

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS & REGULATIONS COMMITTEE
OPEN SESSION

Sunday, July 20, 2014

1:34 p.m.

Des Moines Marriott Downtown
700 Grand Avenue
Des Moines, Iowa 50309

COMMITTEE MEMBERS PRESENT:

Charles N.W. Keckler, Chairperson
Robert J. Grey Jr.
Harry J.F. Korrell, III
Laurie I. Mikva
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Sharon L. Browne
Victor B. Maddox
Father Pius Pietrzyk, O.P.
Julie A. Reiskin
Gloria Valencia-Weber

STAFF AND PUBLIC PRESENT:

James J. Sandman, President

Lynn Jennings, Vice President for Grants Management

Wendy Rhein, Chief Development Officer

Ronald S. Flagg, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary

Mark Freedman, Senior Assistant General Counsel,
Office of Legal Affairs (by telephone)

Stefanie Davis, Assistant General Counsel, Office
of Legal Affairs (by telephone)

David L. Richardson, Comptroller and Treasurer,
Office of Financial and Administrative Services

Carol A. Bergman, Director, Office of Government
Relations and Public Affairs

Carl Rauscher, Director of Media Relations, Office
of Government Relations and Public Affairs

Marcos Navarro, Office of Government Relations and
Public Affairs

Jeffrey E. Schanz, Inspector General

Tom Hester, Associate Counsel, Office of the
Inspector General (by telephone)

John Seeba, Assistant Inspector General for Audit,
Office of the Inspector General

Thomas Coogan, Assistant Inspector General for
Investigations, Office of the Inspector General

STAFF AND PUBLIC PRESENT (Continued):

David Maddox, Assistant Inspector General for
Management and Evaluation, Office of the
Inspector General

Lora M. Rath, Deputy Director, Office of Compliance
and Enforcement

Julia Kramer, Program Counsel, Office of Compliance
and Enforcement

Janet LaBella, Director, Office of Program
Performance

Herbert S. Garten, Non-Director Member, Institutional
Advancement Committee

Frank B. Strickland, Non-Director Member,
Institutional Advancement Committee

Robert E. Henley, Jr., Non-Director Member, Finance
Committee

Allan J. Tanenbaum, Non-Director Member, Finance
Committee

Dennis Groenenboom, Executive Director, Iowa Legal
Aid

Patrick McClintock, Iowa Legal Aid

Chris Luzzie, Iowa Legal Aid

Alex Kornya, Iowa Legal Aid

Terry Brooks, American Bar Association Standing
Committee on Legal Aid and Indigent Defendants
(SCLAID)

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

2 (1:34 p.m.)

3 CHAIRMAN KECKLER: Noting the presence of a
4 quorum, I call to order the duly noticed meeting of the
5 Operations and Regulations Committee.6 The first item of business is the approval of
7 our agenda for today.

8 M O T I O N

9 MS. MIKVA: So moved.

10 MR. KORRELL: Second.

11 CHAIRMAN KECKLER: All in favor?

12 (A chorus of ayes.)

13 CHAIRMAN KECKLER: The agenda is approved.

14 The next item is the approval of the minutes
15 from our last quarterly meeting, which you'll find in
16 the Board book.

17 M O T I O N

18 MS. MIKVA: So moved.

19 CHAIRMAN KECKLER: Is there a second?

20 MR. GREY: Second.

21 CHAIRMAN KECKLER: All in favor?

22 (A chorus of ayes.)

1 CHAIRMAN KECKLER: Without objection, the
2 minutes are approved.

3 Our first item of substantive business for the
4 Committee is a report on -- we have various
5 responsibilities, I should preface this, in the risk
6 matrix that management had developed, the Committee
7 does.

8 As we go through the course of the year, and
9 this is part of our operational element of our charter,
10 as we go through the course of the year, I'd like to
11 address those responsibilities since they've been
12 delineated. And Management has been kind enough to
13 select acquisitions management as the report for this
14 quarter.

15 With that, I will turn it over to Mr. Flagg.

16 MR. FLAGG: Thank you, Charles. Welcome,
17 everybody, to Des Moines.

18 Acquisitions management, as it is probably for
19 every organization of almost any size, is a significant
20 one for LSC. Just to put it in context, on average we
21 do roughly \$400,000 of procurement every year.
22 Obviously, the bulk of our budget is our salaries and

1 our rental expense, but the rest of it in some measure
2 goes through the contracting and procurement process.

3 So we really have a three-pronged approach to
4 dealing with the risks associated with procurement and
5 contracting. One is to have a detailed set of
6 procedures in our administrative manual. Secondly, we
7 train our managers and those involved directly in the
8 contracting process in those procedures. And third,
9 both internally within Management and certainly through
10 the IG's office, there is auditing and oversight of
11 those processes. So let me just update you on all of
12 those things, at least briefly.

13 We have, as I said, an existing administrative
14 manual. Chapter 1 of the manual is on procurement and
15 contracting. It's quite detailed. It describes step
16 by step what needs to be done in connection with every
17 procurement and what needs to be done in terms of
18 memorializing both the procurement process and
19 contracting.

20 Certainly a key aspect, if not the key aspect,
21 to getting the best value for LSC is through
22 competition, and there are very detailed protocols for

1 competition and dollar thresholds requiring more and
2 more vigorous competition depending on how much money
3 is involved, although our thresholds are not that high.

4 So once you get to 10,500, which as you all know from
5 your own experiences doesn't buy much these days, you
6 have to go through an RFP process unless there's a
7 narrow exception.

8 So we have that. We've had this
9 manual -- again, I've only been here 13 months. I
10 think this section of the manual probably goes back at
11 least five or six years, if not more. I think
12 internally within Management, and the IG's office as
13 well has commented, that there aspects of the current
14 manual that are not as good as they might be.

15 There are three sections to the manual. One
16 is a general introduction, there's a second section on
17 procurement of goods, and there's a third section on
18 procurement of services. Not all of the provisions in
19 those three sections are quite as clearly in synch with
20 one another as one might hope. And I think the manual
21 and these procurement procedures were written before
22 technology acquisitions became such a prominent part of

1 our procurement budget.

2 So for all those reasons, Management has
3 undertaken to really completely rewrite chapter 1 of
4 the administrative manual. We have a draft, and in
5 thinking about these issues, we have had a number of
6 discussions with IG's office which have been quite
7 helpful. We've asked the IG's office to take a look at
8 our draft manual, or our revised draft on purchasing
9 and contracting, and they're doing that right now.

10 One aspect of the revised protocol, which I
11 think is noteworthy and I think will help reduce our
12 risks and improve the process, is we are asking our IT
13 department to help us develop a software tool so that
14 as any of our managers are going through the process of
15 procurement, the tool will require that before they go
16 to step 2, they have completed step 1. It won't permit
17 them to go to step 2 or 3 or 4, et cetera, without
18 having completed prior steps, which means hopefully the
19 procedures will always be followed.

20 Secondly, to the extent that documents are
21 required, a signoff or evidence of competition or
22 copies of bids, those sorts of things, they have to be

1 attached to this tool or via means of this tool so that
2 at the end of this process, we'll have a complete
3 explanation of why a purchase was made, and the process
4 that led us to that choice, and all of the
5 documentation.

6 The tool will pretty much require you to
7 follow those steps, and it won't get to Jim Sandman for
8 final signoff unless those documents are attached. So
9 that should be a substantial improvement in that if we
10 have new managers, new people involved in contracting,
11 while they'll still need to be trained, this tool will
12 both help them go through the process and hopefully
13 make it harder to make mistakes.

14 Training is something we take seriously. We
15 need a training for all of our senior managers or
16 people involved in contracting. Last year, shortly
17 after I came aboard, certainly as soon as we have a
18 final version of this new set of purchasing and
19 contracting protocols, we'll have a new training. And
20 it's something we'll do periodically.

21 So I'd probably leave it at that, and be happy
22 to answer any questions.

1 CHAIRMAN KECKLER: Are there any questions?

2 Julie?

3 MS. REISKIN: When you put something out for
4 bid people bid on it and then you have all the
5 documentation attached to that, is that subject to
6 FOIA?

7 MR. FLAGG: That's a good question. My guess
8 is it probably would be unless there were aspects of a
9 bid that were trade secrets. So if somebody said,
10 we've got some magic software algorithm that we're
11 going to share with you, if they described it, that
12 would certainly be subject to exemption.

