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LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS  
  
MEETING OF THE  
OPERATIONS AND REGULATIONS COMMITTEE

OPEN SESSION

Friday, January 25, 2008  
2:23 p.m.

The Legal Services Corporation  
3333 K Street, N.W.  
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

- Thomas R. Meites, Chairman (via telephone)
- Lillian R. BeVier, Acting Chairman
- Jonann C. Chiles
- Michael D. McKay
- Bernice Phillips (via telephone)
- Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

- Sarah Singleton
- Herbert S. Garten

1 STAFF AND PUBLIC PRESENT:

2 Helaine M. Barnett, President, ex officio

David L. Richardson, Treasurer and Comptroller

3 Patricia D. Batie, Manager of Board Operations,  
Office of Legal Affairs

4 Lynn Bolan, Senior Counsel, Office of Legal Affairs

Karen M. Dozier, Executive Assistant to the President

5 Karen Sarjeant, Vice President for Programs and  
Compliance

6 Victor M. Fortuno, Vice President for Legal Affairs,  
General Counsel, and Corporate Secretary

7 Mattie Cohan, Senior Assistant General Counsel

Charles Jeffress, Chief Administrative Officer

8 Laurie Tarantowicz, Assistant Inspector General and  
Legal Counsel

9 Ronald (Dutch) Merryman, Acting Inspector General

Tom Coogan, Assistant IG for Investigations

10 Joel Gallay, Special Assistant to the Inspector  
General

11 Matthew Glover, Associate Counsel, Office of the  
Inspector General

12 Tom Hester, Associate Counsel, Office of the  
Inspector General

13 Maryellen McBride, Accounting Services Manager,  
Office of the Inspector General

14 John Constance, Office of Government Relations  
and Public Affairs

15 David Maddox, Assistant Inspector General for  
Management

16 and Evaluation

Danilo Cardona, Director, Office of Compliance and  
Enforcement

17 Lora Rath, Deputy Director, Office of Compliance and  
Enforcement

18 Michael Genz, Director, Office of Program Performance

19 Bertrand Thomas, Program Counsel, Office of Program  
and Performance

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1 STAFF AND PUBLIC PRESENT: (continued)  
2 Guy Lescault, Program Counsel, Office of Program  
Performance  
3 Bristow Hardin, Program Analyst, Office of Program  
Performance  
4 John Eidleman, Senior Program Counsel, Office of  
Program Performance  
5 Cyndy Robinson, Grants Coordinator, Office of  
Program Performance  
6 Arthur Ford, Program Analyst, Office of Program  
Performance  
7 Glenn Rawdon, Program Counsel, Office of Program  
Performance  
8 Joyce Raby, Program Analyst, Office of Program  
Performance  
9 Tim Watson, Program Counsel, Office of Program  
Performance  
10 Monica Evans, Program Counsel, Office of Program  
Performance  
11 Sean Driscoll, Special Assistant, Government  
Relations and Public Affairs  
12 Treefa Aziz, Government Affairs Representative,  
Government Relations and Public Affairs  
13 Alice Dickerson, Director, Office of Human Resources  
Yvonne Robertson, Accounting Manager, Office of  
14 Financial and Administrative Services  
Linda Perle, Center for Law & Social Policy (CLASP)  
15 Don Saunders, National Legal Aid and Defenders  
Association (NLADA)  
16 Julie Strandlie, American Bar Association (ABA)  
Terry Brooks, Standing Committee on Legal Aid &  
17 Indigent Defendants (SCLAID)  
American Bar Association (ABA)  
18 Deborah Hankinson, Chairman, Standing Committee on  
Legal Aid & Indigent Defendants (SCLAID)  
19 American Bar Association  
20  
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## 1 P R O C E E D I N G S

2 ACTING CHAIRMAN BeVIER: On behalf of the  
3 Chair, Tom Meites, I'm going to call the meeting of the  
4 Operations and Regulations Committee to order.

5 I would want everyone to know that the entire  
6 meeting is going to be an open session.

7 We had thought at one point that it might have  
8 to be in closed session, but the entire meeting is  
9 going to be in open session. We are proceeding  
10 pursuant to our agenda.

11 ACTING CHAIRMAN BeVIER: The first thing we  
12 have to do is approve the agenda.

## 13 M O T I O N

14 ACTING CHAIRMAN BeVIER: Do I hear a motion to  
15 approve the agenda?

16 MS. CHILES: So moved.

17 ACTING CHAIRMAN BeVIER: Is there a second?

18 MR. GARTEN: Second.

19 ACTING CHAIRMAN BeVIER: All in favor say aye.

20 (Chorus of ayes.)

21 ACTING CHAIRMAN BeVIER: Thank you. The next  
22 thing we have to do is approve the minutes of the

1 committee's October 27, 2007 meeting.

2 M O T I O N

3 ACTING CHAIRMAN BeVIER: Do I have a motion to  
4 approve those minutes?

5 MR. GARTEN: So moved.

6 ACTING CHAIRMAN BeVIER: Second?

7 MS. CHILES: Second.

8 ACTING CHAIRMAN BeVIER: All in favor?

9 (Chorus of ayes.)

10 ACTING CHAIRMAN BeVIER: Thank you. Next is  
11 a staff presentation on the complaint investigation  
12 process. I take it, Karen, you are going to do that,  
13 you and Danilo?

14 MS. SARJEANT: I'm going to introduce it.  
15 Danilo will do the main part of the presentation.

16 ACTING CHAIRMAN BeVIER: Thank you.

17 MS. SARJEANT: At the request of this  
18 committee, this presentation will be providing you with  
19 a complete description of our LSC complaint  
20 investigation procedures, including the types of  
21 corrective measures we have at our disposal to use with  
22 programs, how often we have used them, and we will

1 share some information on what other types of measures  
2 would be helpful to us in providing the oversight of  
3 grantees' compliance with LSC's rules and regulations.

4           Joining me today is Danilo Cardona, who is the  
5 director of the Office of Compliance and Enforcement.  
6 Mr. Cardona has been with LSC as the director of OCE  
7 for many years. He is very versed in compliance  
8 issues. I'm sure you will come away from this  
9 presentation with your questions answered, and I would  
10 encourage that you feel free to ask us any questions  
11 along the way that you have.

12           ACTING CHAIRMAN BeVIER: Karen, excuse me for  
13 interrupting so early on. Is any of this going to be  
14 put in writing at some point for the Board, or is this  
15 all oral?

16           MS. SARJEANT: Today, this presentation is  
17 oral, but as we will be discussing in the next part of  
18 the meeting, one of the things we will be doing is  
19 developing all of our compliance procedures and  
20 everything and pulling all of the written pieces  
21 together into a complete compliance manual.

22           ACTING CHAIRMAN BeVIER: Thank you.

1           MR. CARDONA: Thank you very much. For the  
2 record, my name is Danilo Cardona. I am the director  
3 of the Office of Compliance and Enforcement.

4           MS. PHILLIPS: Can you speak a little bit  
5 louder?

6           ACTING CHAIRMAN BeVIER: Right into the  
7 microphone.

8           MR. CARDONA: Can you hear me now?

9           MS. PHILLIPS: Yes.

10          MR. CARDONA: Complaints. The authority for  
11 LSC to investigate complaints is found in the LSC Act,  
12 Section 1006(b)(1)(a), 45 CFR Part 1618, enforcement  
13 procedures, and was enacted to ensure uniform and  
14 consistent interpretation and application of the Act,  
15 and to prevent a question of whether the Act has been  
16 violated from becoming an ancillary issue in any case  
17 undertaken by a recipient.

18           This regulation establishes a systematic  
19 procedure for enforcing compliance with the LSC Act.

20          Further, as a funder, LSC has the duty to  
21 ensure that its grantees are adhering to the law, rules  
22 and guidelines that the U.S. Congress and the LSC



1 mandate the recipients to be subject to.

2           Finally, since at least 1996, when I was  
3 appointed as manager of the LSC OCE, the guiding  
4 principle for investigations of complaints has been  
5 observation of the letter and spirit of the LSC Act,  
6 regulations, and Public Law 104-134.

7           Let me begin now with the process for review  
8 of received complaints. A complaint can come to LSC  
9 OCE via the U.S. mail, e-mail, and through telephone  
10 contact. The complainant can be an applicant for legal  
11 services, clients of recipients, members of the public  
12 who want to file a complaint, staff of a recipient, and  
13 members of the U.S. Congress.

14           In addition, OCE may receive complaints  
15 referred by other offices within LSC, such as the  
16 Office of the Inspector General, the Office of Program  
17 Performance, the LSC President or the LSC Board Chair.

18           The initial step is to review the complaint.  
19 If the complaint on its face is deemed to have merit,  
20 the complaint is docketed and assigned to an OCE  
21 attorney for investigation.

22           An initial letter is sent to the complainant

1 formally acknowledging the complaint and if necessary,  
2 requesting further information and/or documents.

3           After this requested information and/or  
4 documentation is received from the complainant, a  
5 letter goes to the recipient informing them of the  
6 nature of the complaint, disclosing the name of the  
7 complainant if the complainant has not requested to  
8 remain anonymous, and requesting the recipient to  
9 provide an answer, information, and/or documents.

10           If the complaint cannot be resolved through  
11 exchange of information and documentation, an on-site  
12 investigation will take place.

13           After the complaint is resolved, a letter of  
14 disposition of the complaint is issued to the  
15 complainant and a copy is sent to the recipient.

16           Last year, OCE closed 74 complaint reviews.  
17 The single largest category of complaints received is  
18 from applicants who are denied assistance. A review of  
19 complaints closed in 2007 disclose that over half, 53  
20 percent, were for denial of representation.

21           Since there is no entitlement to civil legal  
22 assistance, there is little that can be done for these

1 complainants. Rejected complainants are referred to a  
2 local legal aid program's grievance procedure.

3           The second most frequent complaint we received  
4 is inadequate legal assistance. This occurs when an  
5 attorney/client relationship has been created, and the  
6 client is dissatisfied with the assistance provided,  
7 either the level of service or the quality of service  
8 provided.

9           These inadequate assistance complaints  
10 accounted for 14.3 percent of the complaints closed in  
11 2007.

12           Complaints related to a level of service  
13 typically occur when the client has the hope or  
14 expectation of an extended representation relationship.

15           In cases where there is a court hearing, the  
16 program through clinics, in the preparation of  
17 pleadings, prepares the client to represent themselves  
18 in a hearing, and the client may contact LSC seeking to  
19 obtain more extensive representation from the program.

20           In this instance, complaints of inadequate  
21 legal assistance, the client is referred back to the  
22 program's grievance procedure.

1           Complaints about the quality of assistance  
2 provided run the spectrum and may be as simple as a  
3 missed deadline or failure to communicate with a  
4 client, or they may be more complex.

5           These cases are best resolved by the local  
6 program's grievance committee, which can hear the  
7 client's concerns and speak with the program staff in  
8 order to evaluate those concerns in light of local  
9 practices.

10           If after having gone through the local  
11 grievance process, the client or applicant still wishes  
12 to pursue the matter, OCE will evaluate the complaint  
13 and the program's resolution. OCE may conduct further  
14 follow up if there appears to be a violation of the Act  
15 or regulations.

16           In such an instance, OCE would review the  
17 substance of the complaint and the program's actions.  
18 Moreover, OCE will look at the findings of the  
19 grievance committee to determine whether the  
20 complainant was given an adequate opportunity to  
21 present their grievance.

22           While complaints regarding denial of services

1 and quality of services accounted for nearly two-thirds  
2 of the complaints received, they actually take a small  
3 amount of time and resources to resolve.

4 On the other hand, complaints received from  
5 program staff, that is employees of the local legal aid  
6 programs, accounted for just over 4.2 percent of those  
7 closed last year.

8 Nevertheless, these complaints frequently  
9 demand a large amount of LSC OCE staff resources to  
10 investigate.

11 Each of these complaints are unique and cannot  
12 be reduced to generalities. OCE is careful to explore  
13 these complaints critically to avoid LSC being used by  
14 disgruntled staff against program management. We are  
15 extremely thorough in our initial review and may close  
16 complaints without needing to contact the local  
17 program.

18 Yet after an initial assessment, if there is a  
19 basis for conducting a review, an on-site investigation  
20 may be required.

21 Another type of complaint received is that  
22 from opposing parties who are clearly trying to cut off

1 litigation. In these instances, LSC walks the fine  
2 line between appropriate oversight and not inhibiting  
3 proper litigation on behalf of a client.

4 Most typically, these complaints can be in the  
5 form of an allegation that the client is over the  
6 income guidelines. Income eligibility complaints  
7 accounted for five percent of the complaints closed in  
8 2007.

9 When complaints are received from opposing  
10 parties, OCE scrutinizes closely to ensure there is a  
11 basis for the allegation.

12 For example, when it is alleged that the  
13 client is over income, we want the complainant to  
14 provide specific numbers of the income, the source of  
15 the income, the source of the knowledge of the income,  
16 the number of persons in the household, or any other  
17 factors which might be known.

18 Based on this information, we will give the  
19 complainant an idea of whether the person might in fact  
20 be over income or alternatively, why they might be  
21 qualified for services.

22 In addition, we will advise the complainant

1 that the case may be funded with a non-LSC grant, in  
2 which case the eligibility ceiling may be higher. For  
3 example, persons represented pursuant to Title III  
4 grants are explicitly not means tested.

5 We also advise the complainant that while we  
6 will make appropriate inquiries, we are prohibited from  
7 disclosing what we have learned to anyone outside of  
8 LSC.

9 When undertaking such a review, we will  
10 contact the program and disclose the complaint,  
11 including all the allegations produced by the  
12 complainant, and seek to determine the funding source  
13 of the case and what eligibility information the  
14 applicant told the program.

15 As you can imagine, demand for services being  
16 what they are, there are not a lot of programs out  
17 there trying to represent over income clients.  
18 Nevertheless, on occasion, it does happen.

19 In most instances, it turned out that the  
20 client has not adequately disclosed all income to the  
21 program. This essentially brings us to the remedies in  
22 the case of a complaint.

1           LSC advises each complainant that while we  
2 review and respond to each complaint, we do not have  
3 the authority to provide individual redress to each  
4 complainant. We tell them that we are not a court. We  
5 cannot force a program to represent them, and we cannot  
6 award damages.

7           If we find a violation, we will always seek  
8 remedial action, such as revision of a policy or  
9 practice which allowed the violation to happen.

10          Generally, we will ask the recipient to provide a  
11 corrective action plan, and we will then work with the  
12 program to ensure it adequately addresses the program.

13          In those instances where the program has  
14 violated a prohibition and has expended LSC funds, we  
15 will question all the costs incurred in such a matter  
16 in addition to requiring corrective action be taken.

17          In all cases, when the review is completed, we  
18 notify, as I said before, both the complainant and the  
19 executive director of our findings.

20          From reading the transcripts of this  
21 committee's meeting on October 27, 2007, I understand  
22 that this committee is interested in knowing what



1 sanctions LSC has for violations of LSC regulations and  
2 restrictions in the past.

3 I have searched the complaint records and  
4 looked at those complaints closed during the period of  
5 2002 through 2007. The records reviewed indicate that  
6 during this six year period, there were nine violations  
7 for which LSC pursued the following corrective  
8 measures:

9 Violation number one. It was a violation of  
10 45 CFR Part 1642, claiming attorneys fees. A question  
11 of costs proceeding was pursued and a corrective action  
12 plan imposed. LSC recovered around \$7,000.

13 Violation two. Violation of 45 CFR Part 1617,  
14 class action. Intervention in a class action by a  
15 recipient. LSC pursued in accordance with 45 CFR Part  
16 1618 an informal consultation with the recipient, and  
17 LSC recovered \$10,908.14 expended by the recipient for  
18 this prohibited activity.

19 Violation number three. Violation of 45 CFR  
20 Part 1611, the eligibility regulation. During a  
21 complaint investigation for discrimination and denial  
22 of representation in which it was determined that the

1 allegations were unfounded, nevertheless, OCE found  
2 that the recipient was incorrectly counting food stamps  
3 as income. The recipient was placed under a corrective  
4 action plan.

5 Further, OCE determined that despite counting  
6 food stamps as income, no otherwise eligible applicant  
7 had been denied service because of including food  
8 stamps as income. Violation number four. 45 CFR Part  
9 1611, eligibility again. An investigation revealed  
10 that the client in question was over income. The  
11 recipient undertook a satisfactory corrective action  
12 plan and also ceased representation of the over income  
13 client.

14 Violation number five. Violation of 45 CFR  
15 Part 1604, outside practice of law. An investigation  
16 revealed that a staff attorney conducted unauthorized  
17 practice of the law. The recipient implemented a  
18 satisfactory corrective action plan. The staff  
19 attorney was disciplined, and the retainer fee was  
20 refunded to the client.

21 Violation number six. Violation of CSR  
22 Handbook 2001 Edition. The recipient was incorrectly

1 counting each case multiple times, depending on the  
2 size of the household. The LSC OCE conducted two  
3 on-site reviews and the recipient corrected the  
4 deficiency.

5 Violation number seven. Discrimination  
6 complaint filed by a recipient's staff regarding the  
7 lack of communication between recipient management and  
8 staff, the program's allocation of PI time, payroll  
9 issues, and nepotism to mention a few.

10 LSC OCE conducted an on-site investigation and  
11 the recipient was placed on an extensive corrective  
12 action plan. LSC OCE later followed up and confirmed  
13 that all corrective actions had been implemented.

14 Violation number eight. Violation of 45 CFR  
15 Part 1609, fee generating cases. Based on OCE's  
16 findings, the recipient was placed under a corrective  
17 action plan. LSC OCE later verified that the  
18 corrective action plan was executed satisfactorily.

19 Violation number nine. Violations of 45 CFR  
20 Part 1609, fee generating cases, 1638, solicitation,  
21 and 1642, request of attorneys' fees. The recipient  
22 was placed on month to month funding with special grant

1 conditions which required reporting of specific  
2 activities to LSC OCE.

3 Further, OCE questioned the cost of the  
4 prohibitive activities and conducted on-site reviews to  
5 evaluate and investigate activities of the recipient  
6 pertaining to Part 1609, fee generating cases, Section  
7 1612.6, legislative activities. That is responding to  
8 requests from legislators.

9 The program provided testimony using normal  
10 LSC funds.

11 As you can surmise from the description of the  
12 violations and the corrective measures imposed on these  
13 nine recipients, LSC has in my view a limited array of  
14 sanctions.

15 Let me explain to you what I mean. LSC's  
16 array of corrective measures work well for minor  
17 violations of the regulations. That is violations that  
18 are not normally and willfully committed, but these  
19 corrective measures do not work well for substantial  
20 violations of restricted work.

