

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

MEETING OF THE  
AUDIT COMMITTEE

OPEN SESSION

Friday, January 29, 2016

3:30 p.m.

The Mills House Wyndham Grand Hotel  
115 Meeting Street  
Charleston, South Carolina 29401

COMMITTEE MEMBERS PRESENT:

Victor B. Maddox, Chairperson  
Harry J.F. Korrell, III  
Gloria Valencia-Weber  
Paul L. Snyder (Non-Director Member, by telephone)  
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Robert J. Grey Jr.  
Victor B. Maddox  
Martha L. Minow  
Father Pius Pietrzyk, O.P.  
Julie A. Reiskin

## STAFF AND PUBLIC PRESENT:

James J. Sandman, President  
Ronald S. Flagg, Vice President for Legal Affairs,  
General Counsel and Corporate Secretary  
Lynn Jennings, Vice President for Grants Management  
Rebecca Fertig Cohen, Chief of Staff  
Mayealie Adams, Special Assistant to the President  
for the Board  
Carol A. Bergman, Director, Office of Government  
Relations and Public Affairs  
Traci Higgins, Director, Office of Human Resources  
Janet LaBella, Director, Office of Program  
Performance  
Lora M. Rath, Director, Office of Compliance  
and Enforcement  
Carl Rauscher, Director of Media Relations, Office of  
Government Relations and Public Affairs  
Wendy Rhein, Chief Development Officer  
David L. Richardson, Comptroller and Treasurer,  
Office of Financial and Administrative Services  
Stefanie Davis, Assistant General Counsel, Office  
of Legal Affairs  
Jeffrey E. Schanz, Inspector General  
Joel Gallay, Special Counsel to the Inspector  
General, Office of the Inspector General  
John Seeba, Assistant Inspector General for Audit,  
Office of the Inspector General  
Daniel O'Rourke, Assistant Inspector General for  
Investigations, Office of the Inspector General  
David Maddox, Assistant Inspector General for  
Management and Evaluation, Office of the  
Inspector General

## STAFF AND PUBLIC PRESENT (Continued):

Frank B. Strickland, Non-Director Member,  
Institutional Advancement Committee  
Robert E. Henley, Jr., Non-Director Member, Finance  
Committee  
Allan J. Tanenbaum, Non-Director Member, Finance  
Committee  
Andrea Loney, Executive Director, South Carolina  
Legal Services  
Leslie Fisk, South Carolina Legal Services  
Adam Protheroe, South Carolina Legal Services  
Gerald Jones, South Carolina Legal Services  
Matthew Billingsley, South Carolina Legal Services  
Rusty Infinger, South Carolina Legal Services  
Rita Roache, South Carolina Legal Services  
Stephanie van der Horst, South Carolina Legal  
Services  
Juanita F. Middleton, South Carolina Legal Services  
Jamie L. Bell, South Carolina Legal Services  
Angela Myers, South Carolina Legal Services  
Kimaka Nichols Graham, South Carolina Legal Services  
Mark Fessler, South Carolina Legal Services  
Kirby Mitchell, South Carolina Legal Services  
Sheila Thomas, South Carolina Legal Services  
Don Saunders, National Legal Aid and Defenders  
Association (NLADA)  
Robin C. Murphy, National Legal Aid and Defender  
Association (NLADA)

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## C O N T E N T S

## CLOSED SESSION

13. Approval of minutes of the Committee's  
Closed Session meeting on October 4, 2015
14. Briefing by Office of Compliance and  
Enforcement on active enforcement matter(s)  
and followup to open investigation  
referrals from the Office of Inspector  
General  

Lora Rath, Director of Compliance and  
Enforcement
15. Consider and act on motion to adjourn  
the meeting

Motions: Pages 6, 6 and 75

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

2 (3:30 p.m.)

3 CHAIRMAN MADDOX: I'll call the Audit  
4 Committee to order. Paul, are you there?

5 MR. SNYDER: Yes. I'm here.

6 CHAIRMAN MADDOX: Welcome. Thank you for  
7 joining us.8 I note the presence of a quorum. And so I  
9 would take us to our first order of business, which is  
10 an approval of the agenda. Is there a motion?

11 M O T I O N

12 MR. KORRELL: So move.

13 CHAIRMAN MADDOX: Second?

14 PROFESSOR VALENCIA-WEBER: Second.

15 CHAIRMAN MADDOX: All in favor?

16 (A chorus of ayes.)

17 CHAIRMAN MADDOX: And the agenda is approved.

18 The next item is the approval of the minutes  
19 of our open session meeting on October 4, 2015. Is  
20 there a motion to approve?

21 M O T I O N

22 MR. SNYDER: So moved.

1           PROFESSOR VALENCIA-WEBER: I'll second.

2           CHAIRMAN MADDOX: And Gloria seconds. All in  
3 favor?

4           (A chorus of ayes.)

5           CHAIRMAN MADDOX: And opposed, none. So those  
6 minutes are approved.

7           That takes us to the next item, which is  
8 review of our charter responsibilities. I'm hoping to  
9 stop having this on our agenda. So I just thought it  
10 was important that we actually bring it to a  
11 conclusion.

12           A few moments ago I forwarded an email I had  
13 sent to the staff in November, actually, that attached,  
14 Paul, your Excel spreadsheet on the allocation of our  
15 various charter obligations by the various quarterly  
16 meetings. Gloria, you probably don't have that because  
17 you don't have a computer with you.

18           PROFESSOR VALENCIA-WEBER: No.

19           CHAIRMAN MADDOX: It's the spreadsheet that  
20 was presented at, I believe, our October meeting. And  
21 so my thought is that we simply adopt that as our  
22 working protocol going forward for each of our

1 meetings, and unless there's some reason to do  
2 otherwise, the various tasks that are assigning under  
3 section 8 of our charter will be allocated and  
4 automatically put on our agenda for the forthcoming  
5 meetings.

6           For this meeting, all of those obligations  
7 have to do with the review and approval of the annual  
8 audit, and I think those are going to be taken care of  
9 in our joint meeting with the Finance Committee at 5:00  
10 today. So unless there's further discussion on that,  
11 that's how I would suggest we proceed.

12           Paul, does that sound good to you?

13           MR. SNYDER: Yes. It does, Vic. And I think  
14 that also -- I think we talked about -- is to look at  
15 anything we need to clean up on the charter. I think  
16 on, what is it, section 8(b)(1), it says that we're  
17 going to review the LSC Finance Committee chairperson's  
18 letters or certifications.

19           And I think it raised the question whether or  
20 not those actually occur, and I don't think we've ever  
21 looked at them before, and do we need to. So I think  
22 it was a look to also see is there anything that's in

1 our charter that we're not doing currently. And maybe  
2 if somebody could take an inventory, we could talk  
3 about that at the next meeting.

4 CHAIRMAN MADDOX: All right. I think that's  
5 appropriate. I think we've got enough on our agenda  
6 for today.

7 MR. SNYDER: So you think it would be helpful  
8 is that each time we have a meeting, this is included  
9 with the materials. And that tells us what we should  
10 be looking at this time and what we're preparing to  
11 look at the next time. I think it would be helpful, if  
12 that makes sense to you.

13 CHAIRMAN MADDOX: It does.

14 MR. SNYDER: Thank you.

15 PROFESSOR VALENCIA-WEBER: It does. We could  
16 color code it, too, as we work through it, as a regular  
17 worksheet in the book.

18 CHAIRMAN MADDOX: All right. Well, I'll work  
19 with the LSC staff and see if we can get it cleaned up  
20 and gussied up a little bit.

21 Let's go on, then, to item number 4, which is  
22 a briefing by the Office of Inspector General. I see

1 Jeffrey Schanz is circulating some materials and now  
2 taking his seat. So welcome, Mr. Inspector General.

3 Sorry, Julie?

4 MS. REISKIN: Yes. I think the Inspector  
5 General thinks some of us are younger than we are, the  
6 size of the print.

7 (Laughter.)

8 CHAIRMAN MADDOX: Yes. Jeff, we have a firm  
9 rule that everything has to be in at least 4-point  
10 font.

11 MR. SCHANZ: Well, hold on here. First, you  
12 got it three-hole punched and stapled so it easily fits  
13 into your book. I'll work on that for the next  
14 meeting.

15 CHAIRMAN MADDOX: Thank you.

16 MR. SCHANZ: No. This is just what I want to  
17 use as my outline for my report, amongst other things.

18 I do want to mention to you the website that  
19 we populate, and I keep telling you about it. Every  
20 time we issue a report from the IG's office, I give you  
21 the Cliff Notes version. But the background and the  
22 material that we've worked through are all listed here.

1           What I do want to point out to you, and we'll  
2 get to it a little bit later on page 460 -- it's not  
3 part of this presentation -- is what I call the  
4 compendium report of internal control findings that was  
5 sent out to every ED and to this board so that you have  
6 some idea what the recurring nature of some of the  
7 problems we find are. Now, some of these aren't the  
8 biggest, but it's the recurring nature of some of them  
9 that gives us a little bit pause to concern, and why  
10 I'm presenting it to you today.

