

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

OPERATIONS & REGULATIONS COMMITTEE

Friday, January 27, 2006  
4:30 p.m.

The Melrose Hotel  
2430 Pennsylvania Avenue, N.W.  
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

Thomas R. Meites, Chairman  
Lillian R. BeVier  
Michael D. McKay  
Bernice Phillips  
Frank Strickland, *ex officio*

OTHER BOARD MEMBERS PRESENT:

Thomas A. Fuentes  
Herbert S. Garten  
Florentino A. Subia  
Ernestine P. Watlington (by phone)

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, LSC President  
Victor M. Fortuno, Vice President for Legal Affairs  
Demille James, LSC  
Patricia Batie, LSC  
Michael Genz, LSC Director, Ofc. of Program Perf.  
Mattie Condray, LSC Sr. Ass't. General Counsel  
Laurie Tarantowicz, LSC OIG  
Danilo Cordova, LSC  
Luis Jaramillo, LSC Acting Special Counsel  
Tom Polgar, LSC Director, Gov't. Rel.  
Karen Sarjeant, LSC, V.P., Programs & Compliance  
David Richardson, LSC Comptroller/Treasurer  
Linda Perle, CLASP  
Bill Whitehurst, ABA/SCLAID  
Terry Brooks, ABA/SCLAID  
Bob Henderson, LAW  
Don Saunders, NLADA

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

(4:30 p.m.)

1  
2  
3 CHAIRMAN MEITES: Let's begin.

4 I will call to order the meeting of the Operations  
5 and Regulations Committee.

6 We are missing -- we have most of our members here.

7 Bernice isn't here, but we'll start without her.

8 I'm sure she'll catch up.

9 There has been a request that we slightly modify  
10 our agenda.

11 Item 6 on our agenda -- the staff has asked that it  
12 respond after comments from Mr. Henderson and public comment,  
13 and with that change, I ask for a motion to approve the  
14 agenda, as amended.

## M O T I O N

15  
16 MS. BeVIER: So moved.

17 A PARTICIPANT: Second.

18 CHAIRMAN MEITES: All right.

19 Let us begin.

20 First is approval of the minutes of our meeting of  
21 October 29, 2005.

1 M O T I O N

2 CHAIRMAN MEITES: Any discussion?

3 MS. BeVIER: I have a major correction to suggest.

4 CHAIRMAN MEITES: Please.

5 MS. BeVIER: Ernestine Watlington's name is  
6 Ernestine and not Ernestina.

7 CHAIRMAN MEITES: Okay.

8 With that change, anything else? I'll take a  
9 motion to approve the minutes.

10 MS. BeVIER: So moved.

11 A PARTICIPANT: Second.

12 CHAIRMAN MEITES: And they are approved.

13 All right.

14 We have three items, 3, 4, and 5, each of  
15 which -- 3 is -- yeah, 3, 4, and 5 are items that we talked  
16 about at our last meeting.

17 Mattie, do you want to come forward, please?

18 I believe that 4 and 5, we asked that workshops be  
19 held, and 3, we recommended that the board order publication  
20 of a proposed regulation, which I believe has been done.

21 So, Mattie, why don't you tell us, first of all,

1 what has occurred with regard to our draft final rule to  
2 remove expenditures of grant fund regulation since our last  
3 meeting?

4 MS. CONDRAV: Absolutely.

5 For the record, my name is Mattie Condray. I am  
6 senior assistant general counsel with the Office of Legal  
7 Affairs at LSC.

8 Per the board's instructions, on Thursday, November  
9 3, 2005, the corporation issued a notice of proposed  
10 rulemaking in the Federal Register proposing to delete in its  
11 entirety the regulation 45 CFR part 1631, expenditure of  
12 grant funds.

13 The proposed deletion was warranted because the  
14 statutory authority for part 1631 is no longer the prevailing  
15 rule of law.

16 We received zero comments on our notice of proposed  
17 rulemaking, and you have in front of you a draft final rule.

18 The two differences between the draft final rule  
19 and the proposed rule that you saw last time was that the  
20 draft final rule contains a reference to the actual published  
21 proposed rule and the fact that we got no comments, and the

1 action words are written in the present tense instead of the  
2 future tense.

3 CHAIRMAN MEITES: And the next step for us is to  
4 recommend to the board that it finally approve -- grant final  
5 approval to the rule.

6 Is that correct?

7 MS. CONDRAY: That's correct, to approve the draft  
8 as written or with any amendments, and issue it for  
9 publication.

10 CHAIRMAN MEITES: Okay.

11 Any discussion?

12 (No response.)

13 CHAIRMAN MEITES: Any public comment on that?

14 (No response.)

15 CHAIRMAN MEITES: Do I have a motion?

16 M O T I O N

17 MS. BeVIER: I move we recommend that action to the  
18 board.

19 MR. HALL: Second.

20 CHAIRMAN MEITES: Let's have a vote.

21 All in favor?

1 (Chorus of ayes.)

2 CHAIRMAN MEITES: Any opposed?

3 (No response.)

4 CHAIRMAN MEITES: That will be our recommendation.

5 The next item is number 4, which is the client  
6 grievance procedure.

7 The action that was taken since last meeting, I  
8 believe, was that a workshop was held on our present rule,  
9 the aim of which was to gather input from interested parties  
10 as to whether and what changes should be considered in this  
11 regulation. Is that correct?

12 MS. CONDRAY: That's correct, and that workshop was  
13 held on January 18th, so just very recently.

14 The staff report was not able to be prepared,  
15 obviously, in time for the delivery of the board books,  
16 because the workshop had not yet taken place, but should have  
17 been distributed to everybody at the hotel. I don't know  
18 that anybody would have had time to read it, but you at least  
19 got that -- hopefully got that to you.

20 I will summarize -- especially given the lateness  
21 of the hour, I will summarize very briefly.



1           It was a very useful, I thought, and productive  
2 workshop which was moderated by the LSC chief administrative  
3 officer, Charles Jeffress.

4           After I provided -- first, President Barnett  
5 provided some welcoming remarks and some framing remarks for  
6 us.

7           Then I provided some background and overview of the  
8 regulation, and then we started the discussion, which was  
9 wide ranging and open.

10           We first talked about the importance of and the  
11 reason for having the client grievance process, and there was  
12 general agreement that it's really important for our grantees  
13 to give a voice to the people who are seeking assistance from  
14 them, and that the client grievance process affords a lot of  
15 dignity and respect to them, and it also -- the process also  
16 helps to keep programs accountable to their clients and their  
17 communities, and it was generally agreed that the current  
18 regulation serves that purpose well.

19           There was also some discussion about whether the  
20 client grievance process could actually be an important part  
21 of kind of a client relations program and serve as a source

1 of information for grantee boards in assessing their service  
2 and setting priorities, and it was noted that that potential  
3 is not currently reflected in the regulation.

4           From a factual standpoint, the participants noted  
5 that the vast majority of complaints received involved  
6 complaints regarding the denial of service rather than  
7 complaints over the manner or quality of service, and then  
8 the complaints that they received over the manner and quality  
9 of service are generally resolved at the staff level,  
10 including involvement of the executive director, and that  
11 complaints that actually get to the governing body's  
12 grievance committee are few and far between.

13           It was also noted that a number of recipients have  
14 the same experience where they have a significant number of  
15 their complaints come from a small repetitive number of  
16 individuals.

17           Over the course of the discussion, the group  
18 identified a significant number of issues related to the  
19 client grievance process, and there is a long list in the  
20 report which I won't read to you.

21           I will say that I think some of the issues that

1 came up over and over again during the course of the  
2 discussion were the extent to which programs can be more  
3 proactive in making clients and applicants aware of the  
4 client grievance procedure but how to do that in a positive  
5 manner that doesn't create kind of a negative atmosphere at  
6 the very outset of a client-attorney relationship, basically  
7 how to frame the client grievance procedure in a positive way  
8 for everyone involved, rather than an adversarial way.

9           Another significant issue that kind of got talked  
10 got talked about several times was how the process really  
11 works where you have almost all of your contact with your  
12 clients through telephones, whether it's through a  
13 hot-line-only program or, now that we have much more  
14 consolidated service areas where you have grantees that have  
15 much more broader service areas and have sparse populations  
16 and rural populations in concentrated offices, and how to  
17 effect the client grievance process in an efficient and  
18 effectual manner.