13 But I would think that, without having
14 researched it, that it likely would be subject to FOIA.

15 MS. REISKIN: So a bidder might need to say in
16 there -- someone would have to know what to look at.
17 That's just what I was thinking when you were
18 describing this, is what if there were trade secrets in
19 a bid because they have to give a certain amount of
20 detail to get your interest.

21 MR. FLAGG: Right. Typically, we don't get
22 that level of -- people, in filling out an RFP, might

1 describe the functionality of what they're providing.
2 It would be pretty unusual for them to -- and if they
3 did have something that had a true trade secret, they'd
4 usually be pretty good about telling us in advance that
5 that was the case.

6 PRESIDENT SANDMAN: Julie, Ron's answer is
7 correct. They would ordinarily be subject to the
8 Freedom of Information Act. Our standard form RFP
9 includes a notification that we are subject to the
10 Freedom of Information Act, and advises potential
11 bidders that if they want to designate anything in
12 their application confidential, they should do so, so
13 that we would be on notice up front that they claim
14 that certain information is confidential.

15 We would ultimately have to satisfy ourselves
16 that that claim was legitimate in the event that we got
17 a FOIA request for their proposal.

18 MS. REISKIN: Thank you.

19 MR. FLAGG: I would add that a key aspect of
20 our risk management in this area and many others is
21 that our President is completely conversant in these
22 procedures.

1 CHAIRMAN KECKLER: Laurie?

2 MS. MIKVA: Clarification. So the Committee's
3 being asked to look at Part 1630. Correct? Is there
4 any role for the Committee in terms of PAM, or is that
5 simply a Management --

6 MR. FLAGG: Okay. I think the oversight of
7 1630, actually we're going to get to that. This report
8 was independent of any relationship to the Committee's
9 review of the PAM.

10 As it turns out, by coincidence, we're going
11 to get in the next 15 minutes to another agenda item,
12 which is a rulemaking agenda, and I think at the top of
13 the rulemaking agenda is a suggestion that the 1630 and
14 PAM be reviewed. And certainly in the course of any
15 rulemaking, the Committee would have an opportunity to
16 look at those provisions.

17 CHAIRMAN KECKLER: In light of that, Ron,
18 what's the schedule for the revision of the protocols
19 that you mentioned, the finalization?

20 MR. FLAGG: Well, yes. I think we have sent
21 it to the IG's office. My expectation is by some time
22 around the end of the month we'll get it back from them

1 and we'll work out -- whatever questions they have,
2 we'll work with them.

3 I think they have a more -- and I always
4 hesitate to speak for the IG -- but I think they have a
5 legitimate significant interest in this because, one,
6 it's an area that, with regard to LSC as with regard to
7 our grantees, they like to audit, and they want
8 standards which are auditable.

9 And they are obviously a not insignificant
10 entity in their own right, and they have their own
11 procurement. And while they're not necessarily bound
12 by our protocols, my guess is they're not going to do
13 something dramatically different.

14 So they have at least two different
15 perspectives, which mean that they have a very avid
16 interest and they have terrific insights. But I would
17 expect and hope by the next meeting we'll have a
18 revised version of the protocol, which I'd be happy to
19 share with the Committee.

20 The other caveat I'd make in that regard is
21 the software tool, which I've described, which
22 isn't -- the manual can be amended without the software

1 tool, but that's going to take some time to develop,
2 and I'm not sure exactly -- we hope to have that as
3 soon as possible. But I can't speak for our IT
4 department in that regard.

5 CHAIRMAN KECKLER: Thanks. My question is, do
6 we ever have any trouble? I mean, lots of government
7 entities, one of their main areas of risk in this area
8 are something like bid protests from people that are
9 unsuccessful bidders. Do we ever have any difficulties
10 along those lines?

11 MR. FLAGG: I'll defer to those who have a
12 longer institutional memory. We do not have a bid
13 protest procedure in our regs, I don't believe, and in
14 my 13 months it's not come up. But Jim, have --

15 PRESIDENT SANDMAN: We haven't had a protest
16 in the three and a half years I've been on the job.

17 MR. FLAGG: Our contracts -- I think I said at
18 the outset, we have roughly \$400,000 in procurement
19 annually. Obviously, it could be a little higher in a
20 year where we had a more significant contract.

21 But if we have a \$250,000 contract -- and I
22 don't even know if we do -- but if we do, that's a huge

1 contract for us. And it would be pretty hard for
2 somebody to engage in a bid protest in an economical
3 way vis-a-vis a \$250,000 contract.

4 CHAIRMAN KECKLER: That was somewhat my
5 intuition as well.

6 Are there any other questions from the
7 Committee or the Board?

8 (No response.)

9 CHAIRMAN KECKLER: With that, thank you, Ron.

10 MR. FLAGG: Thank you.

11 CHAIRMAN KECKLER: We'll keep apprised of this
12 issue as we go forward.

13 With that, let's move on to a report -- this
14 is sort of an interim report -- on our private attorney
15 involvement rule, which we continue to work on. And
16 the comment period closed, I believe, June 16th, so
17 Management hasn't had time to rework and respond to all
18 the comments yet, but we have received all the
19 comments. And we have a report on them and on the
20 progress of the rule. Ron?

21 MR. FLAGG: Thank you. Stefanie, are you
22 there?

1 MS. DAVIS: I'm here.

2 MR. FLAGG: Okay. So as Charles mentioned and
3 as you all recall, you approved a Notice of Proposed
4 Rulemaking back at our April meeting. Immediately
5 after that meeting, the notice was published on April
6 15th. Comments were received, eight in number, on June
7 16th or by June 16th.

8 Mark Freedman and Stefanie put together a
9 pretty detailed summary of the comments by topic, and
10 those are found at pages 13 through 18 of your Board
11 book. And Stefanie is available to answer questions if
12 you'd like.

13 Our plan is, from here, to draft likely a
14 Final Rule for consideration by this Committee in
15 October. The only caveat is if Management's take on
16 the comments were that some substantial revision to the
17 proposed notice that went out was required, then it's
18 possible we would recommend a supplemental Notice of
19 Proposed Rulemaking to get additional comments on these
20 more substantial changes. But if the changes are less
21 than substantial, then we would come forward with a
22 proposed Final Rule for you to consider in October.

1 With that, if people have any questions,
2 Stefanie is certainly available to answer more specific
3 questions, although again, these topics, all of these
4 comments, will be addressed in detail in any subsequent
5 document we give to the Committee.

6 CHAIRMAN KECKLER: Are there comments or
7 questions? Laurie?

8 MS. MIKVA: Thank you. Maybe this is directed
9 to you, Charles. But is there a place -- I guess I
10 would like there to be a place -- for the Committee in
11 the interim so that the decision, whether or not it's
12 significant enough to republish, that the Committee is
13 at least informed if not involved in that decision?

14 CHAIRMAN KECKLER: Well, that's a good point,
15 Laurie, and it's something that I think we'd like to
16 know and, in a way, we need to know because it's going
17 to determine the schedule of the October meeting, just
18 looking at it from a purely practical point of view.

19 That particular decision, though, while we can
20 all have opinions about it, it's ultimately up to OLA
21 to decide that, to make that sort of judgment, I think,
22 whether there's a substantial enough revision. But

1 hopefully we'll know that.

2 MR. FLAGG: Look. You may recall, in
3 realtime -- I believe it was with respect to the 1626
4 rule -- we had a Final Rule presented to you -- I'm
5 going to get the dates mixed up, but I think maybe in
6 January.

7 There were some public comments, which were
8 not insignificant, that came up at the Committee
9 meeting. And the best course -- and this was in
10 realtime -- was to republish a rule that took those
11 comments into account, and then get comments on that
12 republished rule.

13 So we had a supplemental Notice of Proposed
14 Rulemaking and a Final Rule, and the Committee
15 certainly controlled that, as the Committee and the
16 Board will have an opportunity to look at whatever -- I
17 mean, look. This is a complicated reg. By and large,
18 people were favorably disposed -- in fact, they were
19 unambiguously favorably disposed -- toward the changes in
20 general.

21 There were a number of specific suggestions.
22 We will react to those suggestions and advise you as to

1 how substantially we think the draft rule should be
2 changed. There's no magic standard.

3 I would say if we're really doing something
4 that's quite different from what was in the Notice of
5 Proposed Rulemaking so that other people wouldn't have
6 had a chance to react to what it is we're proposing,
7 then it probably makes sense to have a supplemental
8 notice.

