

ORIGINAL

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS  
OPERATIONS AND REGULATIONS COMMITTEE MEETING

OPEN SESSION

RECEIVED

JAN 14 1994

Executive Office

Friday, January 7, 1994

9:13 a.m.

Legal Services Corporation Headquarters  
THE BOARD ROOM  
750 First Street, Northeast  
Washington, D.C.

**Diversified Reporting Services, Inc.**

918 16TH STREET, N.W. SUITE 803

WASHINGTON, D.C. 20006

(202) 296-2929

**BOARD MEMBERS PRESENT:**

LaVeeda M. Battle, Chairperson  
Huleh H. Askew  
John T. Broderick, Jr.  
Douglas S. Eakeley  
F. William McCalpin  
Maria L. Mercado  
Nancy H. Rogers  
Thomas F. Smegal, Jr.  
Ernestine P. Watlington  
Edna Fairbanks-Williams

**STAFF PRESENT:**

Alexander D. Forger, ~~President~~ President  
Patricia D. Batie, Secretary  
Victor Fortuno, General Counsel  
Eduoard Quatrevaux, Inspector General  
Ellen Smead, Director, Office of Program Services

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

1  
2 CHAIRPERSON BATTLE: If we are now on the record,  
3 this is January 7, 1994. And the meeting for the Operations  
4 and Regulations Committee has now been convened. I have been  
5 informed that John Brooks is not going to be here.  
6 Unfortunately, his wife has pneumonia. And he called to  
7 cancel.

8 I think that the other committee members are here  
9 and present. And I want to welcome Alex Forger here as our  
10 interim president today.

11 If everyone has in front of them a copy of the  
12 agenda, I think we need to first entertain a motion for  
13 approval of the agenda.

## M O T I O N

14  
15 MR. MCCALPIN: So moved.

16 MS. WATLINGTON: Second.

17 CHAIRPERSON BATTLE: Is there any discussion?

18 (No response.)

19 CHAIRPERSON BATTLE: All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON BATTLE: All opposed?

22 MR. MCCALPIN: Hold on before you do that. I can't

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1 remember exactly where that piece that John Brooks and I  
2 authored comes on the agenda. But as I indicated to you,  
3 about 11:30 or so, I'm going to have to duck out to confer  
4 with the gentleman who has inconvenienced himself to talk to  
5 us about search this afternoon.

6 So I don't know whether approving the agenda means  
7 you can't skip and move things around.

8 CHAIRPERSON BATTLE: What I'll do is note that  
9 we'll need to take that out of order and make sure that we  
10 take that before 11:30, so that you're in on the discussion.

11 MR. MCCALPIN: Thank you.

12 CHAIRPERSON BATTLE: And, with that notation, are  
13 there any oppositions to the approval of the agenda?

14 (No response.)

15 CHAIRPERSON BATTLE: If there are none, the next  
16 item, actually, on the agenda is a closed session, so we need  
17 to go into executive session now.

18 (Whereupon, at 9:14 a.m., the meeting was adjourned  
19 to executive session.)

20 \* \* \* \* \*

21 (12:01 p.m.)

22 CHAIRPERSON BATTLE: We will now resume the

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1 continuation of the Operations and Regulations Committee  
2 meeting this January 7, 1994. In attendance as members of  
3 this committee are Ernestine Watlington and Bill McCalpin and  
4 myself. And we have with us Bucky Askew and Nancy Rogers and  
5 Edna Fairbanks-Williams.

6 We have already approved our agenda, as written.  
7 And, during the executive session, we considered and took  
8 some action on general counsel's report on litigation, which  
9 included matters to which the corporation is a party to.  
10 There was very little consideration of prospective  
11 litigation. But also, we considered and took action on  
12 internal personnel and operational matters and apologized for  
13 the delay which that caused the open session.

14 The first thing that we have on this section of the  
15 agenda is approval of the minutes of December 4, 1993,  
16 meeting. Do I have a motion?

17 M O T I O N

18 MS. WATLINGTON: I so move.

19 CHAIRPERSON BATTLE: Is there a second to that?

20 Bill, can you second the motion to approve it?

21 MR. MCCALPIN: Second.

22 CHAIRPERSON BATTLE: The minutes, as drafted, are

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1 now approved. We move on.

2           During our executive session, essentially, we heard  
3 the president's report, and we also heard from general  
4 counsel on operational matters. So I would like to move  
5 straight to the development. We also did hear about human  
6 resource issues during our executive session, because we had  
7 some operational things that we had to address.

8           So I would like to move our agenda to the  
9 development of a mission statement to guide the committee in  
10 its rule-making activities. And there were two members of  
11 our committee that pulled together a statement to that  
12 effect, Bill McCalpin and John Brooks. And, as I understand  
13 it, John is not with us today.

14           Bill, can you share with us your report?

15                   PRESENTATION OF F. WILLIAM MCCALPIN

16           MR. MCCALPIN: At the last meeting, I guess it was,  
17 you asked John Brooks and me to put our heads together about  
18 an approach to the reform of the regulations or a review and  
19 possible reform of the regulations which have been adopted by  
20 the board and the corporation over a period of years and to  
21 put that in the context of why and how we would go about it.

22           John and I did that. We exchanged some drafts. I

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1 conferred with representatives of CLASP in the progress of  
2 that and made sure that they were touching base with the  
3 Office of General Counsel. And the result is the memorandum  
4 report, which is also in the operations and regulation board  
5 book, green, I think it was.

6 CHAIRPERSON BATTLE: Right. Yes.

7 MR. MCCALPIN: And, basically, what we said was  
8 that the process of looking at the regulations needed to be  
9 inclusive of all who were affected by them but that final  
10 authority, of course, had to rest in the board for adoption  
11 or any modification of regulations.

12 And we indicated that those who may be affected  
13 include the staff of the corporation and those who have a  
14 stake in the rendition of legal service by grantees of the  
15 corporation, including board and staff of grantees, clients  
16 and potential clients of grantees, the bar, possibly, in some  
17 instances, staff of legislative bodies responsible for the  
18 development of the act because, of course, the regulations  
19 must be premised upon and be consistent with the provisions  
20 of the legislation, and others who may be affected.

