

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE

Friday, January 30, 2009

2:26 p.m.

Legal Services Corporation
3333 K Street, N.W.
3rd Floor Conference Center
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

Thomas R. Meites, Chairman
Lillian R. BeVier
Jonann C. Chiles
Bernice Phillips-Jackson
Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

Sarah Singleton
Herbert S. Garten

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President
Karen M. Dozier, Executive Assistant to the President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary
Mattie Cohan, Senior Assistant General Counsel, Office
of Legal Affairs
Mark Freedman, Assistant General Counsel, Office of
Legal Affairs
Karen J. Sarjeant, Vice President for Programs and
Compliance
Charles Jeffress, Chief Administrative Officer
Ronald "Dutch" Merryman, Assistant Inspector General
for Audit, Office of the Inspector General
Jeffrey E. Schanz, Inspector General
Joel Gallay, Special Counsel to the Inspector General,
Office of the Inspector General
Laurie Tarantowicz, Assistant Inspector General and
Legal Counsel, Office of the Inspector General
John Constance, Director, Government Relations and
Public Affairs Office
Sean Driscoll, Special Assistant, Government Relations
and Public Affairs Office
Marcos Navarro, Design Director, Government Relations
and Public Affairs Office
Stephen Barr, Media Relations Director, Government
Relations and Public Affairs Office
Treefa Aziz, Government Affairs Representative,
Government Relations and Public Affairs Office
Hana Bae, Office of Legal Affairs
Cynthia G. Schneider, Deputy Director, Office of
Program Performance
Charles "Chuck" Greenfield, Program Counsel, Office of
Program Performance
Evora A. Thomas, Program Counsel III, Office of
Program Performance
Reginald J. Haley, Program Analyst III (Competition),
Office of Program Performance
Wendy Long, Executive Assistant

STAFF AND PUBLIC PRESENT (Cont'd):

Diane Kutzko, Board of Directors Member, Iowa Legal Aid
Robert Goodin, Chairman of the Board, Bay Area Legal
Aid, California (by video)
Michael Doucette, Chairman of the Board, Virginia
Legal Aid Society
Marjorie Anne McDiarmid, Chairman of the Board, Legal
Aid of West Virginia
Fern Schair, Chairman of the Board, Legal Services New
York City
Brenda Ford Harding, Neighborhood Legal Services
Program, Washington, D.C.
Linda Perle, Center for Law & Social Policy (CLASP)
Don Saunders, National Legal Aid and Defenders
Association (NLADA)
Les Jin, Standing Committee on Legal Aid & Indigent
Defendants (SCLAID), American Bar Association

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

2 (2:26 p.m.)

3 CHAIRMAN MEITES: We have some housekeeping
4 matters before the panel begins. First, this is the
5 meeting of the operations and regulations committee.
6 And I will entertain a motion for approval of the
7 agenda.

8 M O T I O N

9 MS. PHILLIPS-JACKSON: So moved.

10 CHAIRMAN MEITES: Is there a second?

11 MS. CHILES: Second.

12 CHAIRMAN MEITES: All in favor?

13 (A chorus of ayes.)

14 CHAIRMAN MEITES: It is approved.

15 Next I will entertain a motion for approval of
16 the minutes of our meeting of October 31, 2008.

17 M O T I O N

18 MS. PHILLIPS-JACKSON: So moved.

19 CHAIRMAN MEITES: Is there a second?

20 MS. CHILES: Second.

21 CHAIRMAN MEITES: All in favor?

22 (A chorus of ayes.)

1 CHAIRMAN MEITES: It is passed.

2 The principal item on our agenda today is a
3 panel presentation by board chairs of a number of our
4 grantees. We are very appreciative of you coming to
5 talk with us. We probably should have done this four
6 years ago, but we're doing it now.

7 The genesis of this invitation is problems
8 we've had with several of our grantees, where I think
9 we formed an impression that the board of the grantees
10 had not done the job that they ought to have done. Our
11 regulations are quite minimal as far as what we require
12 of the boards of the grantees; in terms of substance,
13 besides the usual corporate not-for-profit boilerplate,
14 I think the only substantive regulation is the boards
15 meet four times a year.

16 Our committee is interested in your ideas, and
17 indeed gathering ideas, about whether we should propose
18 regulations that would more forcefully require the
19 boards of our grantees to act, in terms of their
20 organization or indeed also perhaps in terms of
21 substance. Another alternative is to include terms
22 with regard to board organization and obligations in

1 our yearly grant conditions.

2 Our board was audited by the Government
3 Accountability Office, originally the General
4 Accounting Office, at the suggestion of members of
5 Congress. The GAO came up with a number of proposals
6 as to changes in our organization, which we made.

7 For example, we created an audit committee,
8 which we never had before. We also took a number of
9 other steps towards shoring up our governance and our
10 accountability.

11 What our committee thought was the place to
12 start was with board chairs of several of our grantees
13 to get an idea of how well you thought your boards were
14 doing in terms of organization, and also in terms of
15 our regulations, minimal as they are, and to entertain
16 and solicit any ideas you might have about what we
17 could do or not do.

18 Keep in mind, we don't have to do anything. We
19 can simply decide that things are wonderful, or not so
20 bad that we have to act, is really more what we are
21 likely to look at.

22 You are all here as a selected group of our

1 best grantees. And so we're going to hear a lot of
2 success stories from you. But in presenting your
3 success stories, we want you to imagine you were not a
4 success, and what went wrong to get you to that dire
5 state. We have not invited any of our failed grantees
6 here.

7 With that, I'll turn it over to -- where is --
8 Karen, and introduce the panel. And we look forward to
9 hearing from you.

10 MS. SARJEANT: Thank you. I will not do
11 anything other than introduce the panel since you did
12 such a wonderful introduction to why we asked everyone
13 to join us here.

14 To my immediate right is Michael Doucette,
15 who's the board chair from Virginia Legal Aid Society.
16 Going down the row is Diane Kutzko, who's the former
17 board chair of Iowa Legal Aid.

18 Next to Ms. Kutzko is Marjorie McDiarmid,
19 who's the board chair at Legal Aid of West Virginia and
20 a former regional director of LSC in years past. And
21 next to Marjorie is Fern Schair, the board chair of
22 Legal Services NYC.

1 We also invited Dr. Jimmie Jackson, who's the
2 board co-chair of Neighborhood Legal Services of the
3 District of Columbia to join us, but she had a previous
4 engagement. And we have by videoconference Robert
5 Goodin, who's the board chair at Bay Area Legal Aid.

6 CHAIRMAN MEITES: Can we ask if the video is
7 working, if Mr. Goodin can hear us and we can hear him?

8 MS. SARJEANT: It does not appear that we can
9 hear him.

10 CHAIRMAN MEITES: Is there anything we can do?
11 Let's take a minute and see if we can get this worked
12 out.

13 (Pause)

14 CHAIRMAN MEITES: We're all introduced. Karen,
15 go ahead.

16 MS. SARJEANT: That's it. I'm going to turn
17 it over to the panel.

18 CHAIRMAN MEITES: All right. Why don't we
19 start from --

20 (Pause)

21 CHAIRMAN MEITES: Mr. Goodin, can you hear us
22 again?

1 MR. GOODIN: Yes, I can.

2 CHAIRMAN MEITES: Okay. Good. All right.
3 Let's start with Mr. Doucette -- how long you've been
4 on your board, when you became chair, and how large
5 your board is and a little background, and then go
6 ahead.

7 MR. DOUCETTE: Good afternoon. My name is
8 Mike Doucette. I am the president of the board of
9 directors of Virginia Legal Aid Society. Our
10 headquarters are in Lynchburg, Virginia. We represent
11 low income individuals in central Virginia, Southside
12 Virginia, and what's considered western Tidewater
13 Virginia.

14 Our area of coverage is approximately 10,000
15 square miles. It's mostly rural jurisdiction. I have
16 been on the board since 2004. I've been the chairman
17 of the board since 2006. And in my other life, I am
18 the elected district attorney for the city of
19 Lynchburg.

20 CHAIRMAN MEITES: All right. We welcome your
21 thoughts on how your board is governed and what if
22 anything you think we should do about it.

1 MR. DOUCETTE: I can tell you about our board.
2 But as far as what we should do with other boards, we
3 meet regularly. I think the prime reason that we do so
4 well -- you say we are successful. I'll take your word
5 for that.

6 But we have a very engaged board because we
7 have a very engaged executive director. Our executive
8 director keeps us very much in the loop. We know
9 exactly what's going on at all times. In fact, there
10 are times when I feel like, you know, I'm being
11 bombarDED with e-mails.

12 But there's very open lines of communication.
13 There are very open lines of trust. And anything that
14 goes on, we are brought up to date, and we are kept
15 informed of what's going on.

16 We're also encouraged very strongly, and David
17 and I -- our executive director's name is David
18 Neumeyer -- David and I work very closely together to
19 make sure that the various board members stay engaged
20 and stay focused. It's very easy when you have other
21 functions in life, whatever your job is outside, is to
22 get caught up in that. And I certainly have plenty of

1 things to do in my paying job.

2 But we work very strongly as far as meeting
3 regularly, both as far as board of directors meetings.
4 We meet regularly as far as committees are concerned.
5 We have regular -- anything that happens we get e-mail
6 notifications of with attachments. All our documents
7 are sent to us both by snail mail as well as e-mail.

8 So the bottom line is that we have very open
9 channels of communication, and we're encouraged on a
10 regular basis, and I work with David, to make sure that
11 the other board members stay encouraged and stay
12 focused and stay engaged.

13 CHAIRMAN MEITES: Let me ask you a couple very
14 specific nuts and bolts questions.

15 How large is your board?

16 MR. DOUCETTE: Our board is 15 when it's fully
17 staffed.

18 CHAIRMAN MEITES: And do you have any kind of
19 term limits on how long board members can serve?

20 MR. DOUCETTE: We've discussed that, and we do
21 not.

22 CHAIRMAN MEITES: What permanent committees

1 are there? For example, finance, audit, and so on?

2 MR. DOUCETTE: We have four permanent
3 committees, five if you count the executive committee.
4 Our executive committee basically, if there's something
5 that needs to be dealt with in between regular board
6 meetings, we'll deal with it through executive.

7 But our regular standing committees consist
8 of: governance, basically recruiting other board
9 members and making committee assignments. The second
10 one would be program development. Depending on whether
11 we're dealing with strategic plans and updating
12 strategic plans will depend on how vibrant they are at
13 that particular point in time. Third one would be
14 budget and planning, and the fourth one certainly is
15 resource development. And that's one that we take -- a
16 lot of activity involved with resource development.

17 Have you, in light of Sarbanes-Oxley and
18 anything else, considered adding an audit committee?

19 MR. DOUCETTE: We have an audit. We have a
20 regular audit from an outside agency that reports to
21 the board annually. We have not at this particular
22 point in time, no.

1 CHAIRMAN MEITES: Okay. And my last specific
2 question is: Has your board, as far as you know, ever
3 read our regulations?

4 MR. DOUCETTE: Have they read them? I can't
5 say that -- you know, we are given the opportunity.
6 we're given the regulations. We go over them during
7 the orientation. We discuss them again, maybe not
8 verbatim at our annual meeting. But yes, they're given
9 the opportunity to read them.

10 CHAIRMAN MEITES: All right. So in your view,
11 would you say that the board members are familiar with
12 our regulations?

13 MR. DOUCETTE: Yes.

14 CHAIRMAN MEITES: All right. Let's go on to
15 Ms. Kutzko.

16 MS. KUTZKO: Yes.

17 CHAIRMAN MEITES: The same questions, size of
18 board and so on and so forth.

19 MS. PHILLIPS-JACKSON: Mr. Chairman?

20 CHAIRMAN MEITES: Oh, sorry. Before we go --

21 MR. GARTEN: Can we address questions?

22 CHAIRMAN MEITES: Please. Address questions

1 as we go on.

2 MR. GARTEN: What are the responsibilities in
3 the resource development? What is your -- what does
4 that consist of? Raising funds?

5 MR. DOUCETTE: Raising funds.

6 MR. GARTEN: Does it include any kind of
7 recruitment of pro bono lawyers?

8 MR. DOUCETTE: We have a pro bono coordinator
9 who does that, who coordinates the pro bono attorneys.

10 MR. GARTEN: All right. Thank you.

11 MR. DOUCETTE: But as far as our resource
12 development, it's primarily -- it's pretty much all
13 fundraising.

14 MR. GARTEN: Are you able to raise a
15 significant amount of money?

16 MR. DOUCETTE: I think it's significant. You
17 know, we could all use more.

18 MR. GARTEN: Does it equal to a fraction of
19 what you receive from Legal Services Corporation?

20 MR. DOUCETTE: I don't know the numbers and,
21 you know, I -- we have a full-time person who deals
22 with the fundraising, a fundraising coordinator. She's

1 excellent. And she finds money where I think there's
2 no money to be found.

3 MR. GARTEN: Do you get IOLTA funds, too?

4 MR. DOUCETTE: Yes. Some, for what little
5 there are.

6 CHAIRMAN MEITES: Bernice?

7 MS. PHILLIPS-JACKSON: Can you talk more about
8 how your board stays engaged? What happens?

9 MR. DOUCETTE: I don't know what more I can
10 say than I already do in the sense that we stay in
11 contact through e-mail regularly. We have quarterly
12 meetings. Two of the meetings we are strongly
13 encouraged -- the spring and the fall meeting we're
14 strongly encouraged to attend in person because we have
15 such a -- you know, maybe it's not a large geographic
16 range if you're in Nevada someplace, but as far as
17 Virginia is concerned, we have a pretty wide range.

18 And so two of the meetings, the one in the
19 summer and the one in the winter, we usually do by
20 teleconference. But as far as the spring and fall,
21 we're strongly encouraged to attend personally. Our
22 committee meetings are usually by teleconference

1 because --

2 MS. PHILLIPS-JACKSON: And how many lawyers
3 are on your board and how many client members do you
4 have on your board?

5 MR. DOUCETTE: We have -- at this time we have
6 -- I'm guessing; it's an educated guess. I want to say
7 we have eight lawyers on the board. We had one resign
8 recently. My wife was on the board as well, and she
9 just decided that something had to be cut back and --
10 just so that she stayed sane. So --

11 MS. PHILLIPS-JACKSON: And how many client
12 members? I'm sorry.

13 MR. DOUCETTE: We have three at this time.
14 Recruiting client members is an ongoing dilemma with
15 us. And unfortunately, we made -- had some success in
16 the last couple of months in recruiting and finding a
17 dynamic client member, and then had another one die of
18 a heart attack a few days later.

19 MS. PHILLIPS-JACKSON: Wow. Okay. Thank you.

20 CHAIRMAN MEITES: Lillian?

21 MS. BeVIER: This question, I think, is a
22 follow-up on Bernice's. One of the way that a board

1 like yours might stay engaged and involved, and in
2 particular keep its connection with what it is that you
3 do, is to have client presentations at the board so
4 that -- this board makes it a practice to visit
5 programs as part of our board meetings.