9 We're not talking about enormous delays from
10 this sort of. We're talking about a quarter's delay,
11 typically. But we will try to put the Committee in a
12 position to make that judgment as early as possible. I
13 don't want to commit to it because I'd like to see how
14 the timing goes.

15 But if we have a draft early enough, as we did
16 with the PAI rule originally, we could perhaps schedule
17 an interim meeting and you all could take a look at
18 that with an eye solely -- well, in addition to, what
19 do you think of this proposal, but also with an eye
20 toward, should we be setting this up as a Final Rule or
21 as a notice?

22 CHAIRMAN KECKLER: I can at least make this

1 commitment to you, Laurie, that as I get communications
2 from OLA, I'll loop in the Committee as quickly as
3 possible such that we make a decision.

4 If we need an interim meeting, a telephone
5 meeting, to decide, for instance, do we want to
6 make -- where it comes in, where it becomes complicated
7 and the committee gets involved is where there's some
8 different ways to revise the proposed rule.

9 One way we could revise it is in a relatively
10 minor way. The other is in a more substantial way,
11 which might be good but would require a supplemental.
12 And I think that that's something -- if those two
13 choices are available, and they might not be. It might
14 be we have to revise it, which means we have to have a
15 supplemental if we're going to do it, or it doesn't
16 come up.

17 If there is a choice point where the committee
18 needs to act before the October meeting and learn about
19 it in time -- which again, we might not -- we'll make
20 use of that time. I can make that commitment to you.

21 MR. LEVI: Well, just in terms of our own
22 Board time planning purposes, what's your guess as to

1 when your draft will be ready? Labor Day is September

2 1. So I think --

3 MR. FLAGG: It'll be --

4 MR. LEVI: I'm not going to hold you to it
5 right now. But when you come back for their Committee
6 report tomorrow, or Tuesday morning, if you could have
7 a sense, that will help us because we actually have to
8 build time.

9 If this is just dropped on the Committee a
10 week before the meeting, I can tell you I'll have to
11 create a lot of space that may or may not exist. So
12 that would be helpful.

13 MR. FLAGG: Right. No. we're certainly aware
14 that the organization has some other events going on in
15 September. So we'll be mindful of that.

16 MR. LEVI: Well, it does. And I was trying to
17 move this clear of that.

18 MR. FLAGG: Right. No, we'll be mindful of
19 that, and we'll have a further report by Tuesday.

20 CHAIRMAN KECKLER: Thank you.

21 Are there some other specific questions on the
22 comments that have been received so far? Julie?

1 MS. REISKIN: We'll get the Management
2 response to these comments when you do -- it'll be like
3 a typical Federal Register that says, a commenter said,
4 and Management's response is, and then either we
5 changed it or we didn't? That's how that'll happen?

6 MR. FLAGG: Correct. That's why I certainly
7 don't want to cut anybody off from saying something.
8 But we're going to have a better occasion on which to
9 discuss these comments when we've had a chance
10 ourselves to react to them, and that will give you an
11 opportunity to both comment on the comments as well as
12 Management's proposed response.

13 CHAIRMAN KECKLER: Okay. I've reviewed the
14 comments. I think there's a number of them that are
15 relatively minor but they're reasonable. And I
16 certainly appreciate -- and just want to go ahead and
17 start by thanking the commenters who have put in and
18 provided some helpful and thoughtful ideas for the
19 development of the rule as it goes forward. And I look
20 forward to Management's response.

21 One of the things that I know I've talked
22 about before myself and have thought about is some

1 concerns that the Inspector General put in about the
2 issue of recordkeeping. And it's a complicated matter
3 because no one wants to create huge mandates and so on
4 on the grantees.

5 At the same time, we are interested in
6 feedback. We're interested in how this rule works in
7 practice. We're trying something new. And the reason
8 that we're trying it is for very specific ideas, that
9 we're going to get more pro bono.

10 So if there's any way for us within the
11 regulation -- there are ways outside the regulation in
12 terms of guidance and management to do this -- but any
13 way within the regulation for us to create greater
14 assurance that we are getting that performance, the
15 very rationale of our activity, in making the rule, I
16 do think that makes sense. So that's my add-on for
17 today on that.

18 MR. FLAGG: Yes. I think Management shares
19 your and shares the IG's belief that we should collect
20 data and we should do followup and see how this is
21 working.

22 I think our view is that's best not embedded

1 into a reg so that as our oversight and our followup
2 and our thoughts about how best to evaluate this
3 change, we can do that quickly and effectively without
4 having to come back to the Committee when we've thought
5 of three new data points that we think would be
6 helpful.

7 So we share that view. I think we'd be happy
8 to have it memorialized in the preamble, but do not
9 believe that a robust description of what sort of data
10 collection ought to be done should be included in the
11 reg. And I'd note that's generally not, or I think is
12 uniformly the case, that that's now how regs are
13 currently drafted.

14 CHAIRMAN KECKLER: All right. Well, we'll all
15 look forward to further discussions on it and public
16 comment in October. In terms of our procedure,
17 assuming that we do create a Final Rule, we'll have a
18 final opportunity for public comment in October. Is
19 that the general concept?

20 MR. FLAGG: Right. Yes. Again, the most
21 ambitious schedule would have us publishing for the
22 meeting in October a proposed Final Rule, which the

1 public would have a week or more of notice, and people
2 would certainly have an opportunity to comment on it
3 during that week, or certainly at the meeting during
4 the public comment period.

5 CHAIRMAN KECKLER: Okay. And that's another
6 point about the schedule in terms of us trying to get
7 it done for October, is that we do want to get it in
8 ahead of time so it's in the Board book, so it's on the
9 website. So that just puts another constraint on this
10 particular situation.

11 All right. Well, thank you. I think we can
12 now turn to the next item, which is a report on the
13 grant assurances. Now, a little prefatory comment on
14 that.

15 The Committee usually gets these grant
16 assurances annually. They're developed annually, and
17 they usually go in the Board book, usually in our
18 Committee section, annually. They don't normally come
19 up as an agenda item for the Committee.

20 But this year some proposed grant assurances
21 in particular were put out for comment because that's
22 another thing management does, is they put them out and

1 receive comment on them. They elicited significant
2 comment. The grant assurances were altered in response
3 to that comment. And to some extent, the major changes
4 were -- they went back to more of their original form.

5 But anyway, this sort of issue and
6 back-and-forth was, I think, sufficiently important to
7 warrant a little bit of attention from the Committee.
8 So just for your information and your awareness of
9 what's going on in these grant assurances and the
10 concerns that the field has expressed about them and
11 Management's response to those concerns, we're going to
12 have a report from President Sandman.

13 PRESIDENT SANDMAN: Thank you, Charles.

14 This spring, as we have for each of the past
15 several years, we put out for public comment our
16 proposed grant assurances for grant 2015. The proposed
17 grant assurances drew significant comments for changes
18 we had proposed with regard to three grant assurances,
19 numbers 10 and 11, which are closely related, and 15.

20 Grant assurances 10 and 11 relate to the
21 access that grantees are required to provide to their
22 records, access to LSC; and grant assurance 15 requires

1 grantees to notify the Inspector General of a loss of
2 \$200 or more as a result of certain events, and to
3 notify LSC when the grantee has contacted law
4 enforcement about a crime.

5 In response to the comments we've received, we
6 have effectively withdrawn the proposal that we had
7 made with regard to grant assurances 10 and 11, and we
8 have modified the language of grant assurance 15 to try
9 to response to the concerns that were addressed in the
10 comments that we received.

11 The changes that we had proposed to grant
12 assurances 10 and 11 would have required a grantee to
13 provide access to records in accordance with "federal
14 law" as opposed to "applicable law," which is the term
15 that the grant assurance in its form today for 2014
16 stands.

17 The change we proposed was intended to reflect
18 the result of the decision of the United States Court
19 of Appeals for the District of Columbia Circuit in
20 United States v. CRLA, and to avoid the need to
21 relitigate the issue presented there.

22 Some of the comments we received, however,

1 especially those we received from the American Bar
2 Association and from the Office of Disciplinary Counsel
3 of the Washington State Bar Association, suggested that
4 in some states a lawyer might be required to test the
5 applicability of state privilege law or to be subject to a
6 court order compelling production before they could
7 provide the access that our grant assurance would
8 require as a matter of contract they provide to LSC.

9 In those states a lawyer, it was asserted,
10 could not agree in advance not to contest the
11 applicability of state privileges to a request for
12 information that LSC had made. The comments of the ABA
13 and of the Office of Disciplinary Counsel of the
14 Washington State Bar Association are at pages 45 and 57
15 of your Board book.

