

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS  
OPERATIONS AND REGULATIONS COMMITTEE  
OPEN SESSION

Friday, May 9, 1997

10:11 a.m.

The Legal Services Corporation  
750 First Street, N.E.  
11th Floor Board Room  
Washington, D.C. 20002

COMMITTEE MEMBERS PRESENT:

LaVeeda N. Battle, Chair  
John N. Erlenborn  
F. William McCalpin  
Ernestine P. Watlington

BOARD MEMBERS PRESENT:

Hulett H. Askew  
Edna Fairbanks-Williams  
Nancy H. Rogers

STAFF AND PUBLIC PRESENT:

Honorable Howard Dana  
Justice of the Supreme Court of Maine  
On behalf of SCLAID  
Martha Bergmark, President, LSC  
Victor M. Fortuno, General Counsel/Secretary  
Edouard Quatrevaux, Inspector General  
Suzanne Glasow, Senior Assistant General Counsel  
Melville D. Miller, Legal Services of New Jersey  
Linda Perle, Senior Staff Attorney  
Center for Law and Social Policy  
Renee Szybala, Assistant Inspector General  
John Tull, Director of the Office of Program Operations

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

(10:11 a.m.)

1  
2  
3 CHAIR BATTLE: I would like to go ahead and  
4 call the meeting to order. Good morning to everyone.

5 We have the agenda before us, and what I would  
6 like to do, because we have our counsel with us -- we  
7 have several items on the agenda that we are going to  
8 cover -- is to initially go into closed session to  
9 receive the report from our counsel on litigation.

10 Then, when we come out of closed session, we  
11 can address all of the other items that we have on our  
12 agenda, including some changes to the order and to the  
13 items that we will cover this morning.

14 We did receive a unanimous notational vote to  
15 be able to go into closed session, so with that in  
16 advance, I will entertain a motion for us at this time  
17 to go into closed session from this Committee.

## M O T I O N

18  
19 MR. ERLNBORN: So moved.

20 MS. WATLINGTON: Second.

21 CHAIR BATTLE: It's been properly moved and  
22 seconded that we go into closed session.

1 All in favor.

2 (A chorus of ayes.)

3 CHAIR BATTLE: All opposed.

4 (No response.)

5 CHAIR BATTLE: The motion carries. We will  
6 now go into closed session to receive the report from  
7 counsel on litigation involving the Corporation.

8 (Whereupon, at 10:13 a.m., the meeting was  
9 adjourned to closed session.)

10 \* \* \* \* \*

11 (11:39 a.m.)

12 CHAIR BATTLE: We do have a reasonably full  
13 agenda. We have one Board member that won't be able to  
14 be with us for the full day, so I think it is important  
15 for us to go back on the record and to get started with  
16 what we've got to do.

17 We will now resume our open session, if we can  
18 get either the door closed or Tom and Bucky to join us.  
19 Okay. That's good. Thank you very much, Linda.

20 We are now back in open session, and we  
21 immediately went into -- yes, we do have with us one of  
22 the former members of this Board, we're all waving at.

1 Justice, we're glad you're with us.

2 JUSTICE DANA: Thank you. It's nice to be  
3 here.

4 CHAIR BATTLE: What I would like to do, we  
5 went into Executive Session because we are very  
6 conscious of time. Now that everybody must keep time,  
7 we did, as well, in handling our litigation issues,  
8 while legal counsel was present this morning, first.

9 Now we have before us the agenda for our Open  
10 Session, and the first item on the agenda is, of  
11 course, approval of the agenda.

12 I would like to make some changes to the order  
13 in the items on the agenda before entertaining a motion  
14 to approve the agenda.

15 Item Number 7, which is, "Consider and act on  
16 a draft personnel rule to be codified at 45 CFR Part  
17 1601" is not ready to be presented, so it will be  
18 stricken from our agenda.

19 As well, we have one of the members of this  
20 Committee who must chair, this afternoon, a committee  
21 for, I think it's the Bar Association, and there is  
22 another item which we need to probably cover while he

1 is present with us, which is Item 8, "Consider and act  
2 on proposed procedures to govern employee grievances  
3 filed against either the Inspector General or the  
4 President."