11           The second thing I handed out to you is in  
12 bigger print, and the reason I did this was  
13 self-aggrandizement, very candidly. "HHS and DOJ IGS  
14 urge 'more aggressive' grant oversight." Those were  
15 the two IGs I worked for before becoming the IG at LSC.

16       So I just wanted to let you know that I come by this  
17 honestly.

18           And this is in the single audit that is  
19 circulated by Thompson, and I wanted you to see that  
20 because that's what we do. And every dollar saved is a  
21 dollar that can be used for the grantee. So you can  
22 toss it if you want, or just humor me, and let you know

1 this is where I came from. And I haven't given up on  
2 the aggressive oversight of federal funds or grantees.

3 I do have a discussion item for the board in  
4 open session that I won't -- because you told me we  
5 were tight now, so I'll do it then. That will go  
6 through, very quickly, the compendium report and give  
7 you some of the metrics related thereto. But that's in  
8 the board book at page 460.

9 CHAIRMAN MADDOX: All right.

10 MR. SCHANZ: So you can read that tonight and  
11 look forward for that tomorrow.

12 CHAIRMAN MADDOX: Sounds good. Are there any  
13 questions for the Inspector General while he's with us?

14 MR. SNYDER: Jeff, this is Paul Snyder. If  
15 you would have one of your people be kind enough maybe  
16 just to email me those handouts that were there today?

17 MR. SCHANZ: I don't know if we have them  
18 electronic, Paul. I'm pretty much old school, so I  
19 just handed out --

20 MR. SNYDER: They can hard mail them. They  
21 can snail mail them to me, if they would.

22 MR. SCHANZ: Yes. And I can make sure you

1 have them by me on Monday. But the website, you can  
2 just find. That one, I just put that out sort of as a  
3 template for my discussion. But that's on our website.

4 MR. SNYDER: It's on the website?

5 MR. SCHANZ: Yes. So that's just a screenshot  
6 of it with a couple new additions to it. And the next  
7 one you'll see, after a presentation of the financial  
8 statement audit to the board tomorrow, that will be put  
9 up here also. You can see if you can pull it up.

10 We have the '14 audit of the corporation up  
11 there. We'll have the '15 audit of the corporation up  
12 there after the board approves it tomorrow, or  
13 addresses it tomorrow.

14 The other, Paul, just comes from the single  
15 audit put out by Thompson. I still like having some  
16 visibility in that because I know all auditors read the  
17 Single Audit Information Service. And given how I cut  
18 my teeth on audit, this is just sort of, like I said, a  
19 little bit of self-aggrandizement. But you will get  
20 them.

21 MR. SNYDER: Thank you.

22 MR. SCHANZ: You're welcome.

1           CHAIRMAN MADDUX: Is that, it Jeff?

2           MR. SCHANZ: That's it. Thank you for the  
3 time.

4           CHAIRMAN MADDUX: Thank you very much. We  
5 look forward to your report tomorrow.

6           The next item on our agenda is the discussion  
7 of our committee evaluations for 2015 and goals for  
8 2016. I'd just open it up to the floor. I'll note  
9 that there are a variety of suggestions for  
10 improvement, and my one thought is, one of the comments  
11 was it would be helpful to get the materials farther in  
12 advance.

13           In my own case, we come back from a meeting,  
14 and it takes a couple of weeks for me to decompress and  
15 recharge for the next meeting. And my practice has  
16 been to try to circulate a draft agenda at least three  
17 or four weeks before. I guess I will try to do that  
18 sooner.

19           I would also invite anybody on the committee  
20 to suggest informally to me by email or phone call any  
21 other topics or concerns they have. It's helpful to  
22 get that sort of suggestion as early as possible

1 because anything we do does require a good bit of staff  
2 preparation. Otherwise, I thought the comments were  
3 helpful, and I look forward to implementing them as  
4 much as we can.

5 Any comments, committee members?

6 (No response.)

7 CHAIRMAN MADDOX: If not, we can move on to  
8 our next agenda item, which is management update  
9 regarding risk management. And I see the General  
10 Counsel, Ron Flagg, and welcome him to the committee.

11 MR. FLAGG: Thank you. I'll be brief. The  
12 risk matrix, which again really serves several  
13 purposes, one, to catalogue some of what we do in the  
14 risk management area, and also to whom we report, and  
15 keep a schedule of what we've reported and what we  
16 intend to report. And again, we invite input on this  
17 going forward.

18 I just want to draw to your attention two  
19 items that will be upcoming in April because I think  
20 they're significant. One is not yet noted on the  
21 schedule, but it would be at page 145 of the board  
22 book. It's under Management System Risk Performance

1 Management.

2           We are about to complete in the first quarter  
3 of this year, and Jim reported on this, I think, as  
4 part of meeting our strategic goals, the complete cycle  
5 of performance management for the first time. We've  
6 been going through performance management on an ongoing  
7 basis for several years, but I think we now have all  
8 aspects of it in place, and our review process is being  
9 completed this quarter. And we'll have Traci report to  
10 you, Traci Higgins, our director of HR, report to you  
11 at the April meeting in Washington.

12           And then on page 150, I believe Charles asked  
13 that we make a report on the accuracy of grantee data.

14           And our intention is to provide a report on that in  
15 April, and that will give the ops and regs committee as  
16 well as the board an opportunity to meet our new  
17 director of the Office of Data Governance and Analysis,  
18 Carlos Manjarrez.

19           So with that, I'll be happy to answer any  
20 questions.

21           CHAIRMAN MADDUX: I guess just one question I  
22 have is, are we making the most effective use of our

1 risk matrix? For my own purposes, it comes to my  
2 attention at our meetings and when we get our board  
3 book materials.

4 I wouldn't expect the board to be looking at  
5 it on a weekly or a monthly basis. Do you and Jim and  
6 others use this on a weekly or monthly basis to sort of  
7 gauge your progress and where you are?

8 MR. FLAGG: I think we use it mainly as a tool  
9 with respect to reporting to the board. That is, all  
10 of the activities that are depicted here, we're worried  
11 about the adequacy of MGO funding 365 days a year.  
12 We're working -- Carol, others -- are working on that  
13 issue all the time.

14 So virtually all of the activities that are  
15 reflected on the matrix are things that are done -- if  
16 not every day, they're done regularly. So this is not  
17 a tool to remind us, oh, gee, we ought to think about  
18 whether our grant funds are being misused. Obviously,  
19 that is high on our list of priorities in terms of our  
20 oversight.

21 We use this mainly as a tool to think about on  
22 what basis we're reporting to you. And we're hoping

1 that the board and the committees will use it as a tool  
2 to think about when you want to hear about us on  
3 particular topics.

4 CHAIRMAN MADDOX: I'm just wondering why, for  
5 instance, you've listed management system risk/  
6 performance management as a medium risk. Based on what  
7 I've seen from Jim's report on his last year's efforts,  
8 remarkable, it seems like the risk of management  
9 performance failure here is pretty low, actually.

10 MR. FLAGG: What page are you looking at?

11 CHAIRMAN MADDOX: On page 2 of the matrix.  
12 It's the one you said you would report it in April.

13 MR. FLAGG: I think we're not talking about  
14 management performance. We're talking about managing  
15 performance of -- so this is not Jim's performance.  
16 This is management's attempts to manage performance of  
17 over 100 employees.

18 And I think these Ms and Hs and Ls are all  
19 very judgmental, but I think any time you're talking  
20 about trying to attract the best talent in a  
21 competitive market, retain the best talent in a  
22 competitive market, that strikes me as an M. It's not

1 easy.

2 CHAIRMAN MADDIX: Okay. Any other questions?  
3 Gloria?

4 PROFESSOR VALENCIA-WEBER: On page 149, where  
5 it says integrity of electronic data information,  
6 including potential for problems and the matter of  
7 security, that's listed for the Audit Committee. And  
8 it was last reported -- it'll be a year this April.

9 Given all the changes that have occurred, the  
10 improvements under Jim's leadership and all, probably  
11 it's something we need to revisit some time in the  
12 coming year in terms of what has happened in that area  
13 that we would need to know, as well as maybe reduce the  
14 risk that is assigned to it at this time.

15 MR. FLAGG: That's fine. The reason it was  
16 reported on last year was because our IG's office did a  
17 very comprehensive audit, identified over a dozen or  
18 maybe even 20 specific steps we should take to improve  
19 our security. And Peter Campbell, I believe, on two  
20 occasions, reported on that. And we could certainly  
21 report again on that at the April meeting.

22 PROFESSOR VALENCIA-WEBER: Well, not

1 necessarily April, but some time in this coming year,  
2 given the changes that have been done in response to  
3 the IG's critique as well as what Peter Campbell has  
4 instituted. It would just be good to be brought up to  
5 date.

6 MR. FLAGG: We meet periodically to go over  
7 the matrix as a management team, and we'll do that and  
8 come up with a date on which to report back to you.

9 PROFESSOR VALENCIA-WEBER: Okay. And then in  
10 terms of the matrix itself, on page 153 what I find  
11 very useful is here where we're talking about grantee  
12 operations, and that's the responsibility on the board  
13 side, of delivery of legal services. I do find it  
14 useful you've created the columns and filled in there  
15 what we've been doing.

