

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPEN SESSION

January 6, 1997

9:30 a.m.

LEGAL SERVICES CORPORATION
750 First Street, N.E.
Washington, D.C.

BOARD MEMBERS PRESENT:

Douglas S. Eakeley, Chair
Alexander D. Forger
John N. Erlenborn
Nancy H. Rogers
Maria Luisa Mercado
Edna Fairbanks-Williams
Thomas F. Smegal, Jr.
John T. Broderick, Jr.
Laveeda M. Battle
Hulett H. Askew
F. William McCalpin
Ernestine P. Watlington

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P R O C E E D I N G S

1
2 CHAIR EAKELEY: If we all are ready to get
3 started, I will call the meeting to order. I wish you
4 all a happy New Year. And I would ask for approval of
5 the agenda as circulated with the one change being that
6 we expect a visit from Congressman Jon Fox. And I
7 would like the Board approval to interrupt at whatever
8 appropriate moment of his arrival to welcome him and
9 permit him to address us.

M O T I O N

10
11 MS. WATLINGTON: So moved.

12 MR. MCCALPIN: Second.

13 CHAIR EAKELEY: All right.

14 All those in favor of approving the agenda as
15 noted.

16 (Chorus of ayes.)

17 CHAIR EAKELEY: Opposed.

18 (No response.)

19 CHAIR EAKELEY: The minutes of the September
20 30, 1996 open session, again circulated with your board
21 materials. We have one proposed correction to the
22 draft minutes reflecting a suggestion made by our

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1 Inspector General.

2 Do you all have a copy of the proposed
3 revision to the minutes?

4 I cannot find Victor. There should have been
5 at everyone's place. Basically, the IG suggested that
6 the portion of the minutes describing our discussion of
7 implementation of his technology initiative did not
8 accurately capture the ways things were left.

9 The minutes as circulated said, "Mr. Eakeley
10 urged further consideration before obligating any
11 additional funds to the project."

12 The IG rightly pointed out that that was a
13 statement made at one point in the session. But at
14 another point, indeed at the end, the minutes at least
15 reflect that I urged that the Board reconsider after it
16 had a chance to consider a joint report from management
17 and the IG.

18 And that is the gist of the proposed amendment
19 to the minutes that would substitute what I just read
20 for what is in there now.

21 MR. MCCALPIN: What is the sentence that you
22 are taking out, it starts "Ms. Battle expressed --"?

1 CHAIR EAKELEY: No. "Ms. Battle expressed,"
2 that remains.

3 MR. MCCALPIN: That remains.

4 MS. BATTLE: I would like to amend that. It
5 is "Battle" and not "Battled."

6 CHAIR EAKELEY: Right.

7 MS. BATTLE: Sometimes I am in battle.

8 CHAIR EAKELEY: The first initial B.

9 Is Victor here? We do not have a red lined
10 version of the proposal.

11 MR. MCCALPIN: It says in Ed's memo to the
12 Board, "I recommend that we replace the last sentence
13 of the third paragraph with the following." I guess
14 the third paragraph starts, "The Board discussed
15 whether --" And the sentence at the end of that
16 starts --

17 MS. MERCADO: Well, you cannot mean to put
18 this whole page of transcript into the minutes, because
19 it is only a summary of what the discussion is.

20 You do not mean to put this whole page of
21 transcript as part of the minutes, do you?

22 CHAIR EAKELEY: I think that the question is

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1 how much of the page and a half that was placed before
2 us today is new text, and how much of it is old text?

3 MS. FAIRBANKS-WILLIAMS: It would read, "Mr.
4 Eakeley urged that the Board reconsider after it has
5 had a chance to consider a joint report from management
6 and the IG." The last sentence is down at the bottom
7 of the page.

8 MR. MCCALPIN: The January 5 memo has the
9 proposed substitute sentence.

10 MR. FORTUNO: I think that you have two
11 packets.

12 CHAIR EAKELEY: Mr. Fortuno --

13 MS. MERCADO: I have found it now.

14 MR. FORTUNO: I think that what you have
15 before you is that there are two packets. One was left
16 by me last night, which contains a possible substitute
17 page, if you wish to do that. The other was left this
18 morning by me for the IG's office. And that contains
19 two documents, one of which relates to the minutes, the
20 draft minutes. And that proposes the substitution I
21 think of a new sentence or two.

22 MS. MERCADO: Mr. Chairman --

1 MR. FORTUNO: So you could go any number of
2 ways. You could either substitute the sentence as
3 proposed by the IG. You could substitute the entire
4 page. Or you could do some alternative crafted here
5 and now.

6 MS. MERCADO: It would seem that looking at
7 the materials that were presented by the IG and General
8 Counsel that the easiest thing to do would be, where
9 the sentence goes, "Ms. Battle expressed her objection
10 to implementing the project until the Board agreed to
11 support the initiative."

12 CHAIR EAKELEY: Move the mike. You are not
13 being picked up by the Reporter. Thank you.

14 MR. MCCALPIN: The handout that was given to
15 us by Victor dated January 3rd, draft minutes of
16 September 30, 1996 meeting, the second page, the last
17 sentence. That sentence, we would just, you know it
18 would just -- it could appear after "initiative," and
19 then just strike the rest of it, and then substitute
20 this sentence at the end of the minutes. And then the
21 minutes would accurately reflect the discussion that
22 was had.

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M O T I O N

MR. SMEGAL: I will second that, if it is a motion.

MS. MERCADO: It is a motion.

MR. SMEGAL: If I may speak to it, there is a single page amongst the materials that I have received under a cover letter that says January 3. The enclosure is actually dated January 5. It is typed in a different font. And it starts out with the author and the date. And the mover of this motion which I seconded is proposing that what be substituted for the sentence in question is the last sentence in that particular one page document, which starts with quotation marks "Mr. Eakeley," and unfortunately does not end with quotation marks after IG period.

MR. FORTUNO: So that the record is clear and that you can all follow that, what Mr. Smegal is referring to is the packet that I left for you last night after the meeting that has the transmittal memo or the cover memo from me. Beneath it is the e-mail message that I received from the Inspector General yesterday. And then beneath that is the other

1 alternative that you have before you, which is
2 substituting an entire new page for that.

3 And I think that is being referred to by both
4 Ms. Mercado and Mr. Smegal is the IG's e-mail message
5 to me. And at the bottom, he proposes substituting the
6 sentence relating to Ms. Battle, substituting for that
7 a sentence that relates to the Chair's statement. I
8 hope you can follow that.

9 CHAIR EAKELEY: Well, the problem is that we
10 have got something that we have not had a chance to
11 review before the meeting in the form of a page and a
12 half of proposed substitute minutes. Or the
13 alternative competing version, which is a one sentence
14 amendment that we received the night before, and that
15 is the subject of the current motion.

16 Let me ask the Inspector General this. If we
17 go with the current motion, which substitutes the one
18 sentence that you noted in your e-mail, are we
19 substantially correcting the record?

20 There are some other things in the lengthier
21 minutes that I can see that would improve it, but I
22 despair of doing this in a timely fashion, given the

1 lateness of the submission.

2 So hearing no dissent from the IG or our
3 counsel, it has been moved and seconded that we
4 substitute the sentence, "Mr. Eakeley urged that the
5 Board reconsider after it had a chance to consider a
6 joint report from management and the IG" for the second
7 part of the sentence that currently reads, "Mr. Eakeley
8 urged further consideration before obligating any
9 additional funds to the project."

10 That appears in the middle of the paragraph on
11 page 37 of our board meeting materials.

12 Is there any further discussion?

13 (No response.)

14 CHAIR EAKELEY: All those in favor of the
15 amendment.

16 (Chorus of ayes.)

17 CHAIR EAKELEY: All those opposed.

18 (No response.)

19 CHAIR EAKELEY: The ayes have it.

20 Are there any other suggestions or amendments?

21 MR. MCCALPIN: Who moved and seconded that
22 motion?

1 CHAIR EAKELEY: Ms. Mercado made the motion,
2 and Mr. Smegal seconded it. And the Board approved it.

3 Are there any further additions or corrections
4 to the minutes of our September 30 open session?

5 (No response.)

6 CHAIR EAKELEY: All right. You also had
7 circulated to you under separate copy the minutes of
8 the September 30, 1996 executive session.

9 Are there any amendments or corrections to be
10 made to that?

11 M O T I O N

12 MR. MCCALPIN: I move that be approved.

13 CHAIR EAKELEY: Mr. McCalpin moved.

14 MR. ERLNBORN: And Mr. Erlenborn seconded.

15 CHAIR EAKELEY: Is there any discussion?

16 (No response.)

17 CHAIR EAKELEY: All those in favor.

18 (Chorus of ayes.)

19 CHAIR EAKELEY: Opposed.

20 (No response.)

21 CHAIR EAKELEY: The ayes have it.

22 Now we have the minutes of our November 30,

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1 1996 teleconference, again which were circulated in
2 advance of the meeting.

3 Are there any corrections or additions to be
4 made to those minutes?

5 (No response.)

6 CHAIR EAKELEY: Hearing none --

7 M O T I O N

8 MS. WATLINGTON: I move that they be accepted.

9 CHAIR EAKELEY: Ernestine Watlington has moved
10 that they be approved.

11 Is there a second? I feel like an auctioneer
12 here.

13 MS. MERCADO: Second.

14 CHAIR EAKELEY: Ms. Mercado seconded.

15 Is there any further discussion?

16 (No response.)

17 CHAIR EAKELEY: All those in favor.

18 (Chorus of ayes.)

19 CHAIR EAKELEY: Opposed.

20 (No response.)

21 CHAIR EAKELEY: The ayes have it.

22 Chairman's and members' reports. I will be

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1 very brief, although it has been three months since we
2 last met, or more than that. And indeed, the agenda
3 suggests how much work there is before us. And indeed,
4 how much work there has been done in the interim. I
5 did want to first thank everyone for coming in and
6 working all day Sunday, both Board and staff.

7 And also, if you just look, for example, at
8 the number of regulations that needed to be put
9 through. And particularly, the option rates committee
10 has done quite an extraordinary job, and received a lot
11 of staff support in doing so.

12 Alex Forger and I discussed over Christmas his
13 desire to put an end point to an announced plan for
14 departure. And we agreed reluctantly that Valentine's
15 Day of 1997 would be an appropriate point of
16 demarcation for a very distinguished period of service
17 to this corporation and to the cause of equal justice.

18 And I have discussed with Martha Bergmark
19 having Martha step up to the position of president as
20 we continue our search in Alex's absence. And Martha
21 has graciously consented.

22 And so with the support of the Board,

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1 hopefully that will in effect be our interim
2 transition. I hope that we will be in a position
3 shortly to announce maybe plans for a celebration at
4 Burger King. That is Alex's preference. But something
5 in conjunction with the March meeting that we can have
6 more of an opportunity to tell Alex how much this has
7 meant to us.

8 MR. FORGER: It may be premature.

9 CHAIR EAKELEY: But March will come, I hope,
10 inevitably. But in any event, that is where we are
11 right now. And that is the Chair's report.

12 MR. ERLENBORN: Mr. Chairman.

13 CHAIR EAKELEY: Yes, Erlenborn.

14 MR. ERLENBORN: Is there any action needed to
15 be taken by the Board to approve an interim president,
16 or is that automatic because of the position that she
17 now holds?

18 CHAIR EAKELEY: I am looking at our
19 parliamentarian. I should have asked that question
20 before. But that is a very good question, John.

21 MR. MCCALPIN: Last time we debated a good
22 deal over the words "interim" and "acting." And I

1 should suppose that we ought to adopt some such
2 statement as that, so as not to unduly prejudice the
3 search process.

4 MS. FAIRBANKS-WILLIAMS: I believe that we
5 used acting before, didn't we?

6 MR. MCCALPIN: We used the word "interim."

7 CHAIR EAKELEY: Alex?

8 MR. FORGER: I can recall saying that I was
9 the acting, you know. I thought that I was an acting
10 president. That was interchangeable.

11 CHAIR EAKELEY: Martha, how awkward is this?

12 MS. BERGMARK: This is fine. I recall that
13 Alex had sort of a principle that he followed as acting
14 president, which was that he was the president.

15 CHAIR EAKELEY: Yes.

16 MS. BERGMARK: And he went through an
17 appropriations process and so forth as president. And
18 I expressed the view to you that I thought that had
19 been an appropriate way to go at it. That for purposes
20 of the external world in particular, the president
21 needs to be empowered to be the president, and not be
22 under sort of a sense of how much authority does this

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1 person have.

2 And so I am happy, as I expressed to you, and
3 delighted to have the opportunity to be your acting
4 president, with the understanding that you are engaged
5 in a search, and will make a selection of president.

6 I am happy to have the resolution speak to
7 that point. But for purposes of identification to the
8 world, I thought that Alex's notion of having that
9 person be the president was appropriate.

10 MR. FORGER: I had the understanding that I
11 was the president for the time being, whatever the
12 right word was.

13 CHAIR EAKELEY: Pro tempore.

14 MR. MCCALPIN: Doug, I don't remember
15 precisely. But when we created what I call a job
16 description and it has a different term now for the
17 executive vice president, I believe we indicated that
18 the executive vice president would act in the absence
19 of a president. And it may be that the job description
20 of the executive vice president covers the situation.

21 MR. FORGER: I think that is likely so, Bill.
22 I think that it is in the absence of the president.

1 But I think that where a presidential term comes to an
2 end, I think that it would be far more desirable that
3 action be taken if need be to designate Martha as the
4 president during the search.

5 CHAIR EAKELEY: And that would be my strong
6 recommendation also. In that section of the agenda, I
7 am not sure whether there is an action item. But I
8 suspect that by the time that we get to a break, that
9 we can figure out in terms of bylaws and resolution on
10 executive vice president what we have to do to anoint
11 Martha by February 14th, and maybe figure out the way
12 to do it that does not unduly complicate the search,
13 but also authorizes Martha to act as president fully
14 empowered to act on behalf of the corporation.

15 Maybe I will put a period to that portion of
16 my report, but we will not forget John Erlenborn's very
17 important question. And thank you.

18 MS. BERGMARK: Thank you.

19 CHAIR EAKELEY: All right. Why don't we go
20 around the table.

21 Ernestine, would you like to start with
22 members' reports?

1 MS. WATLINGTON: Not at this time. There are
2 some problems that have to be addressed.

3 CHAIR EAKELEY: Edna?

4 MS. FAIRBANKS-WILLIAMS: Nothing at this time.

5 CHAIR EAKELEY: Maria Luisa?

6 MS. MERCADO: Not at this time.

7 CHAIR EAKELEY: Tom?

8 MR. SMEGAL: Happy New Year.

9 CHAIR EAKELEY: John?

10 MR. BRODERICK: I will pass.

11 CHAIR EAKELEY: LaVeeda?

12 MS. BATTLE: I will pass.

13 CHAIR EAKELEY: Bill McCalpin?

14 MR. MCCALPIN: I have a brief report which may
15 be in the nature of a social item. On Friday, I had a
16 call and a significant conversation with John Brooks,
17 who asked me to remember him to each member of this
18 Board as we met today. And he said that if from time
19 to time he has notice of a board meeting, he might be
20 delighted to sit in the audience and watch us agonize
21 over the problems that used to concern him.

22 I asked after his health. And he said that he

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1 was now sufficiently accustomed to his new hip. That a
2 week ago today he ventured on the tennis court with no
3 nil consequence.

4 CHAIR EAKELEY: A great report.

5 MR. MCCALPIN: He asked to be remembered to
6 all of you.

7 CHAIR EAKELEY: Victor, could we ask our Board
8 secretary to make sure that our directors emeriti
9 receive all notices of meetings and are included at
10 least as part of the audience for them, and indeed
11 given an opportunity to add or delete commas from the
12 deliberations of the operations and regulations
13 committee?

14 MR. FORTUNO: Certainly. I would be
15 delighted.

16 CHAIR EAKELEY: Thank you. Tom.

17 MR. SMEGAL: I am sorry, there was one thing
18 that I should have mentioned. The American Bar
19 Association's Board of Governors met in November, and
20 appropriated on an emergency basis to a committee of
21 the ABA, SCLPSR, the Standing Committee on Lawyer
22 Professional Service Responsibility, I think \$35,000,

1 to assist them in locating lawyers across the country
2 to represent pro bono the 200,000 or so youngsters who,
3 because of changes in the SSI regulations, may need
4 assistance in the appellate process.

5 So hopefully, that will relieve, to the extent
6 that it would have placed a burden on LSC programs, it
7 will relieve the programs from the having to
8 participate in that process.

9 CHAIR EAKELEY: All right.

10 Are there any other members' reports?

11 (No response.)

12 CHAIR EAKELEY: Next is the election of
13 officers of the Board. You will recall that the bylaws
14 provide for a specific meeting date for our annual
15 meeting later in the month of January. Although our
16 bylaws permit us the flexibility, as we have done here,
17 to have our annual meeting at another time within a
18 defined 30 day leeway.

19 So this is both our regular meeting and our
20 annual meeting. And at the annual meeting, it has been
21 our practice to elect the officers, that is to say the
22 chairman and the vice chair. And I throw that open for

1 discussion for the meeting.

2 M O T I O N

3 MS. WATLINGTON: I would not let anyone take
4 that from me, as I have always had the pleasure of
5 nominating Mr. Doug Eakeley as our continued chairman.

6 MR. ASKEW: I second that.

7 CHAIR EAKELEY: Thank you.

8 Are there any other nominations?

9 MS. MERCADO: I move the vote by acclamation.

10 MR. ASKEW: They cannot hear you back there.

11 MS. ROGERS: We are really having trouble
12 hearing back here.

13 CHAIR EAKELEY: Is there any amplification?

14 (Pause.)

15 CHAIR EAKELEY: I just thought that they went
16 dead when Maria moved by acclamation.

17 (Laughter.)

18 CHAIR EAKELEY: Do we have a technical person
19 in the back?

20 (Pause.)

21 CHAIR EAKELEY: All right. This is always
22 awkward, or annually awkward, but not perennially.

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1 My name was put in nomination. And Maria
2 Luisa moved by acclamation.

3 Is there a second?

4 MR. ASKEW: Second.

5 CHAIR EAKELEY: Is there any discussion?

6 (No response.)

7 CHAIR EAKELEY: All those in favor.

8 (Chorus of ayes.)

9 CHAIR EAKELEY: All those opposed.

10 (No response.)

11 CHAIR EAKELEY: Thank you very much.

12 Nominations for vice chair. Nancy.

13 MS. ROGERS: I would like to nominate John
14 Erlenborn for vice chair. He brings us a career of
15 distinguished service in Congress as well as
16 distinguished service on behalf of equal access to
17 justice.

18 MR. MCCALPIN: Second.

19 CHAIR EAKELEY: Mr. McCalpin.

20 Are there any other nominations?

21 (No response.)

22

M O T I O N

1
2 MS. BATTLE: I move that the nominations be
3 closed.

4 MS. MERCADO: Second.

5 CHAIR EAKELEY: Ms. Battle has moved, and Ms.
6 Mercado has seconded, the motion to close the
7 nominations for vice chair.

8 Is there any discussion on that motion?

9 (No response.)

10 CHAIR EAKELEY: All those in favor of closing
11 the nomination.

12 (Chorus of ayes.)

13 CHAIR EAKELEY: All those opposed.

14 (No response.)

15 CHAIR EAKELEY: All those in favor of Mr.
16 Erlenborn's appointment or election as vice chair by
17 acclamation.

18 (Chorus of ayes.)

19 CHAIR EAKELEY: All those opposed.

20 (No response.)

21 CHAIR EAKELEY: The ayes have it. John,
22 congratulations.

1 MR. ERLENBORN: Thank you. |

2 CHAIR EAKELEY: Victor, remind me, are there
3 other officers that we need to deal with at our annual
4 meeting?

5 MS. MERCADO: The secretary.

6 CHAIR EAKELEY: The secretary. I guess that
7 we should reappoint Victor Fortuno as secretary, if
8 that is the wish of the Board.

9 M O T I O N

10 MR. ERLENBORN: So moved.

11 MS. MERCADO: Second.

12 CHAIR EAKELEY: Mr. Erlenborn has nominated
13 Mr. Fortuno as secretary, and Ms. Mercado has seconded.

14 Is there any discussion?

15 (No response.)

16 CHAIR EAKELEY: All those in favor.

17 (Chorus of ayes.)

18 CHAIR EAKELEY: All those opposed.

19 (No response.)

20 MR. MCCALPIN: Do we have a treasurer?

21 CHAIR EAKELEY: We do not have a treasurer.
22 We have, I think, just the committee chairs. And I

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1 would propose that we continue with the committee
2 chairs and membership as currently constituted.
3 Although if there are changes that anyone would like to
4 make or recommendations for change, this would be a
5 good moment to pause and discuss that.

6 MR. FORTUNO: Just if I may, for the record,
7 Victor Fortuno, I believe that David Richardson serves
8 as comptroller and treasurer.

9 CHAIR EAKELEY: All right. Do our bylaws
10 require that --

11 MR. FORTUNO: No. He is an officer of the
12 corporation, not an officer of the Board. And you no
13 more have to act on Mr. Richardson's position than you
14 do Martha's, for example.

15 CHAIR EAKELEY: All right. Just back to
16 committee composition.

17 Is everyone comfortable with current committee
18 composition and leadership?

19 (No response.)

20 CHAIR EAKELEY: Then I propose that we will
21 ask our committees to continue to serve with the chairs
22 as currently in position. I would also ask Mr.

1 McCalpin to continue with his diligence service as OIG
2 liaison.

3 I think that should conclude before the
4 Board's annual meeting unless, Victor, I am missing
5 something.

6 MR. FORTUNO: No, you are not. But I would
7 add a reminder that the annual disclosure statements
8 are due within 30 days of today.

9 CHAIR EAKELEY: All right. Thank you.

10 MS. BATTLE: Do you have copies for us?

11 MR. FORTUNO: Yes, I do. I would be happy to
12 provide them.

13 CHAIR EAKELEY: Non-fax copies would be
14 helpful.

15 MR. FORTUNO: Will do. I will have those
16 ready by lunch time.

17 CHAIR EAKELEY: Thank you. All right.

18 (Pause.)

19 CHAIR EAKELEY: If you cannot hear us back
20 there, raise a hand from time to time. And we will try
21 not to take it personally, and try and speak into the
22 microphone and be reminded of that.

1 MS. MERCADO: We will ask Kathleen to tell us
2 if she can hear us.

3 CHAIR EAKELEY: Yes. All right, Kathleen.
4 You are nominated to be the volume monitor, since you
5 are in the back row.

6 All right. Alex Forger, the president's
7 report.

8 MR. FORGER: Thank you, Mr. Chairman.
9 Victor, do we have more chairs for people to
10 come in, please?

11 MR. FORTUNO: Yes.

12 MR. FORGER: You can bring them up here,
13 Victor. I said that you can even put chairs around
14 over here, I think.

15 MR. FORTUNO: Okay. We are probably going to
16 need them.

17 MR. FORGER: Thank you, Mr. Chairman. Apropos
18 of your early remarks about my settling on a date with
19 you, it is hard to believe that this is my fourth
20 January here. As I arrived, I thought that it would be
21 one January, but it has turned into four. And I must
22 say that this January is not bad from the point of view

1 of the weather. It is very acceptable.

2 I think that I sort of settled on February
3 14th, aside from the romantic aspects of it. That will
4 be about five months from the time that I alerted Doug
5 to the fact that I thought that it would be appropriate
6 for me to head back to my natural habitat.

7 And I think that once one has announced an
8 intention of leave, there does become some ambiguity as
9 to dealing from the point of view of the corporation.
10 So I think that it is entirely appropriate that we make
11 the designation that has been made this morning. And
12 obviously, there is no finer choice, or a more natural
13 one, or one better qualified to fill that role than
14 Martha.

15 At any moment, she can fill those
16 responsibilities with great ease, and with great
17 efficiency and expertise. So you will be in very good
18 hands. And I think that is a deserved and earned
19 recognition, and one that will serve the corporation
20 well.

21 I am, of course, indebted to Martha for these
22 three-plus years of making life more effective for the

1 corporation, and certainly for making life much easier
2 for me.

3 And I thank Clint Lyons for all of that early
4 training that he imported to Martha, that she now has
5 in great measure. Welcome, Clint, it is nice to see
6 you here.

7 On the more mundane aspects of the
8 presidential report, you will hear from various
9 committees, I am sure, so I will not seek to expand on
10 that that will be a subject of committee reports,
11 except to outline briefly from the money point of view.

12 When the Board was last together, we had
13 sought a budget mark of \$396 million for the
14 corporation. The rationale for that being that that
15 was a 10 percent reduction of our \$440 million at an
16 earlier time.

17 OMB suggested that \$305 million was an
18 appropriate figure for us, and gave us the right to
19 appeal that judgment, which we did, on a variety of
20 bases, arguing that it was important that the
21 administration put forth a figure substantially in
22 excess of \$305 million. That would be the lowest

1 figure from the administration since this Board has
2 been in office.

