

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

OPEN SESSION
(DAY 2 OF 2)

Saturday, April 28, 2007

3:22 p.m.

The Peabody Hotel
Three Statehouse Plaza
Little Rock, Arkansas

COMMITTEE MEMBERS PRESENT:

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

BOARD MEMBERS PRESENT:

Herbert S. Garten
Sarah Singleton

STAFF AND PUBLIC PRESENT:

Alejandro Avilles, Arkansas Task Force on Latino and
Hispanic Affairs
Patricia Batie, Manager Board Operations
Jean Carter, Center for Arkansas Legal Services
Mattie Cohan, Senior Assistant General Counsel,
Office of Legal Affairs
Thomas Coogan, Office of Inspector General (OIG)
Karen Dozier, Executive Assistant to the President
Joel Gallay, OIG
Deborah Hankinson, American Bar Association (ABA)
Carolyn Lemens, Student
Linda Perle, Center for Law & Social Policy
David L. Richardson, Treasurer and Comptroller
Don Saunders, National Legal Aid & Defender
Association
Karen Sarjeant, Vice President for Programs &
Compliance
Julie Strandlie, ABA
Laurie Tarantowicz, OIG
Richard "Kirt" West, Inspector General
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary
Charles N. Jeffress, Chief Administrative Officer

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P R O C E E D I N G S

1
2 MR. MEITES: All right, we were in the midst
3 of our discussion yesterday when we adjourned of the
4 four resolutions that Bernice had proposed. In fact,
5 more specifically, we were talking about numbers A and
6 C. Our discussion actually had evolved into a general
7 discussion about different ways to proceed. One
8 suggestion was that rather than do this by resolution,
9 which -- about which concern was expressed lest we
10 not -- we were not able to capture in a resolution all
11 the nuances of a not-for-profit corporation law and
12 also whether a resolution simply stating the law was a
13 useful vehicle for the board to take, versus one
14 suggestion was there be a board briefing by Vic in
15 executive session where we could have a full exchange
16 of views that would be informational. So I believe,
17 subject to being off the record.

18 And another proposal was that, and perhaps
19 with this briefing, that some kind of protocol be
20 informally or formally worked out between the board,
21 presumably, and Vic and Helaine as to a simple
22 procedure for facilitating director's access to

1 records.

2 And that's where we left it. And I know that
3 Bernice and Sarah and Vic were going to talk last night
4 and see if something along those lines rather than the
5 resolution approach would make sense and that's where
6 we left it. So let me ask Bernice where we're at in
7 all of this?

8 MS. PHILLIPS: It was my understanding that
9 I'm not sure but we were going into closed session, but
10 we were going into closed session, but I'm not sure.
11 But I did want to make myself clear in what I was
12 suggesting and I have prepared something, I have
13 written something out just to make myself clear on
14 where I was going with this. So, if you don't mind, I
15 would like to read this into the record?

16 MR. MEITES: Please.

17 MS. PHILLIPS: I appreciate having the time
18 last night to consider what was said yesterday. I am
19 going to try today to be very clear about what I am
20 suggesting.

21 I would start this by saying that I am a
22 client board member and a client advocate and not an

1 attorney. Therefore, I am not educated in the law like
2 lawyers are. So it is necessary for me to ask
3 questions, do research and review documents before I am
4 comfortable making a decision for LSC. I think to do
5 anything less as a nonlawyer would be irresponsible and
6 negligent on my part.

7 I admit that I might ask more questions and
8 ask for more records than anyone. But I believe that
9 this -- these requests are necessary for me to do my
10 job.

11 It is necessary to share my experience getting
12 information from LSC. I was interested in management's
13 response to the congressional investigation and I was
14 refused those documents until I said that I would go to
15 Congress and ask Congress for the documents. Only
16 then, I received a copy of the records.

17 As you know, I made many observations about
18 the employees handbook and asked many questions, trying
19 to understand the different sections. I also asked for
20 some records to help me evaluate some of the policies
21 in January 2007. I received some documents and
22 management refused to release others. They claim that

1 the documents were confidential and sensitive. Some
2 contain salary information.

3 Only after I requested documents under FOIA
4 did I receive other documents. It was yet necessary
5 for me to request the remaining documents I have not
6 received under FOIA, which I received here in Little
7 Rock.

8 I don't believe that these things should have
9 happened. I believe that a board member should not
10 have to go through FOIA to understand documents for the
11 corporation to do their job. What I was suggesting
12 through these resolutions is that there is a clear need
13 for something official passed by this board to be put
14 in place to address the four issues.

15 In closing, I don't believe that members of
16 the board would agree -- other members being treated in
17 this manner. I would think that other members of the
18 board would insist that client representatives be given
19 all the tools and information they need to be
20 effective. Thank you.

21 MR. MEITES: Thank you, Bernice. If anyone
22 has any comments?

1 MS. PHILLIPS: I would just also like to add,
2 I understand management's position when they stated
3 that the information I received was confidential. I
4 understand that that information cannot be shared
5 outside of this board or management staff.

6 When you send me sensitive information and you
7 let me know it's sensitive information, it stays
8 with -- I just wanted to reassure everybody that it
9 stays within the board and management staff. It does
10 not leave outside of that rim. So I understand that
11 that is very important and that management has a
12 concern. But I also want to assure management that I
13 know how to treat sensitive information.

14 MR. MEITES: Well, Bernice, I would join with
15 you in -- not going through the history of what you
16 related -- but yes it is important that all board
17 members keep abreast of what's happening and that to do
18 that, we need access to information about the
19 corporation. I do employment law, so I am very
20 sensitive about the confidentiality of employee
21 evaluations and salary. As you said, it's
22 confidential.

1 And so what I think we all agree to is, while
2 we have a need for information, there may be two
3 limitations. One is that management has to do its job
4 along with us doing our job. And as you said, second,
5 we understand confidentiality. That's why I thought
6 the idea that if Vic could bring us up to speed in a
7 closed session and we can work out some kind of a
8 protocol between ourselves as board members and staff,
9 that I think would avoid the kind of problems that you
10 related from your point of view were very unfortunate.

11 Does that make sense to you?

12 MS. PHILLIPS: That makes a lot of sense. And
13 I believe me, Sarah and Vic -- I understand that the
14 resolutions are not perfect. This is the first time
15 that I have done something like this and I just wanted
16 to make sure that there was something set in place so
17 others wouldn't have to go through what I have
18 experienced.

19 But I am willing to meet with Sarah and Vic
20 and bring whatever to the board so that the board can
21 bless it and approve of it and then move on from this
22 situation.

1 MR. MEITES: All right. Then we will, if I
2 understand you, consider your resolutions withdrawn at
3 this time?

4 MS. PHILLIPS: Yes.

5 MR. MEITES: Fine. And then we'll just go
6 ahead with the agenda with the thought that before the
7 next meeting, conversations that you mentioned will
8 take place and you all can report back to us at the
9 next meeting. Is that okay with everybody?