5 So I would like to move that up to be  
6 considered as our -- in Open Session, it will be Item  
7 4, but actually Item 5 on this agenda, right after we  
8 deal with the minutes.

9 With those two changes, I will entertain a  
10 motion for approval of the agenda.

11 M O T I O N

12 MR. ERLNBORN: So moved.

13 MR. McCALPIN: Second.

14 CHAIR BATTLE: It's been properly moved and  
15 seconded that the agenda be approved as amended.

16 All in favor.

17 (A chorus of ayes.)

18 CHAIR BATTLE: All opposed.

19 (No response.)

20 CHAIR BATTLE: The motion does carry.

21 We have next on the agenda approval of minutes  
22 of the March 7, 1997 Committee meeting. You should

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1 have received your agenda book prior to this meeting  
2 and had an opportunity to review those minutes.

3 Are there any corrections to the minutes,  
4 changes?

5 (No response.)

6 CHAIR BATTLE: I will entertain a motion for  
7 approval of the minutes of the March 7, 1997 Committee  
8 meeting.

9 M O T I O N

10 MS. WATLINGTON: I move.

11 CHAIR BATTLE: It's been moved --

12 MR. ERLNBORN: Second.

13 CHAIR BATTLE: -- and properly seconded that  
14 the minutes be approved as written.

15 All in favor.

16 (A chorus of ayes.)

17 CHAIR BATTLE: All opposed.

18 (No response.)

19 CHAIR BATTLE: The motion will carry.

20 In addition, separate from your agenda book,  
21 you should have received a copy of the minutes of the  
22 Committee's March 7, 1997 Executive Session, and had an

1 opportunity to review those minutes.

2 Are those any changes or corrections to those  
3 minutes?

4 (No response.)

5 CHAIR BATTLE: Hearing none, I will entertain  
6 a motion for approval of the minutes of the Committee's  
7 March 7, 1997 Executive Session.

8 M O T I O N

9 MR. McCALPIN: So moved.

10 MS. WATLINGTON: Second.

11 CHAIR BATTLE: It's been moved and properly  
12 seconded.

13 All in favor.

14 (A chorus of ayes.)

15 CHAIR BATTLE: All opposed

16 (No response.)

17 CHAIR BATTLE: The motion carries.

18 The next item that we have on our agenda is,  
19 "Consider and act on proposed procedures to govern  
20 employee grievances filed against either the Inspector  
21 General or the President."

22 This is an item that is on our agenda by

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1 request from one of our members, Bill McCalpin. And I  
2 will really turn it over to Bill to enlighten us as to  
3 what the status of that particular item is today.

4 MR. McCALPIN: Thank you, Madam Chair. I  
5 think this requires a little bit in the way of  
6 background, how we get to where we are now.

7 When I arrived here for our March meeting, I  
8 was handed a grievance, copy of a grievance, filed by  
9 an employee of the Office of Inspector General against  
10 the Inspector General.

11 As it happened, on that very same day, Mr.  
12 Erlenborn and I had a preset session on the Hill with  
13 members of staff of the House and Senate committees  
14 having oversight of the Inspectors General.

15 We mentioned simply the fact that we had  
16 received the grievance that day, and we're in something  
17 of a quandary, because, so far as we knew, it was  
18 unprecedented in the history of the Corporation, and  
19 that our recollection was that there wasn't anything in  
20 the personnel manual which had been adopted just a  
21 short time earlier which covered it.

22 So we asked those staff members for their

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1 the Integrity Committee, the chair of which is a senior  
2 official at the FBI, and were told, first, that their  
3 procedure would be to refer the matter to the  
4 Department of Justice to ascertain whether the matter  
5 referred involved any violation of a federal statute,  
6 in which case, presumably it would be handled in the  
7 Department of Justice.