3 And thus, OMB has indicated that it will in
4 its budget when it is formalized request \$340 million
5 for the corporation, which is the amount of its budget
6 request last year.

7 We are hopeful that negotiations between the
8 administration and Congress will result in some
9 bipartisan agreement that will assure us of receiving
10 that amount. It would not take us anywhere near the
11 amount required to discharge our mission, even as it
12 was when we first gathered three years ago. But
13 certainly, it would be a step back in the right
14 direction, with the sense of having gone through the
15 last two years of debate and controversy, that we may
16 now have a period of stability when we can build back.
17 At least, that is our hope, if not our expectation.

18 As part of that budget request, we have made a
19 special line request for \$12 million to be devoted to
20 technology. And I think that you will recall two years
21 ago that we had sought a line for technology, but
22 Congress did not approve that. I think that the case

1 is as strong and perhaps stronger today for the need of
2 our grantees to introduce the elements of technology
3 that are available in order that one may reach a
4 greater number of clients in as effective a manner, and
5 do in effect more with less.

6 So I think that the age of technology is here,
7 and that it is very important that we be able to assist
8 the field in that regard. Many of our grantees are at
9 a rather primitive and rudimentary stage with respect
10 to the use of hot lines, centralized intake, research,
11 case management, financial controls, and the like.

12 So I think that is a very important
13 initiative. We hope that Congress will be receptive to
14 that. We can probably do more with those \$12 million
15 than virtually any other \$12 million I could think of.
16 We would still need to develop the rationale and the
17 method of applying it, the inducements to the field,
18 and all other aspects of how one would utilize that
19 money in the most productive way, and in a way designed
20 to generate the best result for the corporation and the
21 clients.

22 Related to technology, as you know, the

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1 Inspector General has an initiative in respect to
2 domestic violence. Yes, we have gone forward in some
3 measure with that in our own method of emphasizing not
4 the pro se aspect of the delivery, but rather utilizing
5 it in the context of the legal service provider.

6 And in conjunction with the Commission on
7 Domestic Violence of the American Bar Association, and
8 I have been a member of that commission, together and
9 in corroboration with the Domestic Violence Commission,
10 as well as with the Department of Justice, we expect to
11 go forward with a proposal that will embrace technology
12 within the context of the delivery of legal service,
13 with its emphasis on domestic violence. And that will
14 evolve shortly.

15 In terms of the regulations, as you will hear
16 from Ops and Regs, they have done a wonderful job of
17 going through some very important and significant
18 regulations with a continuing dialogue with
19 congressional staff with respect to those.

20 As you have been aware, we have the transition
21 cases from which we were supposed to be extracted by
22 August 1. We have kept Congress informed of our

1 progress in working out of the cases that are no longer
2 available to the staff, to the grantees. And indeed,
3 out of 640 class actions, we have succeeded through a
4 variety of means of ending all of those that were in
5 violation of the statute.

6 I think that while we will hear perhaps later
7 with respect to one element of litigation, I think that
8 the field now fully understands, as I am sure that
9 Congress does, that the corporation intends to enforce
10 the regulations notwithstanding that there are many
11 hard cases that are in the course of that, and there
12 are some compelling circumstances that would impel us
13 to seek to represent individuals who are part of the
14 class.

15 But nonetheless, we need to be faithful to the
16 law and to the regulations. And thus, I think that the
17 field understands that the corporation does intend and
18 will enforce those restrictions, even to the point of
19 using such sanctions as we have, to wit refusal to have
20 such a grantee eligible for funding in the future.

21 So I think that that has been a salutary
22 consequence. Although the corporation did not seek to

1 impose all of these restrictions, nonetheless we need
2 to impose the sanctions in the course of that.

3 I think that the other major piece of activity
4 that should be reported on is the issue of competition.
5 And that has been a job of such magnitude, that it is
6 hard to describe the numbers of people and the amount
7 of effort that has gone into implementing the
8 congressional mandate, that we go into a system of
9 competition.

10 Certainly, it is brand new for the field. And
11 what it has replaced is what some have characterized as
12 an entitlement program. It has replaced the
13 presumptive refunding, which is a change for this
14 corporation and its grantees. And that will take some
15 while for that to be fully in place, and for our
16 grantees to fully comprehend the consequences of
17 competition.

18 As you know, the law states that there can be
19 no preference to an existing program. That is quite
20 different from the only other management tool available
21 to the corporation in the past, which has been
22 defunding. And in order to defund the program, one had

1 to find a significant failure to comply with the law or
2 the regs, or that someone could do the task better.

3 But then there are six pages of regulations
4 replete with pleadings, depositions, affidavits,
5 memoranda, hearings and the like before one could
6 achieve that.

7 As we had thought of invoking any of those
8 sanctions during the course of enforcement of
9 regulations, it became evident to us that by the time
10 that that ran its course that the year would long since
11 have ended. So that is not an appropriate enforcement
12 tool that we had. The best one could do would be in
13 respect of a future funding grant.

14 I think that we are expecting Congressman Fox
15 to address us in respect to one grant competition. I
16 think, Mr. Chair, that I would defer any further
17 comments that I had in respect to the competition
18 process until that time.

19 CHAIR EAKELEY: Is that it for your report?

20 MR. FORGER: Yes, sir.

21 CHAIR EAKELEY: I do not know whether -- even
22 though you deferred it, may I ask some questions and

1 make a recommendation or two?

2 MR. FORGER: It is your board. I am your
3 servant, sir.

4 CHAIR EAKELEY: And we are all indebted to you
5 as a consequence of that.

6 The state of the Legal Services state as we
7 enter the New Year is one of diminished resources, new
8 restrictions, less security, and less certainty about
9 the future. And we have just gone through an enormous
10 effort to implement competition, as well as to
11 implement this entire new array of restrictions, some
12 of which have required grantees to withdraw from the
13 grant process as a consequence of the restrictions.

14 And while we cannot give preference to
15 grantees in the application process, it seems to me
16 that a very part of our job remains providing support,
17 technical assistance, and the means for improving the
18 delivery and cost effectiveness of our existing
19 grantees.

20 And I am concerned that given the reduction in
21 resources, and the preoccupation necessarily imposed by
22 the new mandate from the Congress to implement

1 competition, that we do not have enough resources
2 available for the support side, for evaluation,
3 support, and technical assistance that would help
4 existing grantees improve on their delivery, and the
5 cost effectiveness of that delivery.

6 It is also close to a year, and we have had an
7 opportunity to implement competition. But I think that
8 it is also perhaps an appropriate moment to review that
9 program, and how it is functioning, the process, the
10 criteria, and even the procedures for review, or
11 mediation, or whatever. But I think that we can get
12 back to that.

13 Let me just welcome Congressman Fox. And we
14 will just interrupt everything, and ask you to come up
15 and join us at the table, if you would. I am sorry for
16 the set-up, but if you move around.

17 We have had the pleasure of being addressed by
18 Mr. Larry Fox before up in Boston, I think it was, a
19 couple of years ago, prior to ascending to the Chair of
20 the ABA Litigation Section, from whence you have gone
21 from that. We have never had a chance formally to
22 greet or meet Congressman Fox, or to thank him for the

1 stellar leadership on behalf of equal justice for all
2 that he demonstrated under extreme duress this past
3 summer.

4 But we realize the awkwardness of the
5 situation that has brought you here today. But we also
6 want to recognize your support and leadership, because
7 we really might not be here had it not been for that
8 support and leadership.

9 So welcome. The chair is yours, and we are
10 all yours.

11 CONGRESSMAN FOX: Thank you, Doug. I
12 appreciate the Board allowing me the opportunity to
13 address you this morning. I know that you have a very
14 busy agenda, but I do appreciate the opportunity to be
15 here today, and address you on an important issue.

16 With me today, by the way, is Harvey Strauss,
17 executive director of the Montgomery County Legal Aid
18 Office, and the president of the Montgomery County
19 Legal Services, Ted Thompson. So if they could just
20 have a few moments to speak as well. And the current
21 chairman of the litigation division of the ABA, who
22 shares the same last name. He is my younger brother.

1 CHAIR EAKELEY: Let me just ask Mr. Zorzao or
2 Mr. Quatrevaux, I know that we cannot turn this off.
3 We have already tried that.

4 Could we possibly just remove the monitor from
5 the table for the moment? Just put it on the stand
6 underneath there.

7 (Pause.)

8 CHAIR EAKELEY: If we could move one more
9 chair.

10 CONGRESSMAN FOX: So Mr. Thompson can join us.

11 CHAIR EAKELEY: You are witness to our
12 downsizing.

13 CONGRESSMAN FOX: The message received. We
14 are working on an increase. We just need a wing and a
15 prayer, and a few other members to either be in the
16 room or out of the room, depending on our count.

17 I want you to know that my involvement with
18 Legal Services really comes with the fact that when I
19 was with the General Assembly of Pennsylvania that I
20 had reason to call on Mr. Strauss, to my left, who was
21 then and still is the working head of the office. And
22 it is because of that fine service that his attorneys

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1 in the office and the volunteers performed that gave me
2 firsthand experience of how important Legal Services
3 is.

4 And as far as I am concerned, this is a role
5 model office, because of the work that they have been
6 doing. I think that they provide the best legal
7 services of any in the whole country.

8 Beyond the legal services they provide, they
9 have 200 volunteers. They have four outreach offices
10 to the poor. They have educational programs to youth
11 at risk. And as well, meeting the needs of senior
12 citizens and others in the community. So they have
13 gone beyond the normal duties that you might connect
14 with a county legal aid office.

15 And in addition to the two hundred volunteers,
16 which I think is remarkable, they also have 50 percent
17 of their operating funds come from private sources that
18 they raise from private donations, as well as the Bar
19 Association, and as well the county commissioners.

20 So my concern, of course, is that if they are
21 not able to continue. I know firsthand that the county
22 contribution will not be there, nor will the Bar

1 Association.

2 I think that it is important that we keep
3 addressing the needs of the indigent. Their volunteer
4 support must continue. They have served the indigent
5 population of Montgomery County for over 25 years.

6 And I think that the most important message
7 that I can give you today is that those of you who are
8 in Legal Services, each of you are really the heroes
9 and heroines, I am glad to be an instrument and to be
10 an advocate, to talk about why you need to be funded.

11 But let me tell you that you are the heroes
12 and heroines, because you have the passion factor. And
13 no private firm, for profit or otherwise, that has not
14 been involved heretofore as a full-time entity doing
15 legal services, can have that passion factor, what I
16 call the capacity to care.

17 A lot of people when they left law school may
18 have worked for a couple of years in legal services,
19 but how many Harvey Strausses are there? I say that
20 there are not too many. And the lawyers who have
21 worked for him at one-tenth of what they can be paid
22 for in the private sector do it because they are making

1 a difference. And the fulfillment they get in non-
2 compensation in money form but in a fulfillment form
3 inside knowing that they have made a difference in this
4 world is what it is all about.

5 And I must tell you that I am sorry that we
6 had the regulations in the Congress that said that we
7 have to have this competing. Maybe we did not intend
8 the regulations to have this kind of result.

9 So I actually come to you with -- some of this
10 is after discovered evidence, letting you know about
11 the extra services that this particular office
12 performs. And to let you know about the passion
13 factor, and letting you know about the extra things
14 that this particular legal aid office has done.

15 And maybe we did not do a good enough job in
16 promoting and marketing what we do. Maybe we just did
17 too damn good of a job of being great lawyers, and not
18 promoting ourselves enough. I do not think that the
19 legal profession does enough to talk about what we do
20 do right. We let the media in many respects and those
21 others less enlightened than me in government take
22 shots at Legal Services.

1 Well, I am here to permanently promote you.
2 But I also need to make sure that my own local office,
3 which has done the best job possible that got me
4 involved originally, is not overlooked.

5 I want to continue being there again. But I
6 must tell you that I know that there were concerns
7 about the fact that they may not have been computerized
8 yet, or have done the phone intake procedures.

9 And I have a letter here from Harvey Strauss
10 to me saying, "This letter will certify," to me, John
11 Fox, "that we will start a telephone intake system and
12 enhance our program's computerization in 1997. We
13 intend doing this with Legal Services Corporation
14 funding, and the help of our office, and other funders.
15 As I mentioned to you previously, we had already
16 assured Legal Services Corporation staff at the time of
17 their on site visit." But I want to underscore it and
18 present it as Exhibit A on behalf of this appeal.

19 Because I really believe that they may not
20 have marketed themselves as well as they should have.
21 But I do not know of any agency that I have dealt with
22 as a county commissioner, or as a state representative,

1 or now as congressman, who have been more effective for
2 the people and has given a better name to the legal
3 profession, especially in serving those who are one
4 paycheck away from total poverty, one legal case away
5 from losing their home, or one legal case away from
6 having their family break up.

7 And so they are the safety net, and you are
8 the safety net of this country. So I want to have you
9 please in the most fervent terms I can give you to
10 please look into further as a result of our being here
11 today, to further review the matter, to give us a
12 second look.

13 And that is why we are here. And I would not
14 have all of these high powered people with me if they
15 did not believe as strongly as I do that we need to
16 make sure that this is further undertaken and reviewed.

17 So I would like to turn this over first to
18 Larry Fox, from the American Bar Association.

19 MR. FOX: As Tom knows, I do not speak for the
20 American Bar Association.

21 CHAIR EAKELEY: No. But on the other hand,
22 you are among the leaders of the bar, who have used

1 your leadership position to promote equal access to
2 justice. And probably more so than any other member of
3 the Litigation Section or chair of the Litigation
4 Section, you have converted that section into a section
5 into a section of advocates for the poor. And again,
6 we are indebted to you.

7 MR. FOX: You are correct that it was in
8 Boston. And I think that I even said at the time that
9 the reason that I was there was because I was one of
10 those people who had only been in the Legal Services
11 program three or four years, and then I went into
12 private practice. And I spent the rest of my career
13 salving my conscience.

14 One way that I do it is by working very hard
15 to save the Legal Services Corporation. Unlike Harvey,
16 I am a part-timer at it.

17 The second way and the way that I promised you
18 when I came to Boston that I would do it would be to
19 get the Legal Services Corporation and its lawyers
20 involved with the ABA. and we did that. We brought 50
21 Legal Services lawyers all expenses paid to Miami,
22 Florida. It turns out that it was exactly a year ago

1 tomorrow. And we now have a permanent presence in our
2 ABA section on litigation leadership of Legal Services
3 lawyers.

4 And as you know, what we did to help save
5 Legal Services is we beat John up very badly, and
6 reminded him that he would not come to Thanksgiving
7 dinner, if he did not get to help us in this way.

8 The point that I want to emphasize, and it is
9 a point that maybe has been lost, or maybe it is
10 recognized, and maybe the problem is Congress, but I do
11 not think it is, is, this cooperation between Legal
12 Services entities and the bar.

13 The only way that Legal Services programs and
14 the funding that they presently have can possibly be
15 effective is not stand alone operations, not funded
16 solely by this agency, but because they leverage their
17 money, and they leverage their people.

18 And I cannot imagine that I am ever going to
19 be able to have a LAP program, which you know all
20 about, or a Montgomery County Bar Association program
21 that brings volunteer lawyers, that staffs a whole
22 office, to help a for-profit entity that is allegedly

1 delivering legal services to the poor. It will not
2 work. We will not go to bat.

3 If this group calls up the LAP program and
4 says that they have got a problem, we are not going to
5 work with that kind of a group. That is not who we are
6 dealing with. We are interested in pro bono, public
7 service, not for profit, committed agencies.

8 And the Bar Association is prepared to work
9 with those, and has worked with those. And there is no
10 better example than this particular Bar Association and
11 this particular agency. They have two hundred
12 volunteers. They would not have one of their offices,
13 if it was not for volunteers.

14 And I submit that in the calculus that goes
15 into these decisions, that that has to be considered
16 not a minor consideration, but the most important
17 consideration. The Legal Services money here is but
18 one quarter of their budget.

19 And what we going to do? Is the Montgomery
20 County Bar Association going to fund a for profit
21 entity that is going to be delivering legal services by
22 telephone? I do not believe so. I cannot imagine it.

1 We will do our own thing independently, and we will
2 have duplication. And we will end up with not
3 delivering the services in the efficient way that they
4 should be.

5 This is a model agency, if not a model
6 advocate for itself. And I urge you to reconsider.

7 CONGRESSMAN FOX: Thank you, Mr. Fox, Jr.

8 I would like to introduce now Harvey Strauss
9 to say a few words on behalf of the agency, of which he
10 is executive director.

11 MR. STRAUSS: Thank you.

12 First of all, I appreciate you allowing us to
13 come today. I want to thank Jon on the record. I
14 assume that Jon may be the only member of Congress now
15 or in the past who has ever actually been a member of a
16 local Legal Services board of directors.

17 Jon has been a supporter of our program since
18 he was a member of the Pennsylvania general assembly,
19 and when he was a county commissioner, when he was a
20 member of our board, and now as a United States
21 Congressman.

22 I thank him. And I thank Larry Fox. And I

1 want to thank Ted Thompson, who is a private
2 practitioner, sole practitioner, or an ambler in
3 Montgomery County, Pennsylvania. And Ted has been the
4 president of our board I think for at least the past
5 ten years.

6 I will try and be brief. Obviously, when we
7 received the results of this competitive bid process,
8 we were devastated. Our program was devastated and our
9 community. We felt that we submitted a good proposal.
10 And we felt that we reflected a good competent quality
11 local Legal Services program that is the type of
12 program that you all and the people in Harrisburg, and
13 the people in Morristown, Montgomery County, and the
14 people who support us and fund us want to have.

15 We have a dedicated staff and experienced. We
16 have a board of directors, 24 people, 60 percent
17 appointed by our Bar Association. Our bar association
18 is the third largest bar in the Commonwealth of
19 Pennsylvania. Our board of directors reflect all
20 aspects of the community. We have representation from
21 the African-American community, the Hispanic community,
22 the senior citizens, people who work with children and

1 with young people.

2 We have a program that goes a full range of
3 basic civil legal services to the poor. We are a
4 program that raises more than 50 percent of its budget
5 locally. Our budget is about \$820,000. We receive
6 \$300,000 a year from our county commissioners. We
7 receive \$40,000 from our bar association. We receive
8 another \$40,000 from lawyers and law firms. The legal
9 community contributes about \$100,000 a year to our
10 program.

11 While the results of the competitive bid
12 process will be devastating to our program, we will
13 continue. We still have 77 percent of our funds. We
14 still have a desire and responsibility to our clients
15 to continue to represent them. They expect us to
16 represent them. We will do our best to continue.

17 But we think that we are a unique program. We
18 have over two hundred members of the private bar who
19 volunteer. They do divorces for us, bankruptcies,
20 conflicts. They staff outreach offices.

21 We have four or five volunteer retired
22 attorneys who carry case loads for us in our main

1 office. These are prominent attorneys. A former
2 general counsel for a bank, a former labor counsel for
3 a telephone company.

4 We hope that all of these things are
5 indicative of the type of services that we provide. We
6 have an experienced, dedicated, compassionate staff.
7 And I believe that we have an unblemished record of
8 providing quality legal services to the poor, both with
9 the Legal Services Corporation and with our other
10 funders.

11 We use an integrated approach in serving our
12 clients. Many of our clients, and you know what type
13 of people our clients are, are often uneducated and
14 under educated, people who are afraid, people who are
15 terrified to come to a county seat, or even to a law
16 office, or even to a legal aid office sometimes.

17 We work with numerous and hundreds of human
18 service providers, social service providers, to address
19 the problems of our client. If it is a legal problem,
20 we address it. If it is somebody who needs housing,
21 who needs food, who needs to get their kids in school,
22 we work with other agencies and government offices to

1 try to address their problem.

2 We do not say sorry, it is not a legal
3 problem, we cannot help you. We want to do something.
4 We want them to leave one of our offices feeling like
5 their problem has been addressed.

6 I will not take much longer. I appreciate it.
7 We are shocked by the results. We participated in it.
8 If the proposal was weak or lacking, it is my
9 responsibility. If I did not sell the program, that is
10 my responsibility. If I did not reflect what a
11 terrific program we have with unique local support,
12 that is my responsibility.

13 But the ultimate losers in this are going to
14 be the clients. They are going to be the poor people
15 in Montgomery County. They are the ones who need this
16 service. They are the ones who want the service. They
17 are the ones who I believe we provided a quality legal
18 service to for so many years.

19 I am not sure what else to say, other than I
20 appreciate you listening to me. I greatly appreciate
21 the help of Larry, and Jon Fox, and Ted Thompson. If
22 there are other things that anybody needs to know or

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1 would like produced, we will do our best to produce
2 additional information. Thank you all.

3 CHAIR EAKELEY: Thank you, Harvey.

4 CONGRESSMAN FOX: Ted Thompson, president of
5 Legal Services of Montgomery County.

6 MR. THOMPSON: Good morning, ladies and
7 gentlemen.

8 As Jon said earlier, he would not be here
9 unless he had some contact with Harvey, and thus his
10 interest sparked. I would not be here if it were not
11 for Jon. Tracing that back to old Penn State. Jon Fox
12 got me involved in student government. Jon Fox got me
13 interested in serving.

14 I am a sole practitioner with a small office.
15 I have been president of the board for more than 10
16 years, pushing near 15. And I have my own private
17 practice, general practice. This is what I enjoy
18 doing. I know how it feels to sit at that microphone,
19 because I do it every first or second Wednesday of the
20 month.

21 CHAIR EAKELEY: I was going to offer to trade
22 places.

1 MR. THOMPSON: And I know how it is to hear
2 from the audience with regard to an issue that is
3 before the board. And you want to get everybody back
4 on track, and we make certain determinations and
5 decisions. Very well.

6 As Harvey said, and as John has said,
7 sometimes we do not sell ourselves well. We just do.
8 That is the most important thing to us. When someone
9 calls on our line and wants to come in, has a problem,
10 gets beat up, getting evicted, we have the staff to
11 perform.

12 And we have done that for years, since being
13 funded by you and the Commonwealth of Pennsylvania, but
14 even prior. It is a fully volunteer program. This is
15 what we do. We have our meetings, and we talk about
16 various budget things.

17 And it is amazing that I am here with you
18 today, because I have been getting correspondence from
19 you for oh so long inviting me to meetings. Maybe I
20 will come from now on. Because it seems that you
21 sometimes miss the mark. What is really going on out
22 there in the trenches?

1 It is not fun. Either as a sole practitioner
2 sitting on the board volunteering in conflict
3 situations. It is hard work, but we enjoy it. When
4 John and I used to take over Old Maine at Penn State in
5 the student revolution days, we enjoyed speaking up and
6 saying what was right and what was wrong. We enjoyed
7 approaching the presidents of the universities and
8 saying did you think about this.

9 We are saying did you think about this?
10 Because if you go the approach and have the impact that
11 this Step 1 will have, there will be a Step 2 and a
12 Step 3. And will Legal Services become the HMO of the
13 future where there is going to be the referring lawyer,
14 so it does not go out to the specialty, and so that the
15 funds can stay in-house with that referring lawyer.

16 We provide a service. And I have already
17 expressed my opinions with regard to competitive
18 bidding. You are not remodeling the bathroom. You are
19 actually performing brain surgery ongoing. You do not
20 change midstream. You remodel a bathroom once. With
21 brain surgery, you do not want the hands to switch,
22 because it is the end of the fiscal year. It is a

1 service that we provide, not a commodity, not a bottom
2 line. The bottom line are the people.

3 And at this particular point, I am not sure if
4 they are truly being recognized, and if we are truly
5 providing them with a service. If we over-technicalize
6 ourselves. Sure, we can do the 800 numbers, and get
7 the computer up to great speed. But it is the people
8 to people that is what we are all about.

9 I appreciate the opportunity to have these
10 words with you. But I just want you to keep in mind
11 that this is Legal Services Corporation. That is why
12 you are here, and that is why we are here. And we hope
13 that that mission can be continued.

14 CONGRESSMAN FOX: I thank the Board for its
15 indulgence. I have just one final person to speak, if
16 I could. Marcus Williams. He is the director of the
17 Pennsylvania Legal Services. Marcus, if you could say
18 a few words.

19 MR. MARCUS: Good morning. I know many of
20 you, and it is great to see you again. I just wanted
21 to tell you that from the Commonwealth of
22 Pennsylvania's perspective, the 67-county program in

1 Pennsylvania, Montgomery County Legal Services and
2 Harvey Strauss, they do a terrific and effective job
3 there.

4 And at some point, we have to analyze this
5 issue about no preference to those programs that have
6 been providing services. Who pays for the learning
7 curve? The clients do. While you are awarding
8 contracts to these private for profit groups, we have
9 to understand that there is a lack of the commitment
10 and the dedication that Harvey and others have
11 exhibited throughout their lives, their legal careers.

