

LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE

OPEN SESSION

Friday, March 17, 1995

10:45 a.m.

Legal Services Corporation Headquarters
The Board Room
730 First Street, Northeast
Washington, D.C.

BOARD MEMBERS PRESENT:

Committee Members:

John G. Brooks (Presiding)
F. Wm. McCalpin

Other Board Members:

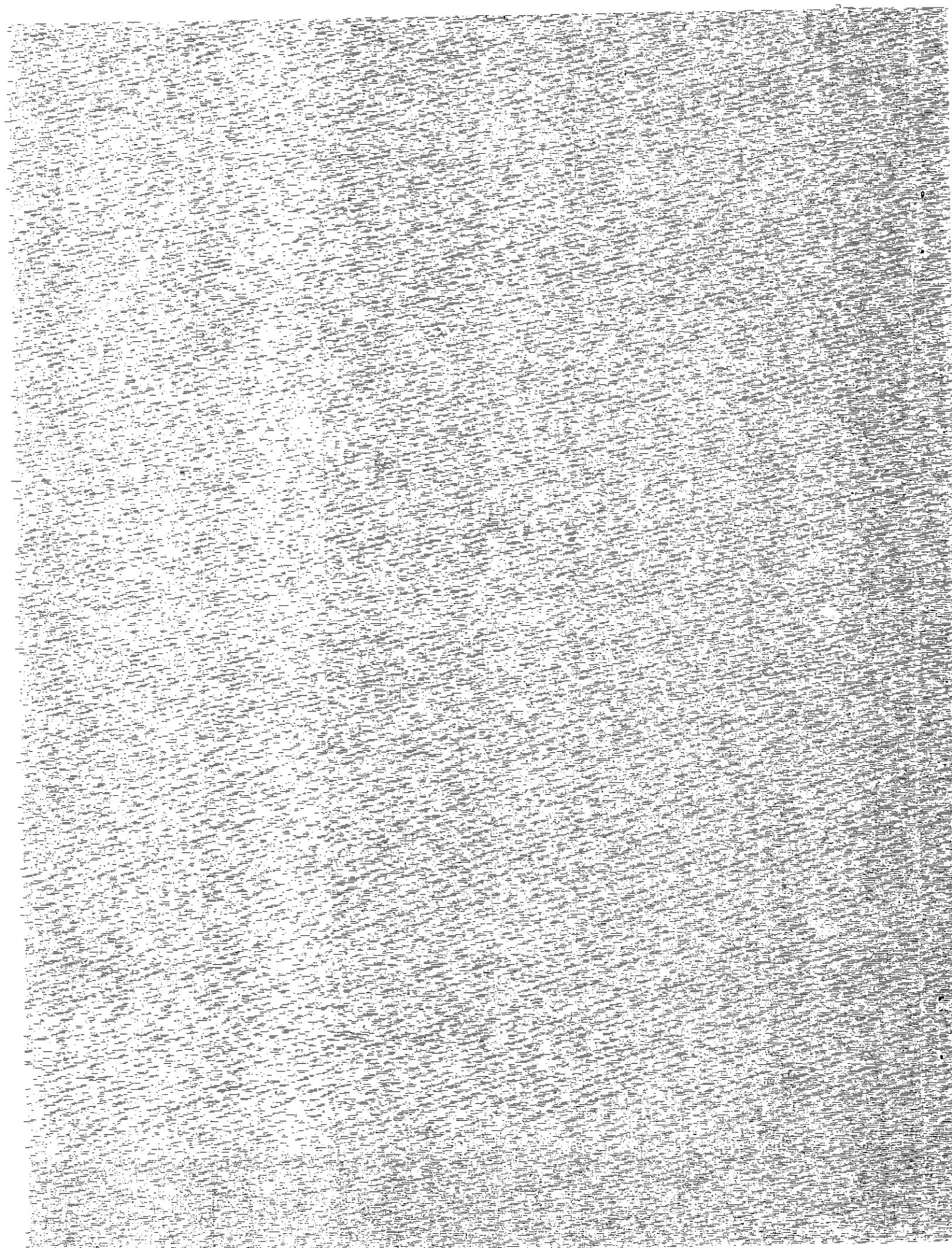
Douglas S. Eakeley
Maria Luisa Mercado
Thomas F. Smegal, Jr.

STAFF PRESENT:

Alexander D. Forger, President
Patricia D. Batie, Secretary
Martha Bergmark, Executive Vice President
Victor M. Fortuno, General Counsel

* * * * *

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P R O C E E D I N G S

(1:50 p.m.)

1
2
3 MR. BROOKS: We now have a quorum of the Operations
4 and Regulations Committee in attendance. The meeting will
5 please come to order.

6 The quorum consists of Mr. McCalpin and myself,
7 John Brooks. LaVeeda Battle, the chairman, is unavoidably
8 absent today. She regrets not being here but she asked me to
9 chair the meeting, and she will be here for the Directors'
10 meeting tomorrow, I believe. Ernestine Watlington, as most
11 of you know, had a bad time with her health and is not able
12 to be here today. So we are somewhat of a bobtailed
13 committee.