8 Based on the very brief explanation that I  
9 gave, I think there was a general feeling that it did  
10 not involve anything, but their procedure would be to  
11 refer it to the Department of Justice, in any event.  
12 If it came back to them from the Department of Justice,  
13 they would then undertake to consider the matter.

14 They told us that, from the sound of the  
15 nature of the grievance, it would likely be referred to  
16 the Office of Special Counsel.

17 In my naivete about this, I said, "You mean  
18 Ken Starr?"

19 (Laughter.)

20 MR. McCALPIN: And they said, "Oh, no. There  
21 is a special Office of Special Counsel in the Federal  
22 Government."

1           It turns out they have an office at 17th and M  
2 here in the District, and there is a Special Counsel,  
3 who is the head of that office, and matters involving  
4 personnel issues like that would normally be within the  
5 province of that body.

6           We were told by the people at the Integrity  
7 Committee that very likely what would happen is that,  
8 when it came to them, and they considered it, the  
9 Special Counsel, who is a member of the Integrity  
10 Committee, would just take it and it would be handled  
11 there.

12           We also were told by the people at the  
13 Integrity Committee, in response to a direct question,  
14 that while they would conduct an investigation, they  
15 would not be empowered to grant relief to a grievant,  
16 that they would measure the conduct of the Inspector  
17 General but that they would not be in a position to  
18 grant the relief requested in the grievance.

19           Thereafter, we contacted the Office of Special  
20 Counsel and explained the situation to them, in view of  
21 the statement we had been given of the likelihood of  
22 its winding up there.

1           In the course of the conversation it developed  
2 that their jurisdiction extends only to Federal  
3 employees of Federal agencies. We pointed out that, by  
4 statute, the Corporation is not a Federal agency and  
5 that our officers and employees are not Federal  
6 employees, therefore, this matter being presumably  
7 outside their jurisdiction.

8           That was about the time you were in Orlando,  
9 as I recall.

10           John and I -- John Erlenborn and I  
11 -- discussed this. And John very sagely suggested,  
12 when I reported the discussions we had had with these  
13 various agencies, suggested that we ought to get what  
14 they had told us in writing.

15           So, early in April, Doug wrote to the ECIE and  
16 to the Special Counsel, laying out the issue and asking  
17 them questions intended to develop what they had told  
18 us orally.

19           About 10 days or two weeks ago, we got -- he  
20 got -- we got a letter from the Office of Special  
21 Counsel confirming that they would not be involved,  
22 because we are not a Federal agency, and our employees

1 are not Federal employees.

2 I think on Tuesday of this week I received a  
3 copy of a letter from the Chair of the Integrity  
4 Committee -- which may be Integrity Committee for both  
5 the PCIE and the ECIE -- generally outlining the  
6 procedure which I have described to you earlier, but  
7 not answering the specific question of whether they  
8 would be empowered to grant the relief or any relief,  
9 if authorized, to the grievant.

10 Well, before receiving these letters and  
11 knowing that this meeting was coming along, and not  
12 wishing to inject any more delay than necessary in  
13 this, I sat down to think about how we might go about  
14 handling a grievance of this matter if it wasn't going  
15 to be handled by one of these entities with which we  
16 had been in contact.

17 The first thing I did was to go to the  
18 personnel manual to see what it provided. Somewhat to  
19 my surprise, I discovered that the personnel manual  
20 should not set forth a grievance procedure for anybody  
21 in the organization.

22 It simply says that a grievance procedure will

1 be established by the Office of Administration and  
2 Human Resources. And it was not 'til earlier this week  
3 that I received a copy of that document, which is not a  
4 part of the personnel manual as such.

5 Well, I drafted a proposed procedure and sent  
6 it to you and John and Edna, as I recall, a week or so  
7 ago. When I was here in Washington last week, I showed  
8 that draft procedure to Mr. McKay and he had no  
9 particular problem with it.

10 I showed it to the IG and his counsel, and  
11 they had a couple of suggestions, which I thought were  
12 appropriate, so I redrafted the procedure which I had  
13 sent originally to the members of this ad hoc Board  
14 Committee, and that's what I understand was sent to  
15 other members of the Board within the last two days.