16 I don't know if in prior matrixes you've given  
17 it was that complete, but that's very useful for me.

18 MR. FLAGG: Thank you.

19 CHAIRMAN MADDOX: Thank you very much, Ron.

20 That will take us to item number 7, which is a  
21 briefing about referrals by the OIG to the Office of  
22 Compliance and Enforcement, et cetera. And I see Lora

1 Rath joining us, John Seeba. Welcome both of you, and  
2 I'll turn it over to you, Lora.

3 MS. RATH: Thank you. Thank you to the Audit  
4 Committee for giving me the opportunity to update you  
5 on LSC management's responsiveness to -- not  
6 recommendations -- referrals from the Office of  
7 Inspector General.

8 In the open portion of the board book, I have  
9 three documents for you. The first one is a memo which  
10 outlines what our activities were throughout calendar  
11 year 2015. And I'm happy to report that during 2015,  
12 OCE was able to resolve six referrals from the Office  
13 of Inspector General's audit division, and at this  
14 point we have zero pending from the audit division. So  
15 six were done throughout the year, three just in the  
16 fourth quarter. So I'd like to go through the ones  
17 that we closed during the fourth quarter.

18 We were able to resolve one through a  
19 questioned cost proceeding. That resulted in  
20 approximately \$3500 being restated to the grantee's LSC  
21 funding line, and approximately \$20,000 is going to be  
22 recouped from the grantee throughout 2016.

1           We also resolved two through informal  
2 negotiations, resulting in \$969 being returned to LSC  
3 via a check for unallowable expenses, and for  
4 approximately \$21,000 being restated to another  
5 grantee's LSC funding line for derivative income that  
6 had been incorrectly allocated.

7           So when we look at all six referrals that we  
8 closed, LSC was able to either recoup or have  
9 reinstated to the LSC funding line just over half a  
10 million dollars. And the numbers, you can see, are on  
11 page 163 of your board book. That outlines the amount  
12 that was referred by OIG, the amount that OCE or LSC  
13 was able to recoup.

14           CHAIRMAN MADDOX: Lora, which document is  
15 that? I'm looking on the computer.

16           MS. RATH: So it's called the status of  
17 referrals from the OIG audit division to LSC  
18 management.

19           CHAIRMAN MADDOX: Thank you.

20           MS. RATH: In the hard copy, it's 158. So  
21 does anybody have questions --

22           MS. REISKIN: What was that called again?

1 Stus --

2 MS. RATH: -- of referrals from the OIG audit  
3 division to LSC management.

4 CHAIRMAN MADDOX: It's the memo. Right?

5 MS. RATH: Yes.

6 CHAIRMAN MADDOX: The memo. Yes. I've got a  
7 couple of questions. On the West Virginia issue, \$5700  
8 in unallowable costs -- membership dues, flowers,  
9 credit card purchases, et cetera -- seems like a lot at  
10 this stage of the game.

11 It seems like OIG, and I presume OCE, have  
12 both for a number of years, at least for the time that  
13 I've been on the board, been stressing to grantees that  
14 this sort of thing just isn't allowed. And this seems  
15 like a large number for that kind of unallowed cost.  
16 Is the message just not getting through to some people?

17 MS. RATH: I think we have really tried our  
18 best to get the message through. In the most recent  
19 compliance advisory that went out in August of this  
20 year, it was in big, bold letters in capitals. At my  
21 presentation at the NLADA this past -- yes, Julie? Go  
22 ahead.

1           MS. REISKIN: I know that was. But to be  
2 fair, when you're doing these, is that after that was  
3 notified, or some of it was before?

4           MS. RATH: That's what I was going to say. So  
5 we've been doing it pretty proactively for the last two  
6 years, definitely in the advisory letter this year, and  
7 in two NLADA presentations this year and the one  
8 before.

9           But these reviews by -- I'm not sure when West  
10 Virginia was. But these are probably from before they  
11 really became aware to us and before we were as  
12 proactive. It's not good, but I think as we're moving  
13 forward, hopefully, we so see less and less point of  
14 these sort of Exhibits.

15           I know that with Acadiana, that was before.  
16 And I spoke to the executive director when I did  
17 informal negotiations with them, and he was like, I'm  
18 sorry. It was before I understood. So I think we're  
19 getting the message across, but we have to realize that  
20 we're falling a little behind.

21           PRESIDENT SANDMAN: Yes. If I could  
22 elaborate, there is a time lag here.

1           CHAIRMAN MADDOX:    Sure.

2           PRESIDENT SANDMAN:   What you're seeing  
3 reported here are expenses that were incurred some time  
4 ago.  What's happened over the last few years is in a  
5 series of individual visits, we've uncovered things  
6 like this and taken action with the grantee.  But it's  
7 only relatively recently that we took the additional  
8 and very important step of highlighting it, in an  
9 all-grantee message, that these kinds of expenses are  
10 not allowable.

11                        So I wouldn't be surprised if, looking  
12 background, we continue to find some problems.  But it  
13 should be in hand going forward.

14           MS. RATH:  I also wanted to point out that  
15 during the fourth quarter, as you remember, in April,  
16 LSC and OIG entered into a sort of an agreement about  
17 how long OCE should take to resolve issues.  So  
18 reporting on that for the Legal Aid of West Virginia,  
19 we resolved it within 179 days.  For Acadiana, it took  
20 72 days.  And for Southern Minnesota Rural Legal  
21 Services, it took 27 days.

22                        So for the third quarter, we resolved things

1 in an average of 92 and a half days. And overall, for  
2 the whole year, it took 154 days, which is well below  
3 our 270-day goal.

4 CHAIRMAN MADDOX: Yes. And I think that's a  
5 substantial improvement on where we were when, for  
6 instance, you took the job, Lora, so congratulations on  
7 that. I think those are really good numbers.

8 MS. RATH: Yes. We've worked very hard to do  
9 that.

10 PROFESSOR VALENCIA-WEBER: There should be a  
11 trophy for the 27-day.

12 (Laughter.)

13 CHAIRMAN MADDOX: Lora, a couple other  
14 questions.

15 MS. RATH: Yes?

16 CHAIRMAN MADDOX: The 14,000 that relates to  
17 the OIG's final report and how that was re-allocated,  
18 is that just a timing issue and there's no net effect  
19 financially?

20 MS. RATH: For West Virginia?

21 CHAIRMAN MADDOX: Yes.

22 MS. RATH: No. So that wasn't a timing issue.

1     That was that it should have been allocated to  
2     different funding sources at the time.  What they've  
3     done is now they're going to pay LSC back for all of  
4     that money.  It should have been split across various  
5     funding sources.  The contract was benefitting multiple  
6     grants.

7             CHAIRMAN MADDUX:  No.  I'm looking at the  
8     \$14,000 that says OIG's final report on selected  
9     internal controls included approximately 14 that were  
10    not included in the referral memo to the management.  
11    And so they agreed that those costs should have been  
12    included in the March 2015 referral.

13            MS. RATH:  Okay.  Right.  So what they did was  
14    they then reissued the referral, and then that's the  
15    \$14,000 that's referred to in letter C.  So we went  
16    back and we said --

17            CHAIRMAN MADDUX:  Right.

18            MS. RATH:  -- there's more money in there.  
19    Should it have been referred to us?  And they  
20    reissued --

21            CHAIRMAN MADDUX:  So that takes me to that  
22    issue, the 14,562.  That's a fairly sizeable number.

1 And we had the New York grantee improperly allocating  
2 2- or \$300,000 of income, in essence, I think it was.  
3 Right?

4 So to what extent is the allocation between  
5 LSC, either for expenses that are improperly allocated  
6 to it or for revenue that's not properly allocated to  
7 it -- is that a recurring program? And if so, how are  
8 we addressing it?

9 MS. RATH: We're starting to see -- I want to  
10 address it in two different ways. The derivative  
11 income and the allocation of that, as the OIG  
12 highlighted and then we saw it on a few visits, a lot  
13 of that was due to attorney's fees just recently being  
14 able to be kept.

15 As part of that, I am in the process, with one  
16 of my fiscal compliance analysts, of putting together a  
17 webinar that we're going to put on for all the grantees  
18 some time in February. I also highlighted derivative  
19 income during my NLADA presentation and in the  
20 compliance advisory.

21 As far as the cost allocation methodology,  
22 usually we only see that when we're on site and looking

1 at the cost allocation methodology. But this year, as  
2 part of the competition process, as part of the fiscal  
3 component of the application, each applicant in full  
4 competition was required to upload their cost  
5 allocation methodology.

6 If it was insufficient, the fiscal compliance  
7 analyst went back to the grant applicant and told them  
8 what was wrong and asked them to revise it. And if  
9 they didn't revise it to a point that we were now  
10 satisfied with it, they now have a special grant  
11 condition on it.

12 So I think we're getting more proactive in  
13 making sure that the policies are in place and are  
14 being followed than we were before.