14 We have the business to do, which I think has been
15 very largely approved you the full committee at the last
16 meeting, subject to a few changes in the indemnification
17 provision and in Section 305, which is disclosure of
18 financial and ownership interests by members of the Board.

19 The first item on the agenda is to approve the
20 agenda.

M O T I O N

21
22 MR. MCCALPIN: So moved, by acclamation.

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1 MR. BROOKS: Well, I hope we don't have a quorum
2 call here. I don't think --

3 MR. McCALPIN: Well, we have a quorum.

4 MR. BROOKS: We have a quorum. So ruled.

5 Now, the minutes of the last meeting is the next
6 item on the agenda.

7 M O T I O N

8 MR. McCALPIN: I move they be approved.

9 MR. BROOKS: Second the motion.

10 (Laughter.)

11 MR. BROOKS: In the absence of objection, the
12 motion is accepted and voted.

13 Then, the principal item on the agenda is the
14 consideration of the bylaws, which have been before the
15 committee and before the Board in successive drafts for some
16 time.

17 MR. McCALPIN: One year.

18 MR. BROOKS: They were, as you remember, withdrawn
19 from the regulations as such to make it easier to amend if
20 necessary, so that we are in the process now of completing
21 the revisions which have been exposed to all interested
22 parties, I believe.

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1 10.01, the indemnification provision, and that has undergone
2 some revision since the last meeting and there has been a
3 revised edition circulated today. Did you get one, Tom?

4 MR. SMEGAL: Yes, I did.

5 MS. MERCADO: Yes.

6 MR. BROOKS: Maria?

7 MS. MERCADO: Yes, I've got one, too.

8 MR. BROOKS: Again, that's primarily a refining
9 process from the draft that we saw at the last meeting. Does
10 anyone have any comments?

11 MR. McCALPIN: In 10.01A(8), there was included, as
12 a result of a conversation between Laurie and me a week ago,
13 the word "witness," and we were not clear, in our own minds
14 at that time, whether, at the last meeting we had agreed on
15 whether or not there should be indemnification for a witness.
16 I know there was discussion of it the last time, but neither
17 Laurie nor I could remember whether there had been a
18 consensus or a decision.

19 We put it in here with the understanding that the
20 issue would be raised at this point. I think what we're
21 talking about is, suppose that one of the persons to be
22 indemnified, within the class to be indemnified, is called as

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1 a witness and, under circumstances such that the individual
2 may feel the necessity of being represented by counsel,
3 whether at a deposition or at a hearing or whatever it may
4 be.

5 The question was whether we would extent
6 indemnification for the costs associated with that
7 appearance. It's in there. I think we can either include it
8 or not include it, depending upon what we think is the right
9 approach to it. We agreed a week ago when we discussed this
10 that we would raise this issue at this time, because we were
11 not clear what the result of the decision was the last time.

12 MS. MERCADO: I apologize for not bringing my notes
13 from the other committee meeting, because I do remember that
14 we did discuss it, but I don't know whether we actually
15 included it on there, because I had all my handwritten
16 provisions that we changed and everything in it, and I don't
17 have that copy with me to tell me that now.

18 I don't know whether Laurie remembers --

19 MR. MCCALPIN: I think we could consider it de
20 novo.

21 MR. BROOKS: I know we considered it, and I know I
22 mentioned the possibility of a witness wanting counsel

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1 available at the hearing, whatever it was, which seemed to me
2 to be a perfectly legitimate expense for indemnification
3 purposes.

4 I don't recall, either, whether we had a decision
5 on it, but why don't we just consider that that is in here?
6 We raised the question. If we hear any objection, we can
7 consider it further. In the absence of objection, I
8 recommend that we just accept it as written.

9 Does anybody have any compunctions about that?

10 MS. MERCADO: Mr. Chairman, no, sir, but I think
11 that if we look at part of the category of expenses under
12 Item A(4), it mentions witness fees, which it would seem that
13 it would be in the same vein of providing indemnification.

14 I mean, if we are providing it for witness fees,
15 then why wouldn't we provide it for a witness that would need
16 counsel to represent them on there?

17 MR. BROOKS: I think that's a little different
18 focus, because --

19 MS. MERCADO: No, it is a different focus, but I
20 mean it's still dealing with the whole concept of a witness,
21 but in a different category of funding. One is the
22 litigation cost versus the actual representation of the

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1 party.

2 MR. McCALPIN: I think basically this inclusion in
3 (4) is intended to take care of expert witness costs and that
4 sort of thing.

5 If there is an agreement to leave it in, I should
6 point out that there has been a change, today, in 10.01A(1),
7 the definition of agent. And that stems from a letter which
8 we have received from the insurance agent who handles the
9 liability insurance coverage for the Corporation.

10 What that letter said, in effect, was that if an
11 agent was acting in a voluntary, pro bono capacity for the
12 Corporation, the insurance policy would cover it.