16 Let me just say briefly that, in five steps,  
17 it calls for a place -- where does some guy go to file  
18 such a grievance? And you go to the Office of  
19 Administration and Human Resources. It is then to be  
20 -- a grievance against the President or the IG is  
21 immediately to be transmitted to the Chair.

22 IG said that it didn't say anything about

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1 serving the person against whom the grievance was  
2 directed, and there apparently was some delay.

3 So I amended Paragraph (a) to say that a copy  
4 of it would be transmitted at the same time to the  
5 person who was named in the grievance.

6 Then, the second step says that the Chair or  
7 his nominee will determine whether the charge warranted  
8 Board action and is within the power of the Board to  
9 resolve, which this was done at the time when we didn't  
10 even know whether it was going to be within our power  
11 or somebody else's power, but I think it's still an  
12 appropriate kind of "does it state a claim for relief"  
13 sort of concept, to let the Chair make that  
14 determination.

15 Let me just go through this quickly.

16 CHAIR BATTLE: Sure.

17 MR. McCALPIN: If the Chair determines that  
18 the charge is not appropriate for Board action, then  
19 there's nothing more can be done with it, and it's  
20 dismissed.

21 If the Chair determines that further  
22 consideration is appropriate, then there are alternate

1 possibilities.

2           If I can analogize again, if it's a matter of  
3 law, interpretation of a document or something of that  
4 sort, then it can go to the Board and the Board can  
5 determine it.

6           If, on the other hand, it is a matter which  
7 requires a factual determination, it seemed to me and  
8 to those of us that discussed it that the Board itself  
9 doesn't want to get into a detailed factual  
10 investigation with hearings or whatever.

11           So the concept was advanced of having a  
12 neutral factfinder -- factfinder only. In that sense,  
13 it is not an arbitration, as such.

14           And, finally, in either case, whether it goes  
15 to the Board directly or a report of the factfinder  
16 comes to the Board, the Board determines what the  
17 relief, if any, shall be.

18           Now, I conclude simply by saying that, as we  
19 discussed this, John volunteered to look into the  
20 question of the availability of neutral factfinders,  
21 which was something that just came out of our heads at  
22 the time, and he has been involved in that, and I think

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1 it's appropriate for him to say where he may be.

2 Now, that's the background of the document  
3 that you have before you.

4 CHAIR BATTLE: First, does everybody have that  
5 document?

6 MR. ERLNBORN: I don't seem to find a copy of  
7 it.

8 CHAIR BATTLE: I got it, and I've read it.  
9 But it sure would be helpful --

10 MR. McCALPIN: No, no, no. No, no. That's  
11 not it. It's this.

12 CHAIR BATTLE: It would be helpful if we could  
13 all have that document before us.

14 MR. ERLNBORN: I have the first version.

15 MS. FAIRBANKS-WILLIAMS: This is the May 5th  
16 version, if you want to see it.

17 CHAIR BATTLE: Can we get copies made of this,  
18 quickly?

19 MR. McCALPIN: It went to Vic, the other day,  
20 and he was to have distributed it. John, there's both  
21 a redline and a clean. It went with a memo dated May  
22 5.

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1 CHAIR BATTLE: Okay. Well, we're getting  
2 copies made so that all the Board members will have  
3 that. I think it is important for us to have the  
4 procedure before us as we discuss it

5 Are there any questions about -- did you have  
6 anything further? -- about the background as to how we  
7 come to the development of a grievance procedure that  
8 will govern how to handle grievances that are against  
9 either the Inspector General or the President, from any  
10 of the Board members, first? Are there any questions  
11 about it?

12 MR. ERLNBORN: I might, just for the  
13 information of the Board, just briefly tell you what I  
14 discovered about the neutral factfinder.

15 I talked to people at the Federal Mediation  
16 and Conciliation Service, and found that their services  
17 are available only in cases of collective bargaining  
18 disputes, although they said they could suggest  
19 informally names of independent parties who could  
20 serve, but outside of the Federal Mediation and  
21 Conciliation Service Auspices.

