

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Friday, August 23, 2002

1:38 p.m.

The Marriott at Metro Center  
775 12th Street, N.W.  
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

LaVeeda Morgan Battle, Acting Committee Chair  
Hulett Askew  
Douglas S. Eakeley (ex officio)

BOARD MEMBERS PRESENT:

Edna Fairbanks-Williams  
F. William McCalpin  
Maria Luisa Mercado

Ernestine P. Watlington

## STAFF AND PUBLIC PRESENT:

John N. Erlenborn, Director and President  
John Eidleman, Acting Vice President for Compliance  
and Administration  
Victor M. Fortuno, Vice President for Legal Affairs,  
General Counsel & Corporate Secretary  
Mauricio Vivero, Vice President for Government  
Relations & Public Affairs  
Randi Youells, Vice President for Programs  
Leonard Koczur, Acting Inspector General  
Laurie Tarantowicz, Assistant Inspector General and  
Legal Counsel  
David Maddox, Assistant Inspector General, Resource  
Management  
David L. Richardson, Treasurer, and Comptroller  
Mattie C. Condray, Senior Assistant General Counsel  
Patricia Hanrahan, Special Assistant to the Vice  
President for Programs  
Leslie Russell, Director, Office of Information  
Technology  
Michael Genz, Director, Office of Program Performance  
Robert Gross, Senior Program Counsel, Office of  
Program Performance  
Danilo Cardona, Director, Office of Compliance and  
Enforcement  
Joe Green, Program Counsel, Office of Compliance and  
Enforcement  
Dierdre Hamlar, Program Counsel, Office of Compliance  
and Enforcement  
Michelle DeBord, Executive Director, MidPenn Legal  
Services  
Frank Strickland, Attorney, Strickland Brockington  
Lewis, LLP  
Robert Dieter, University of Colorado  
Michael McKay, McKay Chadwell  
Linda Perle, Senior Staff Attorney, Center for Law  
and Social Policy

## C O N T E N T S

	PAGE
1.Approval of Agenda	4
2.Approval of the minutes of the Committee's meeting of May 31, 2002	4
3. Office of Compliance and Enforcement onsite visits (John Eidleman)	8
4. Presentations and Discussions of onsite visits by Executive Directors Michelle de Bord, MidPenn Legal Services and Paul C. Julien, Southern Arizona Legal Aid	14
5. Status report on current open rulemakings and Rulemaking Protocol (Mattie Condray)	48
6. Consider and act on Rulemaking Protocol	53
7. Consider and act on Limited English Proficiency Guidance (Mattie Condray)	78
8. Consider and act on potential identification of new appropriate subject(s) for rulemaking (Mattie Condray)	91
9. Consider and act on contract renewals for LSC Vice Presidents Randi Youells, Mauricio Vivero, and Victor Fortuno	105
10.Consider and act on other business	110
11.Public comment	110
12. Adjournment	111

MOTIONS: 4, 6, 103 and 110.

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

1  
2 ACTING CHAIR BATTLE: I'd like to go ahead and call to order the  
3 meeting of the ops and regs, operations and regulations, committee on this August 23,  
4 2002.

5 Are we going to have John Broderick on the speakerphone?

6 MR. ASKEW: No.

7 ACTING CHAIR BATTLE: Okay. I'd like to welcome all of you, all the  
8 board members who are present as well as the members of the committee that are present,  
9 to this meeting. You should have in your board book a copy of the agenda for this  
10 meeting, and I will entertain a motion to approve this agenda as written by a member of the  
11 committee.

## M O T I O N

12 MR. ASKEW: So move.

13 MR. EAKELEY: I second his "so move."

14 ACTING CHAIR BATTLE: Okay. It's been unanimously moved and  
15 unanimously seconded that we approve the agenda as written in our board book.

16 The first item on the agenda is approval of the minutes of the committee's  
17 meeting of May 31st, which was done, at least from my vantage point, by telephone with  
18 others present. If you've had an opportunity to review those minutes, are there any  
19 changes or corrections to the minutes? Hearing none --

20 MR. ASKEW: Mr. McCalpin, do you have any changes?

21 ACTING CHAIR BATTLE: No?

22 MR. ASKEW: I have two.

23 ACTING CHAIR BATTLE: Okay. All right. All right, Bucky.

24 MR. ASKEW: On page 211 at the top, there's a list of people who  
25 participated in the meeting. And the last -- next to last line is Jeanette Studley. It's  
26 actually Janet.

27 ACTING CHAIR BATTLE: Good eye. Okay.

28 MR. ASKEW: And then on page 212, at the bottom of the full paragraph, it  
29 says, "Concluded with a dialogue concerning the recourses used to complete the process."  
30 It should be "resources."

31 ACTING CHAIR BATTLE: Resources. Okay. Any other corrections?

32 MS. MERCADO: You are proud, aren't you? I see that.

33 ACTING CHAIR BATTLE: Hearing none, I will entertain a motion to  
34 adopt the minutes as corrected.

## M O T I O N

35 MR. ASKEW: So moved.

36 MR. EAKELEY: Second.

37 ACTING CHAIR BATTLE: Properly moved and seconded. The minutes  
38 are approved as corrected.

39 We should have to present today executive directors from three programs,  
40  
41

1 who will discuss their experiences undergoing an onsite visit from the Office of  
2 Compliance and Enforcement conducting a CSM/CMS review, a technical assistance  
3 review, and accountability training.

4 We should have before us today Michelle DeBord, who is from the  
5 MidPenn Legal Services Corporation in Harrisburg, Pennsylvania; and along with her,  
6 Harold Creasy, Ocean-Monmouth -- is that Monmouth? How do you pronounce that?

7 MR. EAKELEY: Monmouth. But he's not here.

8 ACTING CHAIR BATTLE: Monmouth.

9 MR. EIDLEMAN: Yes. Unfortunately, Madame Chair -- John Eidleman,  
10 acting vice president for compliance and administration -- Mr. Creasy unfortunately was  
11 hospitalized on Wednesday.

12 ACTING CHAIR BATTLE: Oh, no.

13 MR. EIDLEMAN: I spoke with him this morning, though. I'm happy to  
14 report he's out of the hospital and feeling much better. But he unfortunately couldn't travel  
15 to be here with us.

16 ACTING CHAIR BATTLE: Sure. Okay. Well, we understand. And you  
17 are here in his stead, and we welcome you to the --

18 MR. EIDLEMAN: Well, I'm here to introduce the panel. And I will make  
19 sure to --

20 ACTING CHAIR BATTLE: So we'll have two instead of three, then?

21 MR. EIDLEMAN: That's correct.

22 ACTING CHAIR BATTLE: All right. And we do have Paul -- this is Paul  
23 Julien, okay, who is from Southern Arizona Legal Aid in Tucson, Arizona.

24 Welcome to this meeting of the operations and regulations committee. And  
25 I will then turn it over to --

26 MR. EIDLEMAN: Thank you. Madame Chair, distinguished members of  
27 the committee and board, I'd like to take this opportunity to present to you two guests who  
28 have been recipients of visits from the Office of Compliance and Enforcement.

29 As you know, OCE has many obligations in dealing with recipients, things  
30 such as investigating complaints, following up on A-50 audit reviews from the inspector  
31 general, and also giving -- excuse me -- reviewing for prior approval such things as  
32 sub-grant agreements.

33 But today what we'd like to talk about is three types of onsite visits that are  
34 being conducted by OCE. The are case service reporting/case management systems,  
35 CSR/CMS reviews; technical assistance reviews; and accountability trainings.

36 These three oversight engagements with LSC recipients are OCE's greatest  
37 opportunity to discharge our responsibility in implementing the LSC Strategic Directions  
38 2000-2005.

39 As you know, the third programmatic strategy is to ensure quality and  
40 accountability, which is one of the Act's principle requirements, through programmatic  
41 oversight. This strategy tells us that one way to ensure high quality is to undertake regular

1 visits to programs to guarantee consistent program quality and compliance with the LSC  
2 regulations.

3           A crucial component of those onsite visits is the provision of training and  
4 assistance. These three types of visits -- CSR/CMS, technical assistance review, and  
5 accountability trainings -- are OCE's response to advance our commitment made under the  
6 third programmatic strategy.

7           Let me just briefly say a little bit about these three types of visits. A  
8 standard compliance review is the CSR/CMS review. And the subject matter of those  
9 reviews address the key areas of accurate CSR reporting and compliance with the  
10 case-related regulations and restrictions that were passed in 1996.

11           The technical assistance reviews build on the CSR/CMS reviews because  
12 we recognize that in certain circumstances, some programs may need additional help in  
13 putting together an accurate, implemented compliance system.

14           Special situations include, at the present time, things such as mergers. The  
15 melding of two or more different cultures is difficult, and often a merged program needs to  
16 implement a comprehensive, unified compliance structure, with our many incompatible  
17 systems previously, and very often those systems are championed by individuals who are  
18 in the new program.

19           Several of the technical assistance reviews have been conducted at the  
20 specific request of program management. The accountability training is often included  
21 with the technical assistance review, usually at the end of the visit. And that's a good  
22 opportunity to talk about specific issues within the program.

23           The accountability trainings are also conducted independent from visits  
24 such as presentations at NLADA, statewide staff meetings, retreats, or other multi-program  
25 gatherings. Accountability trainings are also done at the request of programs that have  
26 already received a CSR/CMS visit, and they're usually done at a time different from those  
27 visits.

28           I think to simply put it, OCE sees its work as to ensure that clients get  
29 high-quality representation that they deserve. And we do that by not only determining that  
30 recipients are in full compliance, but also by teaching them how to correctly do so, and  
31 help them improve in their practice.

32           We are resolute in our obligation to ensure accountability. But that is  
33 tempered by the charge to train and assist programs.

34           I now would like to briefly introduce our two speakers. But before I do  
35 that, I would mention that Mr. Howard Creacy, who couldn't be with us today, is the  
36 executive director of a longstanding LSC program, Ocean-Monmouth Legal Services in  
37 New Jersey.

38           He had a review from OCE in November of 2001. Mr. Creacy has had 15  
39 years of experience in legal services, and I've left at your chairs a letter from Mr. Creacy,  
40 which I think you've seen before.

41           But I would just like to call to your attention a few things, one of which is

1 the high praise he gives to the staff that visit with his program. He talks about their  
2 professionalism and their knowledge. He cites Mr. Curtis Goth, who continues to be  
3 available to help the program.

4           And in the last paragraph, one thing that struck me is his statement that staff  
5 "was professional, and their presentation displayed a deep understanding of practical  
6 realities confronting busy practitioners who work in the field." That was very gratifying to  
7 me, that not only does the staff understand how difficult it is for field programs, but also  
8 that they're manifesting that, and the programs understand that sensitivity.

9           Our first speaker today will be Michelle DeBord. Ms. DeBord has 20 years  
10 of experience in legal services, 17 of those as a director. She directed the Keystone Legal  
11 Services program and Central Pennsylvania Legal Services, and now MidPenn, which  
12 came into existence July of 2000.

13           I have some personal knowledge about what Ms. DeBord went through in  
14 trying to bring together four different programs to make one program that covers a very  
15 large area in the center of Pennsylvania. I know she worked very hard, and so did her  
16 staff.

17           Mid-Penn had a visit in November of 2001. It was a CSR/CMS review.  
18 And that was after the merger took place. There were two purposes for this visit. The first  
19 was to ensure compliance, and the second was to help that new program provide for  
20 improvement in their systems. In support of that visit, an accountability training was also  
21 conducted at the end of the visit.

22           Paul Julien has 16 years of experience, both as a private practitioner and in  
23 legal services. He also is an educator, has a doctorate in education. He has been the  
24 executive director of the Southern Arizona Legal Services, SALA, since 1994. And SALA  
25 is a vastly expanded program in Arizona which came about with state planning  
26 configuration decisions that took effect in 2000.

27           In early 2001, SALA received a technical assistance review from OCE  
28 which also included an accountability training. At the time of the technical assistance  
29 review, SALA was still in the process of bringing together different programs, and they  
30 had different philosophies and different traditions.

31           The technical assistance review worked as a diagnostic to help that program  
32 identify its strengths and weaknesses and area for improvement. After the review, the  
33 program engaged in a process of corrective action in improving its case intake and case  
34 management systems.

35           Following that and after those changes had an opportunity to take root and  
36 flourish, OCE went back in early 2002 and conducted a CSR/CMS review to see that  
37 things were in place.