12 And I just want to ask you when you evaluate
13 the merits, to start considering that. That counts.
14 Your history of service, and your history of dedication
15 counts. And I want you to understand that you are
16 talking about brinkmanship and paperwork, and not
17 really actual service to clients. And that is what is
18 important.

19 And I would just hope that as you engage in
20 negotiations that you consider that. And in the back
21 of your minds, if you discover new evidence that they
22 cannot deliver it, let's make a change. Be courageous

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1 enough to go in and make a change, and award the
2 contract back to Montgomery County. Thank you.

3 CONGRESSMAN FOX: Thank you very much, Mr.
4 President.

5 I just wanted to conclude by saying to the
6 Board how much we appreciate the opportunity to be in
7 front of you today. We know that the job is difficult.
8 But we hope that we have given you enough after
9 discovered evidence so to speak for the Board to allow
10 us to have a second look.

11 I know of my good friendship with Alexander
12 Forger and others on the Board who have given me a
13 chance to speak and work with the ABA, and as well work
14 with Legal Services. That we all want the best result.
15 The nonprofits like this, they go the extra mile. No
16 one else will. They provide the linkages to social
17 services, and making sure that the whole person is in
18 fact lifted up.

19 And finally, what you do is a profile in
20 perserverance and the passion of serving the legal
21 needs of the poor. And we are a microcosm of you. We
22 just want to make sure that both ends are connected,

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1 and that the whole family stays together. God bless
2 you all.

3 CHAIR EAKELEY: Thank you for your eloquence
4 and your effective presentation.

5 CONGRESSMAN FOX: We do have a handout for
6 you.

7 CHAIR EAKELEY: Just permit me a reflection.
8 Obviously, we care about the mission of the
9 corporation. We care about our grantees. We care
10 about our management. And we care about your support.

11 We have got a system of competition that was
12 imposed upon us that we did not seek, which was
13 literally crammed down our throats in a timetable that
14 even with resources that we had before they were cut by
15 35 percent would have been overwhelming.

16 We have unfortunately in the statute an
17 explicit directive that no preference can be given to
18 that service, and that passion, and that dedication in
19 effect. And we have an application process that
20 involves an outside evaluation committee, but is only
21 as good as the criteria, and the process, and the
22 procedure at any given moment in time can provide.

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1 Ironically in a sense, the Board took itself
2 out of a direct appellate review posture in
3 promulgating a regulation that vested the president
4 with the final decision making authority.

5 Having said that, I can assure you that this
6 is something that has been visited and revisited, and
7 will be revisited, again not only for this grant
8 period. I think that this issue coming to us now has
9 also generated a need for the Board and for management
10 to review the entire competition grant system, as we
11 now have it in place, to see the extent to which we
12 need to go back and revisit the criteria, or the
13 process, or the lack or right of appeal, or mediation,
14 or something else that makes sure that we do not make
15 mistakes along the way, however inadvertently.

16 And yet we are confronted with the situation
17 where, as you know, we have an evaluation committee
18 that was headed by someone who spent his lifetime
19 involved in Legal Services also making one
20 recommendation, and coming out with obviously a result
21 that is not a happy one for all concerned.

22 But I can assure you that we are here to do

1 our best to support this program at its best. I heard
2 something attributed to Mr. Strauss, but I think
3 implicitly in what he said today that you will be back
4 again if this does not work out this way.

5 MR. STRAUSS: We will be back. I hope that
6 you will still look at the issue.

7 CHAIR EAKELEY: What we are going to do is
8 look at the issue.

9 MR. STRAUSS: Our program certainly will not
10 be in the same position next year as it is this year.

11 CHAIR EAKELEY: I know what.

12 MR. STRAUSS: We owe it to our clients to
13 continue.

14 CHAIR EAKELEY: I hope you understand the
15 situation that we are in, and our intention to do the
16 best we can in that situation. And I also appreciate
17 the extra effort that it has taken for all of you to
18 come here. And we just want to make sure that we move
19 into the future together.

20 CONGRESSMAN FOX: I understood what you said.
21 And I hope that it is in the spirit of cooperation and
22 assistance that somehow the Board could have under

1 direction a second look for the reasons raised, and
2 others that you may so identify.

3 Because even though Harvey says he will be
4 back, he may be so crippled that there may be no
5 program. Because, frankly, much of the funding sources
6 that he has will not be there again. And many of the
7 volunteers that he has may not come back again. And
8 unfortunately, for all of us sitting here, they will
9 not go to a for profit law firm or any other entity
10 different than this one. Because even if it is not the
11 criteria, it is built up over time.

12 And maybe we need to change the regulations of
13 the Congress. I would like to do that, and I will work
14 with you on that. But I need your help making sure
15 that you give a second look at this agency, which is a
16 model Legal Services agency patterned on this model
17 board.

18 CHAIR EAKELEY: Alex, did you want to say
19 anything?

20 MR. FORGER: Well, I certainly appreciate Jon
21 Fox, and Larry, and the representatives of Montgomery
22 Legal Services for being here. I have nothing but the

1 highest regard for Jon Fox, Congressman Fox, as he
2 knows. He was magnificent and heroic in the battle of
3 Legal Services in this 104th Congress. He was willing
4 to swim upstream. He was willing to do the
5 unconventional. He was willing to take the risk. And
6 he did that with remarkable effect.

7 So if this decision had been do you like
8 Congressman Fox or don't you, there is no issue as to
9 what the result would have been. Alas, that was not
10 part of the decision-making process.

11 The decision was made by the president. I
12 feel somewhat uncomfortable of being the guy that
13 destroys Legal Services for poor people in Montgomery
14 County, if that is Harvey Strauss' view that they are
15 the losers by this decision.

16 Needless to say, having spent many years in
17 the arena of Legal Services, I would dislike having my
18 last act be one that destroys something. That truly
19 was not my intent, nor do I think that it is a
20 necessary consequence thereof of the decision that is
21 made.

22 And I am sure that your organization will

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1 continue to work diligently on behalf of those clients
2 who are innumerable out there who need our support and
3 assistance.

4 One point of clarification. The process that
5 is in place lodges the final decision with the
6 president of the corporation. In terms of changing
7 that position, I would not want you to leave with the
8 impression that at least under the present state of law
9 and regulations that that would be changed by the
10 Board.

11 Much as we may all want to review the process,
12 I think that probably would not occur in respect to
13 this decision. Although you must know that we need to
14 complete the process, and that there are issues
15 remaining to resolve with respect to the designated
16 grantee. And it may be that that grantee bid for a
17 number of counties. And it may be that it will
18 determine that it cannot take on simply one or two
19 counties, in which event it will certainly be a
20 revisiting of this issue.

21 I guess the process requires certain criteria
22 to be taken into consideration. And those criteria are

1 basically a knowledge of issues affecting poor people.
2 And secondly, the ability demonstrated of cost
3 effective delivery of high quality legal service. It
4 also, as has been stated, states there can be no
5 preference given to an existing program.

6 The corporation has lived for some 20 years
7 with a process for defunding. And that requires a long
8 procedure of affidavits, depositions, briefs, and legal
9 argument. And then a hearing officer is appointed to
10 determine whether defunding was proper or not. And
11 then there is an appeal from the hearing officer to the
12 president.

13 The president in that long process is the
14 ultimate decision maker. In this instance, competition
15 requested by Congress for the purpose of having new
16 ideas, new thoughts, and new delivery models,
17 specifically included private lawyers as being eligible
18 to participate in this process.

19 It was up to the Board to develop the
20 regulation, to set forth the process by which the
21 competition would be developed and implemented. The
22 Board at one point deliberated as to whether it would

1 ask for mediation in the event that a program was a
2 pre-condition to commencing litigation, not as an
3 alternate decision maker, in respect to the grant of
4 competition.

5 The Board is free, of course, to change its
6 regulation, and to provide some further recourse from
7 the president's decision. But instead of the outside
8 hearing officer in this case, the Board decided for an
9 outside review panel. So that there is a participation
10 from a segment of the community that is outside of the
11 program, which gives it I think a greater prospect of
12 removal from any internal influences, more so than the
13 president simply appointing a hearing officer.

14 So here we had three, as with all other
15 competed areas, three outside people knowledgeable in
16 the delivery of legal services, and indeed having spent
17 much of their career in legal services. And that
18 recommendation came to the president along with the
19 staff and its analysis.

20 And it was on the basis of those
21 documentations that the decision was made. I do not
22 think that we are looking for a marketing plan, but we

1 are looking simply to see without giving any preference
2 to an existing program, which has served this community
3 well, what were the aspects of the competition that
4 would appeal.

5 And certainly, as you have mentioned, it was
6 the notion of a technologically advanced operation in
7 order to reach significantly more clients. At least in
8 my own experience, Larry, I think that private lawyers
9 do not lack compassion or knowledge of legal services,
10 even though they may not spend a career in it.

11 Certainly, I have spent a career in private
12 practice, and believe that there are endless numbers of
13 private practitioners who have a commitment, a
14 dedication, and an understanding to and for the
15 concerns of poor people. And I realize that it
16 is quite different than spending your whole life in a
17 legal services program, but commitment and compassion
18 is no different. It does not have to be any different.
19 And I would not like to think that I had less than that
20 simply because I have been in the private sector.

21 So I think that the fact that a law firm could
22 be a contestant was probably intended by Congress, and

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1 probably entered into this consideration here. There
2 was another county in Pennsylvania that everyone agreed
3 should be replaced by the very competitor who was
4 awarded the grant here. So at least the staff and
5 others found a competitor to be a reasonable deliverer
6 of legal service. It was not just in Montgomery
7 County.

8 So I think that the test probably was the law
9 and the procedure complied with, and I would like to
10 attest to the Board that it was. And the next would be
11 could any reasonable person reach the result that the
12 president reached.

13 And I do not need to go into an explanation of
14 that. I think the fact that three outsider reviewers,
15 people of standing and knowledge, reached the same
16 conclusion. So this is not to say that my decision is
17 the right decision. There may never be a right
18 decision. I do not think that it was a wrong decision.
19 Reasonable people could reach a different judgment on
20 the law, and the regulations, and the documentation
21 that was provided.

22 And I understand that you are aggrieved by

1 that. But I just want to at least assure the Board
2 that I think that the process was complied with. And
3 that there was a reasonable basis for reaching the
4 decision that the president reached. Others could very
5 well reach a different decision.

6 CHAIR EAKELEY: These are very weighty issues.
7 And we will revisit them at considerable length.

8 We also have, I should mention, Michelle Terry
9 and a board member from Delaware County Legal Services
10 here, who want to address the board next also.

11 MR. FOX: And you also have one of my clients
12 here, who just happens to be somebody I assisted
13 through the legal assistance partnership project.

14 CONGRESSMAN FOX: Could I respond?

15 CHAIR EAKELEY: Yes. Maybe the thing to do is
16 hold your response. I think that Bill McCalpin wanted
17 to come in. And I know that Ernestine Watlington has
18 been a wonderful supporter of the Pennsylvania Legal
19 Services programs in particular. But Bill.

20 MR. MCCALPIN: Mr. Fox, I just wanted to say
21 to you that it is comforting and reassuring to learn
22 firsthand from your presentation this morning that

1 there is a passion for Legal Services in at least one
2 member of the Congress. We deeply appreciate your
3 presentation.

4 And I think that I might add that as a
5 historic Republican, I think that I have some sense of
6 the cost to you of the principled leadership which you
7 exhibited last year. And I want to express at least my
8 deep personal appreciation to you for that leadership
9 and what it accomplished for Legal Services.

10 (Applause.)

11 CHAIR EAKELEY: Ernestine, did you want to say
12 something before we turned it back to Larry Fox?

13 MS. WATLINGTON: As a client advocate, I for
14 many years on the other side, fought the competitive
15 bidding, because I foresaw these problems that are
16 arising. That you are going to be looking at paper,
17 what is written on paper, and not what is actually
18 being done for the clients.

19 So after it was mandated, we really appreciate
20 Congressman Fox for being sensitive. We had no choice.
21 But this is also showing what can happen, and what has
22 to be looked back at is that whole process. When you

1 get out there, you are so busy doing the work that you
2 do not know how to really document those things that
3 make that.

4 So this makes it a very difficult decision. I
5 have to represent the client advocacy always, because I
6 came from the bottom up. So when I make decisions and
7 look at it overall, it is because I know what is out
8 there, and I am still in the trenches every day.

9 And so what is written and what it is is
10 totally different, and it is very difficult to deal
11 with.

12 CHAIR EAKELEY: Larry.

13 MR. FOX: Alex, I wanted you to know that I am
14 surprised to be appearing before the Board. I thought
15 that we were going to have a motion for reargument
16 before you only. Because I think that all of us
17 recognize that the decision was yours, and it was our
18 fond hope that -- very clearly in your very kind
19 telephone conversation with me last week when I was
20 being hysterical and you were being rational, and I
21 heard again today when I think when we were both being
22 rational, that you thought that this was a rational

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1 decision. /

2 And I am here to urge you to reconsider.
3 Because it may be a rational decision or it may have
4 been a rational decision. But when you focus on the
5 ability of this particular program, and I do not know
6 if every program replicates it, but this particular
7 program to leverage money and leverage volunteer time,
8 I cannot believe that you can rationally reach the
9 result that the cost effective delivery of legal
10 services to the poor will be enhanced in any way,
11 shape, or form by losing six people who deliver those
12 services for this agency, and giving them to a for
13 profit agency, which I submit that no matter how well
14 committed those people are, will not be able, will not
15 be able, to get the contributions or the volunteer help
16 that this agency does.

17 So we have a lot of witnesses here on the
18 board, but I am appealing to one person. And I hope
19 that you will reconsider in light of that, and reach
20 the conclusion that I think is the only fair
21 conclusion, which the case is compelling. The case is
22 compelling, it is not a close question, that Montgomery

1 County Legal Services should be refunded.

2 CONGRESSMAN FOX: Let me just say finally that
3 I thank Bill for his comments. But I must say that
4 there are a lot of members who followed me bipartisan.
5 We have today, of course, from Delaware County, Kirk
6 Weldon and Tom Foliotta backing that proposal. And
7 they well deserve attention as well for their good
8 work.

9 But I want you to know that I am committed to
10 continuing to work with the corporation, to have a
11 freshman orientation for both sides of the aisle.
12 There are 35 freshman Republican and 35 Democrat
13 freshmen. But I really would not be as an effective
14 advocate today if we do not get that second hearing for
15 Montgomery County. And with that and God's blessing, I
16 am sure it will happen. Thank you very much.

17 CHAIR EAKELEY: Thank you very much.

18 (Recess).

19 CHAIR EAKELEY: I would like to welcome to the
20 podium Michelle Terry from Delaware County Legal
21 Services, and a member of her board.

22 MS. TERRY: Ella Thompson.

1 CHAIR EAKELEY: Ella Thompson.

2 MS. TERRY: Thank you for this opportunity. I
3 became acting director of the Delaware County Legal
4 Assistance Association on November 18, 1996. And on
5 December 31st, of course, I received the news that the
6 Delaware County Legal Assistance Association would not
7 receive its LSC funds for the 1997 year.

8 This news has devastated our program. While I
9 do not, while Montgomery County had, have support. I
10 do have the support, if not in this room, of our
11 congressional representatives.

12 And I must say that upon receipt of the news,
13 I am here on behalf of a very dedicated staff that
14 served the Delaware County community faithfully and
15 excellently without question.

16 Our existence predates yours, in that the
17 Delaware County Legal Assistance Association, came into
18 existence in 1966. And all that I know that at this
19 time is that the application which I did not personally
20 submit was found to be deficient.

21 I am not here because there is a potential for
22 my job loss. I am here because of our clients, and

1 because of the service that we provide, and can
2 provide, and do provide. When confronted with your
3 concerns for technology, we are technologically ready
4 to serve clients, and are in fact doing just that.

5 Our services to the clients of Delaware County
6 have been quite broad. We represent individually. We
7 have done reform. We have done community education.
8 We have served thousands of clients over the years.

9 And at this point, other than receiving a
10 letter telling me again that my application was
11 deficient, I need to know how a process determined that
12 a program that has existed and served with the support
13 of a neighbor law school, with the support of a
14 Delaware County Bar Association and its clients -- the
15 Bar Association has told us forthright that they will
16 not provide pro bono representation to a for profit
17 fun.

18 I must implore that you reconsider your
19 decision. You have given us two months of what you can
20 transition assistance. And I am not sure how that
21 number was reach. But because of the numbers of cases
22 and the concern for professional responsibility to our

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1 clients, I would ask that that decision be reconsidered
2 as well.

3 I do not want to take up too much more of your
4 time. But I would like you to at least hear from my
5 client board member, Ella Thompson.

6 MS. THOMPSON: Good morning. I would say
7 happy New Year, but it wasn't a happy New Year when we
8 found out that we did not get our funding for our
9 program.

10 Delaware County Legal Assistance Association
11 has served Delaware County for 30 years. And in those
12 30 years, they have grown a bond between the community
13 and the Association. Because we have the dedicated
14 people there who have been there all of these years to
15 take care of and do what we need them to do.

16 I don't know as a board member. I never saw
17 the proposal that was written. But whatever
18 deficiencies there were, I think that those flaws could
19 be worked out. I also think that you need to hear from
20 a client's point of view why these things are
21 necessary.

22 Let me say that with all of the cuts that are

1 coming down the road for poor people -- I am talking
2 about the welfare cuts, and whatever other cuts that
3 this Congress and the Senators have beamed on us -- we
4 need more services and not less.

5 Last week I called the customer service
6 people, I got one voice mail after another voice mail.
7 I never did get a chance to talk to any person. But
8 the people need to be able to talk to people. It
9 cannot just be pushing buttons and saying push this
10 number, and it will get you here and it will get you
11 there. It is not going to happen.

12 I talked to the lawyers on the board. They
13 all say that -- I know that the Delaware County Bar is
14 not going to support a for profit organization. They
15 do a lot of volunteer work, which all of us are
16 volunteers on this board. I have done a lot of work on
17 this board. I know Ernestine. I go to Harrisburg. We
18 did a lot of training in our community.

19 And our people are on the move. They are on
20 the move upward anyway. Our staff people, they come
21 out to the community and teach. They do that on their
22 own time. They do not do it on anybody else's time.

1 If it is 4:00 in the morning, and I have somebody on my
2 phone with an emergency, I can call one of them. But
3 you cannot do that over a phone, and you cannot do that
4 on a computer. Because you do not get a person. You
5 get a voice mail.

6 So I think that one of the things that I can
7 here to do was to be sensitive to the fact that clients
8 need this program. We not only need it, we must have
9 it. And also, that everybody here knows that in a
10 couple of months that there are going to be a lot of
11 people out in the streets. Because when welfare falls
12 on them, everything else is going to go too.

13 We need to have these associations working
14 together. If there is any way possible for us to redo,
15 reask, or who can we ask, we will do that. If there is
16 somebody that I can contact, I do not care if it is
17 President Clinton, but if it is somebody that I can
18 contact, let me know. Because I really and truly would
19 like to know who came up with the decision and didn't
20 ask client board members what their opinions were.

21 So that is where I come from. I am a client,
22 and I am a board member. And I serve my community.

1 And if it were not for the Delaware County Legal
2 Assistance Association and Larry Fox, I would still be
3 sitting in a place that was not fit for man nor beast.
4 But today, my development is being torn down and built
5 up, because they had the stick to it-ness to stay with
6 me. This has been since 1989 or 1987. It is almost
7 ten years.

8 They have had the time, and they took the time
9 to listen. Not only to listen, but to take our case to
10 the courts, and get a final analysis that was in the
11 favor of the residents.

12 I guess that is as much as I can say. I just
13 know that here in Delaware County, and I cannot speak
14 for other counties, because in Delaware County, it is
15 sort of like a family situation with the board members
16 and with our Association.

17 I think that had I written a proposal, we
18 would have gotten funded. But since I didn't, I will
19 ask you also to reconsider. Thank you.

20 CHAIR EAKELEY: Marcus, do you want to say
21 something?

22 MR. WILLIAMS: Yes. Thank you, Mr. Chair.

1 I just wanted to reiterate my support for the
2 program. \$280,000 is a crippling blow for this program
3 to lose. I know that the staff of LSC has identified
4 some internal problems. I assure you that we have the
5 resolve to remedy them within the program. You have
6 new leadership, and you have a transition, a new team
7 coming on board.

8 And we would ask respectfully that you give it
9 every consideration as you engage in your negotiation.
10 Thank you.

11 CHAIR EAKELEY: Thank you.

12 Maybe it does not go without saying, but the
13 purpose of this corporation is to serve the community
14 and our clients by providing access to justice to those
15 in need. We are trying to do the best we can under
16 incredibly difficult circumstances.

17 We appreciate you coming here today and
18 sharing your thoughts, and feelings, and concerns, and
19 objections with us. We will do what we can.

20 MR. WILLIAMS: Thank you.

21 MS. TERRY: Thank you.

22 CHAIR EAKELEY: Thank you.

1 MS. THOMPSON: Hopefully, you will do more
2 than you can.

3 CHAIR EAKELEY: We need somebody else's grace
4 and power to do that.

5 MS. THOMPSON: If you know somebody for me to
6 get in contact with, I will do it. Thank you.

7 CHAIR EAKELEY: Thank you.

8 While Ed is getting set up, just permit me a
9 couple more reflections. Obviously, what we have just
10 experienced provides lots of food for thought, I think.
11 As was mentioned when Congressman arrived, I think that
12 the timing is about as good or opportune as it could be
13 for perhaps the provisions committee and the Board to
14 have a report on the competition process, Alex, at the
15 next meeting or before that, where we can talk about
16 the adequacy of inadequacy of resources to support and
17 assist existing grantees outside of the competitive
18 process, as well as whether or not there are ways to
19 improve competition.

20 I do not think that any of us would want to
21 substitute ourselves for the precedent in making
22 weighty decisions. But I think that some of the points

1 made should factor into a discussion of what we have
2 learned so far and where we might go.

3 And I think that it is probably decent timing.
4 It is never great. But any time that there is a
5 decision, by definition someone is going to lose. And
6 that is going to be wrenching. But it seems to me that
7 we have got to do the best we can under the
8 circumstances. And part of that means taking a
9 periodic review of how this is working, and whether it
10 is worth tinkering with it or adjusting it one way or
11 the other.

12 MR. FORGER: Mr. Chairman, I think that what
13 we had intended at the end of this competition process
14 was that all of who have been involved with it get
15 together and see how it could be improved, and what
16 changes we would recommend in the procedure. And I
17 think out of that will come a combined experience
18 that -- since this is really the first time that we
19 have been through this in a full year capacity, I think
20 that we have seen a lot and learned a lot in this
21 process.

22 I do not know how at this moment to leave the

1 issue of the two counties in question. Because the
2 record at least as it appeared is quite incomplete.
3 And I am not sure that this is the place to complete
4 that record.

5 CHAIR EAKELEY: Do not misread my comments.
6 The board is not trying to second guess the president
7 in a judgment call that the board vested in the
8 president to begin with. I think we heard some
9 important points from the people who addressed this
10 this morning that I think that we all want to reflect
11 upon more than overnight.

12 And that was the gist of it. That plus just
13 letting the Board know that we will put in process a
14 review of competition, but not just competition. It
15 seems to me that it is how can we improve evaluation
16 and technical assistance, and does it necessarily have
17 to be in conjunction with the competition process,
18 where we tie our hands or have our hands tied in terms
19 of assisting or preferring grantees when it comes to
20 our ongoing support and assistance.

21 MR. FORGER: I really wasn't responding to
22 anything that you had said, Doug. The letter that went

1 out to the programs was a letter that went out at year
2 end at the end of this process, and it did not purport
3 to give a full summary of the circumstances that led to
4 the decision.

5 And I think surely that should be forthcoming.

6 I do not want the world at large to think that
7 decisions like that are made, and a 20-year
8 relationship is terminated with simply one letter. But
9 we have to get material out by year end. And indeed,
10 some of these decisions were not final until very late
11 in December. So that is one explanation of that.

12 The identification of the outside reviewers, I
13 think, would be important, in terms of an outside view,
14 particular Clint Bamberger, who was instrumental in
15 this process.

16 I would like to discuss with the Board, if it
17 wishes, the process in this given case. But I shall
18 not burden the record with that now. Because I know
19 that there are a number of questions that people have.
20 And I think that they need to be responded to. As well
21 as I think the issue that John Tull might address or
22 Merceria in particular the notion that a grant could go

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1 to a for profit entity.

2 I think that the impression may be given,
3 John, with a law firm grantee that somehow or other
4 federal monies are going to give a significant profit
5 to some individuals, and being diverted from service to
6 poor people. Certainly, that comes through with the
7 statements here that the Bar Association, so it has
8 said, will no longer cooperate with entities that are
9 not 501(c)(3) organizations. Perhaps that needs to be
10 examined.

11 Suffice it to say that on Delaware County, the
12 Board should understand that on Delaware County, that
13 that was a joint recommendation of the Legal Services
14 staff, as well as the outside reviewers.

