

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE

OPEN SESSION

Friday, January 25, 2013

5:26 p.m.

Hyatt French Quarter New Orleans
800 Iberville Street
New Orleans, Louisiana 70113

COMMITTEE MEMBERS PRESENT:

Charles N.W. Keckler, Chairperson
Robert J. Grey Jr.
Harry J.F. Korrell, III
Laurie I. Mikva
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Martha L. Minow
Father Pius Pietrzyk, O.P.
Julie A. Reiskin
Gloria Valencia-Weber

STAFF AND PUBLIC PRESENT:

James J. Sandman, President
Rebecca Fertig, Special Assistant to the President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary
Mark Freedman, Senior Assistant General Counsel,
Office of Legal Affairs
Kara Ward, Assistant General Counsel, Office of Legal
Affairs (by telephone)
Lynn Jennings, Vice President for Grants Management
David L. Richardson, Comptroller and Treasurer,
Office of Financial and Administrative Services
Bernie Brady, LSC Travel Coordinator
Jeffrey E. Schanz, Inspector General
Matthew Glover, Associate Counsel, Office of the
Inspector General (by telephone)
Ronald "Dutch" Merryman, Assistant Inspector General
for Audit, Office of the Inspector General
Glenn Rawdon, Program Counsel, Office of Program
Performance
Carol Bergman, Director, Office of Government
Relations and Public Affairs
Carl Rauscher, Director of Media Relations, Office of
Government Relations and Public Affairs
Janet LaBella, Director, Office of Program
Performance
Herbert S. Garten, Non-Director Member, Institutional
Advancement Committee
Frank B. Strickland, Non-Director Member,
Institutional Advancement Committee
Jon Asher, Executive Director, Colorado Legal
Services
David Pantos, Executive Director, Legal Aid of
Nebraska
Rhodia Thomas, Executive Director, MidPenn Legal
Services
Patricia Pap, Executive Director, Management
Information Exchange
Herbert S. Garten, Non-Director Member, Institutional
Advancement Committee
Frank B. Strickland, Non-Director Member,
Institutional Advancement Committee
Allan J. Tanenbaum, Non-Director Member, Finance
Committee (General Counsel, Equicorp Partners)

STAFF AND PUBLIC PRESENT (Cont'd):

Chuck Greenfield, National Legal Aid and Defender
Association (NLADA)
Don Saunders, National Legal Aid and Defenders
Association (NLADA)
Terry Brooks, American Bar Association

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

2 (5:26 p.m.)

3 CHAIRMAN KECKLER: We're going to go ahead and
4 assemble and get started since we have a full agenda.
5 We have another committee meeting after this, and after
6 that a lovely dinner. So I do want to get started with
7 the noticed meeting of the Operations and Regulations
8 Committee, noting the presence of a quorum.

9 The first item of business is the approval of
10 our agenda for this afternoon.

11 M O T I O N

12 MR. GREY: Move it.

13 MR. KORRELL: Second.

14 CHAIRMAN KECKLER: All in favor?

15 (A chorus of ayes.)

16 CHAIRMAN KECKLER: The agenda is approved.

17 The next item is the approval of the minutes
18 of the September 30th meeting. We have two sets of
19 minutes in here, but I see only the need for the
20 approval of the September 30th is on the agenda. Is
21 there a motion to approve those minutes?

22 M O T I O N

1 MR. GREY: Move it.

2 MR. KORRELL: Second.

3 CHAIRMAN KECKLER: All in favor?

4 (A chorus of ayes.)

5 CHAIRMAN KECKLER: The minutes of the prior
6 meeting are approved.

7 We can now turn to our first substantive item
8 of business, which is to consider and act on our
9 current rulemaking on enforcement mechanisms, and
10 recognize Mr. Mark Freedman from the Office of Legal
11 Affairs to present the issue. Mark?

12 MR. FREEDMAN: Thank you, Mr. Chairman. I
13 will make a ten-minute presentation.

14 You have before you a good rule. Management
15 recommends adoption of this rule. A year and a half
16 ago, the Committee picked up the question of limited
17 enforcement mechanisms to fill the gap created in the
18 rule in 1998.

19 The Committee asked the question, can we do
20 this? Can we write a rule that will provide LSC with
21 meaningful and effective intermediate enforcement tools
22 while providing for a fair process for LSC recipients,

1 and to do so consistent with the goal of maintaining
2 high-quality legal assistance for eligible clients?

3 This rule does that.

4 I'd like to provide a little context from
5 1998, when this gap was created. This is from the
6 preamble to the rules, then. The Committee noted that
7 it was creating this gap, and in the preamble, the
8 Board said that administrative hearings are costly and
9 time-consuming for all parties involved, and that for
10 certain compliance problems, the Corporation may wish
11 to utilize lesser sanctions than suspensions and
12 terminations.

13 We noted at that time that even though the LSC
14 Act had for a long time prohibited a denial of
15 refunding without a hearing, the regulations provided
16 that at refunding time, LSC had complete discretion to
17 reduce the refunding by up to 10 percent with no
18 hearing, and that that actually came from the Office of
19 Economic Opportunity in the predecessor program, where
20 the Office of Economic Opportunity had regulations
21 allowing for reductions at refunding of up to 20
22 percent with no hearings, which was challenged and was

1 upheld by the Second Circuit in 1975.

2 This was some context that we had in 1998 for
3 why would we do this? Why would we say, let's create
4 this hole in the rule and say, we need some different
5 procedures that are not as elaborate as the termination
6 procedures?

7 The goal here is not to take away funding but
8 to protect funding. These are tools for addressing
9 compliance before they rise to the level of a question
10 of an actual termination. When a recipient has a
11 compliance problem, it's an issue for the recipient
12 staff. It's an issue for their clients. And that can
13 become a problem for the entire LSC program and affect
14 all eligible clients.

15 This rule enhances LSC's credibility as a
16 steward of the increasingly scarce public funds. In
17 working on the language of the final rule, we had Dean
18 Minow's voice echoing in our ears from the last meeting
19 when she pointed out, this rule has a lot in it. It
20 can be hard to follow, even for lawyers who are used to
21 digging into every single comma and semicolon. And she
22 asked, could we clarify this rule within the confines

1 of the existing rule?

2 The Committee also emphasized the importance
3 of informal resolution options. And after the
4 committee meeting, the chairman and Mr. Grey pulled me
5 aside and said, that's important. Do that.

6 So there are three major changes in the final
7 rule. First, clarity: We've tried to streamline the
8 rule, enhance the rule, address definitions where terms
9 are used in different rules, defined in one place, not
10 defined in another place, or where phrases are used
11 that aren't defined at all. We've tried to eliminate
12 the redundancies and add clarity to the rule.

13 We have also put a table of procedures in the
14 preamble to try to lay out, how do these different
15 parallel proceedings work? What's similar, what's
16 different, and how do you follow them?

17 Second, we've enhanced the informal conference
18 provisions. We looked back at the language of the rule
19 and the history of the rule, and it highlighted that
20 the informal conference is a vital part of the rule.
21 It is the first step in the process, and it is
22 specifically informal. It is not a hearing, and it has

1 as a goal to narrow the issues and to explore the
2 possibilities of settlement or compromise.

3 But it's only a few lines that talk about
4 that. And so it really doesn't set that tone in the
5 rule. So we've enhanced that by adding to the rule
6 some more provisions focusing on that issue.

7 The notice itself to start the proceedings
8 would have to have a summary of prior attempts at
9 resolution. This is putting on the record, what have
10 we done? Because frequently we expect that we will
11 have been working on an issue for a long time before we
12 get to invoking this rule.

13 We'll be able to -- we'll be required to put
14 down, here's what we've tried. Or, in the alternate,
15 if we've done nothing, if LSC has not tried to do
16 anything, we've got to put that in writing right in the
17 notice: We haven't done anything, and put that on the
18 record.

19 After the informal conference, if we can't
20 find a way of resolving the issues, we will now be
21 required to summarize what was on the table so that,
22 again, we have in the record, here's what was put on

1 the table.

2 That's consistent with, I think, an overall
3 theme in the rule of, let's make sure we have a clear
4 record,, and let's put pressure on everyone involved to
5 try to work things out because everyone's going to know
6 that it's going to be written down.

7 We've also added a clear path for compliance
8 when that's really what we're getting at in a
9 circumstance where we're just trying to get the grantee
10 to do something. If the grantee says -- if we put in
11 the notice, here's what you need to do if you don't
12 want to have this limited reduction, the grantee can
13 say, okay. We get it. We're going to do it.

14 Now, the provisions in the rule are pretty
15 strict because we figure at that point, we need to make
16 sure that they're really going to do it. But if they
17 do to our satisfaction, then they can end the proposal
18 to terminate some of their -- I'm sorry -- to reduce
19 some of their funding.

20 Lastly, we've added appeals and suspensions.
21 This is the first time there will be any appeals and
22 suspensions that are after the informal conference.

1 The current rule regarding suspensions of up to 30 days
2 is unchanged. There will be no appeals during the
3 first 30 days.

4 But when we get into the new period on day 31,
5 the recipient can request an appeal to the LSC
6 President. That's not going to suspend the suspension.

7 It's not going to release their funds. Rather, LSC
8 has to address that appeal within 15 days so that by
9 day 46, the recipient can have had full review.

10 In closing, I'd like to reference President
11 Sandman's comments at the Michigan meeting about the
12 importance of this rule. As I think you know, Jim
13 feels very strongly about this rule, about how it
14 reflects on LSC's role as the steward of public funds
15 and how it affects congressional confidence in LSC's
16 rule with oversight.

17 We don't have all the tools we need right now.

18 And if anything, we said in 1998, we're putting down a
19 marker. We want a new tool here. And what we're doing
20 here is making that tool.

21 I also want to note that Jim's had a very
22 hands-on approach to this rule. There are phrases in

1 this rule -- there are commas in this rule -- that
2 reflect his input. And he's made some hard decisions.

3 I've presented to him, here are some issues.
4 Here is a choice. Here is where we're trying to
5 balance all these things -- fairness, efficiency. He
6 would weigh them and he would say, okay. I've got make
7 a call. Do this or do that.