22 I talked also to the AAA -- American

1 Arbitration Association -- and they have probably the  
2 largest list of people available for this sort of  
3 thing, and they will either mediate, arbitrate,  
4 factfind, or anything else you want them to do.

5 There, of course, are the several different  
6 organizations that are sometimes referred to jocularly  
7 as the "Rent-a-Judge," and you can do that. They're  
8 expensive, though, I think, judges. But that's another  
9 source.

10 I think we would have to decide whether a  
11 neutral factfinder would be useful. I don't think the  
12 Board, in many cases, could devote the time necessary  
13 to factfinding, and we might find that that would be a  
14 useful device.

15 The other question is whether the Board would  
16 merely choose a neutral third party to be a factfinder  
17 or if there would be some procedure for agreeing upon a  
18 neutral third party.

19 End of report.

20 CHAIR BATTLE: Thank you very much, John.

21 MR. McCALPIN: Let me say, in addition to the  
22 time of the Board involved in the factfinding, it

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1     seemed to me at least that, with the Board ordinarily  
2     having appointed the President and the IG, there would  
3     be isolation from any appearance of bias toward  
4     somebody that the Board had appointed -- more  
5     objectivity -- if it went to a neutral factfinder, than  
6     somebody in whom the Board had already reposed the  
7     trust the confidence.

8             The other thing I want to point out, it's the  
9     second comment that was made by the IG's Office, that  
10    resulted in an amendment in Paragraph (e).

11            The IG representatives pointed out that this  
12    grievance had already been pending for some period of  
13    time and, when I talked to them, I said that I was in  
14    hopes that this matter would be considered now, could  
15    be put on track and, hopefully, might be resolved by  
16    the Board by the time of our July meeting.

17            And it was suggested to me that that was  
18    another additional significant time segment.

19            So, very arbitrarily, I wrote the 60-day  
20    provision in Paragraph (e). You know, I pointed out  
21    the Board doesn't meet all that often. It was  
22    suggested to me first that the Board could do it by

1 notational vote.

2 I doubt that this is the sort of thing that  
3 the Board would want to do by notational vote, but we  
4 could do it by telephone conference or a special Board  
5 meeting.

6 But it is fairly common for some time limits  
7 to be written into a grievance procedure and I just put  
8 the gross time limit at the end, rather than trying to  
9 set subsidiary internal time frames within it.

10 I neglected to say that in my initial  
11 presentation.

12 CHAIR BATTLE: Sure. I actually have some  
13 concerns about setting a time frame, given the limited  
14 resources we have and the limited number of times that  
15 we meet, that is as restrictive as 60 days, also given  
16 the fact that, if we're going to go to a neutral  
17 factfinder situation, that there is going to be some  
18 time, depending on the gravity of the grievance  
19 -- there are some that we should be able to probably  
20 resolve very quickly, fairly quickly -- but if there is  
21 a need for factfinding, we would want to, of course,  
22 give our factfinder selection selectee -- selection of

1 the factfinder, given the sea of opportunities out  
2 there may be something that takes some time, and an  
3 opportunity to do the investigation is another piece.

4 So I would be in favor of us, of course,  
5 putting this on the fast track to get it done as soon  
6 as possible, but giving us a realistic outer limit,  
7 which would include a Board meeting.

8 I think that, when you're talking about a  
9 grievance against either our President or the Inspector  
10 General, that that's not something we need to resolve  
11 without doing it face to face. I think that having an  
12 opportunity for a Board meeting at least accords the  
13 level of attention to such a grievance that it  
14 requires.

15 MR. McCALPIN: Let me say that I also thought  
16 about, deliberately omitted any suggestion of how the  
17 neutral factfinding might proceed, whether it would  
18 simply be by investigation, and taking statements and  
19 that sort of thing, or by conducting a hearing.

20 I deliberately left that open, because I  
21 wasn't sure who the factfinder might be and, indeed, it  
22 may be that, in different situations, you would proceed

1 in different ways. So I deliberately left open how the  
2 factfinding might proceed.

