

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

SUNSHINE ACT MEETING
OF THE BOARD OF DIRECTORS

Tuesday, October 11, 2005

4:05 p.m.

[TELEPHONIC MEETING]

3333 K Street, N.W., Third Floor
Washington, D.C.

BOARD MEMBERS PRESENT:

Frank Strickland, Chairman
Lillian BeVier, Vice Chair
Thomas A. Fuentes
Herbert S. Garten
David Hall
Michael D. McKay
Thomas R. Meites
Bernice Phillips
Florentino A. Subia
Ernestine P. Watlington

STAFF PRESENT:

Helaine M. Barnett, President & ex officio
 Board Member
 Patricia Batie, Manager of Board Operations
 Mattie C. Condray, Senior Assistant General Counsel
 Victor M. Fortuno, Vice President for Legal Affairs,
 General Counsel & Corporate Secretary
 Michael Genz, Director, Office of Program Performance
 Charles Jeffress, Chief Administrative Officer
 David Maddox, Assistant Inspector General for Resource
 Management
 Thomas Polgar, Acting Director, Office of Governmental
 Relations & Public Affairs
 Laurie Tarantowicz, Assistant Inspector General and Legal
 Counsel
 Richard "Kirt" West, Inspector General

PUBLIC PRESENT:

Jonathan Asher, Executive Director, Colorado Legal
 Services (by telephone)
 Ellen De Szunyogh, Global News
 Bob Echols, American Bar Association(ABA)Consultant
 (by telephone)
 De Miller, Executive Director, Legal Services of New Jersey
 (by telephone)
 Linda E. Perle, Center for Law & Social Policy(CLASP)
 (by telephone)
 Don Saunders, Executive Director, National Legal Aid &
 Defender Association(NLADA) (by telephone)
 Julie Strandlie, ABA/Standing Committee on Legal Aid &
 Indigent Defendants(SCLAID)

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P R O C E E D I N G S

(4:05 p.m.)

1
2
3 MR. STRICKLAND: Let me call to order a special
4 meeting of the Board of Directors of the Legal Services
5 Corporation, pursuant to notice published in the Federal
6 Register.

7 And I know that we have -- and first, I welcome all
8 the Board members here on the call and we may have some
9 others who will join the call by dialing the call-in number.

10 And I would ask if each of you would identify yourselves for
11 the purpose of the record.

12 MR. MILLER: Hi, Frank. This is De Miller from the
13 Justice Gap Committee.

14 MR. STRICKLAND: Welcome, De.

15 MR. MILLER: Thank you.

16 MR. ASHER: This is Jon Asher.

17 MR. ECHOLS: Bob Echols from the Justice Gap
18 Committee.

19 OPERATOR: Excuse me, David Hall is --

20 MR. STRICKLAND: Okay, David. Welcome.

21 MR. HALL: Thank you.

22 MR. STRICKLAND: Go ahead with the other people who

1 have joined the -- David, we just have taken a roll call of
2 the Board members and we now are asking others on the call to
3 identify themselves. We're about halfway through that. Go
4 ahead.

5 MR. SAUNDERS: Jon Asher. I don't know if you
6 heard Jon or not, but he identified himself. This is Don
7 Saunders.

8 MR. STRICKLAND: Okay, Don. Is that everyone who
9 is on the call?

10 MS. BARNETT: Would you like us to identify --

11 MR. STRICKLAND: Yes.

12 MS. BARNETT: -- who is in person?

13 MR. STRICKLAND: Yes. You have some people there
14 with you, Helaine. Go ahead.

15 MS. BARNETT: Mike Genz, Victor Fortuno, Patricia
16 Batie, Mattie Condray, Tom Polgar, Charles Jeffress and --

17 MS. DE SZUNYOGH: Ellen de Szunyogh.

18 MS. BARNETT: Ellen de Szunyogh.

19 MR. STRICKLAND: All right. The purpose of the
20 call is that -- Board members and others, you will remember
21 that at the last Committee meeting held recently in
22 Washington on September 30th, during that meeting, we took a

1 look at the report prepared by the staff at the Board's
2 request, entitled *Documenting the Justice Gap in America*.

3 And during the course of that meeting, the
4 discussion led us to decide that we should call together the
5 full Board to review the report and I believe Lillian BeVier
6 suggested that in terms of the scope of our review, that we
7 might ask -- I mean, the report, I think, by and large,
8 speaks for itself.

9 And we -- Lillian's idea was that we would have
10 someone take a skeptic's eye view of the report and go over
11 that with the Board members as a part of our discussion. So,
12 it's my understanding that Tom Polgar and perhaps Jon Asher,
13 maybe one or the other or both -- you guys can speak up, but
14 I understand that at least one of you is going to be the
15 skeptic relative to the report as it has been prepared.

16 And is one of you ready to proceed with that?

17 MR. POLGAR: Yes, I am, Mr. Chairman.

18 MR. STRICKLAND: And that's Tom Polgar?

19 MR. POLGAR: Yes, it was.

20 MR. STRICKLAND: Okay. Well, Tom, go ahead with
21 your presentation.

22 MR. POLGAR: Okay. Well, good afternoon, everyone.

1 For the court reporter's sake, I'm Tom Polgar. I'm Director
2 of Government Relations and Public Affairs for the LSC.

3 As the Chairman mentioned, we were tasked with
4 taking a fresh look at the document, *Documenting the Justice*
5 *Gap In America* report, with the goal of assisting the Board's
6 review of it by adopting a skeptic's point of view. And I
7 was asked last week to do that.

8 I would like to begin by making three points.
9 First, I was not involved with the work on the report until
10 very late in the process. I had no part in the methodologies
11 chosen to document that justice gap, the actual research
12 conducted, or the first several drafts of the report itself.

13 I became involved late in the process, about six or
14 seven weeks ago, in editing and in assisting with the
15 report's actual production. I also have taken the last
16 nearly two months to become intimately familiar with
17 *Documenting the Justice Gap*, in part because it's my office
18 and myself who will have to defend the report, if it is
19 released, to Congress and the media.

20 Second, no research, no matter how professionally
21 conducted, and especially social science research, is beyond
22 criticism. There's room to question how the project was

1 undertaken and certainly, room to question the conclusions to
2 be derived from the report.