8 We've had a year-long process in which we have
9 had multiple revisions. We've had Jim's input; the
10 input from comments, especially NLADA and CLASP and the
11 Inspector General. We've had a lot of input and
12 consideration by the Committee.

13 This extensive process has, I feel, produced a
14 good rule that does what we set out to do. And,
15 further, it improves on the prior rule while working
16 within the framework that was set up in 1998.

17 For all these reasons, Management recommends
18 that the Committee recommend adoption of this rule.
19 Thank you for your time.

20 CHAIRMAN KECKLER: Thank you, Mark. And I
21 know that the Committee will have questions, as I have
22 a couple myself.

1 Before turning to that, though, I wanted
2 to -- is Mr. Glover on the phone from the Inspector
3 General's Office?

4 MR. FREEDMAN: I know that he was planning on
5 being.

6 MR. GLOVER: Excuse me?

7 MR. FREEDMAN: There you go, Matt. Are you on
8 the phone?

9 MR. GLOVER: Sorry. I had a little trouble
10 unmuting it.

11 CHAIRMAN KECKLER: Okay. Well, before we turn
12 to questions, the Inspector General is on the agenda,
13 and I know that the question that has been is, in the
14 past the Inspector General has offered comments on the
15 rule, for which we're grateful, as to all other
16 commenters.

17 Is there a further comment of the Inspector
18 General's Office on the final version of the rule that
19 was presented to us today?

20 MR. GLOVER: Yes. We have a very brief
21 comment for the Committee.

22 The OIG has reviewed the final rule prepared

1 by Management for publication. While we may have gone
2 in a slightly different direction with respect to
3 suspension, which we've discussed with the Board in the
4 past, we think the proposed final rule does a good job
5 of balancing the various concerns and interests at
6 issue in this rulemaking.

7 We're particularly impressed with how the long
8 deliberative process has shaped the final rule for the
9 better, and we've not seen anything since the inclusion
10 of the final rule in the board book that would change
11 that assessment.

12 For the reasons that we've detailed in our
13 final comments throughout the process and that we've
14 discussed with the Committee at several meetings, the
15 OIG supports adoption of this final rule prepared by
16 Management, and it recommends its publication.

17 We don't plan to have a long presentation
18 because we think that Management's memorandum analyzing
19 the comments on the further notice of proposed
20 rulemaking and the supplemental material contained in
21 the final rule do a good job of explaining the
22 strengths of the rule as it's now drafted.

1 We'd be glad to answer questions or engage in
2 discussion about particular features of the rule, if
3 the Committee so desires.

4 CHAIRMAN KECKLER: Thank you very much.

5 I'll now turn it over to questions from the
6 Committee, primarily to Mark, but if others are needed
7 as expertise, I'm sure they'll offer that. Okay. So
8 Committee questions? Laurie?

9 MS. MIKVA: Thank you. First of all, I want
10 to thank Mark and Management because they clearly
11 worked very hard on this rule. And even if I don't
12 like the rule, I do appreciate that they have tried to
13 take people's concerns into account to come up with a
14 rule.

15 My question is, what is the reason to reject
16 an outside hearing officer? I know that one is not
17 required, but I'm wondering if the position is that one
18 is not allowed or that one is not a good idea.

19 MR. FREEDMAN: Thank you. Certainly one would
20 be allowed. Congress has not prohibited us from having
21 one. So as you phrased the question, it's more that we
22 feel like in this context, it's not a good idea.

1 Part of that is that in 1998, in response to
2 the direction that Congress was pushing us in
3 suspending that requirement in the LSC Act, the Board
4 for full terminations said, a hearing officer can be an
5 LSC employee. It does not need to be an outside
6 hearing officer.

7 In the context of this rule, we are trying to
8 come up with procedures that will be more streamlined,
9 and again, consistent with what was done in 1998, have
10 something that is going to enable us to act more
11 quickly but with a much more limited scope.

12 So I think that fundamentally the answer to
13 your question is, in that context, having a hearing
14 officer requirement, especially having an outside
15 hearing officer requirement, would run contrary to the
16 direction of where we're going and would likely put in
17 stumbling blocks that would frustrate the purpose of
18 having a more effective mechanism for more limited
19 reductions of funding.

20 Part of that also goes to, I think, a point
21 raised in a number of comments about where at least a
22 number of the commenters would have liked to have seen

1 this go, which really would have been reopening the
2 questions that were addressed in 1998, and in many ways
3 going not only back to the rule we had before the
4 changes to the law in 1996 and '98, but even going
5 beyond that.

6 From Management's perspective, that was beyond
7 the scope of this rulemaking and not the goal that
8 Management was heading towards.

9 CHAIRMAN KECKLER: Go ahead and -- before
10 there's other questions, I'll go ahead and ask a
11 question in a similar vein.

12 There have been some concerns raised, and I in
13 previous meetings raised them myself, about the appeals
14 process and the involvement of the President in the
15 appeals process. And I know that that's been
16 strengthened and continued to be worked on in the final
17 rule.

18 What's the anticipation of Management?
19 There's the rule language, which describes the
20 President's involvement, or his or her designee, if
21 there has not been prior involvement in the process.

22 But what's Management's anticipation or the

1 overall picture of the involvement of the President in
2 what you anticipate the process to look like? What's
3 the picture that you anticipate of involvement?

4 MR. FREEDMAN: Thank you, Mr. Chairman. The
5 role in the process can vary. We have a number of ways
6 in which the President can be involved or perhaps not
7 be involved in the process.

8 The President could be involved from the
9 beginning. The President could be involved in the
10 decisions whether or not to proceed in this fashion.
11 If the President is, then the President will not hear
12 the final appeal.

13 We've taken that from the appeal process in
14 1630 regarding disallowed costs, where the President
15 can hear the final appeal unless the President had had
16 prior involvement in the matter. And similar to the
17 1630 process, the President also can designate somebody
18 else to hear the final appeal even if the President had
19 not had prior involvement.

20 So the President could be involved in the
21 initiation or at any stage of the process up to the
22 appeal. The President, if he or she has not been

1 involved, can hear the appeal, and the expectation is
2 that the President probably will.

3 Nonetheless, the rule does provide, as 1630
4 appeals provide, that the President could delegate it
5 to somebody else, another senior Corporation official.

6 One of the reasons for that in both rules is that the
7 role of the LSC President has ranged greatly with the
8 individuals who have held that office, their styles,
9 the structure of LSC.

10 So mandating that the President has to have a
11 particular role seemed to be not advisable here;
12 rather, emphasizing that we expect the President will
13 have a role, but recognizing that LSC should have the
14 flexibility for the President to determine who's the
15 right person to really do it.

16 CHAIRMAN KECKLER: Let me add a comment to
17 that, then. And some of this doesn't need to be in a
18 regulation. I mean, it can be, although I think that
19 it might be appropriate in guidance because these types
20 of things -- extended suspensions, limited reductions
21 in funding -- we do anticipate that, unfortunately,
22 they will probably be employed, but not that often.

1 That's the optimistic part of our view of it.

2 So you say that probably the President will be
3 involved. I have a very specific interpretation of
4 this language, which you can comment on, which is that
5 when the President is not involved in hearing the
6 appeal or, in the early stages, in managing this, that
7 the delegation that occurs to a senior Corporation
8 employee within the rule is an affirmative delegation.

9 That is to say, there's not a piece of paper
10 that says, "Any time this happens, X official should
11 handle it," but that for that situation, there's an
12 affirmative analysis by the President to delegate.

13 Is that a fair interpretation of the rule, or
14 is it something other?

15 MR. FREEDMAN: I think that that's certainly
16 what we envision based on our practice, not of doing
17 terminations because we haven't done those in a long
18 time, but of how we've handled things.

19 The rule does not mandate that, but that is
20 how we've looked at these issues. And I would
21 anticipate that if the President were to say, "No, I
22 shouldn't handle this," that would be an affirmative

1 action by the President rather than a policy that we
2 adopted of the President just broadly delegating all of
3 that work to someone else.

4 I'll say that in the context of 1630 appeals,
5 it's always been handled on a case-by-case basis where
6 if the President thinks there's someone else who's
7 better equipped to handle that appeal or the President
8 has had prior involvement, then it's looked at on a
9 case-by-case basis.

10 CHAIRMAN KECKLER: I think that that might be
11 usefully clarified in follow-on guidance, if that's
12 going to be the policy, because this is about
13 accountability. It's about accountability for
14 grantees.

15 But as it emerged from the process of
16 developing due process protections, it's about
17 accountability for the Corporation, and for the
18 leadership of the Corporation, and ultimately for us,
19 too, on the Board.

20 So I think that presidential involvement,
21 including that affirmative case-by-case analysis to
22 designate, is an important accountability mechanism on

1 our side.

2 All right. Well, I'll turn it over to other
3 questions, then. Julie?

4 MS. REISKIN: Yes. I know I'm not on the
5 Committee, but I have a question and comment. And I
6 echo what Laurie said about I appreciate how hard
7 you've worked on this, and I've really wanted to find a
8 way to try and support this because I like and respect
9 Jim and the staff, and I don't think that anyone
10 involved with the organization would do anything bad to
11 anyone.

12 However, I haven't been around for 40 years,
13 but I've heard the stories, that things change. And
14 the thing about the informal -- we're going to
15 write -- basically, you have to say what you did with
16 the informal resolution before you can go further.

17 I was on the Medicaid board in my state, and
18 this exact language came up around long-term care
19 agencies and their ability to dump clients. And I
20 agreed with the staff at Medicaid, and voted for
21 language, anti-dumping language, that said -- instead
22 of strict standards with an appeal process, that said,

1 before an agency can dump a client, they have to put in
2 writing what they did to resolve the situation.

3 That was a mistake. Doing that really hurt
4 the clients because all they had to do -- again, when
5 we've had good administrations, it's okay. Other
6 times, and there were other times, all they had to do
7 was basically write, "We tried to work with them and
8 the client wouldn't cooperate," or whatever.

9 That's what I'm afraid of with something this
10 loose, is that in a bad administration, which none of
11 us has control over, that could happen. And again,
12 from everything I've heard here in the past two years,
13 that has happened in the past and may again.