21 If a recipient fails for whatever reason to  
22 comply with -- let's use as examples -- certain

1 sections of the CSR Handbook or certain sections of  
2 Part 1611 or 1620, LSC may impose a corrective action  
3 plan, question the costs of the resources involved, or  
4 impose special grant conditions in an expressed grant  
5 term.

6 I am talking here about a program taking a  
7 case that although not prohibited, it is still not  
8 within the recipient's priorities, or if a couple of  
9 eligibility determinations were erroneous, or if a  
10 couple of retainer agreements were missing in the case  
11 files.

12 However, when a recipient violates a  
13 restriction, that is the recipient is involved in a  
14 class action. solicits clients, requests claims and  
15 collects attorneys' fees, represents prisoners or  
16 conducts grassroots lobbying, the sanctions of  
17 suspending or terminating funding may be inadequate.

18 At this point, it would be helpful to have an  
19 intermediate lesser sanction before imposing the  
20 ultimate sanction, which is termination of funding.  
21 Termination of funding by a simple reading of the  
22 regulation, Part 1606, is a cumbersome and potentially

1 costly proceeding.

2 Further, if LSC is successful in terminating  
3 funding, it will need also to find an alternative  
4 substitute legal services provider because the service  
5 area covered by the funded provider cannot go unserved  
6 indefinitely as required by law.

7 The other available sanction is suspension of  
8 funding, Part 1623, which was enacted to ensure that  
9 LSC is able to take prompt action when necessary to  
10 safeguard LSC funds or to ensure recipient compliance  
11 with applicable provisions of law or a rule,  
12 regulation, et cetera, that LSC has issued.

13 The LSC has to return the funds withheld back  
14 to the recipient within 30 days or if the recipient  
15 agrees, LSC can delay the funds' return for up to 60  
16 days.

17 Although this measure would presumably allow  
18 LSC to safeguard funds, I believe it is not an adequate  
19 sanction for a willful and knowingly violation of a  
20 restriction, not sufficient to effect a change in  
21 behavior, and it will not deter a recipient from  
22 further violations.

1           Let me give you some examples where a lesser  
2           sanction would work efficiently. Let's say a recipient  
3           has two incidents where the staff attorneys ran for  
4           partisan office, an activity prohibited by Part 1608.

5           At the time of the first violation, LSC  
6           required that the program take corrective measures,  
7           including what is in Part 1608, policy, staff training,  
8           et cetera.

9           Further, the LSC ascertained there were no  
10          resources of the recipient used and no clients went  
11          unserved, so consequently, LSC did not have a basis to  
12          question costs, the use of LSC funds.

13          The second violation happens with the same  
14          basic facts as before, with the same staff or different  
15          staff than in the first violation, who run for partisan  
16          political office.

17          What is LSC to do? Not dispend funding? If  
18          so, the recipient can state to LSC here are more  
19          stringent policies, conduct more training, et cetera,  
20          and LSC will then return the suspended funds.

21          Now we have two violations, one dealt with  
22          through a corrective action plan, and the other as a

1 sanction, suspension.

2 Time passes on and a third violation occurs.  
3 Now, LSC has two choices, continue to impose corrective  
4 action measures, which have not had the desired effect,  
5 or to initiate termination of funding.

6 With the exception of these three violations  
7 of Part 1608, the recipient is complying with all LSC  
8 regulations and congressional restrictions. Therefore,  
9 making termination of funding proceedings excessive.

10 It would be extremely helpful for LSC to be  
11 able to impose a minor sanction. For example, LSC  
12 could then impose a non-refundable fine. That would  
13 almost certainly precipitate a change in behavior at  
14 the recipient, and if the management of the recipient  
15 does not adhere the message, then almost certainly the  
16 Board of Directors will intervene.

17 Let me provide you with one more example. A  
18 recipient is found to be in violation of Part 1626,  
19 which is the restriction on legal assistance to aliens.

20 The specific violation is that when screening  
21 applicants, if an intake screener determines that the  
22 applicant does not have a foreign accent, the applicant



1 is deemed a citizen, without a specific query by the  
2 program.

3 After the applicant meets other eligibility  
4 criteria, the program then accepts the applicant as a  
5 client, without having he or she sign a citizenship at  
6 the station.

7 The first time LSC becomes aware of this  
8 situation, it was determined that the number of  
9 offenses when this happened was small, so the recipient  
10 was cited for the violation and placed on a corrective  
11 action plan.

12 A couple of years later, LSC determined that  
13 this same behavior is still happening. The staff  
14 committing the violation are fired by the program.

15 LSC goes to the program a third time and  
16 discovers one or two program staff still exhibiting the  
17 same behavior. LSC is left with the option of engaging  
18 in a protective question of costs proceeding or  
19 terminating funding. The question of costs proceeding  
20 will take a significant amount of time and would  
21 consume both LSC and recipient resources.

22 Imposing a non-refundable fine to the

1 recipient at this point would convey the message to  
2 staff, management, and the Board of Directors that this  
3 type of behavior needs to stop.

4           Finally, a third example. A recipient  
5 violates two restrictions in one LSC regulation. The  
6 LSC places the recipient on month to month funding with  
7 special reporting requirements followed by a question  
8 of costs proceeding for the LSC funds spent on the  
9 prohibited activities.

10           The recipient complies with the reporting  
11 requirements, pays the questioned costs, but  
12 affirmatively states that it has committed not a single  
13 violation.

14           Later, the recipient commits the same  
15 violations again. Whatever corrective measures LSC  
16 imposed on the recipient clearly did not convey the  
17 message. Yet, termination of funding proceedings would  
18 still be premature.

19           Again, to have a lesser sanction such as a  
20 fine to convey a clear message and effect a change in  
21 behavior from the recipient would be most appropriate  
22 and effective.

1           If in the end, the recipient continues to  
2       violate LSC regulations and restrictions, terminating  
3       funding would be most fitting.

4           Thus, I believe that in order to convey a  
5       message to the recipient, its Board of Directors, and  
6       LSC programs at large, LSC needs to have the capacity  
7       to impose a reduction in funding of less than five  
8       percent.

9           A reduction in funding, following strict  
10       criteria, like the criteria set for suspension of  
11       funding and promulgated as a regulation, would allow  
12       LSC to punish a recipient by reducing its funding for  
13       up to five percent of its LSC grants.

14           Thank you very much.

15           ACTING CHAIRMAN BeVIER: Thank you. Are there  
16       questions?

17           CHAIRMAN MEITES: This is Tom. If my memory  
18       serves, we had a proposal on sanctions at a recent  
19       meeting. What is the status of that?

20           MS. SARJEANT: The committee at the last  
21       meeting had decided to not take any action until after  
22       they had the compliance presentation on the complaint

1 process.

2 CHAIRMAN MEITES: Okay, which we have now had.

3 MS. SARJEANT: Yes.

4 CHAIRMAN MEITES: We are now up to speed.

5 Lillian, it may be appropriate for us to start  
6 considering a proposal.

7 ACTING CHAIRMAN BeVIER: It may be. I don't  
8 know, just in terms of the formalities of it, since  
9 it's not on the agenda, and it's not -- I think we are  
10 sort of foreclosed from doing that today.

11 I certainly for one would be pleased to put it  
12 on the agenda for the April meeting, in the hope that  
13 will be done.

14 MS. SARJEANT: I think that's correct, that it  
15 can't be brought up at this meeting for action.

16 ACTING CHAIRMAN BeVIER: Is that maybe not  
17 satisfactory to you, Tom, but --

18 CHAIRMAN MEITES: That is fine. I had a  
19 memory lapse as to where we were, and that clarified it  
20 for me.

21 ACTING CHAIRMAN BeVIER: This is my "Tom  
22 Meites' move" of the day. We are putting it off until

1 next time.

2 (Laughter.)

3 MR. MCKAY: While that was an attempt, very  
4 successfully, at humor --

5 (Laughter.)

6 MR. MCKAY: In all seriousness, it is  
7 something that we wanted to wait to hear from staff on,  
8 and it is something we were really focused on and very  
9 interested in. Now that we have this report, and by  
10 the way, it was a very helpful report, and I noticed,  
11 Danilo, that you were reading from a text, if you don't  
12 mind getting a copy to us so that we can come back and  
13 re-visit those issues to prepare for the April meeting  
14 and to address with a new found zeal, this particular  
15 issue of lesser sanctions.

16 ACTING CHAIRMAN BeVIER: Right. I do have a  
17 question, Danilo, and that has to do with the nine  
18 examples that you gave us.

19 Is that the tip of an iceberg or are you  
20 telling us that there are only these nine cases that  
21 rose to this level, only these nine complaints in that  
22 six year period?

1 MR. CARDONA: That is correct.

2 ACTING CHAIRMAN BeVIER: Goodness! Herb?

3 MR. GARTEN: I'd like to learn more about the  
4 local programs' grievance committee that you referred  
5 to. Each of the programs are required to have a  
6 grievance committee?

7 MR. CARDONA: Yes, we have a regulation on  
8 that, 1621, and they have to have a Board grievance  
9 committee.

10 MR. GARTEN: These major complaints that you  
11 are talking about, where do they fit in? Would they be  
12 referred to a grievance committee or would you bypass  
13 the grievance committee? What happens?

14 MR. CARDONA: Well, it depends on what type of  
15 complaint it is. If it is a complaint as in the nine  
16 in my presentation, because of priorities or because  
17 the person is over income or anything of that nature,  
18 what we do is tell the client, the complainant, usually  
19 a client or applicant -- they haven't been accepted as  
20 a client yet, they could be in many cases -- we refer  
21 them to the grievance committee because sometimes  
22 perhaps they gave the wrong information to the program,

1 perhaps the grievance committee will reconsider or so  
2 forth.

3 When there is allegations of violations of  
4 restrictions or whatever by parties that are not  
5 usually clients or applicants to the program, we do not  
6 refer those to the grievance committee.

7 We do investigate those complaints, and when  
8 they are resolved in one way or the other, as I said, a  
9 complainant gets the resolution, and also the program  
10 gets the resolution of it.

11 We encourage the executive directors to share  
12 whatever it is, and in the majority of the cases, the  
13 program is fine and it hasn't violated anything.

14 In cases like these nine ones that we have  
15 here, there is violations and LSC has to deal with it,  
16 and the program has to deal with it also.

17 MR. GARTEN: I have another question. You  
18 referenced anonymous complaints. At what point does  
19 the director or the parties know who the complaint is  
20 coming from?

21 MR. CARDONA: We tell the complainant that we  
22 will maintain it in confidence as much as we can.

1       There is a point where the program can sometimes figure  
2       it out, but the complainant is fully alerted of all  
3       those things.

4                 We do keep our word.  If they want to remain  
5       anonymous, we keep them anonymous.  We also take into  
6       consideration why the complainant wants to remain  
7       anonymous and so forth.  We do honor that.

8                 MS. PHILLIPS:  This is Bernice Phillips.  What  
9       reassurance will you give the client that there will  
10      not be any retaliation, if the program finds out that  
11      they are the one that complained?

12                MR. CARDONA:  What we tell the client when  
13      there is a complaint, if they are already -- if it is a  
14      case or something, we tell the client that sometimes in  
15      order to find the facts of the specific case, we have  
16      to disclose the name.

17                To my knowledge, since 1996, since I've been  
18      in charge of this process, I have yet to receive a  
19      complaint from a client complainant that says it was  
20      retaliated against by the program because they  
21      complained about something.

22                Pretty much programs are pretty good at taking



1 in complaints and resolve them professionally and  
2 adequately.

3 MS. PHILLIPS: Is there anything set in place  
4 if that were to happen?

5 MR. CARDONA: It will be another complaint.  
6 The only way that can be dealt with is that it will be  
7 another complaint from that specific client to LSC, and  
8 we will have to investigate what happens. Depending on  
9 the facts, it may not be appropriate to do that by the  
10 program.

11 There is no set regulation, law, or procedure  
12 about it. It is mainly common sense.

13 ACTING CHAIRMAN BeVIER: Frank?

14 CHAIRMAN STRICKLAND: A couple of questions,  
15 Danilo. First, thank you for the presentation. I  
16 thought it was very informative, and we look forward to  
17 getting a copy.

18 MR. CARDONA: You will get a copy.

19 CHAIRMAN STRICKLAND: The example you gave  
20 of -- Bernice, are you hearing me?

21 MS. PHILLIPS: Yes.

22 CHAIRMAN STRICKLAND: You gave an example of a

1 class action, and I hope I got the facts right when I  
2 made a couple of notes here. Had the program paid  
3 \$10,000 to someone to participate in a class action?  
4 How did that work?

5 MR. CARDONA: No. It was the resources of the  
6 program spent on filing something on a very old class  
7 action. It was one of their attorneys. The program  
8 never expended any resources, to my knowledge, on that  
9 specific case. It was one of their attorneys, and we  
10 had to calculate all the money and everything that was  
11 involved. I don't think the program paid somebody; no.

12 This was a very old class action, prior to  
13 1973, I believe.

14 CHAIRMAN STRICKLAND: You say you  
15 recovered -- that might be too old even to be of  
16 significant at this point.

17 MR. CARDONA: It was a school desegregation  
18 case.

19 CHAIRMAN STRICKLAND: Was the grantee  
20 representing a client in the class action?

21 MR. CARDONA: Yes, they were. Back when that  
22 was permissible, they were.

1           CHAIRMAN STRICKLAND: It was during the era  
2 when representation in class actions was permitted, so  
3 it doesn't fit into today's circumstances.

4           MR. CARDONA: Correct; no.

5           CHAIRMAN STRICKLAND: May I ask one more?

6           ACTING CHAIRMAN BeVIER: Please; yes.

7           CHAIRMAN STRICKLAND: You talked about the  
8 lesser sanction of reduction in funding. If that  
9 policy should be implemented and there is a reduction  
10 in funding of X dollars, I presume what you mean is  
11 that's not going to be restored?

12          MR. CARDONA: Absolutely, that is my opinion.

13          CHAIRMAN STRICKLAND: That is the sting?

14          MR. CARDONA: Yes.

15          CHAIRMAN STRICKLAND: We are going to take  
16 that money away from you and there is no re-funding  
17 procedure.

18          MR. CARDONA: Correct.

19          CHAIRMAN STRICKLAND: Thank you.

20          ACTING CHAIRMAN BeVIER: Are there other  
21 questions for our presenters?

22          (No response.)

1           ACTING CHAIRMAN BeVIER: Thank you very much,  
2 Danilo, and thank you, Karen. It was very helpful.

3           The next item on the agenda is to follow up on  
4 the GAO report on governance and accountability.

5           Is this you, Charles?

6           MR. JEFFRESS: It is.

7           ACTING CHAIRMAN BeVIER: The first item on  
8 that agenda is consider and act on proposed LSC Code of  
9 Conduct, which we have in our Board book.

10          MR. JEFFRESS: Correct. Before I go to that,  
11 I'd like to point out something else in your Board  
12 book, which is the letter that Helaine and Frank sent  
13 to the requesters of the GAO study, Senators Kennedy,  
14 Grassley, Enzi, and Mr. Cannon, giving them an update  
15 on the status of our compliance with the GAO  
16 recommendations.

17          They did that in December and it would be our  
18 intention to do that periodically and provide copies to  
19 the members of the Board when we do that.

20          In terms of the Code of Conduct, which starts  
21 on page 94 of your Board book, the cover memo, just a  
22 quick refresher by way of background.

1                   The Operations and Regulations Committee  
2           meeting in Little Rock last April, Chairman Meites and  
3           member Mike McKay in a colloquy or discussion regarding  
4           the desirability of having a compliance program at LSC  
5           and asked LSC management to propose a compliance plan  
6           for the Corporation.

7                   Helaine appointed a compliance taskforce,  
8           which began researching compliance programs in business  
9           and other non-profits. On behalf of that taskforce, I  
10          reported to this committee in July, that after  
11          reviewing many compliance programs in business, we  
12          thought the first order of business should be a Code of  
13          Conduct for the Corporation.

14                   This committee discussed what a Code of  
15          Conduct might contain. There were some elements you  
16          wanted to see, some you didn't want to see. You gave  
17          us some feedback, and I took that feedback back to the  
18          taskforce to begin work.

19                   In September, in the GAO report on governance  
20          and accountability, one of their four recommendations  
21          was that LSC adopt a Code of Conduct, which we had  
22          already begun.

1           In October, the taskforce reported on its  
2 progress to the Board.

3           Since October, the taskforce completed a  
4 draft, circulated it amongst the Corporation. All  
5 employees had a chance to comment on it. The executive  
6 team reviewed it. Staff in the Office of the Inspector  
7 General reviewed it.

8           The taskforce got back together to consider  
9 the comments from all of those sources, prepared a  
10 final draft, which was sent to the executive team,  
11 accompanied by a paragraph prepared by the Office of  
12 the Inspector General on efficacy of this Code of  
13 Conduct to the Office of the Inspector General, and  
14 that is the draft that is in your book that the  
15 executive team recommends to you for adoption for the  
16 Corporation.

17           In addition to the draft before you, at the  
18 last meeting, Tom Meites asked that we share with you  
19 some other codes of conduct so you can see some of the  
20 alternatives, some of the things that we looked at in  
21 the course of preparing this. You received last week,  
22 I hope, an e-mail from me with links to some of those

1 other codes and some of those discussions of those  
2 codes.

3           Since this is an item for consideration and  
4 adoption, that this committee recommend to the Board to  
5 adopt, and since this code applies to directors as well  
6 as officers and employees of the Corporation, with your  
7 permission, I think it would be useful to go section by  
8 section through the proposed code.

9           I am happy to take questions on the process at  
10 this point before we start that discussion, if you  
11 would like.

12           ACTING CHAIRMAN BeVIER: Sarah?

13           MS. SINGLETON: Charles, I just couldn't hear  
14 the sentence you said about the Office of Inspector  
15 General. Would you mind repeating it?

16           MR. JEFFRESS: Yes. The taskforce that  
17 Helaine appointed, there were two representatives from  
18 the Office of Inspector General on that taskforce.  
19 After the taskforce completed the first draft and we  
20 circulated it for comments, the two folks in the Office  
21 of Inspector General circulated that draft within the  
22 Office of Inspector General and got even more comment.

1           When the taskforce came back together, we had  
2       comments from everyone in the Corporation.

3           Following that, in that draft, there was not  
4       any paragraph on how it should apply to the Office of  
5       Inspector General. At that time, the Office of  
6       Inspector General came up with a paragraph. I provided  
7       advice and consultation to them, but it is ultimately  
8       their product, that we inserted in the code, in the  
9       proposed code for your consideration.