6 And I have found those to be extremely useful
7 to me as a board member. And at each one, they have
8 clients tell us the clients' stories. And in a way, I
9 think for all of us it brings home to us what it is
10 that our grantees are doing, and it brings home to us
11 why we have these programs and how effective the
12 grantees are at providing the kinds of services that we
13 are funding.

14 I just wonder whether you have these client
15 presentations ever at your board meetings or in any
16 context, or if that's a problem just in terms of
17 confidentiality and so forth?

18 MR. DOUCETTE: When it comes to client board
19 members, we have two problems. One is recruitment. The
20 other one is getting them engaged as well.

21 MS. BeVIER: Yes.

22 MR. DOUCETTE: And one of the problems -- and

1 we've discussed this over and over again -- is from a
2 client perspective, it's pretty intimidating going into
3 a room where it's predominated by attorneys.

4 When we're talking about things like program
5 development and what we can do and how we can do it
6 better, yes, you know, we have had some engagement from
7 our client members as far as developing our strategic
8 plan. But when we're talking about other things -- in
9 our regular meetings, for instance -- we're basically
10 talking about running a business. And we're talking a
11 language that sometimes our clients don't understand.

12 And so it's not that -- the problem with it is
13 getting the folks even there because they get
14 intimidated by the whole idea of coming to these
15 meetings where it's predominated by attorneys.

16 MS. BeVIER: Right. I didn't -- I actually
17 was not talking about your client members because I
18 understand it's really scary being with lawyers, for a
19 number of reasons. If you are one, it's particularly
20 scary.

21 MR. DOUCETTE: Yes. And I'm married to one,
22 too.

1 (Laughter.)

2 MS. BeVIER: But what I'm talking about is a
3 presentation at your board meetings of a client story.
4 Now, maybe what you're saying is that, too, is very
5 stressful for the particular clients whose stories they
6 tell. But I take it your grantees -- the people -- you
7 know, the people who do the work for you are people
8 that can identify particularly compelling stories and
9 grantees -- I mean, sorry -- clients who might not be
10 uncomfortable.

11 I'm just suggesting this as a sort of
12 presentation that you might have at board meetings,
13 especially when people are there. It's a storytelling
14 thing, not a board member thing.

15 MR. DOUCETTE: And along those lines, staff is
16 always encouraged to attend all our board meetings, and
17 we do get regular updates, maintaining the
18 confidentiality. But some of them are success stories,
19 what's been going on, and some of the problem areas. So
20 staff keeps us informed as to what's going on there.
21 It's not coming directly from clients, but it is coming
22 from staff.

1 MS. BeVIER: Right. I'm just suggesting --

2 MR. DOUCETTE: Sure.

3 MS. BeVIER: Thank you very much. That's
4 helpful.

5 MS. PHILLIPS-JACKSON: And how do you ease --
6 you have three client representatives on your board?

7 MR. DOUCETTE: Yes.

8 MS. PHILLIPS-JACKSON: How do you ease the
9 anxiety, that feeling? How do you engage your client
10 members to ease those feelings?

11 MR. DOUCETTE: Probably the one way that comes
12 to mind is, of course, there's always a social function
13 with the meetings that we have in the spring and the
14 fall, just going -- outside the presence of the meeting
15 itself, just going and talking to folks and letting
16 them realize that we're real people, too -- lawyers can
17 be real people -- and just trying to talk to them on an
18 one-to-one basis, and just sort of easing some of those
19 anxieties.

20 Transportation can be an issue, and sometimes
21 -- you know, we always try to make sure that if someone
22 needs transportation, you know, we're more than willing

1 to give them a ride, you know, and talk with them along
2 the way. So it's just being a human being, I suppose.

3 MS. PHILLIPS-JACKSON: What I have found
4 helpful, being a client rep on this board, is that --
5 sitting one-on-one with individuals, and coming in
6 extra for orientation, and making sure that, okay, I
7 understand the material. That's what I have found
8 helpful. Maybe, you know, maybe you would, your
9 clients members.

10 MR. DOUCETTE: We need to do something with
11 our orientation. As an attorney, I found our
12 orientation a bit daunting. It's over the -- you know,
13 as time goes on, you begin to understand. You know,
14 you talk -- LSC, that's an acronym. You know, when I
15 was in the service, I had to learn a lot of acronyms.
16 And sometimes we forget that --

17 MS. PHILLIPS-JACKSON: Exactly.

18 MR. DOUCETTE: -- whether it's LSC or whatever
19 board we're involved in, we start talking that
20 particular language. Sometimes we need to translate
21 that language.

22 MS. PHILLIPS-JACKSON: Right. Exactly. Thank

1 you.

2 CHAIRMAN MEITES: Good. Thank you. Let's go
3 on to Ms. Kutzko. Same introductory questions. Go
4 ahead.

5 MS. KUTZKO: I'm Diane Kutzko. I am former
6 chair of the Iowa Legal Aid board. I have been on the
7 board since 1992, and I currently serve on the
8 executive committee and have a pretty long view of the
9 development of our program.

10 CHAIRMAN MEITES: Be sure to talk right into
11 the microphone.

12 MS. KUTZKO: Better now?

13 CHAIRMAN MEITES: Yes.

14 MS. KUTZKO: And by way of background, we have
15 one LSC-funded program in Iowa. It is the result of
16 the combination of two programs. Iowa Legal -- excuse
17 me, Legal Services Corporation of Iowa was the program
18 that represented individuals in 98 of our 99 counties.
19 And Polk County Legal Aid was situated in Des Moines,
20 and represented Polk County.

21 Just by way of background because I think it's
22 important to show how our board interacts, the programs

1 combined or merged in 2003, and have to say we are --
2 although it was a very difficult process, as many of us
3 here know, we are a stronger board and a stronger
4 program for it.

5 And our board now is seamless. And so
6 representing a wide variety of individuals, including
7 individuals from our urban center, Des Moines, is very
8 important. We now represent them all.

9 We have an 18-member board, 11 lawyer members,
10 six client-eligible members, and one community at-large
11 member. The 18 -- excuse me -- the 11 lawyer members
12 are, of course, selected by the Iowa bar. Our six
13 members from the -- excuse me -- the client-eligible
14 members are recommended by -- we have regional advisory
15 boards.

16 And those regional advisory boards recommend
17 the client members, and so those individuals have
18 either some familiarity with the program itself through
19 the advisory board or otherwise, or some community
20 organizing program. And then we have one community
21 at-large person who -- which gives us the freedom to
22 have somebody who's neither a client member or a lawyer

1 member.

2 We meet quarterly. We have an extremely
3 engaged board. And I'll go ahead and respond to some
4 of the questions you've raised about how we keep
5 engaged. But again, like other programs here, we view
6 this through the prism of a very strong -- governance
7 through the prism of a very strong executive director,
8 Dennis Groenenboom.

9 He has been executive director, I believe,
10 since '93. He was with -- he's been with legal aid,
11 our legal aid program, for 30 years. And so although
12 we understand that controls are necessary and there is
13 no lessening in the board's responsibilities with
14 regard to governance, basically our relationship with
15 Dennis is to support.

16 We evaluate him on a regular basis, every year
17 or 18 months. We make sure that, in fact, there is no
18 -- through that process and other processes, you know,
19 no systematic dissatisfaction with the way the program
20 is run. But basically, we are fortunate to have an
21 extremely strong executive director.

22 You've asked how we keep board members

1 engaged. I think we do it through a number of ways.
2 First of all, we've got three committees other than the
3 executive committee. We have a personnel grievance and
4 nominations committee; we have a programs and planning
5 committee; and we have a development, finance, and
6 audit committee.

7 We had a larger set of committees, but we did
8 a study -- actually, we had an ad hoc committee put
9 together for basically scope and correlations to figure
10 out what worked best. So those are our three
11 committees.

12 Each board member, whether it be a client
13 member or a lawyer member, is charged with being on one
14 of those committees. Each of those committees has a
15 job description. And each of those committees meets on
16 a regular basis and makes reports to the board, to the
17 annual meetings. So there's ownership on the part of
18 the client-eligible members as well as our lawyer
19 members.

20 It is difficult. We all recognize that it is
21 more difficult for client members to be engaged. Dennis
22 meets with -- or not intimidated, perhaps, is a better

1 way to say it. Dennis Groenenboom, our executive
2 director, meets with the client members to review the
3 agenda the night before every board meeting, and he
4 gets very good attendance. And they get the
5 opportunity to ask questions and have a very good
6 voice, I think, at the board meetings as well.

7 There's some issues about client retention
8 because sometimes there are other things going on in
9 their lives that would either prevent them from coming
10 to meetings or fully participating. But those members,
11 when they become engaged -- and right now we have fully
12 engaged client-eligible members -- make a great
13 contribution to the board.

14 CHAIRMAN MEITES: A couple of, again, nuts and
15 bolts questions.

16 How often does your board meet?

17 MS. KUTZKO: Quarterly.

18 CHAIRMAN MEITES: And have you considered
19 breaking your development, finance, and audit committee
20 apart with a separate audit committee?

21 MS. KUTZKO: No. It has a very strong audit
22 function. Okay? The audit committee -- well, finance

1 and audit -- that committee gets monthly financial
2 statements. It also meets with our auditors. Then the
3 board interviews and meets with the auditors at the
4 annual meetings.

5 But the purpose of the development, finance,
6 and audit committee, the function is is to get
7 financial statements every month. And in fact, we just
8 were recently trained -- the board as a whole was just
9 recently trained by somebody on how to read financial
10 statements, which I think was helpful for lawyer
11 members but for all members of the board.

12 So this committee is very active and engaged,
13 and its combined functions, I think, has been very
14 effective.

15 CHAIRMAN MEITES: Last specific question. Is
16 it your sense that board members have an overall
17 familiarity with our regulations?

18 MS. KUTZKO: Yes. They are trained on them.
19 We are reminded of them at many meetings -- I'm sorry,
20 at all of our meetings. And we have -- obviously,
21 they're distributed in our board materials.

22 One of the things you raised, and perhaps

1 we'll get to later, is one of the things that we
2 believe in our program that LSC perhaps could do, as
3 opposed to as far as regulations, is some kind of a
4 video training, or some sort of a written manual, but a
5 video training on the existing regulations. I think it
6 would be very helpful to show. I think it would be a
7 good reminder and refresher that we could show every
8 year, if that was something that you viewed as
9 constructive.

10 And I'd like to address one issue about the
11 idea of having clients tell stories at their board
12 meetings. We have an annual awards banquet every year
13 in conjunction with our annual meeting. And the board
14 -- we get typically excellent attendance, both from the
15 lawyer and client members.

16 But we give awards to clients for their
17 success stories. And three or four the regional
18 offices get to pick. And I think that everyone walks
19 away more invested from that as a result of hearing
20 those client stories.

21 CHAIRMAN MEITES: One other specific question.

22 MS. KUTZKO: Sure.

1 CHAIRMAN MEITES: Given the length of your
2 term, I know I know the answer to this. Do you have
3 any term limits on your board?

4 MS. KUTZKO: Actually, believe it or not, we
5 do. And let me tell you how we do the math. Okay?
6 When we first combined the two programs in '03, we now
7 have three three-year terms. But we started counting
8 from the merger of the two programs.

9 CHAIRMAN MEITES: Understood.

10 MS. KUTZKO: So that's how that works. And I
11 think there are pros and cons on that, and perhaps
12 we'll get into those. But right now, we do have a
13 nine-year limit for terms.

14 CHAIRMAN MEITES: Thank you. Let me open it
15 for questions. Lillian?

16 MS. BeVIER: I was very interested in the
17 training that you say you received in how to read
18 financial statements.

19 MS. KUTZKO: Yes.

20 MS. BeVIER: Was that something that took a
21 lot of time on your part? Was it done effectively by
22 -- what sort of professional? I mean, how did that get

1 organized? It seems to me a great idea, actually.

2 MS. KUTZKO: Yes. By way of background, in
3 addition to all the other things that have gone around
4 -- gone on, you know, in the country, we specifically
5 in Iowa had a very controversial and embarrassing
6 financial scandal called the CTIEC, which brought
7 attention -- it was basically the misuse of financial
8 funds by a state and federal-funded board in giving its
9 -- the most egregious thing was giving its officers
10 very large raises. And the board was found to have not
11 been participatory enough.

12 And so we have legislation in Iowa now that
13 does not require the kind of training we did, but has
14 made us more sensitive to those kinds of things, as
15 well as a state recipient.

16 But we try to do board trainings. We have
17 done diversity training. The financial training was
18 done by a lawyer/CPA who is now our Director of Revenue
19 in Iowa. And so it was -- my recollection, it was
20 telephonic. It was very straightforward. It was a
21 good training. And I think -- you know, I think we
22 learned.

1 MS. BeVIER: Thank you.

2 MS. KUTZKO: You're welcome.

3 MS. PHILLIPS-JACKSON: Totally, totally
4 success.

5 My question is transition from the board
6 members leaving to board members coming on. How does
7 that take place? What happens with that?

8 MS. KUTZKO: The transition is not given by
9 leaving board members, and maybe that would be a really
10 good idea, but it is given by our executive director,
11 who basically has a training for the client-eligible
12 members as well as the lawyer members.

13 And again, we've -- and I distributed our
14 board -- at least the table of contents to our board
15 manual, which shows kind of the range of how we're
16 trained and what our responsibilities are, and the job
17 description.

18 But the transition is basically done through
19 our executive director. And we also do have a
20 mentoring program that each new board member is
21 assigned to an existing member. And often those
22 pairings are lawyer to client-eligible.

1 CHAIRMAN MEITES: Good. Well, thank you.
2 Herb, please.

3 MR. GARTEN: Your independent CPA, I presume
4 the firm or the individual is thoroughly familiar with
5 our regulations.

6 MS. KUTZKO: Yes.

7 MR. GARTEN: And have you -- in any of your
8 reports, have you run into any questions raised by LSC
9 or our IG with regard to your statements?

10 MS. KUTZKO: Have we -- have our auditors
11 raised those issues with compliance? Not to my
12 knowledge and recollection. But we were audited by LSC
13 in the past few years, and I would assume that those
14 issues were raised by the team that came in. But I
15 think that -- I'm not aware of anything that was
16 raised, any noncompliance.

17 MR. GARTEN: And you're satisfied that your
18 CPA is thoroughly familiar and keeps up on the
19 regulations?

20 MS. KUTZKO: You know, I honestly can't tell
21 you whether that's the case or not, frankly. But the
22 members of our committee are. And the auditors in good

1 faith are told what those regulations are and, I
2 believe, perform an audit consistent with that.

3 MR. GARTEN: Thank you.

4 MS. KUTZKO: You're welcome.

5 CHAIRMAN MEITES: Good. All right. If
6 there's no more questions, we'll go on to Ms.
7 McDiarmid.

8 MS. McDIARMID: Do you want to stay
9 alphabetical?

10 CHAIRMAN MEITES: Well, I'm just --

11 MS. McDIARMID: You've got your gentleman from

12 CHAIRMAN MEITES: Well, I'm going that way.
13 Then I'll come back to you.

14 MS. McDIARMID: Excellent. All right.
15 Marjorie McDiarmid, Legal Aid of West Virginia. We are
16 also a program formed in a merger in the last --
17 actually, a little earlier than the Iowa program, from
18 two -- actually, first four and then two preexisting
19 legal services programs.