15 CHAIRMAN MADDOX: Yes. I think it's important  
16 because allocation of costs and revenues is pretty  
17 subjective to some extent. And I think it's  
18 labor-intensive to uncover the improper allocation,  
19 both for OIG staff or for OCE. I can go back to my  
20 public accounting days doing some audit work, and the  
21 tick marks get pretty hard to follow sometimes.

22 So I just think that this sort of area has the

1 potential for some sizeable numbers. And I'm glad to  
2 hear that you're putting in place mechanisms to  
3 minimize it at this early stage.

4 Paul, you might have insights on that  
5 yourself, or not.

6 MR. SNYDER: Well, it's also -- I had the  
7 question, just as we go through here, where we have  
8 items, whether it's derivative income or on these  
9 flings on, I guess, flowers and other costs.

10 Do we receive enough information at the LSC  
11 level to see whether or not this may be an issue at  
12 other agencies, and then can target them for either  
13 more information to be brought in? Or do we just have  
14 to keep waiting until we go visit them and then see if  
15 we have an issue?

16 MS. RATH: For the unallowable costs, we have  
17 to wait until either the OIG or OCE goes to visit  
18 because that's actually looking at the books. And we  
19 don't have access to their books from D.C. Same thing  
20 for costs which are unallowed for being undocumented.

21 However, the things such as derivative income  
22 perhaps next year we can make as part of the fiscal

1 application and -- my fiscal folks might kill  
2 me -- uploading of the derivative income policy to make  
3 sure that programs have an effective policy in place to  
4 make sure that not just attorneys' fees but any  
5 derivative income is correctly allocated.

6 But we can try and get ahead of policies, but  
7 when it comes to documentation, we really need to be on  
8 site.

9 CHAIRMAN MADDOX: Gloria?

10 PROFESSOR VALENCIA-WEBER: This is also  
11 related to the conversation we had yesterday about -- I  
12 believe it was Lynn and others -- about grantees that  
13 receive non-LSC funding from others, including the  
14 state, that have their own reporting as well as  
15 criteria for how it's to be documented and spent.

16 And so coordinating that kind of information  
17 with what we're getting here is clearly a future goal  
18 because our grantees are pooled. They want the money  
19 from the non-LSC funders. But at the same time, how  
20 you allocate those expenses and if there are attorneys'  
21 fees that are ultimately gained is all part of the same  
22 formula.

1           CHAIRMAN MADDOX:   Okay.  Lora, I just had one  
2 more question.  On the Southern Minnesota issue, what  
3 is the state Supplemental Security Income  
4 reimbursement?  What does that involve?

5           MS. RATH:   Good question.  I honestly can't  
6 tell you off the top of my head.  Sorry.

7           CHAIRMAN MADDOX:   Okay.  I just wasn't sure  
8 how the grantee would be receiving that income.  It's  
9 some sort of income maintenance program in Minnesota?

10          MS. RATH:   I believe so.

11          CHAIRMAN MADDOX:   Anyway --

12          MS. RATH:   I can get more details for you.

13          CHAIRMAN MADDOX:   Don't put it on the top of  
14 your list, but it would be interesting to know exactly  
15 what that involves.  I think it happened in the New  
16 Jersey situation as well.  They had another \$18,000 in  
17 state Supplemental Security Income that was a  
18 questioned cost.

19          MR. SCHANZ:   May I be so bold as to recommend  
20 taking a look at the report on the IG website?  And all  
21 your questions will be answered.  And if they're not,  
22 you can call me.

1           CHAIRMAN MADDOX: Thank you, Jeff. I'll do  
2 that. Appreciate it.

3           Any other questions?

4           (No response.)

5           CHAIRMAN MADDOX: If not, thank you for -- oh,  
6 is there more?

7           MS. RATH: I have more if you'd like.

8           CHAIRMAN MADDOX: We're going to be short on  
9 time, so --

10          MS. RATH: All right. So the second document  
11 is just the visualization of the memo. And then of  
12 course the third document is the A50 referrals. And I  
13 just wanted to point out that currently, we have 18  
14 grantees which we're following up on with A50  
15 referrals. Six are ongoing from our last report. But  
16 I'm happy to report that three of those are about ready  
17 to be closed, and you can read the details in the  
18 chart.

19          There's 12 new grantees that had referrals  
20 from the independent public auditors. But I wanted to  
21 report that four of those grantees are being visited by  
22 OCE during 2016, and those are noted in the chart as

1 well.

2           One of the 12 is going to have an executive  
3 director orientation webinar in 2016, which will  
4 hopefully help with some of the issues noted by the  
5 IPA. And the six remaining have all submitted  
6 documentation related to corrective actions that they  
7 have taken, and OCE is in the process of reviewing that  
8 information. So hopefully, by the next time we meet in  
9 April, the majority of these will be closed.

10           CHAIRMAN MADDOX: There's a lot of information  
11 on that chart, Lora.

12           MS. RATH: We're trying to give you as much as  
13 you need.

14           CHAIRMAN MADDOX: No. I appreciate it. And I  
15 don't want to shortchange your presentation.

16           MS. RATH: Nope. I just wanted to highlight  
17 where -- I don't want to go into the details on each of  
18 them, but just to let you know that there has been  
19 progress made on all of them, and there are several  
20 that are ready to be closed or will be closed by the  
21 time we see you in April.

22           CHAIRMAN MADDOX: Good.

1           MR. SCHANZ: Is it fair to say, Lora, that you  
2 told me it was a data dump?

3           MR. SNYDER: Congratulations on, one  
4 shortening the time frame, and two, ending up the year  
5 on these with zero outstanding. I think that's great.

6           MS. RATH: Thank you.

7           CHAIRMAN MADDOX: Yes, Julie?

8           MS. REISKIN: I don't know where -- are we  
9 sure that the Social Security money is SSI, not SSDI?

10          CHAIRMAN MADDOX: I think the answer is in  
11 Jeff's report.

12          MS. REISKIN: Is it? The reason is that --

13          MR. SCHANZ: I'd have to look at the report.  
14 I don't recall that.

15          MR. SEEBA: It could very well be. I think we  
16 need to check into that.

17          MS. REISKIN: Because if it's SSI and we're  
18 taking attorney fees, I have a really big concern about  
19 that. If it's SSDI, that's where attorneys' fees are  
20 appropriate.

21          MR. SEEBA: I believe it's where we win the  
22 case --

1           MS. REISKIN: I know. I know. But anyway, I  
2 can talk to you about it later. But if it's SSI, that  
3 would be concerning because they already have to -- if  
4 they're getting state general assistance, they already  
5 have to pay that back. And that means the client is  
6 going to end up with nothing.

7           I know in Colorado legal aid cases are SSI and  
8 private attorneys do SSDI, so legal aid doesn't get the  
9 fees. So if we're starting to take SSI fees, that's  
10 not good. I know we're --

11           MS. RATH: Anyway, I'm sorry, Julie. I was  
12 going to say that John and I can get together and  
13 consult with Jeff and get back to you about exactly  
14 what it was.

15           CHAIRMAN MADDOX: Any other questions of the  
16 panel?

17           (No response.)

18           CHAIRMAN MADDOX: Okay. Well, thank you all  
19 very much.

20           That takes us to item number 8, which is a  
21 briefing about LSC's oversight of grantees' services to  
22 groups. There are a variety of materials in the board

1 book on this, and it picks up on the discussion we had  
2 at the end of our confidential session in San Francisco  
3 following up on the article by the director of the  
4 Northern California grantee that we discussed.

5 I think my position was reasonably clear at  
6 that meeting. In the interim, I had -- you were  
7 confused? Let me clear it up for you, John.

8 MR. LEVI: It's okay.

9 CHAIRMAN MADDOX: In the interim, I had sent  
10 an email to management outlining my concerns a little  
11 bit more specifically. Father Pius sent a much more  
12 eloquent email, which is in the materials. And I  
13 encourage everyone on the board to read it if they  
14 haven't.

15 Last week, in response to those emails, Ron  
16 Flagg produced an opinion that is also in the  
17 materials. And we discussed it during a call with  
18 management. Myself and John, I think, were the only  
19 two board members on the call. Father Pius was unable  
20 to join us because of the snowstorm. That's what he  
21 said.

22 So in a nutshell -- I'll just throw this out

1 because I think it's an important topic -- we have an  
2 article by a grantee in Northern California who  
3 explains that his program intentionally does not  
4 dedicate resources, significant resources, anyway, to  
5 the provision of extended representation for  
6 individuals, but instead chooses to pursue what he  
7 calls a community lawyering model. And this is on page  
8 14 of the article, which is in our board materials.

9           It says, "The LSNC long ago embraced a  
10 community lawyering model for its advocacy and delivery  
11 structure. LSNC, the Northern California grantee, thus  
12 allocates significant resources both to systemic  
13 anti-poverty advocacy and to the provision of brief  
14 assistance to large numbers of individual clients with  
15 critical legal needs." And this is, I think, the  
16 important statement.

17           "Significantly and intentionally, it does  
18 not" -- emphasis in original -- "allocate significant  
19 resources to the extended" -- emphasis in  
20 original -- "court representation of individuals with  
21 personal legal problems unconnected to the causes or  
22 effects of poverty."