14 So it's not that I think Jim would do that or
15 allow that. We're putting a regulation in place. So
16 that's a big problem.

17 The other -- I wish we could do this in pieces
18 because I like special grant conditions, and I like the
19 idea of the Corporation being able to impose them
20 quickly and without a lot of hassle.

21 The other big thing I needed to bring up is, I
22 brought this to the -- I only have one chance a year to

1 talk to a group of client board members, and that's at
2 NLADA. And I brought this to them.

3 I wanted to make sure that I was being very
4 open and not trying to sway it, so I asked Charles to
5 give me the language for exactly how it was going to be
6 presented, and then Jim looked at it, because I just
7 wanted to be sure I wasn't being biased because I did
8 have feelings about it.

9 What they all said, and it was pretty
10 strong -- Laurie was there; it was pretty
11 strong -- was, why would anything happen if they
12 haven't gone to the Board yet? Because I said what the
13 Corporation was trying to do was to get the attention
14 when someone wasn't complying.

15 You guys bring something to
16 someone's -- something of concern, and then the
17 director doesn't comply. This is bringing me back to
18 what John was saying about, what obligation do we have
19 to deal with boards?

20 What they all said, including some from some
21 programs that we've had problems with, is, the boards
22 don't know when this happens and the bad directors

1 don't tell us, don't tell the based.

2 I feel like a big step is being missed in that
3 before suspensions or reductions or those kinds of
4 things that will hurt clients -- and again, I'm not
5 saying that sometimes they're not necessary and that
6 sometimes you've got to do the hurt to fix it, but they
7 will hurt clients -- that that can happen before the
8 entire board is notified in writing, particularly the
9 client board members.

10 So I feel like that's a huge step that we're
11 missing in this. So that's my big concern, is I think
12 there's some things that have happened and that the
13 client board members, at least, were never even aware.

14 And they didn't have the opportunity to try to fix it.

15 MR. FREEDMAN: Thank you. If I can
16 particularly address that second point, you're correct.

17 The rule does not require notice to the entire board.

18 The rule does, fortunately, require notice to the
19 board chair, that the initial notice will go to the
20 recipient and the board chair.

21 Now, that is depending on the board chair to
22 communicate to his board. And there certainly is the

1 danger that if what we have is a complete institutional
2 failure, then, well, we may have institutional
3 communication problems.

4 There's nothing prohibiting LSC from sending
5 notice to the entire board. I do think that LSC would
6 want to think about whether or not that's appropriate
7 in being respectful of the communications within the
8 boards of grantees and their prerogatives. It's not
9 something that we've really noticed or gotten comments
10 on.

11 So I'd be very hesitant to put it in at the
12 eleventh hour. It is something that we might address
13 as we develop policies and procedures to see, how do we
14 want to do this as an administrative matter, and under
15 what circumstances we might want to look into whether
16 we should be providing notice beyond the board chair.

17 MR. LEVI: Well, boards change their
18 composition. I don't know that we have the complete
19 roster of every board up to date. We make a commitment
20 by rule that we have to notice every member of the
21 board, and then we fail in that, and then were are we?

22 I think the board chair is a good place to start.

1 CHAIRMAN KECKLER: Are there any further
2 questions from the Board? Laurie?

3 MS. MIKVA: I have one more. I'm not sure
4 when the right time to raise this is. But when this
5 first came up, I have asked, why can't we separate the
6 various sanctions we are talking about? And I was
7 told, oh, well, we're just proposing.

8 At this point it seems really hard to separate
9 them, but I am still asking that we be allowed to vote
10 on them separately. And I'm not sure when that or how
11 that could be done.

12 MR. FREEDMAN: That's part of the problem, is
13 the separation. And over time, and I'm just talking
14 about the difficulty that you yourself have pointed out
15 which is that over the time partly for clarity and to
16 try to make it systemic, we've tried to integrate these
17 rules, to some extent, with definitions.

18 So if there was a clearly separable part, it
19 might be possible. But, number one, I don't see that
20 in the text. And then there's the other problem, which
21 is that conceptually we're filling in a general gap.
22 So there are different pieces and different sections.

1 But I'm not sure what the split is that you're
2 contemplating that we could easily do at this point.

3 MR. LEVI: Can I say further to Julie, if you
4 are the board chair and you get that notice from us, I
5 would think you should be sending that around to your
6 board. And in a sense, their failing to do that is
7 itself an indication of an issue. So I sort of think
8 that's where the notice -- that's more to my thinking
9 about that, too.

10 MR. KORRELL: Mr. Chairman? In response to
11 Laurie's question about the splitting, part of it, at
12 least my thinking on it, is that this is the rule that
13 Management's asking for. And so that carries a lot of
14 weight for me.

15 If Management had come to me and said, or come
16 to our Committee and said, we're interested in A and
17 we're interested in B, and let's see which one we can
18 get, or we can get both -- but what they've come to us
19 and said is, can we have this? And that carries a lot
20 of weight for me.

21 (Whereupon, at 6:00 p.m., the examination
22 continued in evening session.)

23

1 E V E N I N G S E S S I O N

2 (6:00 p.m.)

3 CHAIRMAN KECKLER: Okay. Board members can
4 also continue to weigh in. But I do want to open this
5 up to public comment on the rule, on the rulemaking, at
6 this point.

7 Is there any public comment?

8 MR. BROOKS: For the record, I'm Terry Brooks.
9 I'm the staff counsel to the American Bar
10 Association's Standing Committee on Legal Aid and
11 Indigent Defendants.

12 The committee met and reviewed the proposed
13 rule. And, first and foremost, it wanted me to convey
14 its gratitude for the work that LSC has done on this,
15 and for the significant changes that have been made.

16 I think all of the members are particularly
17 complimentary toward the very significant work that has
18 been done to clarify this rule. It really has become a
19 much better rule and a much clearer rule, and the
20 committee is very grateful for that.

21 The committee really struggled because it does
22 not want to try your patience. It knows that you have

1 been at this for a year and have been through several
2 drafts. The committee also has very strong confidence
3 in your current management team. It has worked
4 seamlessly with your President and all of the members
5 of the Board, and does not want to damage those
6 relationships.

7 However, as Ms. Reiskin said, this is a rule
8 that will endure beyond you, and it is important -- the
9 committee believed it was important that that rule be a
10 rule that can be used by your successors. For a
11 variety of reasons, the committee doesn't feel that
12 we're quite there yet, that there are further changes
13 that would make this rule even better.

14 The changes to provide some enhancements of
15 the dispute resolution mechanism are welcomed, but they
16 don't go very far, really. The essence of a dispute
17 resolution process is to put two parties on an equal
18 plane and to have a neutral.

19 This rule does not do that. It does provide
20 some more requirements for summary of
21 the -- essentially, the charges. But beyond that, it
22 does not create an atmosphere of neutrality and

1 mediation.

2 The appeal to the President -- the committee
3 is grateful that there is an appeal process now
4 provided for suspensions. But the appeal process in
5 neither the suspension or the limited reduction
6 situation provides a right to appear or speak to the
7 President. That's at the President's discretion. So
8 it's not a real right to an appeal; it's a right to
9 submit some more paperwork.

10 The appeal of suspensions is a little bit
11 illusory. It takes effect after 30 days, and most
12 importantly, during those 30 days and during the
13 subsequent appeal period, there is no stay of the
14 penalty. So the recipient is without funding.

15 It could experience a complete interruption in
16 funding during that period, and as we've discussed
17 before, some of your recipients may not have the
18 resources to continue operations during that period.
19 So we face the prospect of court hearings with lawyers
20 not at them and other important interruptions in
21 service.

22 The committee thinks of the grantees in some

1 ways as in a similar position to many of the clients
2 that your programs serve. And Jess Dickinson at lunch
3 spoke very movingly about the need for due process for
4 those clients.

5 The due process procedures here are the same
6 kinds of things that legal aid lawyers are every day
7 out there arguing for for their clients. They're
8 looking for impartial decision-makers.

9 They're looking for stays of penalties while
10 disputes are worked out. And it would be very ironic
11 for LSC to adopt a process that is completely
12 inconsistent with the kinds of advocacy that's going on
13 out there every day by your grantees.

14 The committee really does want the Corporation
15 to have strong tools. And it believes that those tools
16 will be even stronger if they're perceived as fair and
17 if there is not a risk that LSC will be called upon in
18 the court of public opinion as having acted too hastily
19 and withdrawing essential human services without
20 sufficient process.

21 Again, just to reiterate, the committee is
22 very grateful for all of the attention you have given

1 this for the very lengthy process, and for the
2 opportunity to participate in this constructive process
3 of trying to improve these rules. Thank you.

4 CHAIRMAN KECKLER: Thank you very much. And
5 many thanks also to SCLAID and to ABA for their
6 comments throughout this process.

7 MR. GREENFIELD: Chuck Greenfield, chief
8 counsel for civil programs from NLADA. And as we have
9 testified earlier at different hearings in front of
10 this committee, the civil policy of NLADA and the
11 regulations and policy committee of NLADA have been
12 following this very carefully over the
13 last -- actually, since 2008 when it was initially
14 proposed and rejected by the previous board.

15 So we continue to talk about this quite a bit
16 internally. And what strikes me, in a conference call
17 we had of our regulation and policy committee a little
18 over a week ago looking at the new proposed draft final
19 regulations, is it continued to strike people as to why
20 this is necessary.

21 So we have made those arguments before; I'm
22 not going to repeat those at length here as to the fact

1 that we don't think these additional sanctions are
2 necessary. In fact, it's reflective of not
3 evidence-based decision-making.

4 The examples given were hypotheticals as to
5 what might happen, but there weren't other actions
6 taken that were currently on the books, current tools
7 in place, showing that those tools are inadequate, and
8 that there are a variety of other enforcement
9 mechanisms in effect.

10 We're concerned about the effect on clients,
11 the client communities and programs themselves. And it
12 hasn't been recommended by those that have looked at
13 the fiscal structure or the oversight structure of LSC.

14 I'm talking about the Fiscal Oversight Task
15 Force, which looked not into just fiscal matters but,
16 as John Levi well knows and has talked about, they went
17 way beyond that call and looked at oversight over
18 grantees as well.