20 I have been on the board of one or the other
21 of those programs since 1985. And no, we don't have
22 term limits.

1 (Laughter.)

2 MS. McDIARMID: And frankly, given -- I mean,
3 the only critique of limits that I saw in the GAO
4 reports was a concern that you folks turn over too
5 much. And therefore, it seems to me that -- I've got
6 my doubts about term limits anyway, but --

7 CHAIRMAN MEITES: Well, we have a different
8 set of constraints than you do, so --

9 MS. McDIARMID: I fully understand that. But
10 that's the risk, isn't it? The risk is that if you
11 turn over your board with great frequency, you lose
12 institutional memory. And that was precisely the GAO
13 critique, and so I think we're at least in part
14 motivated by that concern.

15 What we do have that's unique, as far as I
16 know in the country, is elected attorney board members.
17 Each of our areas of the state, which are carved up
18 based on client population in the state of West
19 Virginia, elects from the entire bar of that area the
20 board member who's going to be the attorney board
21 member, who's going to represent that entity.

22 MS. SINGLETON: I'm sorry. Who did you say

1 votes?

2 MS. McDIARMID: All of the attorneys in the
3 region that's being represented. Those elections are
4 frequently contested. Incumbents have been turned out.
5 We had, I think, in the last election out of our
6 capital city, 16 people running for one board slot.

7 CHAIRMAN MEITES: Okay.

8 MS. McDIARMID: There's a high level of
9 engagement in the bar in the state of West Virginia
10 with this program. And we think, in part, the election
11 of our attorney board members is a reason for that.

12 There are three attorney board members who are
13 named by organizations. I happen to be one of those.
14 I'm named by the College of Law where I teach. The
15 other two organizations that nominate are the state bar
16 and the minority bar in West Virginia, the Mountain
17 State Bar Association.

18 The client members of our board are selected
19 from client groups around the state. We have a strong
20 core of people who are very experienced client board
21 members. We also have some people who turn over with
22 greater frequency.

1 There are more in the former category than in
2 the latter, but if you had to point to a difficulty in
3 filling slots -- and I think right now we're completely
4 full -- but if you had to point to an issue, it would
5 be getting client board members who are able to make
6 the commitment and stay with the program.

7 There are a couple of things that seem to be
8 raised by your materials that I thought I'd address.
9 But if you want to take questions first --

10 CHAIRMAN MEITES: No. Please go ahead.

11 MS. McDIARMID: Okay. You asked about a
12 conflict of interest policy. We do have such a policy.
13 The materials that I gave you are those blue -- yes,
14 with the tabs. And the first yellow tab is the
15 conflict of interest policy.

16 This was our response to Sarbanes-Oxley. I've
17 since talked to corporate lawyers who tell me that
18 Sarbanes-Oxley has little or nothing to do with
19 not-for-profit corporations.

20 CHAIRMAN MEITES: Don't believe that for a
21 minute.

22 MS. McDIARMID: Okay. Well, the ABA seems to

1 think otherwise, but there is, I think, a viable debate
2 on that question.

3 CHAIRMAN MEITES: Some of us on this board
4 lost that debate, and so --

5 MS. McDIARMID: I see. Well, in any event,
6 whether it's required or not, we thought we'd do it.
7 And so you have the policy.

8 The green tab is a set of sample materials I
9 put together illustrating the function of our audit
10 committee. You have at the back of that a bunch of
11 materials -- a report, representative report, from the
12 audit committee.

13 Moving toward the front, which is my
14 understanding of how one ought to read a financial
15 report anyway, the next thing we have is a set of board
16 minutes, which illustrate how we handle audits with the
17 full board.

18 We have the auditor come to the board meeting
19 and make a presentation with respect to the content of
20 the audit. We then ask the management of the program
21 to step out of the room, and we have a board meeting
22 with the -- a portion of the board meeting with the

1 auditor to ensure that if there's anything that he or
2 she has spotted that raises issues with respect to
3 management, they feel comfortable in disclosing that to
4 us. So that's that piece.

5 The next tab, the sort of salmon-colored one,
6 is our board election materials, which contains, among
7 other things, our job description for board members.
8 That gets circulated to anybody who wants to run for
9 that position.

10 The text of the handout gives you more on the
11 training, but I did put in here at the next yellow tab
12 an overview of the last training program that we did,
13 agenda.

14 The next green tab is our most recent
15 strategic plan, together with the process by which it
16 was generated. And the final set of materials under
17 the last salmon tab is the report -- some sample
18 reports, again, from our legal director with respect to
19 compliance issues. I particularly chose one that dealt
20 with priorities and one that dealt with private bar
21 involvement, and also our case service report numbers.

22 CHAIRMAN MEITES: Let me ask you a couple

1 questions, then throw it open.

2 MS. McDIARMID: Sure.

3 CHAIRMAN MEITES: You gave us minutes of the
4 audit committee. Does the audit committee also
5 function as the budget committee or the finance
6 committee?

7 MS. McDIARMID: Yes.

8 CHAIRMAN MEITES: So it's -- what other
9 committees do you have, permanent committees do you
10 have?

11 MS. McDIARMID: We have a personnel committee,
12 we have an executive committee, and we have a committee
13 of one, a delegate who interacts on our behalf with our
14 state funding mechanism, which -- private funding
15 mechanism. We have a group chaired by two attorneys in
16 the state who are not members of the board who take it
17 upon themselves to do private fundraising for the board
18 on a regular basis. We call it the Campaign for Legal
19 Aid.

20 CHAIRMAN MEITES: And do these two individuals
21 also raise money for other legal assistance
22 organizations in West Virginia, or just for yours?

1 MS. McDIARMID: No. No.

2 CHAIRMAN MEITES: Just for you. So you
3 essentially have a fundraising committee, although it's
4 not --

5 MS. McDIARMID: Yes. One member of our board
6 is the liaison, but we think it's important for the
7 bar, apart from the self-serving, potentially, members
8 of the board --

9 CHAIRMAN MEITES: I see.

10 MS. McDIARMID: -- to be the point for
11 fundraising with other attorney members.

12 CHAIRMAN MEITES: Yes. I have two more
13 specific questions, and then I'll turn it open.

14 What kind of training do new board members
15 receive?

16 MS. McDIARMID: There is a book of materials,
17 and there's a meeting that takes place between the
18 board member and our executive director. And then, as
19 I say at the -- I've lost track here now -- the yellow
20 tab, you saw the full board agenda.

21 CHAIRMAN MEITES: And the last question: How
22 often does your board meet?

1 MS. McDIARMID: Quarterly or more. If there's
2 a problem, we may meet more frequently.

3 CHAIRMAN MEITES: All right. Questions? Herb?

4 MR. GARTEN: I'm intrigued with the fact that
5 you have so much competition to get elected to the
6 board. What do you attribute that to?

7 MS. McDIARMID: I think the lawyers in West
8 Virginia care a lot about the delivery of legal
9 services and see this as an important pro bono function
10 for them to perform.

11 MR. GARTEN: Well, we have that in many other
12 states, but you seem to --

13 MS. McDIARMID: Well, I don't know what
14 elections would generate in other states as well. I
15 can just tell you what they generate in ours.

16 MR. GARTEN: Well, whatever you're doing is
17 remarkable. Congratulations.

18 MS. McDIARMID: I can assure you it's not the
19 remuneration. It's nonexistent.

20 (Laughter.)

21 CHAIRMAN MEITES: All right. If there's no
22 more questions, Ms. Schair, is that --

1 MS. SCHAIR: Yes, it is.

2 CHAIRMAN MEITES: Go ahead, please.

3 MS. SCHAIR: Thank you for holding this
4 meeting. My name is Fern Schair. I was on the LSNYC
5 board since 2003, and became chair in 2006.

6 We do have -- and I'll deal with that first --
7 term limits, and there is a three-year limit as chair.

8 Our officers are two-year term limits, though that can
9 be repeated. And the board members have two three-year
10 terms as board members.

11 We just imposed the limits a few years ago, so
12 we had our first large group going off the board a year
13 ago. We lost -- we have 33 members in total, 11 client
14 members, obviously, I believe 19 lawyers. And we are
15 fully -- have a full board for the moment. It has been
16 difficult to recruit client members, and that's the
17 area in which we haven't done so well.

18 But in any event, the replacement when we lost
19 a lot of board members was of concern, and I must say
20 it has been wonderful. I think it confirms those of us
21 who believed in term limits. It made us work very hard
22 to go out and find new people in the bar that had an

1 interest and that were willing, and we found people
2 more than willing to give time.

3 We also found ways to engage people who are
4 going off the board to do all kinds of strategic
5 planning or committees or liaisons or other
6 opportunities to help us, so that it widened the pool
7 of those people who are interested in what we're doing
8 and what we're about.

9 So it is more work. It is difficult. You do
10 have to stagger these, obviously, so you don't lose at
11 any one time too much institutional memory. but we
12 believe in it, and I have to say personally as chair,
13 knowing it was a three-year term, you've kind of got to
14 hit the ground running. You've got three years to
15 accomplish whatever it is you feel you should be
16 accomplishing for the organization. So I think it's
17 wonderful, and I think the organization as a whole
18 finds it's been very useful.

19 Our board members are all assigned to a
20 committee, usually of their choice unless there's a
21 particular reason we need them on a particular
22 committee. But I'd say 90 percent of the time they get

1 to choose.

2 The committees are: the executive committee,
3 which is the most active. Our board meets monthly. We
4 actually tried -- an anecdote -- to not have a February
5 board meeting last year because some of our new members
6 were saying, gee, meeting every month the ten months of
7 the year, this kind of school year, seems like a lot.

8 So we did away with the February meeting and
9 found that that was not a good idea. There is so much
10 that comes up all the time that meeting ten times a
11 year is necessary. And indeed, the year I became
12 chair, we did a July meeting also and a board retreat
13 because we felt at that point we were dealing with a
14 lot of new issues, a lot of merger issues, and we
15 should have a retreat of some of the older board
16 members, a lot of incoming board members, and senior
17 staff. So that the ten times a year seems to be a
18 minimum of meetings, and we're going back to that.

19 The other committees -- so the executive
20 committee minutes by telephone, but once a month about
21 eight to ten days before the board meeting, so that we
22 not only deal with issues that arise but planning for

1 the board meeting.

2 We also have -- probably our strongest
3 standing committee is the audit and budget committee.
4 We do have them combined. We do deal with both audit
5 and budget matters. It is a very hard-working
6 committee. They meet separately for a few hours every
7 month.

8 They had been meeting more a number of months
9 ago because there was a strong feeling -- we had had
10 the same auditor for many years -- that one should at
11 least go out to the world and see if that should remain
12 the same. We were perfectly happy with the auditor,
13 but having had them for something like 18 or 20 years,
14 some of the board officers particularly felt we ought
15 to be going out and looking.

16 And we developed a process, which is one of
17 the many things in the folder I've distributed, where
18 we weighted certain factors in choosing the new
19 auditor. And we sent out a request for RFPs, got a lot
20 of RFPs, and narrowed down on the basis of the factors
21 to -- I believe there were five finalists. And they
22 were all interviewed by the audit and budget committee,

1 individual auditors, and a new auditor was chosen for
2 this year.

3 So we are very process-oriented. The next
4 committee is the development and public relations
5 committee, and we've wound up separating them into
6 subcommittees. It's called development, public
7 relations, and the bylaws, but indeed we need both. The
8 development committee works on our big annual event per
9 year, plus other events as we have it, and the public
10 relations committee on newsletters and working with
11 your terrific newsletter people and others to make sure
12 the news gets out of what we're doing.

13 We then have a program committee, which is in
14 some ways our think tank. We really try to think about
15 what we're doing, how we are dealing with the quality
16 of the services and how we need to monitor perhaps
17 better what's going on.

18 So again, the board members get to choose one
19 of those committees, or there's also less hard-working.
20 The nominating committee, which works hard sometimes
21 but doesn't meet perhaps every month; and then what we
22 call the operations, compliance, and personnel

1 committee, which deals with personnel issues, client
2 complaints -- which is an important function they deal
3 with -- and other matters that may have to do with
4 compliance. And they will often make a report and
5 recommendation to the full board.

6 The second other-than-committee service that
7 is insisted on of every board member is a liaison
8 function. We have teams of liaisons for every office
9 that actually delivers the services, so that when that
10 office has a difficulty that comes to the board's
11 attention, we have somebody on the board who's paid
12 careful attention to what's happening.

13 We have a unique situation in that some of our
14 local offices are also separate 501(c)(3) corporations,
15 which they were many, many years ago historically.
16 They're now part of the whole, and we're working
17 towards making them even more part of the whole. There
18 is central budgeting and financing and all of that.

19 But the liaison team -- and we have two or
20 three because it's such a large board, and try to have
21 a client member and two others on every team -- will
22 read the board minutes, hopefully go to board meetings

1 -- not all to every one but one perhaps to each, and
2 perhaps they rotate it. We try to have one of the
3 three be a coordinator so they're not all doing the
4 same thing.

5 But they get to as many as they can and deal
6 with issues. And when a particular problem comes up,
7 either personnel or program or whatever, political
8 sometimes in an office, we have a group that is more
9 familiar with that office and feels more comfortable.
10 It's such a large program that this I've found very
11 helpful as chair when we work through issues.

12 Lately we have worked on conflict of interest
13 policies. We did not have them; we do now. What we
14 have found, paying attention to Sarbanes-Oxley and not
15 paying attention to those that say it doesn't matter,
16 is that we felt the need, surprising for an
17 organization of lawyers and by lawyers, for our own
18 general counsel, for which we did not want to hire a
19 full-time person but we got a pro bono general counsel,
20 somebody with a large law firm.

21 And he comes to our board meetings. He's been
22 terrific. He's been able to answer questions and

1 research issues as they come up. And he helped us to
2 do some of the orientation that we have done on LSC
3 regs on legal changes, on financial issues, and on
4 other overall matters of running a not-for-profit.

5 I must say many of us who are involved in a
6 number of not-for-profits, it's not just the LSC boards
7 that are facing all this, that organizations all over
8 are changing the way they do business. And while
9 hopefully we all have confidence in our executive
10 directors, as Diane said, we also know that we've got
11 to pay very careful attention.

12 And I think the board is fully engaged, as
13 fully engaged as I think the situation warrants. We
14 instituted -- because of that level of engagement, we
15 pushed it a little bit by having an attendance policy.
16 You cannot miss more than three meetings a year or we
17 ask you to resign from the board.

18 Our board meetings are very well attended.
19 They had been before this, luckily, so there was no
20 outcry when we instituted it. We do have some
21 attendance by telephone, but we as a matter of policy
22 have asked people not to do that more than two or three

1 times a year because it's important for us to be in the
2 same room and to see each other.