3 With regard to the latter, for example, two well-
4 meaning people could look at the identical statistic that the
5 number of poor people in the United States is increasing and
6 reach completely opposite conclusions as to the appropriate
7 policy response.

8 Third, those involved in drafting the Justice Gap
9 report -- the Justice Gap Committee and several LSC staff,
10 most notably Mike Genz, who is here with us -- were acutely
11 aware of what I just said.

12 And while we have continued, through the last 10
13 days, to view the report with a critical eye, much of the
14 work actually was done during the drafting process and
15 earlier. And the report was drafted as conservatively as
16 possible to minimize future criticism. The Committee was, in
17 fact, its own serious skeptic throughout the process.

18 I will quickly walk now through the subject areas
19 that I believe were of greatest interest to the Board.

20 First, why were the methodologies chosen, the three
21 methodologies you see in the report, to evaluate whether or
22 not there was a gap? This was a major issue -- early issue

1 facing the Committee when it began considering how to pursue
2 the Board's charge to more adequately measure the unmet need.

3 Consideration was given to undertaking a major
4 comprehensive survey along the lines of, if not necessarily
5 identical to the 1994 ABA study, but that was rejected for
6 several reasons.

7 It would be quite expensive, probably costing
8 upwards of \$2 million. The results would likely not have
9 been available to report back to the Board in time for
10 consideration of the FY 2007 budget mark, which actually was
11 the intent of the Board last September when they asked LSC
12 management to undertake this task.

13 And finally, that research and the resultant
14 conclusions, despite the cost and time involved, would be
15 subject to criticism, just like any other social science
16 research project.

17 Instead, a decision was made early on to undertake
18 a multi-prong approach. Four different ways of measuring the
19 possible justice gap were developed. Three of them were used
20 in this report. The fourth failed to produce sufficient,
21 usable data and was not included, although it is described in
22 Appendix E.

1 I should note that the data that was received on
2 that fourth methodology was neither helpful nor contrary to
3 the data developed under the other methodologies. It was
4 just that there was so little of it, you couldn't put it to
5 any useful use whatsoever.

6 The three methodologies used had the following
7 virtues over a major national survey. They provided
8 different ways of looking at the problem, so LSC was not
9 putting all its eggs in one basket. They were cost-effective
10 to undertake compared to a national survey. And it was felt
11 they could and they, in fact, did produce results in time to
12 report back to the Board before the Finance Committee meeting
13 10 days ago.

14 Moving to the first methodology, LSC, for the first
15 time ever, decided to require all its grantees to collect
16 data on individuals they were unable to serve. Data was
17 collected by all programs for the period March 14 through May
18 13, 2005. The exact details of the study are provided in
19 both the text of the report and in Appendix A.

20 The conclusion drawn, based on data from all 140
21 LSC grantees, was that for each person served by an LSC
22 program, at least one person was turned away due to lack of

1 program resources.

2 Let me explain some of the issues the Committee
3 looked at and that I reviewed with respect to this
4 methodology and how they were resolved.

5 One issue was whether the two-month period was
6 representative. In fact, the two-month period was selected,
7 in part, because it was thought to be an ordinary two months
8 not affected by holidays or summer vacations or other
9 seasonal variations.

10 However, LSC went back and double-checked the two
11 months of data of 14 programs, 10 percent of our total
12 program base, and compared them to actual 2004 case reporting
13 figures. In fact, the two-month intake data was almost
14 precisely one-sixth of the 2004 annual intake, confirming,
15 mind you, that the data was reliable and representative.

16 The second issue had to do with how to count
17 individuals whose requests for legal assistance were denied
18 without the applicant being screened for financial or
19 citizenship eligibility, because the program did not handle
20 that type of case and knew the applicant would be rejected.

21 Because there was a feeling that it was
22 inappropriate, as well as a waste of grantee resources, to

1 put people through a careful financial or citizenship
2 eligibility screening if the grantee knew it was rejecting
3 the request for help. We told the programs they need not
4 screen them -- by saying "we," LSC told the programs they
5 need not screen them, but should include them in the unable-
6 to-serve count anyway. Thus, it's clear that some people
7 were counted who might not have been eligible for service.

8 The Justice Gap Committee addressed this issue in
9 ways that, in hindsight, seem quite reasonable and actually
10 lead to the conclusion that the 50 percent unable-to-serve
11 number cited in the report might be low.

12 First, because of the self-screening experience --
13 excuse me, first, because the self-screening experience
14 demonstrates that the number of individuals who request help,
15 but are financially ineligible, is actually quite low.

16 Parenthetically here, I might say I spoke to one
17 program director and another person who has extensive
18 experience working with the program and one told me that the
19 people rejected from financial eligibility is under 10
20 percent and the other one told me it's around five percent.
21 So, it is a small number of the people that come in the door
22 and get screened.

1 Second, we know that many people with problems are
2 not served because they do not show up, because they
3 personally know, or the social service agency they deal with
4 is aware, that the grantee does not handle the type of case
5 for which assistance is required. This gets back into the
6 program priorities and various programs refuse to take
7 various kinds of cases.

8 Other potential clients are lost because they tried
9 to and failed to reach the program and still, others are lost
10 because they do not know of the program. We also made it
11 clear to the programs that they were not to count as unserved
12 individuals they referred to a non-LSC funded program, where
13 they thought that the non-LSC program would actually provide
14 assistance.

15 Finally, the actual number of individuals
16 completely unserved was actually closer to 55 percent, but
17 the report and its conclusion settles on 50 percent.

18 In short, in order to adjust to this one concern
19 about a possible overcount, the report makes a number of
20 adjustments that more than compensate.

21 Beyond these two questions, I believe the unable-
22 to-serve methodology is statistically sound. LSC sampled 17

1 percent of the calendar year and collected a hundred percent
2 of the data -- intake data for that 17 percent from a hundred
3 percent of the programs. By any social science survey
4 standards, that is a huge sampling, far larger than anything
5 normally seen even in the most rigorous of academic studies.

6 The second methodology chosen was to review the
7 recent state-level research on the unmet civil legal needs
8 for the poor. In the last five years, studies were
9 undertaken in nine states on this question. The Committee
10 analyzed each study, compared them to each other, and
11 compared the results against the '94 ABA study.