19 So during our last conference call, we really
20 talked about, okay, that Jim really wants this and OIG
21 really wants this. They really think this is
22 necessary. They really think this is necessary, and we

1 don't think it's necessary.

2 So the next thing that comes up with people
3 is, well, they didn't do anything, really, about the
4 due process problems. And the due process problems
5 were raised, I think, at least since the last year,
6 starting in San Diego in January of 2012 at the board
7 meeting.

8 So the due process concerns remain. There
9 have been some changes. They're welcome changes that
10 have been proposed in this final rule, regulations, I
11 should say, including that a person at the position of
12 a director is the person -- or higher -- that makes the
13 initial decision, and that the President has the right
14 to -- that someone can appeal a sanction of less than 5
15 percent or a suspension of over 30 days to the
16 President for review.

17 So those were all added, and those were
18 appreciated; and also, that the President, if he or she
19 had been involved in earlier levels, could not make the
20 ultimate decision. And those were appreciated and I
21 think those are helpful. But it doesn't go nearly far
22 enough.

1 I think Terry Brooks has hit on it, really, is
2 that you're dealing with a number of lawyers, including
3 myself, that really for years have argued due process
4 for our clients. And we really don't see it here. And
5 there are major, major due process flaws.

6 Some of them, and probably the one that hit
7 several of the directors across the country initially,
8 was, so the LSC would be able to suspend someone's
9 grant for between 31 and 90 days, or up to 90 days,
10 without any appeal. Well, you could go and write your
11 review to the President. But the pre-suspension right
12 would not occur. That's right.

13 If you look at the series of procedural due
14 process cases that we often argue for our clients, the
15 pre-suspension or pre-termination right to a hearing is
16 key. It's absolutely imperative that there be someone
17 to review the action, other than the person that took
18 the action, prior to the imposition.

19 You can imagine what a 90-day -- of course, we
20 always think of the maximum; it might not be 90
21 days -- but a maximum of a 90-day suspension would have
22 on a program and on clients. It's substantial. So

1 that's very, very important for us.

2 There's no right to appeal to a hearing before
3 an independent hearing officer or hearing examiner.
4 And that, for a number of reasons, concerns us.

5 When you look at other federal programs that
6 give grants to legal aid programs -- look at Justice
7 Department, and you look at HUD, fair housing and
8 housing counseling grants and so forth -- they all have
9 built-in -- on sanctions, specifically on sanctions,
10 they all have built-in rights to go to a hearing in
11 front of a hearing officer, and the hearing officer
12 makes a recommended decision.

13 We are not proposing that a hearing officer
14 outside of the Corporation make the ultimate decision.

15 We are proposing that neutral eyes be allowed to look
16 at the decision. Those neutral eyes could
17 then -- well, the eyes don't, but the person would then
18 be able to make a recommended decision to the President
19 for the President's acceptance or denial -- or
20 rejection, I should say.

21 Not uncommon throughout the federal
22 government. I don't know why LSC would provide less

1 rights, when we're a legal organization, than other
2 programs provide.

3 Also, the informal conference is not a
4 hearing, or an informal meeting is not a hearing. In
5 fact, the person that you would meet with
6 can -- doesn't have to be, but can -- be the same
7 person who made the initial decision. So it doesn't
8 quite seem like you have any independence there.

9 One of the issues that has come up before was
10 the issue of whether the actions of Congress, in the
11 Appropriations Act of '96 and '98 and each one
12 thereafter, by taking away the notice and hearing
13 rights in front of the independent hearing examiner,
14 statutory rights, whether that in fact is some
15 indication to this Board that they should not provide
16 any right to review or appeal in front of an
17 independent hearing officer.

18 I think that's not correct, that if you look
19 at those provisions, they're all in the context of
20 competition. There was the whole battle in Congress
21 about that. That's why Bill McCollum from Florida and
22 Charles Stenholm from Texas had been fighting this

1 battle for years and years on competition, and finally
2 they were able to get through, in '96, those
3 provisions. And they're all under the context of
4 competition.

5 Regardless, I think there are two questions
6 that come out of that, and Mark answered one already.
7 One is, does -- well, the first one is, does Congress
8 require this Board to give notice of hearing in front
9 of an independent hearing examiner? And no, they
10 don't, because they've suspended those provisions.

11 The second question is one that Mark answered:
12 Is it prohibited? Is Congress prohibiting this Board
13 from doing that? And the answer is no. So Congress is
14 not prohibiting.

15 In fact, the right thing to do would be to
16 provide procedural due process protection. These are
17 important rights. So while it's not a statutory
18 requirement, Congress doesn't prohibit this Board from
19 doing it.

20 I think Terry Brooks hit on this as well, that
21 the informal dispute resolution, which we thought had
22 some promise -- as mentioned by board member Robert

1 Grey, and also Martha Minow discussed it at the last
2 Operations and Regulations Committee -- that that would
3 involve some sort of effort to have involvement of an
4 alternate dispute resolution way or approach to it, not
5 fully defined, and a to-be-developed approach at the
6 last meeting.

7 It didn't result in much, and it just results
8 in a notice of corrective action possibility by the
9 Corporation if the Corporation decides that's
10 necessary. So if it's a one-sided decision as to
11 whether there's a possibility of some other approach,
12 it doesn't sound like it has the language or the
13 clothing of some sort of ADR kind of procedure. It
14 doesn't look like it at all.

15 So we were talking about, well, what could be
16 done? And so that issue came up, actually not too far
17 away from what Julie Reiskin mentioned as well: Is
18 there a way to get the attention of a program? That
19 was mentioned specifically in San Diego, is how we get
20 the attention of programs that are not listening to us
21 and are not complying. We need them to comply.

22 So one suggestion that came up with us

1 brainstorming was, why couldn't there be a notice to
2 the full board, if it has to be to the chair or
3 something, where they convene a board meeting within so
4 many days -- the recipient board, not your Board -- a
5 recipient board meeting within so many days to allow
6 for a conference call or something with the appropriate
7 LSC official to describe the nature of the problem so
8 that the board can begin thinking about what is
9 possible to resolve this.

10 The board can realize, this is really
11 important. This is the key funder that's bringing it
12 up. And we have somebody from the funder that's
13 actually willing to answer questions over the phone
14 during our meeting, so we can talk it out; and then
15 some -- it doesn't have to be long, but some
16 appropriate time afterwards to see if that could be
17 resolved.

18 Another suggestion that came up is, is there a
19 kind of incremental incentive built in? Could there be
20 certain steps that, after a certain step is taken
21 successfully by a grantee, even though it's not
22 everything that LSC wants, could that mean the release

1 of money under the suspension, or at least a certain
2 portion of the money, or a reduction of the amount of
3 the sanction, or something like that?

4 So there are some technical changes that would
5 need to be made in the rule, regardless of whether you
6 made any other changes. And I think they've been
7 brought to the attention of Management. They have to
8 do with the use of limited reduction and lesser
9 reduction. They continue to be used interchangeably,
10 and they're a little confusing.

11 I think I'll close with just the concept that
12 the tag line for LSC is America's partner for equal
13 justice. Right? And so one of those partners is
14 SCLAID. Another partner is NLADA. You have many other
15 partners.

16 On behalf of NLADA, we would ask that you
17 listen to this partner -- you listened to the grantees
18 on this; this is an important issue -- and that due
19 process concerns are, we believe, critical to this
20 regulatory change, if it's going to be made; and that
21 you listen to this partner and make the appropriate
22 decision based upon a true partnership.

1 One might say that if you were representing a
2 private client who wanted to enter into a contract with
3 another private company, enter into a contract with
4 another company, and they came to you with a draft
5 contract and the contract said, the other company can
6 decide all disputes and their decision is final, you
7 might say as a lawyer that you would not advise your
8 client to enter into that arrangement. That doesn't
9 sound fair. Okay?

10 The reason is, well, Greenfield, what are you
11 talking about? This is federal money. We have an
12 obligation to make sure the federal fisc is properly
13 overseen, and we've got to be careful.

14 Well, that's the very reason that there has to
15 be -- because of the unequal bargaining posture between
16 a grantee and a grantor, that's the very reason there
17 has to be adequate due process protections put in.
18 Thank you.

19 CHAIRMAN KECKLER: Thank you, Chuck. And
20 thank you to NLADA for its active involvement, and for
21 the comments that have been provided throughout the
22 process.

1 Are there further public comments?

2 MR. PANTOS: Yes. Hi. My name is Dave
3 Pantos. For the record, I'm the executive director of
4 Legal Aid of Nebraska. I'm also speaking on behalf of
5 the Midwest Project Directors. And I hope I don't use
6 up any goodwill I earned during my last presentation
7 with the last committee.

8 MR. LEVI: It depends on how long you speak.

9 (Laughter.)

10 MR. PANTOS: Right. I'll get to the point.

11 MR. LEVI: You have about a minute.

12 MR. PANTOS: I'll do it. I would like to say
13 that the heart and soul, to me, of legal aid is due
14 process. Before I became executive director, my area
15 of practice was public benefits.

16 If an individual was determined to no longer
17 be eligible for those public benefits, if they
18 requested a hearing, their benefits continued until
19 there was a hearing in front of an impartial
20 administrative law judge or hearing officer. That
21 stems back to Goldberg v. Kelly, which was a legal aid
22 case.

1 So you may be thinking, and Chuck raised this
2 issue, well, there's a big difference between a poor
3 person who will starve without their public benefit.
4 But what's the reality of a suspension or a percentage
5 cut in funding?

6 For most programs, that means not being able
7 to make payroll for one or more, or maybe all, of their
8 staff, or furloughs. So it's not just -- I mean, it's
9 certainly client services that get cut. But it's
10 well-meaning and good folks who work for legal aid
11 programs who won't get paid as the result of a
12 regulation that has not included appropriate due
13 process.

14 So I would reiterate some of the comments made
15 by the folks here with respect to due process and an
16 independent hearing officer, and remember that we
17 are -- well, you are here writing a regulation, a rule,
18 that will be in place after many of the folks who are
19 involved in managing the Legal Services Corporation are
20 gone and there's new folks.

21 Let's just make sure that we don't give tools
22 to less-than-well-meaning folks that can really impact

1 the ability for there to be legal services provided to
2 the poor. Thanks.