3 The issue that we've been less than successful
4 with that I alluded to earlier is making sure we have
5 engaged client members -- first of all, finding client
6 members who are willing to give them time because we do
7 meet so often, it is a big commitment of time.

8 Our executive director meets one-on-one with
9 every board member, client member or not, as they come
10 onto the board, spends some time with them, does some
11 orientation, and then they come to the general board
12 orientation.

13 There was for some time what we called a
14 pre-meeting a half hour before the board meeting for
15 client members specifically who wanted to come and ask
16 questions that maybe they didn't want to ask at the
17 full board meeting. They asked at the pre-board
18 meeting.

19 We found that at least as of a while ago, the
20 client members that had come on board some years before
21 just found it wasn't useful any more and they weren't
22 coming. So there's still that opportunity, and as we

1 now have a new group of client members, we will
2 probably reinstitute that.

3 Let's see. I think that's all the questions I
4 recall that you've asked.

5 CHAIRMAN MEITES: You sound like you have a
6 unique problem. You still have boards of your
7 subsidiaries --

8 MS. SCHAIR: Boards of our board, yes. Yes,
9 boards of our subsidiaries.

10 CHAIRMAN MEITES: We'll leave that. Your
11 geographical area is New York City?

12 MS. SCHAIR: The entire city, yes.

13 CHAIRMAN MEITES: So you don't have the kind
14 of -- you have no geographical problems.

15 MS. SCHAIR: No, except that there are a
16 number of organizations that share a particular borough
17 in Brooklyn. So there's a little bit of issue there
18 about where people go.

19 CHAIRMAN MEITES: Right.

20 MS. SCHAIR: But no, our outline is clearly
21 demarked.

22 CHAIRMAN MEITES: Is it your sense that the

1 board members are familiar with our regulations?

2 MS. SCHAIR: Yes. That's been an intrinsic
3 part of our orientation and our discussions. I think
4 it's harder for them to know the implementation on a
5 regular basis, on a daily basis by the lawyers, but I
6 think they are familiar with the regulations.

7 CHAIRMAN MEITES: All right. Questions?
8 Comments?

9 MS. PHILLIPS-JACKSON: And anyone on the panel
10 can answer this question.

11 What do you see is the barrier for engaging
12 more client board members coming on board, being
13 involved? What are the barriers? What do you think?

14 MS. SCHAIR: Well, interesting. Once they are
15 on board and have come to some meetings, there's much
16 less of a barrier or an issue around the table. I must
17 say all of our serious discussions -- and we've had
18 lots of them -- there really is a give and take with
19 the client board members.

20 It's the finding someone who may live in
21 Staten Island or Queens to come to Manhattan to a
22 meeting and to feel they won't be overwhelmed -- it's a

1 legal services organization, all of the things I think
2 my colleagues have talked about. And it's getting
3 people who will do the work.

4 I think people, and particularly if they're
5 not in Manhattan where we meet, you know, obviously are
6 overwhelmed with their own.

7 MS. PHILLIPS-JACKSON: You would say
8 transportation pretty much is the --

9 MS. SCHAIR: Well, they're paid for
10 transportation, so it's the time. It's the culture.
11 It's all of those things that are so hard to deal with.
12 On the other hand, we put a lot of effort into it the
13 last eight months and have filled the clients. So it
14 may take a little longer and harder, but it's something
15 that can be done. And obviously, it's a wonderful
16 addition to the board.

17 CHAIRMAN MEITES: Herb, please.

18 MR. GARTEN: Yes. How do you arrive at
19 appointments to the board? Is there some process?

20 MS. SCHAIR: We have -- 17 of our board
21 members are suggested by, appointed by, various bar
22 associations around the city of New York. And the

1 client members come through a particular organization
2 designated by one of the boroughs, one of the local
3 programs.

4 So there's no election. I found that
5 interesting, too. I must admit that it's probably --
6 although the bylaws say, for instance, that the
7 association of the bar appointed me initially, but the
8 executive director went to them and said, I want this
9 person, and the bar association will generally appoint
10 the person that we ask for even though it is their
11 appointment.

12 Not every single time, but most of the time
13 the bar associations are very cooperative so that we're
14 able to vet someone's interest in the issue before the
15 bar just comes up with a name. The state bar is the
16 same way, and Bronx and Brooklyn and all the local
17 bars, and the minority bars, which have been very
18 helpful.

19 MR. GARTEN: Is there much competition within
20 the organizations themselves that send you the
21 appointment, or is it -- in other words, one of the bar
22 associations has one delegate to send you. Is there

1 much competition for that position?

2 MS. SCHAIR: Well, most of them have -- the
3 larger ones have -- city bar has three. Somebody else
4 has four, I think state bar. I don't think so. I
5 don't think people are aware. On the other hand, I
6 don't think, you know, people do not want to do it, but
7 I think it doesn't come to their consciousness.

8 There's no organized, we have this
9 opportunity; it's well publicized. It doesn't happen.
10 I think there might be if it was because I think
11 there's a lot of interest in serving with us, and we're
12 fortunate that way. But I don't think it happens that
13 way in reality.

14 MR. GARTEN: Thank you.

15 CHAIRMAN MEITES: Any other questions?

16 (No response.)

17 CHAIRMAN MEITES: Thank you.

18 Mr. Goodin, thank you for your patience.
19 You're on.

20 MR. GOODIN: Thank you. I'm really sorry I
21 can't be there with you. We have a lovely day out
22 here, and I hope you're not in the ice storm back

1 there.

2 Our program is a fairly large program. It's
3 also the result of a merger which occurred in 2000
4 between four programs involving Alameda, Contra Costa,
5 San Francisco, and Santa Clara Counties. We also serve
6 three other counties now.

7 The board and -- I've been the board chair
8 since the inception of the program in 2000. Prior to
9 that, I was on one of the constituent members, which
10 was called San Francisco Neighborhood Legal Assistance
11 Foundation, usually known by its acronym SFNLAF. I
12 went on the SFNLAF board in 1984, became the chairman
13 in 1988, and served there till we merged. So I guess
14 you could say we don't have term limits.

15 And actually, interestingly, in contrast to
16 what we heard from Fern, we had a committee two years
17 ago study whether we ought to institute term limits,
18 and that committee strongly concluded, as did the
19 board, that we should not. So I think we understand
20 the virtues of that, but there are differing views
21 among these programs represented.

22 The board consists of -- when it's fully

1 staffed; we have two vacancies at the moment -- but
2 when it's fully staffed, it's nine client members and
3 24 attorney members. Under our bylaws, a number of
4 those are allocated by the counties we serve, and then
5 there are a number of at-large members.

6 In terms of how the board functions,
7 orientation is done by our executive director. And I
8 would echo what you've heard from many of the other
9 speakers. We have an incredibly strong executive
10 director named Ramón Arias, who has been nationally
11 recognized as such. That's very much the key to a good
12 program, although I think a strong board is also a very
13 important component.

14 But Ramón provides two to three hours of
15 training, which very much includes the Legal Services
16 regulations. And of course, on an ongoing basis, Ramón
17 apprises them if there are any issues or new
18 regulations that we should be aware of.

19 Our board meets four times a year. We
20 strongly encourage in-person attendance. We think
21 that's very important thing also. We have a pretty
22 good regional transportation system, and lots of

1 options where we meet are very close to the Bay Area
2 Rapid Transit stations, which is also where we locate
3 our offices. We have six offices around the Bay area,
4 and they're all intentionally located close to
5 transportation that our clients will use.

6 In terms of committees, we have a separate
7 audit and finance committee that meets actually six
8 times a year. It meets with the auditor, after the
9 auditor completes an annual audit, without management
10 there. They are a very hardworking and conscientious
11 committee.

12 We have a separate development committee,
13 which has fundraising responsibility. And this
14 involves every attorney board member, ultimately. We
15 have an aggressive fundraising campaign, which we call
16 the Partners in Justice campaign, which raises a
17 substantial amount of money from the legal community
18 and some of the corporate community here.

19 We have a labor/management committee because,
20 fairly unusually, our lawyers and staff are unionized.
21 And that committee also does the personnel function of
22 evaluating our executive director. Frankly, we weren't

1 doing it often enough, but we're now doing it on an
2 annual basis.

3 We have a priorities review committee, and we
4 have a nominations, improvement, and board evaluation
5 committee. I will speak about that just for a second
6 --

7 CHAIRMAN MEITES: If you'd hold on --

8 MR. GOODIN: -- about some of the issues about
9 turnover of new blood --

10 CHAIRMAN MEITES: Mr. Goodin?

11 MR. GOODIN: -- which is the other side of
12 coin talking about term limits. That committee is
13 responsible for filling the vacancies, and we do have
14 some attrition. But also, a very important function is
15 to evaluate current board members when their terms are
16 coming up.

17 We look at attendance. We look at committee
18 participation. We look at fundraising involvement. If
19 we don't feel that the board member is up to snuff, we
20 ask him or her to leave. That's one of the ways we
21 ensure some new blood, and we do get new blood in that
22 fashion and from attrition.

1 We've got a client grievance committee, and I
2 believe that's it on the committees.

3 We do not have yet an ethics/conflict of
4 interest policy. We're developing one; we expect to
5 have it in place by May. I have not been advised about
6 the Sarbanes-Oxley issue, but there is an IRS Form 990
7 which is going to require us to say whether we do or
8 don't have one. And we want to have one by the time we
9 file that form.

10 I'd be happy to answer any questions anybody
11 has, or if I've missed anything.

12 CHAIRMAN MEITES: Can you hear me?

13 MR. GOODIN: Yes, I can.

14 CHAIRMAN MEITES: Good. As I understand it,
15 your board actually meets at the offices of your -- at
16 your offices?

17 MR. GOODIN: It rotates. Sometimes it's at
18 one of the offices. The main office, administrative
19 office, for us is in Oakland, which is across the Bay
20 from me here in San Francisco. Normally, one of the
21 law firms with one of the members, they have huge
22 conference rooms, and we often do it there because

1 they're all close to BART.

2 And we try to do at least one meeting
3 occasionally down in the South Bay because for people
4 from Santa Clara, it's a fairly long drive up here to
5 San Francisco. But we rotate among law offices and
6 among our control office at home.

7 CHAIRMAN MEITES: Could you tell us a little
8 bit about what kind of training you give new board
9 members?

10 MR. GOODIN: Yes. I think I mentioned, our
11 executive director, Ramón Arias, has a two to
12 three-hour orientation session where they go over,
13 among other things, all the LSC regs.

14 I make it a point to personally welcome every
15 new board member, and I particularly talk about the
16 importance of their involvement in our fundraising
17 efforts, which have been very successful, and we want
18 to keep going that.

19 CHAIRMAN MEITES: How well have you done with
20 retaining client members?

21 MR. GOODIN: Client members -- I think this is
22 a theme you're hearing -- I think it's not easy to find

1 them, and we've had a number of them who've been with
2 us a long time. They're very involved, and I think
3 very comfortable with us.

4 But getting client board members is not easy.
5 And one of the things that Ramón asked me to ask you
6 is, in terms of possible changes in regulations, if
7 you'd consider not requiring client eligibility per se,
8 but even including people who are executives or running
9 organizations that serve our clients. Some of those
10 people have more time in some instances, and they still
11 have the clients' perspective on issues.

12 But like you know, it's very valuable to hear
13 direct client participation. And one of the questions
14 that was asked earlier is something we started doing
15 because it's of such great interest to board members,
16 and that is to have stories, either by the clients or
17 the lawyers who did their cases, and we have both, at
18 every board meeting tell us something about what
19 they're doing. It's really inspiring.

20 CHAIRMAN MEITES: All right. Questions?
21 Comments?

22 (No response.)

1 CHAIRMAN MEITES: Thank you very much, Mr.
2 Goodin. Let me just summarize very briefly, remind you
3 again why we asked you here, and give you my
4 impression. And then we discuss everything in public.
5 You don't quite have the constraints we do.

6 But the reason we asked you here, as I
7 mentioned, was our concern about governance because of
8 some of our weaker boards. What you have reinforced to
9 me is what we have learned in our travels around the
10 country.

11 Every grantee we go to is different. We have
12 one set of cookie cutter regulations, and everyone runs
13 their organization the way that makes sense for them.
14 And what we've heard today is you all have your own way
15 of organizing your internal affairs, and with very
16 large variation, as we've heard.

17 That makes me somewhat reluctant for us to
18 legislate extensively on how you should run your
19 railroads. Now, I may be in a minority. My colleagues
20 may think that an ironclad one-size-fits-all is the way
21 to get you all in line. But let me throw it open.

22 MR. GOODIN: Well, I would certainly agree

1 with you. I think you've heard a wide variety of ways
2 of going about this, all of which appear to be working
3 very well. And, you know, I think -- I mean, obviously
4 the critical part is getting good leadership, and it
5 starts with the executive director, of course.

6 But then it involves getting really good,
7 strong board members. And I feel really blessed. I've
8 served on -- and I'm sure my colleagues on this panel
9 have -- a large number of boards over the years, and
10 this is by far the strongest. It's really a pleasure,
11 and I think it really helps the organization.

12 CHAIRMAN MEITES: Go ahead.

13 MS. SCHAIR: Whether one legislates, as a
14 board chair who maybe is a little newer to the
15 organization, I might have wanted more nudging, more
16 best practices right in front of me, not having to go
17 find it, more of communication from Legal Services to
18 say, this is -- have you thought about a conflicts of
19 interest policy? Here are six that are in use now that
20 will help you.

21 And for a lot of us, I mean, we have a lot of
22 good pro bono help. And yet it took months to figure

1 out what a conflicts of interest policy for our kind of
2 organization looks like. Maybe there were just too
3 many lawyers and that's why it took so long.

4 But having a few models would have been
5 helpful. And there are a lot of other things that
6 models would be very useful, and actually communicating
7 with other board chairs. For me, a listserv or
8 something, you know, some way to feel there's a little
9 more communication, colleagues and people here, to go
10 to to say, we're having trouble getting client members.
11 What is some advice you can give us?

12 And while you have a lot of good information,
13 terrific information available, for new board chairs
14 particularly, I think having it come at us more would
15 be helpful, and having the ability to talk to others in
16 the same situation.

17 MS. BeVIER: I think that's a really good
18 idea, to talk not in terms of another set of
19 regulations but rather in terms of just some guidance
20 about things you might be thinking about, things that
21 we might be concerned about and have conceivably gotten
22 sort of -- or some of our boards have gotten in trouble

1 with respect to some of the issues that have been
2 raised today.

3 But I was intrigued by the suggestion that --
4 because this theme of client members has been a
5 pervasive one, and thanks to Bernice for bringing it
6 up, but it is -- the suggestion was made about possibly
7 having a different regulation that says not necessarily
8 client members, but members from organizations that
9 serve clients on a regular basis and interact with them
10 and know.

11 Would you all sort of inform me about how you
12 react to that suggestion? Is it a workable, possible
13 way to sort of help resolve this issue? Or does it
14 just sort of get us out from under what is a problem
15 that we should be dealing with?

16 MS. KUTZKO: I feel strongly from Iowa that
17 holding our feet to the fire about having client
18 members per se is very important. I think that they
19 add a dimension, a diversity that you don't really
20 think about otherwise because of their perspective.