1           And then he explains that they've instead  
2           adopted a community-based anti-poverty agenda. And as  
3           examples, he says, its attorneys serve as "corporate  
4           counsel, corporate house counsel, for dozens of  
5           nonprofit organizations across the service area,  
6           assisting them (those organizations) to achieve their  
7           own agendas, such as affordable housing development,  
8           micro-lending and micro-enterprise, business creation,  
9           and job training opportunities.

10           "LSNC's land use litigation and local  
11           legislative advocacy has, over the last 20 years,  
12           directly resulted in the development and construction  
13           of over 20,000 new apartment units. In areas of  
14           housing, health care, and public benefits, LSNC's  
15           statewide legislative and administrative advocacy (all  
16           done in full compliance with LSC restrictions) has  
17           resulted in tangible benefits for literally millions of  
18           poor Californians.

19           "For example, LSNC played a critical role in  
20           the statewide extension of the amount of notice a  
21           landlord has to provide before evicting a tenant for no  
22           cause, the notice from 30 to 60 days." And then he

1 lists other areas where its impact litigation continues  
2 to be effective.

3           Importantly, I think if you look at footnote  
4 27 in the article, he tells us that several years ago  
5 the grantee advocates "had to master the byzantine and  
6 overlapping state and local bureaucracies ultimately  
7 responsible for making public transportation decisions  
8 in rural California. Currently they are engaged in  
9 complex environmental justice advocacy before the State  
10 Public Utilities Commission."

11           And I highlight that because I think it's  
12 obvious that those activities involve the allocation of  
13 significant resources by the grantee, presumably a good  
14 part of which come from LSC. In Ron's memo, he  
15 presents four questions, outlined on page 1, and gives  
16 us brief answers.

17           I certainly agree with the first question and  
18 answer. I think I disagree with all of the other three  
19 conclusions Ron reaches. I specifically disagree with  
20 number 4, "Does LSNC's community-based violate its  
21 obligation to provide individual legal assistance to  
22 eligible clients?"

1           And I say that because I think that the memo  
2 is wrong when it says -- where is that -- when it says  
3 on page 7, it says, "Our performance criteria do not  
4 appear to give the provision of individual legal  
5 assistance primacy. To the contrary, the performance  
6 criteria contemplate recipients will undertake legal  
7 representation as a means of obtaining large-scale  
8 relief for the low income population, where possible."

9           And in conclusion, Ron's memo says, I believe,  
10 on the last page that: "The plain language of the Act  
11 makes clear that organizations must provide legal  
12 assistance to eligible clients to be eligible to  
13 receive LSC funding." I agree with that provision.

14           And I think if you look at the LSC Act, it's  
15 clear that if our criteria don't give primacy to the  
16 individual representation of individual clients, the  
17 LSC Act does. In the opening section, it says the Act  
18 is "to provide equal access to justice for individuals  
19 who seek redress of grievances."

20           It's to provide "legal assistance to  
21 those" -- individuals," I think -- "who would be  
22 otherwise unable to afford adequate legal counsel." It

1 talks about "the need of many of our citizens to have  
2 access to services." It talks about the need to  
3 "preserve the strength of LSC, that it be free from  
4 political pressures."

5 I would submit that everything that the LSC  
6 grantee in Northern California has admitted that it  
7 does with its community-based approach is a political  
8 undertaking, advocating for changes in public policies,  
9 which I think is actually specifically prohibited by  
10 the Act.

11 The Act also says, "An eligible client means  
12 any person." I understand that our regulations, 45 CFR  
13 1611.6, say that an eligible person can be an  
14 organization "if that organization provides services to  
15 eligible persons."

16 But importantly, our regulation does not  
17 require that those services be legal services. So as I  
18 understand what we're doing, our grantees are taking  
19 LSC money given to us by Congress for the purpose of  
20 providing legal counsel to people and legal services to  
21 people, and we're giving it to organizations that  
22 avowedly don't use it or don't provide legal services

1 to individuals.

2           They provide advocacy services in housing, in  
3 food, in all manner of things that are eminently good,  
4 but are not our mission. And so, for instance, when we  
5 talk about a justice gap of X, I think that to the  
6 extent that we fund organizations that take our money  
7 and use it to help organizations that don't provide  
8 legal services, we are necessarily turning away clients  
9 who come to that grantee and are told that they can't  
10 be helped because their case would involve too many  
11 hours of legal work. In other words, it would be an  
12 extended case, and we don't do extended cases. I think  
13 that's a violation of the Act.

14           Just a couple of things real quick and I'll  
15 stop because I think this is an important issue for the  
16 board. If you look at 1006, Section 1006(a) of the  
17 Act, it says, "The corporation (LSC) is authorized to  
18 provide financial assistance to qualified programs  
19 furnishing legal assistance to eligible clients." Some  
20 of our grantees are plainly providing legal assistance  
21 to organizations that don't do law and don't do law for  
22 the low-income population.

1           If you look further in, it says, "The  
2 corporation shall use all manner of factors in  
3 determining the eligibility of clients (eligible  
4 clients)," and they all involve the income, the  
5 expenses, the assets of individuals, not corporations.

6           Finally, it says, "There are things that the  
7 corporation shall not do." First of all, "It shall  
8 ensure that no funds made available to the recipients  
9 are used to undertake to influence the passage or  
10 defeat of any legislation by any state or local  
11 legislative body."

12           And the LSC grantee in Northern California is  
13 now plainly admitting that they have a model of helping  
14 organizations pursue their own agendas that are  
15 specifically to undertake to influence the passage or  
16 defeat of state legislation. I think that's a clear  
17 violation of the Act.

18           "The corporation shall make sure that  
19 attorneys refrain from any political activity." I  
20 think those activities are inherently political. By  
21 their definition, the grantee admits that they are  
22 policy-oriented decisions.

1           Finally, it says, "No funds" -- and this is in  
2 the same section -- "No funds of the corporation may be  
3 used to support or conduct training programs for the  
4 purpose of advocating particular public policies." And  
5 yet that's exactly what the Northern California grantee  
6 proudly asserts it's doing with LSC money.

7           So I could go into a longer dissertation.  
8 Time doesn't permit it, and the patience of everyone  
9 here would prohibit it. But I think that this is a  
10 serious problem. I think that to the extent our  
11 performance criteria are read to permit this kind of  
12 activity, I think those criteria themselves are  
13 inconsistent with our enabling statute.

14           And my own thought is that LSC management  
15 needs to reconsider the legal opinion in light of the  
16 plain language of the Act, as our opinion says, that  
17 the organization must provide legal assistance to  
18 eligible clients. In my view, organizations that do  
19 not provide legal services but instead pursue their own  
20 policy agendas, do not satisfy that criteria..

21           Father Pius and then Julie.

22           FATHER PIUS: The letter I wrote, the memo I

1 wrote, I think speaks for itself, so you're welcome to  
2 read it. And I thank Ron and Stefanie for the response  
3 that they've given. And I would echo a lot that Vic  
4 said.

5           But the one thing I do want to focus on, and I  
6 think it's probably where my biggest point of  
7 disagreement is, and I want to explain why, is that  
8 it's very clear to me and my understanding of LSC funds  
9 is that its primary use is for individual  
10 representation, period.

11           That doesn't mean that there can't be  
12 ancillary roles and that we can't involve groups. I  
13 mean, the decision to extend representation to groups  
14 other than those composed by client-eligible members  
15 was controversial. Management actually opposed it at  
16 the time. But it seems to be part of our regulations.

17           But nonetheless, it's still an ancillary role.

18           It's not a primary role. And if we don't have a way  
19 of making sure that these funds are being primarily  
20 used for what their purpose is given to us by Congress,  
21 I think there's a problem.

22           The thing is, I think this is the assumption

1 of Congress. I think our congressional funders, were  
2 they to read that line from Ron's memo about the fact  
3 that it's not the primary role of LSC funds, I think  
4 they would be alarmed.

5           So I would really encourage management to  
6 reconsider this opinion, to look more at the purposes  
7 of the Act and make it very clear in this legal opinion  
8 that the primary -- even if we don't want to give a  
9 number -- but that the primary use of LSC funds should  
10 be for the representation of individual clients because  
11 I think the purposes that are made clear in the LSC Act  
12 that go back to 1974 make clear.

13           The final thing that I want to say is that  
14 there are a number of things that I addressed in my  
15 letter that were not addressed in Ron's or in  
16 management's legal response. And I do think, if you  
17 just want to read mine, that there are just some real  
18 problems.

19           Gary Smith -- is that his name? Whatever his  
20 name is -- has some ideas of the way legal services  
21 should work, which is fine. It's a great idea. He can  
22 start his own legal services association without LSC

1 funds.

2 But if he wants to take LSC funds, he's got to  
3 understand what the purpose of those funds are for, and  
4 he's got to obey the clear words of the statute and the  
5 clear words of Congress.

6 And they can't give his sometimes strange  
7 interpretations of what these are, his personal  
8 interpretations of what they are, because it's  
9 congressional authority and this board that determine  
10 what those policies are, not his own experience and his  
11 desire for what legal services should be.