10           ACTING CHAIRMAN BeVIER: Any other process  
11       questions before we start going through section by  
12       section?

13           (No response.)

14           ACTING CHAIRMAN BeVIER: Go ahead, Charles.  
15       Thank you.

16           MR. JEFFRESS: The first section describes the  
17       purpose of the Code of Conduct. As you can imagine, it  
18       is a standard section in codes of this sort.

19           It makes it clear that it applies to members  
20       of the Board as well as to officers and employees, and  
21       sets the expectation that we will have the highest  
22       standards of ethics and conduct, and that we expect



1 employees to perform their work with the utmost  
2 honesty, truthfulness and integrity, and describes the  
3 purpose as to assist employees in knowing where to go  
4 with help when they need help, and it stipulates that  
5 these standards apply to all of our business  
6 relationships and activities.

7 Unless there are questions, I will go on to  
8 the second section on compliance.

9 The first paragraph stipulates that everyone,  
10 all members of the Board, officers, directors and  
11 employees, are expected to comply with the laws, rules,  
12 regulations and policies pertaining to LSC as well as  
13 this Code of Conduct, and to act in the best interest  
14 of the LSC and also designates when people have  
15 questions or concerns or uncertainties, they should  
16 contact their supervisors, managers, the Office of  
17 Legal Affairs, or a compliance officer.

18 In most every code which we reviewed, there  
19 was someone in the corporation designated as a  
20 compliance officer to assist with interpretations and  
21 with recordkeeping and whatever else might be required  
22 under the code.

1           In the code before you, we refer to this  
2           person as the compliance officer. We don't otherwise  
3           designate who that is, but in the resolution, which we  
4           have prepared for your consideration for adoption, we  
5           have inserted the general counsel as the compliance  
6           officer for the Corporation, and encourage you to so  
7           designate that person, but we felt like it was a Board  
8           determination as to who that compliance officer should  
9           be.

10           That, of course, would be the compliance  
11           officer for the management and administration side of  
12           the house and the Office of the Inspector General is  
13           recommending that the legal counsel, general counsel  
14           for the OIG, be the compliance officer for purposes of  
15           that office.

16           CHAIRMAN MEITES: Charles, this is Tom. I  
17           should have asked you a question before. Is this  
18           proposed Code of Conduct the existing code or is this  
19           a new creature for us?

20           MR. JEFFRESS: This is a new creature for us,  
21           Tom. There are some provisions in our employee  
22           handbook which will be similar to some of these

1 provisions in here.

2 To my knowledge, LSC has never had such a  
3 code.

4 CHAIRMAN MEITES: Thank you.

5 ACTING CHAIRMAN BeVIER: Mike?

6 MR. McKAY: Charles, did the taskforce discuss  
7 the title of "Code of Conduct" versus "Code of Ethics?"  
8 Was any consideration given to the title "Code of  
9 Ethics?"

10 MR. JEFFRESS: I can't recall a discussion  
11 within the taskforce on "Code of Ethics." A number of  
12 the codes we reviewed were "Code of Ethics" and  
13 "Conduct." "Ethics" frequently comes up, I guess in  
14 part because the GAO recommendation said "Code of  
15 Conduct," we ended up with that title.

16 I can't say it was a deliberate choice.

17 MR. McKAY: The same thing applies to the  
18 title "compliance officer." Was there any discussion  
19 about having this person being called the "ethics  
20 officer" as opposed to "compliance officer?"

21 MR. JEFFRESS: I don't recall any discussion  
22 on that point.

1           MR. MCKAY: I know the discussion will take  
2 place, I don't want to interrupt it, but just to plant  
3 a seed, I really like the title "Code of Ethics." It  
4 makes it clearer what this is. I like the title of  
5 "ethics officer" as opposed to "compliance officer."

6           "Compliance officer" sounds too  
7 government-like.

8           (Laughter.)

9           MR. MCKAY: It was a thought that I had when I  
10 went through this. I would toss that out as a  
11 suggestion and to make sure it wasn't consciously  
12 discussed and rejected for reasons. I simply float  
13 that as a suggestion when we get to more deliberations  
14 on this.

15           ACTING CHAIRMAN BeVIER: All right. I think I  
16 have a question which may really not matter very much.  
17 It says that directors, officers and employees are  
18 required to comply, and to act in the best interest of  
19 LSC.

20           My question about that is whether it means  
21 when you are acting as a director of LSC, you are to  
22 act in the best interest of LSC, in other words, you

1 have various roles in your life.

2 When you are a parent, are you supposed to be  
3 acting in the best interests of LSC. When you are a  
4 law professor, are you supposed to be acting in the  
5 best interests of LSC.

6 When you are a director, and with respect to  
7 anything having to do with LSC business, I completely  
8 understand you comply.

9 From the time I get up in the morning until  
10 the time I go to bed at night, am I supposed to be  
11 acting in the best interests of LSC? I'm trying, but I  
12 just want to make sure I can have a few minutes off.

13 (Laughter.)

14 MR. JEFFRESS: Welcome to the Government.

15 In the "Purposes" section, the last sentence  
16 in the second paragraph, we tried to describe these  
17 standards apply to all of our business relationships  
18 and activities, implying that we are talking about when  
19 we are conducting LSC business.

20 I will have to say, in our employee handbook  
21 that you all adopted last year, when it came to  
22 secondary employment, one of the issues that came up

1 was should LSC have the right to bar someone from  
2 secondary employment that would appear to not be in the  
3 best interest of LSC, and we said yes, essentially.

4 There is that provision in the handbook about  
5 secondary employment.

6 This code was really focused on business  
7 activities and relationships.

8 ACTING CHAIRMAN BeVIER: Okay. I'm sort of  
9 content to leave that, I think, as legislative history,  
10 and I don't think it's an issue that is likely to  
11 arise, but I think it is a point worth making.

12 I'm ready to move on to the next section. Are  
13 others?

14 MR. JEFFRESS: Let me point out the second  
15 paragraph in the compliance section, the paragraph that  
16 the Office of Inspector General staff settled on with  
17 respect to how this code applies to the Office of  
18 Inspector General.

19 Essentially, the code applies the same way to  
20 them it does to anyone else, except that it specifies  
21 that the Inspector General shall designate an official  
22 to function as the compliance officer subject to

1       ratification by the Board, and clarifies that anywhere  
2       in this Code of Conduct that it refers to any  
3       management official, if the conflict should involve an  
4       OIG staff person, then the OIG official is the  
5       appropriate party to respond.

6               MS. SINGLETON: I noticed the OIG has an  
7       exception for the application of the code if it is  
8       inconsistent with other applicable laws. I don't see a  
9       similar exception for LSC.

10              Wouldn't a law of Congress override a Code of  
11     Conduct adopted by us?

12              MR. JEFFRESS: Yes. I don't think there is  
13     any question, it is probably not necessary for either  
14     of us, but certainly any law -- if there is a conflict  
15     of any law, the law takes precedence.

16              MS. SINGLETON: You do not think it is  
17     necessary to put it in there because that is a rule of  
18     law?

19              MR. JEFFRESS: I think that is absolutely  
20     understood.

21              MR. MCKAY: I'm assuming the only reason this  
22     clause is in here is at the request of the OIG.

1           MR. JEFFRESS: Yes. I've discussed this  
2 particular clause with them and they were very  
3 interested in having it remain in there for their  
4 purposes.

5           The next section is leadership  
6 responsibilities. It is a short section, but after  
7 reviewing a number of different codes, we found many  
8 places where higher expectations were placed on senior  
9 management and responsibilities for training and giving  
10 guidance to employees is place on senior management.

11           We inserted this paragraph that says that you  
12 as directors and officers of the Corporation, and our  
13 managers, our office directors and managers, have a  
14 special obligation with respect to creating and  
15 maintaining the culture of our ethical conduct, and  
16 puts the responsibility on us to ensure that employees  
17 have the information and training they need to comply.

18           MS. PHILLIPS: Charles, I have a question.  
19 Can you repeat that so I'm not mistaken in asking my  
20 question?

21           MR. JEFFRESS: I said we inserted that  
22 paragraph because the taskforce and the executive team



1 believed that senior leadership has more obligations  
2 than employees in terms of setting an example and  
3 creating a culture of ethical behavior within the  
4 Corporation.

5 This paragraph stipulates that and says  
6 directors, officers and managers have the  
7 responsibility for providing information, training and  
8 guidance to employees for compliance.

9 MS. PHILLIPS: Thank you.

10 CHAIRMAN MEITES: Lillian?

11 ACTING CHAIRMAN BeVIER: Yes, Tom.

12 CHAIRMAN MEITES: I don't know -- I do know as  
13 a director I have very little direct input into the  
14 information, training and guidance provided to LSC  
15 staff.

16 Under this provision, I would have not just an  
17 obligation but what is called a "special obligation" to  
18 ensure that all employees have sufficient information.

19 If this provision, I believe, were imposed, I  
20 would have to spend a substantial amount of my time, as  
21 would other Board members, in reviewing the training  
22 and information provided to employees with regard to

1 their compliance with all laws, regulations and  
2 policies of LSC.

3 I don't think that is realistic. That is a  
4 task I am not in any position to undertake. I think my  
5 fellow Board members are similarly in that position.

6 ACTING CHAIRMAN BeVIER: I think that is a  
7 very good point. It is one I was going to raise as  
8 well. Directors, they have a different function, a  
9 different set of obligations from those that are  
10 imposed upon and undertaken by officers and managers.

11 MR. JEFFRESS: If I might respond, I think  
12 that is a very good point as well. I do think  
13 directors have an obligation to help us set the  
14 culture, if you will, demonstrate the leadership, but  
15 that second sentence in terms of they shall ensure that  
16 employees have sufficient information, perhaps that  
17 sentence should be "officers and managers shall  
18 ensure."

19 Directors obviously don't work with the day to  
20 day training and information.

21 MS. PHILLIPS: This seems like a serious job.  
22 I was wondering, could it be someone on the outside or

1 does it have to be LSC employees or Board of Directors?  
2 Could it be someone else on the outside? It seems like  
3 a lot of work.

4 MR. JEFFRESS: I think the training that we  
5 would give would need to be particularized to the types  
6 of potential conflicts that exist at LSC.

7 I think it is certainly possible to hire a  
8 consultant to do that kind of training, but I think it  
9 might be better designed by someone within the  
10 Corporation, the Office of the General Counsel, if that  
11 is where the compliance officer or ethics official is  
12 located, or would appear to be the best one to provide  
13 that training on this code.

14 MS. PHILLIPS: I would think this is such a  
15 huge job, would they do it to the extent that someone  
16 on the outside would have the time. That is what I  
17 think.

18 CHAIRMAN STRICKLAND: May I ask a question?

19 ACTING CHAIRMAN BeVIER: Yes, of course.

20 CHAIRMAN STRICKLAND: Charles, in looking at  
21 other codes of conduct or ethics, at least those -- did  
22 most of them provide for the appointment of an ethics

1 officer?

2 MR. JEFFRESS: Most of them do provide or  
3 designate such a position to hold that, and almost  
4 universally, they require training of employees in  
5 whatever the code is.

6 CHAIRMAN STRICKLAND: With respect to in the  
7 other codes to which you looked for guidance, did you  
8 see any that had -- were all of the ethics officers  
9 inside the organization without exception, as far as  
10 you know?

11 In other words, it is someone in-house to  
12 serve that function?

13 MR. JEFFRESS: I don't know that I'm going to  
14 recall all of them well enough to give you an assurance  
15 about all of them. There are some places where boards  
16 of directors have their own corporate secretary staff,  
17 and there may be places where the person is a staff to  
18 the board as opposed to a management official.

19 CHAIRMAN STRICKLAND: As opposed to a  
20 consultant?

21 MR. JEFFRESS: Yes. The ethics official is  
22 always someone who is an employee of the corporation.

1                   CHAIRMAN STRICKLAND: I take it from the  
2                   general drift of this that it's not necessarily viewed  
3                   that the position of ethics officer, either in the  
4                   Office of Inspector General or in our case, the general  
5                   counsel, that's not viewed as a full time position, is  
6                   it?

7                   MR. JEFFRESS: Hopefully, we won't have those  
8                   kinds of problems. I would not anticipate this being  
9                   that.

10                  CHAIRMAN STRICKLAND: Right. It's to resolve  
11                  an ethics question whenever it arises?

12                  MR. JEFFRESS: That's right. I understand the  
13                  reference to the Government may not be quite  
14                  appropriate, but typically in the Federal Government,  
15                  which has similar codes and of course annual  
16                  training's, typically someone from the Solicitor's  
17                  Office or the equivalent of our Office of Legal  
18                  Affairs, will prepare a training on some aspect of  
19                  ethics, and every year, that will be a different  
20                  aspect, but there is some kind of training program once  
21                  a year for employees that is run by the in-house legal  
22                  counsel.

1           MS. PHILLIPS:  If you look at the resolution  
2   that is proposed here --

3           MR. JEFFRESS:  It is on page 101.

4           MS. PHILLIPS:  "Be it further resolved," the  
5   two last ones, there you have two things happening.  
6   You have one where the general counsel is asked to be  
7   the compliance officer and then you have it where it  
8   would be Laurie that is asked to be the compliance  
9   officer.

10           If you had a conflict, say you allowed  
11   something to happen in one office and then the same  
12   thing happened in the Inspector General's Office, and  
13   she didn't go for it or it wasn't allowed, now you have  
14   a conflict.  Wouldn't you have a conflict of interest?

15           That alone, to me, would say it should be  
16   another person on the outside.  I mean how would you  
17   resolve that then?  Let me ask that question.

18           MR. JEFFRESS:  These cases are handled on a  
19   case by case basis, so each case would stand on its  
20   own.  I feel certain if there were similar situations  
21   or similar conditions, that the general counsels would  
22   consult one another and make sure they are consistent

1 and have consistent interpretations.

2 I do think because of the type of work the  
3 Office of Inspector General does, there may be some  
4 additional considerations they have in terms of  
5 potential conflicts for their staff that may not be as  
6 applicable to folks on the management side of the  
7 house.

8 The suggestion you have that they might see  
9 the same thing different ways, I would expect the two  
10 of them would have to work that out.

11 MS. PHILLIPS: What if they didn't resolve it?  
12 What is then in place?

13 MR. JEFFRESS: Later, as we get in here, you  
14 will see the responsibility for the final determination  
15 of how to respond to a potential conflict rests with  
16 the compliance officer, unless it is an issue related  
17 to the president or the Inspector General or compliance  
18 officer, in which case that decision would rest with  
19 the Board.

20 MS. PHILLIPS: The final decision would fall  
21 to the Board, if they couldn't resolve it?

22 MR. JEFFRESS: I don't think we have addressed

1 the case that you point out here, a case presented to  
2 one or the other of these compliance officers might be  
3 viewed differently than a previous case had been.

4 I would certainly hope that there are not  
5 enough cases that we ever have that particular problem.  
6 It's not the situation where these will be coming up on  
7 a regular basis and the two folks will have to make  
8 independent decisions without knowledge of what the  
9 other has done.

10 MS. PHILLIPS: I just felt the need to ask  
11 that question because what if that was to happen, what  
12 if that was to come up, then we would have to resolve  
13 it, the Board would?

14 MR. JEFFRESS: The proposal here before you  
15 does not put the Board in the position of overruling a  
16 decision by a compliance officer. It does put the  
17 Board in the position of making a final determination  
18 of any potential conflict involving the president or a  
19 compliance officer.

20 I cannot recall -- although I'd welcome  
21 support from other members of the taskforce who are in  
22 the audience at this point -- I can't recall any code



1 which provides that the Board has the ability to  
2 override a compliance officer's determination.

3 The whole intention of having a compliance  
4 officer is to avoid the appearance of conflicts of  
5 interest and not put the Board in a situation where it  
6 may have a conflict itself.

7 MS. PHILLIPS: I don't understand. Maybe I'm  
8 not being clear.

9 ACTING CHAIRMAN BeVIER: Could I suggest,  
10 Bernice, it sounds to me as though what you are  
11 imagining is the OIG and management each talking about  
12 the same complaint from the same person and disagreeing  
13 about it.

14 MS. PHILLIPS: No, I'm not saying that.

15 ACTING CHAIRMAN BeVIER: You are saying  
16 complainant X has a complaint and the OIG's office  
17 decides it one way, and complainant Y has the same  
18 complaint and the compliance officer for management  
19 decides it a different way?

20 MS. PHILLIPS: Right. Let's say one of the  
21 persons says it's not fair, you know, okay, if it's the  
22 same situation, how come it hasn't gone the same way.

1 How come the outcome is not the same way.

2 ACTING CHAIRMAN BeVIER: Right.

3 CHAIRMAN MEITES: How about, to address  
4 Bernice's concern, adding a provision that the two  
5 compliance officers regularly confer in an attempt to  
6 harmonize their rulings?

7 MR. MCKAY: Let me suggest that this part of  
8 the discussion is not appropriate for the Code of  
9 Ethics or the Code of Conduct. This part of the  
10 discussion should be held until we get to the  
11 compliance aspect of the Code of Conduct.

12 The Code of Conduct sets forth the rules. The  
13 compliance program talks about how it is going to be  
14 effectuated or complied with or enforced.

15 It seems to me we should not be -- first, the  
16 issue that Bernice raises is one we might wrestle with,  
17 the odds are we will not. In any event, Bernice, I  
18 would encourage us to talk about it when we get to the  
19 compliance aspect and how it is enforced, not what the  
20 code itself is.

21 I would encourage us to move on and address  
22 Bernice's concern when we get to the compliance aspect,

1 not what the actual rules are.

2 ACTING CHAIRMAN BeVIER: I take it what you  
3 are saying is the rules are the same.

4 MR. MCKAY: Exactly.

5 ACTING CHAIRMAN BeVIER: Is that a  
6 satisfactory way of resolving your concern at this  
7 point, Bernice?

8 MS. PHILLIPS: Yes.

9 ACTING CHAIRMAN BeVIER: Thank you.

10 MR. MCKAY: Can we get back to what we were  
11 on, and that is the leadership responsibilities. I  
12 certainly obviously agree with that first sentence.  
13 Let's focus on the directors. We have a special  
14 obligation to help create a culture.

15 I strongly believe that we should remain part  
16 of that second sentence. That doesn't mean we need to  
17 be running the workshops, but it does mean that our  
18 special obligation would include on a regular basis,  
19 maybe even just annually, making sure that the training  
20 is taking place, making sure that the employees are  
21 required to sign this Code of Conduct every year,  
22 making sure that every new employee throughout the year

1 is trained and signs the Code of Conduct.