21 And so on a related issue, I think perhaps --
22 and going back, I'm not sure how you would do the math

1 -- but it would be nice to have some flexibility to
2 have members from other walks of life. For example, we
3 don't have the ability that many other boards have to
4 have people from the world of finance per se,
5 corporations, that sort of thing.

6 But focusing on the client members, I feel
7 strongly that the client representation is very
8 important.

9 MS. BeVIER: I don't think I heard you
10 suggesting that you might want somebody other than
11 lawyers? You have clients and then you have lawyers,
12 and then you want other kinds of people?

13 MS. KUTZKO: It's just a thought that we've
14 discussed that we are -- as a matter of fact, we don't
15 have the able -- and we are trying, for example, to
16 attract lawyers and do a sort of a board assessment --
17 to have some flexibility where there are in fact others
18 who might be on the board as well. But that --

19 MS. BeVIER: With different skill sets, in
20 other words?

21 MS. KUTZKO: Yes. Exactly.

22 MS. BeVIER: Yes. Thanks.

1 MS. PHILLIPS-JACKSON: I'm just concerned with
2 the comment, replacing the client member with a lawyer
3 that assists them. that right there is sticky because
4 who better to tell the story, the client story, than
5 the client themselves?

6 That would just be like, for example, me
7 telling Helaine's story as the president of the
8 Corporation. I mean, no comparison. So I'm just
9 concerned about, you know, replacing lawyers with
10 client members.

11 CHAIRMAN MEITES: Let me follow that up. Our
12 regulations, written not by us, provide that 60 percent
13 of the board shall be attorneys, and one-third shall be
14 client members. That leaves 10 percent who can be
15 anything else.

16 We could achieve all of your purposes by
17 lessening the 60 percent of lawyers to some other
18 number. That would keep the client members, would
19 allow the boards to go out and get nonlawyers for
20 expertise or viewpoints. And I'm sure you wouldn't
21 miss a couple lawyers.

22 Okay. Any other comments? Please.

1 MR. DOUCETTE: If I may, I'd like to address a
2 comment that was raised a few minutes ago about should
3 there be more regulations, not -- and the consensus
4 seeming to be that what works in Lynchburg is not going
5 to work in New York City. And certainly what works in
6 New York City is not going to work in Lynchburg just
7 because of the size involved.

8 We're talking, in the Virginia Legal Aid
9 Society's area that we cover, Lynchburg is the largest
10 city. We probably have 150 lawyers in the entire city.
11 And so when we talk about things like term limits and
12 talk about things like general counsel, we're never
13 going to do those sort of things.

14 But the one thing that I did hear and I sort
15 of liked was if there was some sort of central area,
16 whether it's at the LSC website or whatever it might
17 be, where the different programs can put on a summary
18 of what works for them and what doesn't work for them.

19 One of the things I've learned as a
20 prosecutor, going around the country and teaching trial
21 advocacy and talking to folks in different states, it's
22 great to steal their ideas. And, you know, it's not

1 stealing if it works.

2 And so if I've got a great idea and I post it
3 on the website and you want to take it, by all means.
4 That's why I put it on the website. And if you've got
5 an idea in New York that might actually work in
6 Lynchburg, please put it on the website because I'll be
7 more than happy to use it.

8 And so especially in areas when we're talking
9 about client recruitment and retention, if somebody's
10 got some good ideas out there, I'd love to see them and
11 like to impose --

12 CHAIRMAN MEITES: Well, the Corporation
13 actually has well-developed technical means for
14 listservs and for communicating best practices in other
15 areas. And there's no reason at all we couldn't adapt
16 those to our 130-odd boards.

17 I don't think we've done that much in
18 developing best practices for board members, but that's
19 certainly not beyond our staff's capabilities. And in
20 fact, I want to thank you all for coming because you've
21 given us an idea of where we should start.

22 Good. Well, thank you very much.

1 MS. BARNETT: May I say something?

2 CHAIRMAN MEITES: Please.

3 MS. BARNETT: I also want to add the thanks of
4 the Corporation to the five of you for taking time out
5 of your incredibly busy schedules and joining us today.
6 And this was the start for us, and we have spoken from
7 a staff perspective that our goal would be to give
8 guidance to our board chairs in the course of this
9 year, and that this was the beginning where we would
10 get input from you all to help inform us.

11 And so the suggestions that were made, in
12 particular is there a way that we can connect our
13 boards with best practices, will be either through a
14 website or perhaps it'll be cumulative, a website and a
15 memo from us sharing best practices in the different
16 areas of concern for board governance and oversight.

17 And you have done exactly what we hoped you
18 would do, which was to begin the discussion and
19 heighten our sensitivity to particular areas that we
20 can focus on.

21 So we will definitely have follow-up with
22 regard to sharing best practices, both through a

1 website and both through a memorandum from LSC. And I
2 thank you for sharing your perspectives with us.

3 CHAIRMAN MEITES: We'll take a one-minute
4 break and then we'll resume.

5 (Whereupon, a brief recess was taken.)

6 CHAIRMAN MEITES: Our next area is consider
7 and act on rulemaking petition regarding financial
8 eligibility requirements in disaster areas. As you
9 will recall, we considered this at our last meeting,
10 and we asked for more materials. And Mattie, I
11 believe, is prepared to give us.

12 But there's an -- Mattie's going to make an
13 introductory statement which is a matter for the board
14 to decide rather than our committee. So I'd like all
15 the board members to listen carefully to what she's
16 about to tell us.

17 MS. COHAN: As many or most of you may have
18 already heard, President Obama issued a declaration to
19 agencies issuing basically a moratorium on rulemaking,
20 asking them to not engage in any rulemaking for a
21 period of time while their new appointments are made
22 and the new administration gets settled in.

1 Technically, this moratorium, this directive,
2 does not apply to the Legal Services Corporation
3 because we are not a federal agency. But it's out
4 there, and as a matter of comity, the Corporation's
5 board may wish to take that into consideration as it
6 moves forward.

7 I can tell you that in the transition from the
8 Clinton board to your board, there was no such similar
9 presidential directive, although at some point we did
10 receive a letter from a congressperson on the Hill
11 asking that the board basically cease and desist until
12 there was a new board in place. And obviously, at that
13 time the board chose to do so.

14 So we haven't heard -- as far as I know, we
15 haven't heard anything from the Hill, but that
16 directive is out there. And I just put that forward in
17 front of you for your collective consideration about
18 how you choose to move forward.

19 CHAIRMAN MEITES: Well, let's stop there and
20 let's briefly discuss that because none of us have had
21 experience in this area, and so we're all writing on
22 more or less a clean slate.

1 It seems to me that there are considerations
2 on both sides. We are not bound by this, but that
3 doesn't mean that there may not be good reasons for us
4 to follow it as a policy matter.

5 We do not know when our successors will be
6 confirmed, let alone be nominated. Our process took a
7 great deal of time, but there's no saying that it will
8 take a great deal of time to nominate and confirm our
9 successors.

10 We have, I believe, only one matter actively
11 under consideration for a rulemaking at this time,
12 which is the matter that Mattie is going to discuss.
13 But it is pretty much ready if we decide to recommend
14 it to go ahead. So the issue of whether we go ahead or
15 not I think is teed up by this.

16 Does the committee want to discuss it, or just
17 leave this to the board to discuss?

18 MS. SINGLETON: I have a question, if I may
19 ask the question.

20 CHAIRMAN MEITES: Please.

21 MS. SINGLETON: This moratorium, does it apply
22 to the entire process, or just adoption of rules? I

1 mean, could we start, you know, the publication,
2 getting comments, even have an extensive comment
3 period? Or would that be in violation?

4 MS. COHAN: I believe it does not prohibit an
5 agency from taking action to get a record. I believe
6 it asks agencies not to actually take -- actually adopt
7 regulations. But I think it would not be entirely
8 inconsistent to take action to do fact-finding and
9 create a record.

10 You know, I'm not sure exactly how it's being
11 interpreted and implemented at agencies to which it
12 applies, and I suspect that it may be different. And
13 this is -- I'm saying this only just from, you know, a
14 career in Washington, D.C., that some agencies will be
15 more aggressive about continuing to do fact-finding
16 while others will just put stuff on the back burner.

17 CHAIRMAN MEITES: Lillian?

18 MS. BeVIER: I just have a thought now. I
19 don't really necessarily have a recommendation. But
20 first of all, I think that this is completely for the
21 board to decide. I don't think it's for this
22 committee.

1 And I guess I'm sort of inclined for this
2 committee to -- I mean, here's a possibility. With
3 respect to this rulemaking, there's a real chance that
4 we're going to recommend don't do anything anyway.
5 Isn't that true?

6 CHAIRMAN MEITES: Yes.

7 MS. BeVIER: I mean, that is management's
8 recommendation. I need to be persuaded that we need to
9 have this rulemaking.

10 And so it's possible that we can sort of do
11 both things, which is not to have a rulemaking and
12 please the administration at the same time. I think
13 there are not very many occasions when that's likely to
14 be true. Who knows.

15 But I think that's -- not that we're prepared
16 to do things that we think the administration is not
17 going to like, but that this seems, you know, from that
18 perspective, a possible win/win.

19 But I'm perfectly willing to stop talking
20 about it right now, if that's the will of the
21 committee. And we should wait and have the board do
22 it, and then we can take it up at our next committee

1 meeting.

2 CHAIRMAN MEITES: Well, let me do that in
3 part. Is it the sense of our committee that this is a
4 matter for the board rather than for us?

5 MR. STRICKLAND: Probably so. But in light of
6 that discussion, we might ask Mattie to see if you
7 could provide to the board or all board members a copy
8 of that particular memorandum.

9 CHAIRMAN MEITES: Yes.

10 MR. STRICKLAND: I presume we got a copy, that
11 LSC got a copy of that memorandum?

12 CHAIRMAN MEITES: We did as well. I think we
13 were e-mailed it. But if you could provide us --

14 MS. COHAN: I'm sure we can --

15 CHAIRMAN MEITES: For our meeting tomorrow, if
16 you could give us copies.

17 MR. STRICKLAND: Yes. I think you're right.
18 We did get an e-mail. But I don't have it with me so I
19 think it would be good to have it in front of us for
20 purposes of the board meeting tomorrow, should that
21 discussion arise. Thank you.

22 MS. PHILLIPS-JACKSON: Eventually, you're

1 saying we're not going to move on this?

2 CHAIRMAN MEITES: Well, no. I think what I
3 would recommend we do is, having said what we said, we
4 leave this for the board. And let's go ahead with
5 Mattie's presentation on this regulation, this proposed
6 rulemaking, and see what our recommendation is.

7 What Lillian is saying we well might say we
8 don't recommend this, which means we don't have a
9 problem. So Mattie, why don't you proceed.

10 MS. COHAN: All right. Thank you. For the
11 record, in case I didn't say this before, I am Mattie
12 Cohan, senior assistant general counsel for the Legal
13 Services Corporation. And today may be the first day
14 that I've ever actually needed the microphone, so if
15 anybody can't hear me, please let me know. I'm not
16 quite as contagious as I was in Salt Lake City, but I'm
17 close.

18 As you know, we have received a petition for
19 rulemaking from -- it was submitted by Chuck
20 Greenfield, who was then the executive director of the
21 Legal Aid Society of Hawaii. In case anybody doesn't
22 know, Chuck is now on the LSC staff.

1 CHAIRMAN MEITES: Is he here?

2 MS. COHAN: He was in the audience earlier. I
3 don't know if he's gone back to work. I don't have
4 kids, so I don't have the eyes behind my head thing.

5 And the petition asked for the Corporation to
6 amend its financial eligibility regulations at 45 CFR
7 Part 1611 to allow grantees the flexibility to deem as
8 financially eligible otherwise over-income persons who
9 have been affected by disasters.

10 The management recommendation, up to this
11 point and continues to be, that the petition should be
12 denied. Management is concerned about pursuing
13 regulatory change along these lines because it would
14 increase the potential applicant pool at a time when
15 LSC resources are extremely tight.

16 And in light of the fact that grantees have --
17 if grantees have available non-LSC funds with which
18 they can serve over-income people, the Corporation
19 management believes that it's appropriate -- that that
20 would be an appropriate use of those funds to kind of
21 safeguard the LSC funds for the core eligible client
22 community.

1 That said, at the last meeting the committee
2 did ask management to draft a notice of proposed
3 rulemaking. The committee, as you may remember,
4 neither granted nor denied the petition, did not
5 initiate or not initiate a rulemaking, but asked to see
6 what a draft notice of proposed rulemaking might look
7 like if the committee decided it wanted to recommend
8 such action to the full board. So staff sat down, and
9 management has provided you with, in fact, a draft
10 notice of proposed rulemaking which would provide that
11 authority.

12 There are a couple of -- basically a couple of
13 limitations on the authority the way management has
14 proposed the rulemaking. One was that to define
15 victims -- well, sorry -- to define persons affected by
16 disaster as someone who was living at the time of the
17 disaster or currently, and affected by the disaster, in
18 a presidentially declared disaster area under the
19 Stafford Act, which is the federal act relating to
20 presidential declarations of disasters.

21 There's also technical language about
22 residents of Palau. Unlike residents of the Federated

1 States of Micronesia and the Republic of the Marshall
2 Islands, who are in fact covered by the Stafford Act,
3 residents of Palau are not. And Palau has its own act
4 and own presidential declarations of disaster.

5 So if I use the phrase "presidential
6 declarations of disaster," I'm talking about the
7 Stafford Act, or for Palau, declarations by the Palauan
8 president under Palauan law. Hopefully I don't have to
9 ever repeat that phrase again.

10 In addition to making sure that such persons
11 would be persons covered by those disaster
12 declarations, the draft NPRM proposes to limit the
13 availability of the authorized exception to a 60-day
14 window from the date of the declaration.

15 Under that limitation, recipients could use
16 the proposed exception to find applicants whose income
17 is in excess of 200 percent of the federal poverty
18 guidelines amounts to be financially eligible when the
19 applicants apply for service within the first 60 days
20 after the presidential declaration of disaster.

21 That window represents a reasonable
22 opportunity for recipients to provide legal assistance

1 to persons when they are least likely to be able to
2 afford assistance because they are most in the throes
3 of the effects of the disaster, and when the issues
4 that are going to -- for them that are going to come,
5 related to -- arising from or relating to the disaster,
6 which is another limitation on the availability of the
7 proposed exception.

8 MS. SINGLETON: Mattie?

9 MS. COHAN: Sure.

10 MS. SINGLETON: Before you leave that one,
11 could you explain it to me? I don't think I've ever
12 handled anything that got taken care of in 60 days. So
13 do you just have to apply within 60 days?

14 MS. COHAN: Yes.

15 CHAIRMAN MEITES: Or does the whole matter
16 have to be disposed of?

17 MS. COHAN: No, no. Just the application for
18 assistance.

19 CHAIRMAN MEITES: All right. Go ahead.

20 MS. COHAN: You're correct. There is also --
21 the draft NPRM also proposes to limit the availability
22 of the proposed exception to applicants who are seeking

1 legal assistance for legal problems arising from or
2 directly related to the effects of the disaster.