12 And I really think we need to be very clear,  
13 as a board and as a corporation, that the primary use  
14 of our funds for field grants is individual  
15 representation. And to the extent that I don't think  
16 this memo says that, I think it should be revised to  
17 say so.

18 PRESIDENT SANDMAN: May I respond? Management  
19 takes and took the points that Vic raised at the  
20 October board meeting very seriously. Following that  
21 meeting, I asked our team to do three things.

22 First, I asked Ron and his team to provide a

1 legal opinion, looking at the article, the approach to  
2 practice that the article describes, and the  
3 recommendations that it made, and to opine on whether  
4 or not those recommendations are consistent with the  
5 Legal Services Corporation Act and our regulation.

6           Second, I asked Janet to provide a report,  
7 which she did orally last week on the phone to Vic, on  
8 what the Office of Program Performance does to monitor  
9 what it is that our grantees are actually doing in  
10 providing legal services to individuals and to others.

11           And I'd like to, in the course of this  
12 discussion here, give Janet an opportunity to respond  
13 and explain what the numbers show, what it is that we  
14 look at -- we look every year at the number of -- every  
15 grant cycle at the number of people who are served by  
16 our grantees and what the mix of their work is,  
17 extended service versus brief. And Janet also has  
18 numbers on the number of organizations that are  
19 represented by LSC-funded grantees in 2014.

20           And if you have the numbers available, I think  
21 it would be helpful for the record to provide the  
22 information about what percentage of legal services of

1 Northern California's funding comes from LSC, and also  
2 to provide the specific numbers on group  
3 representations by LSNC in 2014.

4 I also asked Lora to report on what we do in  
5 the Office of Compliance and Enforcement to monitor  
6 compliance with the regulation, 1611, and what those  
7 facts show. So I do think it's important that Ron have  
8 an opportunity to respond in defense of the opinion  
9 that he has rendered, and that Janet and Lora be given  
10 an opportunity to provide the results of their  
11 research.

12 FATHER PIUS: Yes. And again, I'm sorry I  
13 couldn't make that call the other day. Just the snow  
14 made a little impossible.

15 CHAIRMAN MADDOX: Well, I'll turn it over to  
16 the panel to address those issues in whatever order,  
17 maybe starting with Ron. I will say that the numbers  
18 that, Jim, you've referred to are on page 2 of the  
19 opinion.

20 And to me, they're not comforting simply  
21 because the Northern California grantee, by its own  
22 statistics, provides extended services to less than 50

1 percent of the national average. In other words, it  
2 had 18 extended representation cases per 10,000 people  
3 compared with 39 for the national average.

4           So plainly, fewer people in Northern  
5 California are being served in cases where they have a  
6 critical need for legal counsel.

7           PRESIDENT SANDMAN: I would like to respond to  
8 that. All of our grantees deal with inadequate  
9 resources. They can't possibly serve everyone who  
10 comes to them. The question of what the right mix is  
11 between brief service and extended service for clients  
12 is one of the most difficult issues that a legal aid  
13 organization faces.

14           Are they better off providing some help to a  
15 large number of people, or full service to a very small  
16 number of people? That's a hard question, and  
17 reasonable people can differ on that. If you look at  
18 the recommendations of the LSC tech summit, it  
19 advocated an approach where we aim to provide some form  
20 of effective assistance to 100 percent of persons  
21 otherwise unable to afford a lawyer in dealing with an  
22 essential civil legal need.

1           So almost by definition, that advocates an  
2 approach where an awful lot of people are not going to  
3 get full representation, but they are going to get  
4 something, all with the goal of turning no one away  
5 with zero, which is what happens all too often today.

6           Reasonable people can differ on this. And I  
7 know that there are those in the legal aid community  
8 who think that extended service is automatically  
9 better, and that the more extended service you provide,  
10 the better you're doing. My own reaction is: Maybe,  
11 maybe not. Where are your data to back that up? What  
12 outcomes are you achieving?

13           But all I want to say is reasonable people can  
14 differ on this. It is a difficult and complicated  
15 question. And I do not believe that the numbers by  
16 themselves can be used to describe some program is  
17 doing a good job and another doing a bad job simply  
18 because they've elected to provide more in the way of  
19 brief service to individuals than extended service.

20           CHAIRMAN MADDUX: But the problem, Jim, is not  
21 the absolute number. You could have a small number of  
22 extremely extended service cases, and so your number

1 would be low but your service would be fantastic. The  
2 problem is, where is the money going that's not being  
3 used to represent individuals?

4           And I think that our statute says, in 1007,  
5 part (a), subpart (5), we are obliged to "ensure that  
6 no funds made available to the corporation shall be  
7 used at any time, directly or indirectly, to influence  
8 the issuance of an executive order or similar  
9 promulgation, or to undertake to influence the passage  
10 or defeat or any legislation by any state or local  
11 legislative body."

12           I submit that you cannot read the Gary Smith  
13 article without concluding that he has announced a  
14 model that is designed specifically to do exactly what  
15 this section says we cannot do, which is to directly or  
16 indirectly influence the passage of legislation. He  
17 said so.

18           It has to do with the rural busing plan.  
19 That's a public policy. The land use plan, the  
20 environmental justice plans, all of that involves  
21 public policy and state and local legislation. And  
22 they are taking our funds, providing corporate counsel

1 services to organizations that do not themselves  
2 provide any legal services to anybody, and then using  
3 our funds to have those organizations pursue, in his  
4 words, their own agendas.

5 I submit that those agendas would never be  
6 funded by Congress if Congress were asked to do it. So  
7 the numbers don't tell me much of anything one way or  
8 the other, but I think that this provision, 1007, part  
9 (a), subpart (5), is a direct bar. And I don't think  
10 that the legal memo addresses it, as far as I know.

11 Ron?

12 MR. FLAGG: Yes. I think the attempt to  
13 influence clause of the Act has been addressed by our  
14 office repeatedly over the course of the last several  
15 years, and the attempt to influence language appears  
16 not only in the LSC Act but throughout the Federal Code  
17 applicable to pretty much every department and agency  
18 in the federal government.

19 And it is not read anywhere to literally mean  
20 nobody can do anything that has an effect on public  
21 laws. It's just not read that way. It's not read that  
22 way by the Comptroller General of the United States.

1 It's not read that way by the Department of Justice.

2           It has teeth. We have issued advisory  
3 opinions. We have issued multiple advisory opinions  
4 detailing what can and cannot be done consistent with  
5 the attempt to influence provision in the LSC Act. And  
6 with our regulations, we have specific regulations that  
7 implement and enforce, are meant to aid enforcement and  
8 understanding, of the attempt to influence provision of  
9 the LSC Act.

10           And essentially, what has been done here is  
11 taking a very generally written article and assuming  
12 that everything that was done in furtherance of that  
13 generally written article was done in contravention of  
14 the regulations. There's no evidence on the face of any  
15 of the article that anything improper was done.

16           There are multiple ways in which our grantees,  
17 consistent with the Act and consistent with our  
18 regulations, can in fact have an effect on public  
19 policy. I'll mention two, but there are others.

20           One, if a member of the state legislature or  
21 an executive official asks in writing for the opinion  
22 of an LSC grantee or a client of an LSC grantee about a

1 matter of public policy, they're specifically entitled  
2 to answer those questions. They don't have to stand  
3 mute under the LSC Act or our regulations.

4           There are provisions in our regulations which  
5 permit our grantees to represent clients, whether they  
6 be individual clients or group clients, consistent with  
7 our regulations, in rulemakings. So it is not a fact,  
8 again, with respect to LSC or any other federal agency,  
9 that this attempt to influence clause in the LSC Act  
10 and elsewhere in the U.S. Code means you can't do  
11 anything that has an effect on public policy.

12           If it is interpreted that way, I agree with  
13 you. Then probably every grantee that we have would be  
14 in violation of the LSC Act, and every government  
15 agency would be in violation of their enabling  
16 legislation, because somehow, whatever they do has an  
17 impact on policy. So it's not quite that simple.

18           With regard to --

19           CHAIRMAN MADDOX: Ron, just a minute. Just a  
20 minute. I'm not saying that in general, everything  
21 they do somehow violates the statute. But when you  
22 look at footnote 27 and you say, they're telling you

1 that they studied and overcame all kinds of  
2 bureaucracies in order to successfully advocate for the  
3 inclusion of additional business routes, is that not  
4 specific advocacy that has to do with public policy?

5 MR. FLAGG: They could have brought a case  
6 involving an individual who was denied access to --

7 CHAIRMAN MADDOX: And do you know if they did?

8 MR. FLAGG: My opinion was clear. All we did  
9 was -- if the question is, have I conducted an  
10 investigation of every case they've ever undertaken to  
11 see whether it complied with these provisions, no. OCE  
12 was at Legal Services of Northern California in 2012.  
13 Part of its oversight, and I'll defer to Janet and Lora  
14 to describe the oversight that's done by OCE and OPP,  
15 their visit did not disclose any violations of the Act.

16 The only other thing I want to say, and I'd  
17 like to reread the transcript after we get it to  
18 consider Vic's points and review our opinion in light  
19 of those points, with respect to performance criteria,  
20 I think there are two different sets of issues.