3 CHAIRMAN KECKLER: Thank you.

4 MR. ASHER: Yes, Mr. Chair. For the record,
5 I'm Jon Asher. I'm executive director of Colorado
6 Legal Services. Let me start by saying a good friend
7 of mine once said that I'm the only person he knows who
8 burned his bridges while he was on them.

9 (Laughter.)

10 MR. ASHER: I think I may be about to do that
11 again, after earlier.

12 Let me start by saying I think this rule is a
13 matter on which reasonable people can and do disagree
14 about its wisdom. I have a great deal of respect for
15 President Sandman and Mark Freedman, with whom I've
16 worked for a long time. But despite what Mark said, I
17 don't think it is yet a good rule.

18 I will not repeat any of the issues about due
19 process. I simply want to raise three issues.

20 One is, even a short-term suspension is much
21 more devastating than people might think. A 30-day
22 suspension for Colorado, which is about equal to

1 sequestration, would cost us \$280,000.

2 Now, LSC only funds about 40 percent of our
3 program, and we have a large number -- over 50 other
4 grants, but a large number of those reimburse us at the
5 end of a quarter, upon the end of the month.

6 One of the wisest things LSC has ever done is
7 to provide two months forward funding at the beginning
8 of the year. Unlike many nonprofits, it allows us to
9 avoid cash flow problems.

10 But even reducing our funding late in the year
11 by 30 days would be catastrophic to our fiscal
12 operations. Losing \$280,000, while waiting and not
13 having available to us funding from a large number of
14 our other funding sources, really would have a
15 surprising impact with virtually no appeal on a
16 short-term suspension. And that is a much bigger deal,
17 I think, than some people realize.

18 Two, I would ask you to look again at Mark's
19 memo of September 18, 2012. He lists in support of the
20 rule at that point a number of violations of
21 regulations, malfeasance by programs, refers to each of
22 those as egregious.

1 Well, I'm not sure all of them are egregious.
2 Some of them, I would say, are blatant. They are
3 clearly violations. But I don't know whether the
4 standard we're setting is in fact egregious, in which
5 case I think we ought to get to the programs what LSC
6 thinks proactively are the important restrictions that
7 are violated. How do we comply with more of those?

8 We have talked for a long time about doing
9 better work with -- I think very few -- some of the
10 programs, I think, play it a little loose. Most
11 programs want to comply. And I think there are more
12 effective and better ways of protecting programs. More
13 importantly, there are clients.

14 Let me close with two points. One is, I
15 really sympathize with Jim's position on the Hill when
16 he is asked whether he has the tools to ensure
17 compliance. But I'm not sure there is any evidence
18 that if he can more appropriately or more easily answer
19 that, that it will translate into one additional dime
20 for civil legal assistance for the poor.

21 In my 40 years, I have never seen a
22 correlation between rational responses to that day's

1 issue on the Hill and additional resources for civil
2 legal assistance to the poor.

3 It doesn't mean you shouldn't hold us
4 accountable. It doesn't mean that we ought to play it
5 loose. But I think the notion that answering that
6 day's question right on the Hill will increase
7 resources is not borne out by history.

8 Finally, let me just say my biggest concern is
9 still this Board's legacy. And this Board's legacy
10 will not be what you've done on pro bono. It will not
11 be additional fiscal integrity. It will not be changed
12 and improved metrics of program reporting on the work
13 that we do.

14 It unfortunately may be that you have left a
15 loaded gun in the desk drawer of the LSC President's
16 office when Jim leaves. I have absolutely no question
17 about Jim's integrity, that this rule will be used with
18 discretion and with wisdom. And Jim won't be there
19 forever.

20 Those of us who have seen administration
21 vested in not our success, but in limiting and
22 prohibiting the work that we do, will then have an

1 arsenal of tools to be used more frequently, more
2 punitively, and not in the best interest of your
3 grantees or the clients we represent.

4 So I'd keep working on it. Thank you.

5 CHAIRMAN KECKLER: Thank you.

6 Are there further comments to be made?

7 MR. LEVI: I think there are responses that
8 Mark and Jim ought to be making now to what was just
9 said. And I hope we hear it.

10 CHAIRMAN KECKLER: Well, I'll call on Mr.
11 Sandman.

12 PRESIDENT SANDMAN: I'll just say as an
13 initial matter, and I would like Mark to go into
14 detail, that what is proposed here reflects a careful
15 balancing of the Corporation's interest in efficient
16 and effective enforcement and the rights of grantees,
17 taking into account the guidance we received from
18 Congress in the 1990s.

19 The rule also reflects the existing procedures
20 for more severe sanctions. And some of what I've heard
21 recommended would result in more process for lesser
22 sanctions than we currently have for greater sanctions.

1 I think the comments also don't take into
2 account careful consideration that's been given to the
3 timetable for appeals on suspensions. There is
4 currently no right of appeal for a suspension of 30
5 days.

6 We recognize the significant difference
7 between a suspension of 30 days and 90 days, built in
8 an appeal process, and provided a very tight timeline
9 for a resolution of that appeal to minimize the
10 additional period of time that a grantee might go with
11 suspended funds. But Mark can elaborate in more
12 detail.

13 All of those factors have been weighed
14 here -- what we currently do for more severe sanctions,
15 the congressional intent reflected in the
16 appropriations language of 1996 and 1998, and we have
17 anticipated some of the concerns that have been
18 expressed here with procedural protections that have
19 been built into the rule but not explicitly discussed.

20 CHAIRMAN KECKLER: Mr. Freedman?

21 MR. FREEDMAN: Thank you. I think Jim has
22 taken most of the words out of my mouth. I want to add

1 to that, this is hard. I think that one of the things
2 about my job that is so great is that I get to provide
3 legal advice to Jim Sandman and to this Board, which is
4 also one of the toughest things about my job. But your
5 job is harder. I advise, but you have to make the hard
6 decisions.

7 The panel here has presented some of the
8 difficult issues here, and Jim has articulated some of
9 the difficult issues we have without this rule. I
10 don't want to get into all the different backs and
11 forths on every nuance here because I think that
12 fundamentally, the question here boils down to one of
13 trust.

14 Every year we go to Congress and we say to
15 Congress, trust us with almost -- we hope -- \$400
16 million for civil legal aid. In this rule, we're
17 saying, trust Management, that the Board trusts
18 Management institutionally -- not this Management, not
19 Jim, but institutionally trust Management in making
20 decisions in a limited scope that have a real effect,
21 but that Management needs the flexibility to be able to
22 act on.

1 So when we go to Congress and ask them to
2 trust us, we also need to be able to show Congress that
3 we trust Management, and that fundamentally, that's the
4 hard decision. The details we can hammer out, I think
5 we have hammered out, and what we presented to you is a
6 rule that tees up that decision of trust.

7 I'd be glad to answer more specific questions,
8 but I also know the hour is late.

9 CHAIRMAN KECKLER: Let me just add one thing
10 to what you said, Mark, which is that I interpret it
11 close to what you say, but not exactly, because
12 although we do trust up and down the issue, there's
13 also accountability.

14 So the question for me in the rule is: Is
15 there accountability for everybody in the process? Is
16 there a gap in accountability for the grantees that's
17 filled by the rule? But is there also accountability
18 for everything management does in enforcement?

19 The lower level people at LSC who are engaged
20 in the enforcement, is there accountability for them to
21 the President? Is there then accountability for the
22 President in involvement, which will come back to us

1 now, but future boards?

2 And then does it enhance, ultimately, the
3 Corporation's accountability to our funder, to
4 Congress, so that we look like we're accountable for
5 what Congress has asked us to do in its restrictions,
6 in its own laws governing LSC? Can we go back to them
7 and say, yes, we are accountable to you for carrying
8 out the will of Congress?

9 So, yes, there's trust. But there's
10 accountability up and down that assures that trust. So
11 with that as my take on the whole thing, I'll turn it
12 over.

13 MR. GLOVER: Mr. Chairman?

14 CHAIRMAN KECKLER: Yes?

15 MR. GLOVER: This is Matthew Glover for the
16 OIG. If I could just make one brief comment.

17 CHAIRMAN KECKLER: Yes.

18 MR. GLOVER: We've heard a lot today, and
19 throughout this process, about due process. And I
20 think nobody doubts that the Corporation should afford
21 grantees due process. The question is, what process is
22 due?

1 When you look at this rule, what you see is
2 that the grantees get notice. They have an opportunity
3 to be heard in the context of an informal hearing.
4 They're allowed to state their case. They're allowed
5 to submit in writing their arguments, all to
6 decision-makers. And a record is made.

7 That's a pretty elaborate process to ensure
8 the accuracy of outcomes. And so I don't think it's
9 really fair to describe the due process as lacking
10 here.

11 CHAIRMAN KECKLER: Thank you very much.

12 MR. LEVI: Well, I have to say, Jon, that as
13 much as I admire you, I resented the loaded gun analogy
14 as a legacy matter. I think that we've been through a
15 period here in the country involving guns that I take
16 very seriously in a different context.

17 I understand it was just an analogy. But this
18 Board came into office with a series of issues that
19 were on its plate from the behavior, or I should say
20 the misconduct, of grantees that undermined you guys.
21 And we could sit here and do nothing, and then that
22 could be our legacy, too, in the fact of that, that we

1 did nothing when we saw this happening.

2 We asked our Management to consider the
3 implications of the misconduct at various levels of
4 grantees. I would suggest that some of the
5 presentations made by your esteemed colleagues at the
6 table ought to be turned around and directed at the
7 programs -- those board chairs, those grantees -- as to
8 why they wanted to allow their own programs to put all
9 of you and this program in jeopardy. That's what they
10 did.

11 Now, my Board decided, basically, that it took
12 this stuff very seriously. And so we asked our
13 Management to understand more deeply, to take a hard
14 look at this. We spent a year looking at this to try
15 to come up with an appropriate level of -- did we have
16 what we needed to protect the Corporation and to
17 protect the good grantees out there?

18 Now, what I hear coming from you guys is
19 procedural due process. But what I don't hear you
20 coming from is to say, we're working with our grantees,
21 our board chairs, to make sure that this kind of stuff
22 doesn't come before you again. I don't hear that.