12 The conclusion was that at least 80 percent of the
13 legal needs of poor people were unmet, but what issues arise
14 here?

15 First, are the nine states representative? We do
16 not know and the report does not assert they are. The
17 selection of states was happenstance, states where an entity
18 existed that chose to underwrite a study. We do know that
19 the nine -- that nine states is 18 percent of the total,
20 which makes it a large sample, and that LSC had no role in
21 selecting the states. So, LSC did not influence the data,
22 the state selection process, or anything -- or in any way.

1 Are the studies scientifically defensible? It
2 appears they are. The nine studies were undertaken by seven
3 different social science researchers, each independent of the
4 study's sponsor, using accepted methodologies and
5 statistically valid samples ranging in size from 400 to
6 2,000.

7 They are surveys and depending on the size of the
8 sample, they have statistically calculable margins of errors,
9 which in fact, we don't mention in the report. Moreover,
10 since the surveys were done by separate entities, the
11 methodologies vary and the results are not strictly
12 comparable across each survey.

13 Nonetheless, eight of the nine surveys show the
14 unmet legal need to be greater than the 80 percent identified
15 in the 1994 ABA survey, ranging from 82 to 91 percent.

16 The ninth survey, which seems to indicate an unmet
17 need of 71 percent, actually asked respondents when the
18 household sought, as distinguished from received, legal
19 assistance for their biggest legal problem. So, the
20 households in that survey had an average of three legal
21 problems per household and a median of two, but the question
22 which produced the 71 percent unmet need number only went to

1 the largest of the household's legal problems.

2 The last and a major issue in connection with the
3 nine studies, an issue also raised in connection with the 11-
4 year-old ABA survey, is whether they were measuring legal
5 needs or just legal wants.

6 Did the surveys succeed in weeding out individuals
7 who desired legal assistance, but really did not need it?
8 The studies tried to do so, but that's a distinction that can
9 be difficult to make. Often, the prudent course for an
10 individual is to seek legal counsel.

11 Yet, if upon review by competent counsel, it is
12 determined that legal assistance is not required, it does not
13 establish that counsel should not have been sought.

14 Finally, the report, in addressing the nine
15 studies, takes neither the average nor the median of the
16 results. It simply concluded that -- not we, but the report
17 simply concludes that at least 80 percent of the needs are
18 not being met, an outcome that is more than confirmed by the
19 '94 ABA study.

20 In the third of the three methodologies, the
21 Committee counted the number of legal aid attorneys, both
22 working for LSC and non-LSC funded programs, the number of

1 eligible clients using census data, the total number of non-
2 legal aid lawyers providing civil legal assistance to
3 individuals, and the total population.

4 The Committee then calculated the ratio of legal
5 aid lawyers to eligible needy Americans and the ratio of
6 civil lawyers to the general population. The result was a
7 finding that there are 13 times more lawyers serving the
8 general population than there are legal aid lawyers serving
9 individuals below 125 of the poverty line.

10 I would note that this does not establish, nor does
11 the report suggest, that the number of legal aid attorneys
12 needs to be multiplied by 13 to achieve adequate
13 representation of poor people.

14 It could mean, as Lillian suggested at the Finance
15 Committee meeting, that there are too many attorneys serving
16 the wealthy and upper middle class. It could be, although
17 there is little data to support this, that poor people do not
18 have the same number of legal needs.

19 What it does show is that, where the number of
20 lawyers serving the general population was established by the
21 market in a free market economy, 13 times more attorneys
22 exist. It is simply a different way of looking at the

1 question of unmet legal needs.

2 There are also some caveats regarding the count of
3 attorneys. With regard to attorneys serving poor people,
4 legal aid attorneys were counted, including those working for
5 non-LSC programs, but we were unable to estimate a full-time
6 equivalent attorney count for private pro bono work.

7 We would have had to distinguish between pro bono
8 work that was LSC-eligible and that which was not, such as
9 issue advocacy, service to clients not eligible by income or
10 alien status, class action work, or fee-generating work which
11 might have been written off as pro bono if the case was lost,
12 to name a few.

13 Second, the number of attorneys providing civil
14 legal services to the general population is also an estimate
15 and is, therefore, questionable or can be questioned. The
16 effort here, as elsewhere, was to be conservative.

17 The Committee eliminated members of the judiciary,
18 government lawyers, legal aid lawyers, public defenders,
19 lawyers in education, and retired or inactive attorneys. Of
20 the remainder, it then eliminated lawyers working in firms
21 with over 10 lawyers.

22 Is this a perfect way to count? No, but it was not

1 intended to produce an inflated number. If anything, it was
2 done in a manner calculated to produce a conservative
3 estimate of the number of private personal legal services
4 attorneys.

5 Finally, in an effort again to be conservative, the
6 report actually subtracts from the general civil attorney
7 count of legal aid lawyers, but it does not subtract from the
8 general population count of poor people.

9 So, in effect, we took out the bulk of the
10 attorneys serving poor people in producing the overall
11 population ratio, but left poor people in it. The effect of
12 that was to actually reduce the ratio by over 17 percent of
13 the number of attorneys per poor person
14 -- actually, the other way around, the number of people in
15 the general population per attorney.

16 So -- but having said all that, while it is a
17 conservative figure, it is certainly soft and not up to the
18 standards of the other two methodologies.

19 As I close on this last methodology, I would like
20 to restate what I noticed a few minutes -- noted a few
21 minutes ago. While this comparison presents a different and
22 interesting method of viewing the resources available to poor

1 people, it was not used in the conclusion of the report
2 relating to the calculation of unmet legal need.

3 I shall now turn briefly to the report's
4 conclusions. It concludes that the best available evidence
5 is less than one of -- one in five of poor Americans who need
6 legal assistance receive it. To eliminate that gap, the
7 resources made available for legal aid has to increase five-
8 fold.

9 That conclusion, while eminently supportable,
10 leaves open the question of whether closing that entire gap
11 is desirable and necessary or realistically achievable.

12 The second significant conclusion is that half of
13 those seeking help from LSC grantees are not receiving any
14 assistance. It does not state that resources to LSC
15 grantees, both from Congress and other sources, should be
16 doubled. Whether to seek such a goal and if so, over what
17 timeframe, is a policy judgment for the Board to make.