38           I'm pleased to report that both Ms. DeBord and Mr. Julien represent  
39 programs that have very strong compliance intake systems. And we know that for a fact  
40 because we visited those programs.

41           So I'd like to have Ms. Michelle DeBord please speak first.



1 MS. DeBORD: Is the projector on?

2 ACTING CHAIR BATTLE: We can cut it on.

3 MR. EIDLEMAN: I think Les could turn that on for us.

4 MS. DeBORD: Okay. Great. One of the first things that you have to do  
5 with these in the environment we're in now is show where we were and then where we are  
6 now, and what programs came together. So get you oriented to geography first, I guess.  
7 And that should come up with a map of the way Pennsylvania was in 1998.

8 Okay. In 1998, the programs that you see up there -- this program, this was  
9 Keystone Legal Services, five counties in central Pennsylvania. Down here was Legal  
10 Services, Inc., four counties bordering on Maryland there. And then this was Central  
11 Pennsylvania Legal Services. That was seven counties. Swinging over here to the west,  
12 this area was Southern Allegheny Legal Aid.

13 Today the three programs, the first three programs, had gone through a  
14 merger, and then Blair and Bedford Counties were added with the SALA program was  
15 terminated.

16 Today we look like this. This is MidPenn Legal Services. As you can see,  
17 we're now 18 counties, lots of square miles, and lots of territory to cover. So that's the  
18 program that was visited by Legal Services Corporation.

19 Also, I brought with me today a copy of Mid-Penn's first annual report,  
20 which we're very proud of, "Reflecting on the past and Anticipating the Future." And  
21 along with that, there is also a map of Pennsylvania in the package so you can see the  
22 program that we're talking about. I'm going to ask my assistant, Paula Burkett, to pass  
23 those out to you so that you can refer to them if you have any questions.

24 We were visited in late October/early November --

25 MR. EAKELEY: Excuse me. Michelle, just move the microphone a little  
26 bit closer to you.

27 MS. DeBORD: Oh, certainly. Sorry, Doug.

28 I have to say, in general, that the visit was a very constructive process. The  
29 team that was sent was able to provide input to us on many issues in a very helpful  
30 manner. They were not heavy-handed, and they actually had some answers.

31 The process of drafting our report, sending it along to us for comments on  
32 the draft, was also very cooperative. And the offer of training at the end of the visit was, I  
33 think, excellent. The team members followed up on our requests for information during  
34 the visit and also after the visit. They were very helpful in that regard.

35 Now, we were picked to undergo a CSR primarily, I think, because of the  
36 change in our self-inspection results. We had less than stellar self-inspection results. And  
37 Mr. Cardona indicated that that was the primary reason for the visit. We had several  
38 contacts prior to the visit, and we talked about some of those issues that they would be  
39 examining.

40 The pre-visit contacts, I felt, were very reassuring. The information  
41 requested by Mr. Cardona was very clear. There were several phone calls between myself

1 and Camilla Vasegan and Mr. Yenesavage. They were both very cooperative. We had  
2 some problems tying down dates and schedules, with vacations and so forth. They were  
3 very patient. And, of course, we were hoping they'd kick us into 2003, but they were also  
4 very persistent.

5 We were urged to contact other programs that had undergone such a review,  
6 and we did so. Those contacts were also reassuring, particularly in regard to the client  
7 confidentiality issue, which as you know always raises its head in any kind of funder  
8 review.

9 We spoke with folks from Neighborhood Legal Services Association in  
10 Pittsburgh, who had also recently undergone a CSR review. And they indicated that they  
11 had started off using intermediaries to examine files, but had quickly determined that this  
12 was not necessary. The file reviews, while they were tedious, did not spend enough time  
13 on any one file to glean any client information.

14 When we discussed the confidentiality issue on the morning of their arrival,  
15 I felt that the team leader handled that issue very well. She assured me that all  
16 documentation on clients would be shredded after the report was written, and that the team  
17 had been briefed on the issue of confidentiality.

18 Once the reviews were underway, our staff was in attendance for all of  
19 them. And it was clear that the client material was examined only on compliance issues.  
20 The team that visited us, I think, worked very hard to make this a non-issue during the  
21 visit. And because there were hundreds of files to be examined, there was no way to get  
22 the information needed for the compliance review without looking at those files, and no  
23 real way for confidential information to leave the program. We were very comfortable  
24 with the procedure.

25 It also became clear very quickly that no one would have the memory  
26 capacity to retain anything on an individual basis. They'd have to practically have a  
27 photographic memory, we reviewed so many files.

28 At the beginning of the process, we were somewhat surprised when we got  
29 the list of cases. It was clear that this was going to be a major undertaking, as hundreds  
30 and hundreds of cases were requested for follow.

31 But I think, you know, we surprised them right back when they came on the  
32 first morning of their visit and they got the program map and they saw where they were  
33 going and the week and a half that they had to do it in.

34 They did go to all the field offices and, of course, to the administrative  
35 office. And I think this was particularly good in our merged program because they were in  
36 a position to point out inconsistencies from office to office that we've tried to address.

37 The file review was manageable. It was time-consuming and it was tedious.  
38 But my general comments would be that the staff sent were very knowledgeable, very  
39 cooperative, very helpful and respectful of our time and resources.

40 Several of my staff commented that these people actually knew something.  
41 In the past, many of us oldtimers -- actually, it's 25 years, John -- had suffered through

1 reviews where none of those words, cooperative, helpful, or respectful, could be used to  
2 describe the process.

3 I think the very important thing here was these folks knew what they were  
4 doing and they were obviously well prepared and well trained. This was something that  
5 was lacking in the past in LSC reviews. And while they were onsite, they didn't drive us  
6 any crazier than we already are.

7 It was very clear very quickly that this team was there to see that we were  
8 abiding by the basic rules. Now, I suppose there's room to become insulted when your  
9 compliance with the basics is questioned. And as I've mentioned already, many of us have  
10 been through reviews where we were not treated with basic professional courtesies.

11 But this team handled their inquiry into our knowledge of the fundamentals  
12 very tactfully and non-judgmentally. When errors were found or changes requested or  
13 suggestions made, none of us felt attacked or foolish.

14 There was a very strong sense, I think, of "we are in this together" that was  
15 projected by the team leader, and there was a tone that was set that eschewed  
16 blame-placing and instead went forward with the attitude of, let's get this right. Let's  
17 correct this. Let's get this clear. A straightforward, unambiguous message of assistance  
18 and cooperation was communicated.

19 Unlike a lot of LSC visits in the past, the team made the reason for the visit  
20 very clear from the beginning. And you did not get the sense that there was any hidden  
21 agenda or any subterfuge here at all. I think some of the credit for setting this tone has to  
22 go to the staff and the board, the LSC leadership, during the past couple of years.

23 You have cleared the path for these visits. LSC has done a very good job, I  
24 think, of educating all of us on the importance of those CSR reports. You have  
25 painstakingly reminded us again and again in numerous memos, e-mails, publications,  
26 bulletins from staff, and so forth, that this is the information that Congress gets.

27 This is what they pick apart. And these reports are ultimately one of our  
28 best lines of defense against our critics. And you have repeatedly emphasized that the  
29 integrity of the data has to be unquestioned in any major way.

30 This review and the comprehensiveness of this review, I think, will give us  
31 a basis on which our future will depend. They produce a sound basis for our budget  
32 requests, and will silence our critics and maybe turn a few people around.

33 In our case, they served a very practical purpose particularly relevant to  
34 MidPenn. LSC has for many years -- as have all of our funders, actually -- encouraged  
35 programs to develop other funding sources. With three and a half programs coming  
36 together, we had all done that. We had all sought out other funding.

37 As a result, about 50 funding streams, through grants and contracts, United  
38 Ways, bar associations, bar, private, and community foundations, as well as our major  
39 funders, IOLTA, Title 20, and of course the largest, LSC, are all coming through MidPenn.

40 Pennsylvania in the state planning process made the decision to keep as  
41 much of this extra funding that programs had been able to attract together with the LSC

1 funding in order to best leverage most of the resources available to deliver legal services to  
2 poor people in Pennsylvania.

3 In Pennsylvania, we believed that large and comprehensive programs would  
4 be better for clients, and allow all of our funders to get more for their money. But all these  
5 separate funding sources nurtured by the smaller programs were brought into this large and  
6 very comprehensive program of legal services that became MidPenn.

7 Because of this client service-oriented decision, the large merged programs  
8 in Pennsylvania have become enormously complex to administer. When our development  
9 staff went to a recent fundraising training, people were shocked to find that we receive  
10 over a million dollars in what we would call non-major funding sources, less than \$50,000.

11  
12 The demands of those funding sources, including their own reporting and  
13 compliance demands, are almost always daunting and can sometimes be very confusing for  
14 staff to administer. The review that was conducted reassured me that my intake staff and  
15 my top management staff were observing the LSC requirements. It reemphasized that we  
16 must continually be refocusing and making sure that the issues are resolved, and are  
17 resolved in compliance with LSC guidelines.

18 I guess my advice to programs who are undergoing the review is, first of all,  
19 try not to be intimidated by the document request. It was extreme, particularly the case  
20 sampling request. But many of us are starting centralized intake units and starting to  
21 provide hotline services, expanding our PAI programs, and it needs to be reemphasized  
22 that as these changes take place, the regulatory requirements have to be translated or  
23 carried over into those new initiatives.

24 The review served to point out areas where the staff needs further training,  
25 and it also reassured us about some of the things that we were doing correctly, and  
26 resolved some issues for us.

27 For example, they pointed out some of our pro se clinics. We could have  
28 been reporting those as matters in our matters report, and gave us a lot of suggestions on  
29 how to deal with our 16 different brands of pro se clinics.

30 Made a lot of management and staffing suggestions. They pointed out some  
31 coordination issues and some suggestions on how to resolve those. Those can be very big  
32 challenges in our program. And they validated some of our concerns that we thought were  
33 problems. And in many, many other cases, they were just another pair of eyes, looking at  
34 something from another perspective and giving us suggestions or helping us to change or  
35 improve something.

36 Because the staff that was sent was so knowledgeable, some of the people  
37 that I need to rely upon to get accurate data to you got a lot of their questions answered,  
38 both before the visit, during the visit, and after the visit. Some of my intake specialists and  
39 managers who are particularly adept had compliance and data collection issues, had their  
40 kind of quirky talents appreciated by someone other than their very grateful executive  
41 director.

1           One of my managers actually has -- she has monthly regional meetings for  
2 all four of her offices, and a standing agenda item is to review some regulation of LSC or  
3 some policy or whatever, grant assurance. And no one has ever claimed that these parts of  
4 the staff meeting were particularly vibrant. But the team members who visited that office  
5 were very impressed, and she got some very nice, positive feedback.

6           Some of those intake wonks, as we call them, are also involved in our  
7 Pennsylvania case management system. And we are in the process of switching case  
8 management systems from a Pennsylvania born and bred system into the Kemp's case  
9 work management system.

10           Several of the staff people that came on the visit had thorough knowledge of  
11 the Kemp's system and were able to discuss some of those issues with our folks, which was  
12 good because we're pre the change, and now is the time to get our questions answered and  
13 get the system that we need in Pennsylvania.

14           I think I learned in general that we need to build more capacity within the  
15 program for compliance issues. There's not a great deal of depth of knowledge on the part  
16 of the intake and advocate staff, and as you can imagine, from the mergers, still a lot of  
17 confusion.

18           We will be doing training this year. Paula will be working with several of  
19 the staff to set up compliance training. That training that was delivered at the end of the  
20 visit, I felt, was the first step in our capacity-building process. David de la Tour is a very  
21 good trainer, very good communicator, kept it very interesting for people. Some people  
22 actually said it was fun.

23           MR. EAKELEY: Don't tell David that.

24           MS. DeBORD: Don't tell David that. It will just spur him on.

25           But one of the things that he did is he explained about the lack of  
26 appropriate intake documentation and the lax closing of files can equal a loss of all that  
27 work for reporting purposes. In other words, you don't get credit, and you did all this  
28 work. And I saw a couple light bulbs go on during that part of the presentation.

29           I think that for Monica Holman's project that you've started with the best  
30 practices, I think that will be very helpful to the programs. And I encourage that to go  
31 forward. It strikes me that LSC is going further now to help us than they have in the past,  
32 and we are very grateful for that. And I believe certainly that this visit was evidence of  
33 that approach. Thank you.