15 There were four instances in which the outside
16 reviewers were at variance with the staff. And two of
17 those were in Pennsylvania. And my decision was not
18 consistent with that of the staff.

19 The other two, coincidentally, I agreed with
20 staff, and not the outside reviewers. The staff and
21 outside reviewers agreed on Delaware County. The staff
22 and outside reviewers had different views on

1 Montgomery. And in respect to the migrant of
2 Pennsylvania, the outside reviewers recommended that no
3 grant be made. The staff recommended that it be given,
4 I think, to Philadelphia Legal Services, which in turn
5 was going to sub-grant to Camden to handle the migrant
6 work.

7 And I agreed with the outside reviewers that
8 it should be up for recompetition rather than make the
9 grant to a program that had no experience in migrant
10 delivery, which in turn was going to sub-grant to a
11 program that had experience.

12 And I thought that it would be more
13 efficacious perhaps to make that grant directly to the
14 entity that was to be the sub-grantee.

15 So I think that in other respects that there
16 was a convergence. The staff performed admirably. And
17 in respect to the Montgomery County decision, I spent a
18 good bit of time talking to the staff about it, as I
19 did with the outside reviewers. And I made that
20 judgment after a good deal of deliberation.

21 CHAIR EAKELEY: All right. We have, if you
22 count the sub-parts, 28 items on our agenda. And Item

1 8 is a report by our Inspector General, and a report on
2 the OIG technology project.

3 Just by way of preface on the report
4 generally, the Inspector General and I have had
5 discussions through Victor Fortuno, our counsel, about
6 trying to find a way that in executive session we can
7 be briefed by the Inspector General on items that
8 pertain to his investigations that should be kept in
9 confidence. And yet, have a regular report by the IG
10 on matters that of public interest and concern that
11 need not be screened from public scrutiny. And that
12 would also permit more board interaction than was
13 permitted in a briefing session.

14 So I have asked him to give us a report, but
15 also to focus within that report on the technology
16 process, which we left in a state of, dare I use the
17 phrase of suspended animation. In any event, I think
18 that it is fair to say that there were some differences
19 in opinion in terms of where precisely things were
20 left, and at what particular point in time.

21 Nevertheless, I think that the interest of the
22 Board and the IG remain quite significant in terms of

1 what has been accomplished, what we have learned, and
2 where we are, and where the corporation might go on the
3 basis of that learning.

4 So Ed, I am sorry to keep you waiting on this,
5 but the table is yours.

6 MR. QUATREVAUX: Thank you, Mr. Chairman.

7 I have two items before we get to the
8 technology project. They are short. The first relates
9 to our audit of the use of the American Express credit
10 card. You received a draft of that report. We had
11 already provided it to management for comment, and
12 incorporated their comments.

13 We subsequently got some comments from Phil
14 McCalpin. We have taken an initial look at them, and
15 we are going to have a further discussion today. The
16 plan is to issue the reports final next week, in the
17 coming week I should say.

18 Our special audits continue. You will recall
19 that one is a performance audit to determine compliance
20 with the new restrictions and prohibitions in our
21 Appropriations Act. The other is a financial audit to
22 determine whether LSC funds are used to subsidize

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1 restricted activities on the part of others.

2 We visited fifteen of the sixteen sites that
3 we selected thus far, and that is all that I can really
4 say about it at this time. I will have some more to
5 say later.

6 CHAIR EAKELEY: Just in terms generally of the
7 site visitation and review process, is that going
8 fairly smoothly, have you established internal
9 operating procedures that you are comfortable with?

10 MR. QUATREVAUX: Oh, I am very comfortable
11 with our internal procedures. In the interest of being
12 completely honest, I have to tell you that the
13 reception that we got was not equal in all places. And
14 not surprisingly, those that in our opinion could have
15 improved our responsiveness to our request for data, it
16 turns out that we do indeed do have some things to
17 further discuss with them.

18 So with that, if there are no other questions
19 on that, let me begin with the tech project.

20 CHAIR EAKELEY: I should welcome Richard Zorza
21 back also. I apologize.

22 MR. QUATREVAUX: Well, you know Richard Zorza

1 from the Fund for the City of New York. To my left is
2 David Maddox, who heads up information technology for
3 the OIG, who worked with us on this project, and who is
4 building our audit information management system, and
5 keeping all of the other systems going.

6 You asked, as you indicated, the steps that we
7 have taken thus far. And more or less, what we have
8 and what remains to be done. The steps that we took,
9 some of which were discussed at the September meeting,
10 was the preliminary selection of grantee partners,
11 feasibility discussions as to specific sites, visited
12 potential site partners, and obtained an understanding
13 of relevant law.

14 We began programming the Internet version
15 prototype. And let me take a second to point out that
16 there are really two versions. One that will reside on
17 the World Wide Web. And another that would be designed
18 and tailored specifically for kiosk or not on the Web,
19 independent stand alone. It would come down over the
20 Internet, but it would be a different version to
21 facilitate the user. It would be a touch screen, and
22 that is slightly different.

1 We also demonstrated an earlier version of the
2 prototype at the NLDA convention in Las Vegas in
3 November. And what we have today is a prototype. It
4 resides on a Web site in New York City. And I think
5 really the best way to explain it to you is to
6 demonstrate it.

7 A prototype is a rough framework, which is
8 used to facilitate consultation to further develop the
9 product, define the product. So you have got to have
10 something concrete to show people in order to get their
11 feedback, and in order to improve the project.

12 So if you do it that way, you really do pick
13 up the true user needs. In other words, you end up
14 with an end product that the user themselves have
15 essentially designed.

16 CHAIR EAKELEY: Could I ask you to come a
17 little bit closer to the microphone, please. These
18 seem to be particularly voice sensitive only at a short
19 range.

20 MR. QUATREVAUX: The prototype provides
21 examples of capabilities of today's information
22 technology. And that is the way that you should look

1 at it. It is a rough prototype. And I have to note in
2 advance that this is essentially a worse case for
3 Internet play, because we are using a computer that is
4 ancient. It is now three years old. Its processor has
5 been replaced by the Pentium processor, which I
6 understand will be replaced very shortly, early this
7 year.

8 So what it will do is make the response time
9 slow, and that will be exacerbated by the hour.
10 California is waking up now. And the traffic on the
11 Internet will increase substantially. This is a worse
12 case, because Washington, D.C. happens to be where most
13 of the Internet's fiber back bone is routed through, as
14 a result of its origins in the Defense Department.

15 (A slide is shown.)

16 MR. QUATREVAUX: This is just an initial page,
17 as you can see. In a kiosk version, rather than click
18 here to continue, it would be push here. Just touch
19 the screen in that spot. Instead we are using the
20 keyboard and the mouse if we want to use it for the
21 Internet access point other than the kiosk.

22 As you can see, it has got an animation

1 feature that allows you to put in various messages.
2 Next.

3 (A slide is shown.)

4 MR. QUATREVAUX: Now there are a number of
5 things. And I have to tell you that all of this is
6 just very rough. Everything that is up in terms of the
7 development would be up for grabs. Spring layout,
8 substance, sequencing, everything. So again, the idea
9 is to put something in front of people, so that they
10 can get a feedback to the developer. There are
11 a number of things which can be done. Those that are
12 underlined have been programmed already and are
13 accessible.

14 Let's show the welcome video. And this is not
15 the script that would be used. It is just a sample
16 script. And this is not a professional actress.

17 (A video was shown.)

18 MR. QUATREVAUX: All right. Let's look at
19 safety planning. Which for the people's life work is
20 domestic violence, it is a very, very important element
21 of the process. Next.

22 (A video was shown.)

1 MR. QUATREVAUX: I think you have got the
2 flavor of that. The next tape. Of course, that can be
3 printed out, as can any of the screens or any of the
4 information provided.

5 Let's look at the petition for protective
6 order. What you see here is the written version. The
7 help provides an explanation. Dave.

8 (A video was shown.)

9 MR. QUATREVAUX: Now the relationship has to
10 be established. Those are the two key elements. We
11 will just select this one. The victim is married to
12 the abuser.

13 As you can see, what has been imported to this
14 screen is what was entered on the previous screen, or
15 what was selected on the previous screen. So now, the
16 routine asks for the conduct itself that is
17 objectionable. And there is a list here that could, of
18 course, be much longer. And it might be desirable to
19 have it longer.

20 But we have checked, let's see, my abuser has
21 hit me, my abuser has threatened to steal my children
22 from me, and my abuser has made me have sex by force or

1 threat. Next.

2 (A slide was shown.)

3 MR. QUATREVAUX: Now it has shown again, it
4 imports the response on the previous screen, and now
5 asks what is the jurisdiction, where does the abuser
6 live. And we have selected Cobb County. Excuse me,
7 let me back up here. If you do not know what county
8 your abuser lives in, if you are not sure of the
9 geography, we can pull up a map of Georgia. Now this
10 can be improved by insertion of cities for reference
11 points. It is hard to pick it out just in that
12 depiction.

13 But that is an aid to help people complete
14 forms. We have selected Cobb County. And then the
15 next screen will show the address, telephone number,
16 operating hours, and anything else that you would want
17 to know about the Cobb County courthouse. And a
18 further development would include a video from a chief
19 judge explaining what happens in court when someone
20 like a domestic violence victim comes in.

21 To be sure it is Cobb County courthouse, you
22 can ask for a map where the courthouse is located. You

1 also can get written instructions as well.

2 Now the user has to fill out a form with basic
3 demographic information that has to be obtained. If
4 the person has problems filling this out, there is a
5 help function, which is pretty elementary.

6 (A video was shown.)

7 MR. QUATREVAUX: Let's go back. We have seen
8 enough of the help function. Let's go back to filling
9 out the form. In the interest of time, we have already
10 done that here. And now let's proceed.

11 There are two things on this screen. Whether
12 or not the user wants to request confidentiality from
13 the court, and soliciting information that the judge
14 needs to determine the eminence of the threat. In this
15 case, we have entered that he has a gun. But it asks
16 for criminal records, drug use, and all of the other
17 sources.

18 It questions whether there are children, and
19 what their names and ages are. Next.

20 (A slide was shown.)

21 MR. QUATREVAUX: Similarly, there is a need to
22 pick up information about the user. Next.

1 (A slide was shown.)

2 MR. QUATREVAUX: Picking up again more details
3 of the behavior, and when it last occurred. That is a
4 relevant point. And exactly what it was. What was the
5 behavior in this last incident, the injuries sustained,
6 police or medical intervention type questions. Next.

7 (A slide was shown.)

8 MR. QUATREVAUX: This in turn asks for the
9 most as opposed to the most recent type of abuse, for
10 obvious reasons, the date that occurred. And again,
11 there is a constant solicitation for information.

12 One of the things that typically happens is
13 that the victims are reticent. They tend to fear
14 giving information. And they drop at many stages in
15 treating the problem. Next.

16 (A slide was shown.)

17 MR. QUATREVAUX: When they get to this point,
18 the victim is asked whether they want to continue.
19 There is a need for a financial affidavit. Next.

20 It explains here in writing, of course, a
21 couple of things. One about the form, and I will come
22 to that in a minute. How to proceed, if you are ready

1 to print the petition. And a little explanation about
2 the sequence of events. The first set of papers for a
3 temporary order, and you need to go back to make is
4 permanent.

5 (A slide was shown.)

6 MR. QUATREVAUX: It will print a petition.
7 There is a help function there, too. But it will print
8 the petition with the information, complete with the
9 information that the victim has provided. Here it is
10 embodied in the petition itself.

11 And if you look down at the petition, all of
12 that information is in here. No children, the actions,
13 the dates, the consequences. He has got a gun.

14 Okay, Dave. Next.

15 (A slide was shown.)

16 MR. QUATREVAUX: That is it. All right.
17 Let's get the lights back up.

18 That is the state of the prototyping at this
19 point. You asked what would be the next steps
20 required. There would be what is called a formulative
21 evaluation, which is essentially taking us and sitting
22 down with shelter workers, Legal Services lawyers, all

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1 of the people involved with domestic violence victims,
2 and in the legal system, to get their feedback again on
3 substance, sequence, presentation, phrasing, screen
4 layout, all of those sorts of things.

5 And you would continue that process
6 iteratively until you are satisfied that you have an
7 end product that does what needs to be done, and does
8 so in a very effective way.

9 Once you have got to that point, then you
10 would add all of the audio-visual cues to support each
11 step along the way, as opposed to just some of them. A
12 program for a touch screen version. Then conduct a
13 field evaluation, to make absolutely sure that what you
14 have got works. And when you are ready for fielding,
15 you would translate it into other languages. So that
16 is what would have to occur.

17 CHAIR EAKELEY: Edna.

18 MS. FAIRBANKS-WILLIAMS: Now you say when you
19 get this all organized, and on line, and so on and so
20 forth, you will evaluate.

21 Will your paperwork that flows out of this
22 have the -- will your evaluation, will your paperwork

1 that flows out of this have the name on it, and how
2 will the court be able to tell you how much of your
3 paperwork went through the court, so that you will know
4 how many cases were served?

5 MR. QUATREVAUX: Yes. That is very easy to
6 do. We are not planning to do any more work. The
7 project will terminate tomorrow. We are not going any
8 further with it.

9 CHAIR EAKELEY: But I think the question was
10 assuming that it were to go forward, I guess that it
11 really gets to the evaluative component that we had
12 talked about before. One of the things that we had
13 discussed adding to the proposal was a means of
14 evaluating how many people were using it in comparison
15 to how many people would have gone without any help or
16 would have gone to a Legal Services organization
17 anyway. And the quality of the experience as a
18 consequence.

19 MR. ZORZA: I would just say that I think your
20 question really included a suggestion which I think is
21 absolutely right. Which is what we would do is as it
22 printed out, it would have something along the lines on

1 the bottom that this document was prepared with the
2 assistance of the whatever project. And hopefully, in
3 the counties in which we were testing it, we would have
4 an agreement with the clerks. So they would keep track
5 of those counts, and indeed identify the document
6 numbers. So that one could do follow-up research.

7 And in a sense, since we are presenting actual
8 documents, not just providing generalized pro se help
9 from a booklet, that actually printing a document, you
10 would have the capacity to collect that information.

11 CHAIR EAKELEY: Nancy.

12 MS. ROGERS: I am just trying to imagine the
13 kinds of costs of implementing a process like this on a
14 broad scale. And one of the questions I wonder if you
15 have thought through is suppose the statute is amended
16 in Georgia, so that all of this has to be redone. And
17 the Legal Services groups there know that, of course.

18 MR. QUATREVAUX: Right.

19 MS. ROGERS: Do they then need to apply for a
20 grant, so that they will have the funding to hire a
21 programmer to redo this operation?

22 MR. QUATREVAUX: Yes. And it was always my

1 thought that whatever we did, that we eventually would
2 become part of the delivery system for our local
3 grantees as they are viewed down there. And what goes
4 with that is the responsibility for maintaining it for
5 changes in the law.

6 MR. ZORZA: I would say that --

7 MR. QUATREVAUX: Just as you would a pro se
8 handbook. It is just a telephone. That is all that
9 is. That is the next telephone on this Internet thing.
10 That is all it is. It is a communication device.

11 MR. ZORZA: I would say that certainly if a
12 state were to completely rewrite the domestic violence
13 law, then one would incur substantial expenses. But
14 the more likely scenario is, for example, if Georgia,
15 which has a relatively underdeveloped and unamended
16 statute, a very short statute, that it might well pick
17 up innovations in other states, such as for example
18 extending the list of who is subject to protection
19 under the law.

20 And then you would just go in and change that
21 one screen, and that would be a minor thing. And the
22 beauty, of course, of doing it over the Internet would

1 be that you would not then be in the business of
2 distributing many more copies around the state. You
3 would just go and change one thing, and it would be
4 transparent to everybody.

5 So in that sense, there are some advantages to
6 the system in terms of controlling costs. But I think
7 that your general point is absolutely right. That is
8 something that has been thought about and planned for
9 implementation and application like this in any field
10 and in any part of the country.

11 MR. QUATREVAUX: But I think that it is not
12 any different from the current situation, where
13 grantees have to maintain their computer gear. It is
14 like the lights and gas, the utilities. You know, as
15 equipment and software gets up, the grantee has got to
16 have people or someone that can do that for them. And
17 as Richard indicates, we would not think that this
18 would be a very frequent thing.

19 CHAIR EAKELEY: Bill McCalpin.

20 MR. MCCALPIN: My remarks will not address the
21 content of the program, as we have seen it. Rather my
22 concerns are at a threshold of what might be said a

1 jurisdictional level. I believe that a proper
2 interpretation of two sections of the Inspector
3 General's Act and two sections of the Legal Services
4 Corporation's Act raise questions concerning the
5 authority of the Inspector General to carry out a
6 program such as has been presented to us.

7 I raised that issue at a meeting we had with
8 the Inspector General a couple of months ago. And we
9 concluded at that time to seek a legal opinion with
10 respect to the interpretation and construction of the
11 sections which I had in mind. I am sorry to say that
12 as of Friday, the last day that I was in the office,
13 that legal opinion had not been received.

14 However, my concern goes beyond that somewhat.
15 I have a feeling that the way that this project comes
16 to us creates a concern that a section, 8(g)(b) of the
17 Inspector General's Act, was designed to overcome or to
18 prevent.

19 Let me say that a Senate report in support of
20 the 1978 Act in discussing that particular section says
21 that it is included in order to prevent compromising
22 the independence and the objectivity of the Inspector

1 General.

2 Ten years later, when we were added into the
3 Act by amendments, the House report said that Inspector
4 Generals are intended to act as independent fact
5 gatherers with no vested interest in policy or in
6 particular programs and operations.

7 The report, which the IG published in August,
8 which I think is an excellent report, and is entirely
9 within what the statute authorizes the IG to do, lays
10 out two, three, or four, depending on how you associate
11 them or count them, applications of information
12 technology to improve the delivery of legal services,
13 particularly in terms of quantity.

14 A subsequent memorandum from the Inspector
15 General says that that office or the Office of the
16 Inspector General intends to engage in the proof of
17 concept of only one of those particular applications.

18 Thus, I have a concern that this list of
19 separate possibilities and concentration on one gives
20 the Inspector General a vested interest in a particular
21 program, which the statute was designed to avoid, and
22 calls into question the objectivity of the Inspector

1 General, if that office is called upon to review
2 various applications of information technology, which
3 may be adopted and implemented by this corporation.

4 I would suggest that the appropriate role for
5 the Inspector General in a matter of this kind is to do
6 as was done in the August report, to gather facts as
7 the House report says, make recommendations to the
8 corporation as it did in the report, and then leave the
9 implementation to the corporation with a review or
10 oversight role in the Inspector General as I believe is
11 contemplated by Section 483 of the Inspector General's
12 Act.

13 So I have a concern about the propriety under
14 the law of this project going forward under the
15 auspices of the Inspector General.

16 CHAIR EAKELEY: Well, just to forestall a
17 rejoinder by the Office of the Inspector General
18 Counsel, although I do not want to totally foreclose
19 it. But I think that I heard the Inspector General say
20 that the demonstration project was being terminated
21 tomorrow.

22 MR. QUATREVAUX: Right. But that does not

1 resolve the issue, I think, /Mr. Chairman.

2 CHAIR EAKELEY: But I do not think that we are
3 going to resolve it at this table.

4 MR. QUATREVAUX: Let me just say that we
5 provided memoranda on the subject, and that I disagree
6 with Bill's interpretation. That we are in no way
7 attempting to practice law or to deliver Legal
8 Services. What has to be kept in mind here is that
9 this was just a means to get to a place where we can
10 conduct an evaluation of information technology, not
11 domestic violence.

12 CHAIR EAKELEY: We are not going to resolve
13 this today. I think that we have asked for an outside
14 opinion that will help clarify and focus the issue for
15 further discussion. We need to have further discussion
16 on it going forward.

17 But I think that for current purposes that the
18 question that I am left with is the following. We have
19 a prototype. We have seen a little bit of it
20 demonstrated. I was impressed. I would not like to
21 see that work go for naught.

22 We have in development a budget request for

1 fiscal year 1998 that maps out a technology component.
2 I would like to ask management and perhaps the
3 provisions committee to go back and review where we are
4 currently including the propotype, and look at the
5 potential not only for its application but also the
6 potential interface between the various agencies that
7 the Inspector General had identified as potential
8 either funding sources or partners in doing something
9 in the area of domestic violence as an initiative, and
10 see the extent to which it makes sense from the
11 corporation's standpoint to continue with this project.

12 I think informally that is what has been done,
13 but I would like to make that request for review and
14 revisiting a little more formal. LaVeeda.

15 MS. BATTLE: I would like to echo, I guess,
16 the concern that Bill raised, particularly since there
17 were several different possibilities raised in the
18 initial report, of what it is that our management might
19 consider in terms of how it does choose to go forward.

20 I think that he raises in his review of the
21 Inspector General's Act and as well the LSC Act, and
22 the congressional history behind both of those acts, an

1 issue that we will need to at some point address. And
2 I agree with him in laying it out at this juncture.
3 Because I think to the extent that the presentation
4 that we have gotten today goes beyond what the
5 responsibilities are of the respective entities within
6 the corporation, that we have to be mindful of how we
7 address both of those things.

8 CHAIR EAKELEY: Maria.

9 MS. MERCADO: Unfortunately, my comments
10 actually go to the substance of the technology and not
11 a description of how it works or how it does not work,
12 and that management and the provisions committee ought
13 to go back and look at that. That maybe those are some
14 of the issues that can be brought up as far as your
15 prototype.

16 And also looking at various of those concerns
17 that were brought up in the report about our
18 effectiveness in delivering legal services. And I do
19 not know what attention has or has not been taken on
20 those subjects.

21 CHAIR EAKELEY: I would not like to see this
22 prototype abandoned without a lot more thought, study,

1 discussion, and appreciation.

2 MR. QUATREVAUX: It is owned jointly by the
3 Fund for the City of New York and the corporation. And
4 each are entitled to use it as they see fit. This
5 version that exists tomorrow will be preserved and
6 available to the corporation.

7 CHAIR EAKELEY: Well, I thank you for that.
8 And Richard, we thank you for your input, too, and your
9 patience.

10 MR. ZORZA: I have been involved with Legal
11 Services for many, many years.

12 CHAIR EAKELEY: We know.

13 MR. ZORZA: So I fully understand.

14 CHAIR EAKELEY: But this is impressive, and we
15 thank you for it. And we will reserve on the
16 jurisdictional debate, and rejoin that the next time we
17 meet. But Richard, hopefully, you will not have to be
18 involved in that part of it, as we consider moving
19 forward together.

20 MS. MERCADO: Mr. Chairman, although I would
21 make the recommendation that when we get to the point
22 of discussing the issue, it would be helpful for the

1 rest of the board members to have any legal opinions or
2 memoranda discussing this issue.

3 CHAIR EAKELEY: That is what we are waiting
4 for. But that is an independent issue from the
5 question of whether the corporation, whether the
6 management of the corporation, pursues this issues this
7 recommendation of the Inspector General with its
8 prototype that is basically something that is coowned
9 by the corporation and the Fund for the City of New
10 York.

11 Thank you again.

12 MR. QUATREVAUX: You are welcome.

13 CHAIR EAKELEY: It is 12:30. Could we maybe
14 ask for the finance committee report. And then perhaps
15 before going on to the report of the operations and
16 regulations committee, which has ten subparts, we could
17 adjourn for lunch at that point. Maria Luisa.

18 MS. MERCADO: Yes. We are getting some
19 handouts to pass to you. I think that most of you were
20 present at the finance committee meetings. So I am not
21 going to go into a lot of detail.

22 There are currently being passed a couple of

1 resolutions that will deal with the actions that the
2 committee took yesterday, and there are more that we
3 need to take action on today.

4 As I mentioned earlier, I think pretty much
5 all of the board members were present throughout the
6 finance committee meeting, and heard the discussions
7 both on the budget mark and particular adjustments that
8 were made on the fiscal year 1997 budget as well. I
9 will wait until we finish handing out the paperwork.

10 Of course, the Inspector General as well as
11 management were present and there to discuss the budget
12 mark. Since we have so many items to deal with this
13 afternoon, I will try to be as brief as possible. But,
14 of course, if any of you have any particular item that
15 is a question to you, please let us know. Mr.
16 Richardson is also present to address any additional
17 questions that we may have overlooked.

18 But the first item that we do have for action
19 by the board of directors is the adoption of the
20 consolidated upgraded budget for the fiscal year 1997.
21 And that is included in your Attachment B. It is
22 papers one and two, and then Attachment B, which is the

1 management and administration part of the budget.

2 CHAIR EAKELEY: The reason that we are
3 adopting a consolidated operating budget for the
4 current fiscal year is because when we last met on
5 September 30th the fiscal year had not begun. And we
6 did not know what our appropriation was going to be,
7 nor did we know what the carry-over funds would be.