2 That is the kind of special responsibility  
3 that we would have that we would be called upon to  
4 enforce in the second sentence, not the kind of detail  
5 that full time management would have.

6 That would be my thought. I would encourage  
7 that we maintain the language as proposed.

8 ACTING CHAIRMAN BeVIER: As opposed or is  
9 there a way of separating -- we have an oversight  
10 responsibility. I completely agree with that. We have  
11 an obligation to ensure that the officers and managers  
12 are giving all the -- that is just nitpicking?

13 MR. MCKAY: I disagree. We have a  
14 responsibility as the Board to make sure it goes from  
15 top to bottom and that doesn't mean, as I say, that we  
16 should be running the workshops, but we should be  
17 asking the questions to make sure it's being done.

18 ACTING CHAIRMAN BeVIER: That's what I meant,  
19 that we have an obligation to ensure that the officers  
20 and managers are ensuring that all employees have  
21 sufficient -- no, you think not?

22 MR. MCKAY: I don't think so. I think it's

1 important that we recognize our responsibility. We may  
2 disagree on the responsibility, but I think we should  
3 fully embrace it.

4 In reality, what you are saying is correct,  
5 but we finally have the responsibility. If it isn't  
6 being done, then obviously we come back to the managers  
7 and say why isn't it being done.

8 MR. GARTEN: I think the word "ensure" is a  
9 very powerful word.

10 MR. MCKAY: Yes.

11 MR. GARTEN: I think I'd rather we modify it  
12 in some way, that the directors shall cooperate in  
13 ensuring that the officers and managers do so and so.

14 MR. MCKAY: I hear what you are saying. I  
15 don't like the appearance of it. I vote against that.  
16 I think it is important that we fully embrace this and  
17 that we be involved in a significant way. I would  
18 disagree with that, by distancing ourselves from it in  
19 that way.

20 MR. GARTEN: My point is by putting a major  
21 obligation on every director, I think, is a burden that  
22 was not intended or should not be intended. We are not

1 full time employees here.

2 MS. SINGLETON: Would it be all right with  
3 everyone if instead of saying who has the obligation,  
4 we just said all employees shall have sufficient  
5 information, training and guidance to comply with all  
6 laws?

7 MS. PHILLIPS: Say that again, Sarah.

8 MS. SINGLETON: I want to start the sentence  
9 with "All employees shall have sufficient information,  
10 training and guidance to comply with all laws" and so  
11 forth.

12 MR. GARTEN: That certainly answers my  
13 objection

14 ACTING CHAIRMAN BeVIER: Does it answer your  
15 concern, Mike?

16 MR. MCKAY: I like the way it was, but in the  
17 spirit of cooperation, you know.

18 ACTING CHAIRMAN BeVIER: I think it's very  
19 clear that the buck stops here with the Board. There  
20 is no question about that. We are the ones that are  
21 ultimately accountable. The question is just how we  
22 reflect that.

1           The suggestion is that we change that sentence  
2           to read that "All employees shall have" and we  
3           eliminate "they shall ensure that."

4           MS. SINGLETON: To me, it seems as with every  
5           policy, we have something to do with it, and management  
6           has something to do with it. We don't have to restate  
7           every time what exactly each entity has to do with it.

8           CHAIRMAN STRICKLAND: By way of comment, I  
9           don't think we are undertaking any burden we don't  
10          already have.

11          MS. SINGLETON: No.

12          ACTING CHAIRMAN BeVIER: All right. I think  
13          we have that one resolved for the time being. Next  
14          section, Charles.

15          MR. JEFFRESS: Number four, conflicts of  
16          interest, on page 96. The first paragraph describes  
17          what is considered to be a conflict of interest,  
18          whenever an individual's private interests, directly or  
19          indirectly, interfere or conflict in any way with the  
20          interests of LSC.

21          We further describe existing interests,  
22          transactions, relationships, of employees and their

1 families.

2 Directors, officers and employees shall  
3 refrain from entering into relationships and  
4 transactions that might impair their judgment, and the  
5 final sentence in that paragraph, even relationships or  
6 transactions that give the appearance of a conflict  
7 should be avoided.

8 And then we give a couple of illustrations in  
9 the next paragraph about how conflicts might arise and  
10 refer people, if they want further information,  
11 employees anyway, to look at the sections on outside  
12 employment, using LSC time and assets for personal  
13 benefits, and look at the gift acceptance policy.

14 In the first two paragraphs, it is an effort  
15 to describe what constitutes a conflict of interest  
16 that employees should avoid.

17 ACTING CHAIRMAN BeVIER: Sarah?

18 MS. SINGLETON: I seem to recollect that there  
19 are certain statutory prescriptions as to what  
20 constitutes a conflict of interest, at least for Board  
21 members. I'm not certain that this definition is  
22 consistent with that. I know the statute would



1 control, but I don't really see the point of writing  
2 something that is if not inconsistent at least not the  
3 same.

4 MR. JEFFRESS: The section that you say  
5 applies to Board members, it doesn't apply at this  
6 point to employees. We tried to write something here  
7 that was clear enough and comprehensive enough that it  
8 would apply to directors as well as employees. It may  
9 in fact be broader than what the statute covers.

10 CHAIRMAN MEITES: I don't have the statute  
11 here. Sarah, what is the provision you are referring  
12 to? What does it say?

13 MS. SINGLETON: I don't remember exactly. I  
14 think it has some very specific language about what  
15 kind of relations you can have with an LSC grantee  
16 while you are on the Board and for a period of time  
17 after you are on the Board, and other general  
18 prescriptions.

19 CHAIRMAN MEITES: This expands those  
20 obligations but it is not inconsistent with them?

21 MR. JEFFRESS: That is my recollection of the  
22 conversation of the taskforce. Vic has just joined me

1 and has the Act and the regulations here. Can you help  
2 me with this, Vic?

3 MR. FORTUNO: In the LSC Act, under "Officers  
4 and Employees," there is a section on conflict of  
5 interest.

6 MS. SINGLETON: Not to deter you from reading  
7 that Act, but I think there is a general act that  
8 applies to anyone who is appointed by the President and  
9 confirmed by the Senate.

10 MR. FORTUNO: You are talking about something  
11 not in the LSC Act, but something which is applicable  
12 to all presidential appointees?

13 MS. SINGLETON: Yes, that's what I think I was  
14 thinking of.

15 MR. JEFFRESS: That is what I was responding  
16 to as well.

17 MR. FORTUNO: Offhand, I don't recall that. I  
18 know there is in the Act, as to directors, there is a  
19 provision that says no member of the Board may  
20 participate in any decision, action or recommendation  
21 with respect to any matter which directly benefits such  
22 member or pertains specifically to any firm or

1 organization with which such member is associated or  
2 has been associated with within a period of two years.

3 That is the conflicts provision relative to  
4 directors that is in the LSC Act. I'd have to see what  
5 there is.

6 MS. SINGLETON: It sounds very similar. It  
7 seems to me that what that says is different from what  
8 is in this paragraph, and this paragraph might be more  
9 stringent, which I guess if everybody realizes they are  
10 agreeing to something more stringent, it is okay.

11 Basically, that paragraph is a disclosure  
12 paragraph and a non-voting paragraph. This is a don't  
13 enter into any relationship paragraph, for example,  
14 suppose someone in my law firm wants to -- this doesn't  
15 exist -- suppose they wanted to enter into a judicare  
16 type contract with a legal aid provider to be the rural  
17 provider in some small town in New Mexico.

18 As I understood what you read, I could  
19 disclose that and just not vote on anything that had to  
20 do with that, but as I read this, they couldn't do it.

21 CHAIRMAN MEITES: To give another example, a  
22 local grantee calls up Frank's law firm and says we

1       need help with a case, can you contribute some time to  
2       help us. As I understood what was read to us, that  
3       would be fine, unless there was a vote on a grant of  
4       legal aid.

5               Under this conflict of interest provision,  
6       they would be barred from accepting that assignment.

7               MR. JEFFRESS: If I could ask, Tom, in that  
8       example you just gave, how would Frank's firm accepting  
9       that assignment be a relationship or transaction that  
10      might impair their judgment as to what is best for LSC?

11              CHAIRMAN MEITES: Someone might say that as  
12      co-counsel, adverse publicity would come upon Atlanta  
13      Legal Assistance, and he certainly wants them to be  
14      fully funded so they can maintain their role and their  
15      part of the litigation.

16              MS. SINGLETON: Suppose it is a controversial  
17      case that the congressional member from Georgia thinks  
18      only a mad dog would take, and suddenly, Frank  
19      Strickland is now painted as the mad dog of Atlanta,  
20      and that is going to hurt us trying to get funding.

21              MR. JEFFRESS: And you think currently, he  
22      might accept that, but with this, he wouldn't?

1 MS. SINGLETON: Currently, as long as he  
2 disclosed it and didn't vote on anything that might  
3 involve his mad dog case, he would be okay. With this,  
4 I don't think he could take it.

5 CHAIRMAN MEITES: The problem arises because  
6 unlike staff, we are not full time employees. Many of  
7 us have private law practices. Many of us are active  
8 in either pro bono or marginally compensatory  
9 litigation. Often either with or parallel to our local  
10 grantees.

11 Unfortunately, I don't see the conflict of  
12 interest provision as it applies to us, the directors,  
13 as inhibiting that kind of work, which really isn't a  
14 problem for the full time employees of LSC or OIG,  
15 since they don't have private practices.

16 ACTING CHAIRMAN BeVIER: It sounds to me as  
17 though we are going to need some different language for  
18 the directors from this particular language.

19 MR. JEFFRESS: Help me with which sentence it  
20 is that you particularly are uncomfortable with  
21 applying to directors.

22 MS. SINGLETON: The one that bothers me,

1 Charles, is "LSC's directors shall refrain from  
2 entering into relationships or transactions that might  
3 impair their judgment as to what is best for LSC."

4 I believe that right now, we can enter into  
5 such relationships so long as we disclose them and do  
6 not vote on anything that might impact those  
7 relationships.

8 Under this sentence, we, the directors, could  
9 not enter into the relationship. I, personally, prefer  
10 it the way it is in the statute as opposed to the way  
11 it is in your Code of Conduct, although I suppose it's  
12 debatable which is more ethical.

13 CHAIRMAN MEITES: I would like to hear from  
14 Mike, our junkyard dog, on this.

15 (Laughter.)

16 MR. FORTUNO: We have a mad dog here and a  
17 junkyard dog.

18 (Laughter.)

19 MR. FORTUNO: The mad dog is sounding better  
20 and better.

21 (Laughter.)

22 MR. FORTUNO: I'm trying to envision a real

1 practical problem here because when I read this the  
2 first time, I was not troubled by it, but as I'm  
3 reflecting upon the observations, I can see a potential  
4 problem, but I don't have a solution to what changes in  
5 the language could be made to meet the concerns that  
6 have been addressed by Sarah and Tom.

7 ACTING CHAIRMAN BeVIER: A reference to the  
8 statute wouldn't do?

9 CHAIRMAN STRICKLAND: Could we incorporate the  
10 statute by reference or just repeat it verbatim here?

11 MS. SINGLETON: If we had a sentence that says  
12 "Directors shall refrain comply with the statute," and  
13 then the sentence that we have applied to --

14 MR. FORTUNO: Officers and employees.

15 ACTING CHAIRMAN BeVIER: Officers and  
16 employees.

17 MS. SINGLETON: Right. I think that would at  
18 least satisfy my concern.

19 CHAIRMAN STRICKLAND: And just make a  
20 reference to the statute as opposed to re-writing it.

21 ACTING CHAIRMAN BeVIER: That sounds like a  
22 pretty good way to do that. I'm a little nervous about

1 drafting on the fly here. With that in principle, the  
2 idea with respect to conflicts of interest would be  
3 perhaps "Directors shall comply with the statute" and  
4 specific reference to the statute we are talking about,  
5 and then the rest of this provision applied to officers  
6 and employees.

7 MR. JEFFRESS: That certainly can be done. I  
8 don't think there will be a terrible drafting problem  
9 to do that.

10 I would just urge you all to think a little  
11 bit about separating yourself from this sentence. If  
12 in any way this gets interpreted as being the directors  
13 can enter into relationships that might impair their  
14 judgment, I don't think that's what you want to be  
15 saying.

16 ACTING CHAIRMAN BeVIER: Yes.

17 MR. JEFFRESS: Joel was on the taskforce and  
18 he has something he'd like to say.

19 MR. GALLAY: Joel Gallay with the Inspector  
20 General's Office. I just wanted to point out that  
21 there is the same kind of disclosure and essentially  
22 recusal provision further down in the conflict section,



1 so that if a director is involved in a situation that  
2 poses a potential conflict, that matter is disclosed  
3 and then the Board simply can go forward, take action,  
4 with that interested director not being a participant  
5 in it.

6 There is the same kind of cure, if you will,  
7 present already in the document.

8 MR. MCKAY: Your interpretation of this is we  
9 are to -- assuming it would apply to us -- we are to  
10 refrain from this, but if we do it, we could recuse  
11 ourselves under the directors' section?

12 MR. GALLAY: Yes. I agree fully with Charles  
13 that the appearance is essentially the same, that it  
14 does apply across the board, but if there was a  
15 situation where it was not avoidable or a director  
16 found out inadvertently that there was a conflict,  
17 there is a disclosure mechanism and then that director  
18 is not a participant in the transaction or the decision  
19 making. The Board acting through the disinterested  
20 directors can approve the transaction.

21 CHAIRMAN MEITES: I can't accept that. It  
22 puts the burden of explanation on the director to

1 explain why a transaction -- I don't believe that my  
2 cooperation with our local grantee is a conflict of  
3 interest and should be in violation of any code  
4 whatsoever. I don't think that I need to get an  
5 exception to a rule to do what I think as a private  
6 attorney I have a right and indeed an obligation under  
7 some circumstances to do.

8 I strongly feel that the congressional  
9 enactment which sets the parameters of our conduct is  
10 the proper balance between our part time job as a Legal  
11 Services Corporation director and our full time job as  
12 private attorneys.

13 I don't think -- I, for one, do not want to  
14 have to come before the Board and make a public apology  
15 for being co-counsel with our Legal Services grantee in  
16 Chicago in a case involving something or other.

17 I think that not only is it the right thing to  
18 do, but I think I have an obligation to do it. I do  
19 not believe that any Code of Conduct that puts the onus  
20 on me for doing that imposes an appropriate standard  
21 upon my conduct.

22 MR. McKAY: Let's get back to the original

1 question. Is it the second to last sentence in the  
2 first paragraph under conflicts of interest that says  
3 "LSC's directors shall refrain from entering into  
4 relationships or transactions that might impair their  
5 judgment as to what is best for LSC," is that the  
6 sentence that would arguably prevent Tom from doing  
7 what he wants to do?

8 CHAIRMAN MEITES: Sarah, you thought it was?  
9 I do, too.

10 MR. MCKAY: I'm not sure if it is.

11 MS. SINGLETON: Yes. That's the sentence that  
12 I have trouble with. To me, that is a sentence that  
13 imposes a greater obligation than either is imposed by  
14 the statute or by this section on directors.

15 MR. MCKAY: I guess the question I have is,  
16 and it's truly a question, is how does Tom's firm's  
17 involvement in a case with a grantee in Chicago impair  
18 his judgment as to what is best for LSC?

19 It seems to me it would improve his judgment,  
20 if it's possible.

21 MS. SINGLETON: Keep reading because the next  
22 sentence says even relationships that give the

1 appearance of a conflict should be avoided, which  
2 raises my issue with Frank, with his congressman from  
3 Georgia who thinks helping somebody not get evicted is  
4 a horrible thing to do, and he doesn't want to come to  
5 LSC because Frank chose to do that.

6 CHAIRMAN MEITES: The statute very clearly  
7 allows us to work with and support and co-counsel with  
8 our local grantees because we don't vote on matters  
9 that directly, as the statute says, affects our  
10 grantees. We have nothing to do with the amount of  
11 dollars that goes out to any individual grantee.

12 Occasionally, very, very occasionally, we  
13 might have some information about an impropriety of a  
14 grantee, and if that occurred, and that is a grantee  
15 that one of us has an ongoing relationship with, I  
16 would expect that Board member not to act, but as we  
17 all know, we have nothing at all to do with the  
18 appropriation of who gets how many dollars.

19 Under the present statutory scheme, we are  
20 free to work with our local grantees. Under this, I  
21 think there is a real impropriety if I am co-counsel  
22 and I'm taking a fee for my work and the LSC grantee is

1 not because they don't take fees, in some kind of  
2 litigation, to the extent that I get a fee, I am  
3 profiting from their efforts as my co-counsel, and it  
4 certainly has the appearance of improprieties under  
5 this regulation.

6 If nothing I do directly affects that grantee,  
7 I am free to do it, and as I think Congress envisioned.

8 MR. MCKAY: Fair enough.

9 ACTING CHAIRMAN BeVIER: Herb?

10 MR. GARTEN: I think we clarify the entire  
11 situation by inserting the sentence that we looked at  
12 about ten minutes ago, and delete "directors" in that  
13 sentence. I don't see any problem.

14 MR. JEFFRESS: We can prepare another draft  
15 with that for you to look at.

16 MS. SINGLETON: Also, in terms of  
17 distinguishing directors from officers and employees,  
18 that really doesn't bother me since the next two  
19 sections do exactly that.

20 ACTING CHAIRMAN BeVIER: Right. That is a  
21 distinction that actually exists and it is an important  
22 one. I think we have a consensus on how to handle

1 that, Charles, and appreciate your making efforts to  
2 draft that.

3 MR. JEFFRESS: If that is the only thing we  
4 change today, I'll be superbly happy.

5 ACTING CHAIRMAN BeVIER: No, we have already  
6 changed one.

7 (Laughter.)

8 MR. GARTEN: This will allow Tom to sign up  
9 that new client.

10 CHAIRMAN MEITES: I'm on the phone already.

11 (Laughter.)

12 ACTING CHAIRMAN BeVIER: Moving right along.

13 MR. JEFFRESS: After the first two paragraphs,  
14 which describe conflicts of interest and give examples,  
15 we then have two subsections on how reporting and  
16 review and determinations are made about conflicts of  
17 interest.

18 As you pointed out, Madam Chairman, the  
19 officers and employees, there is a different process  
20 than there is for directors, in that officers and  
21 employees who are facing a potential conflict or who  
22 become aware of a potential conflict are asked to

1 report it to the compliance officer, perhaps to the  
2 supervisor as well.