1 Where is that, and why is that?

2 You've had programs -- we've been embarrassed.

3 And every time any one of those things happened, it

4 jeopardizes every one of you, all the good programs.

5 The failing programs, the programs at the bottom of the

6 barrel here, need to start to think about their

7 behavior as it pulls down the rest of you that are

8 doing such great work.

9 So you can talk about our legacy. I

10 understand that. But I think our legacy is also one of

11 responsibility, and that faced with what we came into

12 and a stack of GAO reports like this, for us to have

13 turned a blind eye to them and not to take a serious

14 look at them would have been irresponsible at best.

15 MS. MIKVA: May I respond?

16 CHAIRMAN KECKLER: Please do.

17 MS. MIKVA: I almost always agree with you,

18 Mr. Chair. But I really think that -- we have seen

19 lots of misconduct, and it's been devastating. But I

20 really think it has been, by and large, rogue employees

21 that these rules will do nothing to address.

22 There's other things we have done that will

1 help. The fiscal oversight committee came up with
2 something that I think will help. I don't think these
3 rules come into play at all. Thank you.

4 CHAIRMAN KECKLER: If there are no further
5 comments, I think the time has come to call the
6 question. Call the question precisely here.

7 MR. LEVI: This is not a Board vote. This is
8 just a Committee vote.

9 CHAIRMAN KECKLER: This is not a Board vote.
10 This would be a vote of the Committee. And the motion,
11 which I will seek a second in a moment, is a motion to
12 recommend that the Board adopt the final rule on
13 enforcement mechanisms and authorize its publication in
14 the Federal Register.

15 M O T I O N

16 MR. KORRELL: So moved.

17 MR. GREY: Second.

18 CHAIRMAN KECKLER: All in favor? Okay.

19 Before I note the vote, please --

20 MS. MIKVA: I just want to say I think there's
21 parts of this rule I could support. But all of the
22 protections for the grantees rely on a reasonable and

1 supportive Management and Board. And historically, we
2 know that has not always been the case. And that
3 continues to trouble me.

4 MR. GREY: Mr. Chairman -- well, I guess I've
5 got two today, so I'll address it to both. I don't
6 think that anyone here today has any illusion that this
7 solves every problem that could be confronted either by
8 grantees, the grantor, the funder, or a board of
9 directors.

10 There is not a perfect world for us to exist.

11 I think to address all of the issues and concerns that
12 come or arise out of this relationship, or these
13 relationships, it just doesn't exist.

14 But I do think that it is incumbent upon us as
15 we are given responsibility, as you have
16 responsibility, as we have responsibility, to try to
17 achieve the best set of rules regarding relationships
18 that protect the public.

19 I say that broadly because it's not just about
20 money. It's about service, and it's about access. And
21 it is, as we heard today at lunch, a huge
22 responsibility because it's about our country at the

1 end of the day.

2 If someone has ill will, whether it's due
3 process or not, you can effect a bad outcome and you
4 can stop the process because the process is designed to
5 have parties articulate, to promote, advocate, and to
6 advance their side of the story.

7 One of the things I was going to say, Jon -- I
8 can't say I took the same offense because I understand
9 the point. I also will tell you this, that as I did
10 hear your remarks and your advocacy, I do think that
11 those that rely on your services are in good hands
12 because you are a good advocates and you're thoughtful
13 advocates.

14 I just don't agree with you in this particular
15 case because I think that what this Board has a
16 responsibility to do and this Administration has a
17 responsibility to do is to provide a process that gives
18 us a chance to talk to you; and that we have
19 flexibility in that regard to work out ways in which
20 the ultimate recipient of those funds -- and that is
21 through your good work -- their advocacy where there is
22 none otherwise.

1 But Jon did say something that I was going to
2 say that I think is very important, and that is, we
3 have got to be sure that we have done everything that
4 we can to not allow those who would take advantage of
5 this arrangement to steal the headlines and to believe
6 that they have a free pass, or that that pass can exist
7 long enough that there is no sanction in between
8 ultimate discovery and prosecution and renewal of their
9 grant.

10 I just don't think that that makes sense in
11 the sophisticated world in which we live, with the
12 opportunity, I think, to negotiate and to consider
13 alternative means of sanctions in a case where there
14 could be an opportunity -- you know what? It's not
15 always the individual organization. It is the process
16 that that organization goes through that becomes an
17 education, that becomes an opportunity, and strengthens
18 all of our hands.

19 Let me conclude by saying this. This is a
20 work in progress. This is not, to me, the end of the
21 story. But I can tell you this, that what I read in
22 these rules goes a long way to advising grantees that

1 it's not business as usual, that this does not allow
2 you a free pass, that you must pay attention and be
3 concerned about your responsibility to those whom you
4 serve and for the money that you receive.

5 That's important. And that seems to me to be
6 very clear, that if you choose to be a good grantee and
7 do good work, you will be part of the select group of
8 individuals invited to participate in programs like
9 this, where we talk about best practices and promote
10 the best of what we do.

11 But if you don't, then you have to have a day
12 of reckoning of some type. And that shouldn't be just,
13 take your money away. That ought to be notice,
14 opportunity, intermediate alternative sanctions, to
15 demonstrate that there is a responsibility in executing
16 those privileges and those rights and those
17 responsibilities that you have as a grantee.

18 We're going to work very hard as we, I think,
19 have an opportunity to probably see some of this
20 happen. And if I know this Administration, this Board,
21 if we find that there are opportunities to strengthen
22 and to make more clear and to add flexibility where

1 it's needed, that will be done before we leave.

2 That's the legacy that I hope that we leave,
3 is one that gives any future administrations the
4 ability to be much more considerate, much more
5 even-handed, much more thoughtful, about the
6 relationship that we should have with our grantees.

7 But I for one would never sit here and try to
8 fashion the perfect solution because it doesn't exist,
9 nor would I try to fashion a solution that deals with
10 an exception as opposed to what I think might be the
11 rule here, nor would I try to fashion a sanction for
12 somebody who I thought would abuse the process, because
13 you can't do it.

14 But I will tell you this. I respect each and
15 every one of you. I have talked to each and every one
16 of you at length about this. And I think we have gone
17 to great lengths to try and meet some of the concerns
18 that you have expressed with us.

19 I hope that you will work with us in a very
20 collaborative manner as we try to implement this over
21 time to see if we can not only improve it, but
22 strengthen it. And I thank you for your attention to

1 this, your deduction, and commitment to strengthening
2 this organization.

3 MR. LEVI: And I should make clear that we're
4 all friends in the room here, and that Terry and Chuck,
5 you guys gave really wonderful input the last time.
6 And I think that the Management team here really tried
7 to take it into account in balancing everything and
8 putting together a responsible place to land. There is
9 no perfect place to land.

10 And as for you two fellows, you're two of the
11 great directors in the country, and we very much
12 respect your work. And Jon, I've known you all my
13 life. So I don't want my -- but the fact is
14 that -- Martha wants to say something, and she's our
15 dean, so she's going to finish my sentence here in a
16 second. But this is all a matter of goodwill, and
17 we're trying our best.

18 DEAN MINOW: So this reminds me a little bit
19 of the rabbi who hears a dispute and hears one person
20 and says, "You're right." And he hears the opponent
21 and says, "You're right." And then his wife calls out
22 from the kitchen, "They can't both be right," and he

1 says, "You're right."

2 (Laughter.)

3 DEAN MINOW: So I think that the objections
4 that were raised today are the ones that we should
5 worry about. Will we be perceived as violating due
6 process when the very mission of the organization is to
7 serve due process? Will we be perceived as taking
8 advantage of an unfair balance of power when our very
9 mission is to try to rectify unfair imbalances of
10 power?

11 At the same time, I guess I am curious about
12 why those of you who say you have such respect for this
13 Board and this President do not credit the repeated
14 statement from this organization that we do not have
15 the tools that we need. That's the problem. We do not
16 have the tools that we need.

17 You guys are not the problem. The problem is,
18 we have some grantees who do not respond. Now, I'm
19 trying to play out under these rules exactly what would
20 happen if there was a grantee who could say, in person
21 or in writing or on a telephone, "We will have to shut
22 down if you have a temporary reduction." What will

1 happen?

2 If there's a good faith presentation of that
3 and there's an indication of a plan to begin to do
4 something, won't this President say, "We'll work with
5 you"? Isn't that what this rule contemplates?

6 I'm trying to play it out in my own mind.
7 Where is the circumstance where any indication of that
8 will lead to, "Oh, no, we're going to kill you"? Well,
9 then the only possibility is the assumption that some
10 future board and future president will only desire to
11 kill grantees.

12 We can't control that. And, God willing,
13 we'll all be here for a couple more years, and maybe we
14 can actually look at this rule as it's implemented.
15 I'm wondering, Mark, whether as you think about the
16 guidance, there seem to be three issues that troubled
17 me that I wonder if they could be taken care of.

18 One is the question of whether or not there
19 would be encouragement of use of the kind of informal
20 dispute resolution that wasn't amplified in the rule,
21 but as I've just indicated, I believe is contemplated
22 by the rule.

1 Secondly, that there would be indication that
2 if there is a danger of the entire program shutting
3 down through the operation of one of these temporary
4 sanctions, that that would be given great weight in the
5 conclusion about how to handle it.

6 The third is that there be two kinds of notice
7 that are contemplated or encouraged -- again, not
8 required: one, where possible, that a notice to the
9 grantee's board chair is accompanied by invitation to
10 have a direct communication with staff here as well as
11 encouraging that board chair to be in touch with every
12 member of that board to take Julie's comment very
13 seriously; and secondly, that the President of LSC be
14 expected to periodically update and report to this
15 Board about the operation of this rule.

16 Those are the kinds of elements that I think
17 would help us in a guidance as we deal with what Robert
18 rightly says is the difficulty of coming up with a rule
19 in a world where we can't write a rule for people who
20 are going to abuse it. It just -- you can't do that.

21 But, on the other hand, we understand that we
22 have a problem. And we have a problem of grantees who

1 are not in this room, but who do not respond to the
2 tools that are currently in existence.