18 Congress will, in any event, have the last word on
19 that subject, at least as it relates to federal funds.
20 However, notwithstanding the caveats and limitations
21 identified above, that 50 percent unserved number is sound
22 and I am comfortable defending it to Congress and the public.

1 In closing, LSC undertook this research project at
2 the request of the Board and it was a serious inquiry using
3 scientifically sound methods. LSC did not know what the
4 results would be when this project began, especially with
5 respect to the count of people unable to serve, since no such
6 study had ever been even attempted before.

7 It appears to me that the Committee, whenever it
8 faced a choice, took the conservative approach and that the
9 numbers are sound and speak for themselves.

10 And on that, I'll be happy to answer questions and
11 I'll defer to Jon if any of you go over my head.

12 MR. STRICKLAND: All right. Thank you, Tom, for
13 your presentation. That was very thorough and I think if the
14 -- Jon Asher, do you have anything to add at this point or do
15 you want to get involved in the Q&A?

16 MR. ASHER: Yeah, I'd rather just respond to the
17 questions.

18 MR. STRICKLAND: All right. Will Board members --
19 I hope all of you -- I should have said this at the outset.
20 I apologize for not saying it, but a couple of things.

21 One is, I want to welcome Bernice Phillips and Tom
22 Fuentes to our Board. They've been sworn in officially and

1 we are delighted to have your participation after such a long
2 delay and look forward to seeing both of you -- and all of
3 you, as a matter of fact, in Boise later this month.

4 And second, I hope everyone has received a copy of
5 the report we're discussing. I know that it was certainly --
6 the impression I had, that the staff had sent those materials
7 to all of you. So, is that correct? Do all of you have that
8 material?

9 (Chorus of yeses.)

10 MR. STRICKLAND: Okay, good. All right. Now, you
11 heard Tom's skeptic's eye view of the report. I know it's a
12 little awkward to do this on the phone, but let's go to any
13 questions that Board members might have. And we'd like to
14 ask you to identify yourselves for the reporter.

15 MR. MEITES: This is Tom Meites. Frank, can you
16 hear me okay?

17 MR. STRICKLAND: Yes, yes, sir.

18 MR. MEITES: I just have a question for Tom. At
19 the end, he -- I followed what he said pretty closely and I
20 can understand the report's data that our grantees can only
21 serve one out of two people who come to them for service.
22 But how does that translate into that only one out of five

1 who are Americans are getting legal services?

2 MR. POLGAR: It's two separate questions. The
3 serving one out of two is people that walk in their door and
4 ask for service. There are -- the legal -- and that was what
5 was measured in the first methodology. In the second
6 methodology, they were measuring people that -- or the state
7 studies were trying to measure people that required legal
8 service and weren't receiving it.

9 And that brings a whole host of new players, new
10 people into play. It brings into play people who aren't
11 aware of the presence of the legal services program. It
12 brings into play people who need legal assistance, but know
13 the program doesn't provide it. A common area would be an
14 uncontested divorce.

15 It needs -- it takes into account social service
16 agencies not referring people because they know the program
17 is overburdened and won't take the case. John, do you want
18 to add to that list?

19 MR. GARTEN: Herb Garten here. It takes into
20 account non-LSC programs, doesn't it?

21 MR. POLGAR: Yes, it takes into account non-LSC
22 programs. That's a good point.

1 MR. GARTEN: That's one of the big items.

2 MR. MEITES: Well, let me tell you my response to
3 that. I feel comfortable with the first proposition, that we
4 -- our grantees, given their scope of their work, are only
5 able to serve 50 percent of the people who apparently are
6 within the class of people who are -- they are designed to
7 serve.

8 But I feel very uncomfortable saying that, as a
9 general proposition, in some undefined marketplace for legal
10 services, only 20 percent of the poor people in the United
11 States are being served.

12 The first -- I was very impressed with the basis of
13 the first conclusion. I got to tell you, I'm not real
14 impressed with either the basis or the utility of the second.

15 MR. GARTEN: Herb Garten here. I'm very
16 disappointed that you're not grasping the total picture, Tom.
17 You have nine states that have conducted this report, these
18 studies. You have the ABA. Maryland did one about 12 to 15
19 years ago. The results were very similar, one in five.
20 That's the total picture around the country.

21 In Illinois, I'm confident that if you called any
22 one of the providers, they would confirm to you that they can

1 handle the requests, that they're turning away a lot of
2 people. So, I think that if you were to take another look at
3 this report and possibly even take a look at some of these
4 state legal needs studies, in addition to the ABA study,
5 they're all consistent, they all come within a -- within a
6 few percentage points of each other.

7 MR. MEITES: No, no, Herb. I'm saying something --
8 I've read the -- actually read the Illinois study and I was
9 quite impressed by it. I'm saying something different.

10 I'm questioning -- and this is really for Tom
11 Polgar, I suppose, more than anybody else -- whether it is
12 more -- it undercuts our message to take on the entire unmet
13 needs of the -- of the United States, the one in five, and
14 whether that will not swamp what we can demonstrate, that
15 even given the very limited role we have, we can only meet 50
16 percent of that.

17 MR. POLGAR: Well, I have a two-part answer to
18 that. First, in essence, I think at least for the time
19 being, LSC management here came to a similar conclusion
20 because, in fact, the budget recommendation to the Finance
21 Committee, which now is going to be coming before the Board
22 in a month, is actually only based on the first methodology.

1 MR. MEITES: Okay.

2 MR. POLGAR: So, in terms of the money that you're
3 going to be asked to consider and vote on on October 29th,
4 that was the only thing we looked at.

5 I do think it's striking, though, that the ABA,
6 having done a big study in 1994 and getting the usual --
7 getting -- you know, some criticism for it, but they're --
8 we've had the nine studies in the last five years, we had
9 several studies back in the latter part of the 1990s.

10 We didn't go back that far -- or the Committee
11 chose not to go back that far, only because they thought they
12 were too old. They wanted to stay with more recent ones.
13 And the results are strikingly consistent.

14 And we're talking about, in the case of these nine
15 studies, nine different sponsoring entities, seven different
16 research operations undertaking them. One of three state
17 studies were done by the same researcher, but the other six
18 were all done by separate ones.