8 And what this is is a final version of the
9 current year's budget that has been agreed to by
10 management and the Office of the Inspector General, and
11 reviewed by the finance committee that deals both with
12 the appropriation of \$275 million and the carry-over
13 funds that added to it that makes for a budget in
14 excess of that.

15 MS. MERCADO: That is correct. The bottom
16 line figures are \$275,717,848 for the delivery of legal
17 assistance, \$7,692,252 for management and
18 administration, and \$1,742,617 for the Office of the
19 Inspector General.

20 The basic carry-overs that we have, if you
21 would look at Attachment A. We had designated funds of
22 \$240,252 that are being carried over. And the

1 Inspector General's line was actually the \$200,000
2 consulting money that he has from the previous period.

3 The difference in the number was what, what
4 particular carry-over did he have? I have forgot that.

5 MR. RICHARDSON: It was mainly in the
6 consulting area, but it was \$243,697. And that is just
7 an accumulation of what salary he had left over and
8 travel, and other operating along with the consulting
9 that added to that total.

10 CHAIR EAKELEY: I am sorry, I misspoke. Our
11 appropriation is \$283 million. And the carry-over
12 funds were much less than I had suggested.

13 MS. MERCADO: That is correct.

14 The designated funds, the \$101,100, management
15 and administration, are basically --

16 MR. RICHARDSON: It is mainly the ongoing
17 computer technology. There was a \$3000 set-aside for
18 consulting to upgrade our financial management system.
19 And then there was \$48,900 that was set aside in the
20 Office of Information Technology for the continuation
21 of the grants management project that is under way.

22 MS. MERCADO: And there is \$200,000 in other

1 funds available, especially the interest carry-over.

2 MR. RICHARDSON: That is correct, for this
3 year.

4 CHAIR EAKELEY: Am I also correct in noting
5 that the fact that we have carry-over funds means that
6 we have eliminated the operating deficit that we
7 inherited three years ago?

8 MS. MERCADO: The almost \$3 million deficit,
9 yes. And we are also on target as far as taking care of
10 the build-out expenses for all of the renovation and
11 subletting the space that we had had. We did have a
12 very detailed report from Joan Kennedy, who has been in
13 charge of making sure that the extra space that we were
14 asked to sublet has been done. And of that, the 6000
15 square feet, I think --

16 MR. THOMPSON: 6000 to 6500.

17 MS. MERCADO: That has not been sublet. And
18 we did have a discussion about the fact that the
19 Inspector General was requesting for next year's budget
20 an increase of about 1500 to 2000 square feet in space.
21 And realistically, management and administration will
22 probably need an equal amount of space.

1 And management and the Inspector General are
2 to get to together and decide on the rest of the space,
3 how to configure it. Because to lease all of it out at
4 this point, we may not be able to have space.

5 And I am sure that all of you have observed
6 the incredible amount of work, and down sizing, and
7 reconstructing, to try and deal with the fact that we
8 do have less funding. And one of our greatest costs is
9 occupancy cost.

10 CHAIR EAKELEY: Are there any questions?
11 Nancy.

12 MS. ROGERS: I am still trying to get my hands
13 around the cost of technology, as we look at the
14 budget. And I wonder how much it costs the Inspector
15 General's Office to go from square one to the prototype
16 that we just saw?

17 MR. RICHARDSON: There is \$70,000 in this
18 budget to cover the cost of where the project is going
19 to date.

20 MS. ROGERS: Okay. Thank you.

21 CHAIR EAKELEY: Edna.

22 MS. FAIRBANKS-WILLIAMS: What I wanted to say

1 is since we have rented from other people, and we have
2 not had a written report from Joan Kennedy, I would
3 appreciate at least knowing who we had rented to, and
4 for how long, and for how much. I do not like to have
5 someone call me on the phone, and not be able to say.

6 CHAIR EAKELEY: We want to address that, but I
7 think that it might be a good follow-up from this
8 meeting for the board to have a report on the space
9 allocation process.

10 MR. FORGER: With respect to some of that,
11 Edna, we have terminated our lease commitments. And we
12 have been able to have some others come in now and take
13 over the prime lease. With respect to others, they are
14 a sub-lease. So we still have some continuing
15 responsibility there.

16 MS. FAIRBANKS-WILLIAMS: That is what I wanted
17 to know.

18 MR. FORGER: I think that we can put together
19 one piece relating to the space that we started with,
20 what we now have, and who is occupying the balance, and
21 with the financial implications, part of which are in
22 the budget here of what it has cost us both in build-

1 out and brokerage, and in subsidizing rent.

2 CHAIR EAKELEY: I do not know whether it will
3 delay things too much, Edna, to do it this way. But we
4 had asked yesterday at the finance committee, or we
5 have suggested that management and the OIG go back and
6 rethink future space needs for 1997 and 1998, and
7 analyze the remaining space as yet un-sublet, to see
8 whether that space could meet those needs, or if
9 reconfigured could meet those needs.

10 But perhaps a meaningful way to present all of
11 this information to the Board, so that we also get the
12 context in which more space needs are being requested,
13 would be just a report on space that would include
14 sublets, prime lease, costs, build-out.

15 MS. FAIRBANKS-WILLIAMS: That is the problem.
16 I do not want them to rent out so much that they are
17 living in a rabbit warren. They have to work hard
18 enough as it is.

19 CHAIR EAKELEY: Do you think we can do that?

20 MR. FORGER: We can have that available
21 probably in the next week and distributed.

22 CHAIR EAKELEY: Take enough time to think

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1 through what the needs might be, and coordinate with
2 the IG, and compare what those projected needs look
3 like, and available space. But that is a good
4 suggestion, Edna.

5 Are there any other questions?

6 (No response.)

7 CHAIR EAKELEY: Hearing none, we have before
8 us a resolution that has been proposed for the adoption
9 of a consolidated operating budget that was approved by
10 the finance committee yesterday.

11 Maria, do we have a motion?

12 M O T I O N

13 MS. MERCADO: Yes. I move that we adopt this
14 resolution, and in fact adopt the consolidated
15 operating budget for fiscal year 1997 as proposed.

16 MR. SMEGAL: Second.

17 CHAIR EAKELEY: A second by Mr. Smegal.

18 Is there any further discussion?

19 (No response.)

20 CHAIR EAKELEY: All those in favor.

21 (Chorus of ayes.)

22 CHAIR EAKELEY: Opposed.

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1 (No response.)

2 CHAIR EAKELEY: The ayes have it. Thank you
3 very much. We have now a consolidated operating budget
4 for fiscal year 1997.

5 Next is fiscal year 1998.

6 MS. MERCADO: Yes.

7 CHAIR EAKELEY: I am sorry. Yes. No, I am
8 sorry. I keep forgetting what year I am in.

9 MS. MERCADO: Mr. Chairman, we did have a
10 presentation by our president, Alex Forger. And as I
11 think Alex has mentioned, part of this is the
12 president's report. It was basically the position that
13 the administration after some negotiation was going to
14 recommend the \$140 million as a budget mark for 1998.

15 And in line with what we had done in the
16 previous year, that we would go ahead and support the
17 position of the administration to go in for the \$140
18 million. So we are changing our budget mark request,
19 which we had adopted at the last meeting for \$396
20 million, to \$340 million.

21 And basically, that breaks out into \$218,070
22 for the basic field programs, \$12 million for the

1 technology initiative, \$7,111,000 for management and
2 administration, and \$2,019,000 for the Inspector
3 General.

4 And in the \$2 million amount, it does include
5 a breakout for occupancy costs that would be a line
6 item to the Inspector General.

7 CHAIR EAKELEY: Cost of space allocable to the
8 operations of the Inspector General paid for by the
9 corporation?

10 MS. MERCADO: Right. And that \$2 million
11 amount does take away from what originally was
12 allocated to the Inspector General as far as for staff,
13 salary, and everything else. We would take away from
14 management and administration that portion of the
15 occupancy cost. It does not have an attachment. It is
16 the revised rank calculation, the very last attachment.
17 The Inspector General's portion of the occupancy cost
18 is \$288,000. Whereas before we had that portion in the
19 management and administration line. It would be the
20 \$288,000 plus the \$1,675,000.

21 CHAIR EAKELEY: Does everyone understand? The
22 finance committee recommended or proposed that the

1 Board adopt a new budget mark for fiscal year 1998 of
2 \$340 million. Assuming that we adopt that, we then are
3 required or requested by OMB to submit a breakout of
4 that \$340,000 in terms of grants, a special technology
5 project which is one of the things that are being
6 proposed, as well as a breakdown of the management and
7 administration line of the \$340 million.

8 And that is basically -- I think that we have
9 three motions for this, the first of which is to adopt
10 the budget mark or revised budget mark for fiscal year
11 1998 of \$340 million.

12 Secondly, to agree to an allocation of that
13 \$340 million, which has the numbers that Maria Luisa
14 read, but which I now forget.

15 And a third part of which would be to adopt
16 the initial fiscal year management and administration
17 line that is presented to you on the last page of the
18 handout.

19 MS. BATTLE: I have just one question.

20 When you shift the occupancy costs to the
21 Inspector General, then the Inspector General is still
22 under the rubric of the lease for the entire

1 corporation, is that correct, this is just a shifting
2 of those costs?

3 MS. MERCADO: That is correct.

4 CHAIR EAKELEY: Go ahead, Alex.

5 MR. FORGER: I would add just a brief
6 explanation on the increase of the M&A budget for
7 fiscal year 1998. Two principal items are the addition
8 of seven personnel, I think five in the Office of
9 Program Operations. And two others, I think one in
10 General Counsel and one in Information.

11 And it presupposes a six percent salary
12 increase. And those are the two principal components.
13 The total M&A budget is roughly \$9,930,000. Which
14 depending on where you put the rent allocation, that is
15 the total of the Inspector General and the management
16 side. And here in the proposed budget, it allocates a
17 portion of the space used by the Inspector General for
18 internal bookkeeping purposes to his line.

19 So in the aggregate, it is still \$9.9-some odd
20 million, with the motion that he would pick up the
21 responsibility at least of that aspect of that rent
22 payment.

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1 CHAIR EAKELEY: So we are looking for someone
2 to move that the Board adopt a budget mark of \$340
3 million for fiscal year 1998, which is to be
4 distributed as follows: Basic field programs,
5 \$380,070,000.

6 MS. MERCADO: \$318 million.

7 CHAIR EAKELEY: \$318?

8 MS. MERCADO: Yes.

9 CHAIR EAKELEY: I am sorry. \$318,070,000.
10 Technology initiative, \$12 million. Management and
11 administration, \$7,911,000. And the Office of
12 Inspector General, \$2,019,000.

13 MS. MERCADO: Mr. Chairman, may I recommend
14 that if we pass the resolution that has been presented
15 to you, it deals with all of the three different items
16 that we have been discussing.

17 CHAIR EAKELEY: Right. That is what I am
18 trying to read from. Right.

19 M O T I O N

20 MS. MERCADO: I move.

21 MS. FAIRBANKS-WILLIAMS: Second.

22 CHAIR EAKELEY: Ms. Mercado moves. And the

1 second was Edna Fairbanks-Williams.

2 Is there any further discussion?

3 MR. SMEGAL: Let me just point out that the
4 M&A portion of this budget continues to be less than
5 three percent of the total budget.

6 CHAIR EAKELEY: Is there any further
7 discussion?

8 (No response.)

9 CHAIR EAKELEY: All those in favor.

10 (Chorus of ayes.)

11 CHAIR EAKELEY: All those opposed.

12 (No response.)

13 CHAIR EAKELEY: The ayes have it.

14 Is there any further report by the finance
15 committee?

16 MS. MERCADO: No. Just that our staff is
17 really working under extreme circumstances to get all
18 of the work out, and all of the restrictions, and all
19 of the space reduction, and staff reduction.

20 CHAIR EAKELEY: And we appreciate that hard
21 work, and the results that it shows.

22 MS. MERCADO: And we definitely appreciate Mr.

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1 Richardson's time to figure out where to save, and
2 where to rob Peter to pay Paul.

3 CHAIR EAKELEY: This is probably as an
4 appropriate time as not to break for lunch. It is
5 12:50. If we could agree to reconvene promptly at
6 1:30. We have got a lot of work ahead of us. See you
7 all back here at 1:30.

8 (Whereupon, at 12:50 p.m., a lunch recess was
9 taken.)

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A F T E R N O O N S E S S I O N

(1:55 p.m.)

CHAIR EAKELEY: We are back on the record.

And we are at Agenda Item 10, consider and act on the report of the Board's Operations and Regulations Committee. LaVeeda Morgan Battle.

MS. BATTLE: Thank you, Mr. Chairman.

The Operations and Regulations Committee met on December 13th, 14th, and also on January 5th, to consider some 11 proposed and interim regulations. We did that and have some recommendations that we would like to make to you today.

First, I would like to mention that there were two regulations that we did consider in our meetings, that we at this point will defer, in that we have some issues that we still need to consider carefully, and will present to the Board at its next meeting.

And those two regulations are 1642 and 1639. One pertaining to attorney's fees, 1642; and 1630 pertaining to welfare reform. We do, however, have another nine regulations that we will present to you today. Eight of them are interim regulations, which

1 today we will propose that the Board adopt final
2 regulations on. And one is a proposed regulation that
3 we entered into a review of in order to meet some of
4 the requirements 904, but we made no revisions that
5 required that it be interim.

6 You should have before you a package that was
7 provided to you, which contains the final rules for
8 your review today. The first rule in that package is
9 Part 1609, pertaining to fee generating cases.

10 This is the one rule that I mentioned earlier
11 that was a proposed rule, and not an interim rule.
12 Because essentially what we did with 1609 was to take
13 out the language which referred to attorney's fees. So
14 that it could be addressed solely in Part 1642.

15 We also make some technical changes here. And
16 we decided after we deliberated and put out this
17 proposed rule to return in large measure to language
18 that was in the rule before we ever did our review in
19 several various instances. But 1609 is designed to
20 ensure that recipients do not use scarce legal
21 resources when private attorneys are available to
22 provide effective representation. And number two, to

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1 assist eligible clients to obtain appropriate and
2 effective legal assistance. That is the purpose of
3 this rule.

4 One of the changes that we made here was in
5 order for a particular recipient to ascertain whether
6 or not there is interest among the private bar was to
7 require them to get letters from two private attorneys
8 indicating that they no interest. So you will have
9 surveyed to determine whether there is interest before
10 making a determination to take a fee generating case.

11 The other issue had to do with some language
12 that we reviewed in our statute about the ability to
13 take statutory benefit cases without going through this
14 review of polling the private bar. And we decided to
15 stay with the language that was in the original rule
16 with regard to statutory benefits, which specifically
17 cites the Social Security Act, Subchapter 2, which is
18 disability benefits and SSI.

19 So essentially, that is 1609. As I go through
20 them, if there are any questions, you can just ask.

21 CHAIR EAKELEY: Might we vote them one by one,
22 as we go through them, because there are so many?

M O T I O N

1
2 MS. BATTLE: I so move the adoption of this as
3 a final rule.

4 MR. MCCALPIN: Second.

5 CHAIR EAKELEY: Bill McCalpin seconded it.

6 Is there any further discussion or any
7 questions about Part 1609?

8 (No response.)

9 CHAIR EAKELEY: Hearing none, all of those in
10 favor.

11 (Chorus of ayes.)

12 CHAIR EAKELEY: Opposed.

13 (No response.)

14 CHAIR EAKELEY: The ayes have it.

15 MS. BATTLE: Okay. The next rule that we have
16 before us --

17 MR. SMEGAL: The copies of these that we had
18 dated January 3 had footnotes that are not in these.

19 Were those for our benefit?

20 MS. BATTLE: Yes. The footnotes were for your
21 benefit.

22 CHAIR EAKELEY: The final text for January

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1 5th.

2 MR. SMEGAL: Thank you.

3 MR. ERLENBORN: LaVeeda, I think that it was
4 also mentioned that there will be commentary.

5 MS. BATTLE: That is right.

6 MR. ERLENBORN: Which we do not have here, but
7 commentary that would follow some of the suggestions
8 made by the members of the committee.

9 MS. BATTLE: That is exactly why. With each
10 of these rules, our procedure has been for the Board to
11 adopt the rule that would finally be published in the
12 Federal Register.

13 When it is published in the Federal Register,
14 it will be accompanied by commentary that will reflect
15 the deliberations by the committee, after having
16 received public comment, and appropriately respond to
17 many of the comments that we have received from the
18 public, as well as concerns that were raised by the
19 committee and those who have participated in the
20 process.

21 The next part that we have is 1612. And
22 essentially, Part 1612 pertains to restrictions on

1 lobbying and certain other activities. /

2 Section 504 required this Board to assure that
3 these restrictions on lobbying and certain other
4 activities would apply to all funds with certain
5 specific exceptions. And one of the exceptions set out
6 was the opportunity to use non-LSC funds to respond to
7 congressional inquiries that were made or self-help
8 kinds of issues.

9 What we tried to do in reexamining the
10 lobbying reg was to simplify it to make it workable and
11 readable, and to respond to the requirements under 504,
12 which was to extend the restrictions that we had on
13 lobbying to non-LSC funds, as well as LSC funds.

14 The essential purpose of 1612 is to ensure
15 that LSC recipients and their employees do not engage
16 in certain prohibited activities including
17 representation before legislative bodies or other
18 direct lobbying activities, grassroots lobbying,
19 participation in rule making, public demonstrations,
20 advocacy training, and certain organizing activities.

21 The rule also provides guidance on when
22 participants may participate in public rule making, or

1 efforts to encourage state or local governments to make
2 funds available to support recipient activities, and
3 when they can respond to certain activities. And I
4 think that I have kind of covered that in an overview
5 that I have given you.

6 I would like to make mention of some
7 discussion that our committee had yesterday on sub-
8 issue in this rule, which has to do with the
9 participation of attorneys with LSC recipients and Bar
10 Association activities. And we put together a two part
11 rule that requires if, for example, you are a member of
12 a committee or a chair participating in Bar activities,
13 and one of these issues comes up that relates to
14 lobbying, that you not participate in those activities,
15 and that you assure that no LSC funds are used for your
16 participation, and that you do not identify LSC with
17 those activities.

18 That does not mean that you cannot participate
19 in Bar activities generally. But if the essential
20 activity that you are attending is not devoted to this
21 purpose, which is lobbying, you cannot participate.

22 We also decided to construct the purpose, as I

1 read it to you, in a positive rather than as it was in
2 the past in the negative, because we thought that an
3 affirmative statement communicates more clearly the
4 essence of this rule than a negative statement. So
5 that was the other issue.

6 And with that explanation, if there are no
7 questions before I move, I would like to move for the
8 adoption.

9 CHAIR EAKELEY: Tom.

10 MR. SMEGAL: Well, again, I apologize for
11 asking this. But in the copy that I had dated January
12 3, there was a footnote to it that said we recommend
13 revising this provision. And what we have before us
14 dated January 5, of course, that is not there.

15 The "we," here, is that the staff?

16 MS. GLASOW: We cannot hear.

17 MR. SMEGAL: I am looking at the January 3
18 version, and there is a footnote that we recommend.

19 Is that the staff recommending to the
20 committee?

21 MS. GLASOW: Yes.

22 CHAIR EAKELEY: Suzanne Glasow of the Office

1 of General Counsel confirmed that the "we" is staff.

2 MS. BATTLE: She ought to come up.

3 CHAIR EAKELEY: Suzanne, why don't you come to
4 the table. And indeed, Linda Perle, also.

5 MS. BATTLE: In case there are any other
6 questions.

7 CHAIR EAKELEY: As you like, as a participant
8 in this process.

9 All right. If there are no other questions --

10 M O T I O N

11 MS. BATTLE: I would so move.

12 CHAIR EAKELEY: The motion is that we adopt
13 Part 1612 as the final regulation.

14 MS. MERCADO: Second.

15 CHAIR EAKELEY: The second is from Ms.
16 Mercado.

17 Is there any further discussion?

18 (No response.)

19 CHAIR EAKELEY: All those in favor.

20 (Chorus of ayes.)

21 CHAIR EAKELEY: Opposed.

22 (No response.)

1 CHAIR EAKELEY: The ayes have it. The
2 regulation is adopted.

3 MS. BATTLE: The next regulation you should
4 have in your packet is Part 1620, which pertains to
5 priorities in the use of resources. Part 1620, we have
6 always had -- we had a regulation in the past which
7 addressed the issue of priorities and use of resources.

8 However, 504 required that we assure that not
9 only do we have priorities, but that no cases be taken
10 outside of those priorities once they are set. And
11 that we establish some sort of emergency procedure was
12 the other thing that the committee decided to do, if
13 for some reason there was a need to take a case that
14 was outside of the established priorities.

15 In an earlier version to 1620, we had not only
16 a listing, a laundry list, which you will find in your
17 packet on page 3 of the 1620 regulation, for board
18 consideration, there was a provision in here for the
19 executive director to give some input in certain
20 various areas.

21 Upon review of this particular regulation, we
22 made a determination that indeed this is a board

1 responsibility to establish the priorities. And so the
2 regulatory requirement that we have in here is that
3 certain factors be considered by the recipient in
4 establishing the priorities. And we set forth about
5 eleven factors that must be considered. And that it is
6 incumbent on the board should they desire additional
7 factors, to consider those additional factors, but to
8 have this as a guide for the boards to consider.

9 CHAIR EAKELEY: LaVeeda, on page 3, there is a
10 footnote that it may have not been intended to be
11 included.

12 MS. BATTLE: It should be excluded.

13 CHAIR EAKELEY: And the proposal will be to
14 exclude it.

15 MS. BATTLE: That is right. The proposal
16 should exclude any footnotes which may have slipped
17 through our word processor in the final regs that we
18 are presenting today.

19 CHAIR EAKELEY: Even word processors get tired
20 late at night.

21 MS. BATTLE: That is right.

22 There is also a provision that I would like to

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1 make mention of, which is that there must be a signed
2 written agreement by the staff on these priorities, so
3 that they are aware of what the priorities are, and
4 what cases are acceptable and which cases are not
5 within the priorities based on having read and signed
6 the statement to that effect.

7 There is also an extensive reporting
8 requirement on this, so that the corporation is aware
9 of what the priorities are for all of the various
10 recipients throughout our system.

11 M O T I O N

12 MS. BATTLE: I would move the adoption of
13 1620.

14 CHAIR EAKELEY: Is there a second?

15 MS. WATLINGTON: Second.

16 MR. ERLENBORN: Second.

17 CHAIR EAKELEY: Ernestine Watlington joined by
18 John Erlenborn seconded it.

19 Are there any questions or further discussion?

20 MS. ROGERS: A question.

21 CHAIR EAKELEY: Nancy.

22 MS. ROGERS: Did the committee look at the

1 question of whether there would be a problem with the
2 privilege in reporting to the Board regarding an
3 emergency case?

4 MS. BATTLE: Well, what we did was to
5 establish a procedure for those cases that were taken.
6 And reporting the fact that you have taken a case
7 outside of the normal priorities, I am not sure that
8 just that reporting would require that you disclose
9 privileged information in order to assess whether it
10 was appropriate to take something outside of your
11 priorities.

12 MS. ROGERS: In other words, as it is
13 enforced, it says that it shall include a rationale for
14 undertaking each case.

15 MS. BATTLE: Yes.

16 MS. ROGERS: The understanding would be that
17 that can be a very general rationale such as what is
18 terribly important to that individual, or some other
19 rationale like that.

20 MS. BATTLE: Life, liberty, -- well, risk of
21 safety. I was going to say the pursuit of happiness.
22 But more or less, if a reason is given which can

1 justify why this emergency should have been taken, I do
2 not think that you necessarily have to get into
3 privileged information to do that.

4 CHAIR EAKELEY: Are there any other questions?

5 (No response.)

6 CHAIR EAKELEY: All right. It has been moved
7 and seconded that we adopt Part 1620 as the final rule.

8 All those in favor.

9 (Chorus of ayes.)

10 CHAIR EAKELEY: All those opposed.

11 (No response.)

12 CHAIR EAKELEY: The ayes have it.

13 MS. BATTLE: We can move on to Part 1626,
14 which pertains to restrictions on legal assistance to
15 aliens. One of the things that we did in order to
16 assure the accuracy of our work on this particular reg,
17 because it really does require some significant
18 expertise in dealing with immigration to understand
19 from the concepts that we have in this particular
20 regulation, was to send it out to the National
21 Immigration Law Center in California for their
22 observation and review, as well as the fact that we

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1 took in comments, and carefully considered all of the
2 comments that we received regarding the interim
3 regulation proposal.

4 We decided essentially to set out here a
5 definition of citizenship that is consistent with
6 immigration law. We decided to make a provision
7 available here to meet the requirements of the Kennedy
8 amendment that many of us are familiar with to address
9 the issue of a battered spouse or child, who may be
10 seeking services from Legal Services entity.

11 And we also gave very careful consideration to
12 an issue that was raised by the Inspector General with
13 regard to how you go about assuring that all of the
14 clients that are seen by our recipients are citizens of
15 the United States.