16 I thought that those comments were legitimate,
17 and I don't have any interest in making legal aid
18 lawyers have to initiate proceedings or put themselves
19 at risk with state disciplinary authorities in order to
20 comply with what local authorities think their
21 obligations are under the rules of professional conduct
22 in their jurisdictions.

1 We do, in fact, have some protection against
2 having to relitigate the United States v. CRLA issue,
3 namely, every grantee is required to consent to the
4 exclusive jurisdiction of the United States District
5 Court for the District of Columbia for any matter
6 arising under the grant assurances.

7 Because we have what we regard as dispositive
8 authority in the United States Court of Appeals for the
9 District of Columbia Circuit, we think that any
10 enforcement action that the IG needed to bring could be
11 brought in the District of Columbia, and there should
12 be a pretty quick resolution of the matter under the
13 binding precedent of the U.S. v. CRLA decision. So we
14 have withdrawn the suggestions that triggered the
15 comments. I do want to note that the comments were
16 very helpful and very thoughtful.

17 The other change that we proposed was a change
18 to grant assurance 15, and the change was made in
19 response to a suggestion from the Office of Inspector
20 General. It is intended to make explicit that the
21 theft of time is covered by the grant assurance.

22 We thought that that was already implicit in

1 the grant assurance, but the Inspector General thought
2 it would be helpful to make it explicit. They thought
3 this based on the results of audits they've done at a
4 number of our grantees. They see a problem there, and
5 thought that it would be better to flag the issue
6 specifically for grantees so that they are on notice
7 that time is covered by the language of the grant
8 assurance.

9 The comments we received suggested that the
10 particular language we had proposed initially might
11 give rise to an obligation to report inadvertent errors
12 or negligent timekeeping, things that didn't rise to
13 the level of a crime or intentional misrepresentation
14 of time worked.

15 So we revised the language that we propose to
16 make it clear that we're talking about intentional
17 misrepresentation or theft of time and not something
18 short of that. We believe that that is responsive to
19 the concerns that we regard as -- those we regard as
20 legitimate that were raised, and that all we're doing
21 is making explicit what was already implicit in the
22 grant assurance.

1 A number of the comments that we received
2 acknowledged that under the language of the current
3 grant assurance, the one that's in effect today, time
4 theft is already covered. So I don't believe that
5 we're changing the substance of the obligation.

6 We're just making it clearer, and we're doing
7 it in response to what I thought was a good suggestion
8 from the Office of Inspector General based on their
9 on-the-ground experience in auditing grantees and
10 problems that they've seen.

11 The bottom line, then, is that I don't think
12 that the changes that we're proposing in the grant
13 assurances for 2015 are substantial. The change that
14 we've proposed to grant assurance 15 is simply, as I
15 said, making explicit what was previously implicit.
16 But in light of the number of comments we received and
17 the substance of them, I thought that it would be
18 appropriate to brief the Committee on what we had
19 proposed initially and where we've come out.

20 CHAIRMAN KECKLER: Thank you, Jim. And thanks
21 also to the commenters on this issue.

22 I do want to call the members of the

1 Committee, and the interested members of the Board,
2 your attention to this issue a little bit more broadly,
3 namely, the issue of records access and its role in
4 oversight, which includes the CRLA decision, which of
5 course was litigated for many years.

6 I don't think that anybody in the
7 organization, or really grantees, want to go through
8 that again. That's part of the point of having the law
9 and going through that whole process, is that a
10 decision has arrived that's supposed to clarify things
11 going forward.

12 But that said, I draw your attention to, in
13 particular, the comment that Jim mentioned on grant
14 assurance 10 by the ABA, which is a significant memo
15 that you'll find in the Board book starting at page 57
16 of the Board book.

17 One of the things that's pointed out in there
18 is that there are ambiguities in the structure of the
19 law in this area, including the role of the LSC Act and
20 its reference to, back in the '70s, the mid-'70s, the
21 model codes and state professional rules and so on.

22 It's a complicated area to balance off, the

1 role of an attorney, that we all recognize is important
2 for all the grantees, and our own role in oversight,
3 and as the protector of the taxpayers' interest and the
4 government and Congress, however we want to phrase it,
5 interest as a funder of those legal services and those
6 attorneys.

7 So I'm not proposing that we do anything in
8 particular, certainly, about the grant assurances or
9 even incorporating this into the rulemaking agenda.
10 But I do want to highlight it going forward, to think
11 about this, and if there can be a role for regulatory
12 clarification at some point in the future, to help
13 provide guidance for our grantees and for the
14 organization.

15 So that's a little addendum and a comment on
16 that. This issue is not -- I think it's been dealt
17 with for now, but I think it's still out there. It's
18 been out there as long as we've been on this Board, and
19 it's still a tension and an issue.

20 Yes? Sharon, go ahead.

21 MS. BROWNE: This is just -- because I'm also
22 on the Governance and Performance Review Committee and

1 we're dealing with the non-discrimination and
2 anti-harassment policy, the grant assurances -- I'm
3 looking on page 30, attachment 4 -- gives a list of the
4 different items that the recipient of our LSC funds
5 must comply with.

6 It does not mention the code of conduct in
7 which the equal opportunity, non-discrimination, and
8 anti-harassment policy is going to include, which is in
9 the code of conduct, but yet the recipients are
10 supposed to comply with that policy.

11 I'm just wondering, and I don't know if it
12 should be here or in the other committee meeting, how
13 does the recipient know that they are to comply with
14 that policy as a grant assurance when it's not listed?

15 Because on 4 on page 30, it does mention
16 anti-discrimination.

17 MR. FLAGG: This is a partial answer to your
18 question. I think the policy, the equal opportunity
19 policy that you referenced, the only thing it -- well,
20 there are two requirements.

21 One, it requires that grantees, consistent
22 with their legal obligations, not engage in

1 discrimination or harassment. And I believe that legal
2 obligation, one, exists independent of grant
3 assurances. But I do believe the grant assurance does
4 have an anti-discrimination requirement as well as that
5 our grantees have a policy for investigating any issues
6 of harassment or discrimination.

7 All we've done in our own LSC equal
8 opportunity is say that if there is an instance of
9 alleged discrimination or harassment at a grantee, that
10 in the first instance we'll ask them to investigate it
11 consistent with the policies they should have adopted
12 under the grant assurance.

13 MS. BROWNE: Just to make sure --

14 MR. LEVI: Well, I don't think that -- that is
15 not our policies. They have to have their own
16 policies.

17 MR. FLAGG: That's what I said.

18 MR. LEVI: Frankly, they could be
19 governed -- municipalities have different standards.
20 Wherever they are, they may have to adjust theirs
21 locally. But they need to have --

22 MS. BROWNE: I just want to make sure that our

1 grantees are not being caught unaware with the grant
2 assurances that they have to meet our policy on
3 anti-discrimination because they don't receive a copy
4 of it. It's in our code of conduct.

5 MR. FLAGG: The only substantive requirement
6 they're under with respect to discrimination or
7 harassment is to comply with federal and state law. So
8 I don't think there's -- we've not imposed a
9 substantive legal obligation that they're not under
10 absent our policy.

11 MS. BROWNE: Okay. I'll think about it more.

12 CHAIRMAN KECKLER: You'll have another chance,
13 it sounds like, Sharon.

14 Good. So let's then move on to our first
15 decision item today, which is to talk about the
16 rulemaking agenda. You'll find some comments in there
17 from Management. I know that there's been much concern
18 that this Committee would run out of things to do, and
19 so we wanted to talk about our future agenda.

20 You'll notice in the memo there are several
21 items in there, all of which could occupy a great deal
22 of time. I think what we're interested in from the

1 Committee and the Board today are views about
2 priorities.

3 Ultimately, what we're looking to come out of
4 this with are some key priority items, which then, over
5 the course of the next year or 18 months, we will
6 expect to get a rulemaking options paper on. Okay?
7 And from there, we'll decide what to do with it.

8 But what we're really doing is we're tasking
9 OLA with developing rulemaking options papers for the
10 Committee on those items that the committee deems to be
11 priorities. And there's a number of suggestions in
12 there of what we have.

13 So I think, actually, that's the first task,
14 the first and principal task of the discussion, is to
15 identify those priority items and to provide a work
16 schedule for us and for our support from Management.