19           Some of the other issues that came up is addressing  
20 the issues of client confidentiality with respect to access  
21 to complaint files, whether the grievance process should

1 include non-staff, such as PAI or volunteers, talked  
2 significantly about the application of the process to clients  
3 and applicants who are of limited English proficiency, what  
4 exactly is the appropriate role of the governing body, and  
5 there were a number of other issues like that.

6           The group also considered that a lot of the issues  
7 that were being raised, although important, we recognize may  
8 or may not easily be or even appropriately addressed in the  
9 regulation itself.

10           There was a consideration that it may be that  
11 little or no change to the regulation itself will eventually  
12 suggest itself as being necessary, but perhaps the  
13 corporation should issue some sort of guidance,  
14 non-regulatory guidance, or it was also thought that it might  
15 be that there will be eventually some changes that seem to  
16 suggest themselves, and some of these other issues can then  
17 be discussed in the context of the preamble of the regulation  
18 rather than in a regulatory textual directive.

19           And finally, the group talked a lot about the fact  
20 that -- I think everybody around the table felt that we had  
21 gotten a lot of important issues on the table, but I don't

1 think there was a feeling that all of the issues had gotten  
2 out on the table or that there was much of a handle on what  
3 the most important questions to focus on or what are some  
4 ideas about how we go about thinking about what the  
5 appropriate -- what some appropriate policy directions are.

6           And so, in that light, the management  
7 recommendation is that the committee recommend that the board  
8 direct the corporation to conduct a second rulemaking  
9 workshop to obtain some additional input from interested  
10 parties, including but not limited to programs that run  
11 exclusive or major telephone hot-line operations or have, you  
12 know, significantly dispersed and geographically large  
13 service areas.

14           And also, we would like -- while we had two client  
15 representatives on the -- as participants in the workshop,  
16 who were very helpful, we thought it might be useful to have  
17 additional client perspective on this, and management further  
18 recommends that the board authorize management to issue an  
19 advance notice of proposed rulemaking, if helpful, to solicit  
20 written comments from those who may or may not be attending a  
21 second workshop, that, you know, you have a workshop, you

1 have a relatively small number of people who can get into  
2 town, but an ANPRM might turn out to be useful, and so, the  
3 corporation is looking for the authority to do that if we  
4 think it's necessary.

5 CHAIRMAN MEITES: Question.

6 MS. CONDRAY: Sure.

7 CHAIRMAN MEITES: You've used a term that we had  
8 not heard before, advance notice of proposed rulemaking.

9 What is that?

10 MS. CONDRAY: My apologies.

11 An advance notice of proposed rulemaking is -- it's  
12 what agencies do when they don't yet know what they want to  
13 propose, but they want more input. Sometimes they'll  
14 be -- an ANPRM could be just a series of questions seeking  
15 factual input.

16 An ANPRM could be we're thinking about this policy  
17 direction, we're thinking about that policy direction, we're  
18 not sure what we want to propose, let's get some feedback.

19 It's a way of doing more fact gathering and scoping  
20 of issues before you get to the point that you're actually  
21 making a proposal.

1           CHAIRMAN MEITES:  Okay.

2           Do we have any other committee questions for  
3  Mattie?

4           (No response.)

5           CHAIRMAN MEITES:  Let me open the floor to public  
6  comment, if there is any.

7           Sarah?

8           MS. SINGLETON:  Mr. Chairman, I'm Sarah Singleton.

9           I am a board nominee, but that's not why I got up  
10  to say something.

11           I am also the co-chair of the ABA SCLAID  
12  committee's task force on the revision of standards for  
13  providers of legal services to the poor.  That's longer than  
14  the comment I have to make.

15           We recently were working on the standard that deals  
16  with client grievances, and many of the comments that we got,  
17  particularly from people who work in the field, are  
18  reflective of some of the issues raised in the report that  
19  Mattie presented you.

20           So I rose to really encourage you to do this kind  
21  of notice of proposed rulemaking so that you can get comments

1 from people who work in the area.

2 I think they will most helpful in fleshing out all  
3 of the issues and coming to a good resolution.

4 Thank you.

5 CHAIRMAN MEITES: Thank you.

6 We have two staff management recommendations before  
7 us.

8 The first is that we recommend to the board that  
9 management be directed to conduct a second rulemaking  
10 workshop, and the second recommendation, that management be  
11 authorized, if it believes it appropriate, to issue an  
12 advanced notice of proposed rulemaking to further solicit  
13 comments. Do I have a motion to that effect?

14 M O T I O N

15 MR. HALL: So moved.

16 A PARTICIPANT: Second.

17 CHAIRMAN MEITES: All in favor of the motion?

18 (Chorus of ayes.)

19 CHAIRMAN MEITES: Anyone opposed?

20 (No response.)

21 CHAIRMAN MEITES: It is adopted.



1 Thank you, Mattie.

2 The third item is our consideration on initiation  
3 of a rulemaking to revise our regulation, part 1624, the  
4 prohibition against discrimination on the basis of handicap  
5 regulations.

6 At the last board meeting, the board directed  
7 management to conduct a workshop on this matter, as well.

8 Mattie, would you bring us up to date, please?

9 MS. CONDRAV: Absolutely.

10 That workshop was held on December 13, 2005. The  
11 participants included a number of grantee representatives,  
12 LSC staff representatives, and we also had CLASP, NLADA, and  
13 John Harrion from the United Spinal Association, who -- some  
14 of you may be familiar with the previous incarnation of the  
15 organization, which was the Eastern Paralyzed Vets  
16 Association.

17 Again, President Barnett welcomed the group and  
18 provided some background and some scoping, and I provided  
19 some background and an overview of the requirements of the  
20 regulation.

21 I also talked a little bit about the corporation's

1 enforcement procedures which are set forth at part 1618 of 45  
2 CFR, as part 1624 is enforced in accordance with the part.

3           One of the interesting issues that has come up with  
4 the prohibition on discrimination on the basis of handicap  
5 issue is that, in the intervening years, with the ADA and the  
6 authority for the justice department and the EEOC to be  
7 investigating discrimination complaints, there is an open  
8 question about the corporation's resources and expertise in  
9 investigating claims that are perhaps best handled by  
10 agencies devoted to that purpose.

11           Again, the discussion was wide ranging and open.

12           There was a general assessment that grantees do  
13 appear to be in compliance with the regulation as written,  
14 and it was noted that LSC does not receive many complaints  
15 about noncompliance. Most of the complaints that do come  
16 from LSC -- excuse me -- to LSC are from grantee staff, and  
17 they tend to be related to employment discrimination  
18 complaints. The corporation does not see very many  
19 complaints at all that grantees are not providing accessible  
20 service.

21           The staff practice when we currently get complaints

1 is generally to refer complaints to the appropriate state or  
2 local agency, although obviously, we retain jurisdiction to  
3 investigate.

4           At the same time, we also -- one of the -- the  
5 discussion noted that the language of the regulation probably  
6 could be updated in places, that there are assistive  
7 technologies which could be referenced in the regulation,  
8 talked about -- a little bit about referencing the ADA,  
9 without incorporating the ADA and bringing it on people, at  
10 least an acknowledgement -- there are other Federal  
11 regulations which acknowledge the existence of the ADA, and  
12 there's also other Federal regulations which openly discuss  
13 the interplay between one agency's enforcement of its  
14 regulations and investigations that may be being handled or  
15 are better handled by other agencies.

16           So, there was some discussion about whether that  
17 sort of change to the regulation would be useful.

18           We also discussed other avenues of raising  
19 awareness about accessibility issues outside the specific  
20 confines of the regulation, such as better sharing of best  
21 practices, emphasis on opportunities through the technology

1 initiative grant program.

2           Finally, the participants discussed the fact that  
3 LSC does not have regulations setting forth standards  
4 relating to other types of discrimination through the receipt  
5 of Federal funds -- the corporation does not have Title VI  
6 regulations, for example -- and it was acknowledged generally  
7 that an undertaking to develop such standards would require  
8 considerable thought and effort and was quite outside the  
9 scope of what we had been tasked to do.