3 This would be things like, you know, FEMA,
4 insurance, you know, if they had housing issues related
5 to loss of housing or unsustainability or
6 inhabitability of housing. What it wouldn't cover
7 would be issues entirely unrelated that arose before or
8 after but had nothing to do with the disaster.

9 And finally, the draft NPRM proposes to
10 require that the executive director or his or her
11 designee make the determination that the applicant is
12 being found eligible under the terms of the exception.

13 This is added as kind of an additional
14 appropriate control in light of the fact that, as
15 drafted, there is no upper income limit, which raises a
16 separate question, that management believes that the
17 addition of an upper income limit on the availability
18 of this exception could be appropriate as well.

19 The draft NPRM does not include one, but does
20 include a discussion in the preamble asking about that
21 issue and asking for what limit would be appropriate if
22 the committee and the board ultimately decided to move

1 forward with this NPRM.

2 One other item that I kind of glossed over
3 that I'd like to point out is, again, that this -- as
4 proposed, the exception would be available only --
5 well, it would only be necessary for persons who are
6 otherwise over 200 percent of the federal poverty
7 guidelines amounts because applicants whose income is
8 between 125 percent and 200 percent could probably
9 already be found eligible under the existing exceptions
10 to the eligibility guidelines, to the income ceilings
11 amounts, provided that the grantee has adopted those
12 into their policy.

13 And, of course, if this were to go forward, it
14 would be at the grantee's discretion whether they
15 wanted to adopt an exception into their policies to
16 allow for this, to allow for these sorts of eligibility
17 determinations. Grantees would not be required to do
18 so, the same way they're not required to adopt any of
19 the exceptions to the policies that are permitted by
20 the regulation now.

21 That is a very quick summary.

22 CHAIRMAN MEITES: Thank you very much, and for

1 your usual excellent job of drafting.

2 MS. COHAN: Thank you.

3 CHAIRMAN MEITES: Let's go through the
4 comments. Does the OIG have any comments?

5 (No response.)

6 CHAIRMAN MEITES: None. And public comments?
7 I'd particularly like to hear from our stakeholders.

8 MR. SAUNDERS: Thank you, Mr. Chairman. I'm
9 Don Saunders with the National Legal Aid and Defenders
10 Association. I'm joined by our counsel, Linda Perle,
11 from the Center for Law and Social Policy.

12 We really appreciate the opportunity to
13 respond very briefly. And I want to reiterate and make
14 very clear the comments that we presented to you in
15 Salt Lake, and that is that we by no means are
16 endorsing the adoption of this particular provision.

17 The reason that we had asked that you consider
18 the notice was really because of our interactions with
19 field programs who had actually dealt with catastrophic
20 disasters, certainly much as the president did in New
21 York.

22 And what we heard was consistent with the

1 petition from Hawaii, that -- stated that when you're
2 in the midst of a catastrophic disaster, certain things
3 became evident in each of the instances:

4 That very often lawyers -- certainly in Cedar
5 Rapids and Katrina and other instances -- lawyers
6 within the community were displaced, and there was a
7 very strong lack of other legal resources;

8 That the legal aid programs are on site at
9 disaster centers with very many other agencies;

10 That it was almost impossible for them to
11 discern among the various applicants;

12 That really, the proposal that Mattie has
13 brought to you addresses a lot of the concerns that
14 they suggest;

15 That there's a limited need for limited
16 assistance, but when you're on site beside the ABA
17 Young Lawyers faced with folks who have lost their
18 home, their job, or very catastrophic circumstances,
19 that it is very helpful to be able in this one instance
20 to provide limited access to advice and counsel.

21 That's what we've heard. We've also heard in
22 Cedar Rapids and Louisiana that that was a very limited

1 need, that they don't -- they weren't blessed with a
2 lot of non-LSC funds, but in both the case of Katrina
3 and the Iowa floods, very quickly United Way and other
4 funding resources were made available for them to
5 represent over-income folks.

6 So what we had asked for you to do is not end
7 the conversation, but to give some sort of framework
8 for a productive conversation about what could be done.
9 And we're very grateful to staff for doing that. I
10 think this is a very good discussion piece.

11 And again, we are -- if probably asked, our
12 committee would probably agree pretty strongly with the
13 principles that management is recommending to you in
14 their recommendation pursuant to this. But we again,
15 in being sensitive to our members who had raised
16 concerns similar to those raised in Hawaii, we wanted
17 to see the discussion continue.

18 We could certainly commit to you, based upon
19 this draft, without any action of the committee, to
20 discuss what you're talking about here if you were to
21 choose not to move forward and to bring you more
22 concrete responses.

1 But the reason that we continue t create some
2 concern about it is simply because of what we've heard
3 from those folks who have actually experienced a
4 catastrophic situation.

5 CHAIRMAN MEITES: Well, we have in the past --
6 I speak for our committee -- we have found your
7 recommendations very helpful. And I had hoped we would
8 have a yea or nay recommendation from the two of you at
9 this meeting.

10 It doesn't sound like you are in a position to
11 give that -- to take that position one way or the other
12 on this. Is that correct?

13 MR. SAUNDERS: Well, my understanding, and it
14 may be an incorrect understanding, was that the
15 conversation was going to take place in response to the
16 notice. And we have not seen the notice. I have not
17 seen the notice.

18 CHAIRMAN MEITES: So where you're at is you'd
19 like another iteration of this, that we kick it over to
20 our next meeting? Does that make sense to you? Would
21 you have a sense that if we did defer this to another
22 meeting, by that time you would have a position that

1 you could take for us?

2 MR. SAUNDERS: I could assure you of that, Mr.
3 Chairman.

4 MS. BeVIER: I have -- I hope that my question
5 can be quite explicitly addressed. It has been sort of
6 addressed, both by this proposal and the discussion.

7 And my question has to do with whether this is
8 an income eligibility issue or a disaster aid
9 eligibility issue, and what the time frame is. And I'm
10 very taken with the stress in Mr. Greenfield's memo to
11 us about the -- on strategic partnerships. I think
12 that is the way forward.

13 And what I hear you saying and what I hear
14 this saying is, look. When it's an emergency, who
15 knows whether they're eligible or not. Well, that's
16 what planning is for. I take it one of the things we
17 learned after Katrina and the Iowa floods is there
18 wasn't planning, so everybody was taken flat-footed.

19 So it seems to me that the task for -- you
20 know, for us, for you, for our grantees, for this
21 effort that the Corporation is making generally for
22 strategic planning for disasters, is to put that piece

1 in place. When that piece is in place so that planning
2 has taken place, going forward, what are these
3 partnerships going to look like?

4 Then maybe I might be more willing to think
5 about relaxing the income eligibility requirements
6 because what I'm worried about is the concern that
7 management raises. What about -- I mean, are you sure
8 that you are serving all the people who are
9 income-eligible and then we go to the income not
10 eligible? Or is this just, well, all comers come, and
11 we'll give you -- if you're in a very stressful
12 situation.

13 I'm not, by the way, suggesting we shouldn't
14 be trying to help, or the government shouldn't be
15 trying to help, or ABA shouldn't be trying to help, or
16 anybody shouldn't be trying to help. But we only have
17 a certain number of resources, and we can't spend them
18 all on disaster relief.

19 MR. SAUNDERS: Well, I could not agree any
20 more with what you said. What I have heard and I think
21 what Linda has heard is really it is that immediate
22 aftermath, the really catastrophic aftermath, where the

1 Young Lawyers, who may or may not be familiar with FEMA
2 regulations, which the Corporation has really made some
3 great progress with, that somebody could go over to the
4 legal aid table and talk to a lawyer without any -- you
5 know, any time being taken to figure out funding source
6 or grant source.

7 Anything beyond that, anything that would take
8 away from a focus on people in poverty and those in
9 greatest need would certainly not be something we would
10 support.

11 MS. BeVIER: Well, I don't understand how this
12 NPRM is going to advance that discussion of the sort of
13 -- it's a very limited time frame. It's not focused on
14 -- I mean, it has the 60-day limit and so forth. It's
15 not focused on that aspect, so that you're not invited
16 to imagine this disaster situation.

17 Here we are at the tables, and people can't go
18 from one table to the next. And the Young Lawyers
19 don't know what to do. that's part of the planning
20 process. And obviously, you can't -- I understand the
21 difficulties with planning and having it be perfect.

22 But this doesn't really answer that problem.

1 It's over-answered. And so the conversation -- I'm
2 perfectly happy to put discussion of this off and not
3 decide to go forward on the NPRM and to continue a
4 conversation about a more focused relaxation or a more
5 deliberate implementation of how to resolve those
6 issues at the particular moment of the emergency
7 because that's where the rubber hits the road for me.
8 And I don't -- you know, so --

9 MR. SAUNDERS: And that's the same from what
10 we've heard in these situations. That's really what we
11 want to address. And this may well be broader than we
12 would want to see.

13 CHAIRMAN MEITES: Well, for a change, I'm the
14 one reluctant to delay. But I think that --

15 MS. BeVIER: Hey, I've gone along with you for
16 about five years.

17 (Laughter.)

18 CHAIRMAN MEITES: But in light of the
19 expressions I've heard from the committee members, I
20 think it is prudent that we defer this to our next
21 meeting. That way, as Lillian prophesized, we do not
22 have to deal with the issue of whether we should still

1 be in the regulation business.

2 Does that make sense? So we will do it. Thank
3 you very much, and we will see you in -- Portland?
4 Portland. Good.

5 MS. COHAN: Thank you.

6 CHAIRMAN MEITES: You'll be there in spirit.

7 All right. We are finally, and despite many
8 doubts, going to hear -- have our discussion on the
9 responsibilities of independent public accountants.
10 This, I think, is our fourth or fifth meeting where we
11 have agenda-ized this item only to have it squashed.
12 But it's going to go ahead now. Herb, this is for you.

13 (Laughter.)

14 CHAIRMAN MEITES: The independent public
15 accountants. This is your chance to --

16 MS. SINGLETON: This is the Garten discussion.

17 CHAIRMAN MEITES: Right. This is not the
18 Garten pilot program. This is the Garten discussion.

19 MR. MERRYMAN: If I may, rather than having a
20 screen, I put together an outline so you can follow
21 along.

22 CHAIRMAN MEITES: That's fine.

1 MR. MERRYMAN: I appreciate the opportunity to
2 -- I'll turn on the microphone so I can speak to you
3 all, and the opportunity to talk to you a little bit
4 about the IPAs and what their responsibilities are, and
5 to answer any questions that you have.

6 I have passed out this outline as a guide,
7 just to let you know the topics I'm going to be talking
8 about. And if there are topics on there that you have
9 no interest in or I'm not hitting the target -- it's
10 evolved over time -- please let me know or stop me at
11 any time.

12 My purpose here is to talk in general terms
13 about what IPAs do. Obviously, it's case-specific. If
14 there's particular issues about a particular location
15 -- and this is just general information.

16 I will use the term "management," but it's the
17 generic term of management, just management in general.
18 If I'm talking about grantee management or LSC
19 management in particular, I will try to remember to
20 make sure that's clear at the beginning.

21 But just a brief history of the IPAs in LSC is
22 that the requirement for the IPAs to do financial

1 audits started with the -- was in the original LSC Act.
2 And in 1996, with the appropriations act, that role was
3 expanded and gives us the situation that we have today
4 where essentially the IPAs look at both the financial
5 and compliance aspects.

6 The roles and responsibilities of the IPAs and
7 management obviously are different. The IPAs actually
8 provide information for management to use. They do
9 this through the process of providing opinions on
10 financial statements, on whether or not the statements
11 fairly present the financial position of the
12 corporation or the entity they're looking at.

13 They look at internal controls over financial
14 reporting, and they look at compliance with laws and
15 regulations that could have a direct and material
16 impact on the financial statements.

17 And then they also look at compliance with
18 laws and regulations from the standpoint of the impact
19 on a federal program, the grantmaking. And they do
20 look at the internal controls over the compliance area
21 also.

22 Management, on the other hand, has the awesome

1 responsibility of being responsible ultimately for the
2 internal controls of the entity. I tried to look at
3 the various documents and research available. I refer
4 to OMB Circular A-123, which is Management
5 Responsibility for Internal Controls or Management
6 Controls.

7 Just to give a quick definition about
8 management's responsibility, it states, "Management has
9 primary responsibility for assessing and monitoring
10 controls, and should use other sources as a supplement
11 to, not a replacement for, its own judgment." And
12 underneath that statement there's a list of reports,
13 one of which is the IPA report. So again, it's
14 information for management.

15 LSC also in the Accounting Guide for LSC
16 Recipients recognizes that the IPAs also provide
17 information to management, and state in chapter 3 that,
18 "A financial statement audit will not prevent" -- and I
19 always mess this word up -- "defalcations, nor will it
20 provide for all financial information needs of
21 management. It's not intended for those specific
22 purposes. Each program must instead rely upon its own

1 system of internal accounting controls and procedures
2 to address these concerns."

3 And I bring this up because there's various
4 reasons for this when you're dealing with internal
5 controls and looking at internal controls. Internal
6 controls require constant monitoring. The IPAs are
7 only there a short period of time each year. Controls
8 could be overridden at any time by management or by
9 employees. Management sets the control environment
10 that the IPA really can't control themselves.

11 Internal control weaknesses can be masked, and
12 the information that is from a point in time. I use
13 the history of going to the doctor for your annual
14 physical. You know it's coming up next month so you
15 start eating better. You start exercising.

16 You go into the doctor, sure enough, your
17 cholesterol is where it should be. Your weight hasn't
18 changed from last year. And then if you do what I do,
19 I go out to McDonald's and celebrate with two Big Macs
20 and a large order of fries.

21 (Laughter.)

22 MR. MERRYMAN: I've immediately overridden the

1 internal controls.

2 So it's very important that we not lose sight
3 that ultimately management does have a large
4 responsibility, that being for the internal control
5 structure, the system, the environment.

6 I do want to relate one story about control
7 environment because to me it's so important, and that
8 is as a result of a recent fraud, there were some
9 discussions with various employees. And the executive
10 director indicated that his primary responsibility was
11 not financial; it was making sure that the law work got
12 done.

13 And an employee in the accounting shop said,
14 hey, we knew what's going on or we suspected things,
15 but we didn't tell anybody because we knew that this
16 person had the explicit approval of the executive
17 director. We're not going to challenge that. And that
18 gets back to the control environment.

19 Well, what do IPAs do? I'm going to talk a
20 little bit about terminology because we seem to, in
21 looking at the reports that are published about what
22 they have done, use certain terms that cause us to

1 believe that possibly they don't do a whole lot in the
2 way of internal controls.

3 One of the things they talk about is controls
4 over financial reporting. Oh, we're not looking at all
5 the internal controls. Or they say looking at controls
6 was for the purpose of planning the project, not for
7 expressing an opinion.