16 The process that we have had in place for some
17 time that has worked very effectively is one of
18 requiring applicants for our services to attest to
19 their citizenship. And if you get that attestation up
20 front, and you have no reason to question the veracity
21 of that attestation, then there is no problem.

22 If you do question the veracity of the

1 attestation, we put a provision in as to how one can
2 review citizenship and receive appropriate
3 documentation to assure either that the person is a
4 citizen or an alien who can receive services.

5 One of the reasons that there is a different
6 standard for one who is attesting to citizenship as
7 opposed to one who attests that they are an eligible
8 alien is the fact that not all aliens are eligible.
9 And so we have an attestation requirement for
10 citizenship, and we have a documentation requirement if
11 you purport to be an eligible alien. Because there are
12 going to be some aliens who are going to be eligible,
13 and some that are not going to be eligible.

14 The Inspector General, in order to get around
15 an issue of discrimination, suggested that what we do
16 is to have everyone document their citizenship. We
17 heard in comments on many of the problems that were
18 present in our meeting during December 13th and 14th a
19 real concern that this would be a tremendous
20 administrative burden in light of the fact that there
21 had been a historical problem at all in this area.

22 And in hearing that and in reviewing the

1 history that has been around this issue, we decided to
2 make the cut to require attestation for purposes of
3 citizenship, if there is absolutely no issue of
4 veracity regarding that attestation, and to require
5 verification at any time that there is an eligible
6 alien.

7 We think that is a sound way to approach
8 assuring that we have met the requirements under 504
9 with respect to 1626.

10 MR. SMEGAL: In view of the IG's comments,
11 have they had comments with respect to that, or are
12 they in agreement with this now?

13 MR. MCCALPIN: No.

14 MS. BATTLE: They do not agree, but they do
15 understand the position the position we are taking, and
16 did not have real strong evidentiary basis for saying
17 why we should require citizenship in all instances.
18 The only reason that they did say that we should do it
19 was to get around what you will see in 1626.6(b) on
20 page five.

21 And that is because that there is a law that
22 prohibits one using illegal reasons to say we are not

1 sure that you are a citizen, because you do not speak
2 this language, or you do not look like the rest of the
3 citizens around here, or your accent seems not be the
4 usual U.S. citizen accent.

5 And their main concern, so that you can assure
6 yourself that you are not being discriminatory in how
7 you do challenge this question of the veracity of an
8 attestation, then why don't you just require everybody
9 to provide documentation.

10 We took the opposite view on that. We took
11 the view that we would set out in our regulations as
12 part of the regulation the provision that you not
13 discriminate against people in trying to ascertain
14 their citizenship. But that we would note in the
15 commentary exactly the kinds of things that you could
16 use as a legitimate basis in a credible way to look at
17 the issue of the veracity of an attestation with regard
18 to citizenship.

19 So that was the way that we chose to address
20 that question. We think that it is sound, and we think
21 that it meets the requirements of 504. And I believe
22 that we have had some discussions with some of the

1 members of the committee, staffers, who are pretty much
2 in agree with us in regard to that.

3 MS. ROGERS: The law that was the basis for
4 the sentence of, "A recipient shall not" -- does that
5 pretty much restate the law or does the law simply say
6 that that cannot be the sole basis?

7 MR. MCCALPIN: I am sorry, I did not
8 understand your question.

9 MS. ROGERS: It is just a question about the
10 law that, LaVeeda, that you referred to in .6(b) "A
11 recipient shall not consider factors such as --" And
12 then there is a series.

13 Does the law prohibit any consideration, or
14 does it simply say that that cannot be the sole basis
15 of a decision?

16 MS. BATTLE: It is case law.

17 MS. ROGERS: It is case law.

18 MS. MERCADO: It is case law. It is
19 unconstitutional to do that. That case arose, actually
20 it was a Texas case. Because a lot of Hispanics were
21 being stopped because they looked foreign. Because of
22 their language, or the way in which they dressed, INS

1 was just randomly. And a lot of those people being
2 stopped were U.S. citizens and lived along the border.

3 Now the same is not true on the northern end
4 of the U.S. border. Because people come back and
5 forth, and remain in the Michigan area or whatever.
6 And the same standard has not been used that you have
7 got in the two different areas.

8 I do not remember the name of the case, it was
9 not the Silva case, but it is case law rather than
10 statutory. I do not know the reasons, but that is not
11 the kind of standard that we want Legal Services to set
12 up. To ask people, because of a certain way that they
13 speak or look, whether or not they are documented.

14 MS. ROGERS: Well, the reason for putting this
15 language in here was to make it clear that we do want
16 to assure that the person who we serve meets this
17 criteria, but we do not want people to consider
18 discriminatory reasons for challenging that
19 determination.

20 CHAIR EAKELEY: Tom, and then John.

21 MR. SMEGAL: My only question is in view of
22 the fact that we have a memo from the Inspector

1 General, an underlying memo, is there any comment from
2 the Inspector General on this issue?

3 MS. BATTLE: No.

4 MR. SMEGAL: No. Okay, thank you.

5 CHAIR EAKELEY: John Erlenborn.

6 MR. ERLENBORN: Well, if the Inspector General
7 is not going to make a comment. I have some
8 reservations about this. I went along with the
9 proposals, as it is here. But I recounted to the
10 committee my recollection that when the immigration
11 laws were changed some years ago, to impose a penalty
12 on employers who employed those who were not documented
13 aliens or undocumented aliens who were employed, that a
14 decision was made that everyone, regardless of how --
15 even if you knew them personally, were present at their
16 birth, still if you hired them, you had to request of
17 them or demand of them that they give you proof of
18 their citizenship.

19 Now that was a decision that was made by the
20 Congress in deciding what to do in that instance. So
21 that is one reason that I had some reservations. I
22 think that the Inspector General would have to speak

1 for him. But I think that there were two reasons for
2 the reservations or the comment that he made.

3 One was to obviate the question of
4 discrimination by demanding documentation of some
5 people and not of others. So if you demand it of
6 everyone, then you are certainly not going to be
7 engaging in discrimination.

8 The other was in verifying whether the
9 recipient has been in compliance or not. Whether
10 possibly those who were not citizens had been treated
11 as citizens and given services. If all you have is an
12 attestation, proof of citizenship is very difficult.
13 As I understood the IG's comment, it is very difficult
14 after the fact to verify that the ones getting the
15 service were entitle to it.

16 CHAIR EAKELEY: Maria Luisa.

17 MS. MERCADO: I think that the actual
18 implementation of the law that we are talking about by
19 employers is what they actually have the employees
20 sign. I think that it is a Form I-190 that just says
21 that they are citizens or that they are residents.
22 They do not actually require the documentation.

1 MR. ERLNBORN: They have to have a birth
2 certificate, passport, and enumerated -- in fact, I
3 think that this list in here is probably where that
4 list came from.

5 MS. MERCADO: I understand what the law is. I
6 am just saying that employers should just have the
7 employees sign that form.

8 (Pause.)

9 CHAIR EAKELEY: All right.

10 MS. BATTLE: Our final assessment, after
11 hearing and balancing and weighing all of these
12 interests, was to make the recommendation, which we
13 did, which was to require attestation on citizenship.
14 And when one says that they are an alien, to require
15 the documentation, so we are ascertain whether they are
16 eligible as an alien or not.

17 And we did take into account -- I think that
18 John did raise those same concerns when we had our
19 meeting. We did hear from the Inspector General, and
20 we did hear from the field, and we did hear from our
21 staff, in coming to this resolution on this particular
22 issue. And we did also hear from the Hill that they

1 were satisfied with this as a resolution.

2 CHAIR EAKELEY: One friendly amendment. The
3 introduction on the first page, the first line, "The
4 corporation published an interim rule on attorneys'
5 fees."

6 MS. BATTLE: Does it say that?

7 MR. ERLNBORN: Yes. It is that word
8 processor again.

9 CHAIR EAKELEY: I will say something about
10 this process when we are done.

11 With that friendly amendment, are there any
12 other questions?

13 (No response.)

14 CHAIR EAKELEY: Do we have a motion, LaVeeda,
15 for approval as a final rule of Part 1626?

16 M O T I O N

17 MS. BATTLE: If I have not already so moved, I
18 so move.

19 CHAIR EAKELEY: And is there a second?

20 MR. MCCALPIN: Second.

21 MS. WATLINGTON: Second.

22 CHAIR EAKELEY: Bill McCalpin and Ernestine

1 Watlington.

2 Is there any further discussion?

3 (No response.)

4 CHAIR EAKELEY: All those in favor.

5 (Chorus of ayes.)

6 CHAIR EAKELEY: Opposed.

7 (No response.)

8 CHAIR EAKELEY: The ayes have it.

9 MS. BATTLE: Next we have 1627. It used to
10 have the name of a rock group called Sub-grants, Fees,
11 and Dues. Then we decided to take fees out. And then
12 we put back in membership fees. So now we as a title
13 for 1627, Sub-grants, Membership Fees, and Dues.

14 The only essential thing that we did to this
15 was to add the term membership to the term memberships
16 fees and dues. There was some concern that we received
17 in our discussions about why we took the membership
18 fees out. Initially, we took it out, because the
19 membership fees were the same thing as membership dues.
20 But to make it clear, we decided to put that
21 information back in.

22 There is a distinction. If you are paying

1 fees or dues to a state bar, and you just do so in
2 order to maintain your license to practice law in that
3 particular state, then you may use LSC funds to do
4 that. If you are paying dues to a bar which is
5 optional, that you may join or choose not to join, then
6 LSC dollars cannot be used for those fees.

7 CHAIR EAKELEY: Bill McCalpin.

8 MR. MCCALPIN: I think that it may be useful
9 to point out that this amendment touches only four of
10 eight sections of this particular regulation. The
11 other four sections are not amended.

12 CHAIR EAKELEY: I am relieved to hear that.

13 MS. BATTLE: This is a partial change. That
14 was one of the things that I had in my notes, to show
15 that this is not a change to the entire rule, but just
16 some of the aspects of this rule.

17 CHAIR EAKELEY: Are there any questions?

18 (No response.)

19 CHAIR EAKELEY: Then, LaVeeda, we will need a
20 formal motion.

21 M O T I O N

22 MS. BATTLE: I so move that we adopt 1627,

1 Sub-grants, Membership Fees, or Dues as a final
2 regulation.

3 CHAIR EAKELEY: And do I have a second?

4 MR. ERLNBORN: Second.

5 CHAIR EAKELEY: All those in favor.

6 (Chorus of ayes.)

7 CHAIR EAKELEY: Opposed.

8 (No response.)

9 CHAIR EAKELEY: The ayes have it.

10 MR. SMEGAL: I am reading 1627.4(b).

11 And is it understood by everyone who will read
12 this when the word "practice" appears, that that means
13 practice of law?

14 MS. BATTLE: I think that we may have covered
15 that in the commentary in the past.

16 Is this language different than it was in our
17 previous rule, has it always been practice, or was it
18 practice of law?

19 (Pause.)

20 MS. BATTLE: I am going to leave the answer up
21 to our experts.

22 CHAIR EAKELEY: Tom, can we refer this to

1 staff?

2 MS. BATTLE: We can say practice of law.

3 Is that a problem?

4 MR. MCCALPIN: I voted with the majority. I
5 move that we reconsider for the purpose of making the
6 amendment.

7 MS. PERLE: I was just going to suggest, and I
8 do not know if this is the situation, that there might
9 be a CPA that works for a firm and is a financial
10 officer. And there might be a similar kind of
11 situation where there is a professional organization
12 that they need to be a member of. I do not know if
13 that is the fact.

14 MS. MERCADO: In fact, that is the case.
15 Because I know that the Inspector General talked about
16 auditors who are required to have these kinds of
17 licenses. This was only meant to apply to attorneys.

18 MR. MCCALPIN: Why don't we just simply add
19 the word "professional"?

20 CHAIR EAKELEY: Is your motion to reconsider
21 adding the word "professional" in front of the word
22 "practice"?

1 MR. MCCALPIN: Well, I think you have to
2 reconsider and then amend, and then we adopt, I think.

3 MS. BATTLE: Can we do all of those things? I
4 do not see that the language --

5 MS. GLASOW: Legally, it is okay to do,
6 because the Appropriations Act restriction only reaches
7 private organizations. So that is why we have this
8 exception for governmental entities for payment of
9 dues. So you could say professional. And you can make
10 that amendment, if you want to.

11 M O T I O N

12 MS. BATTLE: Then I will move it.

13 CHAIR EAKELEY: First, a motion to reconsider
14 the adoption of Part 1627.

15 Is there a second?

16 MS. WATLINGTON: Second.

17 CHAIR EAKELEY: Edna Fairbanks-Williams.

18 All those in favor of reconsidering the rule
19 say aye.

20 (Chorus of ayes.)

21 CHAIR EAKELEY: All opposed.

22 (No response.)

1 CHAIR EAKELEY: All right.

2 Now we are open for reconsideration. And the
3 proposal is that the rule be amended, that the proposed
4 rule be amended to add the word "professional" in
5 Section 1626.4(b).

6 MR. ERLNBORN: Let me just make an
7 observation. I think that the wording is a little
8 awkward. I could suggest as an amendment to that or a
9 substitute that it read as a requirement to engage in
10 professional practice. I think that a requirement of
11 practice is awkward.

12 MR. MCCALPIN: I think you are right.

13 MS. BATTLE: To engage in.

14 MR. ERLNBORN: To engage in professional
15 practice.

16 MS. BATTLE: That is fine. That makes sense.

17 CHAIR EAKELEY: So it would read, "Paragraph
18 (a) of this section does not apply to the payment of
19 membership fees or dues mandated as a requirement to
20 engage in professional practice."

21 MR. MCCALPIN: I think a professional
22 practice.

1 CHAIR EAKELEY: All right. To engage in a
2 professional practice.

3 Are there any other tinkers?

4 MR. MCCALPIN: I think, John, that what you
5 suggest ought to follow the word "organization," as a
6 requirement by a governmental organization to engage in
7 a professional practice. I think that it would be
8 better to put the insertion after the word
9 "organization."

10 MR. SMEGAL: I agree.

11 MS. BATTLE: Take the word "practice" out?

12 MR. MCCALPIN: No.

13 CHAIR EAKELEY: As a requirement by a
14 governmental organization to engage in a professional
15 practice.

16 MR. MCCALPIN: Right.

17 CHAIR EAKELEY: Comma, I suppose, to the
18 payment of membership dues.

19 MS. BATTLE: This is really considerably
20 different than what we had before.

21 CHAIR EAKELEY: Are you going to leave the
22 comma on the table?

1 MR. MCCALPIN: Yes.

2 CHAIR EAKELEY: I agree with Brother Smegal
3 that a comma might help set that off.

4 MS. BATTLE: Linda has something to say.

5 CHAIR EAKELEY: We will get to that, but I
6 want to make sure that we have got what we have gone
7 through so far.

8 "Paragraph (a) of this section does not apply
9 to the payment of membership fees or dues mandated as a
10 requirement by a governmental organization to engage in
11 a professional practice, or to the payment of
12 membership fees or dues."

13 Linda, do you have another suggestion?

14 MS. PERLE: My only suggestion was when you
15 say "engage in professional practice" that it sounds a
16 little awkward. I would say "to engage in the practice
17 of a profession." I think that sounds better.

18 MR. MCCALPIN: Okay.

19 CHAIR EAKELEY: To engage in the practice of a
20 profession.

21 MS. PERLE: Does that sound better? I do not
22 care.

1 MS. BATTLE: To engage in --

2 MS. PERLE: In the practice of a profession.

3 CHAIR EAKELEY: So it now reads, "Paragraph
4 (a) of this section does not apply to the payment of
5 membership fees or dues mandated as a requirement by a
6 governmental organization to engage in the practice of
7 a profession, or to the payment of membership fees."

8 MS. BATTLE: Is everybody happy with that?

9 MS. MERCADO: Can we have a motion to adopt
10 the rule as amended?

11 M O T I O N

12 MS. BATTLE: Yes, I move.

13 CHAIR EAKELEY: We have a motion to adopt the
14 rule.

15 MS. BATTLE: I would so move that we adopt it
16 with the amendment that we have just discussed.

17 CHAIR EAKELEY: Is there a second?

18 MR. MCCALPIN: Second.

19 CHAIR EAKELEY: Mr. McCalpin.

20 All those in favor.

21 (Chorus of ayes.)

22 CHAIR EAKELEY: Opposed.

1 (No response.)

2 CHAIR EAKELEY: Part 1627 passes again.

3 MS. BATTLE: Our next part is 1636, which
4 pertains to a client identified -- it should be a
5 client identity and statement of fact.

6 This is a new rule. And it stems from the
7 requirements of 504 that if a recipient engages in
8 negotiations to resolve a legal dispute or in
9 litigation, that they must first identify the client
10 involved and have a statement of facts that sets out
11 basically a coverable claim.

12 The purpose of this Rule 1636 is to ensure
13 that when an LSC recipient files a complaint in a court
14 of law or otherwise initiates or participates in
15 litigation against a defendant or engages in pre-
16 complaint settlement negotiations, that the recipient
17 identifies the plaintiff it represents to the
18 defendant, and ensures that the plaintiff has a
19 coverable claim.

20 So we drafted a rule that essentially met
21 those two criteria set out in 504. We had some
22 specific requirements with regard to how the identity

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1 needs to take place, and the fact that it has to be a
2 signed statement of facts by the client. And that it
3 must be written in a language that the client
4 understands, so we are sure whether the client
5 understands what it is they are saying that their claim
6 is.

7 And we also have a provision for emergencies,
8 if in fact there is a case that must take taken
9 quickly, and that statement cannot be provided. That
10 you can take the case, but you must get the statement
11 done soon thereafter, and have it signed and available.

12 Now we wanted to also cover the issue of who
13 would have access to the statement. And we decided to
14 make a determination based on our review of 504 and the
15 law. That the statement should be available only
16 through the normal discovery for that jurisdiction to
17 either the party or any persons.

18 So this is not a statement that becomes one of
19 general distribution. But for purposes of meeting 504,
20 it will be available only through discovery. That is
21 essentially it.

22 CHAIR EAKELEY: Do you want to put that in the

1 form of a motion?

2

M O T I O N

3

4

5

MS. BATTLE: I would so move that we adopt as
final Part 1636, Client Identity and Statement of
Facts.

6

CHAIR EAKELEY: Is there a second?

7

MR. ERLENBORN: Second.

8

9

CHAIR EAKELEY: Are there any questions or
comments? Nancy.

10

11

12

13

14

15

16

MS. ROGERS: I do not know whether on page 2,
if that word "particular" came from the statute. If
not, I am not sure that I would think it was a good
idea to add it. Because based on procedure,
interpretation has required a great deal more detail
than one might otherwise put in the pleadings, for
example.

17

MS. GLASOW: It is in the statute.

18

19

MS. ROGERS: If it is in the statute, then I
withdraw that comment.

20

21

22

CHAIR EAKELEY: It is a good comment. You got
a good response. We do not need to withdraw.
Are there any other comments or questions?

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1 (No response.)

2 CHAIR EAKELEY: Hearing none, all those in
3 favor of adopting Part 1636 as a final rule say aye.

4 (Chorus of ayes.)

5 CHAIR EAKELEY: All those opposed.

6 (No response.)

7 CHAIR EAKELEY: The ayes have it.

8 MS. BATTLE: We next have Part 1637, which
9 pertains to representation of prisoners. And we have
10 in our final review essentially what we started out
11 with, with some very minor changes to the definition of
12 incarcerated and penal institutions.

13 Many of the comments that we received with
14 regard to this regulation raised the issue of whether
15 being detained in a mental institution would fall under
16 the rubric of this representation of prisoners
17 restriction.

18 And in our review, we decided to make clear
19 that our understanding, and I think that it has also
20 been confirmed with the committee staff, that the
21 intent of Congress here was to ensure that the meager
22 resources that this corporation receives are not

1 utilized to represent people who are imprisoned in
2 penal institutions for litigation involving their terms
3 and conditions of being detained, as well as other
4 legal matters, civil legal matters which they may have.

5 So our definition reflects that now in
6 1637.2(a) and (b). And the prohibition allows for
7 changed circumstances. And I know that we had some
8 discussion about that the last time, and some concerns
9 raised, which I think we also discussed with the Hill.
10 And they are satisfied with the language that we now
11 have in 1637.4. So you have before you a reg which
12 precludes recipients from representing inmates in penal
13 institutions.

14 CHAIR EAKELEY: Does this apply to pre-trial
15 detainees?

16 MS. BATTLE: This applies to anyone who is
17 detained in a federal, state, or local prison.

18 CHAIR EAKELEY: Different jurisdictions call
19 them different things, but pre-trial detention
20 facilities would count if you are arrested but not
21 convicted?

22 MS. BATTLE: Yes. If it is called a penal

1 institution facility, it is, yes.

2 CHAIR EAKELEY: I do not think that our county
3 sheriffs think of our jails as penal institutions, but
4 they are there for pre-trial detention purposes. All
5 right.

6 Would you put this in a form of a motion, to
7 adopt Part 1637 as a final motion?

8 M O T I O N

9 MS. BATTLE: Yes, I move.

10 CHAIR EAKELEY: Is there a second?

11 MR. MCCALPIN: Second.

12 CHAIR EAKELEY: Mr. McCalpin.

13 Are there comments or questions?

14 MR. SMEGAL: Yes. My comment is with respect
15 to Footnote 3, the second sentence of which is, "We
16 recommend that the commentary clarify that this
17 exception of brief incarceration does not permit the
18 recipient to take on new issues and matters for the
19 client during the brief incarceration."

20 Is that what that is intended to convey?

21 MS. GLASOW: Yes.

22 MS. BATTLE: If you have a situation -- the

1 change in circumstances issue was if you have got
2 someone -- for example, you are working on their
3 divorce.

4 MR. SMEGAL: No. I understand all of that.

5 MS. BATTLE: All right.

6 MR. SMEGAL: The thought was incomplete. That
7 is what I was saying.

8 MS. BATTLE: I will complete it in the
9 commentary.

10 CHAIR EAKELEY: Are there any other questions
11 or comments?

12 MR. BRODERICK: I have one question.

13 CHAIR EAKELEY: John Broderick.

14 MR. BRODERICK: Section 1637.4, would it make
15 sense in the second line to add the following? It now
16 says that the recipient must use his best efforts to
17 withdraw promptly. Would it make sense to say, "The
18 recipient must use his best efforts consistent with
19 professional responsibility to withdraw promptly"?

20 MS. BATTLE: I think that we went through this
21 before, and that issue was raised. And we somehow
22 ended up with this language satisfying the Hill. Best

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1 efforts hopefully includes the underlying
2 responsibility, professional responsibility.

3 MR. BRODERICK: Implicit?

4 MS. BATTLE: Yes. We are hoping that it is
5 implicit.

6 MS. GLASOW: We dealt with the commentary in
7 the interim to do the same.

8 MS. BATTLE: And we do mention it in the
9 commentary.

10 CHAIR EAKELEY: Are there any other questions
11 or comments?

12 (No response.)

13 CHAIR EAKELEY: All those in favor of adopting
14 Part 1637 as the final rule say aye.

15 (Chorus of ayes.)

16 CHAIR EAKELEY: Opposed.

17 (No response.)

18 CHAIR EAKELEY: The ayes have it.

19 MS. BATTLE: The next part we have before us
20 is 1638, Restriction on Solicitation. And this part
21 essentially implements 504(a)18. It prohibits programs
22 soliciting clients. And it is designed to ensure that

1 recipients and their employees do not solicit clients.

2 I would like to make mention here of an issue
3 that came up, I do not think that it was necessarily in
4 this reg, but across the board, as we began to look at
5 the fact that we now are in a competitive process,
6 which means that not all of our entities or recipients
7 are going to be not for profit entities where you can
8 either identify a recipient or employees, but you may
9 have partners or owners who would not necessarily be
10 employees.

11 And what we would like to do with this whole
12 process is to do a relook through given that there will
13 be several different potentially even governmental
14 entities that will be doing delivery of legal services
15 down the road, to make sure that the language that we
16 use is consistent to some application for those
17 entities as it is now for the not for profit grantees
18 that we have.

19 And I wanted to mention that when I saw this
20 language for recipients and their employees. It
21 reminded me of our discussion about that. And I think
22 that we basically directed our staff to take a relook

1 through the entire process to make sure that we catch
2 all of those things.

3 CHAIR EAKELEY: Do you want to put that in the
4 form of a motion? I am sorry.

5 M O T I O N

6 MS. BATTLE: That is essentially it. It is a
7 very short reg on solicitation, strengthening the
8 prohibition on our soliciting clients.

9 And I would like to so move that we adopt as a
10 final reg Part 1638.

11 CHAIR EAKELEY: Is there a second?

12 MS. MERCADO: Second.

13 CHAIR EAKELEY: Maria Luisa Mercado.

14 Is there any further discussion or comments?

15 (No response.)