34           ACTING CHAIR BATTLE: Thank you so much for that presentation.

35           MS. FAIRBANKS-WILLIAMS: Question.

36           ACTING CHAIR BATTLE: Okay, Edna.

37           MS. FAIRBANKS-WILLIAMS: I guess LSC passed us out this folder. It  
38 says Pennsylvania in 1998 and Pennsylvania in 2001.

39           MS. DeBORD: Right.

40           MS. FAIRBANKS-WILLIAMS: She passed us out a map. We have  
41 Somerset on one, and she doesn't have Somerset on hers. So have we deep-sixed

1 Somerset, or what happened? There's a discrepancy in these maps here.

2 MS. DeBORD: It's gone to West Virginia.

3 MR. EIDLEMAN: We're sending it to New Jersey.

4 MR. EAKELEY: Careful what you say about New Jersey.

5 MS. DeBORD: We do not have Somerset County. That went to the  
6 program called Southwest Legal Aid in southwestern Pennsylvania.

7 MS. FAIRBANKS-WILLIAMS: Southwest Legal Aid? Okay. There was  
8 one other question. I see pretty near every county has some offices in it except Fulton,  
9 Huntingdon, Juniata, Perry, and Mifflin.

10 MS. DeBORD: Mifflin, yes.

11 MS. FAIRBANKS-WILLIAMS: Mifflin. Is that a rural, mountainous area,  
12 or less people, or why is that strip through there doesn't have an office?

13 MS. DeBORD: That's a top priority for me to get an office in that area.

14 Basically, it's just offices were there. At one time there was an office in Huntingdon, there  
15 was one in Mifflin County, and there was one in Perry County. However, those have  
16 closed, and we do serve those counties through outreach sites.

17 Those were closed back in the early '90s. But it is a top priority for me to  
18 get an office in that area. I want back there badly.

19 MS. FAIRBANKS-WILLIAMS: Well, now that I've found out where  
20 Somerset is, I guess --

21 ACTING CHAIR BATTLE: Okay. Are there any other questions?

22 (No response.)

23 Thank you for that very insightful presentation. Certainly we love hearing  
24 when our staff does a good job of going out into the field and being able to provide both  
25 the kind of review that the Office of Compliance and Enforcement has responsibility to do,  
26 and also technical assistance and accountability training as well. And your report tells us  
27 that this kind of work can go well.

28 One thing I was really impressed with was the evaluative nature of your  
29 report. And I think that just as we are asking all of the states to be in a continual  
30 evaluative mode about how they can provide the delivery of services better, I think our  
31 staff can also continually evaluate based on the kind of feedback that they get after they've  
32 done visits: Where they've done it well, how it's come across, and where they've been  
33 effective because of a myriad of things.

34 And I think you pointed it out, particularly the 25 years of experience.  
35 When it's done well, you know it, and when it's not done well, you know it. And we need  
36 to give some thought to how we can build that into our system of making sure we're doing  
37 our best job as well. Thank you very much for your presentation.

38 MS. DeBORD: My pleasure.

39 MR. EIDLEMAN: Paul?

40 MR. JULIEN: Thank you very much, Madame Chair, members of the  
41 committee. John said that since Harold's not here, I could speak twice as long.

1           ACTING CHAIR BATTLE: I was about to say, we're going to try to -- you  
2 know, given that we've got some time scheduled things, we want to hear all that you've got  
3 to say. But we really do want to also move the --

4           MR. JULIEN: Sure. I hope you have a gavel. If you get tired of hearing  
5 me, just smack it.

6           I would like to thank you. I know most of you, which is really great,  
7 because, you know, we're pretty far away out on the Mexican border in Arizona. But  
8 because you've all made an effort to include me and our program in a number of things, I  
9 feel like I have a personal relationship with some of you, and also with the staff of the  
10 Corporation.

11           And I just wanted to mention a few that have helped our program. During  
12 the last year or so, we've actually had a lot of attention from the Corporation, not all of it  
13 invited, but all helpful.

14           Just most recently, Jay Brown called. We had an emergency situation, a  
15 federal emergency area, when we had a fire that burned 500,000 acres of our state. And  
16 that was all in my service area. And we had to close one of our offices, evacuate. We  
17 pulled our files out. All my staff were evacuated from their homes as a part of the 30,000  
18 people that were evacuated. But Jay called me right away, Jay Brown, and offered  
19 whatever assistance the Corporation could provide.

20           We recently celebrated our 50th anniversary of Southern Arizona Legal  
21 Aid, and Mauricio -- Mauricio, thank you -- came to help us celebrate that. Eric Klieman  
22 came out, and we brought together the chief justice of the supreme court, our attorney  
23 general, I think partly because they offered to come and help do that.

24           And we had a great celebration. We have a brand-new courthouse, the Evo  
25 DeConcini courthouse. DeConcini may be one you remember from the United States  
26 Senate. But it was the first event that was held in the courthouse that wasn't court-related.

27           We had a program-wide meeting. All the staff came together this spring,  
28 and John McKay came and talked to the staff and, as you know, did a -- he always does a  
29 great job.

30           Victor Fortuno has been available to me. In fact, today I was bending his  
31 ear. Every time I needed to have any question asked, he's been available to me, and I  
32 appreciate that, and others in the room who I'd like to talk about in more detail. Michael  
33 Genz has been very helpful.

34           I get to come back every once in a while. I'm a volunteer with the  
35 American Diabetes Association, and we have our meetings over at the J.W. Marriott. So I  
36 always come a day early and kind of walk around the halls of LSC just so they remember  
37 what Arizona looks like in one person's face.

38           I also thank you for the time and effort you've spent as the longest-serving  
39 board of directors of the Legal Services Corporation in history. I can't even imagine what  
40 sort of effort it must take to leave your practice and your homes and families to come and  
41 do this. So thank you very much on behalf of all of us around the country who you've

1 provided leadership to.

2 But I'm really here to talk about the compliance visits and the impact that  
3 it's had on the program. I have formed my opinion about what I think your role should be.  
4 I know that's probably not my job, but when we're out in the field, we think we know what  
5 we need from you, and in case in helps, I thought I'd just tell you a couple of things.

6 And to a certain extent, I see your relationship with us like my relationship  
7 with my staff, in that we really depend on you to influence and cooperate with the decision  
8 makers here, at least on Capitol Hill. We're not supposed to do that, and we really don't  
9 have the means to do that.

10 So, you know, whatever impact you have there is extremely meaningful on  
11 both ends, you know. That is, communicating to us what it is that Congress is expecting of  
12 us, and helping to communicate to Congress what we'd like them to do for us.

13 And the guidance that you all have provided, particularly through OCE, has  
14 been extremely helpful to us over the last couple of years. I have found that in my job, I  
15 expect the staff to do what they are supposed to do. I mean, there are certain guidelines  
16 and federal regulations and so on and so forth that they are expected to work within. But I  
17 also like them to be independent and entrepreneurial.

18 And I get the same sense from the LSC staff about us, that there are  
19 expectations that they demand, and there's also an encouraging support base for us to  
20 expand our resources and provide more services, in our case, with insufficient funds.

21 I mean, I like to make the argument that we're probably the most  
22 under-funded part of the country from the corporation because we've had the greatest  
23 growth. So if you actually take the total number of poor people in 2002 that live in our  
24 service area and you divide that number into the total allocation that we get, we're  
25 probably about as low as any place in the country. We just got yesterday the new numbers  
26 for the 2003 reallocation, and we're going to get a big boost, almost a million dollars of  
27 new money into Arizona.

28 So we've had to do a lot of this without financial support, but we have had  
29 technical support from here. Glenn Rawdon is another person that has helped a lot with  
30 our program.

31 I'll just show you a couple of maps. It's not as much of a jigsaw puzzle as  
32 Pennsylvania. You've all been -- I think you've all been to Arizona. I had an opportunity  
33 to speak to you when you were there. You know, our counties are the size of Eastern  
34 states, and interestingly enough, though, Arizona is the most urban population in the  
35 country.

36 Pretty much everybody lives in Phoenix or Tucson. Only 17 percent of  
37 Arizona is privately owned. Everything else is public land. So you wouldn't normally  
38 think of Arizona as an urban state, but it tends to be.

39 In 1998, this is the configuration. The only thing that was possible to do on  
40 this map divided by counties is that there's a line right here where the little arrow is going,  
41 across Navajo and Apache Counties. That's the border of the Navajo reservation.



1           And the part that's north, up in here, is a part of the DNA Peoples' Legal  
2 Services. And then we have the southern part, which is an Apache -- two Apache  
3 reservations and then off-reservation areas.

4           So this is the 1998 map. And then, if I can -- let's see here, 2000 -- okay.  
5 This is the new map. And again, we're still dividing these two counties up here. But we  
6 have moved from seven programs, when I took over at Southern Arizona Legal Aid, now  
7 to three. Community Legal Services has the western part of the state, DNA has the  
8 northern part of the state, along with a piece of Utah and New Mexico, and then we have  
9 the southern counties.

10           I'd also like to comment that I think we have one of the most diverse  
11 programs in the country. We have the Mexican border. We have two offices on the  
12 border. And we have thirteen sovereign Indian nations, all with their own tribal justice  
13 system, tribal code, and tribal languages. And so the combination really puts us in a  
14 unique position. And we have a community of 800,000 people. So it's a very exciting  
15 program to operate.

16           Okay. That's my map. I read through the strategic plan, and I came to the  
17 conclusion that the section on insuring quality and accountability through programmatic  
18 oversight is exactly what OCE is doing.

19           And, frankly, I think they're doing it pretty well, particularly the bullets that  
20 relate to undertaking regular visits, developing new information systems, and working with  
21 us in the states to develop systems and procedures. So if you're looking toward  
22 accomplishing those goals, I think OCE is putting you a number of steps forward on that.

23           I first learned about the opportunity to have OCE visit our program at a  
24 meeting, an NLADA meeting, when there was a presentation about these technical  
25 assistance reviews. And I was anxious to have some input. I was not anxious to find out  
26 that we had problems, although I knew we did. And I just hoped that I knew where they  
27 were.

28           But as Michelle described, well, it maybe that we had one of the most  
29 acrimonious states in the country; at least, I've heard that from several of the LSC staff,  
30 and even John McKay. We had a fellow who just didn't want to merge. And his name is  
31 David Dick. I don't know if you remember that name, but I think he communicated with  
32 all of you a number of times.

33           But we've worked things through, and we invited -- well, actually, first of  
34 all I went to the DNA program, where David de la Tour and his staff had come to do a  
35 technical assistance review, at the invitation of Wilson Yellowhair -- who I might mention,  
36 as we're speaking right now, is retiring, and it's a great loss to our community. He's one of  
37 the fine leaders. He's got heart problems and he just is not able to continue. And today is  
38 the celebration, the 35th anniversary of DNA.

39           But my eyes were opened at that presentation on that December day. And  
40 afterwards, I met with David, David de la Tour, and I asked if he would come and visit our  
41 program. And he brought a group to Arizona, and to my chagrin, did discover things in the

1 program that we didn't -- that I didn't recognize.

2 For whatever reason, people were a little more open to him than they were  
3 to me. I mean, I'd go out to the office and things seemed to be just fine, you know. But  
4 when David was there, they'd say, well, you know what? We used to do things another  
5 way, and Julien is asking us to do it some different way, and we don't particularly want to  
6 do it. And we want to keep our name up on the wall, Papago Legal Services or Pinal-Gila  
7 County's Legal Aid Society, because that's the way people know us.

8 So I learned some important lessons during that week that they were there.  
9 And again, as Michelle said, they followed that up with a training, which was extremely  
10 beneficial.

11 As John mentioned, I have a background in teaching. I used to teach at the  
12 university, and I taught teachers. And David would be a good teacher. He's funny and he's  
13 very direct, no-nonsense guy, almost theatrical. It sounds like you know him. And I think  
14 people paid attention to him.

15 And, you know, the message was clear: There are strengths in the program  
16 in Arizona, but there are weaknesses. And here's what they are, and here's what you need  
17 to do to change.

18 And on a personal level, it was tough. It was a very hard time for me,  
19 trying to deal with this acrimony that I described. A lot of it ended up being directed at me  
20 personally from this other project director. And I was worn thin on a number of different  
21 levels.

22 And, you know, David really gave me the encouragement to do the right  
23 thing. And one of those things, although this was my idea, I called Danilo and I said, hey,  
24 would you let us hire one of the people who came and reviewed? And I don't know how  
25 much thinking he had to do about it, but he said, fine. Kathy Rudd, Katherine  
26 Rudd -- some of you may know Kathy. And she lives in Las Vegas. And she became a  
27 consultant to us.