10           After consideration of all of the information that  
11 was developed at the workshop, management recommends that LSC  
12 continue to pursue the rulemaking and begin work on the  
13 development of a notice of proposed rulemaking for the  
14 committee's review.

15           Management recommends that the NPRM focus on  
16 updating the language of the regulation to provide for  
17 current terminology and state in the regulation LSC's  
18 position regarding deference to investigations of other  
19 agencies, where appropriate, including reference, as  
20 necessary, to the Americans With Disabilities Act.

21           If the committee agrees and makes these

1 recommendations to the board and the board provides such  
2 direction to the staff along these lines, management would  
3 anticipate providing a draft notice of proposed rulemaking to  
4 the committee for its review at the April 2006 meeting.

5 CHAIRMAN MEITES: I have a question.

6 MS. CONDRAY: Okay.

7 CHAIRMAN MEITES: Two questions.

8 One, we do not have in our regulations any  
9 provisions regarding discrimination on anything but handicap?

10 MS. CONDRAY: In our regulations, no. That is  
11 correct.

12 What we do have is one of our grant  
13 assurances -- every grant assurance that is signed includes  
14 an assurance that the grantee will not discriminate on the  
15 basis of race, religion, this long list of things, and part  
16 1618, the enforcement procedures I referred to earlier,  
17 obligate the corporation to investigate complaints of  
18 violations of the grant assurances. So, when we do get  
19 those -- we don't get those sorts of complaints very often,  
20 but the corporation does take them seriously.

21 Thankfully, we don't receive them very often, but

1 no, the corporation does not have Title VI, Title VII, Title  
2 IX-type regulations.

3 CHAIRMAN MEITES: The management proposal you've  
4 made does not include a notice of proposed rulemaking with  
5 regard to any other kind of discrimination other than  
6 handicap.

7 Is that correct?

8 MS. CONDRAV: That's correct.

9 CHAIRMAN MEITES: Disability.

10 MS. CONDRAV: Management is not recommending  
11 engaging in rulemaking to develop such regulations for  
12 other --

13 CHAIRMAN MEITES: How is it that we have a  
14 disability regulation and nothing else?

15 MS. CONDRAV: It's funny you should say that.

16 We talked about some during the workshop. I think  
17 it's, I'd say, an accident of history.

18 The regulations -- at the time that -- I guess, in  
19 1979, when the regulation was adopted, a lot of disability  
20 issues were kind of -- they were in play, they were current,  
21 and the Federal Government had issued -- the Office of

1 Management and Budget had issued a circular directing Federal  
2 agencies to engage in rulemaking and adopt prohibitions of  
3 discrimination on the basis of handicap regulations.

4           Although the OMB circular, the directive does not  
5 apply to LSC, because LSC is not a Federal agency, it was in  
6 that kind of spirit of comity and interest that it was -- I  
7 don't want to mis-characterize it, but I think there was less  
8 of an awareness of the insidiousness of the discrimination  
9 with disabilities at the time than with other types of  
10 discrimination, and so, that kind of made it a hot topic, and  
11 LSC board, at that time, picked up on that.

12           CHAIRMAN MEITES: Well, something that we should  
13 consider is whether we need a separate regulation on  
14 disability in light of the experience you've reported, that  
15 other kinds of unequal treatment are treated without the need  
16 of a regulation and apparently are treated satisfactorily.

17           MS. CONDRAV: The participants discussed that, as  
18 well.

19           On one level, that is an answer that perhaps  
20 suggests itself.

21           There was also a discussion, however, about kind of

1 the political signal that would send if the corporation  
2 rescinded its regulations on the -- even if we went out and  
3 said, well, you're still -- they're still prohibited from  
4 doing that, no one really wanted to go there.

5 CHAIRMAN MEITES: I understand.

6 Lillian?

7 MS. BeVIER: Well, I guess I'm curious about the  
8 practice of not having the regs pursuant to the other  
9 statutes.

10 I take it that the conclusion there is that the  
11 regs that we issue to our grantees are regulations that  
12 involve us in interpreting our own enabling legislation  
13 rather than -- and enforcing our own and giving money  
14 pursuant to our grant from Congress, whereas we're not sort  
15 of general enforcers of the civil rights laws, and of course  
16 we take them seriously and we want to comply with them, but  
17 the idea that we would need separate regs for all of those is  
18 a little -- seems a little bit odd to me, and so, I can  
19 understand, when we -- when the regs about disability were  
20 adopted, there wasn't a separate statute, right? So, it was  
21 simply a -- it was a different --



1           MS. CONDRAV: That's correct. I mean the statute  
2 that was being implemented by the Federal agencies at the  
3 time was section 504 of the rehabilitation act, but  
4 certainly, at the time, there was no ADA, and then, of  
5 course, there's also an issue to consider that our grantees  
6 are subject to state and local laws, as well, and one then  
7 always wants to tread lightly about trying to adopt  
8 regulations that aren't going to be contradictory with  
9 whatever their local obligations are.

10           CHAIRMAN MEITES: Other board questions?

11           (No response.)

12           CHAIRMAN MEITES: Why don't I open this to public  
13 comment, if there is any?

14           MR. MCKAY: I have a quick question.

15           CHAIRMAN MEITES: I'm sorry, Mike. Please.

16           MR. MCKAY: Mattie, could you give us an example of  
17 where we might give deference to an investigation conducted  
18 by another agency?

19           MS. CONDRAV: Sure.

20           Say we get a complaint -- I'll use an employment  
21 discrimination, because of the few complaints we get, they

1 tend to be in the employment discrimination.

2           An employee feels that he or she was not given a  
3 proper accommodation, that they have a disability and they  
4 asked for an accommodation and they were not provided with  
5 one, and they, therefore, file a complaint with us.

6           Well, our investigators may not be, you know, top  
7 of the line immersed in what the details of exactly what a  
8 reasonable accommodation is under disability law, and it may  
9 be that we kind of let the local -- if they've filed a local  
10 complaint and kind of see where that goes before ending up  
11 making a determination about what is or isn't compliant with  
12 our reg, kind of using the other body kind of as a help and a  
13 fact finder.

14           The other thing that's at play here is, oftentimes,  
15 the people who complain -- they want some sort of equitable  
16 relief.

17           They want back pay, they want an accommodation,  
18 they want service to be provided, and we can't -- we don't  
19 have the authority, unlike the justice department or the EEOC  
20 or local boards, to directly order our grantees to provide an  
21 accommodation.

1           We can strong-arm them, you know, but really, our  
2   remedy with respect to our grantees is, ultimately, to take  
3   their money away.

4           I mean we can put on special grant conditions, and  
5   we can put them on month-to-month funding, there are  
6   intermediary steps, but it's indirect to encourage -- it  
7   would have to encourage the grantee to provide the relief.  
8   We can't directly order the relief.

9           So, oftentimes, the complainant is really better  
10   off going to an agency that has that authority.

11           MR. MCKAY: I think you've really answered my  
12   question.

13           The bottom line is that, if there is another agency  
14   that has expertise and is conducting an investigation, this  
15   language you're discussing should be to take a step back and  
16   allow that agency to do the work and see what they come up  
17   with.

18           MS. CONDRAY: As a general proposition, right.

19           I think the corporation would always just want to  
20   retain jurisdiction, if necessary and appropriate, but yeah.

21           MR. MCKAY: Thank you.

1           CHAIRMAN MEITES: All right.

2           If there are no further questions or comments from  
3 the committee or the board, let's address management's  
4 recommendation.

5           Management recommends that it continue -- be  
6 directed to continue -- I'm sorry -- continue to pursue the  
7 rulemaking and, in fact, to develop a notice of proposed  
8 rulemaking for the committee's review. There's also a second  
9 part to the recommendation listing four areas that management  
10 would like to explore in this notice of proposed rulemaking.

11          I feel somewhat uneasy about limiting the management  
12 rulemaking anyway, just we just had very introductory  
13 remarks.

14           So, what I suggest we consider is recommending to  
15 management that it be directed to pursue the rulemaking and  
16 develop an NPRM, notice of proposed rulemaking, for our  
17 review.