16 CHAIR EAKELEY: All those in favor say aye.

17 (Chorus of ayes.)

18 CHAIR EAKELEY: Opposed.

19 (No response.)

20 CHAIR EAKELEY: The ayes have it.

21 MS. BATTLE: Finally, we have before us Part
22 1640, which pertains to the application of federal law

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1 to LSC recipients. Essentially, this is in response to
2 the section in 504, I don't recall what the subsection
3 is, which requires the laws which apply to fraud,
4 waste, and abuse for federal funds generally to now
5 apply to LSC funds.

6 We constructed a rule and pulled together the
7 history of all of the various laws that now relate to
8 the proper use of federal funds. And we have
9 identified all of them in our definition Section 1640.
10 That we have a written agreement with the Board,
11 between the Board and the corporation, that there will
12 be no violation of these laws.

13 So we have got a provision to that effect.
14 And we also have a provision in 1640.4, which sets out
15 that if there is a violation of this agreement, which
16 means that someone has been convicted of having
17 violated any one of these laws with regard to the use
18 of federal funds, that the corporation would be able to
19 terminate that contract, or shall result in the
20 recipient's LSC contract or grant being terminated.
21 And all of that is what the statute essentially
22 directed us to do.

1 There was an issue of notice to the
2 corporation, if one viewed there to be a violation of
3 any one of these provisions of the laws that are set
4 out in 1640.2. It was initially raised by the
5 Inspector General. But on rethinking and revisiting
6 it, this particular issue, the Inspector General agreed
7 to strike the notice provision. And essentially
8 explained to us that there are already processes in
9 place in the various Departments of Justice and other
10 entities to give oversight to the use of federal funds
11 and violation of any of these statutes.

12 So we have before you a rule, which goes
13 through 1640.4, and it meets all of the specific
14 criteria set out in 504.

15 M O T I O N

16 MS. BATTLE: I would so move its adoption by
17 this Board.

18 CHAIR EAKELEY: Is there a second?

19 MS. MERCADO: Second.

20 CHAIR EAKELEY: Second by Ms. Mercado.

21 Are there any questions or comments on Part
22 1640?

1 (No response.)

2 CHAIR EAKELEY: Hearing none, all those in
3 favor of adopting Part 1640 as a final rule say aye.

4 (Chorus of ayes.)

5 CHAIR EAKELEY: Opposed.

6 (No response.)

7 CHAIR EAKELEY: The motion is passed.

8 MS. BATTLE: That is our report. I would like
9 to say, as I always do, how much we really appreciate
10 the diligence and yeoman's job done by our stake holder
11 and our staff in pulling this together.

12 We had significant participation from the
13 public, and the commentary that we received from people
14 across the nation. We had presenters who came and
15 spoke with us about their concerns about a number of
16 these regulations in our meeting in December. And we
17 are grateful for their participation and illumination
18 of our work. And to the committee members as well.

19 CHAIR EAKELEY: I want to thank the committee.
20 I want to thank especially the committee chair, whose
21 leadership and guidance has been just superb. I think
22 that the Office of the Inspector General contributed in

1 a number of substantive ways. And Suzanne and Linda in
2 particular. And as always, we appreciate that.

3 If you think about it, one of the top
4 priorities that we had along with reauthorization and
5 the billion dollar funding level when we first came to
6 office a little more than three years ago was
7 regulatory reform, get the corporation off the backs of
8 the programs, and make the process user friendly.

9 And, of course, what we have devoted an
10 enormous amount of time, and effort, and attention to
11 in the past two years in particular have been adding
12 regulations and regulatory requirements.

13 Nevertheless, that has been just an extremely
14 professional and proficient job. I was struck by John
15 Erlenborn's comment that in the 27 years that he served
16 in the Congress that he had not seen the Congress write
17 laws the way that the Ops and Regs Committee has
18 develop regulations. And I think that we have a great
19 deal to be both proud of and grateful for.

20 The other observation on this is just that if
21 there were any question in the minds of those in the
22 Congress who think that we do not care about attempting

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1 to discern and implement the congressional intent, the
2 best record to dispel any misgivings about that would
3 be the record of the deliberations of this committee.
4 And we thank you for all of that.

5 If that concludes the Ops and Regs Committee
6 report, we will move on to the Provisions Committee.

7 MR. ASKEW: Thank you, Mr. Chairman.

8 The Provision Committee met yesterday
9 afternoon. The agenda for that meeting is found on
10 page 11 of your board book. The entire committee was
11 in attendance. Committee members Rogers, and
12 Fairbanks-Williams. And we were joined later in the
13 meeting by board member Mercado.

14 You will see on our agenda that we took up
15 four information items yesterday, two of which we heard
16 reports from the Inspector General, and two of which
17 involve reports from the Office of Program Operations.

18 The first information item from the Inspector
19 General was Section 509 procedures. And what we heard
20 was that there were two aspects of that. One was the
21 pre-audit procedures, and then the post audit
22 procedures.

1 The pre-audit procedures, of course, resulted
2 in the issuance of the new audit guide and the
3 compliance supplement, which was done in the fall and
4 went out to all programs. And that stage of 509
5 compliance has been completed. Now we are in the post-
6 audit phase.

7 And we heard of three activities under way by
8 the Inspector General to implement the responsibilities
9 under 509. The first is what is called the A-50
10 procedures. I think I am getting this right. I am
11 sure that Ed will help me if I do not. The A-50
12 procedures, which are the follow-ups to the audits.

13 The Inspector General has developed a
14 memorandum regarding those procedures submitted to
15 management. Management comments were received in
16 October. And the Inspector General will be responding
17 to those comments next week.

18 The deadline for IPAs, of course, is the end
19 of April. So these procedures need to be in place by
20 May 1st. And the Inspector General is certain that
21 they will be in place in plenty of time to meet that
22 deadline.

1 The second issue is something that Mr.
2 Quatreaux referred to earlier, the AIMS system that he
3 is developing, which stands for Audit Information
4 Management System, which is the electronic scoreboard
5 that is being developed for local IPAs to submit
6 summary information on the audits once they are
7 completed by electronic means directly to the Office of
8 the Inspector General, so that they can be entered onto
9 the database of the Office of the Inspector General for
10 internal use only, as audits are completed at the local
11 level.

12 The third item that is under development is
13 that the AIMS is under development now. And at our
14 March meeting of the Provisions Committee, the
15 Inspector General plans to give us a demonstration of
16 that project, so that we can see it. That will be
17 implemented as audits are completed toward the end of
18 April.

19 The third issue is what is called the
20 debarment procedure, which the statute requires that we
21 have. If the OIG determines that an IPA, a local IPA,
22 is failing to meet standards, that IPA can be debarred.

1 And they are drafting a regulation to accomplish that.
2 They submitted it to management in November. They
3 received comments from management in December. And so
4 that is on track to be in place before audits begin to
5 be received later this year.

6 We will receive an update on these issues at
7 our March meeting. But those things are under way, and
8 seem to be on schedule from the Inspector General's
9 point of view, to have all of it in place by the time
10 that they are needed by the end of April.

11 The second issue from the Inspector General
12 was a report to us on the status of the 1995 audits.
13 We heard a report in July from the Inspector General
14 about an initial review of audits that had been
15 received. This was the conclusion of that, to tell us
16 the final outcome of the review of the 1995 audits.

17 He submitted a written report, which I have a
18 copy of here, which basically reviews the number of
19 audits received, the numbers that were clean, the
20 numbers referred to management for follow-up, the
21 numbers that the IG had to follow up, and what that
22 produced in the way of compliance problems versus

1 internal control problems.

2 What my notes reflect is that there were 24
3 audits out of the 315 that were received, that there
4 were 24 that involved compliance problems. But those
5 were not prohibited activities in the way that we think
6 of compliance today. Those are limited to financial
7 items. This is pre-509. So those are simply financial
8 items. Such things as having signed retainer
9 agreements on file, fidelity bond appropriately in
10 place, late submission of taxes, that sort of thing.

11 There has been follow-up to all of those
12 items, as I understand it, and interaction with the
13 programs on all of those topics. The Inspector General
14 suggested a change to us in one regulation about an
15 approval item for one of those things that we will
16 probably be taking up at the March meeting.

17 There were 73 audits that raised issues of
18 internal controls. And his recommendation to us is
19 that more emphasis needs to be placed on that at the
20 local program level.

21 There is still one audit, only one audit,
22 outstanding from 1995, and they are in touch with

1 programs about that.

2 So that completes the review of the 1995
3 audits from the committee's point of view. And we have
4 a report. When John Tull spoke to us on behalf of OPO,
5 he told us what OPO had done to follow up on the issues
6 that had been referred to management. And they had
7 followed up on all of those items that had been
8 referred to them by the Inspector General.

9 And I think that the only thing outstanding as
10 of today were seven PIA waivers that had been requested
11 by programs that the staff is still reviewing and
12 considering. But if I remember correctly, all other
13 items have been resolved with the programs.

14 The third item on that agenda was the Office
15 of Program Operation, and the reorganization of that
16 office, which John Tull and Merceria Ludgood reported
17 to us about. The Office of Program Operation is the
18 new acronym for what used to be OPER.

19 John is the director, and Merceria is the
20 deputy director. They have reorganized into three
21 units. A competition and program improvement unit,
22 which is comanaged by Karen Sarjeant and Kathleen

1 Welch. A compliance enforcement and follow-up unit,
2 which is managed by Danilo Cardona. And an issues
3 analysis and development unit, which is managed by Auh
4 Tu.

5 And this is a result of the new restrictions,
6 the obligations of that office, competition, and
7 reorganization of staff functions and relationships
8 with programs to better address the issues that have
9 resulted from that.

10 The interesting thing that we noted was
11 combining competition and program improvement in one
12 unit, which implies that competition will be a part of
13 and not distinct from program improvement efforts
14 within the corporation. So it is a part of evaluation
15 and technical assistance, and an attempt to help
16 programs improve, and competition will be utilized in
17 that fashion.

18 The last item that we heard a report on was
19 the status of the whole competition process. I have a
20 report here, which I asked them to prepare, summarizing
21 what we heard from them yesterday.

22 If you remember last year around this time, we

1 heard a very thorough report from Karen and Kathleen
2 about competition in 1996, for 1996. We heard a
3 similar but shorter overview of the summary of
4 competition for the 1997 grants from them yesterday.

5 The changes that they had made in the
6 competition process for this year, the kinds of
7 organizational effort that it took on behalf of the
8 staff, which as Doug referred to earlier was massive.
9 In fact, at various points, every member of the OPO
10 staff was involved in the competition process, because
11 of the amount of work required, and the ultimate
12 outcome of that.

13 At the end of this summary, you will see the
14 results in summary form of how many programs received
15 multi-year funding, three year versus two year versus
16 one year. The final grant awards are pending. And how
17 many new significant changes on the last page of this
18 memorandum.

19 Because of the length of that report and the
20 thoroughness of it, rather than me try to repeat that
21 here today, I thought that it would be a good idea if I
22 got the transcript of their report to use, and maybe

1 circulated it to all board members between now and
2 March.

3 Because the end of our discussion was about a
4 review of the 1997 process, as has been mentioned
5 earlier. And the staff's plan and commitment to
6 thoroughly analyze how things went in 1997, what needs
7 to be reconsidered, and what needs to be changed, and
8 possibly even taking a look at the regulation, and
9 coming back and talking to us about if they have seen
10 the need to make any changes in the regulation.

11 They have learned an awful lot from this
12 process this year. And they want and intend to take
13 the opportunity to step back once all of this is
14 completed, and do a thorough analysis of how things
15 went this year, what possibly needs to be changed,
16 amended, reviewed, and then come back to the committee
17 hopefully as early as March, and begin discussions with
18 us about refining the process. So that when we begin
19 the 1998 process, we will have learned from what
20 happened this year.

21 That completes the report.

22 CHAIR EAKELEY: I am sorry that the

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1 cancellation of my flight yesterday and the necessity
2 of driving instead of flying prevented me from coming
3 and listening to that. But I think that it is a good
4 idea to circulate the report.

5 You heard me before. I would like to satisfy
6 ourselves that we are doing everything possible in the
7 areas of technical assistance and evaluation of program
8 improvement that we can to support existing grantees
9 going forward.

10 I am a little concerned about integrating
11 competition and program improvement, because of the
12 language of the competition that says that we cannot
13 assist grantees or give them preference. Clearly, that
14 is in the application process itself. But if the only
15 incentive there is is up or down on a grant decision,
16 that could be perceived to be a rather blunt
17 instrument.

18 I just do not know. I think that it would be
19 very helpful to review how competition has been
20 implemented, how we are doing, what we have learned,
21 and what improvements might be made.

22 But in the same or the second breath take

1 pause and look at whether or not, given the
2 implementation of competition, we can go back and
3 devote needed resources to the areas of program
4 improvement and technical assistance.

5 MR. ASKEW: One reason I thought circulation
6 of the transcript would be helpful is that John gave us
7 a very lengthy presentation on the goals and objectives
8 for this reorganization, which covered some of the
9 questions that you are raising. John does not want to
10 repeat that. Merceria has pleased with him not to.

11 CHAIR EAKELEY: No, no, no. We will
12 circulate.

13 Another question related to that. Have we
14 submitted a report to the Congress? I know that we
15 have submitted reports that are statistical in nature
16 with respect to implementation of competition. But
17 should we not consider, if we have not already done so,
18 a report to the Congress that more or less either
19 distills the presentation yesterday, or incorporates
20 the overview that you have now circulated, or something
21 else?

22 Does that make sense, Martha, or has it been

1 done?

2 MS. BERGMARK: We are just, as you know,
3 completing the 1997 process. We have kept Stan over
4 there aware of our progress on this, but there has not
5 yet been anything formal.

6 CHAIR EAKELEY: I think rather than have a
7 report on competition come within the annual funding
8 request, that it might make sense to consider a
9 separate communication to the Congress on competition.
10 I think equally it may make sense to have a separate
11 report to the Congress on compliance with the new
12 restrictions including in particular the promulgation
13 of the new regulations that we have just adopted.

14 MR. SMEGAL: Maybe I do not have enough
15 information, and maybe the answer is somewhere else.
16 But for the eleven years that I have been involved in
17 this board of directors, my view of the delivery of
18 legal services through this program is that it is a
19 skeleton upon which a lot of other things get hung by
20 the individual recipients apropos of the discussion
21 that we had this morning.

22 And I am wondering if in our process of

1 reviewing grant making or grants that that is factored
2 in. Do we ask the grantees or those submitting
3 proposals what leverage they are going to accomplish if
4 they are provided with our grant? You are shaking your
5 head yes. That is part of it?

6 CHAIR EAKELEY: Suzanne Glasow is shaking her
7 head yes. And Merceria Ludgood is shaking her head
8 yes.

9 MS. LUDGOOD: The RFP does request a
10 discussion of how you would leverage resources. Not
11 only does it include other financial resources, but
12 community resources like lawyers and the Bar
13 Association.

14 MR. SMEGAL: So what kind of presentation
15 would a profit making law firm provide in that area, do
16 they have anything?

17 MS. LUDGOOD: Well, they respond. And
18 generally, the assumptions have been that they will be
19 able to garner the same support that the current
20 provider has. So if they are already getting IOLTA
21 money, they will assume that if they become the grantee
22 that they can also compete for IOLTA money as well, or

1 whatever money is available.

2 CHAIR EAKELEY: I think that we have used the
3 phrase for profit or heard the phrase for profit, and
4 it has got a lot of different connotations. I am not
5 sure that the context in which we have heard it used
6 this morning is necessarily understood by all.

7 MR. SMEGAL: I am just looking at the first
8 page where it lists the kinds of eligible applicants.
9 The first one I see is nonprofit organizations, and
10 then I see a bunch of others who are obviously not
11 nonprofit organizations.

12 CHAIR EAKELEY: Groups of private attorneys.

13 MR. SMEGAL: So that is the way that I am
14 using it.

15 MS. LUDGOOD: Well, insofar as the
16 organizations that are not 501(c)(3) nonprofit
17 organizations, we have researched with the General
18 Counsel's assistance and with outside counsel as to
19 what our obligations are as a 501(c)(3), the use of
20 these monies that were intended for charitable
21 purposes.

22 We have to design, and ensure, and satisfy

1 ourselves that the accounting system that they have in
2 place, that we can track every dime to make sure that
3 it was used for charitable purposes only.

4 So if indeed we were going to award a grant to
5 an entity that was not a 501(c)(3), then we would seek
6 assurances on the front end that they are able to do
7 that. So that on the back end, if ever challenged, we
8 will be able to justify a decision based on the systems
9 that are in place.

10 CHAIR EAKELEY: Are there any questions Bucky
11 or management with respect to the Provisions Committee
12 report?

13 (No response.)

14 CHAIR EAKELEY: Thank you very much, Merceria.

15 MR. ASKEW: Let me, Doug, if I could, conclude
16 by saying that the last three to four months have been
17 a various intense time for the entire corporation, but
18 particularly for OPO. And they have done, I think, a
19 masterful job in managing this process.

20 We heard earlier today about one particular
21 grant, but there were dozens of very difficult
22 decisions that they had to make. They have lots of

1 these review teams going on at the same time, and they
2 did a wonderful job of getting us through this process
3 in a very professional fashion.

4 And I think that I should recognize on the
5 record as we did at the committee meeting yesterday the
6 quality of the work that they did, and how well this
7 all turned out.

8 CHAIR EAKELEY: And we should thank them for
9 it.

10 MR. MCCALPIN: I am sorry that I was out when
11 Merceria started.

12 But do I understand that a grant has been made
13 to a for profit entity?

14 CHAIR EAKELEY: Yes. Or actually, no grants
15 have been made yet. But the competing applicant for
16 six service areas within suburban Philadelphia
17 including Montgomery County and the Delaware County
18 Legal Services is to be newly organized -- something or
19 other, Merceria, that you will help me out on here --
20 the Delaware River --

21 MS. LUDGOOD: The Delaware Valley Legal
22 Services. It is a partnership.

1 MR. MCCALPIN: I wonder how that squares with
2 Section 502 of the appropriations bill, which says that
3 grants may be made to a private attorney, a qualified
4 nonprofit organization, state or local government, sub-
5 state regional planning or coordinating agency.

6 CHAIR EAKELEY: I think it is the first one,
7 private attorney or attorneys.

8 MR. MCCALPIN: Private attorneys.

9 MS. LUDGOOD: Right.

10 MR. MCCALPIN: Not a for profit corporation.

11 MS. LUDGOOD: Right.

12 CHAIR EAKELEY: Yes.

13 MS. LUDGOOD: Right. It is a partnership,
14 just a law partnership, a private law partnership.

15 CHAIR EAKELEY: Are there any other questions?

16 (No response.)

17 CHAIR EAKELEY: Thank you very much.

18 Next we have Item 12. I am not sure what we
19 are supposed to act on, on the report of the Board's
20 presidential search committee. But John.

21 MR. BRODERICK: Well, let me just bring you up
22 to date, and give you two minutes of history, and where

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1 we are. The search committee met in late November.
2 The search committee and one member of the advisory
3 group. The other two members, I had spoken to
4 extensively. They were unable to make that particular
5 meeting.

6 But I had taken their temperature well in
7 advance of the meeting to get a sense of where they
8 were. But they were unable to attend the meeting.

9 I went to Boston in mid-November and met with
10 the consultants, whom I had not worked with, to get to
11 know them a bit. Isaacson & Miller are the consultants
12 from Boston. They were used very successfully by the
13 corporation in 1993 when we selected Alex Forger.

14 At our meeting on November 22nd, I think it
15 was, the consultants addressed us principally on issues
16 of process and timing, which is what we were focused on
17 largely at that meeting. There was also I think a
18 pretty consensus among our group as to the type of
19 qualifications that somebody who was serve as president
20 of this corporation would need to bring.

21 And we received on that day a very eloquent
22 statement from the president of this corporation about

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1 the duties that got performed over the last three
2 years, and more importantly his thinking on what those
3 duties might look like going forward.

4 And we also received a request at that meeting
5 from PAG, I believe, to add a client member to our
6 group, which I think in theory we were willing to
7 accommodate. But in reality, since the group was
8 intentionally somewhat small, there were only eight of
9 us, and since Ernestine was on the committee and we
10 thought represented well that constituency and point of
11 view, we respectfully declined the invitation to add a
12 client member. But we are certainly sensitive to that
13 constituency.

14 At the close of our meeting, it was agreed
15 that we would meet again on the 22nd of January in
16 Washington, and we are scheduled to do that.

17 During the interim, the consultants were to
18 revise in some way the challenge statement that we
19 issued or the job description that we issued in 1993,
20 and they have been working on that.

21 It was also understood that we would send out
22 a letter probably to be signed by the president of the

1 American Bar Association, I am hopeful, to different
2 constituencies and elements of the organized bar to
3 solicit their comments.

4 I think, however, fundamentally, it was agreed
5 that those of us on the search committee particularly
6 would attempt to use our own networks to identify
7 people from around the country who either might
8 themselves fill the needs that we had articulated for
9 the new president, or be able to identify additional
10 candidates for us to look at.

11 The expectation at our meeting in November was
12 that we were hopeful, although I think that frankly has
13 been moved back a bit, that we were hopeful that by mid
14 February that we would be sitting down interviewing
15 real live candidates with the expectation that we would
16 select someone either by mid-February or late February.

17 I think that while that is still possible that
18 in terms of process that I think it is less likely than
19 it seemed in November. And therefore, I think that the
20 committee's work, if it is not interrupted by some
21 national selection in the interim. It probably will
22 not be concluded until the middle of March.

1 It was agreed by way of process that we would
2 through the consultants try to identify the twelve or
3 fifteen candidates who could be given serious
4 consideration. And that that list would be winnowed
5 probably in the first instance by the consultants to a
6 group of six or so people or maybe eight, who we as a
7 committee would then interview, and from which we would
8 select perhaps three candidates to be interviewed
9 ultimately by the Board sitting as a whole.

10 And that in broad stroke is where we are. It
11 was also suggested then and more recently that we
12 perhaps take a serious look at those candidates who
13 were considered previously in 1993.

14 The consultants also, I think on two
15 occasions, as recently as last week, came to the
16 corporation and met with staff and management. I do
17 not know specifically at this point to whom they spoke,
18 but I know they were here. Alan Witchlie came down. To
19 be certain that those who were working at the
20 corporation not only feel that they have input into the
21 process, but in fact have input into the process.

22 And I think that the consultants and the

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1 committee is sensitive to that. I would also say in
2 this public setting that if there are those of you out
3 there who have names of individuals, who you think we
4 should be considering, or whom you think we should be
5 contacting, in an effort to enlist other names, we
6 would certainly encourage you to help us in that
7 regard.

8 So that essentially, Mr. Chairman, is where we
9 are.

10 CHAIR EAKELEY: We have taken the liberty of
11 preparing a resolution to reflect the earlier
12 discussion of succession planning. It is a two page
13 resolution that Victor just most recently circulated.
14 There was also an earlier one page. But the two pager
15 that has two from that on the second line of the first
16 page, one of which from that you can disregard.

17 And basically, what this resolution does is
18 accept Alex Forger's resignation effective February 14,
19 1997, and appoints Martha to succeed Alex effective
20 February 14th, and appoint her to occupy the position
21 of president until such time as the Board appoints a
22 successor or otherwise relieves her of the position.

M O T I O N

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MS. ROGERS: I so move.

MS. WATLINGTON: I second.

CHAIR EAKELEY: Is there any discussion?

(No response.)

CHAIR EAKELEY: All those in favor.

(Chorus of ayes.)

CHAIR EAKELEY: All those opposed.

(No response.)

CHAIR EAKELEY: Congratulations.

MS. BERGMARK: Thank you.

CHAIR EAKELEY: Are there any other questions of John or his report on the presidential search committee process?

(No response.)

CHAIR EAKELEY: Next is consider enactment of proposed policies and procedures relating to communications between the corporation and the Congress.

Bill McCalpin, as OIG liaison, had raised the subject with us over a year ago. I am embarrassed to say how long it was. Like many other things at the

1 time, I did not pursue it to conclusion. And we are
2 trying, as we will be trying in this meeting and the
3 next meeting, to just have in place a series of
4 policies and procedures that are relatively clear and
5 therefore predictable in terms of how the corporation
6 should go about conducting its business.

7 One of those has to do with communications.
8 And Bill, why don't you describe for us what it is that
9 is presented to the Board.

10 MR. MCCALPIN: Thank you, Mr. Chairman.

11 While, as you say, I raised this question
12 fourteen or fifteen months ago, it was not any longer
13 than that, after I had been appointed as liaison to the
14 OIG, it was not necessarily in connection with that
15 appointment that the issue was raised.

16 Actually, what I thought was that we could not
17 adequately discharge our fiduciary responsibilities as
18 directors nor be accountable to or held accountable by
19 the Congress unless we knew what was transpiring
20 between this corporation and the Congress.