3 MR. GREY: One last point, Mr. Chairman. You
4 know, it may be helpful for this rule to have a comment
5 section though, Mr. President, as you write and as the
6 Vice Chair points out, there may be guidance that you
7 could give a future president in looking at how to
8 apply the rules, using words, like the Vice Chair said,
9 if it is going -- because I think we all agree that
10 there is a dual process here.

11 It's not just to take money to get somebody's
12 attention for a bad act. It is understanding the
13 consequences of that as well on those that are to
14 receive the benefit of that funding, so that if you're
15 going to implement these rules, comments related to the
16 Vice Chair's observation could be instructive going
17 forward.

18 MR. LEVI: Well, and at least from my
19 perspective, if it results in a shut-down, then, well,
20 that's -- why do we have an interim rule -- I mean, or
21 not interim, an interim step here?

22 This step is not supposed to be designed -- I

1 mean, we have the draconian one that can result in the
2 shut-down. But if this is resulting in shut-down, then
3 you've got -- then I hope, at least for this period of
4 time, you've got us here, and we certainly would be
5 very concerned about a management team that was
6 behaving in such a way that it was using this kind of
7 rule to force a shut-down of grantees. Because that's
8 certainly not its intention.

9 CHAIRMAN KECKLER: Just a brief comment, John,
10 that the Committee is going to remain, obviously,
11 apprised of this, both in the development of the
12 follow-on guidance, and possibly also one of Martha's
13 points about reporting by the President might be
14 appropriate, either for guidance or for Board protocol.

15 Jim?

16 PRESIDENT SANDMAN: I'd just like to state for
17 the record that I am completely comfortable with all of
18 the guidance that Martha has suggested. In fact, I
19 would simply regard it as good succession planning to
20 give that guidance.

21 (Laughter.)

22 CHAIRMAN KECKLER: Okay. I think,

1 procedurally, the motion and seconded. And I'll go
2 ahead and -- all in favor?

3 MR. GREY: Aye.

4 MR. KORRELL: Aye.

5 CHAIRMAN KECKLER: Aye.

6 Opposed?

7 MS. MIKVA: No.

8 CHAIRMAN KECKLER: The motion carries, and the
9 recommendation will be offered to the Board.

10 Now, with regard to further agenda, I'm just
11 going to make an inquiry. The time is late. The
12 remaining items on the agenda could be deferred until
13 tomorrow, or they could be deferred for a telephone
14 conference. They're important and I want to give them
15 full consideration, but --

16 MR. LEVI: The only question -- but I've got
17 to ask the Institutional Advancement members, are you
18 going to be here in the morning to have a morning
19 meeting?

20 MR. GARTEN: Yes.

21 DEAN MINOW: So we could continue.

22 MR. LEVI: So you can finish now.

1 CHAIRMAN KECKLER: All right. With that
2 permission -- thank you very much, Mr. Chairman -- I
3 will turn now to the next item. And of course, we will
4 attempt to be brief on this matter. And we can carry
5 forward.

6 I'm going to turn it back to Mr. Freedman to
7 discuss something we mentioned before, consider and act
8 on interesting rulemaking -- we're just asking to
9 authorize rulemaking -- on the representation of
10 criminal defendants in tribal court due to a change in
11 statute that affects our regulations in this matter.

12 I also want at this time to acknowledge the
13 work of a relatively new attorney in the Office of
14 Legal Affairs, Kara Ward, who has been very helpful on
15 this rulemaking options paper.

16 MR. FREEDMAN: Thank you, Mr. Chairman. I
17 will be brief.

18 Kara Ward is on the line and can answer any
19 specific questions that you might have on the last two
20 items. And she will be preparing the rulemaking
21 options paper, if we proceed, and will be presenting
22 before the Committee at the April meeting.

1 On this item we are asking to open rulemaking
2 on changes to the regulations reflecting changes to the
3 LSC Act passed by Congress permitting the use of LSC
4 funds for representation of eligible clients in any
5 criminal matter in front of a tribal court.

6 LSC has already informed grantees that,
7 pending action by the Board, they can take these cases
8 consistent with the changes in the Act, notwithstanding
9 the current provisions of the regulation based on the
10 prior language of the Act.

11 The Indian Arts and Crafts Amendment that made
12 these changes also made a number of changes to what
13 kinds of criminal matters can be heard in front of
14 tribal court. So there are some interesting issues to
15 explore to figure out what are the issues that are
16 raised, how to address them in the rules or what should
17 we address in the rules, and at minimum, to update the
18 rules to reflect the new law.

19 So we respectfully request that rulemaking be
20 opened so that we can begin that process.

21 CHAIRMAN KECKLER: Mark, just briefly, what do
22 you contemplate as the next steps for this if we open

1 rulemaking?

2 MR. FREEDMAN: The primary next step will be a
3 rulemaking options paper that will be presented for the
4 April meeting, laying out the options for the steps.
5 And as a part of that, Kara and Tim Watson, who is our
6 expert in OPP on tribal courts and our grantees with
7 Native American funds, are working on determining what
8 are good ways to take a look at what has happened
9 already since this change in the law and what we might
10 learn from our grantees.

11 One of the questions in the rulemaking options
12 paper will be how we want to go about gathering
13 whatever information we need.

14 CHAIRMAN KECKLER: Thank you.

15 Are there questions from the Committee?

16 (No response.)

17 CHAIRMAN KECKLER: Let me request a motion to
18 recommend to the Board to authorize the Committee to
19 consider rulemaking options on the use of LSC funds for
20 representation of eligible clients in any criminal
21 matter before a tribal court. That was from Office of
22 Legal Affairs. That's --

1 MR. KORRELL: You read my mind.

2 CHAIRMAN KECKLER: I read your mind. Are you
3 making such a motion?

4 M O T I O N

5 MR. KORRELL: I'm making a motion.

6 CHAIRMAN KECKLER: Is there a second?

7 MR. GREY: Second.

8 CHAIRMAN KECKLER: All in favor of initiating
9 such a rulemaking?

10 (A chorus of ayes.)

11 CHAIRMAN KECKLER: Opposition?

12 (No response.)

13 CHAIRMAN KECKLER: The motion carries and the
14 recommendation will be presented to the Board.

15 Moving on to the next item, we are to consider
16 rulemaking options regarding private attorney
17 involvement. Well, let's separate. I'm going to have
18 a comment about this.

19 If we do decide to initiate rulemaking in this
20 area, there's a slight complication, which I'll get to
21 afterwards. It's kind of a good complication, in a
22 way, because the Pro Bono Implementation Task Force is

1 working on this area.

2 We have to have our own process to craft a new
3 federal regulation in our own way. So I'll have a
4 suggestion about how to integrate those after. But
5 this just acknowledges the work of the Pro Bono Task
6 Force in asking us to revisit the PAI rule, and this is
7 the first step for us.

8 With that, I'll turn it back over to Mark
9 and --

10 MS. JENNINGS: I have nothing to say. If you
11 needed help, I'm here.

12 MR. FREEDMAN: Thank you, Mr. Chairman. I
13 think you've teed up the issue. We have Lynn Jennings
14 here, the Vice President for Grants Management, who is
15 spearheading looking into, substantively, what is it
16 that we might do here. And Kara Ward is on the phone,
17 who has been handling the OLA end of the rulemaking
18 here.

19 In short, we are asking the Committee to open
20 rulemaking on this so that we can figure out what's the
21 right way to go forward. We can elaborate, but that's
22 the short of it.

1 CHAIRMAN KECKLER: Are there questions from
2 the Committee about this part of the process?

3 (No response.)

4 CHAIRMAN KECKLER: Seeing no questions,
5 Management has asked to phrase it this way. Seeking --

6 MR. KORRELL: Charles?

7 CHAIRMAN KECKLER: Oh, yes. Please.

8 MS. MIKVA: Microphone.

9 MR. KORRELL: Thank you. This is Harry. I
10 apologize for the microphone error there.

11 When you said were there no questions on this
12 aspect of it, I was assuming you were going to explain
13 what your thoughts were on the procedural machinations
14 before you called --

15 CHAIRMAN KECKLER: well, OKAY. I'll go ahead
16 and just -- I was going to tell you a little
17 bit -- you're appropriate to ask about it afterwards.
18 In a way, I was anticipating. Didn't want to
19 anticipate the authorization. But let me go ahead and
20 describe what I think. And you also can comment, Mark
21 and Lynn, about this.

22 We have these two things going on. Under the

1 rulemaking protocol, Management, and particularly
2 Office of Legal Affairs, will be asked to prepare
3 rulemaking options papers; ultimately, write proposed
4 rules and proposed rule changes. At the same time,
5 there's the implementation task force that's going on.

6 One thing that I noticed when I looked at the
7 rulemaking protocol is that if we authorize notice and
8 comment rulemaking, one possibility within our notice
9 and comment procedures is to have one or more
10 rulemaking workshops.

11 A rulemaking workshop is one where
12 stakeholders, which of course in this case would most
13 obviously but not exclusively include the
14 implementation group and board members and staff, can
15 join together to work out considerations of the rules
16 in a way that's provided for procedurally and is open
17 and transparent.

18 So normally, rulemaking workshops are not
19 something that is something that we've always done or
20 felt the need for. But in part because there already
21 are a number of people who are working on it, and we
22 need a way to integrate LSC's work and the work of

1 these other stakeholders that are actively engaged, I
2 was thinking to have a rulemaking workshop.

3 Laurie Mikva has graciously agreed to be a
4 point and coordination person for the Committee in this
5 process as it goes forward and as we develop a
6 rulemaking options paper and a rule through the notice
7 and comment.

8 So that was my idea, and I'll just get
9 Management's thoughts because I've somewhat come up
10 with this without -- just kind of thinking through
11 things today and last night.

12 MS. MIKVA: I guess I would ask somebody who
13 knows to sort of explain to us a little bit what the
14 rulemaking options workshop -- how that works.

15 MS. JENNINGS: From my past experience, you
16 put it in the -- hi, this is Lynn Jennings. You put a
17 notice in the Federal Register that you will be having
18 a number of meetings. I could envision many workshops,
19 actually, on this with a number of stakeholders
20 throughout the process.