10 MS. PHILLIPS: That's fine.

11 MR. MEITES: Is that satisfactory, Mike?

12 MR. MCKAY: It is. And I just want to
13 reaffirm that I have spoken with Bernice and Sarah
14 separately. I support Bernice in her concerns and I
15 think we can come up with something.

16 Are you saying we're not going to have any
17 discussion on this in the closed session legal
18 briefing?

19 MR. MEITES: I think we should defer until
20 next time. We have a full agenda for this afternoon.
21 It's actually not on our agenda for this afternoon and
22 I would prefer to put it off until the next meeting.

1 Despite the claims that as chair my modus operandi is
2 putting everything off, yes, we should put this off.

3 MR. MCKAY: Well, that certainly sounds fine
4 with me, as long as it is okay with Bernice. But I
5 just want to make sure Bernice knows that I will be
6 able to work with her in any way we can to make sure we
7 get at the very least a sense of the board on how to
8 proceed with regard to access of documents, and to
9 staff.

10 MS. PHILLIPS: That's -- that's fine, Mike.

11 MR. MEITES: All right. I shouldn't have said
12 what I just said.

13 In order to keep to our schedule, since we are
14 starting somewhat late today, we are going to defer
15 Item 5 until the next meeting. I talked to Kirt about
16 this. This is the presentation by the OIG on
17 independent private accountants and OIG review of their
18 work. That is a report that we've asked for from the
19 OIG's office, which they prepared, but we have other
20 things that are older on the agenda that I think we
21 should consider, in particular the discussion of the
22 rgy agenda. So if that is acceptable to the committee,

1 we will defer that item.

2 All right, hearing no objections, we will
3 continue.

4 The next item is the status report on locality
5 pay. If we could have -- is it Vic? Who is reporting
6 on this? Vic? That's fine.

7 And as Vic makes his way to the podium, I want
8 everyone on the board to feel free to ask any questions
9 they have about locality pay. I think this is a
10 subject that is peculiar to the federal system and you
11 can assume almost total ignorance of the subject. But
12 go ahead, try your hand at this.

13 MR. FORTUNO: Actually, this shouldn't take
14 very long because all I have to report at this point is
15 that we -- as I explained the last time the committee
16 met on March 20, we have retained a law firm. They are
17 doing the necessary legal research. We spoke with them
18 briefly. They have explained that they have some
19 additional research to do. They informed us in advance
20 of this meeting that they wouldn't have an opinion
21 ready at this time. They don't even have a draft yet.

22 But their research is under way and they assure us

1 they will have something for us well in advance of the
2 next meeting of this committee.

3 MR. MEITES: Just to give us a heads up, is it
4 your sense, at least as how things look now, that there
5 is any action that management will propose our
6 committee takes other than receiving the report?

7 MR. FORTUNO: I think that's all that will be
8 recommended, although I think management may want to
9 start conversations with folks on the Hill concerning
10 possible options available.

11 So I don't think that that absolutely requires
12 board action. I think that it's important that
13 management be informed of that -- that the board be
14 informed of that by management. If the board chooses
15 to become involved it, of course, may do so.

16 But I think at this point, it's just to wait
17 for the report, accept the report and allow management
18 to proceed with conversations with folks on the Hill
19 about possible alternatives, making sure that the board
20 is kept apprised of all those discussions.

21 MR. MEITES: Good, thank you very much.

22 Any questions for Vic at this time?

1 Thank you, Vic.

2 All right, the next item is consider and act
3 on a 2007 regulatory agenda. We have received a
4 comment from the OIG, a response to that from staff and
5 we have received some public comments. Who is going
6 to -- someone from the OIG?

7 All right. There are, as background, let me
8 just give my committee some background. In January
9 2002, the Regulatory Review Task Force of LSC delivered
10 a report to our predecessor board. The Regulatory
11 Review Task Force was appointed and began its work in
12 October 2000. It apparently was -- I don't know the
13 circumstances that led to the creation of this task
14 force, but it consisted of representatives of virtually
15 the entire staff as well as the OIG.

16 And I have a copy here, it is a lengthy
17 document, and maybe it makes sense -- and it does make
18 sense, because that's what we're going to do. Mattie,
19 why don't you just start and tell us about this report
20 and then we'll turn it over to the OIG because it is
21 the OIG's recommendations that triggered our proceeding
22 today. So, Mattie, if you could give us background and

1 then Laurie, we'll invite you to proceed with your
2 presentation.

3 MS. COHAN: Okay, for the record my name is
4 Mattie Cohan. I am Senior Assistant General Counsel
5 with the Office of Legal Affairs for Legal Services
6 Corporation.

7 The 2002 Regulatory Task Force Report that you
8 referred to started as -- it was a staff initiative at
9 the direction of the then president, John McKay. He
10 wanted us to kind of take a bottoms up look at all of
11 the regulation, since it had been at that point a few
12 years since the flurry of rulemaking activity that
13 happened to implement the '96 restrictions. So
14 the -- it was -- it started out and was essentially a
15 staff task force, where we sat down and looked at each
16 of the regulations and made staff recommendations and
17 there was liaison with the Office of the Inspector
18 General on those recommendations.

19 A draft report was published and we met with
20 folks from the field. We received input from them.
21 That turned into the second kind of version of the
22 draft report.

1 The committee and board then -- the original
2 report just had kind of high priority, low priority for
3 rulemaking. The board at the time asked management to
4 come back with specific -- to prioritize the priorities
5 within the high priority items and a list -- a high
6 priority list was created. In the meantime, while that
7 was going on, we were asked for -- a phrase I thought I
8 would never have to utter again -- low-hanging fruit.
9 And that's what created the rulemakings on 1611, the
10 financial eligibility rules, which this board finished.

11 And the rulemaking on 16 -- the review of the
12 rulemaking on 1626, the alien eligibility regulations,
13 which has not been acted on since the prior board left.

14 And then there were several -- from that
15 report, there were several high priority
16 recommendations, I believe all of which have since been
17 acted on in that original priority. It included
18 revision of our outside practice of law regulations,
19 some changes to the FOIA regulations, the client
20 grievance procedure, the 1624 prohibition of
21 discrimination on the basis of discrimination. I
22 believe -- I believe that was -- oh, and we ended up

1 eliminating eight and one obsolete regulation.

2 So I think all of the high priority
3 recommendations from that task force report have since
4 been acted on in one way or another. And so that was
5 the task force. And the report was presented to and
6 accepted by the board. And then they -- at the time.
7 And that's basically the background on that.

8 MR. MEITES: Okay, and we have to bring it up
9 to date. Our committee has from time to time asked for
10 suggestions, both from staff -- from the public, as to
11 regulations we should consider, and the OIG has now, in
12 response to I guess our continuing requests for ideas,
13 has come forward with a series of recommendations. Let
14 me turn it over to Laurie and she can walk us through
15 the recommendations.