18           MS. CONDRAY: He's getting the terminology down.

19           CHAIRMAN MEITES: And just leave it that. Does  
20 that make sense?

21

M O T I O N

1 MS. BeVIER: I so move.

2 MR. HALL: Second.

3 CHAIRMAN MEITES: Discussion?

4 (No response.)

5 CHAIRMAN MEITES: All in favor?

6 (Chorus of ayes.)

7 CHAIRMAN MEITES: Opposed.

8 (No response.)

9 CHAIRMAN MEITES: It is adopted.

10 Thank you.

11 The next item -- and let me just give an advance  
12 notice for those of you who think we are going to go till  
13 midnight.

14 We are not.

15 We are going to defer the closed session till  
16 tomorrow morning, not that any of you was planning to attend,  
17 but -- okay.

18 MS. BeVIER: Excuse me, but what time?

19 CHAIRMAN MEITES: I believe 9:00 o'clock.

20 MS. BeVIER: So, we're going to -- okay. So,  
21 we're --

1           CHAIRMAN MEITES: Our committee will be in closed  
2 session at 9:00 tomorrow morning.

3           MS. BeVIER: I see.

4           CHAIRMAN MEITES: So, we will adjourn the open  
5 session, and hopefully we can finish it. All right.

6           We are now on the next item on rulemaking, which is  
7 consideration of petition from our Wisconsin grantee to amend  
8 our PAI regulation to potentially change the mandatory 12 1/2  
9 percent to a reasonable standard, and I believe our first  
10 speaker is Mr. Henderson?

11          MR. HENDERSON: Yes.

12          CHAIRMAN MEITES: Okay.

13          Please introduce yourself, and we look forward to  
14 your remarks.

15          MR. HENDERSON: Thank you.

16          I know the hour is late, so I'll try and get right  
17 to it.

18          I appreciate the opportunity to appear before the  
19 committee on the -- the comments on the petition for  
20 rulemaking.

21          CHAIRMAN MEITES: Your name is?

1           MR. HENDERSON: My name is Bob Henderson, and I am  
2 the managing attorney at Legal Action of Wisconsin.

3           I'm the managing attorney in one of the -- the  
4 smallest office of Legal Action of Wisconsin. I've been with  
5 Legal Services for about 26 years, in a variety of different  
6 positions.

7           I've been a staff attorney, a managing attorney,  
8 and I did three short stints as a executive or interim  
9 director in between hirings, and most recently, in advance of  
10 the merger with Legal Action of Wisconsin. Prior to the  
11 merger, which occurred in January of 2003, we were a separate  
12 program, Western Wisconsin Legal Services, which is in the  
13 far western part of the state, on the Mississippi River,  
14 serve 13 rural counties. We are now part of Legal Action of  
15 Wisconsin.

16           In Wisconsin, there are two basic field programs,  
17 in addition to migrant and the Native American program.

18           Legal Action serves the 39 counties in the southern  
19 half of the state and Judicare the 33 counties in the  
20 northern half of the state.

21           CHAIRMAN MEITES: Is Judicare one of our grantees?

1           MR. HENDERSON:  Yes.  Yes.

2           I had the benefit of sitting through the Provisions  
3   Committee presentation, and I agree, there was tremendous  
4   information, a lot of good information, and the petition  
5   might seem, at first glance, at odds with everything -- a lot  
6   of the information we heard this morning.

7           I may have deluded myself in my thinking at this  
8   point, but actually, as I thought about it, it is in no way,  
9   or in my mind, at least, not at odds with the notion of -- it  
10  may be a good time to look at different ways of approaching  
11  what we do with our pro bono work.

12          My concern was not to convey any message to the  
13  board, to Legal Services, or to the private bar, the ABA, or  
14  anyone else, to in any way diminish the importance, the  
15  vitality, and the value of pro bono work.

16          My personal bias is, from years of working a small  
17  rural program, that pro bono work is one of the ways that  
18  private attorneys learned the real nature of the problems our  
19  clients face in the work that we do.

20          I've personally had a lot of pride in terms of  
21  working with private attorneys in our area when we were able



1 to match clients up with an attorney, and it's not just from  
2 the client feeling that they then have the respect and the  
3 representation of a private attorney, but the benefit of  
4 having that attorney then come back to us and say, you know,  
5 that was really good, I appreciated that, you know, I'd like  
6 to do more work for you.

7           So, I just mention that just from the standpoint of  
8 letting you know sort of my personal perspective of the  
9 situation.

10           Just a couple of other things I'd like to mention  
11 from the morning session.

12           In Wisconsin, we do not have mandatory reporting.

13           There has been an ongoing debate about mandatory  
14 reporting.

15           In fact, the state bar just did a voluntary survey  
16 of pro bono hours, and they will be releasing the survey this  
17 week or next week. What they reported was a couple of  
18 things.

19           Around 52,000 hours of free legal services for  
20 individuals on limited income, approximately 20,000 hours  
21 for -- of pro bono work performed for legal services

1 organizations serving the poor.

2 I don't know what number they used to value those  
3 services without doing the math, but the report will indicate  
4 that there was about \$18 million worth of pro bono work done  
5 and about \$11 million of that work done for low-income  
6 households.

7 I mention that, again, just by way of explaining  
8 sort of the culture or the nature of pro bono work in the  
9 state.

10 The petition, then, is a petition to amend the  
11 private attorney involvement regulation and to substitute a  
12 reasonable amount expenditure requirement in lieu of the 12  
13 1/2-percent requirement under the current rule.

14 Why do that?

15 The petition itself -- John Abbott, who is the  
16 director of the program, filed the initial petition. I hope  
17 the committee members have received the updated petition.

18 Primarily, it provides different financial  
19 information.

20 There is no difference, really, in the rationale  
21 for the request to consider the rulemaking.

1           The foremost reason for the request to consider  
2 rulemaking under the private attorney involvement statute is  
3 the need for flexibility for the allocation of program  
4 resources, primarily revenue, and by that, I mean Legal  
5 Action has faced -- and the petition sets out the  
6 information, so I don't know that it really bears repeating  
7 all the circumstances, but a good example of it is health  
8 insurance costs have gone up 89 percent in the State of  
9 Wisconsin.

10           Now, I don't think that's a dynamic that's peculiar  
11 to Wisconsin. I know that's a problem all across the  
12 country, and I'm sure that other programs face that. That is  
13 a huge cost factor.

14           In my brief duration as a director, I know that  
15 personnel costs are the most uncontrollable aspect of a  
16 budget for small and large programs. So, there is a huge  
17 expense that's reducing the revenue available to programs.

18           The other dynamic that I think you'll find at Legal  
19 Action of Wisconsin, and at other programs around the  
20 country, is just the overall relative reduction of basic  
21 field funding compared to special grant funding and rising

1 costs, and by basic field funding, of course, I refer to the  
2 LSC money or the Wis staff money in the state.

3 The health insurance costs are just one example.  
4 There are many other examples.

5 The other dynamic is that programs have  
6 increasingly had to rely on special grant money which is  
7 applications for funding for grants such as Bower or HUD  
8 money to do housing work.

9 The problem -- I mean we certainly value those  
10 grants, but the service work is then locked into the type of  
11 work you have to do under the grant. It doesn't allow the  
12 program flexibility in terms of what they can do.

13 So, that has a further impact on the availability  
14 of just basic field funding.

15 So, the primary, I guess, driving force behind the  
16 request to allow more flexibility is the financial  
17 circumstances of Legal Action of Wisconsin, and I don't think  
18 it's peculiar to our organization.

19 There is also a distinction -- and paragraph 9 and  
20 11 of the petition, I think, refers to the PAI expenditure,  
21 which in 2005, for Legal Action, at 12 1/2 percent, was just

1 under \$400,000, represents 5.4 attorneys or paralegals.

2           It's not a situation, as the Provisions Committee  
3 may have heard earlier, that it's us against the private  
4 attorneys in terms of providing pro bono work.