21 So that's what we were envisioning. You put
22 notice in the Federal Register, and you can have

1 in-person meetings, conference calls. We'll probably,
2 as we do here, do it in a similar process until -- I
3 imagine that it will be a very robust and collaborative
4 process where we work on this.

5 So that's why we need to get started, because
6 we have a compressed work schedule that we want to
7 engage with. But I imagine that it will be very
8 robust, with a lot of outreach to the Board and to the
9 members of the Pro Bono Task Force as well as to other
10 interested parties and stakeholders.

11 PRESIDENT SANDMAN: I'd like to note two
12 issues for the Committee's consideration.

13 First, the resolution as Management has
14 proposed it is linked to the recommendations of the Pro
15 Bono Task Force. Those recommendations were limited.
16 They addressed three particular aspects of the PAI
17 rule.

18 We didn't think it was Management's place to
19 recommend to the Committee that the rulemaking exercise
20 encompass more than that. But I think that's an issue
21 that you should consider here

22 Second, I think it would be useful to think

1 about whether you might want to leave open the
2 possibility of having several tracks for rulemaking
3 here. For example, one of the changes that the Pro
4 Bono Task Force recommended has to do with whether law
5 students can be treated as lawyers under the PAI rule.
6 They currently can't be.

7 That's a very discrete issue. I would hope it
8 wouldn't take years to resolve that, and multiple
9 workshops.

10 (Laughter.)

11 PRESIDENT SANDMAN: I wouldn't want the
12 Committee to proceed in setting up a structure that
13 anticipates that everything's got to be dealt with
14 together, when there might be some relatively simple
15 changes that could be made on an expedited basis with a
16 foreshortened process.

17 CHAIRMAN KECKLER: Right. Well, we're going
18 to -- we'll have to work out the most efficient process
19 once we contact the Pro Bono Task Force as well as
20 other stakeholders.

21 That's part of the issue here, is that we need
22 to have a transparent, open, public process, and the

1 Pro Bono Task Force is in effect a semi-official body
2 here. It's still our responsibility to do it in a
3 certain way. I think how we structure the workshops,
4 that will be something the Office of Legal Affairs and
5 Lynn and Laurie will think about for the most efficient
6 process.

7 The other question you raise, which is the
8 scope of the authorization, I mean, it seems like we
9 need to have something that takes -- we're operating
10 without a floor here. Right? We need to take
11 something that takes into consideration what the Pro
12 Bono Task Force has said. That's the floor.

13 The question is, do we want to go beyond that?

14 I'm of two minds of it. I mean, on the one hand,
15 though, I take your other point that there are things
16 that were recommended that we can think about and deal
17 with discretely and effectively.

18 I think that we can -- my own view is that
19 we're going to keep apprised of this issue. It's going
20 to be an active part of this Committee's jurisdiction
21 throughout the course of the year, throughout the
22 course of this schedule. If we want to expand it, we

1 can expand it. I don't think -- there's nothing that
2 stops us from expanding it.

3 But, in a way, by limiting it now -- and now
4 I'm truly thinking out loud in response to your point,
5 Jim -- it seems like it gives us more of a possibility
6 to handle those things that we in the task force right
7 now, or in relatively short order. So perhaps the
8 motion, as Management has presented, may be the better
9 course for today.

10 Yes?

11 DEAN MINOW: I don't know exactly how the
12 workshops work. I guess I just wanted to suggest, in
13 concert with what Jim said, that coming from the Pro
14 Bono Task Force, there were some very specific things
15 that we thought could be done, should be done, that
16 don't seem that different.

17 Maybe I'm wrong. I wouldn't want this process
18 to make it more elaborate, more difficult, even if it
19 opens up some further changes that might be warranted.

20 So it might be that maybe it leads to two stages of
21 rulemaking.

22 But there just -- it's very well described in

1 the summary memo. There are some very specific things
2 that we recommend. I don't think this is that
3 elaborate, that difficult. I think it should happen.
4 It should happen through a rulemaking. And options
5 paper is the next step.

6 If other issues arise that call for going from
7 the floor up higher, that's great. But let's not slow
8 down this process.

9 MR. KORRELL: And presumably, that kind of
10 approach is something that Mr. Freedman and the Office
11 of Legal Affairs can outline in this rulemaking options
12 paper, I assume. There could be stuff on a short
13 track, broader scope.

14 I think those would be the kind of things that
15 we helpful of the Committee to see recommendations from
16 Management on as opposed to our trying to hash it out
17 here before dinner.

18 (Laughter.)

19 CHAIRMAN KECKLER: Right. Well, that's
20 certainly true. But let me ask a clarification
21 question, which is -- and Laurie, this is something
22 perhaps to think about, which is, it's just timing and

1 sequencing of the workshop vis-a-vis the options paper,
2 that is, or a first workshop vis-a-vis the options
3 paper.

4 I don't think that we need to decide that, but
5 it's something that will have to be decided. But I
6 want the motion to leave that to the discretion of
7 Laurie and the staff and the stakeholders exactly that
8 sequence of -- all right.

9 So with that, the motion that has been
10 requested is a motion to recommend that the Board
11 authorize the Committee to consider rulemaking options
12 regarding private attorney involvement in a manner
13 consistent -- let me change it. Let me propose my own
14 motion.

15 A motion to recommend that the Board authorize
16 the Committee to consider rulemaking options regarding
17 private attorney involvement in a manner responsive to
18 the recommendations of the Pro Bono Task Force report.

19 Is there such a motion?

20 M O T I O N

21 MR. LEVI: So moved.

22 CHAIRMAN KECKLER: Okay. Second?

1 MR. KORRELL: Second.

2 CHAIRMAN KECKLER: Okay. There's a second
3 that was heard. All in favor?

4 (A chorus of ayes.)

5 CHAIRMAN KECKLER: Opposed?

6 (No response.)

7 CHAIRMAN KECKLER: That recommendation will be
8 offered to the Board.

9 The next item of business is very brief.
10 Hopefully everybody has seen the Committee's
11 evaluations. Thank you for offering those evaluations,
12 which were largely positive.

13 And they recommended that we stay busy, which
14 I'm sure that we will.

15 (Laughter.)

16 CHAIRMAN KECKLER: I can almost guarantee that
17 that suggestion will be followed.

18 Is there public comment on our actions,
19 further actions today?

20 MR. BROOKS: I approach the microphone with
21 some trepidation.

22 (Laughter.)

1 MR. LEVI: I would think so.

2 MR. BROOKS: I was going to comment during the
3 public comment period on item 5, but I was going to
4 endorse that you do exactly what you did.

5 I would like to note, however, that the
6 American Bar Association was very much involved and
7 engaged in the creation of this regulation and would
8 welcome the opportunity to collaborate further on that.

9 On a sad note, the ABA president who was most
10 influential and active in this was William Reece Smith,
11 Jr., who also led the march on Washington to save LSC,
12 the march of a hundred lawyers or something back in
13 1980. Reece passed away earlier this month, very
14 sadly, and I just wanted to note that we lost a great
15 leader there.

16 But we look forward to the opportunity to work
17 further with you as you engage in this. And I disagree
18 with Jon Asher on the point that your legacy could very
19 well be a reinvigoration of pro bono. And we're very
20 grateful for all of the effort and attention you have
21 brought to that. Thank you.

22 CHAIRMAN KECKLER: Thank you, Terry. And

1 thanks to the ABA, and we certainly look forward to a
2 very fruitful input from them going forward.

3 Sorry. Is there other business to bring
4 before the Committee? Yes?

5 MS. MIKVA: Maybe this should be deferred.
6 But I was wondering what would be the process to look
7 at -- this has come up before, and it came up again
8 today, to look at the rule on the makeup of grantee
9 boards.

10 CHAIRMAN KECKLER: Well, the start of it under
11 the rulemaking protocol is always the initiation of a
12 rulemaking options paper. But I think that which,
13 again, you can do.

14 We've talked about it, and I think we can put
15 that on the agenda for future meetings. And we'll
16 think about it, and think about exact -- like a couple
17 sentences more about what we want from Management. And
18 then it's up to the Committee. We authorize it; they
19 do it. And it's certainly something that we have
20 talked about and --

21 MR. LEVI: You understand it's statutory.

22 CHAIRMAN KECKLER: Well, exactly what --

1 MR. LEVI: The makeup of grantee boards is --

2 CHAIRMAN KECKLER: Right. I mean, to the
3 extent that -- yes, there's a statutory element. I'm
4 not sure if there's any regulatory element at all
5 beyond that. Is that --

6 DEAN MINOW: Maybe there's an interpretation
7 of what is a lawyer.

8 MR. LEVI: Is there an interpretation in our
9 rules on that, or is it just statutory? I know it
10 emanates from the statute.

11 CHAIRMAN KECKLER: Oh, yes.

12 MR. FREEDMAN: I don't want to think too off
13 the cuff right here. There is a framework in the LSC
14 Act, and also in the Appropriations, regarding who
15 has -- minimum requirements on the board.

16 CHAIRMAN KECKLER: Yes, 33 percent. So I
17 guess the first option -- I mean, there's a legislative
18 thing, but --

19 MR. LEVI: Fifty percent lawyers, I think.
20 Right?

21 CHAIRMAN KECKLER: Right. Yes.

22 MR. LEVI: Thirty-three percent -- that's not

1 our regulation. That's the statute.

2 CHAIRMAN KECKLER: Right. The statute is
3 pretty specific. What we would look to is to find out
4 any flexibility that we possess for the issuance of
5 guidance, and to respond to the concerns that have been
6 regularly raised.

7 MR. LEVI: I mean, whether there's a right to
8 waive or anything. But it leaves 7 percent for other,
9 is what I gather.

10 CHAIRMAN KECKLER: So we'll take hold of that
11 issue going forward and think about that.

12 Thank you. And so with no other business to
13 bring before the Committee this evening, I will
14 entertain a motion for adjustment.

15 M O T I O N

16 MR. LEVI: So moved.

17 MR. KORRELL: Second.

18 CHAIRMAN KECKLER: All in favor?

19 (A chorus of ayes.)

20 CHAIRMAN KECKLER: The Committee's business is
21 concluded. Thank you.

22 (At 7:15 p.m., the Committee was adjourned.)