3 CHAIR BATTLE: For anybody who has ever held a  
4 hearing on something, sometimes hearings can take more  
5 than a day to do, depending on what the subject matter  
6 is and what is involved.

7 So I agree that there does need to be some  
8 outer limit that guides us, but I don't want it to be  
9 so restrictive that it is one that we cannot meet in  
10 terms of the amount of time it takes for us to get done  
11 what we need to do with respect to a grievance.

12 Are there any other questions? I've got a  
13 couple, but I want to find out if any other Board  
14 members present or members of the Committee have any  
15 other questions about the proposal that we have before  
16 us, to adopt a grievance procedure when there are  
17 grievances against either the President or the  
18 Inspector General.

19 (No response.)

20 CHAIR BATTLE: First, I would like to thank  
21 both John and Bill for the hard work, obviously, to get  
22 to this point.

1           Just listening to the background of the number  
2 of places that you went to seek guidance before coming  
3 to the ultimate responsibility which this Board has to  
4 develop a policy and to implement it meant that you  
5 touched all the bases out there to see if there were  
6 other entities which would be involved in this process  
7 before determining that it is within our province and  
8 jurisdiction and responsibility to undertake these  
9 grievance procedures.

10           I think that the procedure has in it the  
11 flexibility to meet the specific grievances.

12           I mean, you can have a grievance that says, "I  
13 didn't get the chair I wanted in my office," you know,  
14 "and therefore it's serious enough to me, because I  
15 need this chair, that I want to take it to the Board"  
16 -- from that to something that's major, that might have  
17 some impact on whether that either Inspector General or  
18 President continues to serve in that position.

19           So I think that, having a procedure that  
20 breathes, so that you can take all of those matters  
21 into account and handle them in a way that accords the  
22 process that accords the process that is due to either

1 the President or the Inspector General makes good  
2 sense.

3 I do think that where we are with regard to  
4 the issue of who would do the factfinding if there is a  
5 need for factfinding causes me some concern from the  
6 standpoint that, without having it gelled to any level  
7 of specificity, that's a major front end decision that  
8 we're going to have to make in each instance, it seems  
9 to me, as to whether we're going to need to have  
10 someone who is a factfinder come in and do a report and  
11 take statements -- how much time, how you set that up,  
12 how you involve people in that process -- all the way  
13 from that to actually having a hearing conducted.

14 And I guess we've gotten everything that we  
15 have -- one question that I had. For all the places  
16 that you went, where it was clear that they did not  
17 have final decision making authority, did they have any  
18 interest in participating in the factfinding part of  
19 this process?

20 MR. McCALPIN: Let me say that it's clear that  
21 the Special Counsel will not be involved.

22 CHAIR BATTLE: Okay.

1 MR. McCALPIN: I think there is a possibility  
2 that the Integrity Committee could conduct an  
3 investigation extending over a period of six to 12  
4 months, but that investigation would not result in an  
5 order or even recommendation addressing the claims for  
6 relief in the grievance.

7 CHAIR BATTLE: Well, would factfinders do that  
8 anyway, or would they simply find the facts and tender  
9 those facts to the Board for the Board to make ultimate  
10 decisions in all instances?

11 MR. McCALPIN: That's the concept.

12 CHAIR BATTLE: Okay. So then, at least in  
13 addition to what John presented to us as alternatives,  
14 such as the AAA and the "Rent-a-Judge" group, we have  
15 the Integrity Committee as another option for  
16 factfinding? Is that --

17 MR. ERLENBORN: Well, not with the time frame  
18 that they apparently have.

19 CHAIR BATTLE: Okay. Their time frame is too  
20 extensive?

21 MR. McCALPIN: Six to 12 months. I don't know  
22 how we can -- you know, it's pretty hard to live with

1 that kind of time frame.

2 CHAIR BATTLE: Okay.

3 MR. ERLNBORN: It doesn't appear to be within  
4 the scope of what they were created for, particularly  
5 this idea of first referring it to the Justice  
6 Department.