16 MS. TARANTOWICZ: Thank you. For the record,
17 my name is Laurie Tarantowicz, and I am counsel to the
18 OIG.

19 The OIG is making five recommendations for
20 regulatory action. These recommendations come out of
21 our experience when -- in our investigation of the
22 activities of CRLA, our recent investigation,

1 and -- but they are intended to improve LSC guidance to
2 grantees generally and to improve the accountability
3 for the use of federal funds.

4 MR. MEITES: Before you go on, Laurie, we
5 received -- I might get this wrong -- we originally
6 received comments in -- a recommendation memo dated
7 December 21, 2006. We subsequently received a second
8 memorandum.

9 MS. TARANTOWICZ: That's correct. I'm sorry,
10 I should clarify. We did issue our original memorandum
11 at the end of December. And then, just recently, in
12 the last week, issued a superseding memorandum which
13 basically cuts down our recommendations from six to
14 five.

15 MR. MEITES: All right, I have picked up
16 someone else's notebook which doesn't have the copy of
17 your current memorandum. Oh, I got one. Thank you
18 very much.

19 Okay, go ahead. Why don't you walk us through
20 the recommendations and --

21 MS. TARANTOWICZ: Okay. Our first
22 recommendation is that the board issue a regulation

1 allowing for additional sanctions, which have
2 historically been termed "lesser sanctions" and other
3 tools to induce grantee compliance. Our view is that
4 currently, management has fairly limited tools at its
5 disposal, some of which call for very drastic measures,
6 such as termination in whole or in part of grantee
7 funding. And others that are not -- that are of
8 somewhat limited usefulness such as month-to-month
9 funding and special grant conditions. The latter
10 especially is the case where a grantee has declined to
11 abide by the terms and conditions of its current grant
12 and therefore additional conditions might not be the
13 most effective way of ensuring compliance.

14 An example of lesser sanctions would be to
15 impose a nonrefundable penalty with minimal procedures,
16 making enforcement quick and effective. I'll mention
17 here the task force report. I know that Mattie didn't
18 mention this in her list and I don't know -- I don't
19 recall -- I was on that task force, but I don't recall
20 the list -- if there was a subsequent list after the
21 report was issued. But I know that in the report
22 itself, a lesser sanctioned regulation was deemed to be

1 of the highest priority. And at that time, the Office
2 of Compliance and Enforcement had indicated that it
3 desired to use that when more drastic measures were not
4 called for.

5 We believe that this regulation would allow
6 LSC to assure grantee compliance while providing a more
7 streamlined and less drastic measure.

8 Our second recommendation is that the board
9 revise its timekeeping regulation which currently
10 appears at Part 1635. this recommendation or this
11 modification would require grantees to implement a time
12 keeping system that is capable of linking time records
13 to funding source. Currently, the regulation does not
14 require an identifiable nexus between the time spent
15 and the funding spent to support that time.

16 The grantees' accounting records currently do
17 not contain this information. In doing our
18 investigation, we found it very difficult. As you
19 know, there are some restrictions that apply to the of
20 LSC funds but do not -- but grantees are allowed to use
21 their non-LSC funds to carry out certain activities
22 such as comments on legislation when requested.

1 We found it very difficult to be able to
2 ascertain when these activities were undertaken what
3 the actual funding in support of those activities was.

4 And therefore, difficult to ascertain whether grantees
5 had spent their LSC funds on those activities.

6 We believe that this would provide a tool
7 critical for ensuring accountability and we are hopeful
8 that it would not overburden the grantee community
9 because we understand that some grantees currently have
10 that capacity.

11 Our third recommendation is that the board
12 modify its regulation governing lobbying and certain
13 other activities that currently appears at Part 1612.
14 we believe that modification is necessary to provider
15 clearer and more adequate guidance on lobbying and
16 related restrictions, those being rulemaking
17 activities, advocacy training and certain organizing
18 activities.

19 Just quite candidly, we found this regulation
20 to be very confusing. And while -- while doing our
21 CRLA investigation, we found certain activities that we
22 thought were in violation of the statute. When we went

1 to the regulation, however, trying -- and it took us
2 some time to try to muddle through it, we had
3 determined that it wasn't clear that those activities
4 were, in fact, in violation of the regulation. We
5 therefore didn't think it was appropriate to come out
6 with a finding of noncompliance against the grantee,
7 given the unclear situation.

8 We believe it provides -- the regulation
9 currently provides insufficient implementing guidance
10 to grantees because it lists some activities that are
11 permissible, some activities that are prohibited in the
12 same area, but some that might fall in between, it's
13 not clear whether they're permissible and prohibited.
14 I assume they are not prohibited because the regulation
15 doesn't directly prohibit them. But as I said, it
16 seemed to us that the statute just might. Therefore,
17 we recommend some clarifying changes to that
18 regulation.

19 Our fourth recommendation is that the board
20 modify its regulation governing prohibited political
21 activities. This regulation appears at Part 1608.
22 This regulation basically restates the law. The LSC

1 Act prohibits both LSC and grantee employees from
2 intentionally identifying the corporation or the
3 recipient with certain political activities and also
4 applies the Hatch Act to LSC and grantee employees.

5 The Hatch Act is administered by the United
6 States Office of Special Counsel and we believe that
7 LSC should work closely with the special counsel's
8 office if it chooses to modify this regulation. In
9 fact, the special counsel has offered the assistance of
10 his office in doing so.

11 We believe that our experience at CRLA shows
12 that there are differing conclusions about what might
13 constitute a violation of this regulation. Management
14 and the OIG had differing conclusions. We don't
15 believe that the general counsel opinions cited are
16 actually applicable to the situation that we brought
17 forward. We also don't think that the opinions had any
18 relevance to an issue of whether there was a violation
19 of the Hatch Act.

20 Having said that, whether you come out one way
21 or another on that particular circumstance, we believe
22 that it provides an example of why the regulation

1 should be modified to provide some guidance and do more
2 than merely restate the law.

3 Our final recommendation is that the board
4 issue a regulation addressing when it is permissible
5 for grantees to perform work without a client. During
6 our investigation, as you know, we found that the
7 grantee performs substantial work without having a
8 client. In this situation it was litigation. We
9 understand that there is work that grantees -- or
10 activities that grantees will undertake without having
11 clients, such as community education, self-education,
12 training programs. And all of that is certainly
13 appropriate. But we questioned whether actual legal
14 services work -- actual legal work should be performed
15 when there is no client, no eligible client on whose
16 behalf that work is being performed. And although
17 there are regulations in place that suggest that
18 recipients need to have a client before engaging in
19 legal work, such as 1611 governing financial
20 eligibility, 1626 governing citizenship and alien
21 eligibility, there is no explicit requirement that, for
22 instance, litigation work or we've seen evidence of

1 other work such as letters being written to employers
2 or landlords or local agencies, and we haven't been
3 able to have an ultimate finding on this but it appears
4 thus far that there is no client associated with that
5 work.

6 We therefore think it is appropriate for the
7 LSC board to give guidance to the grantees as to when
8 and if such work is appropriate without having an
9 actual client on behalf of whom the work is conducted.