8 Well, in fact, those statements really have a
9 lot of meaning to them when you start looking at what
10 the definitions are. And because there are so many
11 different bodies out there, whether it be the Public
12 Accounting Oversight Board or SEC or AICPA or
13 Government Audit Standings, controls over financial
14 reporting have some similarities.

15 Basically, it's the procedures that provide
16 reasonable assurance regarding the reliability of the
17 financial reporting. It's the procedures used to
18 maintain records of the accounts that fairly reflect
19 the transaction. It's the controls and procedures to
20 ensure that transaction are recorded as necessary to
21 permit the preparation of the statements.

22 It's also the procedures and controls over the

1 receipts and expenditures that are being made, and
2 making sure that they're only made in accordance with
3 the authorizations of management and the directors,
4 i.e., they're being recorded appropriately. And also,
5 it's the controls that provide for the prevention or
6 timely detection of unauthorized acquisition, use, or
7 disposition of company assets.

8 Now, if you take that and take a look at, for
9 instance, the fundamental criteria that's contained in
10 the accounting guide, there's very little if anything
11 that these areas do not encompass that's in the
12 fundamental accounting guide. So it's a lot more broad
13 than what would appear by the few words that they put
14 in the report, internal controls over financial
15 statements.

16 Now, that also expands down to internal
17 controls over compliance because they use similar
18 language. But they modify it slightly to indicate
19 controls over trying to ensure there wasn't any
20 material or significant noncompliance in regards to
21 federal programs or major programs.

22 Auditors, for planning purposes, look at

1 controls based on risk. They do their work through
2 test. They want to make sure they look at the most
3 material things. They want to make sure they get a
4 good idea of what goes on. And so they do look at
5 internal controls and do a lot of internal controls to
6 help determine what to test, the depth of the testing
7 that needs to be done, and the relative impact that
8 those controls would have on the financial statements
9 or on compliance.

10 They actually do a risk assessment that
11 requires them to look at the design. Controls are
12 designed around an objective. Why do you want the
13 control? Does the design satisfy that objective?

14 If the design is fine, then they are obligated
15 to see if it's implemented as designed. And once they
16 do that and once they assure themselves that there's a
17 low risk because the control is designed properly and
18 that it is implemented, then they must go out and test
19 that to make sure that happens.

20 But because the control is designed properly
21 and because the control has been implemented, the
22 amount of testing, the substantive testing, can be

1 less. And so thus it's for planning purposes. What
2 tests do I need to conduct? How many do I need to
3 conduct? But it's after a large body of work that has
4 been done to understand the risks, one of the risks
5 being the control structure.

6 They will do this through inquiry. They'll do
7 this through past knowledge if they've associated with
8 the corporation. They'll look at complaints. They'll
9 look at losses. All types of things impact the types
10 of things they look at in risk.

11 But ultimately, they do look at the internal
12 controls also, and it's all designed to help plan the
13 audit to make sure they get enough information in order
14 to provide reasonable assurance that certain things are
15 occurring. Again, not absolute. Reasonable. They do
16 it through testing.

17 They are obligated to report on material
18 weaknesses that they find in the controls. And though
19 they say, we're not expressing an opinion, they still
20 have an obligation that, if they in their work find a
21 material weakness in controls, to disclose that.

22 And they also disclose other areas that may

1 not rise to the level of a material weakness that is
2 important for people in management and governance to
3 know, and they will do that also.

4 So if they find -- if nothing is reported in
5 the report, it means that nothing has risen to the
6 level that either they felt it was material enough to
7 put into their report or significant enough to report
8 to management or those in governance in writing. They
9 may do it verbally. It may be something they point
10 out.

11 MS. SINGLETON: Dutch, can I ask you a
12 question on that?

13 MR. MERRYMAN: Yes. Yes.

14 MS. SINGLETON: If they find something that
15 they don't deem material -- if they find something
16 that's not material but they deem it significant and
17 you say they report it to management, what management
18 are you talking about in that instance?

19 MR. MERRYMAN: IT could be in the form of a
20 report, where they report an instance of compliance or
21 noncompliance. It doesn't have a material impact, but
22 it's important enough, they think, to bring to

1 management's attention.

2 And that has happened with our corporate audit
3 this time. There's a finding of an issue of -- a
4 question of compliance. They're not classifying it as
5 a material weakness or anything like that. But it's
6 important enough, they think, to bring to the attention
7 of those who -- in governance and management. It
8 should be to both.

9 MS. SINGLETON: Okay. I guess I was thinking
10 about our grantees, and the IPAs who look at our
11 grantees. When you say -- say they found one of these
12 significant things. They would tell local management
13 about it. Would it go any farther?

14 MR. MERRYMAN: No, it should go to the board
15 also, those in positions of governance. Because in
16 recent years, there's an a lot more communication
17 required to --

18 MS. SINGLETON: How about would it go to you?

19 MR. MERRYMAN: We have asked them to report
20 every finding, whether it's in writing or oral, major
21 or minor. So it should come to us if they're following
22 our guidance.

1 There is a -- a lot of question was, can't the
2 IPAs do more? And the answer is yes, they can do more.
3 The question comes in, why can't they express an
4 opinion on the controls, as opposed to just indicating
5 that they used it for planning purposes?

6 In order to express an opinion, it's a
7 separate engagement. It's called an attestation
8 engagement for an examination of internal controls. And
9 it requires a lot more information and work, not only
10 by the IPA, but also by management.

11 In the standards that govern these type of
12 engagements, there is a requirement that before an IPA
13 can accept an engagement, that certain things must
14 happen and management must provide certain information
15 or promise to provide certain information.

16 First of all, management must accept the
17 responsibility for these internal controls. They must
18 evaluate, independent of the IPA's work, the
19 effectiveness of its own internal controls using
20 suitable and available criteria. They have to actually
21 establish some type of an assessment system.

22 In addition, management must support its

1 assertion about whatever they say the effectiveness of
2 the controls is through sufficient and appropriate
3 evidence that can be reviewed by the IPA. And then
4 management must provide an assertion about the
5 effectiveness of the internal controls in a report that
6 accompanies the audit report.

7 Now, this has been looked at in federal
8 government about requiring federal entities to have the
9 internal controls and opinion, or an examination of
10 internal controls to this degree.

11 I've read mixed reviews on that. The latest
12 I've read is that probably not because of the cost.
13 There's only one organization I have been told -- I've
14 not independently verified this -- but Homeland
15 Security is the only one that is required to have this
16 type of level of examination.

17 The general thought within government has been
18 -- this is my opinion -- that A-123, which is what
19 management is required to do under -- for internal
20 controls by OMB circulars, would be sufficient, and the
21 additional cost, which ranges -- I mean, it's all over
22 the place; zero, I guess, if you're already required to

1 do it, but up to 100 percent more to the cost. It
2 could be very expensive, and I really don't have a good
3 cost estimate on what this would cost like our
4 grantees.

5 What are we doing to try to improve the value
6 of the information that the IPAs provide to the
7 programs? We are reexamining all parts of the
8 oversight, whether it be reviewing the reports that
9 come in and how we review those, or looking at -- we
10 have sent information out and supplied the memorandum
11 from Helaine about the various issues in GAO, so
12 they're aware of the, you know, alcohol purchases and
13 the importance it is to the Corporation. We've
14 supplied that by e-mail to the list of IPAs that we
15 have.

16 We are incorporating now to try to get visits
17 to IPAs when we make a grantee visit. It's more
18 meaningful if we're there at the same time because if
19 issues come up at either place, we can track one to the
20 other as opposed to working independent.

21 We're looking at expanding our reviews. Our
22 reviews of the IPAs have been generally looking at the

1 compliance aspect, which we figured they would be the
2 most difficult side of it. But we're also going to
3 expand that to include, as appropriate, the financial
4 side also.

5 We're looking at audit bulletins, drafting
6 audit bulletins to get information out to the IPAs on
7 reporting requirements, and trying to make sure that we
8 look at every aspect and not leave anything unturned.

9 One thing that we have talked about trying to
10 do is IPAs change from time to time. Some IPAs are not
11 familiar with LSC regulations; as you've talked to the
12 board members, how do they know about the regulations,
13 the IPAs have the same problem. And so we have talked
14 about trying to develop an online training course for
15 IPAs that may address, you know, the regulations.

16 Right now the compliance supplement is written
17 in a manner to allow the judgment of the IPA to be the
18 general guide, the person on the ground at the time
19 seeing what's going on, based on their knowledge, all
20 these other types of things that would be very
21 difficult to say, do these steps.

22 If we say, do these steps, then that's the

1 only steps we'll get. The IPAs do have to exercise
2 professional judgment in doing their work. And our
3 steps are recommended, but we'll take a look at that,
4 too.

5 That's generally the types of things I wanted
6 to set forth to generate discussion. I hope I hit the
7 areas, or at least one or two of the areas, that you
8 were interested in. If you have any questions, I'll be
9 glad to let Jeff answer those right now.

10 CHAIRMAN MEITES: Let me start, and then throw
11 the discussion open.

12 We were all embarrassed by the GAO report, you
13 know, finding a \$50 check for liquor. But in not only
14 listening to you today but also in our discussions at
15 the audit committee, I at least have come to the
16 tentative conclusion that that's not something the IPAs
17 are going to find.

18 They may find it, but they're not going to
19 look at every -- as a matter of course, they're not
20 going to look at every check written by their grantee.

21 MR. MERRYMAN: They are not.

22 CHAIRMAN MEITES: And given the way -- what

1 you've told us today is in fact -- it's quite a
2 different approach. You design a program that will
3 find problems, and then you apply that program. And
4 you'll find -- you may not find every problem. That's
5 just the cost of the system.

6 And say it the other way: The cost of looking
7 at every single expenditure is just another different
8 inquiry, and our IPAs don't do that. Is that correct?

9 MR. MERRYMAN: That is correct.

10 CHAIRMAN MEITES: Now, if we wanted our IPAs
11 to do that, I suppose they could. They're capable of
12 looking at every check written by a grantee.

13 MR. MERRYMAN: They are. But I would say
14 this: Even if we had them express an opinion, they
15 would not look at every check.

16 CHAIRMAN MEITES: That's just not what they
17 do?

18 MR. MERRYMAN: No. As a matter of fact, the
19 only time that I'm aware of -- and I'll admit I have
20 limited knowledge -- would be when you had a fraud and
21 you get a forensic accountant in there.

22 You want to look at every check. You need to

1 look at every check. You need to trace every dollar,
2 where you're trying to find out where every dollar
3 absolutely went to. But you have a reason to do that.

4 CHAIRMAN MEITES: So is it fair to say that
5 what the GAO -- the undertaking of the GAO is not
6 something our IPAs can be expected to do?

7 MR. MERRYMAN: I cannot speak as to what GAO
8 did or did not do because -- I will tell you this. You
9 know, in talking with IPAs, we've been trying to, you
10 know, get informed understandings. We did have one IPA
11 tell us that if his staff spent time on a \$50 check,
12 he'd think about replacing them because it is something
13 they look to for materiality.

14 Now, having said that, if we say, look at
15 every check as our guidance, and then we go out and
16 check and see that's done, well, maybe they will. But
17 again, the cost.

18 CHAIRMAN MEITES: Right. All right. That was
19 my question as to what we can expect and what we want
20 our IPAs to do.

21 I suppose the second order question is just
22 quite specific. When you get an IPA report into your

1 office, what do you do with it? Who looks at it? How
2 long do they look at it? What do you look at it for?
3 What do you do when you're done looking at it?

4 MR. MERRYMAN: What we do is, first of all,
5 it's sort of like a triage because most IPA reports
6 come in at the same time. 114 reports come in about
7 the same time. They're due at the same time.

8 The initial review is to determine which ones
9 have findings in so we can move those to the top of the
10 list. And in the past, what we had is a checklist that
11 -- I have supplied a checklist at some point in time,
12 either to the ad hoc committee or -- we look for
13 certain things that are required by standards. Do they
14 have certain statements? Do they have certain pieces
15 of information?

16 Then what happens is it's reviewed for that.
17 If something stands out, it is written up. We then
18 pass the report on to management. Management gets a
19 copy of the report. And if there's anything that needs
20 to be entered into the follow-up system, it's entered
21 into the follow-up system.

22 There is advanced notice of what the reports

1 contain, whether it be a qualified opinion, an
2 unqualified opinion, what findings, significant
3 findings are, through a web-based process. That goes
4 right into the system and is available not only to the
5 IG but to management through the AIMS system.

6 The AIMS system was something that was put in
7 place back in the late '90s. The technology is old.
8 It's cumbersome. That needs to be looked at. And I
9 think it was one of the projects that was on the list
10 to be looked at of the information-sharing, you know,
11 through the ad hoc -- you know, within the ad hoc
12 committee.

13 So what we plan on doing is doing a more
14 robust review of the reports now to involve more people
15 to get through them a lot faster and to look in a lot
16 more detail in some of the areas. And what we will do
17 is keep updating a checklist to look at things that
18 keep coming up or that cause us to say, we need to look
19 at this now. We haven't been looking at it. Something
20 has come to our attention. And there'll be a more
21 robust program in place by 30 April when the 114 show
22 up.

1 CHAIRMAN MEITES: So you're actively working
2 on that and hope to have that by --

3 MR. MERRYMAN: Yes. By 30 April.

4 CHAIRMAN MEITES: -- the next generation?

5 MR. MERRYMAN: So this big iteration that's
6 coming in will be the first one under that iteration.
7 So we're going to increase our review of those reports,
8 look for more things. We have other things that we
9 want to look at now, through experience or through
10 lessons learned type of thing.

11 Derivative income would be something that
12 would be very important to look at, make sure we've --
13 not that derivative income is bad or good. It's just
14 that, you know, to highlight that, to make sure that we
15 see what the footnotes say, see what's in the report,
16 and make sure that gets looked at, would be one thing
17 we're -- we have added that to our checklist.

18 And any other things that come up like that or
19 that we're made aware of or that we find on our own,
20 find on our grantee visits or through OCE visits that
21 we think would be important to look at and can be
22 looked at through the reports.

1 CHAIRMAN MEITES: Good. Thank you.

2 Questions? Comments? Lillian?

3 MS. BeVIER: I think that the GAO report has
4 had a salutary effect on the board's operation and on
5 management's as well. But your report leads me to ask
6 a question that I've been really kind of wanting to ask
7 since the report was issued, which is -- because what I
8 hear you saying is it wouldn't have been found,
9 shouldn't have been found.

10 The kind of things that the GAO was saying --
11 the \$50 check here and -- there were a couple that were
12 major. You're not saying that?

13 MR. MERRYMAN: No. I can't say that right now
14 because one thing that happens is as information comes
15 out, and that's part of the risk assessment, is to look
16 at that information and see how that information now
17 impacts.

18 At the time, I don't know if the IPAs saw a
19 \$50 check or not. Okay? But now if they see a \$50
20 check for political activity or political parties, that
21 will increase their risk in looking at things because
22 of the importance that was placed on that that may not

1 have been -- they may not have seen the \$50 check, so I
2 don't know if they would have placed importance on it;
3 or if they do see it, that should be a consideration
4 now in their risk assessment on whether it's important
5 or not. And that's just the learning curve on some
6 things.