5           I would hate to have it construed in that fashion.

6           It is true that those 5.4 positions, though, are  
7 dedicated to either direct or indirect support of the return  
8 of pro bono work done by private attorneys, and in 1985, when  
9 the Legal Services board looked at this issue, at least at  
10 that point, in that year, the LSC board looked directly at  
11 the private attorney involvement regulation to try and  
12 determine whether or not you should retain the 12 1/2  
13 percent, use as a guideline, or do something else, and at  
14 that point, at least, one of the mentions of the board was  
15 that the board believes the essence of PAI is the direct  
16 delivery of legal services to the poor by private attorneys.

17           I guess I didn't hear anything different than that  
18 statement during the Provisions Committee discussion,  
19 although it was clear that there may be other less direct  
20 type of activities that programs could do to encourage pro  
21 bono work.

1           But the point is that those staff attorney  
2 positions, for the most part, have to be dedicated to  
3 supporting work, rather than providing direct work to the  
4 client.

5           It's true that staff attorneys do -- our staff do  
6 screening of cases and referral. I don't even know if that's  
7 considered direct or indirect, but that's a direct link to  
8 the client.

9           There's a lot of time that staff spend on  
10 recruitment of private attorneys, monitoring the cases or  
11 follow-up on the cases, and training, I guess, would be  
12 primarily the other time expenditure that I'm thinking of,  
13 because in western Wisconsin, when we were a smaller program,  
14 we did training every year, a CLE event.

15           It was our main draw for private attorneys to come  
16 in and get free CLEs, and we could encourage them, then, to  
17 do pro bono work. It worked very well. We did seminars on  
18 divorce, housing, disability, and I think that's true for all  
19 the programs, but those are fairly large expenditures of time  
20 in terms of not affecting directly the client.

21           The other factor, pointed at paragraph 11 of the

1 petition, is the return of the number of cases closed  
2 compared to the expenditure.

3           The expenditure is 12 1/2 percent. The number of  
4 cases Legal Action of Wisconsin closed as private attorney  
5 cases was a little over -- well, almost 5 percent.

6           You could suggest that there is a better way to do  
7 it to raise the pro bono cases closed figure. Maybe Legal  
8 Action needs to do it differently. I don't know how  
9 different that number is for other programs around the  
10 country.

11           What, then, is different, possibly, now than in  
12 1985, when the board last visited the PAI expenditure  
13 requirement? And I should say, obviously, in 1985, the board  
14 decided to retain the 12 1/2-percent figure.

15           At that point, the major issue before the board was  
16 with respect to part 1614 or whether a 12 1/2-percent  
17 standard should continue to be a requirement, or should it be  
18 considered simply a guideline, and whether the standard  
19 should remain at 12 1/2 percent. As I read through the  
20 comments, one of the main reasons the board decided to retain  
21 that number was to ensure a substantial effort to build and

1 maintain pro bono work with the private bar.

2           One of the things I think the board heard today,  
3 and at least I heard from a number of different presenters  
4 during the Provisions Committee, is that pro bono work is  
5 much more part of the fabric of the legal community now than  
6 it was in 1985, and I think, personally, that's true.

7           There are a number of different sources of  
8 initiatives for pro bono work now, as compared to 1985. The  
9 ABA has been working on pro bono. The local bar committee  
10 has worked on pro bono. The State Bar of Wisconsin and, I  
11 think, most state bars are concerned with the level of pro  
12 bono activity, as opposed to 1985, when I think programs were  
13 much more in a position of expanding or being new to the area  
14 and making contact with the private bar, and pro bono wasn't  
15 quite so much on the radar end at that point.

16           So, I concur completely with the chair's comments  
17 when we opened up this afternoon that equal justice is a  
18 shared responsibility, and we share that responsibility.

19           We need to be partners with the private bar, and  
20 that's the only way it's going to work. I can't see going to  
21 a private attorney and asking him to do pro bono work if



1 we're not there in the community with them.

2 We have to be partners, along with the private bar,  
3 the ABA, and everyone else that does that work.

4 But I think that's the main difference, one of the  
5 main differences, that we are not as much alone as we might  
6 have been in 1985 as working on the development of pro bono  
7 projects.

8 There is substantial activity in that area now.

9 What is the notion of moving to a reasonable  
10 standard? If you move off of the 12 1/2-percent, which is a  
11 fixed amount, to a reasonable standard, how do you determine  
12 what's reasonable from one program to the next?

13 We have had 20 years of experience with  
14 expenditures by programs.

15 Not all programs, I believe, have spent the same  
16 amount, and some have done better than others.

17 That's one standard that might be used.

18 Some programs have had to request waivers over the  
19 years.

20 I'll talk briefly about that in a minute, but we  
21 certainly have 20 years' experience to rely on as what might

1 be at least a reasonable range.

2 We also have -- just as an example of criteria that  
3 could be looked at -- that ratio of PAI expense to the number  
4 of cases closed.

5 That, by no means, can be, you know, a sole  
6 criteria.

7 There should be other criteria that might be a lot  
8 more meaningful than simply a number of cases closed, but  
9 it's an example of factors that could be reviewed.

10 The reasonableness of a PAI plan -- and the  
11 suggestion is that it would be contained in the grant  
12 submitted by the program on an annual basis so that the Legal  
13 Services Corporation could review the plan that a program or  
14 recipient has for the development and the continuation of pro  
15 bono work. The plan, as it does now, which has to describe  
16 the private attorney involvement, would have to set out what  
17 the program considers to be a reasonable level and how they  
18 plan to meet that level.

19 The petition also requests appeal -- a repeal,  
20 excuse me, of the waiver provision. My personal experience  
21 with the waiver provision, which is, of course, the provision

1 that if the program doesn't meet the required expenditure of  
2 12 1/2 percent, they are required to request waiver of the  
3 unexpended portion before the end of that fiscal year. My  
4 personal experience is that that's not been a problem in  
5 terms of recipient programs working with LSC when they are in  
6 a situation where they needed to request a waiver.

7 As a small program, a rural program, we did, on  
8 occasion, have to submit -- this is Western Wisconsin Legal  
9 Services -- have to submit a request for waiver, and the LSC  
10 staff was always very accommodating in working with us, and  
11 so that there is no loss of funding that would affect,  
12 obviously, the delivery of services to clients.

13 Again, in 1985, when the board looked at this  
14 issue, not only of the PAI expenditure but the waivers, they  
15 surveyed about 187 of the programs or 180 of the programs,  
16 and 37 needed to submit a waiver request, which was roughly  
17 20 percent of the programs in 1985. My information that John  
18 Abbott obtained from staff at LSC was that, in 2004, 30  
19 programs submitted waiver requests, and I think we're down to  
20 about 138 programs, or thereabout, at this point, field  
21 programs, so you're still kind of in the ball park of 23

1 percent of the programs needing to submit a request for  
2 waivers.

3           When Mr. Abbott mentioned to me that I would be  
4 presenting the comments on the petition, I did have a  
5 discussion with him about the waiver provision, because it  
6 seemed to me that you would still need to request a waiver in  
7 situations where a program might not meet a reasonable level  
8 of expenditure, and it might have been for circumstances  
9 beyond the program's control or they just didn't meet it.  
10 They might still have to request a waiver.

11           A more streamlined approach might be for the  
12 program to address any deficiencies in their private attorney  
13 involvement plan so that, rather than addressing it simply as  
14 a waiver, the program -- the recipient program would have to  
15 come up with an action plan to be submitted that next year  
16 that would inform the Legal Services Corporation as to how  
17 they plan to correct any deficiency in the plan.

18           This is, obviously, an extremely complicated area.

19           I truly appreciate your time, after the end of a  
20 long day.

21           I think there are some wonderful things that are

1 done on pro bono.

2 The essence of the petition, I think, is a request  
3 to step back and maybe take a fresh approach to PAI.

4 There might be ways to accomplish many of the  
5 programs mentioned today without necessarily being locked  
6 into 12 1/2 percent. If a program spent slightly less than  
7 that amount or less than that amount and still has an  
8 effective, efficient delivery, I guess the question is what  
9 sense does it make to have the program locked into 12 1/2  
10 percent?

11 Moving to the reasonable standard would provide  
12 some flexibility, I think, without losing all of the  
13 resources and experience that you heard about today from the  
14 Provisions Committee.