19 And year in, year out, the result comes out the
20 same and at some point, even I become a believer, whereas if
21 it was one study or two studies, you wouldn't buy it.

22 MR. MEITES: Thank you.

1 MR. POLGAR: Just like you wouldn't buy one poll,
2 one -- in my background, which is politics, you don't buy one
3 poll, but when you see 10 of them, you start to believe it if
4 they all say the same thing.

5 MR. MEITES: Okay. Thank you, Frank.

6 MR. STRICKLAND: Okay. Other Board members?

7 MS. WATLINGTON: This is Ernestine Watlington. I
8 just wanted to point out that even though -- you know, that
9 report was done, can you just imagine how many people have --
10 is not added or under that now that it's considered low-
11 income and poor that has to be addressed by a legal services
12 program?

13 I mean, it's something that we can't deal -- I
14 mean, it's got to be dealt with some kind of way, but can you
15 imagine how many more people is now added to those lists?

16 MR. POLGAR: Yeah, the answer is yes. I mean, it's
17 a good point, particularly in certain parts of the country.
18 The two natural disasters, but especially Katrina, have
19 clearly added substantially to the roles.

20 I mean, we were estimating -- and this was, in and
21 of itself, pretty conservative, but of the 500,000 evacuees
22 they're talking about, internally, we're estimating a minimum

1 of 200,000 people are eligible for legal services.

2 And as was done in the case of the Justice Gap
3 report, that's the low number. We were actually looking at
4 some higher numbers. Certainly, in the case of New Orleans,
5 40 percent of the city's population was eligible for legal
6 services.

7 MS. BeVIER: But is this in addition -- excuse me,
8 this is Lillian BeVier. I mean, are you saying Katrina
9 created very substantial additional poor people or that most
10 of the people who were, in fact, most severely affected by
11 Katrina were already low-income?

12 MR. POLGAR: Well --

13 MS. BeVIER: And eligible? Eligible is what I
14 mean.

15 MR. POLGAR: Nothing in the Justice Gap report
16 factors Katrina in at all. This thing was -- the research
17 was over and it was well along -- on the way of being written
18 before Katrina ever materialized.

19 But no, we're figuring additional people eligible
20 in light of the fact that somebody who may not have been
21 eligible before the storm hit, having proceeded to lose their
22 job and house, may very well be eligible overnight.

1 MS. BeVIER: Right, and I do understand that there
2 will certainly be additional legal services that will need to
3 be provided, even by people who previously might have been
4 eligible financially, but didn't have those kinds of legal
5 problems, so --

6 MR. STRICKLAND: Other questions from Board
7 members?

8 (No response.)

9 MR. STRICKLAND: All right. Jon Asher, did you --
10 you were going to answer questions, but apparently, there may
11 not be any other questions. But I want to make sure that we
12 hear everybody out on the report.

13 MS. BeVIER: I would just like to say -- this is
14 Lillian BeVier again -- since I was the one that wanted a
15 skeptical look, I think it's -- I very much appreciate the
16 work that Tom did on it, it's -- the skeptic's look and I
17 appreciate it.

18 But the Committee did a conservative job and that --
19 -- as I said at the Finance Committee meeting, I don't think
20 there are any surprises in this report in terms of there
21 being a very substantial unmet need there.

22 So, I just -- I would guess that -- I don't know --

1 Tom, let me ask you this question. Do you anticipate any
2 questions along the lines of "Well, why were LSC resources
3 spent on this," or is that something that people will -- may
4 not be concerned about?

5 I mean -- and the only reason I suggest that is
6 just the possibility that this is -- you know, it's -- the
7 figures are more clear and definite and you can look at them
8 with more confidence than you could have without the report,
9 that these needs have existed for a long time. I guess this
10 is not a surprise.

11 So, you don't think anybody will ask you questions
12 along those lines, of "Why did we do this?"

13 MR. POLGAR: No, I'm not concerned about that for a
14 couple of reasons. One, it's common practice for a
15 government agency to go out and try to assess the need for
16 the services it provides.

17 Secondly, we didn't spend a great deal of resources
18 on this, except for staff time of a number of people here.
19 The people on the Justice Gap Committee were volunteering
20 their time. We would have been working anyway, so there was
21 probably no net additional cost. I mean, Mike Genz, I know,
22 spent a tremendous amount of time on this, but he was going

1 to get paid no matter what.

2 MS. BeVIER: Right.

3 MR. POLGAR: The -- yeah, so the cost is a minimum
4 -- probably the single biggest cost -- the two single biggest
5 costs we incurred are conference calls, the production of the
6 report will be an expense, and frankly, some additional costs
7 that we imposed on our grantees by forcing them to do the
8 unable-to-serve study, but that doesn't show up in our
9 budget.

10 MS. BeVIER: Right.

11 MR. MEITES: Frank, this is Tom. Can I make
12 another comment?

13 MR. STRICKLAND: Yes, sir.

14 MR. MEITES: Board members may recall that -- I
15 think it was roughly a year ago at a Board meeting when we
16 were going over our projections.

17 There was -- I and others on the Board felt a need
18 to base our request to Congress on more real world data,
19 rather than just going back to what we used to be in 1995 and
20 decrying the reduction. I think this report is exactly what
21 we need to start and we now have a baseline of at least 50
22 percent unmet need, just people kind of over the transom.

1 And I think that we can -- the next step, it seems
2 to me, is to quantify what kind of dollars it would take.
3 It's not going to take 2-X dollars. It takes something less
4 than that, but what kind of dollars it would take is to bring
5 our grantees help to service the mission that Congress has
6 given them as of now.

7 So, I think this is exactly the place where I hope
8 we would be to enable us and the staff to put together
9 presentations to Congress that are based on real data with
10 real numbers.

11 MR. POLGAR: One thing, if it -- when we say 2-X
12 dollars to serve twice as many people, that was 2-X dollars
13 of the entire pot of money available to legal services
14 program -- to the LSC-funded legal services programs. And
15 half their money doesn't come from us, so --

16 MR. MEITES: Right.

17 MR. POLGAR: So, even if you assume double, the
18 non-federal resources would have to double too.

19 MR. MEITES: That's a good point.

20 MR. FUENTES: This is now Tom Fuentes and I would
21 just like to raise a point or two.

22 My recollection back in September 2004 was that we

1 were going to go after this information in order to get the
2 fullest picture possible that we could have as a resource to
3 do our job.