17 I think the other item that I'm interested in
18 getting a read on is, as you look at the suggestions,
19 the ones that we might not ultimately identify as
20 priorities, are there ones that we don't want to do?
21 Do we have a strong feeling that something needs to be
22 just completely tabled and taken off?

1 The reason that I say that is that although
2 the core issue here is to identify priorities in a work
3 schedule for us and for OLA, as you read down the list
4 there are certain items which could be done relatively
5 quickly, that maybe somebody just could offer in a
6 relatively short fashion.

7 They're just quick, relatively, fixes that
8 don't need to be a priority of the Committee but still
9 might end up getting done in the next 18 months if
10 people in the institution find the time to do it. If
11 we don't want them to do it, now would be a good time
12 to tell them, to express that.

13 So with that, I'll turn it over to you, Ron,
14 and you can give your expression of what you hope to
15 get out of the discussion.

16 MR. FLAGG: Thank you. Hopefully Stefanie and
17 Mark are on the line?

18 MS. DAVIS: Yes.

19 MR. FREEDMAN: This is Mark. I'm on the line.

20 MR. FLAGG: Great.

21 MR. HESTER: And I'm here, too, as well, Tom
22 Hester from the OIG. I'm here for Laurie, who

1 unfortunately is ill and couldn't make it.

2 MR. FLAGG: Thanks, Tom.

3 Let me at the outset thank all the people on
4 the telephone, who put together in really quite a brief
5 format, in five or six pages, a set of potential
6 rulemakings covering really eight different, in some
7 instances quite broad, substantive topics.

8 Exactly as Charles has described, the ask that
9 we make of the Committee today is just some guidance as
10 to how you would like us to prioritize these.

11 Obviously, we can't and it wouldn't make much sense for
12 us to try to do them all at once.

13 We have presented these to you in the order
14 that, if left to our own devices, we would follow. And
15 I think Stefanie and Mark and Tom are certainly here to
16 answer any questions about particular details involving
17 any of these general topics.

18 We are not here and we have not in this memo
19 attempted to reach any substantive conclusions or go
20 into great detail. We're happy to answer questions in
21 as much detail as we can, but I think the focus here,
22 from our perspective, ought to be on just prioritizing

1 these.

2 The only thing else I would say, just for the
3 Committee, in thinking about scheduling, in October in
4 one form or another you'll have a substantial PAI
5 regulation to deal with. In January, you will get a
6 significant proposal about collection of data vis-a-vis
7 migrant and other farmworkers, which will not be a rule
8 but more akin to what you dealt with on the census
9 issue. But it'll be a significant item, certainly.

10 So we have those two outstanding items that
11 we're working on. But with that, we're ready, willing,
12 and able to go to work on these various proposals that
13 are covered by Stefanie and Mark's memo, and look for
14 any suggestions you have as to priority.

15 CHAIRMAN KECKLER: Just before I get the
16 Committee's read on this, I want to also point out, and
17 certainly Mr. Hester can comment as well, I notice that
18 in the memo, something that I found significant is
19 that -- and this is at the top of page 96; it's the top
20 of the second page of the memo -- it discusses -- as
21 you said, Ron, there's a sort of an ordering here, a
22 rough ordering of OLA's sense of prioritization.

1 Then at the top of the second page, there's a
2 one-sentence discussion, with the Office of Inspector
3 General recommending on the first three items in the
4 above list and then two additional rulemakings that
5 they suggest, which are included. So at least for the
6 first three, there's a convergence of prioritization.

7 MR. FLAGG: Yes. And I did note that the IG
8 identified, I think, in their first three items the
9 same three, or an overlap with our first three. So it
10 didn't seem to us to make much sense to try to make any
11 finer distinction among those three. They're obviously
12 all fairly significant.

13 Just to be clear, Management agrees with the
14 IG that the 2(e) regulations and Part 1603 are worthy
15 of further regulation. We would give them relatively
16 less weight simply because the 2(e) regulations deal
17 with our being subpoenaed.

18 That has, in my long tenure of 13 months, not
19 been a big issue. We've had one subpoena. So it's
20 something that we think we ought to deal with, but it's
21 not a high priority. Likewise, 1603 is worthy of some
22 action, but the status quo seems to have worked out all

1 right for the last 40 years. So that one could
2 probably wait for another few months as well.

3 CHAIRMAN KECKLER: Okay. I'm going to go
4 ahead and turn it over to the Committee and the other
5 Board members for questions and thoughts about the
6 potential rulemakings. Julie?

7 MS. REISKIN: I was just curious why revising
8 the protocol that looks like it's about 14 years old
9 was last instead of first. I mean, I don't care. I
10 was just -- that jumped out at me.

11 MR. FLAGG: Because in effect, the Committee
12 and the Board can work around the protocol. Charles
13 said, well, for example, let's prioritize these, and
14 Management will give us options papers because that's
15 what the protocol provides.

16 As a practical matter, many of these proposals
17 would pretty clearly involve amending the rules. So
18 probably what you'd get from Management will be a draft
19 Notice of Proposed Rulemaking and perhaps a brief
20 options paper that says, here are the options. We
21 recommend a draft Notice of Proposed Rulemaking, and
22 here it is, simply because we're not talking about an

1 area where there's a lot of moving parts. You either
2 amend the regs or you don't.

3 Also, these are areas where very specific
4 items are going to be addressed. I'll contrast it to
5 the PAI regulation. The PAI regulation, one, does not
6 have a statutory predicate, and second, is fairly
7 complicated. There were a lot of different
8 possibilities. So for that, we did have a fairly
9 elaborate process, and with the guidance of this
10 Committee, this Committee conducted, in essence, public
11 hearings.

12 I think on most of these regs, they're more
13 discrete. And so we can likely undertake most of these
14 in a fairly straightforward way. So that's why, at
15 least from Management's perspective, while I think the
16 protocol ought to be revised, really, to reflect what
17 we're talking about, that often this options paper is a
18 formality that could be foregone, it's again not an
19 emergency. Some of these things ought to be fixed.
20 The options paper you can kind of work around.

21 CHAIRMAN KECKLER: Let me go ahead and respond
22 a little bit to that just to say this is an interest of

1 mine, to revise the protocol.

2 I think that it's appropriate, ultimately, for
3 this Board, having accumulated experience and having
4 some knowledge and having, I should add, a good working
5 team available at OLA that also has developed
6 significant experiences and has, I would say, a pretty
7 good understanding of rulemaking in general and
8 rulemaking in LSC in particular, I think that that's
9 certainly a legacy that I personally want to leave to a
10 future Board.

11 So that gives us a certain amount of time but
12 not forever to get it done. And if we can get it done
13 such that it assists our rulemaking, that's a good
14 thing. It's one of those things that was in my mind as
15 I prefaced this discussion by saying, let's look at
16 priorities and identify priorities.

17 But let's have these other things -- unless we
18 say nay against them, if there gets to be a little bit
19 of momentum, if we get to develop ideas from the
20 Committee in terms of how the protocol can be revised,
21 and we have a little bit of time to work in, that's out
22 there. That's an idea that we can potentially do and

1 that we want to do at some point.

2 So unless we put a stop to it, it'll be there.

3 And we can maybe get a chance to do it, and maybe I'll
4 develop some ideas from my perspective and experience
5 and work with OLA, and we'll be able to do something
6 with it in the interstices of our practical rulemaking.

7 So that's a little bit of a response from my own
8 perspective.

9 Are there other thoughts? Father Pius?

10 FATHER PIUS: I don't think it's a huge
11 priority, but the 1603 one, I think it might be
12 helpful, at least -- the state advisory councils -- to
13 have someone do some sort of research to see what
14 actually was done in the 1970s.

15 If you look at the regulation, it looks like
16 they were all assuming something, and there were some
17 steps that were put into place. But what exactly was
18 done and then when it fell into desuetude, might be
19 helpful as a background issue before we -- to wade into
20 this is going to be large if we do this.

21 So if we decide to go with that route, it
22 would be nice, I think, to have some background

1 information to see what was done first. That would be
2 my suggestion on the 1603 issue.

3 MS. DAVIS: Yes. This is Stefanie. We have
4 done some research into what was done with 1630 in the
5 1970s, and as far as our research has taken us, we
6 determined that the Board did in fact comply with its
7 statutory requirement to request that the governors of
8 each state set up a state advisory council.

9 My understanding is that there were somewhere
10 around 40 state advisory councils that were
11 established, but that in those states where a governor
12 did not act to establish a state advisory council, LSC
13 did not exercise its authority to appoint members to a
14 state advisory council.