3 The supervisor may well plan some appropriate  
4 action to keep the conflict from affecting business.  
5 The compliance officer will make the final call then in  
6 the case of employees who face potential conflicts as  
7 to what action needs to be taken to isolate this  
8 employee from whatever activities are involved in the  
9 conflict.

10 It also stipulates in the second paragraph  
11 under officers and employees that conflicts of interest  
12 involving a compliance officer must come to the  
13 president and the Board of Directors and conflicts of  
14 interest involving the president must come to the  
15 Board.

16 It was not clear to us exactly how the Board  
17 would want to handle such information coming to them,  
18 so we voted as if it would go to the chairman of the  
19 Board or to a committee designated for that purpose,  
20 should the Board decide to designate such a committee.

21 Whatever action is taken by the Board in  
22 response to one of those conflicts would be reported

1 back to the compliance officer, so there would be a  
2 record on potential conflicts that were identified and  
3 how they were dealt with.

4 Under the directors' subsection, it has the  
5 director also bringing to the attention of the  
6 compliance officer and the Board the potential  
7 conflict, and the provision that Joel referred to,  
8 that if there is a potential conflict, the director  
9 must recuse themselves from the activity or transaction  
10 or vote that is underway.

11 I'll note that the fact that person recused  
12 themselves should be noted in the minutes.

13 There is a section here about avoiding  
14 situations where directors might profit financially  
15 from LSC activities, and this is in keeping with the  
16 LSC Act requirements on directors.

17 CHAIRMAN MEITES: I have a comment on the  
18 first paragraph. In the second sentence, you use the  
19 word "lobbying." On our anti-lobbying provisions, I am  
20 sensitive to -- you mentioned that word. I don't know.  
21 I would hope you could clarify what activities you mean  
22 by that word.



1           MR. JEFFRESS: The taskforce was certainly  
2 assuming this meant lobbying other directors on how  
3 they vote. With the current sensitivity, maybe we  
4 should try a different way to describe that.

5           CHAIRMAN MEITES: I would prefer that.

6           MR. JEFFRESS: I think we could probably just  
7 delete the words --

8           ACTING CHAIRMAN BeVIER: If you are not going  
9 to take part in discussion, you are not going to take  
10 part in trying to persuade others about how they ought  
11 to vote on it.

12           I have a grammatical change. This is what I  
13 do. The first sentence, "Any officer or employee will  
14 bring something to the attention of their supervisor,"  
15 could you put "his or her supervisor?"

16           MR. JEFFRESS: I can. I have a fellow member  
17 of the executive team who really has tried to keep me  
18 from using such language, or can I just say --

19           ACTING CHAIRMAN BeVIER: Then you should say  
20 "officers or employees" who become aware should bring  
21 it to the attention of their supervisor.

22           MS. SINGLETON: "The supervisor" would work,

1 too.

2 ACTING CHAIRMAN BeVIER: "The supervisor"  
3 would work; yes.

4 CHAIRMAN MEITES: I have a comment on the  
5 second paragraph of the directors' section. I'm not  
6 sure I understand the mechanics. We now file an annual  
7 statement regarding our activities and so on, as  
8 directors, we file that.

9 I'm not aware that is circulated among our  
10 fellow directors. Maybe it is, but I'm not aware of  
11 that.

12 As I read the second paragraph, our annual  
13 filings with management and any updates now go to each  
14 of our fellow directors. First of all, is that a  
15 change from what we are doing now, and second, what was  
16 the reason for that change?

17 MR. JEFFRESS: The taskforce did not consider  
18 that the individual filings would be circulated. That  
19 conversation never happened in the taskforce.

20 We were assuming this would be a specific  
21 notification about a potential conflict and that would  
22 be circulated. You will have to help me a little in

1 terms of what is on your annual filing and why that  
2 should be circulated, unless it is an identification of  
3 something that is a potential conflict, I would see no  
4 reason for it to be circulated.

5 CHAIRMAN MEITES: Maybe Vic can help us.

6 MR. FORTUNO: You currently do under the  
7 By-Laws of the Corporation file an annual disclosure  
8 statement, which is retained in the records of the  
9 Corporation. It's not circulated to your fellow  
10 directors.

11 What it does is it is a listing of  
12 organizations with which you have an affiliation and  
13 there are definitions as to what they mean by "you."  
14 It is you or a member of your immediate family.

15 It also relates to organizations that you have  
16 had a relationship with within the past two years.

17 There are definitions to broaden the scope of  
18 that, but basically what it does is asks for entities  
19 in which you have an ownership or other interest, and  
20 it simply is a disclosure. A record is maintained. If  
21 there is ever a question, that record can be produced  
22 to demonstrate that you had disclosed a relationship.

1           It is not something that is circulated, and it  
2           is something that is only used in the event of a  
3           conflict issue, and there are not many that have arisen  
4           so far.

5           You are right. Under the By-Laws, there is a  
6           disclosure requirement and it is implemented by the  
7           requirement for filing an annual filing of a disclosure  
8           statement. It is not circulated. What it is is  
9           disclosure of interests that you have in organizations,  
10          whether you are on their board of directors or have an  
11          ownership interest.

12          CHAIRMAN MEITES: I'd be more than happy to  
13          change it. I don't know. What do my fellow Board  
14          members think?

15          MR. GARTEN: What specific language are you  
16          concerned with?

17          CHAIRMAN MEITES: Must disclose the nature of  
18          such an affiliation to the compliance officer and the  
19          Board of Directors. Maybe if the compliance officer  
20          feels it is a matter that requires the Board, it goes  
21          to the Board, as routinely anything we file does go to  
22          all the Board members, but maybe it should.

1           MS. CHILES: I was just going to ask what  
2 happens to the disclosures that we fill out every year?  
3 Where do they go?

4           ACTING CHAIRMAN BeVIER: They are kept in the  
5 file. He said corporate records.

6           MS. CHILES: What if a potential conflict is  
7 disclosed in the disclosure?

8           MR. FORTUNO: The disclosure is simply a  
9 listing of relationships. It may be that a conflict  
10 arises. If there is a question about whether you  
11 disclosed an affiliation, an ownership interest in a  
12 business or serving on the governing body of a  
13 non-profit, there is a record of it.

14           It simply is a repository. It is maintained.  
15 If there is ever a need to refer to it, that can be  
16 done. The onerous is on the director in the first  
17 instance to disclose the existence of a relationship  
18 when the director becomes aware of a possible conflict.

19           Because of the way the statute is written and  
20 because you don't play a role in decisions concerning  
21 individual grantees, the Board does play a role in  
22 terms of broad categories, funding requests in the

1 field, whether it is a technology initiative grant, you  
2 don't focus on individual grantees. Conflicts of that  
3 sort seldom if ever arise.

4 MS. CHILES: Do you think you could just make  
5 sure that this second paragraph does not conflict in  
6 any way with the statute that requires that we provide  
7 these disclosures every year?>

8 MR. FORTUNO: Sure.

9 MS. CHILES: I just want to make sure it  
10 harmonizes with that.

11 MR. FORTUNO: Certainly.

12 MS. CHILES: And it doesn't add any additional  
13 burdens.

14 MR. FORTUNO: I don't think it currently  
15 conflicts. I think that the requirement in the By-Laws  
16 that you file an annual disclosure statement doesn't  
17 conflict with this. I think what this does is simply  
18 provides that if you become aware of a conflict, that  
19 you disclose the existence of the conflict.

20 It may be that the organization that is  
21 involved is already listed in your disclosure  
22 statement, but you would be expected to disclose the

1 conflict when it arises in any event. I don't think it  
2 is inconsistent. I don't think there is a conflict.  
3 We will certainly look at it to ensure that.

4 MS. CHILES: As it stands right now, if a  
5 conflict arises -- we don't have to disclose it to the  
6 Board of Directors. We just have to disclose it to  
7 LSC; correct? Or amend our filing?

8 MR. FORTUNO: You have to refrain from -- I'd  
9 have to take a look at the specific language of the  
10 statute -- certainly you would have to abstain from any  
11 vote. You couldn't participate in any vote concerning  
12 an organization that would maybe benefit with which you  
13 have an interest.

14 I don't know. I'd have to check the By-Laws  
15 and see if the By-Laws require that -- I would think it  
16 does -- disclose to your fellow directors the conflict,  
17 in addition to abstaining. I don't think it is  
18 sufficient to just abstain without disclosing there is  
19 a conflict.

20 ACTING CHAIRMAN BeVIER: Tom, are you content  
21 with this language as it presently reads?

22 CHAIRMAN MEITES: I can live with that. I'm

1 not sure how the procedure would work. Let me give you  
2 a real life example.

3 Before I was appointed to the Board, I was  
4 co-counsel with our local grantee in a challenge to  
5 subprime lending in Illinois under the Illinois Usury  
6 Act. That case, I think, started in 2000, and not  
7 surprisingly, it's still going on.

8 I disclosed that in my earliest filings, and  
9 the case continues. Under this, I will be happy to  
10 disclose the existence of that case to the compliance  
11 officer and to the Board, and I trust that I will be  
12 allowed to continue or not. In fact, you might save me  
13 from it, but I don't think you will.

14 I don't mind that. I agree that these things  
15 will happen rarely. As I understand it, it is only  
16 when a matter arises with one of our grantees, that we  
17 should disclose that.

18 It doesn't prohibit it, it brings it to light  
19 and let's the Board have say on whether they think it  
20 is appropriate. Yes, I can live with this.

21 MR. FORTUNO: I think that the real value of  
22 the disclosure statement is that when you submit that,



1 we have it, see it, review it. If we identify a  
2 potential conflict and call it to your attention, so  
3 it's a safeguard, because what you have done is  
4 identified those entities with whom you have a  
5 relationship, and we have an opportunity to review it  
6 and determine whether it is something that should be  
7 called to your attention.

8 Other than that, it is simply a record that is  
9 maintained should there be a question as to the  
10 disclosure of the relationship.

11 It may be, and in fact, it seldom is the case  
12 that when you disclose the relationship, that there is  
13 a conflict.

14 MR. MCKAY: You do more than just file it.  
15 You look at it?

16 MR. FORTUNO: Sure.

17 MR. MCKAY: For instance, in mine, if I wrote  
18 down Northwest Justice Project, you'd say hey Mike,  
19 that's the grantee in Washington State, you can't be on  
20 their board or working with them?

21 MR. FORTUNO: Actually, it would be called to  
22 your attention, but the fact is the provision in the

1 Act, the conflicts provision, would allow it.

2 MR. MCKAY: Fair enough. Wrong example. You  
3 would bring to your attention an issue, you wouldn't  
4 just throw it in a file?

5 MR. FORTUNO: Yes.

6 MR. MCKAY: Very good. Thank you.

7 ACTING CHAIRMAN BeVIER: Are we ready to move  
8 on to reporting and resolving violations?

9 MS. PHILLIPS: I just have to excuse myself  
10 from the meeting at this point because I'm not feeling  
11 well. Are we going to vote on this today?

12 ACTING CHAIRMAN BeVIER: I expect on the  
13 agenda is a vote on whether to recommend the resolution  
14 for adoption to the Board. We have already made a few  
15 changes. I'm not exactly sure how that vote is going  
16 to proceed.

17 It is certainly intended that during the  
18 course of this annual meeting of the Board, this Code  
19 of Conduct as tweaked by this committee and the Board  
20 itself will be voted on.

21 My guess is, Bernice, if you can be with us  
22 tomorrow at the Board meeting, you will have an

1 opportunity to express your dissent, if that is what  
2 you wish to do.

3 I hope you are feeling better.

4 MS. PHILLIPS: Thank you.

5 ACTING CHAIRMAN SINGLETON: Are we ready to  
6 proceed with V?

7 MR. JEFFRESS: V, reporting and resolving  
8 violations. This does get easier as it goes along.  
9 The tough sections were first. I'll let you know that.

10 ACTING CHAIRMAN BeVIER: Oh, yeah?

11 (Laughter.)

12 MR. JEFFRESS: Maybe I shouldn't say that.

13 The first paragraph describes all of our  
14 duties, directors, officers and employees, to report  
15 any violations which we see, and it specifies that the  
16 appropriate office of LSC will investigate. It  
17 indicates what types of cases, which is any case of  
18 significance will be reported to the OIG for their  
19 consideration also as to whether it is something they  
20 should pursue.

21 It stipulates that directors, officers and  
22 employees are to cooperate in any investigation,

1 authorizes LSC to take disciplinary action against  
2 employees for violations of the Code.

3           There is a paragraph that begins at the bottom  
4 of page three and goes to the top of page four in terms  
5 of how the Board will respond, should the Board  
6 conclude that a director has knowingly violated the  
7 law.

8           I would point out to you in that paragraph,  
9 there are not a lot of disciplinary measures for Board  
10 members identified anywhere. The only one that is  
11 identified is removal of the director from the Board,  
12 and that is permitted under the law by a majority vote  
13 of the Board of Directors.

14           MS. SINGLETON: I think you ought to deny us  
15 our per diem.

16           MR. JEFFRESS: I believe it is seven.

17           MR. FORTUNO: The provision is that a member  
18 of the Board may be removed by a vote of seven members  
19 for malfeasance in office or for persistent neglect of  
20 or inability to discharge duties, or for offenses  
21 involving moral turpitude and for no other cause.

22           MR. JEFFRESS: Those are the only conditions

1 under which you could remove a member of the Board.  
2 Since there may be a need to -- theoretically a need to  
3 have a provision for what the Board would do in the  
4 event someone violates the Code, the taskforce inserted  
5 the word "censure" in here. I think the law is silent  
6 on whether a board can do that or not do that. There  
7 is no other provision at this point that we know of for  
8 any discipline for members of the Board.

9 MR. GARTEN: Are you reading from the D.C.  
10 corporate law?

11 MR. JEFFRESS: No. I was reading from the LSC  
12 Act itself.

13 MR. GARTEN: I am sure the D.C. law would be  
14 similar on removal of directors.

15 MR. JEFFRESS: Right.

16 MR. GARTEN: I think adding something is a  
17 mistake.

18 MR. JEFFRESS: We can delete the including  
19 "censure" if you are uncomfortable with that. The  
20 taskforce was looking for some idea, some suggestion to  
21 give to the Board as to what you might do.

22 It's your determination.

1 MR. GARTEN: The law is what it is.

2 MR. JEFFRESS: Right.

3 MS. SINGLETON: I was going to make a  
4 different point but it seems to me that we could as a  
5 Board add something that is in the nature of censure,  
6 if we thought that was appropriate.

7 MR. JEFFRESS: I believe the Board has that  
8 authority, but it has not been addressed.

9 ACTING CHAIRMAN BeVIER: Why would that be a  
10 problem?

11 MR. GARTEN: First of all, if you decide to  
12 change what we just read, it is going to require you to  
13 comply with either an amendment to the Charter or an  
14 amendment to the By-Laws, or a combination of the two.

15 I don't see the need for it. The Board is  
16 going to investigate and they are going to remove the  
17 director if any one of those acts that are provided for  
18 in both the LSC Act and I'm sure in the D.C. Act are  
19 there. I don't see we are gaining anything by the word  
20 "censure."

21 MS. SINGLETON: I agree that we couldn't  
22 remove somebody except in compliance with those laws,

1 but I don't see why we couldn't say you might get a  
2 letter of censure if you have done something that we  
3 don't think warrants removal because of whatever  
4 reason, but we think that somebody ought to call it to  
5 your attention that this wasn't good conduct.

6 MR. GARTEN: I think you had better get  
7 counsel to give you an opinion on what you can add.  
8 I'm not sure you can just pull the word "censure" out.  
9 Naturally, if the Board is looking into something and  
10 they are considering removing a director, just getting  
11 into that area is in the nature of a censure. I don't  
12 think you can just throw that word in there legally.

13 MS. SINGLETON: I'm a little bit more worried  
14 about the obligation under the first sentence. Do I  
15 honestly have an obligation to report any violation of  
16 law I might notice to you guys? If so, don't ride with  
17 Herb because he speeds.

18 (Laughter.)

19 MR. JEFFRESS: Actually, we had quite a go  
20 round on this particular point, as you can imagine, in  
21 the taskforce, with some similar examples. We think  
22 this section has to be read in conformance with the

1 purpose which applies to our business relationships and  
2 activities.

3 In terms of violations of any law, regulation  
4 or LSC policy or this Code, we were not anticipating  
5 parking ticket kind of references. As a matter of  
6 fact, the paragraph on the OIG referrals was written  
7 specifically to try to exclude those kinds of things.

8 ACTING CHAIRMAN BeVIER: Herb?

9 MR. GARTEN: Before we got into this last one,  
10 I had a question, and that was we heard this morning or  
11 this afternoon about minor infractions going before the  
12 grievance committee.

13 Why didn't you reflect that as one of the  
14 exceptions that the Inspector General is not going to  
15 get involved in? You have minor or technical  
16 irregularities that occur on a non-recurring basis.  
17 Why not add matters referred to the grievance  
18 committee?

19 MR. JEFFRESS: Grievances are typically human  
20 resources' related, personnel types of issues. We did  
21 in the last sentence there, "Employment related  
22 complaints and grievances that can be handled through



1 regular complaint and appeal procedures," the last  
2 sentence of the second paragraph in Section V, we tried  
3 to identify those would not be the type that --

4 MR. GARTEN: They can be non-employment  
5 matters that are minor and are referred to the  
6 grievance committees, so why not exclude them rather  
7 than get the Inspector General's Office involved?

8 MR. JEFFRESS: I know the discussion earlier  
9 about grievance committees was with reference to  
10 grantees, the grievance committee at a grantee that  
11 would hear a complaint about non-representation or  
12 denial of representation or the quality of  
13 representation.

14 MR. FORTUNO: I'm not sure what we are talking  
15 about when we say the "grievance committee at LSC," I  
16 don't think LSC has a grievance committee.

17 MR. JEFFRESS: We have a grievance process in  
18 our handbook.

19 MR. GARTEN: I heard it referred to as a  
20 grievance committee.

21 MR. JEFFRESS: We would require every grantee  
22 to have a grievance committee.

1                   MR. GARTEN: Okay. I see the distinction.  
2           Are you satisfied with the description of what is not  
3           going to be sent, what minor matters are not going to  
4           involve the OIG?

5                   MR. JEFFRESS: I'm satisfied that at this  
6           point, that is what this intends. I will say that was  
7           a major point of discussion and took quite a while to  
8           get to this point of identifying the types of things  
9           that the OIG really doesn't want to spend their time  
10          on, and they never anticipated those kinds of things  
11          being referred to them.