10 And that concludes our recommendations.

11 MR. MEITES: Thank you very much. Let's first
12 have staff response and then I would like any public
13 comment.

14 MS. COHAN: Would you like the full management
15 report, tracking the report that was in here?

16 MR. MEITES: Yes, let's put the whole thing
17 out and then we'll try to figure out what to do with
18 it.

19 MS. COHAN: Sure. Management is making a
20 recommendation regarding the creation of one
21 rulemaking. Management considered the comments, the
22 recommendations that came from LSC recipients, the OIG

1 recommendations and its own review of the issues.
2 Management has determined that there is no need for
3 significant rulemaking.

4 However, management does believe that a new
5 lesser sanction issue rulemaking could be helpful to
6 provide a tool in addition to the ones already
7 available. And that particular recommendation has to
8 do with the consideration of a rule for the imposition
9 of special grant conditions imposed during a grant
10 year. And I will discuss that in greater detail.

11 There are currently a variety of enforcement
12 mechanisms that the corporation has in front of it.
13 Among these are the imposition of corrective action
14 plans, temporary suspension of funding, question cost
15 proceedings and termination of a grant in whole or
16 part. And all of those can be imposed at any point
17 during a grant year.

18 Placing recipients on month-to-month funding,
19 which may be done at the outset of a grant term, and
20 imposing special grant conditions which may be done at
21 the outset of a grant term or between years of a
22 multi-year grant term. These mechanisms, along with

1 informal compliance, training, informal consultations,
2 usually suffice to ensure that recipients remain in
3 compliance or come into compliance if they have been
4 out of compliance with applicable regulations.

5 However, the ability to impose special grant
6 conditions during the terms of a grant would further
7 enhance the corporation's ability to tailor sanctions
8 to particular situations of a given case.

9 As I noted, special grant conditions may be
10 imposed at the outset of a grant or between years of a
11 multi-year grant term. Being able to impose special
12 grant conditions pursuant to regulatory criteria during
13 the course of a grant year, in instances when a
14 recipient has been found to be in violation of an
15 applicable requirement would be useful.

16 I will note that, of course, corrective action
17 plans can be imposed during a grant term. And they
18 often contain similar requirements to what is
19 envisioned would be in those special grant conditions.

20 However, management's experience is that imposing such
21 requirements as special grant conditions is a
22 particularly effective way of grabbing the grantee's

1 attention. When the corporation has been able to
2 impose special grant conditions between the years of a
3 grant, that really seems to get their attention, in
4 cases where a corrective action plan in and of itself
5 isn't enough. Although I think usually it is.

6 In addition, providing this by regulation,
7 this authority by regulation will ensure that
8 recipients have notice that special grant conditions
9 may be imposed during the course of a grant year and
10 would not constitute a modification of the grant
11 contract, the contractual relationship that is embodied
12 by the grant agreement. And will be done in
13 conformance with criteria that would then be set forth
14 in the regulations. So that is management's positive
15 recommendation and that is the only rulemaking
16 recommendation that management has.

17 In terms of responding to the OIG's
18 recommendations, management believes that revisions to
19 the timekeeping rule area unnecessary. Management
20 believes that the information that the OIG appears
21 interested in is essentially available through
22 recipients' accounting records and it has not been

1 management's compliance side of the house experience
2 that they could not get access to the sort of
3 information through the acc records.

4 In addition, management believes that
5 requiring recipients to record this information as part
6 of the timekeeping record is therefore redundant and an
7 administrative burden. Management is also concerned
8 that such a requirement would be problematic inasmuch
9 as time keepers, the individuals who are actually
10 recording the time, may not know at the time that they
11 record their hours exactly which funds are being used
12 to support their activity, particularly when there is
13 multiple funds which may be available to support a
14 particular activity. And grantees know when they have
15 activities that can only be supported by non-LSC funds.

16 But they do lots of things that could be supported by
17 LSC funds or their non-LSC funds.

18 The timekeeping requirement requires that
19 grantees keep time on a contemporaneous basis, so to
20 include an accounting of what grant is being charged
21 would require that information to be recorded also on a
22 contemporaneous basis, which would force recipients to

1 assign funding sources on that contemporaneous basis
2 and that works contrary to the flexibility that
3 recipients currently have to use those funding sources
4 in the most advantageous way during their fiscal year.

5 In addition, management notes that prior
6 drafts of what became the timekeeping requirement in
7 the federal -- in the fiscal year '96 appropriation law
8 originally contained a requirement that the timekeeping
9 be tied to the account to be charged. However, the
10 final version adopted by Congress did not contain such
11 a requirement and the final language adopted
12 specifically separates timekeeping and accounting. We
13 went back and reviewed the legislative history and the
14 regulatory history of the timekeeping requirement in
15 the appropriations act and the regulations and there
16 doesn't seem to be a particular concern expressed on
17 the part of Congress that time records need to
18 contemporaneously reflect funding source.

19 With respect to the OIG's recommendation on
20 Part 1612, restrictions on lobbying and certain other
21 activities, management believes that rulemaking in this
22 area is unnecessary. Management is -- questions what

1 the OIG means in referencing actions which go beyond
2 what is permissible but short of what is prohibited.
3 Any given activity is either permissible or prohibited
4 and management respectfully disagrees with the OIG that
5 the current regulation is unclear. And management
6 further notes that the Office of Legal Affairs is
7 available to provide guidance to LSC staff, including
8 the Office of the Inspector General, and recipients, on
9 questions of interpretations of the regulations.

10 In the last several years since the current
11 version of this regulation was adopted, OLA has been
12 asked for and has issued a grand total of two external
13 opinions and no internal opinions on this. And I will
14 note, though, that there is a generous amount of
15 guidance predating the current version of the
16 regulation, much of which is still extant and
17 applicable. Because although the regulation has
18 changed, there is a lot of -- the guidance on the parts
19 of the regulations which have not changed over the
20 years is still applicable.

21 The paucity of requests that OLA has received
22 for guidance indicates at least that we don't see a

1 burning need for rulemaking because we don't think the
2 regulations seem that unclear that people are asking
3 for lots of interpretations.

4 Similarly, with respect to Part 1608,
5 management believes that rulemaking is unnecessary.
6 Again, management respectfully disagrees that the
7 regulation is on its face unclear. Again, OLA is
8 available to provide guidance to the LSC staff and the
9 OIG as well as recipients on questions of
10 interpretations of the regulations. As noted, OLA had
11 issued two internal opinions dealing with the specific
12 issue identified by the OIG and no external opinions on
13 that issue other than the public release. We have
14 since publicly released those two internal opinions.

15 Again, there has been a paucity of requests
16 for guidance on the regulation. You know, I will
17 contrast that to 1611, which was in many ways confusing
18 to our recipients and we received multiple requests for
19 guidance to make the language clearer, which we've
20 done. So we don't believe that there is any need that
21 justifies that rulemaking is necessary at this time.

22 With respect to lesser sanctions, management

1 believes that the OIG's suggested rulemaking to
2 authorize limited reductions in funding is unnecessary.