21 One set of issues, which is addressed in our  
22 opinion, is whether what is written in the article

1 violates the performance criteria. My view, my reading  
2 of the performance criteria, is they set up sort of a  
3 federalism structure.

4           That is, with regard to the most basic  
5 questions of how to deliver legal services by a legal  
6 aid organization, identifying what the legal needs are  
7 in a service area, prioritizing which of those needs  
8 should be addressed by the legal aid program, and then  
9 identifying the optimal delivery system or systems for  
10 meeting those priorities, we basically leave it to our  
11 local grantees.

12           And as we heard today in Oregon, even within  
13 an individual grantee, they may address issues of what  
14 are legal needs and what the priorities should be and  
15 what the delivery systems should be to individual  
16 offices.

17           Obviously they don't do it without any  
18 standards at all. We do have standards, and we do have  
19 restrictions on how some of the -- they can't bring a  
20 class action to address those needs, for example. But  
21 we do have a federalism structure to our performance  
22 criteria.

1           Now, Father Pius's email, I don't think he  
2 really -- he was not addressing the same questions I  
3 was just describing. He was addressing, in my view,  
4 the overall characterization of the origins of LSC and  
5 its overall purpose. And in my memo I'm not purporting  
6 to say whether Gary Smith's reading of history is  
7 better than Father Pius's.

8           FATHER PIUS: It's reading the statute.

9           CHAIRMAN MADDOX: Yes. And I think to that  
10 extent, Ron, I think that it seems to be undeniable  
11 that the statute plainly does provide primacy to the  
12 provision of individual legal services.

13          MR. FLAGG: Well, look. Let's --

14          CHAIRMAN MADDOX: And if not, then there's a  
15 new way of interpreting statutes because the plain  
16 language suggests that. And to the extent that your  
17 memo is precedent for grantees suggesting otherwise, I  
18 think that's unfortunate.

19          PROFESSOR VALENCIA-WEBER: Victor, could we  
20 please hear from Janet and Lora about what they have to  
21 say?

22          CHAIRMAN MADDOX: Yes. I wanted to ask the

1 chairman, first of all, if we have time to go on.

2 We're way over time already.

3 Martha?

4 DEAN MINOW: As Vic knows, I really welcome  
5 your inquiry. And I think that there are some concerns  
6 that you have raised here and at other times that are  
7 worth our grantees' understanding and knowing.

8 I also think that the indirect, in one of your  
9 phrases, as opposed to direct, that's where it starts  
10 to unravel because indirectly, to be a lawyer is to  
11 affect policy. So that's where I agree with Ron.

12 I do think this discussion is a big one, an  
13 elaborate one, and I would defer, of course, to the  
14 chair. But my suggestion is that there be a small  
15 group that get together to talk about these issues more  
16 fully. That's my suggestion.

17 MR. LEVI: I am worried about the time because  
18 you still have the 403(b) and then we have the Finance  
19 Committee and the auditors. But I don't want to  
20 foreclose -- people have had their hands up for a  
21 while, and I think you better take their questions.  
22 And then what I'd like to do is either take Martha's

1 suggestion or finish your meeting, finish everybody  
2 else, and then see where we are.

3 CHAIRMAN MADDOX: Okay. That's what we'll do.

4 And I do want to cut off Janet and Lora. I  
5 appreciated everything you all said on our call last  
6 week. And I just think that we're out of time.

7 Gloria?

8 PROFESSOR VALENCIA-WEBER: Well, I would like  
9 to hear what Janet and Lora have to say. And then I  
10 have a brief statement of my own, and it's going to be  
11 very brief.

12 CHAIRMAN MADDOX: Janet, if you and Lora could  
13 both give us the summarized version.

14 MS. LABELLA: Sure. Very, very briefly, as  
15 you pointed out, Vic, LSNC receives 30 percent of its  
16 funding from LSC. And the cases that they report to  
17 LSC are those that are LSC-eligible under the  
18 regulations. They are not necessarily tied to those  
19 cases that were funded by LSC funds, which I think is  
20 an important distinction here.

21 And in addition to the statistics that appear  
22 in Ron's memo, I'll give you just a few more. Out of

1 the 13,173 LSC-eligible cases, reportable cases, that  
2 were closed by LSNC in 2014, eight were group cases.  
3 So that is one indicator of the number of cases closed  
4 that were group cases.

5           And as Vic did point out, of their cases,  
6 their total cases closed, they exceeded the national  
7 median. Of their extended cases closed, they are  
8 substantially below the median, but there is another  
9 statistic there which is contested cases closed, and  
10 there they rise up a bit. So they closed 12 cases per  
11 10,000 poverty pop that were contested, where the  
12 median is 18. So they're not dramatically below the  
13 median in that regard.

14           They also have an extensive PAI practice.  
15 They closed 2,241 cases with private attorney  
16 assistance, and far exceeded the national median there  
17 as well. They closed 43 per 10,000 poor people, where  
18 the median is 16.

19           So I think that it's difficult to look at the  
20 cases in isolation because they are ones that are  
21 reportable to LSC but not necessarily tied to LSC  
22 funding. And that's an important piece of the puzzle

1 that we don't have here.

2 CHAIRMAN MADDOX: Lora?

3 MS. RATH: Yes.

4 CHAIRMAN MADDOX: Thank you, Janet.

5 MS. JENNINGS: Janet, do you know how many  
6 cases there are overall?

7 MS. LABELLA: Oh, I'm sorry. Yes. Overall,  
8 in 2014, there were 537 group cases closed by all of  
9 our grantees. So it's a very small portion --

10 PRESIDENT SANDMAN: Janet, when you say group  
11 cases closed, you mean a case where an organization or  
12 a group was the client?

13 MS. LABELLA: Correct.

14 CHAIRMAN MADDOX: Do you know how many were  
15 open?

16 MS. LABELLA: No. I don't have the number  
17 that were opened. Opened?

18 CHAIRMAN MADDOX: No. Open.

19 MS. LABELLA: Because there would be some that  
20 would still be open at the end of the year. We don't  
21 get that breakdown. We get the number of cases open,  
22 but not if it's a group case.

1           CHAIRMAN MADDOX: So an organization, a  
2 grantee, might have 50 open cases. And if it closes  
3 eight, we don't know how much of its time is being  
4 dedicated to these group cases, do we?

5           MS. LABELLA: Correct. And in the rule of  
6 thumb, which is a contested case takes more time than  
7 an extended case than a limited service case, it  
8 doesn't always play out. There can be some extended  
9 cases that really don't take a lot of time.

10           But that is a general rule of thumb that's  
11 applicable. And if you have a complex case on behalf  
12 of a group, that's going to take more time. But you  
13 could have a very complex case on behalf of an  
14 individual, particularly one that was an appeal that  
15 took a lot of time. So there isn't really a mechanism  
16 to tie the resources to the cases.

17           CHAIRMAN MADDOX: Thank you, Janet.

18           Lora? Julie? Lora, if you have anything to  
19 add.

20           MS. RATH: I just wanted to briefly go over  
21 OCE's role in it. When we go onsite, we are reviewing  
22 the 1611 policy to make sure that there's a policy and

1 procedure in effect for screening group client  
2 eligibility.

3           While we're onsite, we interview the staff  
4 about their processes. We review any forms and make  
5 suggestions about it. And I just wanted to say that in  
6 the review, we looked at the visits we've done over the  
7 last two years, and while we found that everybody had a  
8 policy, in some instances the policies and the forms  
9 needed to be tweaked.

10           But we also found that it was very  
11 rare -- because we select a sampling when we're onsite  
12 of both the open and the closed group cases. And staff  
13 reported that there were very few instances out of the  
14 probably 50 visits that we did last year where there  
15 were group clients to review the cases, and that Native  
16 American tribes were a major group client.

17           CHAIRMAN MADDUX: Gloria?

18           PROFESSOR VALENCIA-WEBER: Yes. I would like  
19 to address that, and taking, just the core reference,  
20 this statement in Ron's memo on page 188 that addresses  
21 groups or associations, and especially those who  
22 members are eligible for services.

1           A key group or association that is involved in  
2 being represented by a number of our grantees are  
3 American Indian tribes, especially with regard to  
4 certain recurring problems, including with the Indian  
5 Child Welfare Act, where Congress has expressly  
6 preempted the state jurisdiction for children who  
7 qualify under that act, and the parents who are  
8 involved in custody or placement issues.

9           You have a continuing problem of state courts  
10 assuming jurisdiction they do not have, ignoring that  
11 the Congress had said, mandated, shall have that  
12 jurisdiction in the tribal courts, absolutely bypassing  
13 not just the tribe and its courts but the social  
14 service systems that are set up to protect those  
15 children within the tribes and displacing them. And  
16 it's repeated. It's recurring. And in many instances,  
17 Victor, it has absolute public policy effect.

18           A case arises many times in other states, but  
19 clearly it was happening in Oklahoma. And OILS, as  
20 well as our other grantees there, had recurring  
21 problems. Eventually, through enough cases where the  
22 state courts were told ultimately, you do not have

1 jurisdiction; Congress's language has expressed, it led  
2 to the state of Oklahoma passing legislation that  
3 removed some of the fictional ruses that were being  
4 used to manufacture state jurisdiction.