28 And she took this on as a personal project, that everything that needed to be  
29 fixed was going to be fixed because if it wasn't, it was going to reflect on her with her  
30 peers that she goes out with every week to do these reviews.

31 And I couldn't have asked for better help. She visited with me throughout  
32 the year, between the technical assistance and the CSR review -- I guess that's the same, or  
33 case management review. And we looked at files and we trained staff and we fixed things.

34 And after that was finished, we had a scheduled review. Now, this was the  
35 formal review. And Joe Green, who's here today, led a team that came to Arizona, visited  
36 our eleven offices, pretty much all of our staff members. As Michelle mentioned, it was an  
37 ominous task to try to prepare for the visit. I believe they looked at about 710 files, again,  
38 in every office.

39 We had a few issues that we addressed. One was confidentiality. It was  
40 critical to us. We had -- we decided to use intermediaries, which was very effective on a  
41 number of levels. And Danilo and Joe were happy to cooperate with that.

1 I think the best thing about that was that our staff who served as  
2 intermediaries really got a lesson themselves about what was -- what the compliance issues  
3 were. And although we'd already had the training, this was a hands-on one-on-one. And,  
4 you know, the good news was, in the review, things were greatly improved. And it was  
5 kind of a celebration, actually, of the effort that we had put into this during the year.

6 One of the other things that we did was we created a wide area network,  
7 which we didn't have, you know. If you know Arizona, some of our reservation offices,  
8 the wiring is not very sophisticated. And it was an extraordinarily expensive process.

9 I don't know if we're unique, but I suspect we're different. But nonetheless,  
10 that was something and remained something that we could have used more help with.  
11 Now, again, Glenn Rawdon was very helpful, and Michael, with assistance. And we have  
12 had a technical assistance -- or, I mean, a technology grant.

13 But the cost has been overwhelming to us to put this wide area network in.  
14 Just our telephone bill every month for this is \$6,000, in addition to all the rest of the  
15 telephone bills that we have. So that's something that was absolutely critical for us to do,  
16 but cost a bundle.

17 I think that there were unintended benefits of this process. When I first  
18 thought about this, I thought it was fairly fundamental. We were just going to look at  
19 compliance with sort of basic requirements. But what happened as a result of our focus on  
20 this was any increase in the quality of our work, the professionalism about keeping records  
21 in our files.

22 And this was something that Joe commented on when he was there, that our  
23 files were just overall a better representation of what we had done, that people were paying  
24 more attention, not just to the specific compliance issues that were being reviewed, but  
25 just -- but generally about the way the files looked.

26 And it gave us an opportunity to show off a little bit as well, that we do  
27 fairly complicated work. Again, we do it in a number of different jurisdictions, and we  
28 appreciated the fact that the Corporation was there to see that.

29 In closing, I would just like to maybe offer some of the same thoughts that  
30 Michelle did about the value of this. In my own life, I'm a conservative person, and I'm  
31 very sensitive to the political waves that are, you know, coming from here and -- we're in  
32 Washington, D.C. -- but also in Arizona. We're a very conservative state.

33 And I believe we have succeeded, as a result of a number of things, in  
34 establishing a bipartisan support for what we do. It's no longer some liberal cause. This is  
35 a very fundamental, basic need in our justice system, to provide access and quality  
36 services.

37 And I have a lot of Republican friends who -- some in Congress; Jim Kolbe,  
38 for one, is our congressman, and he's been a personal friend for a long time. My daughter  
39 was his page. And, you know, he never -- not only did he never vote for funding, he was a  
40 pretty outspoken opponent for a long time.

41 But he's not an opponent any longer. And I think part of it is as a result of

1 the efforts that you all have made here, and hopefully some of what we've done. But I  
2 think they feel we're more accountable at this point to you and to Congress for what we're  
3 doing; that our statistics are accurate; that we're really doing the work that we say we're  
4 doing, and that we're providing outcomes that are making a difference in the community.

5 And again, as Michelle said, I think that the more we can establish that, the  
6 better the chance of increased funding and support across the board, across political lines,  
7 and in various governmental agencies.

8 So I appreciate what Danilo has done with his staff, the visits that have  
9 occurred. Our program is better off because of it. And thank you for this opportunity to  
10 share that.

11 ACTING CHAIR BATTLE: Well, thank you so much for your  
12 presentation and your insight that I think will be very helpful to us in the future as to how  
13 to do it in the right way so that it makes a -- has the kind of positive impact that it did for  
14 you.

15 Doug?

16 MR. EAKELEY: I just wanted to say thank you, and it's nice to see you  
17 both again. I also wanted to commend John and Danilo because accountability is a part of  
18 our Strategic Directions, and a very important part of what we do.

19 Being in the Office of Compliance and Enforcement does not guarantee any  
20 popularity, either with the field or with the board. And as soon as the arm's length  
21 supervisory role tends towards the adversarial, most of us tend to get calls from the field.  
22 And the good work of OCE doesn't frequently get back here, although we know  
23 it's -- we're well aware of it happening.

24 But this is the first such presentation we've had, and I think it's been very  
25 informative and very valuable, and very reinforcing in terms of encouraging a good job  
26 well done.

27 MR. EIDLEMAN: In closing, I'd just like to say that I think very often, for  
28 the field, compliance is like quantum physics, and only a handful of people understand it  
29 and they're all at LSC.

30 But I think what we're doing now is we're educating the field, and they're  
31 learning how to do compliance. And once they can do that, they can then concentrate, as  
32 they should, on delivering services to clients. Thank you.

33 ACTING CHAIR BATTLE: Thank you very much.

34 The next item that we have on our agenda is to receive a status report on  
35 current open rulemakings, and a status report on Rulemaking Protocol. We have Mattie  
36 Condray at the table to provide us with those status reports.

37 MS. CONDRAY: I'm Mattie Condray, senior assistant general counsel  
38 with the Office of Legal Affairs.

39 This portion of my report will be pretty short and sweet. There are two  
40 negotiated rulemakings currently ongoing, one on 1611, our financial eligibility  
41 regulations, and the other on 1626, our citizenship and alienage eligibility regulations.

1 Both of those working groups, the working groups have had three meetings  
2 each. The working groups' meeting period is done. Each working group has had a chance  
3 to review a first draft of a notice of proposed rulemaking. I am currently in the process of  
4 working on the second draft of each notice of proposed rulemaking, which will then be  
5 distributed back to the working group for comment.

6 I am this close -- and I'm making a very small gesture, for the record -- from  
7 getting the 1611 financial eligibility draft notice of proposed rulemaking back out to the  
8 working group. I will go out on a limb and say I intend to have it back out to the working  
9 group before the end of next week. If I hadn't been helping to prepare for this meeting, it  
10 might have happened this week. But next week. I'm not going to gauge 1626. I'm not  
11 going to make a guess on that one yet.

12 Something -- since I don't have a whole lot of substance to talk about about  
13 either of the rulemakings at the moment, something that I know is a concern of many  
14 people that I did want to address right now is time, the amount of time that these are  
15 taking.

16 And I just thought I would point out that I agree that it's taking a long time.  
17 But I went back and kind of looked through some of the records, and I noted that  
18 from -- the whole first year of this process was taken up in preliminary activity in getting  
19 to when the working groups started. So although the board identified 1611 and 1626 as  
20 appropriate subjects for rulemaking in January of 2001, the working groups actually didn't  
21 get started until January of 2002.

22 I think that was for a variety of reasons, from the time it took to identify the  
23 subject for rulemaking to the time that the president and the chair of the operations and  
24 regulations committee formally said, yes, we're going to do this, and we're going to have a  
25 negotiated rulemaking. That took place in June. That was a six-month delay.

26 And then the amount of time it took from June to get the working groups  
27 appointed, and then by that point the working groups were looking at their own schedules  
28 going into the holiday season and couldn't find the time to meet until the new year.

29 I'm hopeful that if we -- if and when we do another one of these, all of that  
30 preliminary process will take much less time. And looking at it from the time the working  
31 groups have been started, we're looking at -- you know, we're now at the eight-month  
32 point, not speedy but, I think, progressing steadily, and that the bulk of the work has been  
33 done in a much shorter -- to this point, has been done in a much shorter period of time than  
34 perhaps it appears.

35 I also, for my own edification, went and looked at some of the last  
36 rulemakings that the Corporation did prior to the rulemaking protocol, and discovered that  
37 1628, the fund balance rule, from the time that the committee first looked at a draft of a  
38 notice of proposed rulemaking to when it was published, was just short of two years.

39 1635, it was again just short of two years, and I don't know how much time  
40 went in before the committee saw a draft of the rulemaking. The property manual, though  
41 that was not a regulation, followed a very similar path through consideration and adoption.

1 And that took in excess of three years.

2 I think what that says is all of that takes an awfully long time. I'm not sure  
3 one is -- you know, they take differing amounts of times for a variety of different reasons.  
4 It's not to say one is better than the other. I'm just -- I just -- for my own edification, it was  
5 interesting for me to go back and kind of take a look and try to find some perspective in  
6 this.

7 I think part of it is with the other rulemakings, we don't know how much  
8 time it took prior to when the committee first got its draft to look at. And here we are  
9 keenly aware of how much time that's taking.

10 Hopefully, the theory goes that by the time the committee in fact reviews a  
11 draft and we issue a notice of proposed rulemaking for publication for comment, that what  
12 you've invested at the outset you make up in the back half of the process, that it doesn't  
13 take two years from the time that you issue the notice of proposed rulemaking to actually  
14 get a final rule in place.

15 But be that as it may, that was more just kind of an observational thing.  
16 Because I've heard from a number of people a concern about time, and I share it. So I was  
17 able to go back and just do that for a little bit of comparison purposes.

18 I know there are other issues relating to the rulemaking process that don't  
19 have to do with time. And my comments don't address those at the moment.

20 ACTING CHAIR BATTLE: I'd like to just, for the committee's sake, so  
21 that you'll understand, the status report on rulemaking protocol was put on the agenda  
22 because I asked us to revisit the protocol for rulemaking. Because in my view, I do have  
23 some concerns about the overall protocol and how it works.

24 The way that this protocol is set out, as we have seen, a working group has  
25 met on three occasions. I think we've had a facilitator who ed to facilitate those meetings.  
26 And the costs now on the hindsight, having gone through this process from beginning to  
27 end, as I understand it, has been quite a bit, and more than we expected that it would be.

28 In addition to this, though, we have gotten very good rules -- two things.  
29 One, I think that probably the process has been excellent in that we've had an excellent  
30 facilitator. We've had very good people who have substantive things to offer to be  
31 participatory in the process.

32 My concern has been that the final decisions about what that reg needs to be  
33 are going to be made by the board members, and the board members are excluded from the  
34 entire negotiated reg making process. And all of the judgments are made before the board  
35 ever gets it by this group of people that have met on a number of occasions at great  
36 expense to the Corporation.

37 So by the time the board gets it at the end of that process and begins their  
38 evaluation, my concern is that the board is so late in the process, first giving its first view,  
39 that it -- what I don't want to see happen is us undo a lot of the good work potentially that's  
40 already gone on.

41 But that work has gone on without any view about the perspective that

1 board members might have about how the judgments needed to be made through the  
2 process. And so I really think on two fronts that we need to take another look at the  
3 protocol, to determine whether we need to have a reg/neg protocol -- that's one thing -- or  
4 if we have it, whether we can do it in a way that's not as expensive as the way that we've  
5 done it thus far.

6 And the third and most important part, in my view, is that I think that the  
7 board members who have the task and the responsibility and the obligation to make the  
8 judgments and the decisions about what the regulations ought to be be involved in the  
9 process, move it along, so that those judgments are embedded in what we get as a final  
10 product.

11 Right now, I would feel a bit reticent to take a reg that's gone through this  
12 process of having had all of the field and the staff deeply involved in it, and then make my  
13 judgments on the back end, without that process being a part of how it's negotiated and  
14 how it's decided.

15 So with that being the case, my suggestion -- and that's why the next item is  
16 on the agenda, consider and act on Rulemaking Protocol, is that we might want to take  
17 another look at this.

18 We're at a good juncture. We've had it go through a process. We've seen  
19 some of the very positive things that a reg/neg process can bring. And we've also seen and  
20 experienced, you know, some things that are real challenges for us, some of them being  
21 financial from our standpoint of view, for how that works. And from the board's  
22 standpoint of view, and my concern has been the judgment, the board's judgment and  
23 involvement in that process.