13 But, if the agent were a professional -- an
14 insurance agent, a real estate agent, a lawyer, something of
15 that sort, being paid, compensated for services to the
16 Corporation then, on the assumption that such a professional
17 individual would have his or her own insurance coverage, the
18 Corporation's insurance policy would not cover.

19 It seemed to us that it is prudent that the
20 indemnification provision not, in at least that respect, go
21 beyond the protection which the Corporation has under its
22 insurance policy. So we have limited the definition of

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1 "agent" to one serving in a voluntary capacity.

2 MR. BROOKS: Yes.

3 MS. MERCADO: Yes, Mr. Chairman, I guess this goes
4 back to another issue that we discussed as to whether or not,
5 in this agent capacity, an employee who would be brought in
6 an action could qualify under that provision. It doesn't
7 seem like they would, because they would be paid by the
8 Corporation.

9 MR. McCALPIN: It doesn't have to be, because
10 indemnity includes employee, anyway.

11 MS. MERCADO: But would an employee be acting in a
12 voluntary capacity or would they be acting under their --

13 MR. McCALPIN: An employee is an employee. An
14 employee is not an -- you know, they may conceivably, under
15 some consideration of common law concepts, be considered an
16 agent, but he or she is indemnified as an employee, and I
17 don't think we need to worry about the fact that employees --

18 MS. MERCADO: They don't contradict each other, as
19 far as you're concerned?

20 MR. McCALPIN: No, I don't think so at all.

21 MS. MERCADO: Okay. I guess one of the things that
22 would be helpful for me, and I don't know whether there's

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1 another document that indicates this, since you just
2 mentioned this voluntary capacity was a new addition from the
3 draft that we viewed at the last meeting, is maybe to
4 highlight where some of the changes have been so that we can
5 look at it, since I don't have the other one to compare it
6 to.

7 MR. MCCALPIN: Well, I can give you my copy of
8 that, I suppose.

9 There's one other one that I think I ought to point
10 out. I guess the copy that went to the Board in Subparagraph
11 G refers to arbitration under the rules of the Federal
12 Mediation and Conciliation Service. That was included after
13 the last time, but further investigation by staff in the
14 meantime has revealed that the procedures of the Federal
15 Mediation and Conciliation Service would not be appropriate
16 for us.

17 Therefore, in the copy which is passed out this
18 afternoon, you will see that the language is simply they
19 agree to submit the issue to arbitration pursuant to
20 procedures which shall be established by the Board from time
21 to time, which is essentially the language of the guideline
22 provision in 3.05.

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M O T I O N

1
2 MR. MCCALPIN: With that, Mr. Chairman, I would
3 move that this committee approve Section 10.01 as distributed
4 to us here today, this afternoon.

5 MR. BROOKS: You have heard the motion.

6 (Laughter.)

7 MR. BROOKS: In the absence of objection, I declare
8 the motion voted upon unanimously, and I think we should
9 follow it by another motion.

M O T I O N

10
11 MR. MCCALPIN: Right. I would move that this
12 committee recommend to the Board adoption of the bylaws as
13 circulated to the Board in advance of this meeting with,
14 however, the substitution of Section 10.01 distributed today
15 for the 10.01 that was in the document submitted to the Board
16 in advance.

17 I have touched upon the only significant changes in
18 that 10.01, which is the redefinition of agent and the
19 elimination of the Federal Mediation and Conciliation
20 Service. Those are the only significant, non, you know,
21 substitute one word for another, changes which may be
22 involved.

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1 MR. BROOKS: I think maybe we should note one other
2 change, which is 10.01B(4). As it had been, we said, "In the
3 case of any criminal proceeding, such person had no
4 reasonable cause to believe his or her conduct was unlawful."

5 That has been changed to the other way around, so
6 that it now reads: "In the case of any criminal proceeding,
7 such person had reasonable cause to believe his or her
8 conduct was lawful."

9 The reason for that is that there may be a very
10 legitimate belief that a law or regulation which is
11 outstanding is not valid, could be unconstitutional, or the
12 regulation could be -- would have the force of law -- might be
13 declared to be beyond the scope of the authority of a
14 regulatory body and, in good faith, that could be contested
15 in a court proceeding, and successfully contested.

16 So that I think it seemed more reasonable to phrase
17 it in the revised way so that the burden was really on the
18 contestor of the indemnification to prove that the person had
19 no reasonable cause, rather than putting the burden on the
20 indemnitee.

21 I think that's the only other more or less
22 substantive change.

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1 So the motion has been made. I suggest a slight
2 amendment that, since 305 has had a verbal change, that that
3 be in your motion.