21 We suggested that the precise composition of these  
22 working groups may vary, depending upon the particular

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1 regulation under consideration and the reach of the  
2 regulation, the subject matter in its reach, with final  
3 approval through board action.

4 We suggested that a schedule needed to be adopted  
5 to instill some order and sequence and priority into this  
6 process. And we suggested five criteria for the construct of  
7 that schedule, including, first of all, the need for action  
8 where an existing regulation has met with difficulty in its  
9 implementation or interpretation, or the regulation is even  
10 questionably at variance with statutory authority or is  
11 inconsistent with the present policy of the corporation. In  
12 any of those instances, basically where the regulation is out  
13 of whack, we ought to get at it quickly.

14 Second, the complexity of the regulation would be a  
15 factor, the nature of the action indicated, whether it needs  
16 to be amended, replaced, combined, clarified, or deleted.  
17 The potential for controversy in drafting the terms of the  
18 regulation may have an affect on the sequencing of it and,  
19 finally, the likelihood of the amendment of the underlying  
20 statutory authority.

21 If the underlying statutory authority of the  
22 amendment is very likely to be changed in the reauthorization

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1 process, then unless there is a problem with present  
2 interpretation, it would seem that the most effective use of  
3 time and resources might well cause that to be put later in  
4 the list.

5 But to implement the review and reform process, we  
6 outlined and suggested the following procedure: The first  
7 was that a group of affected parties should come together to  
8 provide this committee or -- in brackets -- the board, which  
9 is really an alternative that we suggested, with an overview  
10 of problems with existing regulations and the possible need  
11 for new regulations, together with a proposed schedule.

12 And it's my understanding, based on conversations  
13 I've had, that there have been those discussions among  
14 affected folks and that they will be prepared to discuss that  
15 with us today. That each existing or proposed regulation  
16 should be addressed by a group of affecting parties  
17 voluntarily coming together, as necessary, to address the  
18 particular regulation.

19 A general counsel of the corporation to whom we  
20 suggest would be assigned responsibility within the  
21 corporation for the regulation and reform would be a part of  
22 each group and would advise this committee of the creation

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1 and composition of the working group to address a particular  
2 regulatory reform.

3 In the event of problems in the formation of any  
4 such group, this committee will move to provide a procedure  
5 for the consideration of the particular regulation involved,  
6 adverting to the reg neg concept in the statute in that  
7 respect.

8 In the event that it appears that there is any  
9 problem at all in the composition of the working group for a  
10 particular regulation, this committee will be prepared to  
11 step in and make that determination, including the naming of  
12 a mediator, moderator, whatever, and specifying the  
13 composition of the group, if necessary.

14 Prior to the commencement of work on a regulation,  
15 this committee and/or the board will be advised of the  
16 substance of the regulation to be considered and preliminary  
17 views of working groups concerning it and the committee or  
18 the board would be afforded an opportunity to give its views  
19 with respect to such regulation.

20 The concept was that instead of the board  
21 addressing, initially, regulations generally, that it would  
22 be more effective as each regulation comes on the schedule

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1 for consideration -- the Operations and Regulations committee  
2 or the board would be given the opportunity to express some  
3 preliminary views, with respect to the content of that  
4 particular regulation to serve as guides for the working  
5 group in addressing the particular regulation.

6 Then, the working group would go to work. And this  
7 came up earlier this morning. It was our concept that the  
8 stakeholder group, the working group, would, with whatever  
9 preliminary advice is given by the board or the committee,  
10 set to work on the particular regulation, without  
11 participation at that level -- direct participation at that  
12 level -- by a representative of the committee or the board.

13 And they would come back to the appropriate board  
14 committee with an agreed draft from the group or a draft with  
15 areas of disagreement noted and the areas of disagreement to  
16 be resolved, initially at the committee level; ultimately, at  
17 the board.

18 The board committee would review the draft, make  
19 such changes as it deems appropriate, and approve the draft  
20 for publication and comment with, however, the opportunity  
21 for other members of the board to review and comment prior to  
22 publication on the draft.

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1           Following the close of the comment period after  
2 publication, the relevant board committee would review the  
3 comments, make any appropriate changes, and transmit to the  
4 board for final approval. Now, it was our thought that in  
5 most instances, the draft would come, and the board committee  
6 to be involved would be Operations and Regulations.

7           But when you get to a regulation on monitoring, for  
8 instance, then it seemed to us the appropriate committee was  
9 the Provisions Committee, rather than Operations and  
10 Regulations, because that is their responsibility. And there  
11 may well be other instances. And that's just given as an  
12 example.

13           The process we described would begin, we think, as  
14 early as today, with the presentation that I think we will  
15 receive. But it will take some time to complete the final  
16 action depending, in some respects, on the progress of the  
17 reauthorization legislation, because we can't finally  
18 complete redoing the regulations until we know what our  
19 underlying statutory authority is going to be.

20           Well, Madam Chair, that's the work product that has  
21 evolved from the commission that you gave to John Brooks and  
22 me at the last meeting. And it is before you for

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1 consideration of this committee at this time.

2 CHAIRPERSON BATTLE: I would like to thank you and  
3 John for the hard work I know that put into pulling this  
4 together, because I think it does really accomplish two  
5 things. It accomplishes giving us an idea of what the  
6 procedure is going to be for going through the rule-making  
7 process and, as well, it gives us some idea of the priority  
8 setting that we have got to do.

9 And you've also pulled together an opportunity,  
10 indeed, for us to find out exactly where things are. So I  
11 thank you for that.

12 Are there any questions from any of the board  
13 members or members of the committee about this report?

14 MS. ROGERS: Bill, I really like it. I have one  
15 question, in terms of priority. Does your first priority  
16 item include regulations that are very expensive in their  
17 operation for the local problems and have a possibility of  
18 being redrafted in a way that meets the need for the  
19 regulation but is less expensive?

20 MR. MCCALPIN: That, frankly, was not a factor  
21 which had occurred to us or which we discussed as we were  
22 going through this. But it seems to me to be an entirely

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1 appropriate one.

2 MS. ROGERS: And would that be a high priority or a  
3 low priority on your list?

4 MR. MCCALPIN: Well, we weren't attempting to  
5 establish priorities. What we were attempting to do was to  
6 lay out considerations which people who would establish the  
7 priorities would take in mind as an establishment. In other  
8 words, merely because this first one is first doesn't mean  
9 that that's the only criterion that would be satisfied with  
10 respect -- you may have one that has a variance with the  
11 present policy of the corporation.