3 As noted earlier, management is recommending its own
4 lesser sanctioned rulemaking with respect to the
5 imposition of special grant conditions. Management
6 believes that the current enforcement tools with that
7 one change are sufficient to enable to corporation to
8 insure that recipients remain in compliance and come
9 into compliance when violations occur. Management is
10 concerned that imposing monetary penalties for
11 violations will only have the unfortunate effect of
12 reducing their already over-stretched resources, and
13 that in turn will have an impact -- a negative impact
14 on both client services and on the funds available to
15 the grantee to perform corrective actions, whether
16 that's getting training, hiring consultants, developing
17 compliance mechanisms, to the extent that those sorts
18 of activities require resources. If the corporation is
19 penalizing them and taking their resources away from
20 them, management is concerned that that will make it
21 more difficult for the grantee out of compliance to
22 come into compliance.

1 MR. MEITES: Mattie, there was one
2 recommendation you didn't comment on, the last
3 recommendation of the OIG, that -- no work absent
4 identified client.

5 MS. COHAN: Correct. I hadn't gotten to that
6 yet.

7 MR. MEITES: Okay, go ahead.

8 MS. COHAN: In this respect, management simply
9 disagrees with the OIG that a problem exists with
10 respect to this issue. Management believes that in the
11 way that this issue came up and turned into the OIG's
12 recommendation, the issue wasn't really so much doing
13 work without a client, so much as in those instances
14 doing work while searching for and soliciting for a
15 client. The regulations against solicitation are quite
16 clear and therefore management believes that rulemaking
17 on this issue is not necessary.

18 MR. MEITES: Okay. Before we open for public
19 comment, I believe it would be helpful for our
20 committee to have a chance to raise some questions.
21 And let me start; I have a couple questions.

22 Mattie, you mentioned that both the lobbying

1 and political activities regulations have not elicited
2 requests for clarification from our grantees. Which
3 might mean that the grantees are perfectly happy with
4 them but we shouldn't be. Let me ask the other side of
5 the question. Have we received complaints from the
6 public that our grantees are improperly or
7 impermissibly lobbying or participating in political
8 activity?

9 MS. COHAN: I can't address that with absolute
10 specificity. But it is my understanding that we are
11 not receiving considerable amounts of complaints. I
12 can't say that we've never had one, but I don't know
13 that we're getting -- not only -- I don't think we're
14 getting many complaints. And if we've gotten
15 complaints I don't think they've, in fact, panned out
16 to be a problem.

17 MR. MEITES: Okay, one question on the time
18 keeping and this is for Laurie. I think I understand
19 what you are proposing, although in general terms.
20 That is that as the -- the attorney keeps track of his
21 or her daily activities as required by regulation, that
22 in addition to name, attorney, client, work done, time,

1 there also be an additional observation, source of
2 funding for the work that the attorney is doing. Is
3 that --

4 MS. TARANTOWICZ: That's correct.

5 MR. MEITES: The attorney or paralegal would
6 be the one who would make that entry; is that correct?

7 MS. TARANTOWICZ: That's correct.

8 MR. MEITES: Okay, let me open generally to
9 our committee for comments, questions.

10 MR. HALL: Just to put another issue on the
11 table, and I know it didn't come up as a recommendation
12 from the OIG, but since management has responded to
13 those, there were some outside recommendations both
14 from CLASP and LASH around the federated states issue.

15 And management, as I read it, seemed to disagree with
16 that. And I'd like to get a better understanding as to
17 why you feel we shouldn't have some regulations in that
18 particular area?

19 MS. COHAN: Sure, I was holding off on
20 providing the report on outside comments because I
21 wasn't sure if the chair wished to just deal with the
22 OIG comments yet. But I'm happy to continue the

1 management report.

2 MR. MEITES: I believe that during the public
3 comment section, we will have a presentation on those
4 recommendations.

5 All right, if we can, let's just limit our
6 comments.

7 Sarah.

8 MS. SINGLETON: Mattie, did you see the
9 December memo to the OIG to which two letters from the
10 Office of Special Counsel were attached?

11 MS. COHAN: Yes, I did.

12 MS. SINGLETON: So you are generally familiar
13 with those letters?

14 MS. COHAN: Generally familiar with them. I
15 have not read them in a while.

16 MS. SINGLETON: Okay, I'm wondering if you
17 think those letters are consistent or inconsistent with
18 the opinions that have been issued by the LSC Office of
19 Legal -- whatever?

20 MS. COHAN: Office of Legal Affairs, Office of
21 General Counsel?

22 MS. SINGLETON: Yes.

1 MS. COHAN: I have no reason to believe that
2 the opinions attached by the Office of Special Counsel
3 are inconsistent with the opinions of the Office of
4 Legal Affairs. I don't believe -- and Laurie can
5 correct me if I'm wrong -- that the OIG was taking
6 issue with the opinions that were issued in the context
7 that the opinions were issued. I believe the Office of
8 the Inspector General is taking issue with the
9 application of the opinions to the situation that they
10 found. Rather than saying the opinions themselves were
11 incorrect under our regulations or under the federal
12 law.

13 MS. SINGLETON: Well, not to open any cans of
14 worms, but that letter that's about the fellow from the
15 U.S. Department of Commerce seems to me very similar to
16 the situation.

17 MS. COHAN: Without getting into a lengthy
18 legal discussion, federal employees are subject to
19 different provisions of the Hatch Act than are our
20 grantees. The Hatch Act imposes one set of
21 restrictions on federal employees and a different set
22 of restrictions, which are not as strict, on state and

1 local government employees. The corporation's
2 employees and grantee employees are subject to the
3 state and local government provisions of the Hatch Act
4 or what's colloquially called "Little Hatch" and again,
5 I haven't read those specifically.

6 MS. SINGLETON: So they would allow
7 identifying information that would specifically refer
8 to a person's employment with one of our grantees? Is
9 that what you're telling me, under the Little Hatch
10 Act?

11 MS. COHAN: Under the Little Hatch Act,
12 employees are permitted to -- people subject to the
13 Little Hatch Act are permitted to run for nonpartisan
14 office. Okay? And there is a certain definition of
15 what a nonpartisan office is, which I won't get into
16 here. And to the extent they do so, they are, in fact,
17 expressly permitted to use their name and title on
18 their campaign literature, and that is not deemed to be
19 intentionally identifying their employer with political
20 activity.

21 MS. SINGLETON: So suppose they are just
22 supporting someone who is running for political office,

1 they are not themselves running?

2 MS. COHAN: That's a different question that I
3 am not really prepared to go into right here. And, you
4 know, management believed that the opinions that were
5 there were applicable, as is their authority to do, and
6 so that's how that came up.

7 MR. MEITES: Let me ask -- I should have asked
8 this first. I believe that -- I know our committee
9 sets its own agenda and I am trying to make sure we're
10 clear about where we're going to end up today. If we
11 decide, say, to pursue three of these further and two
12 no further, I don't -- correct me if I'm wrong, but
13 that is our committee's decision and we do not need the
14 board's approval, unless we ask the board to authorize
15 the publication of a notice of rulemaking; is that
16 correct?