4 The solution, though, as you pointed in this
5 Justice Gap report -- it seems to me that it's perceived
6 really only in terms of additional funding, not necessarily
7 in terms of developing increased deficiencies or cost-
8 effectiveness in the provision of legal assistance, in the
9 use of development of technology, or pro se assistance or
10 other ways.

11 I am wondering if, along the same lines of
12 following up on comments made before me here, aren't we, LSC,
13 eventually opening ourselves to some criticism, especially in
14 light of the fact that this Justice Gap Committee included
15 members who arguably have a vested interest in increased
16 federal funding for legal services. And they analyze data
17 from those with such an interest.

18 I'm not questioning their good motives. I am,
19 rather, wanting to make sure that we, as a corporation -- our
20 best position to defend ourselves, should those points be
21 raised.

22 MR. POLGAR: I'll tackle the first part of that

1 question. The LSC has actually been fairly active in trying
2 to make its -- the delivery system of its grantees more
3 effective and more efficient. I mean, that included the
4 statewide planning initiative, which resulted in the merging
5 of a lot of programs to try and achieve economies of scale.

6 That includes the technology incentive grant
7 program, which is developing new uses of technology, some of
8 which have been proven highly successful and are now being
9 disseminated around the country, the better use of pro se
10 efforts. There is stuff going on, on that front.

11 Ironically, last year, faced with a little internal
12 squabble between the House and the Senate in doing the FY '05
13 budget, and they needed a couple million dollars to solve
14 some internal intra-body fight over spending -- how to spend
15 -- divvy up LSC funds, they found their couple million
16 dollars by taking it right out of the technology program.

17 But in any event, we are working that -- down that
18 road and hopefully, we'll see more and more success, but the
19 unmet need is still there. But it's certainly an interesting
20 calculation, what kind of technology improvements are we
21 going to make in the next five years to make the programs
22 more efficient.

1 MR. FUENTES: But it would seem also that the
2 solution reached by the study is somewhat based on the
3 assumption that what is termed necessary access hires an
4 attorney to address every legal need and that this should be,
5 in some way, our goal.

6 I think that's kind of a big and serious policy
7 question that the Board has not fully debated nor taken a
8 formal position on.

9 MR. ASHER: Tom, this is Jon Asher and whether I
10 was during most of the time of the Committee, I certainly am
11 now director of a beneficiary of the federal funding.

12 But I think that many of us have a pretty
13 consistent record of saying that if you have unmet legal
14 needs, there are two ways to address that and not either/or.
15 One is to increase the availabilities of legal services for
16 those in need and the other, equally important, is to make
17 every effort to try to reduce the need for advocacy in order
18 to resolve disputes.

19 When we get closer to narrowing that gap, maybe we
20 will be better at quantifying exactly what the benefits of
21 reducing those needs are.

22 But there is no doubt that in simplifying the legal

1 system, in making pro se assistance available, in getting
2 greater efficiencies out of technology and kiosks and other
3 efforts to allow people to more adequately navigate the legal
4 system without the need for a lawyer or skilled advocate,
5 plus reducing the number of issues going into the legal
6 system, totally, you're absolutely right.

7 And I think that in most states, legal services are
8 very involved in trying to do exactly what you're saying.
9 Those are not either/or. Those are both absolutely essential
10 and at some point, the Board may need to make difficult
11 judgments of where to put its emphasis.

12 But at this point, there is plenty of room for
13 both, I would say, but neither the Committee nor people who
14 are involved in delivering the service, I think, are
15 unmindful of exactly the challenge that you present.

16 MR. HALL: This is David Hall. If I could just
17 interject on that last point, I think that is well-taken,
18 that when -- to look for efficiencies and try to make sure
19 that we were addressing the need with the appropriate type of
20 service and resource.

21 But I would argue that -- you know, that's a
22 problem challenging the entire profession and not just

1 delivery of legal services to poor people. The profession,
2 in general, needs to look at efficient ways of resolving
3 dispute, more collaborative ways of resolving disputes, et
4 cetera.

5 And I would just argue that we should not, as a
6 board, in any way, send a message that, in serving the poor,
7 we need to be more efficient but the rest of the profession
8 need not be.

9 I think that -- at least my personal point is that
10 in order for the legal system to have integrity, we have to
11 be making sure that the legal needs of the poor are treated
12 and respected in the same way that -- of individuals who pay
13 for their attorney. And we know that -- you know, that's not
14 always the case.

15 So, I think Jon Asher is correct. The legal
16 services community has probably been, because of the lack of
17 resources, having to focus on that issue more so than the
18 rest of the professional, to a certain extent.

19 But I think we have to look at access and look at
20 our quest for justice -- you know, across the board and not,
21 in any way, minimize or sacrifice the rights and legal needs
22 of the poor in ways that we wouldn't do for others.

1 And so, I would also say -- unfortunately, because
2 I have to go off to another meeting -- is that -- you know, I
3 would like to commend the administration for undertaking the
4 report and doing what we, as a board, asked.

5 I remember Rob Dieter, in essence, challenging the
6 -- challenging management to come back with something better
7 than what they had before and I think they undertook that.
8 There's always some weaknesses in any study or report. It's
9 probably not perfect.

10 But I think they have responded to the requests we
11 put forward to them and I do believe the other -- that that
12 gives us the better basis for identifying the need and for
13 advocating to Congress for resources to address those
14 particular needs.

15 So, I apologize for having to leave, but I hope
16 that -- you know, the Board sees this as a step forward and
17 something that we can build on and probably perfect and make
18 even better going forward.

19 MR. STRICKLAND: David, thank you for joining us
20 for as long as you were available.

21 MR. HALL: Okay. Thank you.

22 MR. STRICKLAND: All right. Any other Board

1 members have questions or comments about the report?

2 (No response.)

3 MR. STRICKLAND: All right. Let's proceed along
4 these lines then. As a general proposition, I think that the
5 principal reason we're considering this report, to the extent
6 that we are, is because it is a significant report and a
7 policy statement, if you will, or an advocacy piece or all of
8 the above.