15 So I don't think we have a lot of background
16 on what feedback we got from the state advisory
17 councils or whether they reported to LSC in the manner
18 that either the statute or the regulations envisioned.

19 But that certainly is some research that we can
20 undertake to better inform that decision.

21 FATHER PIUS: Yes. I certainly think we have
22 a fidelity to carry out what Congress asks of us. So I

1 do think some time should be spent just researching
2 exactly what happened to these. They obviously don't
3 exist any more, and when did they just go into
4 nonexistence as well, not only the front-end stuff of
5 what was done in the 1970s, but that back-end stuff as
6 when they dropped out.

7 This might even be an issue where we turn to
8 Congress to make a change. But that's just far in the
9 future. But some background information, I think,
10 first is the first step, and so a memo or something
11 that details this as much as we can.

12 CHAIRMAN KECKLER: Yes. I think it's an
13 interesting point, and it's an interesting project for
14 somebody to develop.

15 FATHER PIUS: Great summer intern project.

16 CHAIRMAN KECKLER: Yes. We have a couple
17 interns. You raise a good point, though, that I had
18 when this came out, is was there an intent? There's an
19 intent to provide oversight. There's an intent to find
20 a way to interact with bar leaders in each of the
21 states, to involve them and incorporate them and bring
22 them into the process in a substantive way, a

1 substantive oversight way.

2 I think even if these things have fallen, as
3 they apparently have, into desuetude, that idea has
4 still got some value. And I know since that time there
5 have been the development of access to justice programs
6 in now more than half the states.

7 Maybe there's a way to not just rescind but to
8 bring in, either through regulation or through some
9 other manner, a new way to develop and build
10 relationships and collaborate as an institution
11 structurally with these new entities, these new access
12 to justice entities, that have developed in the time
13 since the original rule was developed.

14 Anyway, it's a thought, but again, it's kind
15 of out there. But it's good.

16 FATHER PIUS: Yes.

17 PROFESSOR VALENCIA-WEBER: Are we done with
18 discussing 1603? I'd like to make some comments
19 regarding D that was listed, and that is LSC's policy
20 with respect to individuals who have filed an
21 application for adjustment of status to a legal
22 permanent resident.

1 From my experience in immigration law, we need
2 probably just to do something about this on two parts.

3 One is that our own regs, 1626, more explicitly state
4 the eligibility of the individuals in question. But
5 secondly, the history of immigration forms is that they
6 continuously proliferate and they renumber them. You
7 can never have a complete list.

8 You may recall earlier we had a rulemaking
9 about this, where we removed the list of documents from
10 the reg itself so that as now DHS, formerly INS, keeps
11 promulgating, changing, and splitting forms, we don't
12 have to continuously run back.

13 With regard to the process of adjustment of
14 status, I want to call to mind to you that the
15 litigation regarding U.S. citizen spouses who are
16 petitioning for a spouse to have adjustment of status
17 to legal permanent residency, and then potentially
18 being able to become a citizen, or of adult children
19 who have brought in a parent -- we're not talking about
20 craziness that happens when people talk about anchor
21 babies; we're talking about adult children who are U.S.
22 citizens.

1 The courts have generally begun to look at
2 that as saying the right at issue is not of the
3 non-citizen. It's the right of a U.S. citizen to have
4 his or her partner or his or her parent be here, having
5 gone through the bona furosemide system of petitioning
6 and gaining lawful entrance of that person.

7 So we do owe to changing Part 1626 to reflect
8 what is the jurisprudence that is the right of the U.S.
9 citizen. But I think we could do something fairly
10 efficient and get rid of that list because I can assure
11 you it's going to change constantly.

12 Right now an individual can be the beneficiary
13 of an adjustment to status petition besides more than
14 just spouse or adult child for a parent. It can be
15 done through an employer. It can be done by an asylee
16 wanting to change from a person who's been given refuge
17 from persecution and has the formal status as an
18 asylee. So there is no one uniform form.

19 CHAIRMAN KECKLER: Thank you, Gloria. I'm not
20 sure that under 1626, as we have it now, that we have a
21 list of forms in the regulation.

22 MR. FLAGG: One of the things the Committee

1 did, which I think was a good thing, was we took the
2 list out of the regulation precisely because of the
3 changing nature of the list. And we publish it
4 effectively as a program letter, which we can do
5 without the formality associated with a regulation.

6 There is some value to the list, so that
7 people know what documents could be used for this
8 purpose. But you're right, it does change. And I
9 think the issue that's raised in this section D is on
10 the current list that was republished as a program
11 letter that coincided with the revised 1626, we have
12 some questions as to whether some of the documents that
13 are on that list are appropriately on that list.

14 But we did not want to sua sponte strike those
15 documents without giving the public a chance to comment
16 on it. So that's in effect what we're talking about
17 here in part D, or at least in part what we're talking
18 about.

19 CHAIRMAN KECKLER: Right. So it's another
20 go-round in 1626.

21 MS. DAVIS: Yes.

22 MR. FLAGG: Stefanie, if you want to say

1 anything else? I would say it's just a small piece of
2 it.

3 CHAIRMAN KECKLER: Yes.

4 MS. DAVIS: It's just as we were
5 reviewing -- this is Stefanie Davis in OLA. But as we
6 were reviewing the proposed changes to the program
7 letter, as we were pulling the appendix of 1626 out, we
8 had discovered that some of the types of documentation
9 that were listed as appropriate to show that an
10 individual had filed for adjustment of status to lawful
11 permanent residence were actually documents that showed
12 them applying for a different status.

13 For example, filing an application for asylum
14 was considered to be one of the documents that could
15 show that someone had filed an application to adjust
16 status to lawful permanent residence. An application
17 for asylum does not necessarily equal an application to
18 become a lawful permanent resident.

19 We were a little concerned in looking at that
20 document that it seemed somewhat inconsistent to say in
21 one part of section 504, which is the restriction on
22 representing people who are not citizens except in

1 certain circumstances -- it seemed inconsistent to say
2 that the statute authorized us to represent individuals
3 who had already received asylum, but then through our
4 regulation to extend eligibility to individuals who
5 were applying for asylum that we hadn't been granted
6 elsewhere by Congress.

7 So that's just an example of the kind of
8 question that we're looking at when we're talking about
9 the proposed changes or the proposed action under
10 letter D.

11 CHAIRMAN KECKLER: Gloria?

12 PROFESSOR VALENCIA-WEBER: Stefanie, you're
13 quite right. And not only does listing that
14 document -- it's not true, it's again putting it in a
15 category that Congress's statute does not put it in.
16 An asylee is someone who has, through adjudication,
17 been determined to be a victim of persecution, at risk
18 if returned to his or her country, and it is a legal
19 status.

20 MS. DAVIS: Yes.

21 PROFESSOR VALENCIA-WEBER: But it can even be
22 terminated by the U.S. But it is up to the asylee

1 whether he or she wishes to apply for adjustment of
2 status with the idea of becoming a legal permanent
3 resident and possibly a citizen of the United States,
4 and many asylees -- perhaps the most noteworthy, Vaclav
5 Havel, who was given refuge here -- never moved to try
6 to become a legal permanent resident, with the idea
7 that his home country would be one he wanted to return
8 to, and in fact move into a better kind of country.

9 So the asylum application nor the designation
10 of being an asylee is not anything comparable to an
11 adjustment of status petition.

12 CHAIRMAN KECKLER: Okay. And with regard to
13 that, my question is, since we moved it into the
14 appendix and it's in terms of guidance -- I know that
15 we usually put that out for comment and so forth, any
16 changes in that guidance. But I'm not sure that we
17 even need a reg with that. Is that a clear issue?

18 MS. DAVIS: I think the issue is that the
19 list, as it appeared in the appendix to 1626 and as we
20 moved it into the program letter, is that that list has
21 been around for at least ten years.

22 I think there's a concern that to the extent

1 that the appendix appears to extend eligibility to
2 categories of individuals that -- that it extended
3 eligibility, there's a concern that if we changed the
4 rule to tighten it up, that those people would no
5 longer be eligible or that documentation would no
6 longer demonstrate eligibility for services, that it
7 could be seen as removing a right that individuals
8 could have believed that they were entitled to.

9 So we did not feel like it was appropriate to
10 do that without having put the issue out for notice and
11 public comment. So I don't know that it would
12 necessarily be -- it wouldn't go back into the rule.
13 But I do think it's appropriate to come before the
14 Committee and to be put out in the notice and comment
15 process before we make any large adjustments to the
16 chart.