12 But if its underlying statutory authority is apt to  
13 be amended in the reauthorization process, that particular  
14 one wouldn't necessarily get top priority. You have to  
15 balance off these different factors. But I think that what  
16 you suggest, a regulation which has turned out to be  
17 expensive or difficult of application by a field program,  
18 that certainly is a criterion which ought to be considered in  
19 placing that particular regulation in the priority for  
20 consideration.

21 CHAIRPERSON BATTLE: Are there any other questions?

22 (No response.)

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1           CHAIRPERSON BATTLE: Do I have a motion that we  
2 adopt this report as a statement of the approach to  
3 regulatory reform that we plan to recommend to the full  
4 board?

5                           M O T I O N

6           MS. WATLINGTON: I so move.

7           MR. MCCALPIN: However indelicate it may be, I'll  
8 second it.

9           CHAIRPERSON BATTLE: Any discussion, first of all?  
10 I think we have already discussed it before the motion. But  
11 is there any discussion on this?

12                       (No response.)

13           CHAIRPERSON BATTLE: All in favor?

14                       (Chorus of ayes.)

15           CHAIRPERSON BATTLE: Any opposition?

16                       (No response.)

17           CHAIRPERSON BATTLE: Motion carried.

18           As part of your presentation, you mentioned that we  
19 would have a presentation today as to the status of where the  
20 reg working group is and also input from our counsel.

21           And I just wanted to make a statement, now that we  
22 have adopted this, that I think it is critical that a portion

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1 of this process involves our general counsel working along  
2 with the regulations group to accomplish reporting back to us  
3 and also being a part of the deliberative process. And I  
4 hope that as we hear from those that have been involved in  
5 the reg group, they can tell us their vision of that.

6 MR. MCCALPIN: You know, our report, which you've  
7 now adopted, certainly envisages close cooperation between  
8 the staff of this corporation -- and we suggest general  
9 counsel as the appropriate staff of the corporation -- and  
10 the various working groups. And, frankly, we think they  
11 ought to sit down together and work out their differences.  
12 And, if they can't work them out, we will. But they ought to  
13 sit down together and work out their differences.

14 CHAIRPERSON BATTLE: Certainly.

15 MR. EAKELEY: And sooner than later. Can I just  
16 add that as a postscript?

17 CHAIRPERSON BATTLE: That's what we're hoping for.  
18 Can we hear Alan and Linda and Suzanne?

19 PRESENTATION OF LINDA PERLE

20 MS. PERLE: For the record, my name is Linda Perle.  
21 I'm staff attorney at the Center for Law & Social Policy.  
22 And I've been staffing this regulations working group that

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1 you've heard about and I can explain a little more about.

2 At Mr. McCalpin's suggestion, Alan and I met on  
3 Wednesday with Ms. Glasow and Mr. Fortuno. We met separately  
4 with Ms. Bergmark to discuss what we thought was the  
5 appropriate approach to this process that we would use to  
6 develop proposals for revisions to LSC regulations.

7 And I think it's fair to say that we reached not  
8 just consensus, but I think pretty much complete agreement.  
9 I don't think there was really any disagreement among the  
10 four of us and with Martha, as well.

11 We agreed that the goals of this process should be,  
12 I think, basically those that Mr. McCalpin outlined, maybe  
13 articulated a little bit differently. We felt that we should  
14 attempt to deal with those problems that have arisen under  
15 the current regulations, especially with an eye toward  
16 resolving differing interpretation, resolving ambiguities  
17 under the current regs.

18 We also wanted to remove any unnecessary  
19 restrictions that are in the current regs that intrude  
20 unnecessarily on local decision making, remove those  
21 restrictions that go beyond the requirements of the act or  
22 are inconsistent with the act. And there are a number of

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1 places where, at least, we think that's true.

2 Simplify the regs. Some of them are unbelievably  
3 and unnecessarily complicated. And last, but certainly not  
4 least, in revising the regs, implementing any new policies  
5 that this board wishes to implement, particularly with  
6 respect to monitoring and evaluation and any other areas that  
7 may develop as this board considers other issues. So those  
8 would be the goals of the process.

9 In terms of the actual process that we would use,  
10 we all agreed that LSC should adopt the goal of the reg neg  
11 process, but not necessarily the specific processes that are  
12 laid out in the Negotiating Rulemaking act. That act, as I  
13 understand it, has been used by agencies that deal with very  
14 highly complex and technical issues, often where large  
15 economic interests are at stake, like the Environmental  
16 Protection Agency or the Nuclear Regulatory Agency. It's a  
17 very expensive process to use.

18 It's much more complicated than we think is  
19 necessary to deal with our issues. And I think, in terms of  
20 the process that we can accomplish, it would unnecessarily  
21 drag out the process. Suzanne has done a lot of research  
22 about the Negotiating Rulemaking Act. She can certainly

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1 answer any questions that anybody has.

2 CHAIRPERSON BATTLE: Well, I think we're at a point  
3 where we have basically adopted a procedure. So we can  
4 really move on on that. And I think that our procedure does  
5 exactly what you say, which is it adopts the principles that  
6 you have for reg neg, without all the specifics.

7 MS. PERLE: The purpose, really, is to make sure  
8 that LSC staff who represent the regulators and  
9 representatives of the Legal Services community who represent  
10 those who are regulated and have an interest have input at  
11 the outset and that the proposals that reach this committee  
12 represent whatever possible consensus. I mean, I think we're  
13 all agreed that that's what we want to accomplish. And I  
14 think we all agreed that that shouldn't be too difficult,  
15 with respect to most of them.

16 In terms of the priorities, applying the principles  
17 that Mr. McCalpin laid out, we, the regs working group --  
18 which I have a list of the members of that, and I'll give  
19 that to the board -- we have established a priority. We  
20 discussed that priority with Suzanne and Victor. And I think  
21 that we are agreed that, basically, the priority that the  
22 regs working group set out is one that is appropriate for the

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1 board to adopt.