21 That if we were going to be responsible for
22 everything vis-a-vis the Congress, then we had to have

1 knowledge of those communications. So it was in that
2 vein that I began to poke into this, and discovered
3 among other things that there are certain required
4 communications between this corporation and the
5 Congress.

6 And that in addition there are many other
7 communications between this corporation and the
8 Congress, which go on in the day to day activity and
9 administration of the affairs of the organization.

10 So I attempted to draft a policy for
11 consideration by this Board to encompass both the
12 required communications and those communications which
13 occur in the natural course of events, simply in the
14 interest of keeping this Board informed of what was
15 going on, and to which they might have to answer to the
16 Congress.

17 I want to make it as clear as I possibly can
18 that nothing in this policy is intended or should be
19 applied in such a way as to inhibit in any respect any
20 communication between management, OIG, or anybody and
21 the Congress.

22 All that this policy seeks is relevations to

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1 this Board and knowledge by this Board of what may be
2 transpiring between the corporation and the Congress.
3 And I think that we need this or something very like it
4 in order to discharge our responsibilities, and to
5 answer to the Congress in terms of accountability for
6 what we are doing, and what we have been called upon to
7 do.

8 And it is in that vein that I have proposed
9 this policy, which I sent to you a couple of weeks ago,
10 and which you have circulated to the Board with your
11 memorandum of December 22nd.

12 CHAIR EAKELEY: I just want to know whether
13 management, or the IG, or both have any comments on the
14 proposed policy?

15 MR. QUATREVAUX: Well, I am afraid that I am
16 not going to tell you what you want to hear. We
17 disagree with the proposed policy. About a year ago, I
18 believe, we circulated an earlier draft that Mr.
19 McCalpin had prepared to the OIG counsel, their
20 counsel. And the feedback that we got was very much
21 one sided, and very forceful, and very much opposed to
22 such a policy.

1 I will say this. I endeavor to keep you
2 informed, fully and currently informed, as the Act
3 requires. I tried to do that, and I think that we have
4 done that. I can tell you that I will try to provide
5 you everything possible. But I cannot before the fact
6 agree to such a policy.

7 It is very much in the same mode as the
8 personnel issues that we discussed. I think that we
9 are dealing here with tripartite communications. And I
10 am very much afraid that the IG oversight committees on
11 the Hill would look at this policy as having a chilling
12 effect on communications.

13 If you would like, I would undertake to consult with
14 them, to get an opinion from them.

15 CHAIR EAKELEY: I read the comments that you
16 provided after we voted this earlier version. I
17 thought that Bill made a major effort to incorporate
18 those comments into this. I do not know what purpose
19 would be served either by management or the IG keeping
20 from the corporation communications to the Congress or
21 from the Congress. It does not seem to me to serve the
22 purposes of the Inspector General Act, or the

1 relationship for that matter that the IG and the agency
2 had, or the president and the Board.

3 This seems to capture what we are trying to
4 do, which is just to keep track of the communications
5 with the Congress rather than interfere with what is
6 actually being said one way or the other.

7 This also impacts on management, because it
8 imposes more of a reporting requirement than we have
9 had in the past with them too. But I realize that it
10 is a different issue. I realize that it is quite a
11 different issue, and that there were concerns that you
12 focused on that came from the IG community.

13 MR. FORGER: One of my concerns is that the
14 Board is not sufficiently informed of things that are
15 going on on a regular basis. And I know that we have
16 tried in a less hectic environment to have a weekly
17 mailing to the Board that summarizes things that have
18 occurred. We have not been able to stick to that on a
19 regular basis.

20 So I have no problem with doing more to keep
21 the Board informed. The only concern that I would have
22 is the clearance aspect, where this is not just

1 informing but it is getting a clearance before
2 something goes out. And I have no problem when it is
3 testimony or comments on legislation or appropriations.

4 But I think that in responses to inquiries,
5 that we just need to have an element of discretion
6 there as to the nature of those that would require a
7 clearance in advance. Because we frequently -- I mean
8 a telephone will call in, and they will want to know
9 how you are allocating \$45, or is it true that your
10 program has done the following.

11 MR. MCCALPIN: Alex, I think that is what we
12 attempted to address when we said in paragraph seven
13 that oral communications are to be disclosed to the
14 Chair or his designee as soon after the communication
15 as possible.

16 MR. FORGER: I was looking at four, which says
17 written.

18 MR. MCCALPIN: Those are written
19 communications.

20 MR. FORGER: It may be that one needs to get
21 to OMB by 5:00 today, and how you are allocating your
22 M&A budget.

1 CHAIR EAKELEY: It may be responses to
2 significant inquiries.

3 MR. FORGER: Well, I think as long as there is
4 a notion that there is an element of discretion in that
5 which is really more than administrative or implementing
6 something that is not a policy.

7 CHAIR EAKELEY: The responses to inquiries are
8 part of that paragraph that you are talking about?

9 MR. FORGER: Yes, indeed. Which could come
10 from OMB or staff of a congressional committee, to
11 please send us over again another copy of whatever it
12 may be, or your response. Is it true that the program
13 in Peoria has done the following thing? We want a fax
14 back.

15 But I have no problem even literally, except I
16 am sure that I could call up the Chair and say hey, we
17 have got a response to Congressman X that we are
18 sending out today, you know, I will fax it to you right
19 away. It is simply a matter of reasonableness on that.

20 But on the communication, I have thought about
21 suggesting to the next administration that on the
22 communication for management dealing with the Inspector

1 General, that what we do is either create the position
2 or designate a specific individual to interface with
3 the Inspector General.

4 There are so many communications at so many
5 different levels on so many different issues that it
6 gets fragmented in the corporation. One needs to be
7 alert to the number of things that relate to the
8 Inspector General. And it is everything from
9 personnel, and rent, and regulations, and monitoring.
10 There is virtually nothing in the office that does not
11 have some involvement, interest, or relationship to the
12 Inspector General.

13 And I am sure that Ed does not get the prompt
14 response that he always wants when a piece goes to
15 personnel, or to OPA, or to somebody else. So I think
16 that at least from the management end that I would like
17 to see one source or one point person, so that we know
18 what has not yet been answered, and what is the
19 response. And that is quite apart from this issue.

20 MR. MCCALPIN: That is right. There is
21 nothing in this that relates to internal communications
22 within the corporation.

1 MR. FORGER: We took advantage of this for a
2 soliloquy.

3 MS. MERCADO: The bottom line of your comments
4 come back to the fact that at different periods of time
5 that there have been communications with Congress which
6 dealt with policy issues, or a substantive area, or a
7 particular point. So all of this is just a caution to
8 immediately get a heads up to say we are doing this,
9 and we may or may not get any kind of inquiry either
10 from that particular congressional staff or on a
11 particular issue.

12 If in fact you are taking a substantive role
13 in a particular area, you still have a fiduciary
14 obligation to make sure that we are carrying the
15 mission of the Legal Services Corporation Act.

16 CHAIR EAKELEY: Nancy.

17 MS. ROGERS: I do not feel the necessity to
18 have written communications from the president or other
19 representatives of management to Congress approved in
20 advance by the chair or designee. Because it seems to
21 me that those usually arise in the context of not much
22 time. And that the chair and the president ought to

1 have a fairly good working relationship with respect to
2 when a call should be made.

3 Certainly, that rises to a level that has to
4 do with whether or not the president is acting in
5 accordance with the Board. So to me, it would be fine
6 simply to require the communication of copies furnished
7 to the Board, as circumstances permit.

8 MR. MCCALPIN: Would it make you feel happier
9 if in the fourth line after the word "should," we add
10 "in the discretion of the president"?

11 MS. ROGERS: That seems like the exception
12 that follows that rule, but that is what I am asking.
13 But that is what I am after, so that is fine.

14 MS. BATTLE: If I understand, the purpose of
15 this is to assure that we as a Board ultimately are
16 apprised of the critical communications to the Hill.
17 And I have some concern that absent a policy, if you
18 have got people that you are working well with, as
19 Nancy has pointed out, then there is no need for any
20 policy in virtually any area.

21 But what a policy does is to give you guidance
22 as to how that relationship ought to be constructed.

1 And I think that with all of the various issues that we
2 have that must go before the Congress, that it would
3 bode us well to have a policy in this area.

4 CHAIR EAKELEY: I agree. I know on the
5 writings, the paragraph four that Alex was talking
6 about, that there can be maybe not de minimis inquiries
7 that are responded to in writing and there should be a
8 threshold before that has to come up. But it seems to
9 me that the Board as representative of the corporation
10 should at least be on record as having a policy
11 requiring communications with our funding source to be
12 regularized and submitted through the Board as and
13 when feasible.

14 For what it is worth, I think that exempting
15 the president from that sort of policy requirement, but
16 asking something more of the Inspector General, that
17 inadvertently puts at issue the independence of the
18 Inspector General, but is vital to his job, and is a
19 statutorily guaranteed role.

20 And I do not want to do that either. And nor
21 do none of us wants to do that. And it seems to me
22 that there is balance here, and it helps us explain the

1 policy being merely to be kept apprised of
2 communications as and when submitted, and if time
3 permits on the written side to have some advance
4 clearance process.

5 MR. FORGER: If I may join Mr. Chairman. With
6 management, it says cleared. It says cleared, anything
7 must be cleared. Which I think in its normal parlance
8 might mean that there is an element of involvement of
9 the other party in approving, or disapproving, or
10 modifying it. Whereas at least I do not get that same
11 sense to be submitted through.

12 And that is what is said to be applicable to
13 the Inspector General when he submits his semiannual
14 report through the Board. The Board has no authority
15 to change, but is the conduit and is on notice of what
16 is going through.

17 And I know there that we have a chance to
18 respond and the like. My only point is to submit it
19 through, it is either cleared and submitted through are
20 not necessarily the same.

21 CHAIR EAKELEY: Are there any further
22 comments, or suggestions, or questions?

1 MR. ERLNBORN: Mr. Chairman.

2 CHAIR EAKELEY: Mr. Erlenborn.

3 MR. ERLNBORN: I do not have the text with
4 me, but I recall reading this. And this is just a
5 general principle. This, as I recall, and correct me
6 if I am wrong, requires that if there is any informal
7 verbal communication between the president or the
8 Inspector General, or any on the Hill -- I do not know
9 if we have spelled out --

10 MR. MCCALPIN: Members or staff.

11 MR. ERLNBORN: Members or staff. That that
12 would have to be recorded, is that correct?

13 MR. MCCALPIN: Ultimately, yes.

14 MR. ERLNBORN: I have a sense of difficulty
15 with that. An informal communication, verbal, would
16 have to be interpreted in some way by the one who is
17 reporting it. I think that it is a different category
18 than sending copies of written communications, which
19 are quite accurate. You know word for word what has
20 been transmitted.

21 This gives me a little cause for concern, that
22 we would require that whenever there is a telephone

1 conversation or maybe a meeting at a cocktail party, or
2 however it might occur, that the party from the
3 corporation who has engaged in that would have to
4 somehow or other interpret that, write it down, and
5 then inform the Board.

6 MR. MCCALPIN: John, I understand your
7 concern, but I think that it is also quite apparent
8 that communications of considerable substance relating
9 to issues vital to the corporation can be communicated
10 via telephone, or an in person face to face meeting.
11 And that we can subsequently be called upon to answer
12 with respect to the subject matter of such
13 communications, whether they be in terms of
14 appropriations or elements of appropriations, or
15 reauthorization of positions taken with respect to a
16 particular element of a reauthorization act.

17 And if communications of that sort are being
18 conducted verbally rather than in writing, they can be
19 just as important to us, and maybe in some respects
20 more important, than formal communications in the way
21 of letters, or prepared testimony, or whatever.

22 CHAIR EAKELEY: But the thrust of John's

1 suggestion might be to change paragraph seven to oral
2 communications of substance.

3 MR. ERLENBORN: Not every greeting.

4 MR. MCCALPIN: Pardon?

5 MR. ERLENBORN: Not every greeting.

6 MS. BATTLE: I was about to say that we have
7 generally implicitly considered de minimis
8 communications not to be what we are talking about
9 here. I think that the "of substance" may address the
10 concern that John has raised.

11 CHAIR EAKELEY: Or oral communications on
12 substantive matters.

13 MR. MCCALPIN: I suppose you can say that
14 reauthorization -- I guess maybe appropriations are
15 substantive too.

16 MS. BATTLE: Yes.

17 MR. MCCALPIN: And if you are going to put it
18 in seven, you also have to put it in eight.

19 CHAIR EAKELEY: Agreed. I think that would
20 help. Renee.

21 MS. SZYBALA: We do not have it in front of
22 us. We are not prepared to speak to it today. It came

1 into our office, I think, on December 30th. And one of
2 the foreseeable consequences of having a use or lose
3 vacation policy is that at the end of the year that
4 offices are kind of cleared out.

5 When I came back from the holiday, I had to go
6 through all of those regs that you went through today.
7 So I really have barely read this.

8 You said that Mr. McCalpin made some big
9 changes from last time. I will be interested in
10 looking at it. But I do not think that we are prepared
11 to comment.

12 On the other hand, I hear things being said
13 that lead me to believe that there is no trust here.
14 You need to be able to trust your president and your IG
15 to be telling you about important things that are
16 happening, or you need to get a new president or IG.

17 Of course, appointments should be communicated
18 to the Board. There are things that the Board should
19 know about. I do not know of any instance in which it
20 has not happened. Maybe you do. It certainly has not
21 happened vis-a-vis the IG, or at least I do not think
22 so.

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1 But, you know, we have communications with
2 Congress that relate to the OIG community at large, and
3 laws that do not relate to LSC but relate to OIG
4 authority, investigative authority, and other agencies.
5 And we comment on those when we are asked to. I do not
6 think that the Board really wants to know. But if you
7 want to have copies of all of that kind of stuff, we
8 will send it to you. It is no problem.

9 The thought that every time that anybody calls
10 to ask a question about how many investigations did you
11 have in this year on that thing, on this kind of issue,
12 that you want us to write something to you, it is kind
13 of amazing. I cannot imagine why you would want to be
14 bothered with things that in our view are irrelevant in
15 your review of us or of LSC.

16 That is all. And I see in there some over-
17 reaching into our organization and our job. And our
18 job is under the IG Act. It is not only LSC. We have
19 government-wide organizational efficiency and
20 effectiveness requirements. That is the whole IG
21 community works together, and we have two separate
22 councils on which we sit as part of the IG community.

1 And those councils sometimes through us communicate
2 with Congress.

3 I have no problem sending you that stuff. We
4 get phone calls relating to that stuff too. I do not
5 see why you would want a report of a phone call.

6 There are also times in which I can think that
7 there is privacy needed for OIG investigations.
8 Hopefully, it will never happen here, that the Board or
9 a member of the Board is under investigation for
10 something.

11 But in those instances, we might want
12 oversight from Congress, from our oversight committees,
13 because we cannot go to the Board for oversight.

14 CHAIR EAKELEY: You cannot go to the agency
15 head?

16 MS. SZYBALA: If they are investigating you.

17 CHAIR EAKELEY: You have got to be
18 investigating the entire Board, if that happens.

19 MS. SZYBALA: You know, I cannot do you a
20 list, and I cannot say that anything like that will
21 ever happen. And again, I have to read the policy.
22 But a policy that requires you to report every

1 conversation, and requires that you make a notation of
2 every conversation no matter how trivial, because --

3 CHAIR EAKELEY: I do not think that is the
4 intent. And I thought that we tried to take care of
5 that with the change to the communications of substance
6 part of it.

7 MS. BATTLE: I guess the concern that I have
8 is I am hearing two things. One, I am hearing where
9 they say -- and I can acknowledge that over the
10 holidays that you have not had a chance to look at the
11 most recent proposal that we have before us, and I can
12 understand that.

13 The second piece though is even if you
14 disagree, if this policy is adopted by this Board, the
15 IG will abide by it, is that your understanding?

16 MR. QUATREVAUX: No, I am afraid that. I
17 would take it to the oversight committees of the
18 Congress, and ask them for their opinion. Because I
19 believe that their opinion is contrary. And I believe
20 that there is universal agreement in the OIG community
21 that this is not a wise policy.

22 CHAIR EAKELEY: Maria.

1 MS. MERCADO: As long as we get copies of the
2 oversight committees' opinions as to a particular
3 point. I hear them mentioned, but I still want to have
4 somebody's letter or something verifying that that is a
5 fact.

6 CHAIR EAKELEY: Are you saying that you cannot
7 comment without finding out what the oversight
8 committee thinks?

9 MR. QUATREVAUX: My problem is I think I know
10 what they think. And I am willing to get that on the
11 record, if that is the desire.

12 CHAIR EAKELEY: Bill.

13 MR. MCCALPIN: Maybe I can satisfy some of
14 your concerns by reading to you a passage from 95-452
15 which says, "However, in carrying out his mandate, the
16 Inspector General may also discover information which
17 reflects adversely on high agency officials including
18 the agency head. For this reason, this provision
19 contemplates that the Inspector General's reports would
20 ordinarily be transmitted to Congress by the agency
21 head without alteration or deletion. This requirement
22 is fundamental to the legislation. It provides the

1 foundation of the Inspector General's independence.

2 "The committee intends to infer on the
3 Inspector General a unique status within the executive
4 branch. In the absence of specific legislation on the
5 issue, the committee recognizes that the head of a
6 department or an agency has the right to screen all
7 communications before transmittal from the agency to
8 Congress or elsewhere."

9 So I think that 5 USC 401 just notifies us.
10 But also citing Tooley v. Regan, 340 US 492. This is a
11 corollary of the president's responsibility for running
12 the executive branch of the government.

13 So the Congress has certainly contemplated the
14 possibility that the Inspector General would be
15 investigating even the head of the agency, but says
16 that that report has to go through the agency.

17 MS. SZYBALA: I think that it is talking about
18 the semiannual report.

19 MR. MCCALPIN: No.

20 CHAIR EAKELEY: Are there any other comments
21 or questions?

22 MR. ERLENBORN: Maybe half in a jocular vein

1 but somewhat serious as well. Let me say that I have
2 had a problem with the management of waste paper. And
3 a lot of it is generated with what I am getting from
4 the corporation. The amount of reports, and the amount
5 of memos and so forth. I like to be kept currently
6 informed.

7 But there has been a flood of paper. And I
8 hate to have it doubled, if all of these informal
9 communications have to be transmitted to the members of
10 the Board.

11 CHAIR EAKELEY: What is the frequency of
12 communication between the OIG and the Congress on
13 issues of concern to the Legal Services Corporation in
14 the course of a month?

15 MR. QUATREVAUX: It varies greatly, depending
16 on the time of the year. For example, we put out the
17 tech report, and we sent that to a number of members of
18 Congress. I get constituent complaints referred by
19 congressmen and congressional offices.

20 MR. MCCALPIN: I think that we need to know
21 about that.

22 MS. SZYBALA: Management does. It is what

1 level the Board wants involvement in day to day
2 activities. Management gets a flood of constituent
3 complaints.

4 CHAIR EAKELEY: We are talking about
5 communications between the Congress and the corporation
6 in one form or another.

7 MS. SZYBALA: Right. And they replied to
8 constituent complaints, complaints from Congress.
9 These are daily things where a person said I walked
10 into an office and I was denied delivery of services.
11 And it is investigated by LSD. OPO can speak to this
12 better obviously than I. And they get back a letter
13 that says there was not a problem in the usual case,
14 that the program was within their rights.

15 I do not think that the Board wants all of
16 those. The IG early on asked even management for all
17 communications to Congress, and we backed away from
18 wanting that, because of how voluminous it is. There
19 are things that are of no broader concern than the
20 particular complaint.

21 CHAIR EAKELEY: Can you assure us that we have
22 contemporaneous reporting of every communication with

1 the Congress in your office on the subject of our
2 appropriation?

3 MS. SZYBALA: Right now? Yes, I tend to think
4 so. I mean we have not had any in ages. For example,
5 we were asked for new language on the appropriation
6 line. This is like last June that I think I am going
7 back to when it first came out.

8 Well, we faxed stuff to the Hill, and we
9 immediately gave it to management. Now if you want us
10 to give it as well to the Board. We kind of figured
11 that the management to some extent is a conduit. That
12 was just language.

13 CHAIR EAKELEY: What about the line item for
14 the IG appropriation?

15 MS. SZYBALA: What about it?

16 CHAIR EAKELEY: I recall seeing that after it
17 went to the Congress by way of a request.

18 MS. SZYBALA: From us?

19 CHAIR EAKELEY: Yes.

20 MS. SZYBALA: We requested a line item before
21 you guys were here.

22 CHAIR EAKELEY: Hold on. I cut LaVeeda off.

1 Before we go off on a tangent.

2 MS. BATTLE: I was about to say a couple of
3 things. One, to respond to what John said about the
4 flood for everyone. As I understand the position here
5 is that the communications would go either to the Chair
6 or a designee. So only would the rest of the board
7 members get all of this paper, if there is a need for
8 us to know it.

9 The fundamental premise of the proposal that
10 has been made by Bill has to do with our responsibility
11 for this agency vis-a-vis the Congress, and our need to
12 know what is going on about the future of this agency
13 vis-a-vis communications by anyone who we pay to the
14 Congress.

15 And I agree with that. And I would like to
16 move that we adopt what Bill has proposed to us, and
17 get a second on it, and put it on the floor for
18 discussion.

19 CHAIR EAKELEY: Do you want to move it, or do
20 you want to table it for the next board meeting, so
21 that we can receive comments from the Office of the
22 Inspector General i the interim?

1 MR. MCCALPIN: Whatever the Board wants.

2 CHAIR EAKELEY: Yes, we visited this subject a
3 year ago, but we have not revisited it recently. So it
4 is not something that would be fresh or at the top of
5 the priority list with the OIG. And Renee did not then
6 reflect on it, and provide substantive comments. This
7 is supposed to be a communications policy on behalf of
8 the corporation. And my inclination would be to defer
9 its adoption or further consideration of it until the
10 next board meeting with the expectation that we would
11 have comments.

12 M O T I O N

13 MS. WATLINGTON: I will move that.

14 MR. MCCALPIN: Second.

15 CHAIR EAKELEY: The motion to table for the
16 next meeting, is that a friendly amendment or a
17 substantive one?

18 MS. BATTLE: That is fine. I recognize that.
19 Taking into account what Renee said, that they do need
20 to have an opportunity to comment.

21 CHAIR EAKELEY: All those in favor of tabling
22 this agenda item until the next meeting.

1 (Chorus of ayes.)

2 CHAIR EAKELEY: All those opposed.

3 (No response.)

4 CHAIR EAKELEY: All right. We will deal with
5 it that way.

6 Now two things by way of housekeeping before
7 we go into executive session. First, Victor Fortuno
8 reminds me that the government, and the Sunshine Act,
9 and LSC's implementing regulations provide that the
10 subject matter of a meeting may be changed, but that to
11 do so we need a recorded vote of the majority of the
12 directors that the corporation business so requires,
13 and that no earlier announcement of the change was
14 possible.

15 Theoretically, this was within the province of
16 the presidential search committee report and the
17 attenuation of that search process, and the need to
18 finalize and formalize our succession planning.

19 But I suspect that Martha would feel more
20 comfortable, as would Victor, if the Board were to
21 consider adopting a resolution to the effect that the
22 resolution accepting Alex's resignation and appointing

1 Martha effective the day of his departure was required
2 by corporation business, and no earlier announcement of
3 the change was possible.

4 Is that something that the Board is willing to
5 consider?

6 MS. BATTLE: Yes.

7 CHAIR EAKELEY: Can we have a motion to that
8 effect?

9 M O T I O N

10 MS. BATTLE: I will so move.

11 CHAIR EAKELEY: Is there a second?

12 MS. MERCADO: Second.

13 CHAIR EAKELEY: All those in favor.

14 (Chorus of ayes.)

15 CHAIR EAKELEY: All those opposed.

16 (No response.)

17 CHAIR EAKELEY: The second item of business is
18 we have a closed session, but we have to vote to go
19 into closed session, because we did not get an
20 unanimous vote notationally for that. The two agenda
21 items on the closed session are on the agenda, 14 and
22 15. But the Inspector General asked for the

1 opportunity for a briefing that should have been in
2 here and that was not.

3 And I would like to amend the agenda for a
4 closed session to include a briefing by the Inspector
5 General, and would seek board approval to go into
6 executive session for those three purposes. Namely,
7 the two on the agenda, plus the briefing by the
8 Inspector General.

9 M O T I O N

10 MS. BATTLE: I would so move.

11 MS. MERCADO: Second.

12 MS. ROGERS: That it is a briefing?

13 CHAIR EAKELEY: It says as long as it is a
14 briefing and only a briefly, we are within the Sunshine
15 Act.

16 All of those in favor of adjourning into
17 executive session.

18 (Chorus of ayes.)

19 CHAIR EAKELEY: All those opposed.

20 (No response.)

21 CHAIR EAKELEY: The ayes have it. A five
22 minute break. Executive session. And then we will