12                   On the other hand, the OIG would like to make  
13          sure that folks are aware that where there are real  
14          problems reported, that there is an expectation that  
15          the OIG would at least look at it and make a  
16          determination whether to make an investigation.

17                   MR. GARTEN: Thank you.

18                   MS. SINGLETON: I'd like to go back to what  
19          obligations we have to report things. Right now, if I  
20          should observe a grantee that I think is violating a  
21          law or a reg, am I obligated right now to report it to  
22          you guys, if we don't adopt this Code of Conduct?

1           ACTING CHAIRMAN BeVIER:  If we don't adopt the  
2 Code of Conduct?

3           MS. SINGLETON:  If we don't adopt this  
4 provision in the Code of Conduct, am I under an  
5 obligation to report that to you now?

6           MR. JEFFRESS:  I'm not aware of any, but let  
7 me defer to our legal eagle.

8           MR. FORTUNO:  I am not aware of any provision.  
9 Certainly, some folks might be disappointed if you  
10 didn't do so, but I'm not aware of anything that would  
11 strictly speaking require that you report any such  
12 violation.

13          MR. MCKAY:  Yes, we have a fiduciary duty as a  
14 member of the Board, as an example, if your example is  
15 you are aware of a grantee violation of a congressional  
16 restriction, if you are aware of that, it seems to me  
17 as a Board member, we do have an obligation to report  
18 it.  It is part of our fiduciary duties as a member of  
19 the Board to make sure that the restrictions are  
20 adhered to, in the same way we would be concerned if  
21 OCE wasn't properly ferreting out --

22          MS. SINGLETON:  I understand if I saw somebody

1 in LSC doing something I thought was against the law, I  
2 might have to report it. I question whether in fact if  
3 I think that a grantee is violating a restriction, I  
4 have a duty to come tell LSC about it. I really do.

5 ACTING CHAIRMAN BeVIER: Why would you not?

6 MS. SINGLETON: Because nothing in my job as a  
7 member of the Board of Directors makes me responsible  
8 for individual grantee compliance.

9 ACTING CHAIRMAN BeVIER: Well, you're not  
10 responsible for it but the Corporation is responsible  
11 for it, and if you gain knowledge of it, it certainly  
12 is in the best interest of LSC that be reported, at  
13 least it would seem to me.

14 You don't have to go around trying to ferret  
15 it out. You are not an investigator or prosecutor. If  
16 you actually know that is occurring and you don't make  
17 sure that the Corporation learns of it so some action  
18 can be taken, I think it is a breach of a fiduciary  
19 obligation.

20 I think you have a fiduciary duty to do  
21 something about that.

22 MR. FORTUNO: I think Mike and Lillian made a

1 good point. I'd have to think about it from that  
2 standpoint. There is an obligation to enforce  
3 requirements and restrictions on the Corporation.

4 As a director of the Corporation, whether  
5 there is a fiduciary duty to ensure that the  
6 Corporation is apprised of violations that you become  
7 aware of, that could well be the case. I'd have to  
8 think about that.

9 I think they make a good point.

10 MS. SINGLETON: Okay. Something I need to  
11 think about. I understand you think they make a good  
12 point. Are you giving me counsel's opinion that right  
13 now I have that obligation as a member of this Board of  
14 Directors?

15 MR. FORTUNO: Because it is an important  
16 matter, a significant matter, I'd like to reflect on  
17 it, so that you have a carefully thought out opinion on  
18 it. I think they make a good point, and right now, my  
19 reaction based on our discussion is you do. I'd like  
20 to reflect on it more thoroughly.

21 ACTING CHAIRMAN BeVIER: I think the Board  
22 would be very appreciative of getting an opinion with

1       respect to that issue. My inclination is so different  
2       from Sarah's, that I think it is something worth --

3               MR. FORTUNO: I will. For the time being, I  
4       don't think you have to turn Herb in for his two miles  
5       above the speed limit.

6               MS. SINGLETON: Just for the record, it's not  
7       that I know of people who are violating the law, I just  
8       want to know what kind of an obligation I have should I  
9       find out something like that.

10              ACTING CHAIRMAN BeVIER: Should it come to  
11      your attention. We know this is hypothetical, Sarah.

12              MR. GARTEN: You might find it helpful to have  
13      some language to which they become aware or something  
14      along those lines.

15              ACTING CHAIRMAN BeVIER: That is what it says,  
16      doesn't it?

17              MR. GARTEN: It doesn't spell it out. I think  
18      there is a duty legally.

19              MS. SINGLETON: To me, the standard ought to  
20      be at least the same as like when you have to turn your  
21      client in for lying.

22              (Laughter.)

1 MS. SINGLETON: You have to have fairly  
2 certain knowledge as opposed to just some little  
3 suspicion. That is just a thought.

4 MR. GARTEN: I would suggest that you look at  
5 some of these others. I think you are going to have  
6 some qualifying language.

7 MR. JEFFRESS: It's the "reasonable suspicion"  
8 wording there that is of particular concern, I take it.

9 ACTING CHAIRMAN BeVIER: Please tell me  
10 exactly where you are. "If the Board of Directors  
11 concludes knowingly violated," is that what you are  
12 talking about?

13 MR. JEFFRESS: No. The first paragraph in  
14 Section V.

15 MS. SINGLETON: Section V, the very first  
16 sentence.

17 ACTING CHAIRMAN BeVIER: "LSC directors have a  
18 duty to report violations of any law, regulation or LSC  
19 policy."

20 You are asking whether that changes --

21 MS. SINGLETON: Or "Any reasonable suspicion  
22 of waste, fraud and abuse." It would seem to me that

1 at least the "reasonable suspicion" qualifier ought to  
2 go before the violation of law also, have a duty to  
3 report any reasonable suspicion of violations of law or  
4 regulation.

5 MS. CHILES: It seems like it is a two part  
6 question, number one, is there a duty, and number two,  
7 at what point is that duty triggered.

8 MS. SINGLETON: Right.

9 MS. CHILES: At what level of knowledge or  
10 certainty do you have to have to have that duty  
11 triggered.

12 ACTING CHAIRMAN BeVIER: We are going to be  
13 hard put, I think, to come up with this resolution  
14 recommendation. I'm not sure what we will do about  
15 being hard put. I'm just warning you. We are also  
16 going to be hard put to get through this agenda by  
17 5:00.

18 Are we ready to go on?

19 MR. McKAY: I have a question about Section V  
20 as well. The first question I have is why are we  
21 putting the reporting section right in the middle of  
22 the Code when you have certain provisions ahead of it



1 and certain provisions behind it?

2 Why wouldn't it be at the very end of the  
3 Code, the reporting section?

4 MR. JEFFRESS: We are happy to put it wherever  
5 you would like it. I guess in the course of dealing  
6 with other codes, it's probably the order it came up  
7 in. Again, I was just trying to figure out what your  
8 thought process was.

9 MR. MCKAY: I guess the next question I have  
10 is there is not going to be a second part to this,  
11 there isn't going to be like a compliance program.

12 It looks like this is your effort at the  
13 compliance program right here, that is making sure that  
14 the Code is properly enforced.

15 MR. JEFFRESS: Actually, I believe there are  
16 other elements to the compliance program that the Board  
17 would want to consider.

18 If you look at the compliance programs in  
19 private industry and in large non-profits, in addition  
20 to codes of ethics or conduct, there are frequently  
21 provisions of best practices for the Board, and how the  
22 Board will conduct its business. It might be useful

1 for LSC to look at that.

2           There are also provisions for regular  
3 corporate reviews of are we in compliance with the Fair  
4 Labor Standards Act. Are we in compliance with all the  
5 other laws that apply to us.

6           A full compliance program in addition to this  
7 Code would have some other features that have internal  
8 control kind of annual reviews of activities.

9           MR. MCKAY: That is what I'm getting at. I  
10 want to be assured that either we put it in here under  
11 reporting and resolving violations, or somewhere else,  
12 I think an important part of the Code.

13           A code in many ways could be wonderful, looks  
14 great and everyone when it is finally agreed up fully  
15 embraces it, but there is a danger of it just being  
16 placed up on a shelf and it collects dust and cobwebs.  
17 It needs to be a living, breathing document, fully  
18 embraced by the Board and this Code of Ethics  
19 inculcated throughout the organization.

20           That includes training, which we have already  
21 discussed. It was in a previous section.

22           It seems to me this needs to be reduced to

1 writing, making it clear that -- I'm not saying it  
2 should be in the Code. Indeed, I'm suggesting the  
3 possibility of this section actually being pulled out  
4 and put elsewhere into a separate document to be  
5 entitled "the compliance program," where you would  
6 address training, I'd suggest once a year, for  
7 everybody. Training for every employee that comes on  
8 the job. After the training, they sign this Code of  
9 Conduct and they do it every year so it's there in the  
10 file.

11 I don't see anything in here about anonymous.  
12 I know there are dangers with allowing employees to  
13 file anonymous complaints, but sometimes that is the  
14 only way you are going to get a good legitimate  
15 complaint.

16 I'm not entirely sure I saw anything and maybe  
17 I missed it, an anonymous hotline or a box where  
18 someone can drop off something and slip in a document  
19 without their name on it.

20 These are just examples. Spot checking. I  
21 think you were talking about best practices. Coming  
22 back throughout the year and someone checking every

1 once in a while, making sure, are we maintaining a file  
2 of the signed documents from the employees. Are we  
3 training new employees when they come on the job.

4 This is what makes a Code of Conduct a living,  
5 breathing really code that is being executed.

6 I guess my first impression of this section is  
7 it is good, but it needs more, and either you add it  
8 here or you pull it out and you have a separate  
9 compliance document, which is normally what I see.

10 A Code of Conduct which is a clean set of  
11 rules, here they are. That's the Code of Conduct or  
12 Code of Ethics. The second document is the compliance  
13 document, the compliance program. This is how we are  
14 going to make sure this is adhered to.

15 MR. JEFFRESS: The taskforce, in our first few  
16 meetings, was dedicated to listing all the elements of  
17 a compliance program, and that included many of the  
18 things that you mentioned.

19 When we were drafting the Code, anticipating  
20 that this may be the first piece that was acted upon,  
21 the taskforce felt like if somebody is going to sign  
22 this Code, they are going to want to know what is going

1 to happen, what are the consequences, who do I report  
2 to if I see a problem.

3 We felt like if we could do the two together,  
4 we could put it a different place if we were going to  
5 proceed with the Code first and then do the rest, we  
6 felt like this kind of procedure, although we generally  
7 try to keep it free of procedures, the reporting  
8 procedure and consequences need to be in there.

9 MR. MCKAY: I don't disagree with this  
10 approach. I think it is good to make sure people know  
11 they should be keeping their eyes peeled for not just  
12 themselves but if they see someone else either  
13 intentionally or unintentionally, that they have an  
14 obligation as well.

15 I don't mean to suggest that we do anything  
16 other than move this to the end so it's clear that we  
17 are talking about everything preceding it, not just  
18 anything that was preceding this in Section V.

19 If we do not enlarge it to include these other  
20 things, we should have a follow up document to set  
21 forth the training, the requirement that every employee  
22 sign this thing once a year, is what my proposal would

1 be, so that they are reminded of the rules, and also  
2 informed of changes in the rules that have taken place  
3 in the preceding year.

4 MR. JEFFRESS: Good points.

5 ACTING CHAIRMAN BeVIER: As I understand you,  
6 Mike, you are suggesting that we do two things. One,  
7 we put this at the end, and two, that as part of the  
8 resolution adopting the Code of Conduct, when and if we  
9 get to that, we include a direction to develop and  
10 present to the Board for its consideration a compliance  
11 program.

12 MR. McKAY: Correct.

13 MR. GARTEN: I need some clarification. The  
14 Code of Conduct deals with many different matters other  
15 than waste, fraud, abuse or violations of law. What  
16 about violations of these other items that we are going  
17 to cover in the Code of Conduct? How is that handled?

18 MR. JEFFRESS: Some of these, if they were to  
19 occur today, we would handle through a grievance  
20 process or through a disciplinary process, and perhaps  
21 through the Office of Legal Affairs, if someone engaged  
22 in some restricted political activities, if someone

1 released corporate records that shouldn't have been  
2 released, we would deal with them through our normal  
3 disciplinary process.

4 This just brings together in one place the  
5 kinds of conduct that we expect people to exhibit and  
6 the kinds of conduct we expect people to refrain from.

7 As I said earlier, to some extent, some of  
8 these kinds of issues are addressed at least partially  
9 in the employee handbook which you adopted in April.

10 This is intended to be a more comprehensive  
11 statement of conduct all in one place than anything we  
12 have today.

13 MR. GARTEN: I am wondering whether it belongs  
14 in a separate document for that reason, because you are  
15 covering more than these serious matters, and there is  
16 no reference to violations of all these other matters,  
17 as to how they are going to be handled.

18 MR. JEFFRESS: It says "have a duty to report  
19 violations of any law, regulation, policy or this  
20 Code." If it's a violation of anything in the Code,  
21 this is a reporting mechanism to use for that  
22 violation.

1           MR. GARTEN: The separate document that you  
2 were referring to, how do they handle that?

3           MR. MCKAY: It's called "the compliance  
4 program." It is a separate document that makes sure  
5 that this Code is properly enforced. It is two  
6 documents. That's normally the way I see it.

7           MR. JEFFRESS: It might well be that when the  
8 taskforce works on these next sections of the plan, we  
9 could come back to you and say now that we have this  
10 second section that includes something like this, and  
11 remove it from the Code.

12          MS. SINGLETON: I think it is sort of like  
13 Herb, lawyers have ethical rules that basically set  
14 forth how you are supposed to act, but then there is  
15 usually a whole separate set of rules that say how  
16 those ethical rules are enforced. That is the kind of  
17 distinction I think you are making.

18          ACTING CHAIRMAN BeVIER: Do we have a  
19 consensus about moving number V to the end of this? We  
20 don't need a motion yet because we are not at that  
21 stage. I just wanted to make sure that part, is that  
22 something that people think is a good idea? Probably,



1 we will have a direction to develop a compliance  
2 program as well.

3 Now are we ready to go on to VI?

4 MR. JEFFRESS: Let me just call to your  
5 attention the last paragraph on V, which is a  
6 whistleblower provision prohibiting retaliation against  
7 individuals and encouraging people to report or to seek  
8 advice when in doubt.

9 MS. SINGLETON: If in fact you are going to  
10 separate out the procedural parts of V and put them in  
11 a compliance section, I think you ought to leave in  
12 your Code of Conduct a section called "No Retaliation,"  
13 and put retaliation in there. I don't believe that is  
14 procedural. I think that is part of the conduct you  
15 are requiring people to engage in.

16 ACTING CHAIRMAN BeVIER: I agree with that.

17 MR. McKAY: I agree. Indeed, I'm not entirely  
18 sure I would want Section V out of the Code. All I am  
19 suggesting is that there should be more that I wouldn't  
20 like in the Code.

21 I like the folks knowing they should be  
22 keeping their eyes peeled for that; yes.

1           ACTING CHAIRMAN BeVIER: I didn't understand  
2 you to be saying you wanted it out. I thought you were  
3 saying you wanted it moved to the end because it  
4 applies to everything and that in addition to V, we  
5 have a separate compliance procedure formalized.

6           If we do move it to the end and it is  
7 procedural, I think Sarah is right. What we may want  
8 to do is put this paragraph about retaliation as a  
9 separate roman numeral, and I don't know what roman  
10 numeral it would be, but it would be very roman.

11           (Laughter.)

12           MR. JEFFRESS: Call attention to it. We  
13 certainly can do that.

14           ACTING CHAIRMAN BeVIER: All right. Charles?

15           MR. JEFFRESS: Moving on to VI, restricted  
16 political activities. This is a section that applies  
17 to officers and employees but not to directors.  
18 Directors are not restricted from political activities.

19           Officers and employees are covered by sections  
20 of what is usually referred to as "The Little Hatch,"  
21 it's not the full burden of the Hatch Act, but there  
22 are restrictions on state and local government

1 employees and government contractors in terms of what  
2 they can do in terms of political activities.

3 Those same restrictions by law apply to LSC  
4 employees, and this paragraph simply codifies that and  
5 reminds people of it.

6 ACTING CHAIRMAN BeVIER: Questions? Concerns?  
7 Let's not get lazy now.

8 (No response.)

9 MR. JEFFRESS: Section VII, fair dealing.  
10 This is a kind of statement of principle that we found  
11 in quite a few Codes of Conduct. In some ways, it may  
12 be more applicable to private sector organizations  
13 perhaps than to non-profits.

14 In talking about it, the taskforce felt it was  
15 important to include it as a statement of principle in  
16 expectations for LSC employees. It also does address  
17 the gifts in a consistent manner as they are addressed  
18 in our employee handbook.

19 MS. SINGLETON: I do have a question on the  
20 gifts, because that one does apply -- does it apply to  
21 us?

22 Frequently, I think people might get gifts

1 from a local -- in fact, we all get gifts from local  
2 programs when we go there. What does this handbook say  
3 about that?

4 MR. JEFFRESS: Gifts less than \$50 are  
5 considered a token value and are permitted. Gifts  
6 beyond \$50 are not permitted. The handbook only  
7 applies to employees at this point.

8 MS. SINGLETON: Doesn't this read -- I'm sort  
9 of serious. I think those things we gave out last  
10 night were worth more than \$50.

11 ACTING CHAIRMAN BeVIER: Did we give those  
12 out?

13 MS. SINGLETON: I'm just using that as an  
14 example of types of things I've gotten from programs,  
15 the bags we get when we go on program visits usually  
16 appear to me to be worth more than \$50.

17 MR. JEFFRESS: Most of the programs are aware  
18 of our \$50 limit. I would hope they are not exceeding  
19 the \$50 limit in terms of what they give us.

20 MS. SINGLETON: I think Jonann went way over.

21 MS. CHILES: The program didn't pay for it.

22 MR. JEFFRESS: You must be getting different

1 things in your bags than the employees are getting.

2 (Laughter.)

3 MS. SINGLETON: I guess that is a point. Is  
4 it who pays for it or what the value of the thing is  
5 that matters?

6 MR. JEFFRESS: Our policy says you shouldn't  
7 take gifts more than \$50 from people that we are doing  
8 business with or our grantees, folks affiliated with  
9 us.

10 If somebody out of the blue handed you a \$100  
11 bill, this wouldn't apply. If it came in a bag that  
12 had a legal services' program's name on it, I think we  
13 would have a hard time.