2 We agreed on one aspect that's not directly part of  
3 the process that Mr. McCalpin laid out, but which we think  
4 needs to go on quickly. We agreed that both CLASP and the  
5 LSC staff would work on developing a joint list of regulatory  
6 issues that need to be addressed immediately, before the  
7 board could reasonably consider adopting new regulations.

8 We tried to develop a proposal for the board to  
9 give the staff some policy direction on how the current  
10 regulations should be implemented. And Victor talked about  
11 the fact that the corporation staff has always had some  
12 discretion, with respect to enforcement. So that policy  
13 would hopefully guide the operation of that discretion.

14 We want to do this quickly. There are a number of  
15 problems that are sort of lurking and could surface at any  
16 time. For example, there are programs that have gotten a  
17 substantial amount of new money in 1993 or will get new money  
18 in '94. They may have problems under the current fund  
19 balance regulation.

20 There's a waiver provision in that, which has been  
21 in the past used very sparingly by the staff. For example,  
22 the board might wish to suggest that the staff use that

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1 somewhat more liberally. That's a kind of situation that  
2 we're talking about. We're going to try to prepare that list  
3 very quickly, and hopefully in time for you to deal with at  
4 your January 28th meeting.

5 CHAIRPERSON BATTLE: I was about to say, if we  
6 could get that real quickly, then I think that -- I had not  
7 established when our next meeting was going to be, but  
8 certainly, we're going to meet on the 28th. And if, for no  
9 other reason, so that we can get this process moving, if you  
10 can get this to us, I think that we can act on it.

11 MS. PERLE: Well, we agreed that the four of us  
12 would try to put that list together early next week.

13 CHAIRPERSON BATTLE: Good.

14 MS. PERLE: Now, we agreed also that we think that  
15 the formal regulation revision process should begin by  
16 finalizing drafts on what we have designated as program  
17 issues. They are a cluster of regulations that affect  
18 program operations, both procedurally and substantively.

19 And we talked about cost. Some of these, while  
20 they don't appear to be very complicated, are often very  
21 complicated, very costly for programs to implement. And so  
22 we're going to focus on those.

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1           There are others that have cost implications that  
2 will be in the next level of priority, because they're more  
3 complex regulations. But these program issues are ones that  
4 often do have costly implications for programs.

5           There are several regulations that the regs working  
6 group has already prepared drafts on. We're now working on  
7 devising a second set of drafts, which we have shared with  
8 the general counsel. They deal with, for example, part 1604  
9 on outside practice of law; 1607 on governing bodies; 1608  
10 on political activities; 1609 on fee generating cases.  
11 Those, we have new, second generation revised drafts.  
12 Eligibility is part 1611. Part 1621, which is the client  
13 grievance procedures. These are things that are extant  
14 drafts from the regs working group.

15           In addition, there are a number of other  
16 regulations which we think we can get to quickly to devise  
17 drafts, and we're hoping to do within the next couple of  
18 weeks: 1605, appeals; 1613, criminal; and 1615, habeas  
19 corpus; 1616, attorney hiring; 1617, class actions; 1619,  
20 disclosure of information by programs; 1620, priorities.  
21 There may be some others.

22           And some of these, we may decide after looking at

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1 them they don't need to be dealt with right away. But we  
2 have included those in this cluster that we're going to look  
3 at.

4 So we're hoping that, with at least with a large  
5 number of these, we can get drafts to you which have gone  
6 through whatever process we finally decide, late winter or  
7 early spring. So we're talking about within the next couple  
8 of months, this group, we will have drafts that we hope the  
9 committee will be ready to consider, at least on some of  
10 these. I mean, this is a big plate.

11 Some are more important than others. But  
12 certainly, on these first six and some portion of the others  
13 that I mentioned, we should be able to get you a draft that  
14 has been gone through and massaged by the appropriate people  
15 that you can consider.

16 Next, we would want to work on finalizing a draft  
17 regulation on legislative administrative advocacy. We would  
18 probably include the regulation on redistricting. Now, I  
19 understand that that is an area where there may be some  
20 legislative changes. And we recognize that.

21 But the reg, particularly 1612 on legislative and  
22 administrative advocacy, right now, is so complex and

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1 convoluted that it's virtually impossible for programs to  
2 understand in terms of what they can and cannot do.

3           And the existence of that reg has really chilled  
4 programs in their willingness to do things that are, in fact,  
5 permitted under the statute. And the reg also, in our view,  
6 overreaches in so many areas that it has further had that  
7 chilling effect.

8           What we think we need to do is take what the  
9 current law is and use it as a guidepost for redoing the  
10 regs, stripping it down to the essentials of what needs to be  
11 done.

12           CHAIRPERSON BATTLE: And then we can also wait to  
13 see what happens in the legislative process. But I think  
14 you're right, that you still need to pare back those  
15 particular provisions that are so overbroad that they extend  
16 beyond what the law actually requires us to do. And then we  
17 can look to revisiting it, if there are some legislative  
18 changes that come out of the reauthorization process.

19           MS. PERLE: I think history has also shown us that  
20 there are certain situations where the corporation takes the  
21 lead on its regulations. Sometimes, the Congress will  
22 follow.

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1           Sometimes, the Congress will say, "Yes, we like  
2 what you have done in those regulations, and we want to  
3 incorporate that into the legislative framework." So it's  
4 possible that we could provide an impetus for some positive  
5 affirmative changes with respect to some of these regs, but  
6 this one in particular.

7           Then, after that -- I really meant to say something  
8 else. When I say, "after," I don't really mean that we're  
9 going to finish one reg and start another one. I think that  
10 we're going to work on most of these regs on a parallel  
11 track. It's just that this is the order in which we think  
12 we'll present them to you as final regs.

13           So we're working now on the administrative and  
14 legislative regulation. The next group that deals with  
15 fiscal issues, we're working on those now. But we just think  
16 in terms of when we'll finish them, this is the order in  
17 which we'll probably finish them and present them to you.

18           The next group are those which have what we call  
19 "fiscal implications." There are a whole bunch of them.  
20 1627 is sub grants, fees, and dues; 1628 is recipient fund  
21 balances; 1629 is bonding; 1630 is cost standards; 1631 is  
22 some arcane provision called "expenditure of grant funds,"

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1 and I don't understand what it does.