7 MS. BeVIER: Okay. I think I understand that
8 you're saying, that the particular kinds of issues that
9 the GAO identified were things that now will be
10 perceived as risks.

11 MR. MERRYMAN: If they weren't, they should be
12 now.

13 MS. BeVIER: Well, yes. Now they will be.

14 MR. MERRYMAN: Right.

15 MS. BeVIER: But the question is -- I guess
16 this is sort of maybe without a particular point -- the
17 question is in terms of the amounts of money involved
18 and so on, if you had been saying sort of looking ex
19 ante, looking before the GAO report is issued, the
20 procedures in place -- I mean, perhaps you did not have
21 this robust review and you hadn't had these issues
22 identified.

1 But the procedures in place were
2 insufficiently attentive to risk in general or
3 insufficiently attentive to particular kinds of risk.
4 So are we going to need another GAO report to tell us
5 what they should be looking for?

6 MR. MERRYMAN: No. We shouldn't need a GAO
7 report to tell us what they need to be looking for. But
8 if GAO issues another report, they should consider the
9 contents for future work.

10 Now, the \$50, you know, we can talk about cost
11 and the definition of cost. There's monetary cost.
12 There's publicity cost. And publicity in this
13 particular case was more expensive than the \$50.

14 MS. BeVIER: Sure.

15 MR. MERRYMAN: And how to communicate every
16 instance of that to an IPA that they might run across
17 is -- may be difficult. Like I said, I would be
18 surprised if they selected a \$50 payment. However, me
19 talking personally, not reviewing the IPA in
20 particular, I would be interested in political
21 contributions.

22 MS. BeVIER: You sure wish they had.

1 MR. MERRYMAN: I sure wish they had.

2 MS. BeVIER: These checks, anyway.

3 MR. MERRYMAN: Well, yes. And --

4 MS. BeVIER: Yes. So do we. I mean, I
5 understand what you're saying, Dutch, and I don't --
6 I'm just trying to -- I still am puzzled. But you've
7 been helpful to me in kind of understanding it a little
8 bit.

9 CHAIRMAN MEITES: Any questions? Sarah?

10 MS. SINGLETON: I believe this is sort of a
11 follow-up because I'm kind of in the same quandary. Are
12 you saying it would sort of be happenstance whether
13 they would find that political contribution that was
14 only \$50?

15 MR. MERRYMAN: No. I don't believe they'd be
16 looking for a \$50 because looking at material aspects,
17 materiality may not have been defined as a \$50 payment.
18 They may have been looking for larger dollar types of
19 transactions.

20 MS. SINGLETON: That was in the past.

21 MR. MERRYMAN: The past.

22 MS. SINGLETON: Now they've been told, okay,

1 we can't do lobbying. We can't buy liquor. We can't
2 make political contributions.

3 MR. MERRYMAN: Right.

4 MS. SINGLETON: I assume that they knew that
5 already. Are they going to dig any deeper to look for
6 those types of prohibited but small transactions?

7 MR. MERRYMAN: In my opinion, they should
8 because cost, like I said, in this particular case is a
9 heck of a lot more than the dollar cost. And we have
10 not sent out any specific instruction one way or
11 another on that. Maybe we should, and I'll take that
12 back and look at that.

13 But I really believe that the cost now and the
14 materiality, because of the exposure that it caused,
15 should be considered as a material area to look at.

16 MS. SINGLETON: So why wouldn't the memo that
17 Helaine wrote that said, don't spend money on this, and
18 you sent that to the IPAs -- why wouldn't that put them
19 on notice that they should be looking for these?

20 MR. MERRYMAN: It could. It should. It
21 should put them on notice. That's why we sent it out.

22 MS. SINGLETON: Oh, okay.

1 MR. MERRYMAN: But it doesn't hurt to say,
2 and, oh, by the way, we're going to be coming out
3 looking at these areas, too; we want to make sure that
4 you cover these, by the IG shop. I mean, we'd have to
5 make that determination. But I think anything that we
6 can provide based on education, maybe even the hard --
7 you know, hard education, that we can provide to make
8 sure they understand what would be beneficial to the
9 grantees and not adversely impact the cost figure of
10 the audit.

11 CHAIRMAN MEITES: Bernice?

12 MS. PHILLIPS-JACKSON: I'm just not sure like
13 what are the IPAs supposed to look at when they come
14 into agencies? Do they have a set agenda, or do
15 management tell them what to look at or whoever else? I
16 mean, I'm not sure.

17 MR. MERRYMAN: Okay. The IPAs -- the other
18 benefit of the IPAs is they are independent of
19 management, and they should be coming in independent of
20 management to look at what they need to look at and
21 what their -- the IPA's, the auditor's, risk assessment
22 tells them to look at, and then have the freedom to

1 report whatever they find.

2 They are not under the control of management.
3 They do not report to management. They are contracted
4 through either the board of governors or -- I mean, the
5 boards or the executive director. But they have
6 professional standards that requires them to operate in
7 an independent manner and to report based on their
8 findings.

9 That's one of the reasons that you get so much
10 talk about do we need to change IPAs or not IPAs. and
11 it's not so much because, you know, there's a lot of
12 concern that IPAs aren't reporting what they should
13 report. It's more a concern over a comfortable
14 relationship. Are we putting blinders on inadvertently
15 and not seeing the bigger picture, seeing things
16 because our relationships are comfortable.

17 But they are independent of management, and
18 should be.

19 CHAIRMAN MEITES: Herb?

20 MR. GARTEN: My understanding is that these
21 IPA organizations have all been informed and educated
22 on what they're expected to look for, and what -- and

1 they are familiar with the regulations. You have
2 assured yourself, I presume, as has management, that
3 the IPAs know what the regulations say. Is that true?

4 MR. MERRYMAN: The compliance supplement has
5 the information on the regulations. There's a
6 requirement they familiarize themselves. But we have
7 no affirmative, you know, certification by IPAs that
8 yes, I am familiar with the regulations.

9 But that's one of the things we check for when
10 we go out to visit the IPAs and the documentation, to
11 make sure they understand the regulations, that they've
12 applied the regulations, that they have tested the
13 regulations appropriately.

14 MR. GARTEN: And I presume that they are
15 getting representations from management with respect to
16 compliance with the regulations insofar as management
17 is concerned?

18 MR. MERRYMAN: I'm sure they're getting verbal
19 representations. I'm not sure about written
20 representations.

21 MR. GARTEN: You heard one of the presenters
22 make a suggestion that LSC should consider supplying

1 some video training for their board members. You
2 concurred that that's a good idea.

3 MR. MERRYMAN: I concur with that. That's a
4 good idea.

5 MR. GARTEN: And you would certainly cooperate
6 with LSC in producing such a video?

7 MR. MERRYMAN: Sir, I have to defer to Jeff. I
8 will cooperate with Jeff.

9 (Laughter.)

10 MR. MERRYMAN: We would, sir. I think there's
11 -- you know, there's a value to making sure the message
12 is consistent. There's a value to can it be used for,
13 if it's a matter of understanding the regs and what the
14 regs say, what can be used. How could we teach others'
15 experience and knowledge?

16 MR. GARTEN: And those videos, if you did
17 them, would be available not only to the board of the
18 local organization but to the auditors.

19 MR. MERRYMAN: Right. And we may want --

20 MR. GARTEN: And management.

21 MR. MERRYMAN: Absolutely. And we may want to
22 add a module specifically on auditing. You know, we

1 talk about the regulations and what they mean in
2 general.

3 We might want to ourselves then say, okay, now
4 that you've heard what the regulations mean, this is
5 what our expectations are when you go out and audit. So
6 we might want to amplify some things. But the general
7 presentation, general information, it would be great
8 for everybody.

9 MR. GARTEN: What do you say, Jeff?

10 MR. SCHANZ: I agree wholeheartedly with
11 Dutch. I thank him for, I think, a very good
12 presentation. It would be very beneficial, but there's
13 good lawyers and there's bad lawyers. There's good
14 doctors and there's bad doctors. And there's good IPA
15 and CPA firms, and there's bad CPA firms.

16 What Dutch didn't mention in the past
17 presentation, and I'm surprised he didn't put up the
18 props, is all CPA firms have professional standards in
19 order to get their license. They pass the CPA exam.
20 They have to be licensed by the state.

21 If we find in our reviews of IPA work any
22 deficiency in the work that deviates from professional

1 standards that have been agreed to by GAO, for one, and
2 by the AICPA, and a host of all other boards of
3 accountancy out there, we're to report to the state
4 board of accountancy that we found deficient work.

5 So the CPAs have this knowledge. And whether
6 they apply it properly or not is still going to be a
7 matter of board governance. I was very refreshed today
8 to hear the board presentations because they seem to
9 get it, that it is a management responsibility.

10 It's an ongoing commitment. It's not at a
11 point in time like the IPA audit is. If you come --
12 and Dutch's doctor example is a perfect metaphor for
13 this. But the governance continues from the day you're
14 appointed to the day you leave.

15 And any internal control -- and no matter
16 whether we do a slam-dunk video presentation or not, it
17 can be ignored. And it can be, in certain instances,
18 cases where the -- and this is one of our risk factors,
19 where there seems to be a cozy -- I'll use the term
20 "cozy," and not in such a pejorative sense, but
21 relationship between the independent CPA firm and the
22 grantee, where they've been back and forth, back and

1 forth, and nothing has been reported.

2 And just to embellish Dutch's presentation a
3 little bit, one of the things we're doing under my
4 tenure is we're doing a much more robust review of the
5 IPA reports that come in. I've hired an additional
6 staff person that will be trained in looking for "red
7 flags" and things that we communicate very freely with
8 management.

9 And I think with that sort of -- the three C
10 approach to taking a look at the IPA reports, sharing
11 that information with OCE, and if it's an important
12 enough issue, I discuss it with Helaine on a biweekly
13 basis.

14 There will still be slippage. There is no way
15 that either Dutch or I or a GAO representative could
16 come up here and say, we can give you a 100 percent
17 assurance that these issues won't surface again.

18 MR. GARTEN: But the more we remind the IPOs
19 and management at the local level and their boards of
20 what's required of them is less opportunity for GAO in
21 the future to say, you didn't do your job. Do you
22 agree with that?

1 MR. SCHANZ: Yes. Yes, I do. I agree with
2 that wholeheartedly.

3 MR. GARTEN: And I think that there's even a
4 reference in one of the GAO reports to the fact that
5 \$50 in and of itself --

6 CHAIRMAN MEITES: Is not the issue.

7 MR. GARTEN: -- is not a problem. Yes. Thank
8 you.

9 CHAIRMAN MEITES: Well, we have since the GAO
10 report, I think, as a board and as our committees have
11 looked closely at various aspects of our operation and
12 of our grantees' operation.

13 And it's reassuring to hear that what to my
14 mind is one of the more remote parts of the chain, the
15 IPA -- because we never see them and we have no direct
16 control over them at all -- that you are looking
17 closely at the quality and completeness of their work.
18 Thank you very much.

19 MR. SCHANZ: You.

20 MR. JEFFRESS: Mr. Chairman, if I may, this is
21 Charles Jeffress. Just for a point of clarification --
22 since this is on the record, I think it may be useful

1 to make -- there were several references in the past
2 conversation to political contributions by grantees.

3 The GAO made no finding and found no evidence
4 of political contributions. There was a \$50 charge
5 paid to the State of New York for lobbying registration
6 fee, so there was a lobbying fee to the State of New
7 York. But it wasn't a political contribution.

8 So just for the record, I'd like it to reflect
9 that there has been no finding of any political
10 contributions by our grantees.

11 CHAIRMAN MEITES: Thank you.

12 All right. Our next and last substantive item
13 is a staff report on LSC's Freedom of Information Act
14 function. Who is going to -- here's Victor, who has
15 not been heard from so far today. Go ahead. Oh, by
16 the way, I know we received no materials on this item,
17 so there's hope here.

18 (Laughter.)

19 MR. FORTUNO: This is Victor Fortunato, LSC
20 general counsel.

21 The memo that was to go after that tab was
22 going to be prepared and finalized this week and sent

1 to you. Unfortunately, due to an urgent personal
2 matter, I haven't been in the office this week.

3 So while it's largely done, it still needs a
4 little bit of polishing. But it's got, we think, all
5 the information that you requested, and we should be
6 able to get it out certainly within a couple of weeks.
7 But my expectation is early next week.

8 CHAIRMAN MEITES: Why don't you do it on a
9 schedule that makes sense for you, and we will -- if we
10 are still in office, we will hear it in Portland.

11 MS. PHILLIPS-JACKSON: Can we see the draft
12 that you've prepared?

13 MR. FORTUNO: We have a draft, so that we can
14 certainly share that with you.

15 MS. PHILLIPS-JACKSON: Thank you.

16 MR. FORTUNO: But we'll have a finalized
17 document in just a matter of days. But we can send you
18 the draft and the final.

19 MS. PHILLIPS-JACKSON: Thank you.

20 MR. FORTUNO: And then if you have any
21 questions, you're welcome to call me or e-mail me with
22 any questions. And if you'd like, we can put it on the

1 agenda for the next meeting.

2 CHAIRMAN MEITES: Well, let's plan on putting
3 it on our agenda. And if you get it out, the sooner
4 the better. And if any comments, formal or informal,
5 just direct them to Vic.

6 Sarah?

7 MS. SINGLETON: As a draft, since you're our
8 legal counsel, is this supposed to be privileged?

9 MR. FORTUNO: This isn't a privileged
10 document. I think the document is FOIA-able. It's
11 really all about how we process FOIA and what the stats
12 are, what kinds of numbers we see on an annual basis.
13 And we provide that information for a period of years.
14 And we discuss the backlog and steps that have been
15 taken to eliminate the backlog.

16 And so the document itself is FOIA-able, so
17 the -- I would suggest that the final document is
18 FOIA-able. Drafts would ordinarily not be since
19 they're pre-decisional. So I would ask you to bear
20 that in mind. But the final itself will go out
21 shortly, and that, as I said, would be FOIA-able
22 itself.

1 MS. SINGLETON: Yes. My comment was directed
2 to the fact that it is still in draft stage. So we
3 should treat it, I think, as privileged until it's
4 final.

5 MS. PHILLIPS-JACKSON: No doubt. Absolutely.

6 CHAIRMAN MEITES: All right. Well, we will
7 give you an extension of time.

8 MR. FORTUNO: Thank you very much.

9 CHAIRMAN MEITES: Which I support.

10 Other public comment?

11 (No response.)

12 CHAIRMAN MEITES: Consider and act on other
13 business?

14 (No response.)

15 CHAIRMAN MEITES: Well, hearing none and none,
16 I will accept a motion to adjourn, noting that it is
17 5:02, which is 28 minutes early.

18 M O T I O N

19 MS. PHILLIPS-JACKSON: So move.

20 MS. BeVIER: I second.

21 CHAIRMAN MEITES: And the motion is passed. We
22 are in adjournment. Thank you.

1 (Whereupon, at 5:02 p.m., the committee was
2 adjourned.)

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