17 CHAIRMAN KECKLER: All right. Well, I think
18 we've expressed -- oh, I wanted to ask you, Julie, if
19 you wanted to discuss section E because you're
20 mentioned in here as somebody who had this interest.
21 What's the issue or the concern?

22 MS. REISKIN: This concern has come up now

1 twice when Jim and I have presented at the NLADA
2 conference. There's a difference between the statute
3 and the rule. The statute clearly says client-eligible
4 people. The rule allows for organizations that
5 represent client-eligible people.

6 Apparently what's happened in some places, or
7 at least the perception, is that the organizations
8 might be an organization that serves clients that isn't
9 necessarily run by clients, and that the people that
10 are going on as the client represents are not actually
11 clients, but they're paid staff that maybe never
12 were -- and what people think is if someone was a
13 client and graduated to be a staff, that's okay.

14 But if it's someone that's really just another
15 paid professional, it's just another example of what we
16 don't want, is people speaking about us without us, or
17 for us without really including the clients, which was
18 the intent of the law.

19 So the clients are very interested in making
20 it clear that the representative should be, at least to
21 start with, actual low-income people. And again, if
22 they then improve, if they get a job or things get

1 better, and maybe when they get their second term on a
2 board or they get above that poverty level, that's
3 okay.

4 We don't want to be part of that poverty
5 industry that punishes people for doing well. But we
6 also don't want people that haven't lived it taking
7 those slots, and I think that's -- and I agree with
8 that concern and perspective that we've heard. And
9 also, there is an inconsistency between the law and the
10 reg.

11 CHAIRMAN KECKLER: Yes. I think that this,
12 obviously, is included in Management's agenda as
13 something that needs to be addressed. I wonder if
14 there might not be a possibility of putting out some
15 kind of guidance on it as a possible alternative.

16 We can try to do it. I don't know, I think
17 maybe we should. But it's getting into the grantee and
18 getting into the grantee boards and monitoring -- think
19 about if we did it from a compliance standpoint. I
20 would feel it would be challenging, a challenging
21 conversation, to go to the grantee and say, take this
22 person off your board.

1 MS. REISKIN: I think that would be very
2 disrespectful. I just think it should be clear because
3 they say two different things. And so I think
4 different people have different perspectives. So even
5 if we were to make a change, it would have to be done
6 in a sensitive way where we're not telling someone to
7 kick off a volunteer. That would be very bad.

8 CHAIRMAN KECKLER: Yes.

9 MS. REISKIN: I don't know what the answer is.
10 I just know that this has come up two years in a row
11 by a lot of different people, and it's something that
12 should be addressed, whether that's guidance or reg or
13 whatever. But yes, you're right. It has to be done
14 sensitively.

15 There can be a grey line, and so I think we
16 just need to look at what is Congress's intent, and
17 then how do we define that? Because I also think just
18 because someone happens to be low income doesn't
19 necessarily mean that they are the right person to
20 speak for clients. There are other qualifications
21 other than just having an income below a certain number
22 as well.

1 So I don't want to say that's the only
2 qualification. And again, I know that we're going to
3 have a presentation on board governance and how to do
4 this properly. It's something that I think the
5 grantees have also struggled with, some of them -- some
6 of them have done very well -- of how do we do this,
7 and how do we do it right?

8 The law does get some prescriptive of the
9 boards, which is unusual. I think there are just a few
10 of these programs now that still are prescriptive like
11 that. So again, I don't know what the right answer is,
12 but I think it merits discussion and clarification,
13 however is best to do that.

14 CHAIRMAN KECKLER: I think that is something
15 to think about and keep in mind.

16 M O T I O N

17 CHAIRMAN KECKLER: Now, I think what we're
18 going to do is, without excluding anything -- and I
19 haven't heard anybody say that we definitely shouldn't
20 do any of these things that Management has thought we
21 ought to consider -- I'm just going to go ahead and
22 propose a motion that our priorities for the present

1 time, and we are going to revisit this at least
2 annually in terms of the rulemaking agenda, but our
3 priorities for the present time are the first three
4 items on the agenda that are agreed upon by Management
5 and the Office of Inspector General as priority
6 guidance.

7 MS. MIKVA: Do you want a second?

8 CHAIRMAN KECKLER: I do.

9 MS. MIKVA: I second it.

10 MR. LEVI: It doesn't mean the others have
11 gone away.

12 CHAIRMAN KECKLER: It absolutely does not mean
13 that the others have gone away. But it's trying to set
14 up a work plan for them.

15 Discussion?

16 (No response.)

17 CHAIRMAN KECKLER: All in favor?

18 (A chorus of ayes.)

19 CHAIRMAN KECKLER: Opposed?

20 (No response.)

21 CHAIRMAN KECKLER: Okay. That motion carries,
22 and we're going to focus on those first three items, A,

1 B, C, in the memorandum, with it understood that the
2 others are out there, are available for thoughts and
3 development, as that becomes possible.

4 MR. FLAGG: Thank you. Yes. I think that's
5 very helpful, and we'll certainly do the research, for
6 example, on 1603. That doesn't have to --

7 FATHER PIUS: Yes. That and the 1607 issue.
8 It might be helpful to just research and see what the
9 extent of the potential problem is. I imagine that's
10 probably not very difficult, but just to get a
11 collection of the background of the client member board
12 members from the various entities to see whether it's
13 even a real problem.

14 CHAIRMAN KECKLER: Yes. And Julie, and also
15 Father Pius, this is a key issue. As you go to these
16 conferences and say that we're taking it seriously and
17 we're thinking about how to deal with it sensitively
18 and the appropriate way to deal with it, get some
19 suggestions. Those are the people who know the extent
20 to which it's a problem and are thinking about ways to
21 talk about it.

22 All right. So with that, let's turn to the

1 last substantive item on the agenda, which was raised
2 last time, and as a consequence is another outgrowth of
3 our 1626 rulemaking and some comments that came in from
4 the field on that.

5 We asked Management to provide a memorandum on
6 some possible ways that we could extend services to
7 individuals that are covered by the Convention Against
8 Torture, torture victims that come in. They have
9 provided that memo and talked a little bit about why it
10 couldn't be part of 1626 and what we could potentially
11 do instead. And that memorandum begins on page 110 of
12 your board book.

13 With that, I'll turn it over to Ron Flagg.

14 MR. FLAGG: Again, I think specific questions
15 could be addressed best to Stefanie, who's on the line.

16 I'm not sure there's really much, certainly, for me to
17 add. I think this is an area where if we wanted to
18 take an initiative, it would have to be a legislative
19 initiative.

20 I think it's fair to say that institutionally,
21 we're careful about undertaking legislative
22 initiatives, and where we do so, we do it with the

1 guidance and assistance of Carol and her colleagues in
2 GRPA. And beyond that, I don't think I have anything
3 to say.

4 CHAIRMAN KECKLER: Father Pius?

5 FATHER PIUS: Even on this, the legislative
6 area, it doesn't even have to be a position where we
7 advocate a conclusion. But in some ways, at least, we
8 should have an informative role on this.

9 That is, we should inform the legislature that
10 we have identified what is a potential inconsistency
11 problem that they should be aware of in terms of our
12 ability to carry out the provisions given to us in the
13 law. So it need not be advocacy, but it can be
14 informative.

15 CHAIRMAN KECKLER: Right. It's an area where
16 we've noticed an interest from our grantees. It's come
17 up. And it's our knowledge that there may be interest.
18 It is a decision for Congress. There may be interest
19 in Congress.

20 I know, again, that Representative Smith, and
21 cosponsored by Representative Wolf and some others in
22 Congress, has a bill in the House to improve services

1 for victims of torture right now. So there's an
2 interest in the topic.

3 So with that, Carol's up here, if you have any
4 comments to add, Carol, about this. I know that if you
5 read the memo, it talks about the way that we normally
6 inform Congress of possible potential legislative
7 changes that they may wish to consider through the
8 budgetary process. But I will turn it over to Carol to
9 add anything she may wish.

10 MS. BERGMAN: Thank you, Charles. The biggest
11 challenge is that it's not really in our interest to
12 reopen our authorization discussion, which would be the
13 most logical place in which to have this conversation,
14 because it's not possible to have a conversation only
15 about this.

16 Therefore, as I've said to Charles, I think
17 the best way to go forward on something like this if
18 the Board wanted to pursue it would be for us to
19 explore those conversations with the appropriations
20 staff in both the House and Senate.