4 MR. McCALPIN: Well, except that 305, as we adopted
5 today, is exactly what was distributed to the Board
6 beforehand.

7 MR. BROOKS: Were those two words in?

8 MR. McCALPIN: What two words?

9 MR. BROOKS: "Significant personal financial
10 interest" was added last time.

11 MR. McCALPIN: But you're talking about the
12 guidelines.

13 MR. BROOKS: Oh, I'm sorry. I'm talking about the
14 -- no, I'm -- no, it's in 305A(1) in the last line.

15 MR. McCALPIN: Oh, "Any significant personal
16 financial or ownership interest."

17 MR. BROOKS: We added the word "significant."

18 MR. McCALPIN: But that was circulated.

19 MR. BROOKS: Was it proposed?

20 MR. McCALPIN: Yes.

21 MR. BROOKS: All right.

22 MR. McCALPIN: The only substitute, the only

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1 difference between what the Board got in advance in this
2 meeting and what they're going to be asked to act on today is
3 10.01.

4 MR. BROOKS: All right.

5 MS. MERCADO: But Bill, are you saying that the
6 Section 305 changes that were submitted to the Board ahead of
7 time, the committee has already voted on and recommended
8 those changes as they are noted in the Section 305 that was
9 submitted to us, so that the committee doesn't need to take a
10 vote to recommend to the Board?

11 MR. McCALPIN: No. Since it's in the package which
12 went to the Board, the motion is that the Board adopt the
13 package which it received beforehand with the exception of
14 the substitution of 10.01.

15 MS. MERCADO: I'm sorry. I didn't hear the
16 adoption of the package. I just -- I don't know what I
17 heard. Okay. Now that makes sense.

18 MR. BROOKS: All right. You've heard the motion.
19 There being no objection --

20 MR. McCALPIN: But we do have a third member here,
21 now.

22 MR. BROOKS: Oh, so we do.

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1 MR. EAKELEY: I'm pretending I'm not here. You all
2 are doing fine without me.

3 MR. BROOKS: If you want to second Bill's motion --

4 MR. EAKELEY: I'll second Bill's motion.

5 MR. BROOKS: Good. Well, this is a gutsy motion,
6 anyway. You've heard the motion, duly seconded. All in
7 favor say "Aye."

8 (A chorus of ayes.)

9 MR. BROOKS: The motion is adopted. We shall
10 recommend it to the Board shortly.

11 The agenda then takes us to consideration of the
12 proposed Board disclosure form and related guidelines. I
13 think last time we considered that and decided that we would
14 not present it for final action until the May meeting. I
15 think we have a draft. I have some suggestions relating to
16 it. You may well have.

17 My suggestion is that we incorporate any
18 suggestions that seem appropriate and helpful, rewrite it,
19 distribute it and present it for action in May. Do you think
20 it's ready now?

21 MR. MCCALPIN: I think it was clearly agreed at the
22 last meeting that we had time to worry about the guidelines

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1 and that we would clearly not present any guidelines for
2 consideration and approval at this time.

3 I don't recall that there was any specific
4 agreement that we would consider them in May, but I suppose
5 there isn't any reason why we couldn't. I think, as I recall
6 what the minutes say, it is that Laurie and I were supposed
7 to confer on these guidelines, a draft of which I have done,
8 and you've now made some suggestions, and I think if we get
9 our comments to Laurie shortly, she can have something for us
10 to consider at the May meeting, and that would be plenty of
11 time.

12 Any further discussion?

13 MR. EAKELEY: That sounds fine to me.

14 MR. McCALPIN: This agenda item says "form." I
15 don't know that we have previously discussed a form, but I
16 would think that, when once we adopt the bylaw and the
17 guidelines, construction of the form is a ministerial act
18 that can be left to the staff.

19 MS. MERCADO: I think so.

20 MR. BROOKS: Well, can you incorporate the
21 suggestions that you will receive, Laurie, into a new draft
22 of a guideline?

1 MS. TARANTOWICZ: Certainly.

2 MR. BROOKS: And let us have them as soon as
3 convenient so we can consider them further

4 MS. TARANTOWICZ: Okay.

5 MR. EAKELEY: I can't find my draft -- draft of the
6 disclosure guidelines or form. I can remember my concern,
7 though. The definition of "association" seemed to suggest
8 that we had to list every client that we've ever represented
9 for two years. I didn't think that was the intention and it
10 might just have been my tortured reading of the text.

11 MR. McCALPIN: I think it is true with respect to
12 investment, but certainly not clients.

13 MS. MERCADO: See, that wasn't real clear to me,
14 either, and I think that that was part of what I had hoped
15 maybe some other discussion would elaborate on, because the
16 way it is written, it would make it seem that way. Let me
17 see if I have my copy.

18 MR. EAKELEY: "Any firm or organization with which
19 you've been associated."

20 MS. MERCADO: Mm-hmm.

21 MR. EAKELEY: And that includes all clients, as I
22 read it, or read it. We can't mean that.

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1 MR. McCALPIN: No. It is not intended to mean
2 that.

3 MR. EAKELEY: But I think you don't have to push
4 the words a lot to come up with that instruction.

5 MS. MERCADO: Because that was one of my questions
6 that I had earlier to Pat, when we were looking at this, you
7 know, did this include clients or whatever, because of the
8 way it was written.