15 That's really the essence of the petition.

16 CHAIRMAN MEITES: I have a couple of questions for  
17 you.

18 MR. HENDERSON: Sure.

19 CHAIRMAN MEITES: I'm sure other members have, as  
20 well.

21 I'm going to ask a kind of naive question.

1           Let's say that I can buy 1,000 hours of attorney  
2 time, and I can either buy it by hiring two full-time  
3 employees or I can go out and use that same amount of money  
4 to buy 1,000 hours of private attorney time.

5           Is it a matter of indifference whether -- as far as  
6 your economic well-being -- whether you spend the money, the  
7 12 1/2 percent, by hiring additional staff, or whether you  
8 use the 12 1/2 percent to use private attorneys in lieu of  
9 your own staff?

10           MR. HENDERSON: I'm not good at math.

11           CHAIRMAN MEITES: Isn't it just a wash whether you  
12 use the 12 1/2 percent for staff or you use the 12 1/2  
13 percent to use private attorneys?

14           MR. HENDERSON: I think the answer depends on the  
15 nature of the legal problem.

16           We have certain areas of specialty in the work that  
17 we do, and we're good at that.

18           We're not good in other areas, and I guess that's  
19 the only answer I can give.

20           It depends on what the nature of the legal problem  
21 is.

1           CHAIRMAN MEITES:  Okay.

2           I'll let other members develop -- the second  
3 question is, given your remarks that -- both from listening  
4 today and from your own experience -- you appreciate the  
5 importance of the private bar's involvement, would it give  
6 the wrong signal if this board, in light of that need of  
7 private attorney involvement, were to adopt the change that  
8 Wisconsin is proposing, that we go from 12 1/2 percent to  
9 what might be seen as a less onerous standard, a reasonable  
10 standard?

11           MR. HENDERSON:  I am not sure about the signal.

12           I'm never that good at sort of predicting what the  
13 private bar might think about something.

14           You know, it's all been twisted around in Wisconsin  
15 just in terms of the mandatory reporting.  The same attorneys  
16 that are the most dedicated attorneys doing pro bono work are  
17 sometimes vehemently against mandatory reporting.

18           I think it is important that, if we did take that  
19 type of step, that we do the proper education by talking to  
20 the private bar about why we're doing what we're doing.

21           I can't imagine that, after hearing some of the

1 great pro bono work that's done today, that that work would  
2 go away because we moved off a mandatory level of  
3 expenditure.

4           It just seems to me that pro bono work is too  
5 ingrained, thankfully -- we can always do more -- in the  
6 fabric of our communities now that it's not just going to  
7 fade away.

8           We -- just another example -- in Wisconsin have a  
9 three-year -- we have an integrated bar. You have to be a  
10 member of the bar to practice, and so, we have a \$50 add-on  
11 for three years to support the work that Legal Services do,  
12 and that came through the Supreme Court in the State of  
13 Wisconsin, and we're thankful, because it helps us survive,  
14 but most of the private attorneys I talk to, at least in our  
15 area, are supportive of it.

16           I mean they're glad to pay the money. They're  
17 pretty supportive.

18           That's not universal. There are some attorneys  
19 that, you know, don't want to pay the money, but I think  
20 attorneys would support what we're doing as long as they know  
21 why.



1                   CHAIRMAN MEITES: Lillian?

2                   MS. BeVIER: I have a question, I guess it is. I'm  
3 not sure. It may just be a comment.

4                   I was struck by the principal rationale you offered  
5 for changing this requirement from what it presently is to a  
6 reasonableness standard, and basically, I understood you to  
7 say we can't afford it, we can't afford the 12.5, and what  
8 that says to me is that what you're really asking for is not  
9 an adjustment in whether it's a rigid standard or a  
10 reasonableness standard, but you're basically saying that the  
11 board needs to change its priorities, because with the  
12 limited resources our grantees have, they're now spending too  
13 much money on private attorney involvement, and that's a very  
14 different kind of inquiry and question from what the other  
15 aspect you're saying, is we just need more flexibility, and I  
16 think that it's inconsistent with what we've heard today  
17 about the opportunities and challenges of encouraging private  
18 attorney involvement.

19                   It may well be that we decide at some point that  
20 the priorities are insufficiently and inappropriately  
21 adjusted, but the fact that health insurance is more

1 expensive than it used to be is not, to my mind, a very good  
2 reason for adjusting the PAI requirement down, because  
3 obviously, what you're saying is we need to do less of that,  
4 so we can pay these other expenses we have.

5           So, I don't know whether that's a comment or a  
6 question, but you're certainly free to comment on my comment  
7 or my question, whatever it is.

8           MR. HENDERSON: Only to mention that I didn't  
9 intend to suggest the health insurance premium as an isolated  
10 reason for not doing pro bono work. I suggested it and meant  
11 to suggest it more as the overall sort of condition of field  
12 programs having less money to do what they do, and if they  
13 are able to do pro bono work in a different fashion or a  
14 better fashion, while not necessarily spending 12 1/2  
15 percent, that's what I had in mind.

16           MS. BeVIER: Thanks.

17           MR. HALL: I guess I am certainly sympathetic and  
18 moved by point number 11 in your petition, which is where you  
19 are -- that only 3.5 percent of the cases that are closed are  
20 handled by private attorneys, but you're spending 12.5  
21 percent of your budget. I mean that is a kind of stark

1 number and difference there that would make one want to  
2 question whether this makes sense, but I guess, though you  
3 talked about it a little bit, I'm wondering why the waiver  
4 provision that is presently built into the act doesn't  
5 address these type of problems, because I would hope that if  
6 we looked at all of our programs, we wouldn't see this type  
7 of disparity, and especially since the regs, as I read them,  
8 not only allow for a temporary waiver but even a permanent  
9 waiver if one can demonstrate that you -- there are various  
10 standards, but I have to believe that your situation fits  
11 into one of those standards, that it's just not economically  
12 feasible for us to continue to do this.

13           So, instead of rewriting the whole framework, why  
14 is it that this exception, this waiver provision isn't enough  
15 to satisfy the needs and challenges that you are facing right  
16 now?

17           MR. HENDERSON: I think the dynamic of the waivers  
18 provision is that -- well, first of all, it's, from my  
19 understanding, viewed as a waiver of the financial  
20 expenditure, and I don't know as, right now, there's anything  
21 built into it that actually refers to case closures measures,

1     although I suppose that could be included as part of a waiver  
2     request for a rationale.

3             Waivers work, again, from my experience  
4     in -- you're required to expend 12 1/2 percent, and the  
5     waivers are submitted at the end of the year if you don't  
6     think that you're going to meet the 12 1/2-percent  
7     expenditure.

8             So, basically, as you're working your way through  
9     the year, you're still allocating all that time to PAI, and I  
10    think most programs, if they're close or in the range, are  
11    actually pushing more time to PAI towards the end of the  
12    year.

13            Whether that's efficient and effective, I don't  
14    know, but it's not a planning tool as in, well, we know ahead  
15    of time that we're going to allocate X percentage at the  
16    beginning of the year to our private attorney involvement  
17    plan, because this is a effective allocation.

18            It's we have to spend 12 1/2 percent, so let's do  
19    that, and I don't mean to suggest that it's not done in the  
20    best possible way that programs can to try and refer cases  
21    and do the work that needs to be done by private attorneys,

1 but just the dynamics of the waiver provision itself -- it's  
2 not something a program can use at the beginning of the year  
3 to say we're going to request a waiver this year because we  
4 know that it's more effective for us to spend a lower amount.  
5 It's more the end of the year.

6 MR. HALL: Yeah. And I guess maybe that is a  
7 question to staff, which is, if an organization has had  
8 a -- or a grantee has had a pattern where it appears that  
9 what they have been doing falls within the waiver  
10 requirements and those standards, it couldn't request a  
11 waiver going forward, because -- especially since the waiver  
12 provision talks about a permanent waiver.

13 I assume that's there to say that you could exempt  
14 someone ongoing, not just in a one-year situation.

15 Am I just misreading that?

16 MS. CONDRAV: That's a level of expertise with the  
17 waiver provision that I don't personally possess at this  
18 moment.

19 CHAIRMAN MEITES: Let me pick up something --

20 MS. CONDRAV: We do have the person who actually  
21 processes the waiver requests here, if you'd like to hear

1 from him.