24 So I know I've seen several people say that they've got some concerns or  
25 issues they want to raise as well, so let me start with Maria.

26 MS. MERCADO: I'm just going to actually address a point that Mattie  
27 raised a few minutes ago because I think that the analysis of some of these rules taking  
28 three years from beginning to end is a little warped.

29 And the reason that it is is because every congressional year, for it seemed  
30 like at least the first five or six years of our tenure, we were having to draft new  
31 regulations to new restrictions from Congress.

32 And so although we started with this regulation two years ago because we  
33 had to implement the immediate regulatory -- and I say that, having been an ad hoc  
34 committee member of the ops and regs committee all along --

35 ACTING CHAIR BATTLE: She was. She was there at every meeting.

36 MS. MERCADO: -- is that we had ops and regs committee meetings that  
37 lasted all day long, and sometimes into the following day, because of all the restrictions  
38 that Congress put upon us that had to be dealt with immediately so the field had some  
39 direction of how it was that they were to implement that particular congressional  
40 restriction.

41 So looking at the fact that we started with a regulation three years ago, three

1 years before, and ended it three years later, didn't mean that we weren't doing an inordinate  
2 amount of work in between on all these other regulations that had to be made.

3           So I don't think that that is a very good analysis of looking at the time span  
4 of what that particular time period made. I think what you ought to look at is that those  
5 new restrictions, congressional restrictions, that were given on us from one day to the next,  
6 and how quickly those were implemented and done by the board, and of course the  
7 members of the field that had input in that.

8           MR. ASKEW: We've got these two underway that we're going to finish,  
9 and we've got no more pending now that we're going to start negotiated rulemaking on.  
10 And my review of the list that Mattie gave us that we're going to talk about in a minute, I  
11 don't think any of those call for negotiated rulemaking.

12           So I think what we ought to do is probably finish up these two, and then do  
13 an evaluation of those first two processes, how much it cost, what the results were, the  
14 people who participated in it, get some feedback from them about what they felt the value  
15 of it was, and then take a look at it, you know, from that perspective once these are over.

16           I think to change this in the middle before we finish these two might be a  
17 little premature. And since we've gotten no more pending, or even getting underway,  
18 there's really no urgency to changing it right now because we don't have anything in the  
19 pipeline to begin.

20           I wanted to ask Mattie if you feel that now that you've been through two -- I  
21 mean, the first one was the first one. Now that you've been through two, do you think it's  
22 possible to do these more efficiently now that we've learned something through these first  
23 two that we didn't know before, or do you think these are probably fairly typical of a  
24 complicated reg, that it's going to take this long to do each one of them?

25           MS. CONDRAY: In a very lawyer-like answer, I'm going to say a little bit  
26 of both. I think we can certainly shave time off of the front end. You know, it took us a  
27 year from the time that the issue was identified to when we actually had the first working  
28 group meeting.

29           I don't think it has to take a year. That's just a matter of everybody who's  
30 part of the process, from the staff to management and the board, making it -- the things that  
31 have to get done, making them happen faster. I think there's certainly time to take off on  
32 that end.

33           The amount of time that it takes to get the rulemaking done, the hard work  
34 of the committee, of the working group, that does take a considerable amount of time.  
35 Maybe it can be a little more efficient. Maybe only undertaking one at a time would be  
36 more helpful, given staff demands, not only from my perspective but the perspective of a  
37 number of the members of the working group from outside LSC.

38           The working groups were not the exact same group of people. But there  
39 were several members on each working group who were the same. So to the extent that I  
40 was trying to do two of these while doing everything else I do, the same was said for all of  
41 those people, that they were trying to do two of these while doing their regular job. And so



1 that -- the scheduling thing, I mean, that was part of it.

2           So I think there's probably some efficiencies to be gained. But it's not -- I  
3 don't think it's going to -- you know, if you're going to do the process, you have to give it a  
4 little bit of time to work out.

5           One of the things that -- although we're talking about having been through  
6 it, we really haven't finished either of the processes. And I think, having gone through  
7 negotiated rulemakings in previous jobs, as I've said, what you lose in time at the  
8 beginning of the process, you hopefully make up some more time towards the end of the  
9 process.

10           Because you get to the point where you have a draft notice of proposed  
11 rulemaking. Because the stakeholders have been at the table, you don't have to necessarily  
12 put it out for 60 days' comment or 90 days' comment. A 30-day comment period is  
13 probably all you really need because people have already given their input. And even if  
14 there are things about which we disagree, those -- the stakeholders know what it is that  
15 they're already not in agreement with.

16           ACTING CHAIR BATTLE: I guess the dilemma for me is that even  
17 though you have that as your preliminary document, what it is that the committee  
18 recommends to the board may be something different because it will breathe the thought  
19 processes of the board members.

20           MS. CONDRAY: Right.

21           ACTING CHAIR BATTLE: And so that's what gets put out to comment.  
22 And then you get the stakeholders back involved if whatever it is that we come up with is  
23 different from what had been negotiated prior to.

24           MS. CONDRAY: That's true. And that's one of the things that, when we  
25 sat at the outset, we were aware of.

26           ACTING CHAIR BATTLE: You know, so I guess what I'm saying is that  
27 you end up redoing it twice. I don't -- you know, and that judgment, the committee's  
28 judgment, is as important at the beginning of the process as it is at the end.

29           So I guess what I'm saying is that I don't disagree that that may be -- some  
30 kind of process that involves negotiated reg making is something that we can consider.  
31 But all I'm saying is I don't want to have to redo the thought processes of the board's  
32 involvement at such a late stage that it could unseat the whole process and cost us much  
33 more in the long run.

34           And I'm not going to suggest that the board not have its judgment included.  
35 You know, there's one way to say, well, if everybody has agreed to it, then, board, you  
36 don't have anything to say about it because they've already agreed.

37           Well, no, that's not the way the process works. We're here to give our  
38 judgments as to what the regs ought to say, and to set the standard for what the policies  
39 undergirding those regs ought to be about. And the sooner the people who are involved in  
40 the process know what that is, the more effective the negotiated process can be.

41           So I'm hearing what you're saying and I'm agreeing with you that there are

1 ways to make it a little bit more efficient. And I agree with you, Bucky, that getting all the  
2 way through the process and getting to the end makes sense.

3 But I also think that before we end our term -- we've been through this in a  
4 number of different ways -- I think it does make sense for us to articulate what we've  
5 learned about having extensively rewritten the entire regulatory code for legal services  
6 over the period of the past nine years.

7 And, you know, I would venture to say that if you would go back and to  
8 read what the time frames were after the restrictions were put in, that this business about  
9 two years only applies to specific regs where there are very complex issues, and not the  
10 whole process and what we did.

11 And even with some of the more complex ones that we had to address  
12 where there was a need for us to articulate quickly to the field what the standards were  
13 because they needed to be in place, this committee was able to do that and do it quite  
14 efficiently and quite quickly within put from the field, with the comment provisions in  
15 place, you know, using the process that was in place prior to this reg/neg process.

16 So I just want to make sure that we get a chance to articulate what our  
17 views are on this issue before we're dead and gone. Go ahead, Doug.

18 MR. EAKELEY: I think we just articulated it. I was going to second  
19 Bucky's motion.

20 ACTING CHAIR BATTLE: Was that a motion? Was that a motion or just  
21 a comment?

22 MR. EAKELEY: The sense of the board, the sense of the committee, that  
23 at the conclusion of the -- between negotiated rulemakings, we ask for an evaluation that  
24 hopefully gives this committee and this board the opportunity to participate in the  
25 evaluation and add its accumulated experience on it.

26 ACTING CHAIR BATTLE: But this is my concern about that. Mattie has  
27 done an excellent job of drafting to a level, but it's not the final draft. And we have not yet  
28 seen 1611 or 1626 as of yet.

29 Then the end of the process means that we review these, and then they go  
30 out for comment. And as she suggested, it's either a 30-day or a 60-day time frame for the  
31 comment. Then, after it comes in for comment, we do our final rule.

32 So we're talking possibly another four months, four to five or six months  
33 before it's the end of the process, before we actually begin to talk about our thoughts about  
34 how this process can be done better. We may not be around at the end of four or five  
35 months.

36 MR. EAKELEY: Well, we'll get the draft -- the proposed rules by the next  
37 board meeting, I assume.

38 MS. CONDRAY: Certainly 1611, and I would think 1626.

39 MR. EAKELEY: Yes. That would be very --

40 MS. CONDRAY: 1611, I'm confident I can say that.

41 MR. EAKELEY: That would be really disappointing if we didn't.

1 MS. CONDRAY: I know. If I can summarize what I'm hearing you saying,  
2 and I think you've hit upon a basic philosophical approach to the Rulemaking Protocol, I  
3 think underpinning the Rulemaking Protocol that the board adopted and the whole  
4 adoption of the negotiated rulemaking process was a philosophical position that says, we  
5 want to engage in more collaborative rulemaking.

6 We want to use staff and the field to put their heads together and do all of  
7 this hard work for us. And we as a board have -- we reserve the right to make judgments  
8 about it because it will come before us, and to provide policy direction.

9 I think you were right that there was -- in this process, there is an  
10 underlying sense from the board that if the field and the staff come to agreement on  
11 something, we are not going to go out of our way to second-guess those areas of  
12 agreement.

13 We reserve the right to do so if we feel that you've gone out into left field,  
14 and if there are areas of disagreement between staff and the field, between the OIG and  
15 management, between the OIG and the field, who are really kind of the main stakeholders,  
16 and/or any other stakeholders who have been at the table, obviously have the final say in  
17 making those policy calls as well as agreeing or disagreeing with what everybody else has  
18 come up with.

19 But I think you're right. There is an underlying philosophical choice there  
20 to seed a certain amount of authority, work, whatever, to the stakeholders that was  
21 embodied in this. If that, upon reflection, is not what the board wants to do, then there  
22 probably should be some change to the protocol.

23 But then I think what the committee should then discuss is that  
24 philosophical underpinning of the approach.

25 ACTING CHAIR BATTLE: And that's what I'm saying. I don't think we  
26 have to wait for the end of the process to begin that dialogue. That is precisely my point. I  
27 think we can start talking about that now.

28 MR. EAKELEY: Well, why don't -- I mean, the sense of Bucky's  
29 suggestion was that we initiate an evaluative process. You're right, if we wait till the final  
30 final, we're not going to be around to do that.

31 But these rules will hopefully have emerged by the next board meeting, and  
32 that should be a sufficient time to look at them and what the process has produced, and  
33 compare with the prior experience and with the philosophical approach, and also to get the  
34 perspectives from the OIG and the field and other stakeholders who participated.

35 ACTING CHAIR BATTLE: Go ahead.

36 MR. ERLBORN: I really don't know that it's a great deal of difference  
37 whether we address this now or some time in the near future. I know I have made up my  
38 mind. I have been shocked by the cost, something that we did not contemplate. I  
39 remember having a teleconference with Doug, and I think he joined our being surprised at  
40 how costly it can be to have the reg/neg.

41 I formed a positive position relative to reg/neg when I was in Congress and

1 I was observing it from outside. Most of it was the Department of Labor. And it seemed  
2 to me that the industrial giant knew a lot more about the workings inside his plant or her  
3 plant, and I thought that the reg/neg made good sense, and you had people with some real  
4 knowledge participating.

5 I don't think that it -- that may have been an inaccurate observation. It was  
6 just my impression. But I've been watching this operation, and I think it's wasteful,  
7 time-consuming, and I think if the board is to have its imprint, as LaVeeda has said, that  
8 should be done in putting it together to put it out for comment, not waiting for a year  
9 to -- and who knows how many thousands of dollars to work on this.

10 I'm not sure that you change an awful lot of the positions through the  
11 negotiation. I think that mostly they're going to come out pretty close to where they were  
12 before the negotiations began.

13 So whether we act on this now or later I guess doesn't make a great deal of  
14 difference. But I've pretty well made up my mind.

15 MS. MERCADO: I just want to echo President Erlenborn's position, which  
16 is basically that philosophically, from the front end, because the board is the governing  
17 body, the policy-making body, of the Legal Services Corporation, that it is incumbent upon  
18 us to be involved in any process of rulemaking from the very beginning.

19 And, I mean, I can't count the times that we'd already had input from the  
20 field and input from the staff on a rule that was brought before the committee, and we  
21 totally changed it because of our different experiences, of our view, both politically, from a  
22 practical side, whether it's me being a sole practitioner and what the realities of the world  
23 are out there versus what you're asking people to do on regulatory impact about the local  
24 programs' work.