7 CHAIR BATTLE: And we have a danger, if we're  
8 outside of their normal jurisdiction, we would be the  
9 last thing on the list to get done, as well. So there  
10 is some real danger I can see in that.

11 But I wanted to survey that. With all the  
12 good work that you did, Bill, in going back and asking  
13 all of those different people who have some specialized  
14 knowledge about certain entities, the Inspector General  
15 in particular, whether or not that would be something  
16 that we would be able to use.

17 What I'm hearing is, we've got to go to an  
18 outside, completely impartial third party, who will be  
19 able to do it within the time frame that we would  
20 direct.

21 MR. McCALPIN: Either that, or do it  
22 ourselves.

1 CHAIR BATTLE: Yeah, or do it ourselves, which  
2 the policy allows. I mean, there is that alternative,  
3 that we do our own investigation or have some third  
4 party neutral do it.

5 MR. ERLNBORN: I think using the term  
6 "neutral party" makes this applicable, then, to the  
7 President, as well as to the IG. This other committee  
8 would be strictly IG.

9 MR. McCALPIN: That's right.

10 CHAIR BATTLE: Okay. That's fair enough.  
11 Okay.

12 Renee, I did see your hand up. Did you have a  
13 question about something, or would you like to come to  
14 the mike?

15 MS. SZYBALA: I wanted to elaborate on  
16 background information from Mr. McCalpin, but I think  
17 that can wait until after you vote. I don't have a  
18 comment on the policy.

19 CHAIR BATTLE: Okay. All right. Well, the  
20 policy, then, is before you.

21 We have the good work of our subcommittee, in  
22 laying out a procedure that will address grievances

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1 that may be lodged against either the President or the  
2 Inspector General.

3 If there is no further discussion --

4 MR. McCALPIN: I'll move that we recommend to  
5 the Board the adoption of this procedure.

6 MR. ERLENBORN: Before you do that, is there  
7 still a question about the 60 days?

8 CHAIR BATTLE: Oh, that's right. There is.

9 My suggestion is not that we err on the side  
10 of going below this, but that we place 180 days in as  
11 opposed to 90, because I think this has to breathe for  
12 all time.

13 MR. McCALPIN: 180 days seems like a long  
14 time.

15 MR. ERLENBORN: Yeah. These things should be  
16 handled expeditiously.

17 CHAIR BATTLE: They should. I guess what I'm  
18 saying is, we don't know the gravity of the grievances,  
19 and all I want to do is not have us -- in  
20 administrative terms, what sometimes happens is -- and  
21 I represent administrative bodies in many instances  
22 -- they have some rule that says "You must decide at

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1 your next meeting," so they duck and duck until they  
2 can get to another meeting.

3 I want us to just put a time frame that  
4 breathes in realism, and try to decide in less than  
5 that time, as much as possible.

6 MR. McCALPIN: It seems to me, LaVeeda, that  
7 the grievance comes in, it goes immediately to the  
8 Chair, the Chair makes a prompt decision, as to whether  
9 it goes forward or not, and the Chair makes a decision  
10 whether to refer it to the Board directly or to a  
11 neutral factfinder.

12 If it goes to the Board, presumably, the next  
13 time the Board meets, which is 60 to 90 days. We meet  
14 quarterly at least. If it goes to a neutral  
15 factfinder, it seems to me that 30, 45 days ought to be  
16 enough, especially if there is a hearing. That ought  
17 to be the shorter way of doing it.

18 CHAIR BATTLE: I don't argue that we ought to  
19 be able to do most of these in 35 days. I just think  
20 if we adopt a procedure, we ought to allow a time frame  
21 for when we have no money to meet.

22 I would actually err on the side of saying,

1 "at the next Board meeting," I mean, rather than saying  
2 a specific time frame.

3 MR. McCALPIN: Well, a grievance may come in  
4 10 days before a Board meeting. You know, you  
5 obviously couldn't handle it at the next Board meeting.