17 MS. COHAN: Under the rulemaking protocol,
18 yes, that would be correct. If you were actually going
19 to recommend the initiation of a rulemaking, the board
20 has the ultimate responsibility to do that. The
21 committee would have the authority to say, we want more
22 information on these issues, if the committee so

1 chooses.

2 MR. MEITES: All right, more comments from the
3 committee?

4 Yes, Kirt.

5 MR. WEST: Mr. Chairman, Kirt West, Inspector
6 General. I would like to respond specifically to
7 Sarah's question because I am the one who had the
8 conversation with the Office of Special Counsel
9 regarding the letters that you got in your book.

10 And while OSC will not give specific guidance
11 unless there is a specific factual thing that has been
12 referred to them, there was a strong feeling that the
13 Hatch Act language in the LSC Act would have prohibited
14 the identification of the grantee with a partisan
15 political activity. The two OLA opinions address
16 simply whether or not someone who is running for
17 nonpartisan office as, by the way, in the Washington,
18 D.C., area there is an exception for employees running
19 for nonpartisan office. Whether you could simply
20 identify your employer. And of course, it would make
21 sense if you said, I'm running for office and I can't
22 tell you who I am working for. And that's what the OLA

1 opinion addressed.

2 And I have spoken with Vic. Which I think you
3 have to understand the context of the opinion you
4 received is a management position, this is not an
5 opinion coming from the General Counsel to the board.
6 This is the OLA opinion, the OLA staffer presenting the
7 views of management to this. And I think you might
8 want to get what Vic's views are on this, whether he
9 thinks the two opinions issued by his office are
10 applicable to the situation that we had.

11 MR. MEITES: Okay, any more comments?

12 Mike.

13 MR. MCKAY: I don't know if this is an
14 appropriate time. If we're talking about our agenda,
15 I'm not sure if this falls into the regulations or not,
16 but I've been thinking about this for some time and was
17 thinking maybe the finance committee ought to look at
18 it, but more appropriately it probably ought to be this
19 committee. But that is, and it has been raised before,
20 but I do propose that we take a look at the possibility
21 of creating and implementing a compliance program for
22 LSC.

1 I know that is used quite a bit in the private
2 sector, but it was suggested by the IG. I have given
3 it some thought, and I think it's a good idea to at
4 least consider the pros and cons of having a compliance
5 program here. And I don't know if it's appropriate for
6 us to discuss this now, but if we're talking about
7 agenda, I'd at least like to put that out.

8 MR. MEITES: Give me a few more sentences on
9 what you mean by "compliance program"?

10 MR. MCKAY: Well, in the private sector, a
11 compliance program would include a code of conduct.
12 This is what is expected of the employees of a
13 particular entity. And then the next phase would be a
14 procedure for the implementation of that code, creating
15 a committee normally of the board itself that would
16 supervise it, identifying a high-ranging official in
17 the organization who is in charge of supervising it.
18 Having an ethics advisor, someone available to give
19 advice on these kinds of things.

20 In many ways, some of this stuff is already
21 here. But I like the idea of having us at least
22 looking at this subject. Bring in someone -- I think

1 we have a lot of folks here on staff who can help us,
2 but even someone from the outside who can come in and
3 discuss with us the pros and cons of a compliance
4 program.

5 MR. MEITES: This would be compliance of not
6 our grantees but of our organization?

7 MR. MCKAY: Indeed.

8 MR. MEITES: Okay. All right, I think that is
9 not so much part of the regulatory agenda but part of
10 our operations agenda. And I think we can just add
11 that to our discussion.

12 Okay, if there are no more comments from the
13 board, let me open for any public comment on the
14 proposals we've heard.

15 MR. SAUNDERS: Good morning. I'm Don
16 Saunders. I am the Director of Civil Legal Services
17 for the National Legal Aid and Defender Association.
18 And Chairman Meites, members of the committee and
19 board, we appreciate the opportunity to very briefly
20 comment on the topic before you this morning.

21 My colleague and counsel, Linda Perle, who
22 usually addresses this committee was unable to stay for

1 these deliberations so I am going to briefly make a few
2 comments with regard to the matters before you.

3 As we pointed out in our comments in response
4 to request for comments, we feel that the current
5 regulatory structure is working very well. It is
6 understood by your grantees. We have been operating
7 through this system for a number of years. We have
8 certainly not witnessed widespread chronic compliance
9 issues in the field. Certainly having participated
10 with you and your staff with regard to 1611, 1621, we
11 understand -- 1626 -- that these are very time
12 consuming processes and it's our view that the system
13 is certainly not broken and we do not see -- and we've
14 discussed this extensively with our members -- we do
15 not see areas within your existing regulations that
16 need to be reopened and reevaluated by this committee.

17 We would include the issue of sanctions. We
18 would concur with your management recommendation,
19 except for the issue of lesser sanctions. We believe
20 that certainly the tools that you have at hand,
21 month-to-month funding, special grant conditions, the
22 question of cost, certainly the programs I have worked

1 with that have been on month-to-month funding, for
2 example, take that as a very serious consequence.

3 We understand why that issue is before you and
4 if the committee and the board chooses to move forward
5 in a reconsideration of this matter, we would urge you
6 to take the advice that Mattie gave you and include as
7 part of that conversation a discussion about process
8 and criteria as those special grant conditions were to
9 be imposed. We would certainly agree with that.

10 I will not spend much time in addition to what
11 Mattie did with regard to our strong opposition to the
12 recommendations of the Inspector General with regard to
13 the problems that were identified, particularly as a
14 result of the visit to one of your grantees. We feel
15 that these proposals are overly broad, greatly expand
16 inappropriately the authority of LSC pursuant to the
17 act and restrictions. They would create a series of
18 new and burdensome regulations on programs.

19 Certainly with regard to the timekeeping, to
20 their great credit, your grantees have vastly expanded
21 the number of sources of revenue that are provided. In
22 some instances, between 50, 70 or 80 funding sources

1 are on hand in a program and we really have not seen a
2 problem with the timekeeping regulation and would urge
3 that it be maintained in its current form.

4 With regard to 1612, that's a very important,
5 very carefully crafted regulation that's clearly
6 understood in the field. There have been many
7 trainings that we and others have provided with regard
8 to what is appropriate under that regulation.

9 I was part of a process in 1996 and 1997 when
10 this version of 1612 was promulgated pursuant to the
11 new restrictions placed upon your grantees. This
12 provision was shared with the majority staff on the
13 authorizing committee and the appropriations committee
14 who imposed the new restriction with regard to
15 legislative and administrative advocacy. They fully
16 understood it.

17 As you know, Senator Cohen and Senator Bumpers
18 were able to be successful on an amendment which
19 addresses some of the issues that are raised by the IG.

20 We also feel that what is not prohibited is not
21 prohibited. And being able to negotiate with an agency
22 on behalf of a client with regard to what your advocate

1 feels is an inappropriate or illegal interpretation of
2 a law or regulation is a good thing. It is much better
3 to do that, to do it informally, than to force a
4 litigation situation. We are not talking about formal
5 rulemaking here. That is not really what the issue is
6 before you.