21 We would look at whether or not they were
22 interested in attaching language in the annual

1 appropriations process, which, given the dearth of
2 legislation in many areas, has increasingly become the
3 venue by which things that everybody agrees on across
4 the aisle ends up being a place where that kind of
5 language can be included.

6 So if there were interest, that's how I would
7 suggest that we consider approaching this. And we'd
8 start with just exploratory conversations with the
9 appropriations subcommittee staff in the House and the
10 Senate and take their guidance from there as to how
11 best to pursue it.

12 CHAIRMAN KECKLER: Thank you.

13 Are there other questions from the Committee
14 and the Board? Yes, Robert?

15 MR. GREY: Yes. A question. In many parts of
16 the country where LSC grantees are located and issues
17 like this arise, there have typically been those legal
18 aid organizations that are not funded by the Federal
19 Government that have taken a broader jurisdiction to
20 look at issues like this and to support, advocate, and
21 represent individuals who are faced with these issues.

22 Having worked in the legislative arena as well

1 as you have, Carol, this idea of opening yourself up
2 for examination of a possibility of expanding your
3 jurisdiction sometimes has a flip side to it.

4 I just think in this sort of environment, we
5 ought to be very sensitive of making sure that we do
6 what we do well before we start thinking about other
7 areas that we might explore, even if it's informative.

8 I just would caution us to think carefully
9 about sticking to the mission, and recognize that those
10 who suggest that maybe doing so in good faith, but
11 there are other avenues to approach representation of
12 individuals that are caught in these different
13 circumstances throughout the country.

14 It may more appropriately be handled that way.

15 So sometimes this saying that "No good deed goes
16 unpunished" is sometimes more true than not. That's my
17 thought.

18 CHAIRMAN KECKLER: So the issue, I guess, is
19 whether with your appropriate caution, Robert, should
20 we have the discussion with the staff?

21 MR. GREY: I think the research issue that we
22 raised is a good one. But it gives us an opportunity

1 to -- before we step out beyond the area of discussion
2 where we have our own opportunity to look at the issue,
3 it may be that there are others -- I'd just caution
4 about using resources to explore something that will
5 lead us on a path that doesn't necessarily mean that we
6 can be very helpful or productive, and could set in
7 motion events that we then lose control of.

8 So once we let it go, once we start going to
9 the Hill to inform people about things that we see all
10 the time -- or in this time, rather, not all the time,
11 because I think there's some times that are
12 appropriate -- but those same individuals that came to
13 us have access to Congress, too. Those same
14 individuals are as knowledgeable and have done as much
15 research as we could do.

16 So maybe the appropriate question is those who
17 have come to us to share the thought, that while we
18 don't see a jurisdictional basis at this time, might
19 they continue their advocacy and inform us if they run
20 into other obstacles that they think we should be aware
21 of.

22 We've got a lot of things we want to do, and

1 there are a lot of other issues we want to explore. So
2 my inclination would be to say no at this point.

3 CHAIRMAN KECKLER: Laurie?

4 MS. MIKVA: Do we have any idea blood the
5 number of possible eligible clients that legal aid
6 grantees might represent under CAT?

7 MS. DAVIS: We don't.

8 CHAIRMAN KECKLER: That's right. We don't.
9 We got four comments. They might have been supporting,
10 maybe, each other. But we don't know how many.

11 But how would that cut? If there's a lot of
12 people out there, that raises some of the issues that
13 Robert raises in terms of diverting our resources. At
14 the same time, if there's not that many, then it
15 becomes less crucial.

16 So I'm not sure -- it seems like it would be
17 good thing to know. I agree with you, Laurie. But I'm
18 not sure how it changes our calculus.

19 MS. MIKVA: That's what we don't know.

20 CHAIRMAN KECKLER: Right.

21 MR. LEVI: But the request is to have the
22 research done.

1 CHAIRMAN KECKLER: Right.

2 MR. LEVI: And I think that sometimes
3 reasonable.

4 PROFESSOR VALENCIA-WEBER: I think we need --

5 MR. LEVI: Vic wanted to speak.

6 PROFESSOR VALENCIA-WEBER: Oh, sorry. We
7 certainly need the research, but I join Robert in his
8 sense of caution because particularly with the CAT, you
9 can invite mischief by even possibly opening a
10 discussion with staff.

11 If you look at the terms of the CAT as an
12 international treaty, it isn't just physical torture.
13 It includes inhuman or degrading treatment, and it
14 opens up lots of views about -- think of the long years
15 of discussion we've had in and out of government about
16 what constitutes torture, even if you're looking just
17 at physical things.

18 There are many organizations out there who are
19 far better advocates than us for expanding the kind of
20 legal support to individuals who have already qualified
21 for relief by having obtained withholding of
22 deportation or deferring, even if they were going to be

1 deported, because of the risk they face in the home
2 country or another country that has tortured them.

3 You have groups like PEN, the major
4 international writers organization, and others who are
5 continuously advocating for particular people and
6 benefits for them. And they have far better-informed
7 views about the extent of the abuse, and perhaps even
8 access to better congressional people than we have. I
9 would not invite mischief.

10 MR. MADDUX: Yes. Wholly apart from the
11 political issue that Carol raises, which I think is a
12 good one, I fully agree with you, Gloria and Robert. I
13 think this is something we have no business getting
14 into in the current climate, in the current
15 appropriations environment, and in the current
16 immigration climate.

17 Gloria knows much more about all this than I
18 do. I defer to her expertise even though I disagree
19 with her in many respects on immigration law. But just
20 Friday, DHS published data, buried in the news of plane
21 crashes and invasions and the like, that in the period
22 from October through June, the number of family units

1 coming across the Rio Grande section of the
2 border -- not unaccompanied minor children, but family
3 units -- increased by 500 percent, from 9,000 to
4 55,000.

5 A lot of these people are going to be claiming
6 protection under one statute or one treaty or one
7 provision or another that would expand our
8 jurisdiction. And personally, I know that Carol is
9 right; there's too many political risks. I think that
10 Robert's right; we need to stick to our knitting.

11 I would personally prefer that this is
12 something that LSC table for the foreseeable future and
13 if and until there is some indication that it's a
14 problem of some magnitude that somebody else better
15 situated can deal with. That would be my view.

16 MR. LEVI: I want to amend what I said,
17 actually, because after I said it, I feel a little bit
18 like the partner that hands a project to the associate
19 and the partner says, "It'll only take a few hours."

20 (Laughter.)

21 MR. LEVI: Everybody's giving that associate a
22 few hours. And we have limited resources within our

1 staff, and they are pretty maxed out. So I want to be
2 careful what we hand them.

3 CHAIRMAN KECKLER: Right. And I think the
4 issue, then, getting the sense of the Board, in my
5 view, my own view is I'm simply more optimistic about
6 these kinds of things than a lot of people who have
7 expressed it.

8 My own experience with people on this issue on
9 both sides of the aisle is that they're committed and
10 sincere in their focus on this issue. They tend to
11 want to help people that have genuinely been tortured,
12 and not help people that make false claims but to help
13 people that make true claims.

14 But getting the sense of people's caution and
15 concerns, I think that you've heard that. And I think
16 that we have to go ahead and, to the extent that we
17 can, keep aware of this issue. And if there's an
18 opportunity to talk to the people who commented and to
19 find out what their concerns are, and if they have the
20 answer to Laurie's question about these concerns, I
21 think that's a meaningful thing.

22 But there are limited resources. And I think

1 the sense is that we're holding off on this. Is that
2 the sense people have on this? So I think we have to
3 go ahead and accept that at the present time. But be
4 aware of it. And all I can say is that hopefully it
5 will get fixed somehow, even if we aren't in a position
6 to fix it.

7 With that, we'll turn it over to the public
8 comment portion of the meeting. Is there any public
9 comment?

10 (No response.)

11 CHAIRMAN KECKLER: Seeing no public comment,
12 is there any other business to bring before the
13 Committee?

14 (No response.)

15 CHAIRMAN KECKLER: I will now consider a
16 motion to adjourn the meeting.

17 M O T I O N

18 MR. GREY: So moved.

19 MS. MIKVA: Second.

20 CHAIRMAN KECKLER: All in favor?

21 (A chorus of ayes.)

22 CHAIRMAN KECKLER: The meeting is adjourned.

1 MR. LEVI: My gosh. So we gave you extra
2 time. I just want the record to reflect that.

3 (Whereupon, at 3:17 p.m., the Committee was
4 adjourned.)

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