9 And therefore, there was a strong suggestion that
10 we bring this to the attention of the full Board before we --
11 the report is issued by LSC. But at the same time, I would
12 note that we issue a lot of things that do not come to the
13 Board's attention, so -- and I would expect that we will
14 continue to do that and we put out the Equal Justice magazine
15 and other publications and reports on a fairly regular basis
16 without the participation of the full Board.

17 But in this instance, because of this report being
18 produced at the request of the Board and being a very
19 significant piece of work, that's how we convened this
20 telephonic meeting. So, if there are no other questions,
21 then I would like -- I would be glad to entertain a motion.

22 MS. PHILLIPS: Mr. Strickland?

1 MR. STRICKLAND: Yes?

2 MS. PHILLIPS: Bernice Phillips. I have a
3 question.

4 MR. STRICKLAND: Go ahead.

5 MS. PHILLIPS: Actually, I have two questions. The
6 first question is about certain documents that's sent out to
7 members that may lead to represent the opinion of the Board,
8 such as the Justice Gap.

9 And I wanted to ask, was there a procedure that was
10 set in place or is set in place for materials to be looked
11 on, discussed, and then -- you know, decided upon?

12 MR. STRICKLAND: Well, I was addressing that just a
13 moment -- you mean in terms of any report that's issued by
14 LSC?

15 MS. PHILLIPS: I mean -- not any report, but just
16 the reports that may -- you know, lead to represent the
17 opinion of the Board members, such as the Justice Gap.

18 MR. STRICKLAND: Well, I think the Justice Gap
19 report is a significant document and that's why we're
20 reviewing this in this meeting. There could be other
21 examples of that, but -- but as an example, I think, of one
22 that could be viewed as significant, but the Board didn't

1 review it, was our 2004 annual report that was prepared by
2 the staff and issued and enjoyed via circulation, so --

3 MS. PHILLIPS: So there is no procedure?

4 MR. STRICKLAND: No, there's not a specific
5 procedure for that. I think we'll probably do that on a
6 case-by-case basis.

7 MS. PHILLIPS: Well, can I -- well, I'd like to
8 make a motion that we set a procedure for that.

9 MR. STRICKLAND: Well, I wonder if I might ask you
10 to hold that motion until we meet in Boise or we can vote on
11 it now if you like. But I think we could discuss that a
12 little bit better if we were all there in person and you may
13 be quite right that we have a procedure, but -- is that all
14 right with you if we take it up at our Boise meeting?

15 MS. PHILLIPS: That's fine. That's --

16 MR. STRICKLAND: Because really, the purpose of
17 this meeting was to consider this report and not get into
18 other issues.

19 And Vic, we may have -- I'm not looking at the
20 Federal Register notice, but was it limited in scope?

21 MR. FORTUNO: Yes, it's limited to consideration
22 and action on the -- on this particular report.

1 MR. STRICKLAND: Yeah, okay. For that reason,
2 Bernice -- when we hold our meetings, we published an
3 official notice in the Federal Register as to the date, time,
4 and location and the subject of the meeting.

5 So, we have to follow that and therefore, I would
6 have to rule your motion out of order at this time and ask
7 you to hold that until the Boise meeting.

8 MS. PHILLIPS: Okay. Would it be out of order to
9 also ask for a procedure to be set in place for documents --
10 certain documents that's sent out to the Board for Committee
11 meetings?

12 And the reason that I ask that is because I noticed
13 when I was not going to attend the Finance Committee meeting,
14 I only received the Justice Gap and then I received a memo
15 from Helaine. But when I was going to attend the meeting, I
16 received the Board books, entire, and -- and the Justice Gap
17 report.

18 So, had I not -- you know, wanted to come to the
19 meeting in Washington, the Finance Committee meeting, I would
20 have probably been absolutely lost, at a disadvantage. So,
21 is it out of order to --

22 MR. STRICKLAND: Well, I think any motion other

1 than dealing with this report is going to be out of order for
2 -- just for this meeting.

3 MS. PHILLIPS: Okay.

4 MR. STRICKLAND: And those -- but certainly, the
5 intent of the Board and the staff, that all Board members
6 receive the same material in advance of meetings. And if
7 there was any confusion relative to what you received in
8 connection with the Finance Committee meeting, we certainly
9 apologize for that, but that was unintended.

10 And we do have a procedure in place for making
11 certain that all Board members receive the Board book in
12 advance of the meeting and any other materials that are being
13 circulated. They're circulated to everybody. MR.

14 POLGAR: Yeah, just to elaborate on that, Mr. Chairman, we
15 normally, at Helaine's direction, send out all important --
16 any important document to every member of the Board.

17 All materials associated with one of our regular
18 quarterly Board meetings and all the Committee meetings at
19 that Board meeting also go to all members of the Board and
20 then -- but sometimes, when there's a special ad hoc
21 committee meeting which makes -- which is very limited in
22 subject, the material might only go to those members of the

1 committee.

2 MR. STRICKLAND: Members of that committee, yeah.

3 MR. POLGAR: Plus other members of the board who
4 tell us they're coming. So in that case, sometimes, it --
5 everything doesn't go to everyone.

6 MR. STRICKLAND: All right. Well, you --

7 MR. POLGAR: But that's really the only case I can
8 think of.

9 MR. STRICKLAND: Here, I think that's a good point.
10 Did you understand that one, Bernice, that --

11 MS. PHILLIPS: Yeah, I understand that, you know,
12 you do send -- committee --

13 MR. STRICKLAND: Yeah, if you're on the particular
14 committee, then you would get the materials for that
15 committee. Or if you decided to attend a meeting of a
16 committee of which you're not a member, then you would also
17 get the materials, but --

18 MS. PHILLIPS: So you would get the materials if
19 you were not a committee member?

20 MR. STRICKLAND: If you -- if you're going to go to
21 the meeting.

22 MR. POLGAR: No, but for the quarterly meetings

1 like the upcoming one in Boise, every member of the Board
2 will get all the materials for --

3 MR. STRICKLAND: For all committees.

4 MR. POLGAR: -- with respect to every committee
5 meeting.

6 MS. PHILLIPS: No, I understand that, but what I'm
7 saying is that if you're not attending, you're not a member,
8 then -- you know, you don't receive the material? Is that
9 what you're saying?