7 With regard to the performing work without a
8 client, that probably is more disturbing to us than any
9 of the other suggestions, because we have no idea what
10 it means. Your grantees are required by their
11 profession to maintain currency with regard to the law,
12 to be trained, to develop legal thinking with regard to
13 issues that might be developing in the community, at
14 times, to participate as amicus.

15 Whatever the situation was before this one
16 grantee, we think a reaction to address an issue that
17 really gets to the fundamental nature of the practice
18 of your grantees would be a mistake and we would urge
19 you not to -- not to agree with that proposal.

20 MR. MEITES: What about the political activity
21 suggestion?

22 MR. SAUNDERS: Again, I -- I am not an expert

1 on big Hatch or little Hatch. But it has not been a
2 situation to my information, Mr. Chairman, that has
3 created much of a problem. I mean, I understand at
4 times identifying information has been attached to a
5 name and, to the extent that that can be avoided,
6 that's an important issue.

7 With regard to people who are running for
8 office, it's a very rare occasion and I'm not aware at
9 least of instances where there has been any lack of
10 clarity in the existing regulation or any problem with
11 regard to what is a bipartisan race, what is not.

12 Clearly, some of your staff have run for
13 elected positions in nonpartisan situations. But I am
14 not aware of any lack of clarity and would agree
15 certainly with the recommendation of management in that
16 regard.

17 MR. MEITES: Right now, are you in a position
18 to convey to us comments about Micronesia and other
19 states?

20 MR. SAUNDERS: We certainly endorse the
21 position brought to you by the Legal Aid Society of
22 Hawaii and reinforced, as you heard yesterday, in

1 Arkansas.

2 We disagree with the change that was adopted
3 by LSC in the mid-'90s, as I recall it, and I don't
4 express a great deal of understanding of the detail.
5 But this was a position that the LSC has taken in the
6 past a different read on. And our idea certainly is
7 that this outcome is not mandated by the compact and
8 that you should at least review whatever options you
9 might have with regard to that interpretation.

10 We are aware of the fact that Congress is
11 looking at this, that Representative Abercrombie and
12 others are aware of the problem and are in touch with
13 them with regard to whether or not Congress can address
14 it. But I think it is our position certainly that the
15 earlier interpretation by LSC was supported by a
16 legitimate interpretation and we would urge you to
17 consider adopting the comments that were provided to
18 you by Hawaii and Arkansas.

19 MR. MEITES: Okay, Mattie, let me ask you to
20 respond just to the last point.

21 MS. COHAN: You mean just about the Marshall
22 Islander issue?

1 MR. MEITES: Yes.

2 MS. COHAN: If I may, just a little bit of
3 background to how this came up. In the LSC Act,
4 service was originally available to what was called the
5 Trust Territories, which included the Federated States
6 of Micronesia, the Republic of the Marshall Islands,
7 and the Republic of Palau.

8 With the Compact of Free Association, which I
9 believe was 1986, those -- the Trust Territories were
10 eliminated as trust territories of the United States
11 and those now independent nations create -- through the
12 compact created a special relationship with the United
13 States.

14 The act which implemented the compact has
15 not -- the act itself has changed a few times. The
16 operative language has not. When the corporation
17 initially adopted regulations acknowledging the change
18 in the status of the former Trust Territories, yes, it
19 was implemented in such a way that those citizens of
20 those countries could be served in other states around
21 the United States, places in the United States.

22 In response to a comment, I believe from the

1 Office of the Inspector General at the time, the office
2 noted that the language of the act of the compact
3 provides that LSC services are to be made available in
4 the Marshall Islands, in the Republic of Palau, in the
5 Federated States of Micronesia. The language of the
6 compact is not written such as to provide the
7 eligibility for services to residents of or citizens of
8 those nations. It's eligibility to provide services in
9 those areas.

10 And management and then the board at the time
11 agreed that that really was -- that was the language,
12 the language was -- the language of the compact is
13 fairly straightforward in that way, that that was the
14 appropriate interpretation of the regulation and so
15 that's been the position since then.

16 I know this has been an ongoing issue for a
17 number of our grantees for a number of years. Back in
18 I believe it was 2003, 2002 or 2003, there was an
19 amendment to the compact of free association, and
20 Congress had an opportunity to review that language at
21 the time and did not make any change to that structure
22 of the language at that time. And so the

1 continuing -- you know, those opinions of the Office of
2 Legal Affairs -- the opinions of the Office of Legal
3 Affairs interpret the fairly clear regulatory language
4 and in the preamble to that regulation, there is a long
5 discussion of this. And essentially the legal affairs
6 opinions that have been issued since then track the
7 regulations through the Office of Legal Affairs can't
8 provide an opinion, contrary to what the regulation
9 says.

10 MS. SINGLETON: Whose regulation?

11 MS. COHAN: The corporation's regulation.

12 MR. MEITES: I'm missing one part of the
13 puzzle. The compact says our grantees can provide
14 service in the former trust territories.

15 MS. COHAN: That's correct. And there are
16 grantees in those trust territories.

17 MR. MEITES: Why can't our grantees provide
18 services here if they're poor? If they meet the other
19 eligibility requirements --

20 MS. COHAN: Oh, if they meet other eligibility
21 requirements. But they have to meet both the financial
22 and the 1626 eligibility requirements.

1 MR. MEITES: Which is what? Which is what?

2 MS. COHAN: Those persons would have to be
3 either legal permanent residents of the United States
4 or have eligibility if they were victims of domestic
5 violence --

6 MR. MEITES: By virtue of their birth in a
7 former territory, they are not otherwise eligible for
8 service?

9 MS. COHAN: That's correct.

10 MR. MEITES: Now, they are in the United
11 States legally --

12 MS. COHAN: They are in the United States
13 legally -- there are many, many aliens who are in the
14 United States legally who are not permitted to receive
15 services from LSC-funded recipients, whether it is
16 funded by LSC or not.

17 MR. MEITES: Got it. So that is it your -- or
18 your office's view that unless congress essentially
19 changes the eligibility requirements with regard to
20 these persons, we cannot by regulation authorize our
21 grantees to provide service?

22 MS. COHAN: That is the management position,

1 yes.

2 MR. MEITES: All right.

3 MS. COHAN: Can I also note for the record
4 that the corporation -- that management has attempted
5 to get further guidance from both the Department of
6 State, who presumably has the authority to interpret
7 treaties, and the Office of Insular Affairs of the
8 Department of the Interior, which has certain
9 administrative responsibilities with respect to those
10 former trust territories. And we have received no
11 response to written requests for guidance telling us
12 that our interpretation is incorrect, or telling us
13 that our interpretation is correct, for that matter.

14 MR. MEITES: Now, is it your view that it
15 would be imprudent for the corporation at this point in
16 time simply to say we can interpret treaties ourselves?