5 CHAIRMAN MADDOX: But Gloria, I mean, those  
6 are obviously eligible clients.

7 PROFESSOR VALENCIA-WEBER: But I'm saying  
8 that --

9 CHAIRMAN MADDOX: So we're talking about  
10 organizations that are not themselves eligible clients.

11 PROFESSOR VALENCIA-WEBER: But they are  
12 organizations in terms of you have parents with  
13 children subject to wrongful jurisdiction --

14 CHAIRMAN MADDOX: Right. But if an --

15 PROFESSOR VALENCIA-WEBER: -- as well as you  
16 have tribal courts being represented by some of our  
17 grantees challenging the state court improperly  
18 exercising jurisdiction.

19 CHAIRMAN MADDOX: Right. And that sounds like  
20 it's perfectly fine.

21 MR. FLAGG: Vic, can I make one point?

22 CHAIRMAN MADDOX: Yes, Ron.

1           MR. FLAGG: Because in fairness to Legal  
2 Services of Northern California, under 1611.6, groups  
3 are clearly permissible clients. And I understand the  
4 argument that for 40 years that regulation, which goes  
5 back to 1976, in your view did not comport with the  
6 Act.

7           But clearly, Legal Services of Northern  
8 California or any other grantee, to the extent they  
9 represent organizations -- and again, the  
10 representation across the country and in Northern  
11 California is not, at least by number, all that  
12 substantial -- but clearly, they can do so in  
13 compliance with our regulation.

14           And I'm sure you did not mean to intend to say  
15 that they were acting illegally if they're complying  
16 with the regulation.

17           CHAIRMAN MADDOX: No. I think the regulation  
18 disregards the Act. I think the language of the Act  
19 says that the grantee needs to be providing legal  
20 services. And as we discussed last week on our call,  
21 1611.6 allows organizations to receive LSC funds even  
22 though those organizations don't provide any legal

1 services. So I think we ought to look at the  
2 regulation again.

3 MR. FLAGG: My last point would be, that  
4 regulation has been written that way for 40 years.  
5 That may not make it right, but it certainly makes it  
6 old.

7 CHAIRMAN MADDOX: And just for background,  
8 Ron, that regulation was written by -- let's be  
9 honest -- the very people that Gary Smith is holding up  
10 as the models for anti-poverty warriors rather than  
11 legal access to justice lawyers.

12 MR. FLAGG: Fair enough. But the regs have  
13 been rewritten many times. And the Act was  
14 substantially scrubbed in 1996, and the Congress at  
15 that time reviewed the Act and reviewed our regs. And  
16 among the many restrictions that were put in 1996 was  
17 not a restriction on the representation of groups that  
18 had been permitted for the prior 20 years.

19 CHAIRMAN MADDOX: Okay. No dispute about  
20 that. Thank you.

21 Julie, we've got to move on. I'm sorry.  
22 Harry, if you -- okay. We'll talk about it. I'll

1 circulate something. We'll maybe see if we can get a  
2 small group and move on. I've violated my pledge to  
3 manage time better --

4 MR. LEVI: That's okay.

5 CHAIRMAN MADDUX: -- at our very first meeting  
6 of the year. All right. Thank you so much. I hate  
7 for cutting it off. Thank you, panel, very much. Ron,  
8 thank you. I mean, to the extent that I gave any  
9 impression that I thought the memo was not well-done.  
10 That's absolutely not true. I think it's a perfectly  
11 legal-like, well-drafted, considerate, thoughtful memo.  
12 I just disagree with it.

13 (Laughter.)

14 MR. FLAGG: I get disagreements from my loved  
15 ones all the time, so thank you.

16 (Laughter.)

17 CHAIRMAN MADDUX: Let's move on to our item  
18 number 9, which is the 403 briefing. We don't have  
19 anyone here, do we, to brief us on that? We have a  
20 memo.

21 PRESIDENT SANDMAN: I think Traci Higgins is  
22 on the phone. Traci, are you on?

1           CHAIRMAN MADDOX: Traci?

2           PRESIDENT SANDMAN: If she's not, I can speak  
3 to this.

4           CHAIRMAN MADDOX: Probably because we're so  
5 far behind schedule that she had --

6           PRESIDENT SANDMAN: The materials are in the  
7 board book starting on page 206, where you'll see our  
8 usual report on the performance of our 403(b) --

9           MS. HIGGINS: I'm here.

10          PRESIDENT SANDMAN: Oh, thank you, Traci.  
11 You'll see the report on the performance of our 403(b)  
12 plan over the last quarter. We've also provided the  
13 audit report for the 403(b).

14          There was a management letter with that  
15 report; you'll see our response. We attempted to  
16 address the issues that the auditors identified for us,  
17 and received an email back from them complimenting our  
18 response.

19          CHAIRMAN MADDOX: Highly complimentary email  
20 from the auditors. And so I think if you take away  
21 nothing else from the 403 briefing, you should take  
22 away the fact that the auditors basically were highly

1 impressed with management.

2 DEAN MINOW: Which is not a typical thing to  
3 see from an audit.

4 CHAIRMAN MADDOX: Right. Right.

5 MR. SNYDER: Now, now.

6 CHAIRMAN MADDOX: Say again, Paul?

7 MR. LEVI: He said, "Now, now."

8 MR. SNYDER: I said, "Now, now," when you  
9 don't think auditors can make nice comments. Just  
10 kidding. Just kidding.

11 CHAIRMAN MADDOX: All right. Traci, is there  
12 anything you can add to the briefing Jim gave us?

13 MS. HIGGINS: I think that sums it up. I  
14 mean, in terms of market performance, we all know what  
15 the markets have been doing. So we have to just sort  
16 of stick and stay and wait 'til they settle out before  
17 we take any next steps about adding to our watch list,  
18 that sort of thing.

19 And then with respect to our response to the  
20 auditors, yes. We did take that very seriously. We've  
21 already put into place all of these fixes that we  
22 outline in our letter --

1           DEAN MINOW: Tracy, can you talk closer to the  
2 phone or something? Because it's hard to hear.

3           MS. HIGGINS: Okay. Can you hear me better?

4           CHAIRMAN MADDOX: Yes. But don't repeat  
5 yourself.

6           (Laughter.)

7           MS. HIGGINS: I won't. So we're moving  
8 forward. And I'm actually pleased that these issues  
9 were identified. We looked further and saw no other  
10 examples of the issues that they identified because  
11 they're just working off of a sample. So I think we  
12 are actually in very good shape.

13           CHAIRMAN MADDOX: Thank you, Traci. I think  
14 that concludes our 403 briefing and takes us to our  
15 next agenda item, which is public comment. I recognize  
16 Don Saunders. And I also note that public comment will  
17 be available tomorrow at the full board meeting, not to  
18 dissuade anyone from commenting.

19           (Laughter.)

20           MR. SAUNDERS: Thank you.

21           MR. LEVI: And thank you for putting it on me  
22 so I'll be off schedule.

1                   CHAIRMAN MADDOX:    Don?

2                   MR. SAUNDERS:    Very briefly, I'm Don Saunders  
3   of the National Legal Aid and Defender Association.  
4   Just very briefly, I would urge your committee, as you  
5   consider the issues you recently talked about, just to  
6   remember that there is a lot of interest in the public,  
7   and that the conversations that you have with regard to  
8   the regulatory process or the program criteria or  
9   performance criteria be appropriately open to the  
10  public.

11                  CHAIRMAN MADDOX:    Right.  Well, I think the  
12  meeting is open to the public.  And obviously, if  
13  anything were to happen with a regulation, it would be  
14  subject to all of the rules regarding notice and  
15  comment, which I'm not suggesting anything will happen  
16  to it.

17                  Terry?  Terry Brooks?

18                  MR. BROOKS:    In the interest of brevity, I  
19  echo the comments of my colleague.

20                  CHAIRMAN MADDOX:    That's it?

21                  PRESIDENT SANDMAN:    He was brief.

22                  CHAIRMAN MADDOX:    That is brief.  Thank you,

1 Terry, and the ABA is on record.

2 Let's see. Where is my agenda? Is there any  
3 other business for the committee?

4 (No response.)

5 CHAIRMAN MADDOX: No. Move that we -- do we  
6 need to go into closed session?

7 M O T I O N

8 MR. LEVI: Yes. So move.

9 CHAIRMAN MADDOX: Okay. We're going to go  
10 into closed session briefly. Is there a second to the  
11 motion?

12 MR. KORRELL: Second.

13 CHAIRMAN MADDOX: All in favor?

14 (A chorus of ayes.)

15 CHAIRMAN MADDOX: Paul will have to call in  
16 again.

17 MR. SNYDER: Yes, I will. Thank you.

18 CHAIRMAN MADDOX: The public session is now  
19 ended, and we're going to go into closed session.

20 (Whereupon, at 4:54 p.m., the committee was  
21 adjourned to Closed Session.)

22 \* \* \* \* \*