2 And there are other regulations, some of them in  
3 the program issues group, like the fee generating case and  
4 attorney's fees regulation that have some fiscal  
5 implications. And there are other documents that exist  
6 within the corporation, like the audit guides, that need  
7 substantial revisiting and revision and updating.

8 We will try to look at all of those things, kind of  
9 as part of an overall piece, and deal as quickly as we can  
10 with those that are particularly problematic and then sort of  
11 deal seriatim with the other ones. But the regs group has  
12 begun work on looking at these fiscal issues.

13 We have convened a subgroup that includes people  
14 who work within programs on fiscal issues, the financial  
15 officers of a number of programs, and some other additional  
16 people who are not necessarily working within Legal Services  
17 programs who have a very good sense of what the fiscal issues  
18 are that relate to the nonprofit world in general. So we  
19 have a lot of good technical expertise in that group.

20 CHAIRPERSON BATTLE: Bill, did you have something  
21 you wanted to add?

22 MR. MCCALPIN: Linda, I wonder whether in your

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1 conversations with general counsel and with Martha Bergmark  
2 you have been apprised of the fact that there are half a  
3 dozen or so pending general counsel opinions which have not  
4 been issued because of uncertainty about the regulation or  
5 variant views and that sort of thing and whether you have  
6 taken those particular regulations into consideration in your  
7 priority setting approach.

8 MS. PERLE: I think the answer to that is yes. And  
9 a number of those issues are issues that we raised, asking  
10 for consideration or reconsideration of letters, or issues  
11 that were raised by recipients to us, and we suggested that  
12 they seek a general counsel's opinion on those. So I'm sure  
13 that there are a few other issues that we're not aware of,  
14 but we're aware of most of them.

15 And, as part of our meeting, we specifically asked  
16 Suzanne and Victor to review the draft regulations that we  
17 had, with an eye towards making sure that a number of those  
18 issues that we might not be aware of -- because not every  
19 issue comes to our attention -- or there may be sort of very  
20 peculiar situations that we wouldn't be aware of -- to make  
21 sure that the changes that we're proposing address those  
22 issues. And Suzanne and Victor said that they would do that.

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1           So we have discussed it. We discussed it  
2 specifically Wednesday, but we talked generally about that,  
3 as well.

4           CHAIRPERSON BATTLE: Thank you. That was a  
5 critical point to us, because to the extent that there are  
6 regulations that not only potentially are overbroad but are  
7 just simply so complex or difficult, that two people sitting  
8 who think alike would come up with different results --

9           MS. PERLE: Well, that's true, and there are some  
10 like that, but I think that there are a large number of  
11 regulations which we think, on their face, are pretty simple  
12 and straightforward but have been interpreted over the last  
13 several years by particularly MAC/OPEAR in a way that needs  
14 to be addressed.

15           We need to remove any ambiguities that exist in the  
16 language, with respect to those kinds of issues, so that  
17 those issues don't arise again, so people have some pretty  
18 clear guidance on what's required and what's not required.  
19 That's not to say that we have to deal with every issue,  
20 because I think that there are a number of issues where what  
21 the regulations need to do is just sort of give a framework  
22 and then leave to local programs the authority to devise

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1 policies that can exist within those frameworks.

2 CHAIRPERSON BATTLE: We have run substantially  
3 over, based on the extended session we had this morning. So  
4 if you can wrap up.

5 MS. PERLE: This will just take a minute. I'm just  
6 going to talk for one minute about part 1614, which is PAI.  
7 That is an area where we have done substantial work, we have  
8 gotten a lot of input from people not only within our regs  
9 working group that's much broader than the total regs working  
10 group. And I think it's one area that not only is very  
11 complicated but also involves a lot of interests.

12 And that may take a little bit longer. We're  
13 clearly working on that and have been for quite some time.  
14 But we don't want to rush that, because we want to make sure  
15 that what we give you is a product that represents some  
16 consensus. So that may take a little while.

17 The remaining regulations, I think, have some less  
18 priority, or they are ones that we, CLASP and the working  
19 group, haven't given a lot of attention to. And Suzanne and  
20 Victor can respond, if you have any questions about those.

21 With respect to the compositions of the groups  
22 needed to address these regulations, Alan and I and the regs

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1 working group have envisioned that the regs working group  
2 would remain as the regs working group, and then  
3 representatives from that group would work with the general  
4 counsel's office as the reg neg group for most of the  
5 regulations.

6 I think that we agreed that there wasn't a need to  
7 convene another separate, large group, since our regs working  
8 group is very representative of the Legal Services community.  
9 It includes clients, it includes field program  
10 representatives, support centers, the union, the ABA, and a  
11 number of others. I have a list, and I'll give it to  
12 everybody.

13 CHAIRPERSON BATTLE: But would our staff members be  
14 able to attend the meetings of the reg working group? Is  
15 that envisioned, in the way you're talking about it? I  
16 understand a smaller group is going to have to work out all  
17 the details, but --

18 MS. PERLE: We would like the LSC staff members to  
19 attend. There may be some concern among some of the members  
20 of the regs working group who don't know Victor and Suzanne  
21 and haven't worked with them the way that we do. We would  
22 like to convince them that it would be valuable for the

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1 general counsel's office staff members to be there, because  
2 they could give us perspective on some of these issues that  
3 we're what all a little --

4 CHAIRPERSON BATTLE: I think it would be helpful.

5 MS. PERLE: So we have suggested that they come to  
6 the meeting. And I think we'll just have to kind of wait and  
7 see what the reaction to that is. Martha Bergmark, who has  
8 been a member of the regs working group before she joined the  
9 LSC staff, I think, will definitely be there.

10 We agreed that the staff and the representatives of  
11 the working group could act as the reg neg group. We would  
12 sit down together where it was necessary to work out  
13 differences over drafts and produce joint proposals, with  
14 areas of disagreement noted for the committee.

15 And we also agreed that if there were other parties  
16 outside of Legal Services' community that had some interest  
17 in these regs -- I'm not talking about PAI, particularly, but  
18 in these others -- that they would have an opportunity during  
19 the comment period to make their views known. And in PAI, we  
20 need to include a broader group. There may be other regs  
21 that we need to include a broader group on. We can certainly  
22 make that determination.