9 MR. McCALPIN: Doug, except that, if all this goes
10 back to 305 of the bylaws, and "associated" is defined in 305
11 of the bylaws as, "A member shall be deemed associated if he
12 is serving or within two years as a director, officer,
13 trustee, employee, consultant, attorney --

14 MS. MERCADO: Attorney. That's right.

15 MR. EAKELEY: And, as a partner in a firm, it's all
16 the firm's clients.

17 MS. MERCADO: See, that's the one that bothered me.

18 MR. EAKELEY: We couldn't have intended it.

19 MR. McCALPIN: Well, I think what we'll do is have
20 the guidelines make clear that that's not included.
21 Actually, what it was intended to do was to require you to
22 disclose the law firm with which you were associated, not the

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1 clients or the employer, if it's a corporate legal
2 department.

3 MS. MERCADO: We definitely need to clarify that,
4 because I know that that was one of my concerns in trying to
5 figure out how to do that disclosure, and I had asked the
6 corporate secretary about that, because that's the way the
7 language makes it read, that if you are an attorney, then
8 that could actually extend to your clients, as well.

9 MR. MCCALPIN: Well, you know, there's no change in
10 this, and that's got a long history. So I think we'll make
11 it clear in the guidelines.

12 MR. EAKELEY: It would be helpful if we just
13 eliminate the ambiguity.

14 MR. BROOKS: Well, that comment has been noted. Is
15 there any more to be said now on the guidelines?

16 [No response.]

17 MR. BROOKS: If not, the next item on the agenda is
18 to consider the committees' oversight responsibilities for
19 corporate operations, which takes off from where the ad hoc
20 committee left off this morning.

21 One thing I like to be sure we have here is all the
22 input. It would be helpful to us, from the staff, to receive

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1 from them their point of view of what we could be helpful to
2 them with.

3 Are there any comments on that?

4 MR. McCALPIN: Yes. Let me ask a question. I
5 wasn't clear. Did I hear or infer that Nancy thought that
6 the end of the meeting this morning in her committee was
7 finished?

8 MS. MERCADO: Yes.

9 MR. McCALPIN: Well, I thought that that committee
10 was going to consider what was the appropriate assignment of
11 jurisdiction with respect to the committees and whether this
12 committee -- whether, and the extent to which -- this
13 committee would oversee various aspects of the operation of
14 the Corporation.

15 I would have thought that, until the ad hoc
16 committee had done that, it would be inappropriate for us to
17 consider it.

18 MR. EAKELEY: I was not at the preceding committee,
19 but I have the transcript.

20 My understanding -- and we have another member of
21 the committee with us -- my understanding is that the ad hoc
22 committee's conclusion was that the Board functions oversight

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1 responsibility through the president and that it is not
2 appropriate for various Board committees to get into
3 operational oversight other than, for example, on matters of
4 fiscal stewardship in the Finance Committee or personnel
5 policies, which would be left to Operations and Regulations,
6 but that we were not going to be authorizing or recommending
7 that various committees request that staff who report to the
8 president report to those committees.

9 MR. McCALPIN: My recollection is that the minutes
10 or the transcript of the last meeting also indicated that you
11 had requested each chair to submit to you a statement of what
12 the chair considered to be the jurisdiction of his or her
13 committee. If you have those, I haven't seen them, and I
14 don't know what our chair considers to be the appropriate
15 role or jurisdiction of this committee.

16 MR. EAKELEY: I'm deliberately keeping them from
17 the Board.

18 MS. MERCADO: What was actually submitted was that
19 the staff -- actually, I think Laurie -- may have pulled up
20 from transcripts and records what the different
21 responsibilities of the committees were.

22 Correct me if I'm wrong Laurie; didn't you do this

1 going back to some of the transcripts and information as to
2 what the different duties and obligations were of the
3 committees, and she prepared a summary of the different
4 categorizations of each committee that she gave us at that
5 meeting. Yes.

6 MS. TARANTOWICZ: Right. And I believe I prepared
7 a new draft just this week -- I don't know if that was
8 distributed -- just adding --

9 MR. EAKELEY: I haven't seen that, Laurie, or the
10 new draft.

11 MS. TARANTOWICZ: Okay.

12 MS. MERCADO: I haven't gotten the new draft.

13 MS. TARANTOWICZ: I can get copies of that out.
14 It's just to add a couple of things that the committee
15 decided should be included in Provisions and, I believe, A&A,
16 dealing with the COB.

17 MS. MERCADO: Okay.

18 MR. McCALPIN: One of the things that appears to
19 have changed over time is that initially this committee used
20 to receive a report of litigation at a committee meeting,
21 independently of the General Counsel's report to the Board.

22 I think lately there has not been such a report at

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1 this committee meeting, that it's just generally to the
2 Board. Is that a conscious decision?

3 MR. EAKELEY: I wish I could say yes, but if it was
4 a conscious decision and it wasn't -- we had talked generally
5 about the duplication between reports to this committee, in
6 particular, and to the Board as a whole, and I think that, as
7 a consequence of that, we have Mr. Fortuno reporting directly
8 to the Board, but it's not as a consequence of any directive
9 on my part.