17 In fact, we did in the first place when we adopted the
18 regulation. And we respectfully disagree with our
19 predecessors. Perhaps our predecessors weren't aware
20 then of how large a problem this would be, about how
21 many emigres there would be from these territories,
22 about what a strain it was upon the pro bono resources

1 of the states in which they live, that it now is
2 apparent to us that it is a pressing problem in several
3 states, including Arkansas, where we now sit. And
4 having taken a closer look and having the benefit of 10
5 more years of legal scholarship and thousands of more
6 decisions, that we think that our predecessors were
7 wrong. Can't we do that, as a matter of power and as a
8 matter of prudence?

9 MS. COHAN: The board certainly has the
10 authority to -- if it believes -- the board has the
11 authority to decide that its interpretation was
12 incorrect. The board does not have the authority to
13 implement a regulation outside the authority that the
14 treaty, in fact, and the act actually provides.

15 MR. MEITES: Okay. But if we were to conclude
16 on further study that our predecessors were wrong, we
17 certainly have the power to adopt the regulation and
18 that's as far as I really need to ask you. Whether we
19 should or not is a different question.

20 Okay, comments from the committee on this?

21 MR. HALL: Yeah, on this issue alone, I just
22 think this is something that we have to address in some

1 manner. I mean, I can't believe that if the dollars
2 that Congress allocates can be used in one place, that
3 if that individual comes to another place that those
4 dollars now become tainted and against the spirit of
5 the restrictions.

6 I mean, it's this type of situation that makes
7 people not like lawyers, you know, because it just
8 follows logically that if the dollars are permissible
9 here, then they would be permissible in another
10 location. The individual hasn't changed in some way
11 and become tainted, so how could they taint the dollars
12 here? And we're in a jurisdiction, Arkansas, where
13 they are facing this problem.

14 And for us as a board to feel like our hands
15 are tied and we can't do anything just says that, you
16 know, we are closing our eyes to a very logical
17 problem. And I know it's complicated. I'm not trying
18 to downplay the complications, the legal complications
19 of it. But there are times when we have to sit back
20 and say what was the spirit behind this particular
21 restriction.

22 And if it was permissible, and if the key word

1 was "in" those particular places, we shouldn't let the
2 word "in" stand in the way of us trying to provide
3 service. So I would encourage us to try to develop
4 some resolution to this.

5 MR. MEITES: Mike?

6 MR. MCKAY: Following the leadership of our
7 current chair, as the chair of the Finance Committee, I
8 will observe that we are incurring on the time of the
9 Finance Committee meeting.

10 MR. MEITES: Yes.

11 MR. MCKAY: I would then -- but
12 quickly -- embrace David's comments.

13 We need to look at this. I would move that we
14 add this to the agenda of our meeting in July, that in
15 the intervening period and not in the board book but
16 well before that, we receive a memorandum from the
17 legal office that sets forth the issues that Mattie had
18 articulated, so that we can give this some thought, be
19 ready to address this in force in Nashville.

20 M O T I O N

21 MR. MEITES: Let me take that as a motion. Is
22 there a second?

1 MS. CHILES I'd second it.

2 MR. MEITES: We agree to this? All in favor?

3 (Chorus of ayes.)

4 MR. MEITES: And let me, in light of the time
5 issues, let me quickly sum up where I'm at least at on
6 these regulatory issues and see what other people
7 think.

8 I'm sorry, Bernice?

9 MS. PHILLIPS: Before you go on, can I
10 just -- I'm not understanding, and Mattie, maybe I
11 missed something, why if the people are legal citizens
12 and they meet the requirements, why can't we service
13 them?

14 MS. COHAN: The residents of the Marshall
15 Islands, the Republic of Palau and the Federated States
16 of Micronesia are not U.S. citizens. They are citizens
17 of their own sovereign countries. So that's why it's
18 different.

19 The Trust Territories changed the legal status
20 of those people from a -- their immigration status
21 changed with respect to the United States. So those
22 people are residents of those countries unlike, for

1 example, residents of Puerto Rico or residents of
2 American Samoa, who are United States citizens. So
3 that's a change.

4 MR. MEITES: Let me briefly sum up where I'm
5 at and just leave it open for the committee. I think
6 we should look at this lesser sanctions issue. It's
7 come up in the CRLA and I think in some other issues.
8 Management and the OIG both think that's something we
9 should look at and I think that we want to make sure
10 that our corporation has the tools at hand it needs to
11 do its job. And we've already decided that we will
12 look at the former trust territories.

13 I am not inclined to undertake rulemakings on
14 the other four areas, and I can briefly go through
15 them. The timekeeping, although I agree with the OIG
16 it would be a useful addition to its investigatory
17 repertoire, I think -- my sense is that, particularly
18 what Don said, there are so many funding sources that
19 it really would not only impose a burden on the
20 timekeeping but also is likely to lead to errors which
21 is likely to lead to more work for everyone.

22 For lobbying political activity, I am in a

1 little bit different place and there is a lot in the
2 press these days about -- at least of a federal level
3 what is and what is not permissible political activity.

4 I think that if we tried to improve our
5 regulation -- and I agree with Laurie, I read them.
6 And they at first glance didn't give me a lot of
7 guidance. But I'm afraid if we tried to improve them,
8 I have no certainty that we would arrive at a better
9 product. And given what Don and Mattie have said,
10 particularly there aren't a lot of outside complaints
11 that this is a problem area, I'm loath to undertake
12 them.

13 And finally as to the -- who was a client, I
14 just disagree with that. My view is our legal aid
15 grantees have many, many, many clients at any point in
16 time. And a lawyer has a continuing obligation to
17 advise his clients of potential rights or liabilities
18 that they may face. And I don't think it's our job to
19 get between a lawyer and his obligations of what his
20 clients' situations may be and then advise the client
21 of potential rights or liabilities they may have.

22 So where I come out is the former trust

1 territories and the lesser sanctions, I would like to
2 take a further look at. But I don't see that the case
3 has been made on the other areas.

4 Let me open that for comment.

5 MR. MCKAY: I agree.

6 MR. MEITES: Any other comment?

7 All right, hearing none, I think that that's
8 what we will do. Though I would like to thank Laurie
9 for her work. In particular, I had no idea that there
10 was a final report and I think it's very useful that
11 the OIG, just like the personnel manual, call our
12 attention to areas of the regulations that we've never
13 had a chance to think about.

14 So I would like to thank you and commend you
15 for your work in this area.

16 MS. TARANTOWICZ: Thank you, Mr. Chairman, and
17 thank you to the committee for your consideration of
18 our comments.

19 MR. MEITES: Okay, to wrap up quickly, that
20 completes our agenda. Is there any more public
21 comment? Any new business?

22

M O T I O N

1 MR. MEITES: I will entertain a motion to
2 adjourn.

3 MR. MCKAY: So moved.

4 MR. MEITES: Is there a second?

5 MS. CHILES Second.

6 MR. MEITES: We're in adjournment. Thank you.

7 (Whereupon, at 11:15 a.m., the meeting was
8 adjourned.)

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