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1           You had asked me yesterday about who would chair  
2 the meetings. We haven't really thought about that. We had  
3 hoped that we could work this out pretty informally. But I  
4 think that we are willing to have a member of the LSC staff  
5 be the formal chair, if we need to have a person that's  
6 designated.

7           We spoke about it earlier, and Victor mentioned  
8 that he thought, depending on what the reg was, that the  
9 group could meet and elect a chair. I think we're open to  
10 that. I think that there won't be too many situations where  
11 a chair will have to exercise prerogatives in a way. I think  
12 it's clear, at least to the four of us, that we can work on  
13 these issues.

14           And we have already shared our drafts with Suzanne.  
15 She has read them -- and Victor -- but Suzanne has read them  
16 quickly. And she said there were a number of issues and  
17 questions that she had. I don't want to speak for her, but I  
18 think she feels pretty comfortable working from those drafts.

19           CHAIRPERSON BATTLE: Sure. And all of that, I  
20 think, Linda, will work. I think the way that our procedure  
21 or process has been devised, our counsel is going to report  
22 back to us how things are going. So I just want to make sure

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1 that everyone can agree upon what that process is going to  
2 be, so that when we get the information back, it has flown  
3 through the process correctly, and we're getting reports that  
4 are based on --

5 MS. PERLE: Well, I can promise you that we'll do  
6 everything in our power to make sure that that happens. And  
7 I don't anticipate -- and I don't think Alan does, and I  
8 don't think Suzanne or Victor anticipate that we're going to  
9 come to loggerheads over very many, if any, issues.

10 We didn't talk about this specifically, but I don't  
11 think Suzanne would also disagree that when we present the  
12 committee with proposals, we will make sure that the  
13 proposals are footnoted or annotated in some way, so that  
14 you're aware of the reasons why particular decisions were  
15 made on the drafts and what issues are at stake, so that  
16 you'll be fully -- nobody is going to try to slip anything by  
17 the committee, in terms of changes.

18 Some things may be just to clarify language, and  
19 we'll say that. But most of the changes do implicate some  
20 policy or some particular problem that has arisen under the  
21 regulations to date.

22 CHAIRPERSON BATTLE: Suzanne? Anything to add?

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1 MS. GLASGOW: Just that we're very comfortable with  
2 this.

3 CHAIRPERSON BATTLE: I think that you've presented  
4 what Linda fits just directly within the framework of the  
5 report that we got from Bill about his vision as to how he  
6 thinks this process ought to proceed.

7 MS. PERLE: We had discussed a lot of these things  
8 with Bill. And so I think we were comfortable that what we  
9 were doing is fleshing out the details of what Bill was  
10 envisioning.

11 CHAIRPERSON BATTLE: So I think this committee is  
12 going to look forward to the report on the 28th that tells us  
13 the specifics about which regs, but the priority is going to  
14 be which ones you're going to take up first, second, and  
15 third. And that will help us in our organization around the  
16 issue of how we're going to handle it.

17 MS. PERLE: We plan to keep you very busy this  
18 spring and summer.

19 CHAIRPERSON BATTLE: We're looking forward to it.  
20 And, in fact, we're looking to have some more counsel to help  
21 Suzanne, if we can.

22 Are there any questions from the committee or from

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1 any of the other board members about this report?

2 (No response.)

3 CHAIRPERSON BATTLE: If not, thank you.

4 The next issue was the issue of developing a  
5 mission statement to guide the corporation in its  
6 reauthorization-related activities.

7 And I know that the minutes reflected that Bill and  
8 John would do that, but Ernestine and I discussed the issue  
9 of a mission statement regarding reauthorization. And we  
10 have come up with some things that we're going to share with  
11 the committee and with the board and make a recommendation  
12 regarding what our position ought to be with regard to  
13 reauthorization.

14 This committee is tasked, of course, with the  
15 responsibility of making recommendations to the full board  
16 regarding reauthorization legislation. From the information  
17 that we have received, both from our staff and from CLASP, it  
18 appears that it's critical for us, as early as possible, to  
19 adopt a strong position in support of reauthorization.

20 As we all are aware, the Legal Services Corporation  
21 was first created by Congress in 1974. The initial  
22 authorization period was for three years. And, at the end of

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1 that three-year period, Congress proceeded to reauthorize the  
2 corporation in 1977, when the original authorization section  
3 of the act expired.

4 The 1977 reauthorization was also good for three  
5 years, and it expired on September 30, 1980. Since that  
6 date, the LSC Act has not been reauthorized. However, we  
7 have been able to continue, in effect, because there was no  
8 sunset provision in the act. And, as long as Congress has  
9 continued to appropriate funds, then we have been able to  
10 survive.

11 But we have survived on these annual  
12 appropriations, to which Congress has also attached  
13 restrictive riders. And, since September 30th, all attempts  
14 that have been made at the issue of reauthorization have  
15 failed. This failure has been as a result of a number of  
16 problems.

17 The Presidential policy during the Reagan  
18 administration was to potentially veto the authorization,  
19 which had a real chilling effect on any incentive that one  
20 might have for legislation action. And, during the Bush  
21 administration, even though there was a policy in support of  
22 reauthorization of LSC, there was a series of other policy

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1 concerns that muddied the water, so that the debate  
2 continued, and we weren't able to achieve reauthorization.

3           During the 1980s, Congress adopted more than 22  
4 riders to the legislation appropriating funds for LSC, thus  
5 giving rise to the need for lots of complex regulations and  
6 for muddying the waters, with regard to where we need to be  
7 and what we need to be doing.

8           In principal part, these riders imposed  
9 restrictions on the types of cases that Legal Services could  
10 pursue and the scope of Legal Services' advocacy.  
11 Ultimately, there were also riders which restricted the  
12 authority of the corporation itself to implement certain  
13 regulations and policies and to enact new regulations, unless  
14 there was a confirmed board.

15           Moreover, the former board adopted resolutions  
16 addressing previous reauthorization legislation back in 1991  
17 and in earlier years. So I think it's going to be critical  
18 for us, as a board, to establish and to let Congress know,  
19 clearly, what our positions is with regard to some of the  
20 previous resolutions that have been reached by this board and  
21 with regard to the previous attempts that have been  
22 undertaken what our position is.