25 There is a whole lot of difference. By being involved from the beginning,  
26 especially when it's costing us a lot of money to do this process, then it really behooves us  
27 to be aware of not wasting any more money by having to reinvent the whole process of  
28 going through a rule that your board, right or wrongly, may have differences of opinion  
29 with what was already recommended after you've already spent this time and energy and  
30 money to do that.

31 So I don't think that we need to wait until the process of the two pending  
32 regulations are completed in order for us as a board to say, philosophically, we believe that  
33 the board should be in from the very beginning, that it shouldn't be a cost-prohibitive  
34 process, and that you still get the input from the field and from the stakeholders that are out  
35 there, given the proper amount of time, which we've always had.

36 And that I think that you can go back and look at every single congressional  
37 session that we've had since we've been in this board, and you will see, we had some  
38 turnaround on some of those rules within three or four months. And I don't see why we  
39 can't get that done in some of those rules.

40 And our staff was just as overworked. Probably even less staff than we  
41 have now, and they got all that regulatory work done. Now, maybe they obviously were

1 working above and beyond the time frames or periods that they had, but in any event, I  
2 would want to make sure that we do deal with the policy issue now.

3 ACTING CHAIR BATTLE: Okay. Well, there's -- is it a motion that  
4 breathes in all of what we've said that you can do, Bucky?

5 MR. McCALPIN: Yes. Restate the motion.

6 MS. WATLINGTON: This is one time I can be okay.

7 MS. MERCADO: Well, he actually didn't formally make a motion. He  
8 was just making --

9 MS. WATLINGTON: Yes. Bill hasn't had an opinion. There's two sides  
10 here. Maybe Bill could come up with -- what do you say, a medium, a middle ground?

11 MR. EAKELEY: I think we need a little bit more preparation and input and  
12 reflection before we change a protocol that we spent a lot of time developing. And I don't  
13 think that there's any urgency that we do it today rather than at the next board meeting. It  
14 would be nice to put something in process that brings it back at the next board meeting.

15 ACTING CHAIR BATTLE: Well, all I'm suggesting, right, is that we put  
16 in process, that we give some direction to what that process needs to be for the next board  
17 meeting.

18 MR. ASKEW: And when I said "end," I didn't mean wait till the very end.  
19 I think once the negotiation part is over with and a draft regulation is published, then we  
20 could begin the evaluation process at that stage.

21 Because what we're really looking at is that whole process up to that point.  
22 We're not looking so much at what happens from there.

23 MR. McCALPIN: I think you'd better get into it before publication.

24 MR. ASKEW: Well, I just think it's better to evaluate something when it's  
25 over rather than when you're in the middle of it. That's my concern. Because there will  
26 still be other things to happen or develop that are going to affect the outcome of that  
27 evaluation.

28 And one we know is going to be over with, or we're pretty sure it's going to  
29 be over with, by the time of the next board meeting, 1611.

30 ACTING CHAIR BATTLE: Let's try this. Let me just make a suggestion.  
31 Just -- I'm listening to what all of the members and the president have said.

32 Why don't we begin the process of looking at what will work as a  
33 rulemaking medium that allows for board input on the front end and less cost and greater  
34 efficiency? We can begin to look at that and get a report on what that might be at our next  
35 board meeting. How does that -- is that --

36 MR. EAKELEY: As long as it doesn't slow up 1626.

37 ACTING CHAIR BATTLE: Where's Victor? That's his staff. If he's  
38 anywhere in the room --

39 MS. CONDRAY: That's me.

40 ACTING CHAIR BATTLE: I know. That's why I'm asking Victor because  
41 Victor needs to find some resources that don't -- I think you're right, that don't slow up

1 your finalizing the drafts on these two. Because I know --

2 MS. CONDRAY: No. I don't think they will.

3 MR. FORTUNO: If the board would like that done, it will be done.

4 MR. EAKELEY: Actually, it's really looking also at Len Koczur and the  
5 IG and Linda Perle, one of the very active participants and proponents of the negotiated  
6 rulemaking. It really is making sure that we have sort of a collaborative input and  
7 evaluative exercise going on, by not just the Office of General Counsel.

8 MR. FORTUNO: We will consult interested parties and come to you with  
9 what we hope is a collaborative effort so that at the next meeting, the committee is in a  
10 position to take this issue up again. And if you choose to take some action, you can do so.  
11 But if you are satisfied that it can be put off, you can do that as well.

12 MS. FAIRBANKS-WILLIAMS: And you would have the cost of each one  
13 of these in front of us at that time?

14 MR. FORTUNO: Yes.

15 ACTING CHAIR BATTLE: It's here -- don't we have that now?

16 MS. CONDRAY: I can tell you that now. It will cost \$60,000 because  
17 even though the process is not done with the -- even though the rulemaking process is not  
18 done, the facilitator process is done because the contract is over and we ran out of money.

19 I will say the particular fellow who has been our facilitator has done some  
20 under-the-table work for us because he's involved in the process and wants to see it done  
21 right.

22 MR. EAKELEY: You didn't mean it quite the way it came out.

23 ACTING CHAIR BATTLE: He's done it without getting paid.

24 MS. MERCADO: He's done it pro bono.

25 MS. CONDRAY: Well, in terms of his contract, he's doing it on his own  
26 time now.

27 MR. EAKELEY: Right. Right. That's what we --

28 ACTING CHAIR BATTLE: That's a better way of saying it.

29 MS. CONDRAY: He's doing it on his own time.

30 ACTING CHAIR BATTLE: Bill, I saw you --

31 MR. FORTUNO: So just to be clear, the \$60,000 is for the two reg/negs,  
32 but it's just for the facilitator's time.

33 ACTING CHAIR BATTLE: Okay.

34 MR. FORTUNO: And as Mattie has indicated, he has in fact provided  
35 some pro bono services, if you will -- maybe that's a better expression than "under the  
36 table" -- so that if he were to have been paid for all of the work that he did, it probably  
37 would have been somewhere closer maybe to 70,000. But that's for two regs.

38 ACTING CHAIR BATTLE: Okay. Bill?

39 MR. McCALPIN: As a member of ops and regs in our early years, I was  
40 very familiar, along with John and others, about how that went along. Since I've moved  
41 over to provisions and been on the periphery, I'm not quite so sure.

1                   So I think what I'd like -- I suspect what we're going to wind up with is  
2 somewhere in between the old and the new. And I'd like to see the differences, similarities  
3 and differences, between the old approach and the new approach, and see where we want  
4 to incorporate elements of each.

5                   MR. ASKEW: Sort of a side-by-side comparison of how the process  
6 works?

7                   MR. McCALPIN: Yes.

8                   MS. MERCADO: A comparative study.

9                   MR. EAKELEY: Actually, Mattie, that's not as Herculean a task as it  
10 sounds.

11                  MS. CONDRAY: No, no, since we never had a written procedure before.  
12 And certainly I dealt with that in the drafting of the Rulemaking Protocol, so that's not  
13 going to be a problem.

14                  ACTING CHAIR BATTLE: Okay. So we really don't need a motion. I'll  
15 just report out that we're going to have this in process and in progress, to be reported out  
16 the next time we meet. And maybe by then our real chair will be back.

17                  MR. EAKELEY: Maybe we won't be around.

18                  ACTING CHAIR BATTLE: Or maybe we won't even be here.

19                  MR. ASKEW: Maybe we'll be board members for life.

20                  MR. McCALPIN: A long life.

21                  MR. EAKELEY: What they're called is trustees emeriti.

22                  ACTING CHAIR BATTLE: Okay. We can move on -- thank you very  
23 much, Victor -- to consider and act on Limited English Proficiency Guidance.

24                  MS. CONDRAY: There's a memo in the books -- I believe it is on page  
25 215 -- on this issue. Our grantees, as recipients of federal assistance, are subject to Title 6  
26 of the Civil Rights Act, which prohibits, among a host of other things, discrimination on  
27 the basis of national origin.

28                  The government has been on -- it's a government-wide effort to issue  
29 guidance regarding national origin discrimination as relates to persons of limited English  
30 proficiency. There was an executive order issued by the White House to government  
31 agencies to issue guidance on this issue.

32                  The executive order does not apply to us, to LSC, because we are not a  
33 federal agency. However, because our recipients are recipients of federal assistance, the  
34 Title 6 requirements do apply directly to them.

35                  And in addition, our grant assurances say that as a matter of the grant  
36 assurance, the grantee assures us that they will not engage in national origin  
37 discrimination.

38                  The Department of Justice has recently issued fairly extensive guidance that  
39 went through a public comment period to its grantees about how -- the guidance is in the  
40 way of best practices. If you're doing these things and if your programs are taking account  
41 of these factors to serve your limited English proficiency populations, you should be okay.

1 They didn't issue a regulation.

2 And part of the executive order tells agencies to use the Justice Department  
3 guidance as the basis for the guidance that they have to individually put out. So it  
4 occurred to us, in looking at this, that there were three real -- three options for LSC.

5 One, LSC could issue its own guidance to its grantees, probably based in  
6 part on the DOJ guidance, but amending it for our own particular circumstances. Doing so  
7 would be analogous but not quite what we did with our 1624 regulations, prohibition on  
8 discrimination on the basis of handicap.

9 The Rehabilitation Act on which those regulations are based again does not  
10 force LSC to issue guidance on that subject, but does apply directly. In that case, the  
11 Corporation decided to issue regulations.

12 So it would be similar in terms of, well, our grantees have a responsibility  
13 to be in compliance with Title 7. We have a grant assurance saying that they're going to be  
14 not engaging in national origin discrimination. It might be helpful to our grantees to issue  
15 some guidance. I suspect most of our grantees are already working in this area, given their  
16 client populations, and it might be a good opportunity for our grantees to be able to  
17 comment to us on what they are doing and help cross-pollinate and that information back  
18 out. So that's kind of one option.

19 If you want to look at a disadvantage of such an option, it might be that  
20 arguably we could find ourselves obligated to investigate a claim. There's some difference  
21 of opinion about what that obligation currently is in terms of Title 6 obligations.

22 But if we issue guidance, there becomes a question of, well, what are we  
23 obligating ourselves to? Although I say again we would not have to issue a regulation, I  
24 think it could be guidance in the way of best practice kind of stuff.

25 Option two is that the Corporation could decline to issue its own guidance,  
26 but at least send out something to the grantees reminding them of their independent Title 6  
27 obligations, letting them know that this Justice Department guidance is out there for  
28 Justice Department grantees, Department of Justice grantees, but that they can look at that  
29 and glean what they want from it as a useful model.

30 That gets us part of the way. A disadvantage of that approach is that DOJ  
31 guidance may or may not be particularly helpful to our grantees on its own, and I wonder if  
32 that course of action could lead to confusion if one of our grantees said, well, we were  
33 following Department of Justice guidance, yet we looked at what they were doing and  
34 decided it was inappropriate. You know, have we sent mixed signals to our grantees? So  
35 that's kind of a pro and a con.

36 MR. EAKELEY: Can I interrupt you right there for a second? Have we  
37 looked at the DOJ guidance to any great extent and made a preliminary judgment as to  
38 whether or not it's applicable to the work of our grantees, or that it would be confusing or  
39 helpful?

40 MS. CONDRAY: I've read through it and it makes sense to me. But I  
41 wouldn't want to say off the top of my head that it's going to be applicable all across -- I



1 mean, which is part of the reason why even the executive order instructs agencies to  
2 implement their own guidance, to use the Department of Justice guidance as a place -- as a  
3 base, but issue their own --

4 ACTING CHAIR BATTLE: How are best practices utilized now? If we  
5 were to just take the approach that you suggested in terms of having some best practices  
6 that we put out that include DOJ guidance, but maybe some other things, what impact does  
7 that have from a standpoint of our responsibility?

8 I agree with you, raising the concern that if we issue as a reg or as a  
9 responsibility a reg that requires that we -- that there not be violations of Title 6, then do  
10 we have an obligation to determine compliance, investigate? You know, I have some real  
11 concerns, as you do, as to whether we're the agency to do that.

12 But yet you've talked about best practices as one approach, and then just  
13 abdicating completely to DOJ and just say, hey, go look at what DOJ has done and we  
14 aren't going to do anything on this, is there -- tell me, first of all, if you use the best  
15 practices approach, what does that really mean?