10 MR. STRICKLAND: That's correct. In other words,
11 the people who are on that particular committee -- you see,
12 we -- ordinarily, we don't have -- the Finance Committee
13 meeting that we just had in September is not a typical thing.
14 We don't have very many of those -- those meetings.

15 But with regard to that kind of meeting, then when
16 we're calling together a meeting of that committee, the
17 expectation is that that committee would meet and while other
18 Board members could attend a meeting if they wanted to, it
19 somewhat defeats the purpose of having committees if every
20 Board member goes to every committee.

21 MS. PHILLIPS: But everybody is not expected to
22 participate in --

1 MR. STRICKLAND: No, no, that's right. That's
2 correct. That's why we have standing committees so that the
3 members of those committees can focus on the work of their
4 respective committees and then bring their collective wisdom
5 to the full board, so --

6 MR. POLGAR: But even with respect to the Finance
7 Committee meeting on September 30th, the one document that
8 was central to that meeting, which was the management
9 recommendation on the '07 budget, actually went to every
10 member of the Board, whether they were on the Committee or
11 not, because Helaine thought that was an important document.

12 MS. WATLINGTON: But I -- this is Ernestine. I
13 think what you're saying -- I know what I would like -- is at
14 that meeting, you put a procedure out and then everyone knows
15 who gets what.

16 MR. STRICKLAND: Okay, I think we can do that.
17 We'll just agree to do that without taking any action on it,
18 but I think we need to be careful about getting off the
19 stated Federal Register agenda.

20 MS. WATLINGTON: Okay.

21 MS. PHILLIPS: Subject -- uh-huh.

22 MR. STRICKLAND: In any event, where I was headed,

1 are there any other questions for Board members?

2 (No response.)

3 MR. STRICKLAND: Okay. Then where I was headed a
4 moment ago was, I would entertain a motion that -- regarding
5 the -- that is, for approval of the report entitled,
6 *Documenting the Justice Gap in America.*

7 M-0-T-I-O-N

8 MR. GARTEN: I so move.

9 MR. STRICKLAND: Is there a second to that motion?

10 MS. WATLINGTON: Second.

11 MR. STRICKLAND: Second by Ernestine Watlington?

12 MS. WATLINGTON: Yes.

13 MR. STRICKLAND: And it was moved by Herb Garten, I
14 believe?

15 MR. GARTEN: Yes.

16 MR. STRICKLAND: All right. Any -- is there any
17 further discussion on the motion?

18 (No response.)

19 MR. STRICKLAND: Hearing none, let's proceed to --
20 I think we'll have to do a roll call vote and I have put away
21 my roll. I apologize for that. Let me get that back in
22 front of me.

1 All right. We'll proceed somewhat alphabetically,
2 because I don't have everybody's name in the book.

3 Lillian BeVier?

4 (No response.)

5 MR. STRICKLAND: Has Lillian dropped off?

6 (No response.)

7 MR. STRICKLAND: All right. Tom --

8 MS. BeVIER: Frank, Frank?

9 MR. STRICKLAND: Yes?

10 MS. BeVIER: Sorry, I was muted.

11 MR. STRICKLAND: Oh, all right.

12 MS. BeVIER: Aye.

13 MR. STRICKLAND: Okay. Tom Fuentes?

14 MR. FUENTES: Aye.

15 MR. STRICKLAND: Herb Garten?

16 MR. GARTEN: Aye.

17 MR. STRICKLAND: And David Hall, I believe, has
18 dropped off. Mike McKay?

19 MR. McKAY: Aye.

20 MR. STRICKLAND: Tom Meites?

21 MR. MEITES: Aye.

22 MR. STRICKLAND: And "Lico" A. Subia?

1 MR. SUBIA: Aye.

2 MR. STRICKLAND: Ernestine Watlington?

3 MS. WATLINGTON: Aye.

4 MR. STRICKLAND: Bernice Phillips? Bernice?

5 MS. PHILLIPS: Aye.

6 MR. STRICKLAND: And the Chair votes aye, so are
7 there any opposed?

8 (No response.)

9 MR. STRICKLAND: All right, the record should
10 reflect, then, that it was adopted by unanimous vote of the
11 Board. And is there any -- I would also say that in light of
12 Bernice's and Ernestine's suggestion that we have some
13 procedures and policies, we will get about the business of
14 preparing those.

15 But it is not necessary to the case, because we
16 took a vote on this document, that every paper that goes out
17 of LSC is going to require the Board to convene and vote on
18 it, because I think that would just make it unmanageable. I
19 just -- so, we're not necessarily setting that precedent by
20 this vote, at least in my opinion. So, I just wanted to
21 express that thought while we were all together on the phone.

22 MS. BeVIER: Well, Mr. Chairman, this is Lillian.

1 MR. STRICKLAND: Yes?

2 MS. BeVIER: I hope that people on the Board did
3 not feel that this meeting was inappropriate. Having been
4 not solely responsible, but having wanted to do it, I think
5 it was a very useful discussion and it's very important for
6 this particular report, in my view, that the whole Board be -
7 -

8 MR. STRICKLAND: Absolutely. I agree with you and
9 I think it was a good exercise and I express appreciation,
10 I'm sure, for the entire Board, to Tom Polgar, and to others
11 who may have participated in the devil's advocate approach to
12 reviewing this report.

13 MR. ASHER: And Mr. Chair, I always appreciate the
14 opportunity to be the more skeptical and cynical --

15 (Laughter.)

16 MR. ASHER: I told somebody the other day that I
17 was thinking I was getting so cynical I'm going to give up
18 thinking.

19 (Laughter.)

20 MR. STRICKLAND: Well, we appreciate that comment.
21 Any other business to come before the meeting?

22 (No response.)

1 MR. STRICKLAND: All right. Is there a motion to
2 adjourn?

3 M-O-T-I-O-N

4 MS. BeVIER: So moved.

5 MR. STRICKLAND: A second?

6 MS. WATLINGTON: Second.

7 MR. STRICKLAND: And I'm sure that's going to be a
8 unanimous vote, so I will declare the meeting adjourned as of
9 5:05 p.m. and thank you, everybody, for participating today.

10 ALL: Thank you.

11 MR. STRICKLAND: Good-bye.

12 (Whereupon, at 5:05 p.m, the meeting of the Board
13 of Directors was concluded.)

14 * * * * *

15