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1           Rather than to get into the specifics of what those  
2 previous riders to appropriations entailed and the history of  
3 the amendments to the reauthorization bill, I believe that  
4 the recent history of reauthorization really gives us hope  
5 that this board needs to quickly adopt a resolution in  
6 support of reauthorization.

7           It's my understanding that in May of 1992, the  
8 House did pass the reauthorization bill, H.R. 2039, by a  
9 strong bipartisan vote. The reauthorization bill passed the  
10 House, however, but the Senate reauthorization bill was taken  
11 up so late in the session that it was not able to be voted on  
12 by the end of the session.

13           So, in mid-1993, Representative John Bryant  
14 introduced H.R. 2644, a bill which was essentially identical  
15 to the 1992 House bill which passed. This was done to  
16 basically get the ball rolling again and to press for  
17 reauthorization.

18           As we recall, those hearings took place about the  
19 time that we were going through the confirmation process.  
20 And it was significant that the administration took a  
21 position and had associate Attorney General Hubbel to testify  
22 on behalf of reauthorization.

1 I have basically two concerns that I think we need  
2 to address in setting out this effort. One is that since, as  
3 I understand it, we're going to have a markup, potentially,  
4 in February of the bill that was introduced by Representative  
5 Bryant, I think that we need to, prior to that markup, go on  
6 record as to what our position is with regard to some of the  
7 issues that might be a part of that process of markup.

8 And the second thing is that I think we need to  
9 designate who our representative is going to be to  
10 participate on behalf of the corporation in that process.  
11 The expectation, I believe, at present is that the  
12 subcommittee on administrative law and government relations  
13 of the House Judiciary Committee will have the markup bill  
14 introduced sometime in February or March.

15 And the full Judiciary Committee will proceed in  
16 the spring, with the full House consideration to be late  
17 spring or early summer.

18 Concomitantly, the full Senate Labor & Human  
19 Resources Committee will hold a hearing and markup the Senate  
20 legislation either during or immediately after the House  
21 consideration, so that we don't run into the same problem  
22 that we ran into last term.

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1           The time table is fluid as to the dates that I've  
2 mentioned, but I think that the time table for us is clear  
3 that we need to act as soon as we can to undertake this  
4 action in coming up with what our mission statement needs to  
5 be.

6           I would like to present for consideration by this  
7 committee two items, essentially. The first is a  
8 reauthorization position statement that we have drafted. And  
9 the second is just a motion from this committee that we  
10 designate our chair to be our designated representative on  
11 behalf of us, to be involved in the legislative process.

12           The reauthorization position statement is something  
13 that I hope you've all gotten a copy of very recently. I  
14 think I gave it to Pat, and she may have distributed it to  
15 you. But it sets out some very basic positions. And I'll go  
16 through them very briefly, because we have got a very short  
17 lunch time that's going to hit us in just a moment.

18           But it says that in its inception, the Legal  
19 Services Corporation was designed to embody the fundamental  
20 principles of equal access to justice and a fair opportunity  
21 for competent, high-quality representation in civil matters  
22 for this nation's poor.

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1 Today, with 14 percent of the American population  
2 and 21 percent of American's children in poverty, the need  
3 for civil legal assistance to the poor cannot be understated.

4 And, thus, the board urges Congress to pass reauthorization  
5 legislation in keeping with the following precepts.

6 And we list about eight precepts, the first being  
7 that federal funding commitment to Legal Services must be  
8 restored and continued; the second being that Legal Services'  
9 programs should have the same ability as would a private  
10 attorney to provide legal services to clients, to provide  
11 Legal Service clients a full range of services in all civil  
12 matters, without undue restrictions.

13 Legal Service clients should have access to civil  
14 legal assistance to pursue and resolve their grievances in  
15 all forms and ways available to other residents and citizens  
16 under our systems of law.

17 The third is that Legal Services' programs should  
18 be encouraged to freely seek and obtain nonLSC public and  
19 private funds, unencumbered by LSC restrictions and in  
20 accordance with the guidelines of the funding sources from  
21 which they will obtain those funds.

22 The fourth is that local control of Legal Services'

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1 programs should be preserved and strengthened, to allow the  
2 local board of directors to make decisions about the program  
3 priorities for allocation of scarce financial and staff  
4 resources and governance.

5 Local governance should effectively involve local  
6 appointed clients and attorneys appointed by the local bar  
7 associations and reflect the diversity of the local legal and  
8 client community.

9 The fifth is coordination of local, state, and  
10 national advocacy should be preserved and strengthened to  
11 assist in achieving high-quality legal services to the poor.

12 The sixth is that competent, high-quality  
13 monitoring and evaluation of programs should be conducted  
14 with a view toward both assuring effective accountability to  
15 Congress and to clients who are served and to improving the  
16 quality of the programs that are providing legal services.

17 The seventh is that innovation and experimentation  
18 which is designed to improve program delivery and use of  
19 scarce resources should be encouraged.

20 And the eighth is that a fair process which  
21 includes independent judgements should guide any kind of  
22 administrative procedure that we ultimately adopt which would

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1 result in the funding or reduction or suspension of funds of  
2 programs that are grantees.

3 If you've had a chance to look at this, or if  
4 you've gotten any questions about it, I'll entertain  
5 questions about the reauthorization position statement.

6 (No response.)

7 CHAIRPERSON BATTLE: If there are none, I'll  
8 entertain a motion.

9 M O T I O N

10 MS. WATLINGTON: I so move.

11 CHAIRPERSON BATTLE: Where is Bill?

12 MR. EAKELEY: He's outside. You can second it.

13 CHAIRPERSON BATTLE: I'll second it. It has been  
14 moved and seconded that the reauthorization -- I guess we  
15 were the committee, Ernestine -- that we adopt this position  
16 statement.

17 I will just mention this. I did fax a copy, so all  
18 of the members of the committee have seen this and had a  
19 chance to review it. And I have talked with Bill, and he is  
20 in accord with us on it.

21 So all in favor, say, "Aye."

22 (Chorus of ayes.)

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1 CHAIRPERSON BATTLE: All in opposition?

2 (No response.)

3 CHAIRPERSON BATTLE: It is so adopted, and we will  
4 make this recommendation to the general board.

5 And the second motion that I will entertain relates  
6 to our designee before Congress, which I think we have agreed  
7 to be our chair.