16 MS. CONDRAY: Well, in my own mind, if we issue our own guidance, the  
17 way I would want to see it drafted would be much similar to the approach that the  
18 Department of Justice has taken, is if you're doing these things, you should have a plan for,  
19 you know -- and if you're going to have a plan, if it does these things, that should keep you  
20 in compliance with Title 6. We think these things --

21 MR. EAKELEY: Sounds like a guidance.

22 MS. CONDRAY: Yes. It's guidance as opposed to a rulemaking  
23 obligation.

24 ACTING CHAIR BATTLE: Do we do compliance on guidance? I mean,  
25 in other words, if we go and we've got a grantee that is doing these things, when we go out  
26 to do our inspections and reviews, do we look to see if they're actually following our best  
27 practices or is that still under the purview of some other agency to look at whether you're  
28 in compliance with Title 6?

29 MS. FAIRBANKS-WILLIAMS: If you look at what they're spending on  
30 interpreters and so on and so forth, you know what they're doing. Because we pay for  
31 interpreters.

32 ACTING CHAIR BATTLE: I understand. I'm just -- I'm trying to figure  
33 out what additional obligations fall from having a best practices approach.

34 MS. CONDRAY: Well, you know, there's an interesting question, and  
35 that's addressed in my footnote here, that there have been prior opinions from the Office of  
36 Legal Affairs that LSC doesn't have a duty to -- one in particular, a duty to investigate  
37 claims of sexual harassment, which is not a Title 6 issue, but it's a discrimination Title 7  
38 issue.

39 The problem I personally have with this opinion, this is something that  
40 hasn't been aired. It hasn't come to culmination. But with this issue, I think it's incumbent  
41 to get your hands over it, is that under Part 1618, the Corporation has a duty to investigate

1 claims of noncompliance with the grant assurances.

2 The grant assurances say you will not discriminate on the basis of XYZ.

3 ACTING CHAIR BATTLE: You've got an obligation to investigate. Yes.

4 MS. CONDRAY: So I don't see how we don't have an obligation already  
5 existing to investigate those claims. I know I'm -- I don't know that my opinion is shared  
6 universally throughout the Corporation on this.

7 MR. EAKELEY: Well, that leaves --

8 MS. CONDRAY: But then -- so for my mind, if we issue guidance or best  
9 practices -- that's not even a regulation -- I don't see an enhanced risk to the Corporation of  
10 having to investigate things because I think that obligation is already there.

11 MR. EAKELEY: I think if you ask the board, we'd be in complete  
12 agreement with that. But I could not see any -- does management have a position or  
13 recommendation, and does the OIG have a recommendation or position on these three  
14 options?

15 ACTING CHAIR BATTLE: You've got three options, but you don't tell us  
16 if there's a management recommendation.

17 MS. CONDRAY: I don't know. I will defer to the president if there is a  
18 management recommendation. I can tell you what my personal recommendation would be.

19 MR. EAKELEY: That wasn't --

20 MR. ERLENBORN: We've not been called upon or had this raised as an  
21 issue to take a position on.

22 MS. CONDRAY: I think the thinking was even about whether or not we  
23 wanted to do this and what approach we wanted to take. We wanted to get the board's  
24 input on first.

25 If the board wanted us to develop guidance, obviously then we would be  
26 going back and developing guidance, which would obviously then come before the board  
27 for -- you know, to kind of get some board input about what sort of guidance we should do.

28 It would go out for public comment. It would have the board input before  
29 we got to the point that we were issuing any final guidance.

30 ACTING CHAIR BATTLE: Okay. So you're suggesting that we just have  
31 guidance on this?

32 MS. CONDRAY: That's my personal suggestion that -- I think doing  
33 nothing, I don't think, is necessarily helpful for our grantees.

34 MR. EAKELEY: But I'd like to know more about the extent to which the  
35 DOJ guidance more or less adequately informs and guides, and also the potential  
36 compliance morass adopting our own guidance would get us into. Those are the tradoffs, I  
37 think, that are presented in the memo.

38 ACTING CHAIR BATTLE: Could we then -- we've got to consider and act  
39 on the agenda, but I don't know that we're ready to act.

40 MS. CONDRAY: We don't have to act, obviously.

41 ACTING CHAIR BATTLE: Yes. I don't think --

1 MR. EAKELEY: Send it back to -- I think we want the OIG input in this,  
2 too. Or maybe just send it back and --

3 MS. CONDRAY: Absolutely.

4 ACTING CHAIR BATTLE: But with this, at least, as a proviso from the  
5 board, from what I'm hearing, I guess we want to make sure that where there are activities  
6 that implicate Title 6, that our grantees are informed of what the appropriate way to  
7 address those issues might be in a manner that doesn't obligate us to actually be the  
8 enforcer of Title 6.

9 MS. CONDRAY: Enforcing particular standards. Right.

10 ACTING CHAIR BATTLE: Because I think that enforcement issue is one  
11 for the courts, one for any agency. I don't know under Title 6 if there's Department of --

12 MS. CONDRAY: EEOC.

13 ACTING CHAIR BATTLE: EEOC or whoever enforces it. There's an  
14 enforcement agency already out there. We don't want to have standards that may differ  
15 from that enforcement agency as to how those things are addressed.

16 But we do want to make sure that we have addressed, from a standpoint of  
17 providing best practices or guidance, as it is breathed into the kind of work that our  
18 grantees do.

19 MS. MERCADO: And again, how that applies in tandem with our grant  
20 assurances for the grantees on the general language of no discrimination based on sex,  
21 national origin, handicap, everything, pretty much the litany of Title 7 discrimination.

22 But even secondly, a lot of our grantees, this particular guidance does apply  
23 because a lot of them get funding for the domestic violence grants on assistance to them. I  
24 don't know how many of our grantees do, but I know they do from DOJ. And I'm sure that  
25 they have that guidance that they are affected by.

26 MS. CONDRAY: I'm sure that's absolutely right. Anybody who's getting  
27 federal grants, if they're getting them from DOJ, they're going to be subject to the DOJ  
28 guidance. If they are getting any other grants from any other agencies -- I know like the  
29 IRS issues some grants -- if there's anybody else out there, that other agency will have to  
30 issue its own guidance which they will have to follow.

31 MS. MERCADO: Like a lot of them have older or elder or senior citizens'  
32 programs. You know, they have Title 21 --

33 MS. CONDRAY: Yes. And if they get Veterans -- if there's maybe any  
34 Veterans Administration money, I can imagine, yes, they're going to have to follow similar  
35 guidance.

36 MS. MERCADO: I think that a lot of our grantees are subject to this. It's a  
37 question of whether we as a general policy do it across the board.

38 MR. EAKELEY: I'll let Bucky articulate this.

39 MR. ASKEW: No. I think we've reached a consensus, haven't we, that  
40 we'll send it back to the staff to come back at our next meeting with a staff  
41 recommendation to us, after looking at the issues that we've raised as a committee here

1 today?

2 ACTING CHAIR BATTLE: Yes. Right. But without us actually getting  
3 into the compliance issues, if there are other agencies that do it.

4 MR. ASKEW: Right.

5 ACTING CHAIR BATTLE: All right. Okay. Consider and act on  
6 potential identification of new appropriate subjects for rulemaking.

7 MS. CONDRAY: Again, you've got a memo in the book about this. I think  
8 we talked about this a little earlier today, and from some of the discussion from the  
9 provisions committee meeting this morning, that the board has not identified any new  
10 appropriate subjects for rulemaking in a while.

11 I think that has been in part because we had two hot and heavy negotiated  
12 rulemakings going on, and in part because of continued anticipation of a new board. With  
13 the working groups moving towards their end game and with the continuation of this  
14 anticipation of a new board, but not really knowing when it might happen, it seemed an  
15 appropriate time for the committee to at least discuss, A, if the committee wants to  
16 recommend that the board set something else in motion at this time instead of just waiting  
17 indefinitely, or if the committee would prefer to continue to wait, and if the former, if the  
18 committee would like to recommend to the board to identify an appropriate subject for  
19 rulemaking, what that subject might be.

20 For the committee's deliberation, what I did was I reprinted from the regs  
21 review task force report the summary of the priority list that had been part of that report, as  
22 well as I excerpted just the summaries of each of those regs so that there was a little more  
23 information about what those regs were, for kind of background knowledge.

24 I will note that the first item, the highest priority item, that was identified  
25 then was what I will summarily call lesser sanctions. The termination, debarment,  
26 suspension, enforcement, and the whole lesser sanctions idea, that substantively remains  
27 what the Corporation feels, the staff felt, was its highest priority need in terms of  
28 substance. But we caution that that is going to be a bit rulemaking that will be laden with  
29 many policy implications and will take a long time.

30 So with the knowledge that that does remain our number one priority, the  
31 Office of Legal Affairs, in our memo, suggested that if the board wanted to identify an  
32 appropriate subject of rulemaking that would be less complicated, very well suited to  
33 notice and comment rulemaking, and not have the policy implications for the  
34 Corporation/grantee relationship and grantee activity implications, that the FOIA  
35 regulations, which was number three on our priority list, might be a good candidate for that  
36 as a way to kind of keep something moving in the pipeline but not take on a big chunk.

37 ACTING CHAIR BATTLE: Can I just ask a question? We don't have any  
38 regs that we need to address because there's some pending restriction or new language in  
39 an appropriation that we've gotten that we haven't address?

40 MS. CONDRAY: That's correct.

41 ACTING CHAIR BATTLE: So this is -- it's like seeing the light at the end

1 of the tunnel for me. We're at a point where we don't have a need to do it because  
2 Congress has asked us to do it. We're looking internally at what our needs might be.

3 MS. CONDRAY: That's correct. Trying to figure out what -- part of the  
4 regs review task force, the premise was, okay, we got through that flurry of all the stuff we  
5 had to do. Now let's look back at all of them and figure out what needs fixing, what could  
6 be better, what never got acted on because we were doing this flurry of other regulations,  
7 what's been sitting there for a very long time. And this was the list.

8 MR. ASKEW: Mattie raised two issues, I think: One, should we do  
9 anything, and then secondly, if we should, what should we do?

10 On the first issue, I think we should move ahead on some of these. I don't  
11 think there's much reason for us to just wait if there are some things that need to be done  
12 and can during our tenure.

13 However, I don't think we should take on ones that are big, complicated,  
14 controversial, or going to take a long time. And so I think we should move ahead with  
15 1621 and 1602, client grievances and FOIA, in the sense that they're fairly technical  
16 changes, from what I understand, probably not a lot of controversy around them, not a lot  
17 of time, would not require reg/neg. We ought to move -- put those in the pipeline and get  
18 them started.

19 Secondly, I'd recommend that we do outside practice of law, which is the  
20 last recommendation, because in 1995, Madame Chairman, your committee had a  
21 regulation ready to publish on that that we took off the table because of the changes going  
22 on and the restrictions that were adopted.

23 And frankly, I think we're at a stage where I think we could publish that reg  
24 and move it forward and see what we get from publication, and not have to start the  
25 process all over again.

26 My memory is -- and you can correct me -- that we were at a stage of being  
27 ready for publication on that regulation in '95, and it's been sitting ever since. And it's  
28 probably one that we could do fairly straightforwardly and get the comments back on and  
29 see if we could move it ahead.

30 ACTING CHAIR BATTLE: Mr. President?

31 MR. ERLNBORN: I would second the suggestion about bringing up the  
32 FOIA. The practice of law I have not thought about at all.

33 But the FOIA, I was one of the sponsors of the bill that created the FOIA.  
34 And at that time, we were told that this was going to be something for the public, for  
35 journalists, and historians. I have found out over the years, it's an easy approach to  
36 discovery for an awful lot of lawyers. That's what most of the -- at least a large number of  
37 the demands under FOIA result in.

38 But I think that that's something that could be brought up without a lot of  
39 controversy, and probably would be a good one to identify for action now.

40 ACTING CHAIR BATTLE: Okay.

41 MS. MERCADO: I would just add the 1607, governing bodies, only

1 because we've dealt with the whole issues of governing bodies in tandem with our diversity  
2 issues all this past year, that I think that that would be fairly a quick one to do as well; and  
3 that we ought to incorporate our whole goal and priority of diversity within the legal  
4 services community and our grantees.

5 ACTING CHAIR BATTLE: Okay. Doug?

6 MR. EAKELEY: I think if what we're after is relative ease of adoption  
7 during a short tenure period, governing bodies is going to be -- isn't going to qualify for  
8 that, Maria Luisa.

9 It's on the priority list, but I think that the client grievance procedure and the  
10 FOIA, and maybe the outside practice of law if in fact it was where it was when we left it,  
11 might be already biting off as much as we can chew, if not a little bit more.