10 So what we've been trying to do is wean the
11 committees away from the type of oversight that we thought
12 appropriate at the inception of our term and before we had a
13 full-time president and, now that we have a full-time
14 president who is responsible for managing the Corporation,
15 the appropriate role and scope of our committees is
16 different, although I don't think we really have gotten to
17 the point of describing or agreeing to what those roles ought
18 to be.

19 MS. MERCADO: And I guess maybe that's why you're
20 coming back as to whether or not the ad hoc committee has
21 finished. One of the items that actually isn't finished,
22 that we're supposed to get some additional feedback, is the

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1 issue of the inspector general in dealing with audits. I
2 know that management and the IG are looking at that.

3 But I thought that there needed to be some more
4 clarification, I guess, exactly as to what they would or
5 wouldn't do, and I didn't know whether that would come out of
6 the ad hoc committee or does that come out of the full Board?
7 This morning, I think that there was not a clarification of
8 where that was coming back to, you know, because we had a lot
9 of questions that were brought up.

10 MR. FORGER: I thought, Maria Luisa, that on that
11 dialogue between the inspector general and Martha, it was
12 simply that we're working out, in more finite detail, the
13 areas of jurisdiction and who refers what to whom at a given
14 moment.

15 But I think those issues are okay. I think that
16 one worked it's way out. I don't see that requiring Board or
17 committee attention.

18 MS. MERCADO: Okay.

19 MR. EAKELEY: But I have not -- I think it would be
20 useful, and it was my intention that, just as we should have
21 a job description for the Board and a job description for the
22 president, we also should have job descriptions or a charge

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1 to each committee, so that the responsibility of each
2 committee is laid out and everyone agrees to it and knows
3 what to expect from it.

4 We're not there. And you're right. Maybe we were
5 too hasty in letting the Ad Hoc Governance Committee self-
6 extinguish this morning.

7 MR. BROOKS: Bill?

8 MR. MCCALPIN: That gets us back to No. 5. Do I
9 understand from this conversation that this committee's only
10 oversight responsibility with respect to corporate operations
11 has to do with personnel policy?

12 MR. FORGER: I would think so.

13 MR. EAKELEY: That is the one area that has been
14 specifically identified as being appropriate for this
15 committee to review. I don't think we have a Board
16 discussion.

17 Maybe the ad hoc committee did last meeting when I
18 wasn't here, but I don't think we've gone through -- well, I
19 don't know. I don't know whether we have actually exhausted
20 the subject and have reached agreement that this is the only
21 thing that this committee should be dealing with. I don't
22 know. Can someone enlighten us?

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1 MR. FORGER: I think, from the ad hoc committee's
2 point of view, as I recall, looked at the composition and
3 what they thought was the jurisdiction of the committees and
4 thought there was no need to have any major change except the
5 name change of Maria Luisa's.

6 MS. MERCADO: Finance Committee.

7 MR. FORGER: It's now the Finance Committee.

8 MR. McCALPIN: No, it's not.

9 MR. FORGER: The bylaws have to be amended.

10 MR. McCALPIN: I was going to suggest to Maria
11 that, after the bylaws are adopted, that she move to change
12 the name of her committee.

13 MR. FORGER: Okay. But I mean that was a major
14 decision made, that maybe the name of that committee should
15 change. But I think that aside from the dialogue on where
16 should management personnel report and the inspector general,
17 my sense was that there was no feeling that there should be a
18 further analysis of committee functions or specification or
19 change.

20 MR. BROOKS: Well, I wonder whether there are
21 matters involving development, possibly, of Board policies,
22 where either the president or the chairman or both would

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1 appreciate having the thoughtfulness of the Operations and
2 Regulations Committee brought to bear on development of
3 policies.

4 It could be something like branch offices, for
5 instance, regional offices, other policy matters which could
6 benefit, it seems to me, by a committee approach, short of
7 the entire Board. Now, maybe it's not sensible to build that
8 into any structure, but I think the committees -- the Finance
9 Committee or the Appropriations Committee -- are available to
10 think about fiscal matters with the management.

11 MR. FORGER: I think, following up on your point,
12 John, that some of the predictions of Congressional action
13 have come to pass. I think we may find ourselves modifying,
14 quite significantly, the structure of the Corporation.

15 Indeed, even if one wanted to pose a very
16 significant cut, quite a change in the structure of the
17 delivery of the service that we have out there, some reports
18 ask that it could mean a shift to the Corporation of a lot of
19 the activities elsewhere being performed or a need to do
20 training, greater oversight.

21 I think that, without predicting where all this
22 will end up -- and we hope that we will continue just as we

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1 are -- that surely may be an area where we've got to look
2 more carefully and have the Operations Committee and maybe
3 others more fully engaged in how the Corporation is going to
4 function.

5 MR. BROOKS: You don't see that as sort of a
6 standing part, or part of a standing description, but could
7 be done more on an ad hoc basis, if and when necessary?