2 MR. GARTEN: I have a follow-up on the same thing  
3 that --

4 CHAIRMAN MEITES: Let's hold off.

5 Herb, why don't you give your comment first?

6 MR. GARTEN: The same question that Professor Hall  
7 raised with you is something that I don't understand.

8 First of all, you referred to 2003 in one  
9 paragraph, and you refer to 2004 in another. What did you  
10 actually spend in 2003, which is the statistic in paragraph  
11 11?

12 MR. HENDERSON: In 2004 -- I must have misspoke if  
13 I said 2003, because --

14 MR. GARTEN: No, I'm referring to your petition.  
15 Paragraph 11 gives the example of 2003.

16 MR. HENDERSON: Oh. And I'm sorry. You may have  
17 the original petition.

18 John Abbott filed an updated petition that had just  
19 slightly different financial information.

20 MR. GARTEN: Well, what was the amount of the  
21 waiver that you sought, dollar-wise?

1           MR. HENDERSON: Oh. I don't believe Legal Action  
2 of Wisconsin submitted a waiver in 2004. I actually don't  
3 know that, because I'm not the director anymore, but I don't  
4 think we submitted a waiver request.

5           CHAIRMAN MEITES: Herb, you do not have the current  
6 version.

7           Let me make a suggestion that I'd like public  
8 comment on this, and I'd like staff's response, but what I am  
9 going to tell you right now that I'm going to propose to our  
10 committee that in light of the remarks we heard this  
11 afternoon -- and it occurred to me that it's been 20 years  
12 since we looked at this regulation -- that it makes some  
13 sense for us to continue this discussion at our next meeting,  
14 and questions like how does the waiver really work -- we  
15 could have the staff answer by the next meeting, rather than  
16 taking -- we don't have to take any action on the petition  
17 this afternoon, and my sense is that we would all be helped  
18 by continuing this discussion.

19           But let me open it for public comment first and  
20 then the staff response.

21           Is there any public comment on the petition?

1 (Pause.)

2 CHAIRMAN MEITES: Be sure to introduce yourself  
3 before you start speaking.

4 MR. SAUNDERS: Good afternoon, or good evening, as  
5 the case might be.

6 My name is Don Saunders.

7 I'm the director of Civil Legal Services for the  
8 National Legal Aid and Defender Association, and given the  
9 previous discussion, I'll try to be very brief, Mr. Chairman.

10 I just wanted to make two points, one of which  
11 completely supports what Bob has brought to you today, and  
12 certainly you've heard me and others at NLADA address you  
13 before about the increasingly difficult situation your  
14 grantees are facing due to stagnant funding.

15 We've urged you to be aggressive in your strategies  
16 toward the Congress, and I think you've indicated your  
17 willingness to do that through your budget request. We fully  
18 support that and are your partners in that.

19 However, I think a regulatory effort around 1614 is  
20 not the way to address the financial problems that Legal  
21 Action has brought to you through this petition.



1           We have seen through the years, through the 20  
2 years now, the development of an entire infrastructure that  
3 you heard a lot about this afternoon to support pro bono.

4           You heard about small firms, mid-size firms, the  
5 need for that infrastructure that your support has created.

6           Unlike most of the other regulatory issues that  
7 this committee considers, changes to this particular rule  
8 implicate major changes in the delivery system of civil legal  
9 aid in this country, and would suggest to you that that kind  
10 of an undertaking is one that you should be very cautious in  
11 your approach about.

12           NLADA makes policy on issues like this through its  
13 regulations and restrictions committee. Linda Perle and I  
14 had the opportunity, through several calls in which they  
15 considered this petition, to really hear from about 25 of the  
16 leading management people of legal services programs across  
17 the country, and I do think, Mr. Chairman, while a number of  
18 programs have concerns and issues about this particular  
19 provision, certainly Bob and Legal Action are not alone, you  
20 would have been pleased with the conversation.

21           There were certainly programs who met your goal of

1 trying to be creative, trying to think through where are the  
2 disconnects between us and the private bar, and after  
3 extensive conversation and discussion among that committee,  
4 there was a unanimous vote in opposition to the petition.

5 I bring you that position from the field and from  
6 NLADA this afternoon.

7 I would suggest, however, that given the field  
8 perspective, the conversation you heard this afternoon, that  
9 the discussion in Professor Hall's committee this afternoon  
10 is an important one. The field is certainly engaged in that.

11 The many strategies that you heard suggested this  
12 afternoon, and many more are being talked about among your  
13 grantees, NLADA is their partner in that, and we would  
14 certainly volunteer to be your partner before the Provisions  
15 Committee as it goes forward and discusses this topic outside  
16 of the regulatory context, which is -- our view, at least at  
17 this point, is that's where the conversation ought to take  
18 place.

19 We are partner sponsors with the ABA pro bono  
20 committee of the Equal Justice Conference. We've enjoyed a  
21 close working relationship with your staff in the future, and

1 I really -- the reason we combined this conference with the  
2 field and pro bono is for this very conversation to take  
3 place.

4 We have made great strides over the years, but I  
5 thought Mr. Scutter's suggestion to you this afternoon of a  
6 way to ratchet that discussion up, particularly with your  
7 leadership and your support, was an excellent suggestion, and  
8 certainly, we would endorse that idea, as well.

9 So, my point, really, on behalf of NLADA at this  
10 point is we would urge you not to take the action suggested  
11 in the petition but to continue to look at ways in which the  
12 Legal Services Corporation can help its grantees and the  
13 private bar approach equal justice through the real  
14 leveraging of the many resources you heard about all  
15 afternoon.

16 So, those are my comments.

17 CHAIRMAN MEITES: Well, let me put what I said  
18 maybe in more context, in light of your remarks.

19 My suggestion that we don't resolve this this  
20 afternoon is as much to keep this item on our agenda till  
21 after the Provisions Committee has a chance to consider it

1 further, because we may hear from the Provisions Committee  
2 that it wants us to essentially open a rulemaking with regard  
3 to this rule, and since it is in our agenda, I, for one,  
4 think it makes some sense for us to keep it open rather than  
5 acting this afternoon.

6 But are there questions?

7 If not, we'll hear from Mr. Whitehurst.

8 MR. WHITEHURST: Hi. I'm Bill Whitehurst. I'm  
9 here on behalf of the ABA Standing Committee on Legal Aid and  
10 Indigent Defendants, and although we, too, truly appreciate  
11 the frustration from which this petition comes, we would urge  
12 this committee to deny the petition, and I would go further,  
13 Mr. Chair, and ask that -- I think this is a separate item  
14 than what the Provisions Committee is doing.

15 I would ask for you to consider acting on the  
16 petition so that that provisions discussion can take place  
17 without this hanging over anyone's head. I think it's a  
18 separate matter.

19 I would note that, as frustrating as it is, I think  
20 Professor BeVier pointed out that when you're doing it just  
21 because you don't have enough money, I will say that, because

1 you have used a percentage, it also applies to the amount of  
2 money available for PAI.

3           So, it's not like you have mandated a certain  
4 amount be spent. You're saying a certain percentage must be  
5 spent.

6           The other reason I ask that it be denied is that I  
7 think there is a provision -- and it is the waiver provision,  
8 which is the proper procedure to be followed here.

9           I would note it's my understanding that Wisconsin,  
10 both in 1997 and 1998, sought waivers under the waiver  
11 provisions, and according to what Mr. Henderson said,  
12 received help and assistance and a favorable result on that  
13 waiver request, and I simply ask that that would be the  
14 way -- or suggest that that would be the way for them to  
15 proceed, as opposed to this petition.

16           I would also note that this petition is signed only  
17 by one program in the United States, and what's being asked  
18 would affect all programs in the United States.

19           So, I think the petition needs to be acted on. We  
20 would ask that it be denied.

21           I obviously would include the transcript this

1 morning, this afternoon, in the Provisions Committee, to  
2 prove the point that the very purpose for which the board  
3 created this rule has and is being carried out; it has  
4 worked.