12 MS. MERCADO: I know, you know. But I just hate diversity stuff  
13 constantly being put under the table, and more than one item agenda time after time after  
14 time. It just seems like it wouldn't take that much to incorporate a lot of what we already  
15 have on grant assurances to be put into a regulation.

16 ACTING CHAIR BATTLE: Can we do this? Because though what this  
17 writeup tells us is that these are the ones that we need to address, the specific issues  
18 involved in each will tell us how complex it might be for us to be able to make the  
19 changes.

20 For example, if FOIA has to do with the fact that there are new FOIA rules  
21 that we just need to take a look at, maybe, and include regarding technology, and we  
22 haven't had a chance to do that and there's great guidance out there on what we need to do,  
23 that's one thing.

24 If it's because there have been some complex disputes about FOIA that we  
25 need to resolve by changing the regulation, and those disputed parties are going to have  
26 opinions about it, you know, that's another thing.

27 What might make sense is that we now have identified this list. If we can  
28 get -- and if, as Bucky has said, for outside practice of law we have a reg ready to go out  
29 for publication, we just need to look at it again and send it out, it's already been through  
30 the process, we've already gotten input from everybody, it's probably at one stage, it might  
31 make sense to kind of, now that we've gotten the identification from the task force, go back  
32 and look at what the specific needs are of each of these regs. And from that, we can draw  
33 up a list and take the easiest one first. How's that?

34 MS. CONDRAY: Okay. Are you asking for a recommendation for the  
35 next meeting about this, or are you asking for kind of a call at the moment from the table?

36 ACTING CHAIR BATTLE: Next meeting. Next meeting.

37 MR. McCALPIN: Why don't you bite the bullet?

38 MS. CONDRAY: The committee doesn't want to recommend anything --

39 MR. McCALPIN: You haven't got unlimited time.

40 MS. CONDRAY: -- in the meantime to start working on between now and  
41 the next meeting?

1 MS. FAIRBANKS-WILLIAMS: That's taking too much time again.

2 ACTING CHAIR BATTLE: Okay. FOIA was number --

3 MS. CONDRAY: Three.

4 ACTING CHAIR BATTLE: -- was suggested number one, suggestion  
5 number one. Then client grievances was at least Bucky's number two, and then outside  
6 practice of law, three, and governing bodies was four. That's our list.

7 MR. ERLENBORN: Are you going to finish one before you start the next  
8 one?

9 ACTING CHAIR BATTLE: Probably.

10 MS. FAIRBANKS-WILLIAMS: No. Do them all together.

11 MR. ERLENBORN: Do them all together?

12 MR. ASKEW: Let me ask Mattie: Client grievances, it's my understanding  
13 that that's fairly technical changes that shouldn't be that complex, or am I --

14 MS. CONDRAY: That's my understanding. And part of the reason that  
15 1621 and 1602 ended up numbers two and three on the priority list was because it was seen  
16 if our first priority was something that was going to be big and hairy, that numbers two and  
17 three on the list were up there on the list because they were things that the task force  
18 believed could be tackled pretty easily, that they would not be very complex, and that they  
19 could be tackled easily, so that if you were doing something more complicated, you could  
20 do one or two of these easier ones at the same time and keep things moving.

21 1624 and 1607 -- 1624 was then seen as something that's a little harder. It  
22 merits considerable attention, but it wasn't the most immediate thing, but was going to  
23 require a lot of effort. So, you know, trying to space out the hard stuff.

24 With 1604, it's interesting because there was a feeling from the -- the  
25 committee recognized that we had -- we did have a notice of proposed rulemaking that was  
26 published but never acted upon. There was a feeling from within the task force from some  
27 people that we were more or less just ready to go. Just republish it, and that would be fine.

28  
29 There was also a feeling from some people on the task force that it  
30 wasn't -- that it would turn out to be not that easy, that we would republish it -- we could  
31 republish it very easily, but that the comments that we would get and the issues that had  
32 developed, the opinions that had developed, in the time from 1995 when that notice of  
33 proposed rulemaking was first put out, might make it not the easiest thing in the world to  
34 resolve at the end of the day.

35 So there was an ambivalence of feeling about that, which is why it ended up  
36 at the bottom of the six-item priority list.

37 MR. ASKEW: Let me make a motion.

38 ACTING CHAIR BATTLE: Okay.

39 MR. ASKEW: The motion is that the --

40 ACTING CHAIR BATTLE: Sorry. What was -- Bill, were you trying  
41 to -- before we get to the motion --

1 MR. McCALPIN: No. I just wanted to point to the fact that general  
2 counsel was coming up to say something.

3 ACTING CHAIR BATTLE: Okay. Oh, okay. I'm sorry. Go ahead.

4 MR. ASKEW: No. You go ahead before me.

5 MR. FORTUNO: No. I just wanted to respectfully remind the committee  
6 that we do have the two reg/negs that are in the works that need to get wrapped up. We  
7 have the report, the study and report, which will be a collaborative effort on the reg/neg  
8 process.

9 We've got some new major pieces of litigation. We've got possibly a  
10 strategic plan to work on. So I just wanted to caution that if there is something new to be  
11 added, that we might want to limit it to one or two and keep it to the simpler ones, just  
12 because otherwise we might have difficulty getting back to the committee at the next  
13 meeting with all of this in ready form.

14 MR. ASKEW: We're talking about October, Victor.

15 MR. McCALPIN: Not September?

16 M O T I O N

17 MR. ASKEW: All right. My motion is that we move the FOIA reg up, and  
18 hopefully, if possible, have something ready for the next meeting on FOIA; secondly, that  
19 we go forward and publish 1604 for comment, or republish, as the case may be; and that  
20 third, we move governing bodies up to be number one on the list of priorities to address  
21 once we get this other work out of the way.

22 ACTING CHAIR BATTLE: Is there a second for that?

23 MR. EAKELEY: Second.

24 ACTING CHAIR BATTLE: Okay. Properly moved and seconded. All in  
25 favor? Any discussion, first, by anyone?

26 (No response.)

27 ACTING CHAIR BATTLE: All in favor?

28 (A chorus of ayes.)

29 ACTING CHAIR BATTLE: All opposed?

30 (No response.)

31 ACTING CHAIR BATTLE: The motion carries. And that requires  
32 probably, Bucky, the least amount of staff work at this point since 1604 has already been  
33 done and FOIA is just small and technical. Okay.

34 MS. CONDRAY: Just for my own clarification, the decision with respect  
35 to 1604 is just to clean that up and move right to republishing it now?

36 MR. ASKEW: Right.

37 MS. CONDRAY: Okay.

38 MR. FORTUNO: Thank you very much.

39 MR. EAKELEY: It will be an interesting resolution to draft for tomorrow's  
40 meeting.

41 ACTING CHAIR BATTLE: Okay. We are now down to consider and act



1 on contract renewals for LSC's vice presidents Randi Youells, Mauricio Vivero, and Victor  
2 Fortuno.

3 MR. EAKELEY: As you'll recall, in a process that started a year and a half  
4 ago, I think it was, on the initiative of John McKay, we entered into contracts with our  
5 three vice presidents, in part to maintain the management team intact through what we  
6 anticipated to be a short and successful transition period, so that the incoming board would  
7 have the benefit of that management team for a period of time, during which they would  
8 presumably conduct their search for a new president.

9 Time has passed. We are still here. The now-extended contracts of  
10 employment will expire at the end of this year. We've attempted to give at least -- well,  
11 actually, we extended them for a year last time. I think it's fair to say that the likelihood is  
12 that the new board will not be sworn in before January of next year, but we remain hopeful  
13 that that will be sooner than that.

14 But nonetheless, I think John Erlenborn's recommendation, with which I  
15 concurred, was that consistent with the policy adopted by the board in the past, we should  
16 extend the contracts of the three vice presidents now for a further six months to and  
17 including -- actually, authorize the president to renew the contracts to July 1, 2003.

18 And that's what the resolution before you does, authorize the renewal of the  
19 contracts for the three to July 1, 2003, but does not take away the board's ability or  
20 authority at any time to change officerships.

21 ACTING CHAIR BATTLE: Yes?

22 MR. ERLBORN: I certainly endorse what Doug has just said. I was  
23 just reading the language, and it leaves me wondering as to whether it's clear enough.

24 The last paragraph, starting on the bottom of the first page, is, "Be it further  
25 resolved, however, that such renewals shall not impair the board's authority under the LSC  
26 Act or the bylaws to appoint or remove officers." I wonder if that is clear enough to pick  
27 up on the paragraph before that, which means that they have an employment contract  
28 which provides, if they are let go before the term expires, that they will get certain  
29 compensation.

30 Is it clear enough, is my only question?

31 MR. EAKELEY: Well, I think -- well, I didn't draft it. I think it  
32 is -- basically, the board is authorizing you to negotiate, in effect, an extension of the  
33 employment agreement, as distinguished from the officerships.

34 The board has final say on who the officers of the Corporation are, and  
35 those changes take place whenever the board says that they take place. But if we enter into  
36 an employment contract for a term certain and a decision is made to terminate that  
37 employment in advance, in that unlikely event, then there will be severance arrangements  
38 consistent with the employment agreement.

39 MR. ERLBORN: The way you describe it, I think it probably is quite  
40 adequate.

41 ACTING CHAIR BATTLE: Okay. Bill?

1 MR. McCALPIN: May I ask whether the word "negotiate" in the first  
2 "Resolved" clause means that there may be changes in the terms of the agreement other  
3 than the end date?

4 MR. ERLENBORN: Actually, as I recall, the board's resolution in the  
5 past -- and I may be wrong on this -- oh, no. It does have it here, the extension to July 1,  
6 2003.

7 It would be my intention in negotiating the contracts -- and I believe that  
8 that is up to me; as I recall, I signed the contracts in the past -- it would be my intention not  
9 to negotiate any new terms, but merely to extend the term of the present contract to July 1,  
10 2003.

11 MR. McCALPIN: That is what I was looking for, whether the word  
12 "negotiate" meant that all the provisions were wide open.

13 MR. EAKELEY: I don't think that's --

14 MR. ERLENBORN: They may try, but I'm not going to do it.

15 MR. EAKELEY: But I do think we need to get -- the president  
16 employs -- the board employs the president. We appoint the officers. And I don't think we  
17 should tie the hands of the president to do anything.

18 And there may be a cost of living increase along the way or something that  
19 other members of the -- other employees of the Corporation get. I don't think you want to  
20 take that away from these three because we're asking them to stay on.

21 MR. ASKEW: I agree. On the other hand, if they are what we might  
22 regard as significant modifications --

23 MR. EAKELEY: Yes. I think that is not -- that was not in contemplation  
24 when the word "negotiate" was selected in this resolution.

25 MR. ERLENBORN: I see now we have put this in play for negotiation.

26 MR. EAKELEY: No, we haven't.

27 ACTING CHAIR BATTLE: Are there any other questions from any other  
28 board members?

29 (No response.)

30 ACTING CHAIR BATTLE: Is there a motion regarding recommending  
31 this resolution?

#### 32 M O T I O N

33 MR. EAKELEY: So move.

34 MR. ASKEW: Second.

35 ACTING CHAIR BATTLE: It's been properly moved and seconded that  
36 we recommend to the board the Resolution No. 2002-016. All in favor?

37 (A chorus of ayes.)

38 ACTING CHAIR BATTLE: All opposed?

39 (No response.)

40 ACTING CHAIR BATTLE: Motion carries.

41 Okay. The last two items include consider and act on other business. Is

1 there any other business to come before this committee?

2 (No response.)

3 ACTING CHAIR BATTLE: Hearing none, public comment from anyone?

4 (No response.)

5 ACTING CHAIR BATTLE: If not, I'd like to thank Mattie for her  
6 outstanding work before us today, and the panel that came before us as well. We really  
7 appreciate that. I think we've had an outstanding meeting.

8 Just as a point of personal privilege, I've really appreciate the flowers that I  
9 received after my surgery from the Corporation. I really -- it was the biggest pot of  
10 flowers I got from anybody, so everybody admired them in my home.

11 MR. ASKEW: I think we should thank our chair for stepping in for Justice  
12 Broderick for maybe the third meeting in a row now and moving us through this very  
13 efficiently.

14 ACTING CHAIR BATTLE: Glad to do it. And hearing that there's no  
15 other business, this meeting is now adjourned.

16 (Whereupon, at 3:44 p.m., the meeting was concluded.)

17 \* \* \* \* \*