8 MR. EAKELEY: No. I was making the distinction, or
9 reacting earlier to the use of the term "oversight" in terms
10 of a Board committee having oversight over the functioning of
11 a portion of management which really replicates or displaces
12 the president's ongoing oversight responsibilities and our
13 supervision of him.

14 But the question of where should policy issues
15 relating to organization and operations emerge --

16 MR. BROOKS: Develop.

17 MR. EAKELEY: -- develop -- is a different one, and
18 I think that that would be fine. Laurie, you keep
19 disappearing on us.

20 MS. TARANTOWICZ: I'm sorry.

21 MR. EAKELEY: Could you just explain to us what
22 this "Jurisdiction of Committees" sheet you've just handed us

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1 represents?

2 MS. TARANTOWICZ: We went through the transcripts
3 when the communities were first established and, over time,
4 they were established at first as temporary committees, most
5 of them, and then they were made permanent to try to glean
6 what the functions were of the committee but, since that
7 time, it has just been assumed that those were the
8 committees, and they were put in the bylaws, and not much
9 discussion has taken place as to what the committees are
10 supposed to do. So basically, we just went through the old
11 Board transcripts.

12 MR. EAKELEY: Has the Ad Hoc Committee on
13 Governance reviewed these?

14 MR. FORGER: Not while I was at its meeting.

15 MS. MERCADO: They reviewed most of it. Let me
16 see. John has the original one that got distributed in that
17 other meeting. What did we add to it, Laurie?

18 MS. TARANTOWICZ: At the February meeting, this was
19 distributed, except for, at that meeting, there was a
20 discussion as to certain things that probably should be
21 included, and so we included the second thing listed under
22 Audit and Appropriations, regarding the Corporation's budget.

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1 MS. MERCADO: That's right.

2 MS. TARANTOWICZ: And, under Provisions, we added
3 the third item regarding grantee audits, because the
4 committee felt that that was under Provisions' jurisdiction.

5 MR. EAKELEY: I think what I would like to do, with
6 this committee's leave, is to suggest that the Ad Hoc
7 Governance Committee not get out of ad hoc review too soon,
8 and review this and perhaps use this as the format for
9 soliciting input of the various committees about what they
10 believe the appropriate scope of their jurisdiction should
11 be, and pursue something that would actually adopt such a
12 written statement.

13 MR. McCALPIN: The interesting thing about this,
14 under Operations and Regulations there is no reference to
15 personnel policies.

16 MR. EAKELEY: That's right.

17 MR. McCALPIN: But there is a reference, in Item 4,
18 to something that I suppose could be within the jurisdiction
19 of this committee, and that is the Corporation's
20 organizational structure.

21 MR. EAKELEY: Policy questions about organizational
22 structure or --

1 MR. McCALPIN: Yes, policy questions --

2 MR. EAKELEY: -- general operations, correct.

3 MR. BROOKS: Maria?

4 MS. MERCADO: Yes, Mr. Chairman. One of the things
5 that I was looking at in picking up all these papers we have
6 here is that we have a document that I'm sure someone
7 diligently prepared for us for this Ad Hoc Structure
8 Committee meeting this morning, which was an analysis of the
9 committee functions where they're broken down into Ad Hoc,
10 Ops and Regs provisions, Audit and Appropriations, whether we
11 renamed the committee, what recommendations and duties we
12 had.

13 It's this long, green document that we had in front
14 of us, that we actually didn't even get to use at the Ad Hoc
15 Committee, to discuss the different recommendations that we
16 would have on the duties and responsibilities of the
17 committees.

18 MR. McCALPIN: Tabula rasa. It's completely blank.

19 MS. MERCADO: I know. We're supposed to put in the
20 information. We never prepared this. Thank you. I'm just
21 sorry that we overlooked this, this morning.

22 MR. EAKELEY: I'm prepared to take this back to the

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1 ad hoc committee, and then we'll work on it.

2 MR. BROOKS: So we shall receive our audits from
3 the ad hoc committee and the Board in due course.

4 MR. EAKELEY: You will hopefully receive your
5 invitation to provide input.

6 MR. FORGER: You will not accept the suggestion
7 that the ad hoc committee will go out of business.

8 MS. MERCADO: At least not yet, anyway.

9 MR. EAKELEY: Martha wanted to say something, had
10 something else, if we're all done with this subject for now.

11 MR. BROOKS: Well, let's reserve comment on this.
12 Yes, Martha.

13 MS. BERGMARK: I just wanted to introduce John
14 Pensinger and to acknowledge his good work for the
15 Corporation and to thank him and wish him well, as he moves
16 on to other employment. John has been in our general
17 accountant's office.

18 John, why don't you just come up and say hi, real
19 quickly? Do you have any parting thoughts? Today is
20 actually, I believe, John's last day in the office, and we'll
21 miss you. He's moving on to the Department of Justice,
22 Office of Justice Programs, and to the General Counsel's

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1 Office there.