14 ACTING CHAIRMAN BeVIER: We haven't adopted it  
15 yet, Sarah. Do you think it is not something we ought  
16 to do?

17 MS. SINGLETON: I am worried about these  
18 plaques. I'm sorry.

19 ACTING CHAIRMAN BeVIER: The plaques that we  
20 give in recognition of?

21 MS. SINGLETON: That we get. I remember when  
22 we got something from that place we visited, we asked,

1 and they said no, it wasn't worth more than \$50. I'm  
2 pretty sure most of these plaques are costing \$50 or  
3 more.

4 MR. JEFFRESS: There is a provision in Federal  
5 law that we didn't copy and I didn't think of until you  
6 just raised the question, that we had to deal with in  
7 terms of what we gave to the two Senators.

8 If it is an award without utility, then the  
9 price is not the issue.

10 MS. SINGLETON: Okay; fine.

11 MR. JEFFRESS: I don't know that we have  
12 included that language in ours yet, but it probably  
13 would be good language to include. We had a big debate  
14 about whether they were going to put goldfish in that  
15 bowl or not. If they don't, they are okay.

16 MS. CHILES: I just want to clarify one thing  
17 about the Little Rock visit, since Sarah mentioned it.  
18 The gift bags did not exceed a value of \$50 a piece,  
19 and the program did not pay for them. I think that  
20 covers us.

21 MS. SINGLETON: We got a nice book. I figured  
22 it was a hard bound book, that's \$25 right there.

1 MS. CHILES: With all due respect to Judge  
2 Arnold, it's not a best seller.

3 (Laughter.)

4 MR. JEFFRESS: Can I move on to  
5 confidentiality?

6 ACTING CHAIRMAN BeVIER: As far as I'm  
7 concerned, you may.

8 MR. JEFFRESS: This section stipulates two  
9 things, one that we will make our records available to  
10 the extent possible, in an effort to be transparent.  
11 However, those that cannot be made public, we will  
12 avoid disclosure of. I think that is pretty standard  
13 boilerplate language.

14 Recordkeeping, Section IX, originally was  
15 drafted thinking about financial records and accounts  
16 and assuring that no one would intentionally record  
17 things wrong or misrepresent facts, that folks could  
18 have access to it.

19 It is broader here in that it also applies to  
20 reporting of information, any information that LSC  
21 collects and disseminates, records created or received  
22 in the course of business, it makes clear that it is

1 LSC property, it doesn't belong to the individual, and  
2 the records will be kept according to our retention and  
3 disposal procedures.

4 I don't think there is anything exceptional in  
5 here.

6 ACTING CHAIRMAN BeVIER: Questions? Comments?

7 (No response.)

8 MR. JEFFRESS: X, protection of corporate  
9 assets. We all have a continuing obligation to protect  
10 the corporate money, property and other resources,  
11 spend them strictly in accordance with our policies and  
12 procedures.

13 XI, the directors, officers and employees  
14 promise to be accessible to auditors, that we won't  
15 limit the scope of the auditors' work or interfere with  
16 their process in any way, and that we promise to have  
17 full disclosure of our finances and public reports.

18 It makes it clear that LSC officers and the  
19 Inspector General are responsible for reporting to you  
20 all if a significant disagreement exists between us,  
21 our financial staff, and the auditors with respect to  
22 any of the procedures and processes in place.



1           XII is a restatement of our commitment to fair  
2 employment practices. XIII is again another statement  
3 that we will not discriminate or harass. This is  
4 broader than just retaliation for participating in an  
5 investigation. This is -- will not discriminate or  
6 harass in any way.

7           MR. FORTUNO: XIII also has a reporting  
8 provision. I don't know if that is something you want  
9 to focus in on or not.

10          MS. SINGLETON: Are you up to XIII already?

11          MR. JEFFRESS: While you were looking the  
12 other way, we slid right by them.

13          MS. SINGLETON: XIII is one I have a lot of  
14 trouble with. I'm sorry.

15          MR. JEFFRESS: That's quite all right.

16          MS. SINGLETON: I like harassing people -- no.

17          (Laughter.)

18          ACTING CHAIRMAN BeVIER: Does that include the  
19 members?

20          (Laughter.)

21          MS. SINGLETON: It seems to me that this  
22 Code -- I'm not sure why it is called "discrimination

1 and harassment." It sets forth obligation not to  
2 harass people in a way that is more stringent than what  
3 the law requires.

4 Do you agree with that assessment or not? I  
5 don't really know what the law in D.C. is. That's  
6 generally what the law is.

7 MR. JEFFRESS: I think by saying "any form of  
8 harassment or intimidation" is probably broader than  
9 the law.

10 MS. SINGLETON: Why do we want that?

11 MR. JEFFRESS: Why would we want to allow any  
12 form of harassment --

13 MS. SINGLETON: Somebody might say I just  
14 harassed Herb when I said he speeds and made a joke out  
15 of it, and poor Herb can now sue me -- not sue me -- he  
16 can charge me with violation of this Code of Conduct.

17 Why do we want that? I really don't know why  
18 we want to make a Code of Conduct in this regard, which  
19 is so sort of subjective, we want to make it more  
20 stringent than what the law requires.

21 ACTING CHAIRMAN BeVIER: Are you talking about  
22 a vagueness problem?

1 MS. SINGLETON: It's a vagueness problem and  
2 it's also just why are we making the workplace even  
3 more regulated, I guess, than what the law already  
4 does.

5 MR. FORTUNO: Any harassment or discrimination  
6 that is prohibited by law?

7 MS. SINGLETON: That is what I believe our  
8 Code ought to exhibit, but it shouldn't go farther.  
9 That is a personal belief. I'm sure there are people  
10 who could say yes, it should go farther for a variety  
11 of reasons. It's just my belief we shouldn't.

12 ACTING CHAIRMAN BeVIER: As part of the Code  
13 of Conduct, in other words, because your personal  
14 ethical obligations are not to harass and so forth are  
15 one thing.

16 How does the committee feel about this? Does  
17 anybody share Sarah's concern?

18 MR. MCKAY: I do. I'm just concerned about  
19 how we can clearly set forth those standards in the  
20 Code for the every day employee. If we were to simply  
21 change it and say to "any form of harassment or  
22 intimidation in violation of the law," then that's not

1 going to help most of the employees who don't  
2 understand what the law is.

3 It seems to me the challenge would be to try  
4 to figure out a way to communicate that without simply  
5 referring them to the U.S. Code.

6 MS. SINGLETON: Someone could find out for us  
7 what the law in this jurisdiction is in terms of what  
8 kind of harassment is unlawful.

9 MR. MCKAY: I think that would be helpful.

10 MS. SINGLETON: And then we could put that in.  
11 I kind of got a suspicion that I was sleeping when we  
12 passed this part of the employee handbook or something.

13 (Laughter.)

14 MR. MCKAY: For the record, you were harassing  
15 Herb at the time.

16 (Laughter.)

17 ACTING CHAIRMAN BeVIER: Sarah, I have a  
18 question for you, this idea of what is a hostile work  
19 environment, that is a violation of Title VI, isn't it,  
20 if you create a hostile work environment? It is  
21 incredibly vague. It is a violation of law.

22 I'm not sure that is going to make anything

1 more -- if you are trying for clarity.

2 MS. SINGLETON: There are only certain kinds  
3 of hostile environments that are unlawful. Yes, the  
4 definitions are vague.

5 MR. FORTUNO: But you have judicial decisions.

6 ACTING CHAIRMAN BeVIER: You are saying it is  
7 not on the basis of sex, race, or gender?

8 MS. SINGLETON: Anything. I'm going to be  
9 against people who are tall.

10 ACTING CHAIRMAN BeVIER: Well, in that case,  
11 we should eliminate it.

12 MR. JEFFRESS: Our employee handbook, as you  
13 say, you might want to go back and read what is in the  
14 employee handbook, in that we do say that harassment is  
15 prohibited because we don't want harassment in the  
16 workplace. It's not a good working environment if  
17 people are harassing one another.

18 That is not conduct that we expect to tolerate  
19 at LSC. You are right, it is beyond that prohibited by  
20 law, but in terms of employment practices, I don't  
21 believe harassment should be tolerated.

22 What is "harassment?" I understand there is

1 some vagueness there.

2 MS. SINGLETON: You have just promised people  
3 you are going to keep the workplace free from any form  
4 of harassment, and if your jurisdiction is anything  
5 like mine, if you don't do that, they now have a cause  
6 of action against you and if it's really, really hard  
7 on them, they can say you have constructively  
8 discharged them.

9 MR. JEFFRESS: We did go to some lengths in  
10 the handbook to take the advice of outside counsel on  
11 saying that this wasn't that kind of basis for a  
12 lawsuit, but I don't dispute that someone could well  
13 make a case.

14 ACTING CHAIRMAN BeVIER: What is the pleasure  
15 of the committee?

16 MS. SINGLETON: I'm not on the committee.

17 ACTING CHAIRMAN BeVIER: She's harassing the  
18 committee.

19 (Laughter.)

20 MR. GARTEN: I think Sarah's suggestion is a  
21 good one, that we simply ask the taskforce to look at  
22 the law and try to crystallize it in the Code of

1       Conduct, take that language and try to put it in an  
2       understandable form, so they don't have to go to the  
3       library to look it up and analyze it themselves.

4                ACTING CHAIRMAN BeVIER:  You are saying two  
5       things.  One is you want to limit this to the legal  
6       definitions, the legal kinds of harassment, Title VII  
7       kinds of harassment, and second, you want an effort  
8       made to make it more clear to employees what this is.

9                I think we ought to think about the  
10       possibility that the kinds of changes that we have  
11       suggested are sufficiently captured by thinking of them  
12       as drafting changes, that it might be possible for  
13       staff to work them through tonight.

14               We are not going to be able to finish this  
15       meeting today.  We are going to obviously have to  
16       re-commence tomorrow morning.

17               It is possible that if they drafted -- you are  
18       shaking your head "no."  I was thinking if they draft  
19       it, we might at least consider whether we are in a  
20       position to adopt the Code of Conduct.

21               MR. MCKAY:  I think this document is too  
22       important for us to ask staff to hustle to put

1 something together, have us look at it and bless it  
2 quickly.

3 I think we all agree this is a very important  
4 document. Let's think about it. Let's talk about it,  
5 give the comments to staff and let them reflect upon  
6 it. I think the challenge that I have just suggested  
7 is going to require a little thought to come up with  
8 the right language.

9 I guess I would recommend that we finish with  
10 our comments and have them present something to us  
11 before our next meeting that we could look at, think  
12 about, and then hopefully finalize in April.

13 MR. GARTEN: I concur. I just have a  
14 suggestion. I think it's going to be difficult to lay  
15 out what the law is. I have a suggestion for you to  
16 consider.

17 After the words "harassment and intimidation,"  
18 continue the sentence and say "including abusive  
19 verbal, physical, or visual," and I would add "to the  
20 extent prohibited by law."

21 If you find any other categories when you  
22 check out what the courts have held, add it.



1           MR. MCKAY: That might be the solution if it  
2 cannot be placed into the Code itself. I would like us  
3 to see if they can do it, but if they can't, and I join  
4 in your fear, if they can't, then I think that is a  
5 good resolution.

6           ACTING CHAIRMAN BeVIER: I want to see if I  
7 can ask Sarah whether you think in the provision itself  
8 it ought to be limited to particular kinds of  
9 harassment as Title VII does, race, gender, and so on.

10          MS. SINGLETON: I personally believe it  
11 should. I think what you could do, I think it should  
12 say the language that Herb said and then try to help  
13 people like Mike is trying to do, I think you could  
14 give examples that would include those that are  
15 prohibited by law.

16          ACTING CHAIRMAN BeVIER: Okay. I think we  
17 can't do better than suggest to you the nature of the  
18 concerns for the taskforce to take account of. I think  
19 we are pretty clear about what it is that we are  
20 interested in having you try to do, and all we can do  
21 is hope that you can do it.

22           I do think it is always risky to put examples

1 in a code, even when you say "including but not limited  
2 to."

3 MS. SINGLETON: That might be okay if you use  
4 things that are clearly prohibited by law, from my  
5 perspective, it would be okay.

6 ACTING CHAIRMAN BeVIER: Right. We will be  
7 very interested in what you come up with.

8 MR. JEFFRESS: Thank you. I do think we will  
9 want this Conduct of Conduct and our employee handbook  
10 to be consistent. It may require us to look back at  
11 the paragraph in our handbook on harassment and come  
12 back to you with perhaps revisions to that as well as  
13 revisions to this.

14 MS. SINGLETON: As Herb pointed out, Part V  
15 says what happens to a director who violates this Code  
16 of Conduct. What happens to the employee or the  
17 officer who violates the Code of Conduct? Does it say  
18 in here? I'm not seeing it.

19 MR. JEFFRESS: It says subject to discipline  
20 up to and including termination and the forms of  
21 discipline we have are spelled out in our employee  
22 handbook, but we didn't repeat those forms of

1 discipline here.

2 MS. SINGLETON: Where does it say that? I'm  
3 sorry.

4 MR. JEFFRESS: I hear somebody whispering  
5 behind me. I wish they would speak up louder. Page  
6 three of Section V, third paragraph.

7 "Where appropriate, LSC may take disciplinary  
8 and/or corrective action up to and including  
9 termination of employment for the commission of any  
10 such violation or for the failure to cooperate in an  
11 internal investigation."

12 MR. GARTEN: That just deals with failure to  
13 cooperate in an internal investigation. What about --

14 MS. SINGLETON: That is what I thought, too.  
15 I'm sorry.

16 MR. JEFFRESS: I guess that is not what was  
17 intended. I can see why it does read that way. I  
18 think that is another modification we need to work on.

19 MR. MCKAY: The point is you tell the  
20 directors what is going to happen, but you ought to let  
21 the employees and officers know, too.

22 MR. JEFFRESS: Right.

1           MS. SINGLETON: My next question is also  
2 general. Do you know whether people use violations of  
3 Code of Conduct as a basis for a suit against  
4 employers?

5           MR. JEFFRESS: I cannot answer that question  
6 one way or the other.

7           MR. FORTUNO: We have not looked, but my  
8 assumption is there is no limit to the creativity.

9           MR. GARTEN: There are tons of cases and  
10 lawsuits involving employee manuals. If you look that  
11 up, you are going to find many.

12           CHAIRMAN MEITES: I think Vic is talking about  
13 a branch of which I am a proud member.

14           (Laughter.)

15           MR. GARTEN: Would you take the case?

16           MR. FORTUNO: It depends on whether it  
17 constitutes a conflict.

18           ACTING CHAIRMAN BeVIER: Is that something,  
19 Sarah, that you want to have some research done on for  
20 the edification of the committee and the Board before  
21 we proceed to adopt this in April or to think about  
22 adopting it?

1 MS. SINGLETON: That would be my preference.  
2 I do think if it's clear this can become the basis of a  
3 lawsuit against an employer, then I really believe we  
4 need to write it as tightly as we can.

5 ACTING CHAIRMAN BeVIER: We need to be very  
6 careful in that respect.

7 MS. SINGLETON: Yes.

8 MR. GARTEN: I think if you sought the advice  
9 of a labor lawyer, they would put a disclaimer as they  
10 do in any regular employee manuals. It may be an  
11 appropriate disclaimer to add to this.

12 MR. JEFFRESS: We have that disclaimer in our  
13 handbook. We didn't think about applying it here, but  
14 we will look at that.

15 MR. McKAY: Again, there is a reporting  
16 requirement in XIII. I don't know if that is a  
17 concern. It is the last sentence of the first  
18 paragraph. "Directors have a duty to immediately  
19 report harassment or threatening behavior."

20 MR. GARTEN: When it occurs or they become  
21 aware of it? Why the "or?"

22 MR. JEFFRESS: Because someone may report it

1 to you that it happened yesterday.

2 MR. GARTEN: When they become aware of it  
3 should be sufficient.

4 MR. JEFFRESS: Okay.

5 ACTING CHAIRMAN BeVIER: Who are they  
6 acknowledged to make known to? "Directors, officers  
7 and employees are encouraged to make known if a  
8 colleague's conduct makes them personally or others  
9 uncomfortable," to whom are they supposed to make this  
10 known?

11 MR. McKAY: That is the reporting and  
12 resolving violation section.

13 MR. JEFFRESS: In terms of violations, it can  
14 go there. This is also an abbreviated version of what  
15 is in the employee handbook, which directs them to the  
16 supervisor, for employees.

17 ACTING CHAIRMAN BeVIER: I think that needs to  
18 be clarified then. I think I read it as Sarah, you're  
19 bothering me, so I would appreciate it if you wouldn't  
20 do that. It could be make it known to the harasser or  
21 make it known to the supervisor.

22 MS. SINGLETON: I'm pretty sure you

1 have -- you should have a whole mechanism already for  
2 reporting harassment.

3 MR. JEFFRESS: Yes, we do.

4 MS. SINGLETON: I think it ought to be clear  
5 in here that you should be using that mechanism, not  
6 making up a new one under the Code of Conduct.

7 MR. JEFFRESS: Right. That's what was  
8 intended here, but since it's not particularly well  
9 referenced.

10 The last paragraph says "For further  
11 information on reporting offensive conduct or to review  
12 the official policy," and it refers you to Section 2.3  
13 of the employee handbook.

14 MS. SINGLETON: That is kind of gentle. I'm  
15 talking about let's be specific.

16 MR. JEFFRESS: Fair enough.

17 MS. SINGLETON: If you want to have a defense  
18 that you had a policy and they didn't follow it.

19 MR. JEFFRESS: Fair enough. Do you have any  
20 problem with people signing this?

21 MR. MCKAY: I do. I would recommend that we  
22 say by signing this document, the undersigned, and I

1 would add "understands and agrees to abide by this Code  
2 of Conduct."

3 MS. SINGLETON: Was advised to consult with an  
4 attorney.

5 (Laughter.)

6 MR. GARTEN: You want to say acknowledge  
7 receipt of a copy of it, too?

8 MR. JEFFRESS: We can do that.

9 MS. CHILES: Can I go back up to the first  
10 paragraph in Section XIII? I agree with the discussion  
11 that we have had so far about abusive, harassing or  
12 offensive conduct for the verbal, physical or visual.  
13 That is too vague.

14 I don't see a problem with prohibiting threats  
15 or acts of violence or physical intimidation. Is that  
16 a problem?

17 MS. SINGLETON: I don't believe so because I  
18 think -- at least most places I am familiar  
19 with -- prohibit violence in the workplace, and all of  
20 that would be a violation of the criminal law, assault  
21 type laws anyway.

22 MS. CHILES: I'm just thinking about a



1 personal experience in the private sector where I had a  
2 very large brief thrown at me. I would have liked to  
3 have had this whole provision, go into the managing  
4 partner's office and say I was just threatened.