5 In 1980, there were only just over 80 organized pro  
6 bono private attorney involvement programs.

7 Within 10 years of the adoption of LSC's PAI  
8 instruction, regulation, that number had increased to over  
9 800.

10 So, what you set out to do is working, and in  
11 Texas, at least, we say if it's not broke, don't fix it.

12 Obviously, how we do it can always be made better,  
13 but the issue is not whether we do away with it, but rather,  
14 how we make it work better.

15 I would point out that this has had a synergistic  
16 effect, two plus two equals five, if you will, in that, by  
17 increasing the number of pro bono programs, we've increased  
18 not only the number of lawyers, but we've also increased the  
19 amount of money that's involved in the system.

20 Furthermore, it created an environment that was  
21 critical, and it led to the ABA to adopt a stronger

1 definition of pro bono in 1993, and it also  
2 created -- contributed to creating a culture that has led to  
3 the broad acceptance of pro bono, and I think you saw that  
4 this morning.

5 Other things that I'm not sure were envisioned at  
6 the time this was created but needs to be understood, and I'm  
7 not sure how we can measure it, is the collateral benefits  
8 that have been realized under this.

9 For private attorneys, our understanding, have a  
10 better understanding of the need of legal services for the  
11 poor. We have increased, as I said, the resources.

12 We've brought the community together in ways where  
13 there was distrust on both sides.

14 I would also tell you that this specific  
15 restriction or regulation has helped us in Congress, when we  
16 go to raise money, and of course, another benefit is the fact  
17 that the ABA has and continues to focus on LSC funding.

18 We have an ABA day where we bring state bar leaders  
19 that represent thousands of lawyers here, and it is this 12  
20 1/2 percent private attorney involvement that is one of our  
21 arguments for increasing the money and also showing that

1 others are doing their part and that LSC is doing its part in  
2 incorporating and reaching out to the private bar.

3 We've increased legislative funding. We've  
4 increased our IOLTA funding. Literally, it would be killing  
5 the goose that laid the golden egg for us to do away with  
6 this at this time.

7 The waiver provision is available. I would  
8 encourage Wisconsin to use it.

9 It is working, and I would ask that the petition be  
10 denied.

11 CHAIRMAN MEITES: Any questions from board members  
12 or committee members?

13 Mattie, do you have comments?

14 MS. CONDRAV: Sure.

15 As you can see in the report that you have,  
16 management's position is that -- a request that the petition  
17 be denied.

18 Our rationale is that experience tells us, when we  
19 look back over 20 years, that changing the regulation in the  
20 manner suggested is not -- we don't believe it's necessary.

21 I did some looking at some statistics of our waiver



1 petition process, in fact, from 1997 through 2005, and maybe  
2 I can just quickly run through some little snapshots.

3           There was an average of 26 waivers applied for each  
4 year during that time.

5           2003-2004 did see an increase in the number of  
6 waivers. We suspect that that's due to the mergers and  
7 consolidations that were happening in that time as part of  
8 the state planning process. The number dropped to 15 for  
9 2005; 15 programs requested waivers, which is, my math, a  
10 little more than 10 percent of programs requested waivers.

11           So, the vast majority of our programs are not  
12 requesting waivers.

13           They seem to be able to, in fact, comply with the  
14 regulatory requirement.

15           Of the waivers sought, the vast, vast majority of  
16 the waivers sought were only seeking partial waivers.

17           In 2005, the median waiver percentage requested was  
18 29 percent.

19           So, they're not seeking waivers for most of their  
20 money.

21           Most programs are not seeking waivers.

1           And in the period from 1997 to 2005, I believe that  
2 LSC denied one waiver petition, which I think demonstrates  
3 that the corporation is, as Bob suggested, very willing to  
4 work with the grantees who are trying to comply with the  
5 regulation but find themselves, through whatever  
6 circumstances, unable to do so.

7           That's just a very -- you know, I did some very  
8 quick back-of-the-envelope kind of math. I don't pretend to  
9 be a statistician, but I think that gives you a flavor for  
10 some of the experience that we've, in fact, had, and I think  
11 bolsters the argument that I have heard, that the way to  
12 address -- that a regulatory change along the lines suggested  
13 is not necessary, and I believe, also, what Bill said and  
14 what you heard this afternoon is that the PAI investment,  
15 over time, generates more than just the specific cases that  
16 it covers. There is kind of an investment aspect to it.

17           Other than that, I think -- I think that that's  
18 just all I will say, in the interest of time, unless you have  
19 any questions, other than to say that, therefore, the  
20 management recommendation was to deny the petition at this  
21 time.

1                   CHAIRMAN MEITES:  Questions from any committee  
2  members?

3                   MS. BeVIER:  I guess my question really is whether  
4  management thinks it's just a mistake to wait to deny the  
5  petition or -- I mean I suppose we could deny the petition  
6  and then still consider the issues that it raises in the  
7  context of the provisions, so -- but nevertheless, does  
8  management have a view about whether that's here or there?

9                   MS. CONDRAY:  Well, I think our view was that, yes,  
10  it would be preferable to deny this petition now --

11                  MS. BeVIER:  Okay.

12                  MS. CONDRAY:  -- and let the discussion in  
13  Provisions take its course, and at such time as that  
14  discussion has come to fruition, if and to the extent it  
15  seems appropriate to then go back and revisit the regulatory  
16  requirements, the committee can recommend we initiate a  
17  rulemaking then and provide the policy guidance as to what  
18  questions should or shouldn't be taken up in the rulemaking  
19  at that time, yes.

20                  MS. BeVIER:  Right.  Okay.

21                  Thank you, Mattie.

1                   CHAIRMAN MEITES:  Mike?

2                   MR. MCKAY:  I guess I am inclined to go along with  
3 the management recommendation right now.  I came into this  
4 meeting thinking we'd wait, after I heard what was going on  
5 in Provisions.  I'm a little concerned -- my sense is that we  
6 would not approve this petition for the reasons that are  
7 being proposed but perhaps for other reasons that we would  
8 come up with as the provisions committee continues to do its  
9 work.

10                   If we do keep it open, we run the risk of having  
11 grantees think that we're seriously considering adjusting  
12 this for the reasons that were submitted, as opposed to  
13 encouraging folks to file for waivers.  So, I guess my  
14 inclination at this point, unless I'm convinced otherwise, is  
15 to deny the petition now, with the understanding we can come  
16 back and reopen the issue if the work of the Provisions  
17 Committee directs us that way.

18                   CHAIRMAN MEITES:  Since the Provisions Committee  
19 chair is also a member of this committee, David, where do you  
20 come out on that?

21                   MR. HALL:  I come out the same way.  I don't see

1 the two as being connected, and we're looking at it from a  
2 broader point of view.

3 CHAIRMAN MEITES: Bernice?

4 MS. PHILLIPS: Me, too.

5 CHAIRMAN MEITES: All right.

6 Well, I think we have a consensus, then, and I will  
7 accept a motion that we recommend to the board that this  
8 petition be denied.

9 M O T I O N

10 MS. BeVIER: So moved.

11 MR. HALL: Second.

12 CHAIRMAN MEITES: All in favor?

13 (Chorus of ayes.)

14 CHAIRMAN MEITES: Opposed?

15 (No response.)

16 CHAIRMAN MEITES: Thank you.

17 Mr. Henderson, thank you very much.

18 MR. HENDERSON: Thank you.

19 CHAIRMAN MEITES: We will -- I should ask for other  
20 business now, because we're going to go in closed session  
21 next. Is there any other business for our committee?

1 (No response.)

2 CHAIRMAN MEITES: Is Vic still here?

3 I think the next step is to ask for a motion to  
4 adjourn our open meeting.

5 A PARTICIPANT: Yes. And then tomorrow when the  
6 committee convenes, you can convene in closed session.

7 CHAIRMAN MEITES: Okay. I'll accept a motion that  
8 we adjourn the open portion of the committee.

9 M O T I O N

10 MR. HALL: So moved.

11 CHAIRMAN MEITES: Is there a second?

12 A PARTICIPANT: Second.

13 CHAIRMAN MEITES: All in favor?

14 (Chorus of ayes.)

15 CHAIRMAN MEITES: Thank you very much.

16 (Whereupon, at 5:50 p.m., the meeting was  
17 adjourned.)

18 \* \* \* \* \*