2 MR. EAKELEY: Nancy Gist is a good friend and law
3 school classmate.

4 MS. BERGMARK: Right, and Laurie Robinson is a
5 colleague of mine.

6 MR. FORGER: I think it could be said that John has
7 at last found access to Justice.

8 (Laughter.)

9 MR. MCCALPIN: Well, it was John's letter to us
10 which occasioned the redefinition of "agent" in 10.01.

11 MR. EAKELEY: Well, we thank you very much for all
12 the wonderful service and we wish you well in your next stage
13 of continued service.

14 MR. PENSINGER: Thank you, Mr. Chairman. I just
15 want to say it's been an honor and a pleasure being here
16 roughly the past nine years, and I hope I've contributed to
17 something to the operation of the Corporation.

18 MR. EAKELEY: That you have, and there will be a
19 lot here that remains for some time to come.

20 MR. PENSINGER: Thank you again.

21 MR. MCCALPIN: And we will not hear any references
22 to sinking ships.

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1 (Laughter.)

2 MR. BROOKS: Is there any other business to come
3 before the meeting? Mr. McCalpin.

4 MR. McCALPIN: I took note, over the last couple of
5 weeks, about the -- as well as I could in the daily paper,
6 which is not terribly reliable -- about what the Congress was
7 doing with respect to the issuance of regulations, raised the
8 question whether that, in any way, affected what we were
9 doing.

10 Laurie sent me a copy of the bill and a statement
11 that, I guess, counsel's office had concluded that, at least
12 as presently configured and discussed, the bill does not
13 affect our ability to draft and publicize -- well, yes, I
14 haven't seen that.

15 MR. FORGER: Additional regs?

16 MR. McCALPIN: Pardon?

17 MR. FORGER: Additional regulations?

18 MR. McCALPIN: Yes. Yes. But I had a conversation
19 with LaVeeda this morning, and raised the question about
20 further progress on certain of the regulations and so on, and
21 I think it fair to say that it was her view that we ought to
22 do everything possible internally to progress the development

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1 of revised regulations, but that we needed to consider
2 carefully whether and when we ought to publish, in the
3 Federal Register, any of those regulations, having in mind
4 all the other things that are going on around us.

5 I frankly thought that we were going to take up
6 1608 today, and that caused me to rush into something that I
7 needn't have rushed into the other day, but, in addition, we
8 had long ago said that there were two regulations which we
9 were going to initiate internally, rather than through the
10 outside working group -- 1622, which was FOIA; and the other
11 one I don't remember -- and that Laurie was to give us drafts
12 of that in March.

13 She says that she had a conversation with LaVeeda
14 about that some while ago, and I had that same conversation
15 this morning. And the agreement that LaVeeda and I reached
16 this morning, and I communicated to Laurie, was that Laurie
17 would go ahead to work on those two and circulate them to the
18 committee as soon as there was something available that we
19 could then be in a position to discuss them when next we met,
20 which is presumably in May, along with 1608.

21 I think, by then, won't the comment period on
22 certain published regulations also have expired so that we

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1 can have a pretty full docket for that 11th of May, which I
2 think is the day that was set aside for us on this.

3 But I think it is a policy question perhaps to be
4 considered, as each regulation comes along, whether it is
5 prudent and expedient to publish a proposed or final
6 regulation with everything else that's going on around us.

7 MR. BROOKS: Well, I have talked to LaVeeda about
8 that same subject and where I come out -- and I think LaVeeda
9 agrees and I think we agree fundamentally with you, and I
10 think what I'm content and I think you may be as well -- is
11 that we don't lose our momentum, that we may defer either
12 publication in the Federal Register or promulgation of final
13 regulations, where it might be possible for us to do it, but
14 to continue as if we were on an original schedule so that we
15 can have drafts, final drafts or preliminary drafts, as the
16 case may be, as soon as feasible.

17 I would like to see them come out without waiting
18 until a week before the May meeting, so that we're not, I
19 believe, going to schedule an April meeting for the Ops and
20 Regs Committee, which was thought possible, but we might even
21 think in terms of as if we were having an April meeting.

22 If that would be possible, Laurie would get some

1 portions of that assignment ready, so that we could digest
2 them a little more deliberately than sometimes we've been
3 able to in the past, which is a suggestion which I think
4 LaVeeda agrees with, and I feel that we don't want to lose
5 the opportunity to progress as fast as possible when the time
6 comes.

7 MR. McCALPIN: I think that's right. I think it
8 would be a mistake to be still in the water, to be stopped
9 dead on this.

10 MR. BROOKS: Any further business?

11 [No response.]

12 MR. BROOKS: Thank you, Mr. McCalpin for your
13 architecture.

14 M O T I O N

15 MR. McCALPIN: I move we adjourn.

16 MR. EAKELEY: I'll second that.

17 MR. BROOKS: The motion has been made and seconded
18 to adjourn. Any discussion?

19 [No response.]

20 MR. BROOKS: A1 in favor.

21 (A chorus of ayes.)

22 MR. BROOKS: It's a vote. That's the shortest

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