5 ACTING CHAIRMAN BeVIER: And the threat was  
6 carried out.

7 (Laughter.)

8 MS. CHILES: Just a thought. I understand the  
9 concerns that have been raised. I don't necessarily  
10 see that same concern with respect to threats of  
11 violence or physical intimidation.

12 ACTING CHAIRMAN BeVIER: Gang, I am about to  
13 conclude that this committee has done its work with  
14 respect to the Code of Conduct, and I think we very  
15 much appreciate the taskforce's work, too, Charles.

16 We take this very seriously, which is the  
17 reason why we have gone over it with this fine toothed  
18 comb, and it is something that is right for the Board  
19 to do and for this committee to do.

20 I do not believe we are in a position to vote  
21 on the resolution. I think we are where Mike McKay  
22 said we were, which is this is going to have to be put

1 over until the April meeting.

2 We will report on this to the Board tomorrow  
3 at the meeting.

4 Mike?

5 MR. MCKAY: I agree. This is very, very good  
6 work and real progress has been made. Since it is  
7 going to be worked over, I just wanted to make sure  
8 there was a consensus on the suggestion I raised  
9 earlier that it be changed to "Code of Ethics" and that  
10 the compliance officer be the "ethics officer."

11 CHAIRMAN STRICKLAND: I concur in that.

12 MS. SINGLETON: I would sort of like it to be  
13 ethics and conduct, just so we know it is something you  
14 are supposed to act on also.

15 CHAIRMAN STRICKLAND: We could name it that,  
16 but my preference would be the term of art within the  
17 document be "ethics officer."

18 MS. SINGLETON: That part is fine. I just  
19 thought the name of it should be "Code of Ethics and  
20 Conduct."

21 ACTING CHAIRMAN BeVIER: "Code of Ethical  
22 Conduct?" Never mind.

1 (Laughter.)

2 ACTING CHAIRMAN BeVIER: Code of Ethics and  
3 Conduct and ethics officer.

4 MR. JEFFRESS: I appreciate your kind words to  
5 the taskforce. I will communicate that. I also need  
6 to say that the executive team spent a lot of time  
7 going over this word by word, as did, I'm sure, people  
8 in the Office of Inspector General.

9 It really has been a very collective effort.  
10 Appreciate you all going over it so carefully as well.

11 ACTING CHAIRMAN BeVIER: At some point, we  
12 will come to closure on it. It's just not quite right  
13 for that now. We do appreciate your efforts.

14 I am a little bit at sea about what to do. It  
15 is 5:00. We are supposed to end at 5:00. There is no  
16 possible way that we are going to end this committee  
17 meeting right now. It is also true that we are not  
18 going to finish it.

19 Vic, I have a question for you, and that has  
20 to do with how the agenda would work. Tomorrow  
21 morning, the first thing that we have on the agenda is  
22 the 8:30 closed Performance Reviews Committee.

1           Is it possible for us to stop this meeting now  
2 and then re-convene it tomorrow after the Performance  
3 Reviews Committee meeting? In other words, we can have  
4 that one and then proceed to this one?

5           MR. FORTUNO: Yes. What you can't do is you  
6 can't start a meeting earlier than the noticed time.  
7 For example, you couldn't start Performance Reviews  
8 before 8:30.

9           I think we set this up so it would be a  
10 rolling agenda, so that the notice reads that way, if  
11 you don't conclude today, you can go ahead and recess  
12 until tomorrow, and continue then and adjourn at the  
13 end of the meeting, and you can have it either before  
14 or after the Performance Reviews.

15           ACTING CHAIRMAN BeVIER: Unless I hear a  
16 motion to adjourn this meeting right now, I think we  
17 ought to take a look at the continuity of operations  
18 plan. Would people object if the Acting Chair takes a  
19 two minute break, while you guys are getting yourselves  
20 organized?

21           I really would like to proceed expeditiously.  
22 I will hurry.

1           CHAIRMAN STRICKLAND: May I inquire about the  
2 lighting in the back of the room? It appears that the  
3 audience is in the dark. Is there a problem with the  
4 lights or did we just not turn them on?

5           MR. JEFFRESS: That is not unusual at LSC.

6           (A brief recess was taken.)

7           ACTING CHAIRMAN BeVIER: I would like to call  
8 the meeting back to order, please.

9           Tom Meites, are you still on the phone?

10          CHAIRMAN MEITES: Yes, I am.

11          ACTING CHAIRMAN BeVIER: Are you going to be  
12 available tomorrow for the 8:30 Performance Reviews  
13 Committee meeting?

14          CHAIRMAN MEITES: Yes, and I look forward to  
15 it.

16          ACTING CHAIRMAN BeVIER: Wonderful. Then you  
17 will be available for the continuation of this meeting,  
18 which I take it will not take is very long. I think I  
19 was perhaps over estimating how much longer we had on  
20 this committee.

21          We are very interested in the suggestion you  
22 put forward earlier this morning. At some point, we

1 would like to make sure that we get that motion, get  
2 that in the form of a motion.

3 MS. SINGLETON: Couldn't we do it right now?

4 ACTING CHAIRMAN BeVIER: We can, but I want to  
5 back up a little bit with respect to the Code of  
6 Conduct.

7 I think, as I've reflected on this, and sort  
8 of pondered the length of time between this meeting and  
9 our next meeting, and the urgency that we really ought  
10 to be feeling with respect to adopting this Code of  
11 Conduct, I would urge the staff -- I would think that  
12 the Board would direct the staff -- to proceed with  
13 dispatch to implement the changes that we have  
14 suggested to the draft, and that we plan to schedule a  
15 conference call meeting of the Board, notice it in the  
16 record, and meet and get this Code of Conduct adopted.

17 I think it would be in the best interest of  
18 the Legal Services Corporation if we proceed that way,  
19 rather than waiting until April.

20 MR. MCKAY: I agree. It is something that we  
21 have been talking about for a while, certainly before  
22 any GAO reports came out. I know I've raised it for

1 quite some time. I fully embrace that.

2 I would like to make sure that we give the  
3 taskforce enough time, a good couple of three weeks to  
4 write this thing up, and then give us a good two weeks  
5 to read it and think about it before we have the  
6 telephone conference.

7 I think it is a great idea and I fully embrace  
8 it.

9 ACTING CHAIRMAN BeVIER: Herb?

10 MR. GARTEN: I suggest they also consider  
11 taking a look at the employee handbook and if possible,  
12 to make it consistent with what we have decided with  
13 the Code of Conduct, and that shouldn't be too  
14 difficult to do.

15 MR. JEFFRESS: We will present one change that  
16 is the same for both. You may have to adopt both a  
17 Code of Conduct and a revision to the handbook, but it  
18 will be consistent.

19 ACTING CHAIRMAN BeVIER: Right. I think we  
20 should aim to have this done. I'm putting the two  
21 weeks together with the two weeks for us to look at. I  
22 think giving ourselves four weeks is rather a lot, and

1 it is generous. We ought to be able to do it within  
2 that time.

3 Let's just make sure we do. I know the  
4 taskforce has been diligent and will continue to be and  
5 so will the Board members in reviewing the changes.

6 MS. SINGLETON: This is going to the whole  
7 Board?

8 ACTING CHAIRMAN BeVIER: What will go to the  
9 whole Board will be our recommendation that we proceed  
10 in this way, and then it will go to the whole Board.

11 MS. SINGLETON: I mean what they are  
12 re-drafting and circulating?

13 ACTING CHAIRMAN BeVIER: Yes. I think it  
14 should go to the whole Board, even though it is  
15 just -- I think it should go to the whole Board and the  
16 whole Board ought to vote on it when we have the  
17 conference call.

18 MR. JEFFRESS: Would it be helpful to get the  
19 revised Code of Conduct with the changes highlighted,  
20 or do you want to go through the whole thing top to  
21 bottom again?

22 ACTING CHAIRMAN BeVIER: No. I just think the



1 changes.

2 MR. JEFFRESS: We will give you the whole  
3 Code, but we will highlight those changes.

4 ACTING CHAIRMAN BeVIER: Right; yes.

5 The staff report on the continuity of  
6 operations plan, this is just a report, and I take it  
7 that each of us has read this plan, and it's not something  
8 that we adopt and an expeditious report will be useful  
9 at this point.

10 MR. JEFFRESS: I have my instructions, Madam  
11 Chairman. I'll be happy to comply.

12 ACTING CHAIRMAN BeVIER: Thank you, Charles.

13 MR. JEFFRESS: As you say, the report is for  
14 information. It does not require a Board action.

15 The GAO recommended in their report on  
16 governance and management that LSC adopt a  
17 comprehensive and effective continuity of operations  
18 plan. We informed them that we would do so in the year  
19 2008.

20 A comprehensive plan is going to involve three  
21 sections. One, an emergency plan detailing the  
22 procedures to be taken following an emergency.

1           Second, a disaster recovery plan on how we can  
2 recover from a disaster, and steps we need to take to  
3 restore essential services.

4           And then a third part of it would be the  
5 business continuity plan on how we will resume full  
6 operations following an emergency.

7           At LSC, we had an emergency response plan that  
8 was developed shortly after we moved to this building.  
9 We started out with our emergency response team  
10 reviewing and revising that emergency response plan as  
11 the first component of our continuity of operations  
12 plan.

13           That is what is in your book, the emergency  
14 response plan as developed by our emergency response  
15 team, as reviewed by the executive team, and as  
16 reviewed and commented upon by all staff, at least the  
17 folks that had the opportunity, I won't say everybody  
18 did.

19           The team has updated the plan and as you see  
20 it before you, it has been adopted by the executive  
21 team. It's been posted on our Intranet for all  
22 employees. We are in the process of printing bound

1 copies to give all of our employees.

2 This portion of the plan describes what we  
3 will do in the event of an emergency, how employees are  
4 to behave, what the emergency response team's duties  
5 are, and names of the members of the emergency response  
6 team.

7 It describes what to do in the event of any  
8 number of types of disasters, floods, hurricanes,  
9 tornadoes, bomb threats, fires. It addresses emergency  
10 supplies and their locations.

11 It covers what to do in the event of an  
12 emergency here at this building.

13 It also goes on to talk about the  
14 communications plan following an emergency, should our  
15 building not be able to be occupied. It talks about  
16 how we will communicate with employees as to what is  
17 happening, how we will get feedback from employees as  
18 to what is happening with them in case it is a  
19 community wide emergency.

20 It has telephone trees for notification to the  
21 Board. It has provisions in here as to the  
22 notification to grantees. It designates John Constance

1 and the GRPA staff as the contact to communicate with  
2 the media for what is going on, and it provides for  
3 those kinds of communications following an emergency.

4 That is the plan you have before you, the  
5 emergency response plan. That is in your book. That  
6 does not provide Board approval. I think it is a  
7 thorough plan.

8 Moving onto the second stage of the continuity  
9 of operations plan, how we will recover essential  
10 functions following a disaster, we have negotiated a  
11 contract with a provider to provide us a computer  
12 network back-up for our network.

13 It is being built out as we speak. It is not  
14 quite operational. It will be shortly. Essentially,  
15 at the flip of a switch, our back-up center will be  
16 able to handle our computer operations just as if it  
17 were the center here. The back-up information will be  
18 a day old, so we may have lost a little information.  
19 It will be fully operational.

20 It is at a remote spot, 80 miles away, in the  
21 hills of Virginia, where a number of other  
22 organizations and Government agencies have their

1 back-up as well.

2 There are essentially servers out there that  
3 are dedicated to our purpose and we will be using them  
4 for our back-up as well.

5 Once that flip is switched -- that switch is  
6 flipped -- it's been a long day.

7 (Laughter.)

8 MR. JEFFRESS: Anyone from their computer,  
9 whether at home or anywhere else, can log into our  
10 system with appropriate security clearances, and it  
11 will be as if they were at their desk. They will have  
12 access to all of our on line documents and our e-mail  
13 and communications systems.

14 That is a big step for us in terms of assuring  
15 continued operations following a disaster.

16 The next step will be for us in each office to  
17 then designate okay, how is the Finance Office going to  
18 continue their operations if they have to work from  
19 home, if they have access only to what is on the  
20 network, how do they pick up and go forward.

21 We will have a plan for each office as to how  
22 that office will pick up and go forward in the event

1 that our building is not habitable, and we can't get  
2 back here.

3 We do not anticipate renting a separate  
4 building or facility for LSC to operate out of, unless  
5 our building here is destroyed, and we will have to  
6 deal with that at that point. Our assumption is that  
7 the essential services can be conducted from home or  
8 from remote locations using the remote computer. We  
9 won't be contracting for a separate facility unless  
10 this one is destroyed.

11 We informed GAO we were going to complete this  
12 work this year. We will keep the Board informed of our  
13 progress. It is a plan that management will develop  
14 and share with you, not one that you will need to pour  
15 over yourself and approve every detail of it.

16 Are there any questions about either our  
17 process for approaching this continuity of operations  
18 plan or anything you may have seen in the document in  
19 front of you?

20 CHAIRMAN STRICKLAND: One minor point. I  
21 guess this is the emergency response plan. On page 29  
22 in the book -- I'm sorry -- 134 in the book, in the

1 Board book, the map of the fourth floor, the space that  
2 is in blue that includes GRPA, is that supposed to be  
3 blue or does that have to do with the exit's of the  
4 building? Maybe that should be white.

5 MR. JEFFRESS: No. What is going to be on  
6 line, it will be white. This was a space that was not  
7 in the original LSC plan when we moved to the building.  
8 I was aware of that shading problem and we do need to  
9 un-shade that somehow.

10 CHAIRMAN STRICKLAND: Okay. I just wanted to  
11 point that out.

12 MR. JEFFRESS: Right. Thank you. You have  
13 done a very thorough job, Mr. Chairman, to have noticed  
14 that.

15 (Laughter.)

16 ACTING CHAIRMAN BeVIER: Are there questions  
17 for Charles?

18 (No response.)

19 ACTING CHAIRMAN BeVIER: Thank you, Charles,  
20 for this report. It is very interesting and you have  
21 done good work.

22 MR. JEFFRESS: Let me give credit to Tracey

1 Busby, our benefits manager in Office of Human  
2 Resources, who is head of the emergency response team,  
3 who has really taken charge in developing this. I'd  
4 like to credit her for that part.

5 ACTING CHAIRMAN BeVIER: Thank you.

6 The staff report on the risk management plan  
7 development?

8 MR. JEFFRESS: I will handle that as well.

9 As you know, GAO recommended that we conduct and  
10 document a risk assessment and implement a  
11 corresponding risk management program as part of a  
12 comprehensive evaluation of internal control.

13 This was in the first GAO report on governance  
14 and management.

15 At the July Board meeting in Nashville, we  
16 talked about this, recognizing that risk management  
17 programs come in lots of sizes and varieties, the Board  
18 was very clear about making sure we only undertook  
19 something appropriate for an organization of our size,  
20 which we have taken to heart.

21 We also said since the second report on grants  
22 management, we thought it might have implications for



1 internal control procedures as well, that we would not  
2 embark on the overall risk management program until we  
3 can incorporate whatever recommendations came from the  
4 second report and they did indeed have, as you know, a  
5 recommendation about clarifying roles and  
6 responsibilities that will have an impact on how we do  
7 our risk management.

8           The executive team has discussed this risk  
9 management program, the need to develop one here, and  
10 we have committed on our work plan for 2008 to develop  
11 the risk management plan.

12           We have talked about some steps we may have to  
13 take, but it is premature at this point to go into any  
14 of those. Our commitment this year is to design that  
15 plan, make sure we have a good design that you all are  
16 comfortable with.

17           ACTING CHAIRMAN BeVIER: Thank you, Charles.

18           I think at this point, it is not a good idea  
19 that we proceed down the agenda. I think the staff  
20 report on the follow up to GAO and the discussion of  
21 OIG reports on IPAs are extremely important. Both of  
22 them are issues that we take very seriously.

1           At this time of the day, I think first of all  
2 we don't have Bernice with us. Maybe she will be able  
3 to join us tomorrow. Hopefully, Tom Fuentes will be  
4 able to be here as well. Maybe David Hall will find  
5 that he is able to join us.

6           I propose that we recess this meeting until  
7 the conclusion of the Performance Reviews Committee  
8 meeting tomorrow, which is presently scheduled to begin  
9 at 8:30, and we will begin at 8:30, and hopefully, we  
10 will be finished, maybe even before a full hour has  
11 elapsed.

12           That is what we will do unless I hear an  
13 objection.

14           CHAIRMAN STRICKLAND: No objection, just an  
15 inquiry.

16           ACTING CHAIRMAN BeVIER: We are just going to  
17 continue it. This is just a recess. We will pick up  
18 where we left off.

19           CHAIRMAN STRICKLAND: In terms of timing  
20 tomorrow, I would ask the chairman of our Finance  
21 Committee, I know we allocated a substantial block of  
22 time on the agenda for your committee, do you

1 anticipate using the entire amount of time?

2 MR. MCKAY: I asked for that amount of time.  
3 We have a very, very full agenda. Of course, we will  
4 do the best we can.

5 CHAIRMAN STRICKLAND: So be it. Just an  
6 inquiry.

7 MR. MCKAY: Yes. Thank you.

8 MR. JEFFRESS: Madam Chair, if I could make  
9 one point before you recess.

10 ACTING CHAIRMAN BEVIER: Yes, please.

11 MR. JEFFRESS: Something that is not on the  
12 agenda but was on the agenda of this committee for the  
13 past two meetings is locality pay. This committee  
14 directed management to work with Congress on clarifying  
15 that issue.

16 John Constance did a superb job. The language  
17 came out exactly as we had hoped it would. At the last  
18 Ops and Regs Committee meeting, there was a question  
19 about payment of the deferred pay from 2007.

20 Since that is a financial issue in terms of  
21 the payment, it is on the agenda for the Finance  
22 Committee tomorrow.

1           I just wanted to note for the record that  
2       since this committee had been dealing with it, the  
3       policy is now approved by Congress, so the vote for  
4       payment will be on Mr. McKay's agenda.

5           ACTING CHAIRMAN BeVIER: We are always happy  
6       to pass it along. I speak for Tom Meites in that  
7       respect.

8           (Laughter.)

9           ACTING CHAIRMAN BeVIER: All right. This  
10       committee is in recess, and we will reconvene tomorrow  
11       after the Performance Reviews.

12           (Whereupon, at 5:25 p.m., the committee  
13       meeting was recessed, to reconvene the following day,  
14       Saturday, January 26, 2008.)

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