8 Ernestine, if you so move, I'll second it.

9 M O T I O N

10 MS. WATLINGTON: I move.

11 CHAIRPERSON BATTLE: I second it. All in favor?

12 (Chorus of ayes.)

13 CHAIRPERSON BATTLE: Any opposition?

14 (No response.)

15 CHAIRPERSON BATTLE: I think that we probably are  
16 going to have some continuing discussions around this issue  
17 because of the time frame. And it is on a short track. I've  
18 talked with Doug about it.

19 And, I think, over lunch, before we present our  
20 final report to the board, there may be some additional input  
21 that we'll get informally just in our discussions with people  
22 that are more directly involved with what's going on on

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1 Capital Hill.

2 I guess the final item that we have got on our  
3 agenda has to do with the grant assurances.

4 Ellen?

5 PRESENTATION OF ELLEN SMEAD

6 MS. SMEAD: I'm Ellen Smead, director of Program  
7 Services.

8 Since the last meeting, the week after the last  
9 meeting, we were able to meet by telephone calls and by  
10 memoranda that we exchanged with Linda Perle and with Dwight  
11 Loines, we came to agreement on the assurances for the 1994  
12 grant year, so they could be sent out with the grant award  
13 letters and be signed by the grantees and returned.

14 And I appreciate the cooperation and assistance  
15 that we have received from both Linda and from Dwight in  
16 getting these things resolved so quickly.

17 MS. PERLE: There are just a couple of things that  
18 I wanted to say. We began the work on this revision process  
19 in July, and we met with the staff in late September and  
20 began negotiations. We reached resolution on some of these  
21 assurances fairly early on in that process.

22 And sometimes, the staff was not willing to go

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1 quite as far on them as we would have argued we needed. So  
2 some represent a compromise, rather than a consensus. And  
3 there's clearly a lot more work that can be done on these  
4 assurances.

5           Nonetheless, we have eliminated most of the really  
6 onerous assurances and revised numerous others. We have  
7 deleted those that duplicated other provisions or were  
8 inconsistent with them. We went from 23 assurances to 11, so  
9 that's a major improvement.

10           Those dealing with access to records are now much  
11 closer to the ABA standards on monitoring and evaluation than  
12 they were before, and they contain standards, reasonableness,  
13 a necessity that LSC was never willing to include before.  
14 And they no longer include a lot of threatening language that  
15 was in those assurances.

16           So that's a big improvement. There is recognition  
17 of the need to protect client confidences and secrets,  
18 employee privacy concerns, and attorney work product. None  
19 of those things were ever mentioned before. But they clearly  
20 don't go far enough. They represent sort of the bottom line  
21 of how far the LSC staff was willing to go at the particular  
22 point in time in which we were discussing that assurance.

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1           CHAIRPERSON BATTLE: I guess our view is, now,  
2 those assurances, I guess, have already gone out, and they  
3 had to be approved. So we're at the point where I think  
4 there will need to be further discussion, in light of all the  
5 dynamics that we have got about what we're going to do for  
6 next year. And that will need to be undertaken.

7           MS. PERLE: And clearly, the results of the actions  
8 that are going to be taken by the provisions committee, we're  
9 going to have a big impact on how those look next year, with  
10 respect to new policies on monitoring and evaluation. And  
11 LSC needs to reevaluate its own information needs and revise  
12 assurances in light of that.

13           I think there's one area where there's probably  
14 still a lot of dissension, and that's over the EVA grant  
15 conditions, which we think probably should be eliminated, and  
16 just treat personnel records the same way the others are  
17 treated.

18           CHAIRPERSON BATTLE: But that has been pared back  
19 some, hasn't it?

20           MS. PERLE: It has been pared back substantially,  
21 and we have gotten rid of a lot of the really difficult and  
22 sort of problematic portions of that. So that's an area that

1 we need to do more work on for the future.

2 MR. EAKELEY: Has the input of the Inspector  
3 General been solicited on that?

4 MS. PERLE: Yes, on all of these. I think that's  
5 fair to say. And Ed's here. And a number of the compromises  
6 that were reached were things that we weren't happy about or  
7 comfortable with but were sort of the bottom line for the  
8 Inspector General. And so they're in there. I think we  
9 would be happy to continue to discuss some of those issues.

10 CHAIRPERSON BATTLE: Are there any questions about  
11 the final product?

12 (No response.)

13 CHAIRPERSON BATTLE: Thank you for working together  
14 to get that issue resolved.

15 MS. PERLE: It was our pleasure. We did sort of  
16 get the ball rolling. We were able to get a lot of stuff  
17 resolved, particularly in light of what happened at the last  
18 board meeting. That, I think, helped get things resolved.

19 MR. EAKELEY: And I would like to thank Ellen  
20 Smead, in particular.

21 MS. PERLE: Yes.

22 CHAIRPERSON BATTLE: I was about to do just that.

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1           Thank you, Ellen, very much, for your hard work on  
2 that and the other issues.

3           MS. PERLE: And I would like to thank Ellen. I  
4 think that we, over the years, despite sort of lots of  
5 situations, we have managed to get a lot of stuff resolved,  
6 with Ellen's help. And she has been very helpful. Thank  
7 you.

8           CHAIRPERSON BATTLE: That, I think, is the end of  
9 what we have got on our agenda. Are there any other items  
10 from this committee, what's left of it?

11           (No response.)

12                                   M O T I O N

13           MS. WATLINGTON: I now make a motion that the  
14 committee be adjourned.

15           CHAIRPERSON BATTLE: That's right. And I'll second  
16 that motion. It has been moved and seconded that we adjourn.  
17 No opposition, because there are just two of us.

18           MR. EAKELEY: I'm a voting member.

19           CHAIRPERSON BATTLE: Oh, I'm sorry.

20           MR. EAKELEY: I agree. Mr. McCalpin promised us to  
21 promise that we would commence the presidential search  
22 committee meeting promptly at 1:30. So I suggest that we

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1 promptly adjourn so that we may promptly resume.

2 CHAIRPERSON BATTLE: And, with that, I'm going to  
3 assume that all three of us are in favor of that. Then this  
4 committee is now adjourned.

5 (Whereupon, at 12:56 p.m., the meeting of the  
6 Operations and Regulations Committee was adjourned.)

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