6 CHAIR BATTLE: At the next available Board  
7 meeting. Suzanne.

8 MS. GLASOW: I have some suggested language  
9 that may solve that. It's to say "The Board shall, not  
10 later than 60 days or the next scheduled Board meeting  
11 thereafter," or something.

12 CHAIR BATTLE: Okay.

13 MS. GLASOW: So that you give yourself that  
14 little flexibility.

15 MR. ERLENBORN: Whichever comes first or last?

16 CHAIR BATTLE: I think that does -- that meets  
17 my concern.

18 MR. ERLENBORN: I think that needs further  
19 clarification.

20 CHAIR BATTLE: Because all I'm concerned about  
21 is making sure that we don't everybody get on the  
22 telephone, nobody has looked at the report, "Let's

1 vote."

2 I want us to take seriously any grievances  
3 that come in and have an opportunity as a Board to  
4 meet.

5 MR. ERLENBORN: I think that's a good point.

6 CHAIR BATTLE: Yeah.

7 MR. ERLENBORN: Might I suggest that we not  
8 put in a date certain, certain number of days, but just  
9 say "as soon as possible," "as expeditiously as  
10 possible."

11 CHAIR BATTLE: I'm comfortable with that.

12 MR. McCALPIN: I think there's a certain  
13 discipline, John, in putting a specific number. "As  
14 soon as possible" can be put off and put off. It does  
15 seem to me that there is some discipline in having some  
16 specific time.

17 CHAIR BATTLE: I think that Suzanne suggested  
18 something. Can we hear that language again?

19 MS. GLASOW: "The Board shall" -- "In either  
20 case, the Board shall, not later than 60 days, or at  
21 the next scheduled Board meeting thereafter" -- does  
22 that work?

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1 MR. ERLNBORN: Meeting after the 60 days?

2 MS. GLASOW: Right.

3 MR. ERLNBORN: Yeah.

4 MS. GLASOW: I also have a comment on another  
5 paragraph, after this one is resolved.

6 CHAIR BATTLE: All right. I think that John's  
7 point is good. It's the next meeting after the 60  
8 days, for this reason. I think that Bill raised the  
9 point, a grievance comes in two days before a Board  
10 meeting, is that the meeting thereafter? Do we have 60  
11 days before we meet again? I like John's clarification  
12 of that point.

13 MS. GLASOW: Okay.

14 CHAIR BATTLE: Okay.

15 MS. SZYBALA: That also means that, if the  
16 grievance comes in the day after the Board meeting,  
17 it's 60 days after the next Board meeting, which  
18 could --

19 MR. McCALPIN: No, 60 days or the next Board  
20 meeting.

21 CHAIR BATTLE: The 60 days, what you've got is  
22 a 60-day time frame and then Board meeting after that

1 60 days.

2 MS. GLASOW: Either 60 days after the  
3 grievance is filed or --

4 MR. ERLNBORN: If the Board meetings are 90  
5 days apart, you would have the 60 days run and then you  
6 might wait until the Board meeting, which would be 90  
7 days.

8 CHAIR BATTLE: With the clarification we've  
9 made on the record, our point is, 60 days is your outer  
10 limit for everything else. The Board has got to decide  
11 the next time it gets together. Okay.

12 Suzanne, did you have something else you  
13 wanted to suggest about the language?

14 MS. GLASOW: Yes. This is the first time I've  
15 looked at this, and so I'm a little concerned --

16 MR. McCALPIN: That's the way we feel about  
17 some of the regs we get.

18 MS. GLASOW: I know. I apologize.

19 In Paragraph (c), it says, "The grievance will  
20 be dismissed." I wonder if it would be more  
21 appropriate to say, "The grievance will be dismissed  
22 for Board consideration."

1 Does this mean that the griever has no other  
2 avenues to the OHR or anywhere to pursue a grievance if  
3 it doesn't rise to the level of Board consideration?

4 MR. ERLNBORN: If it's the President or the  
5 OIG, there's no one other than the Board that can  
6 resolve it.

7 MR. McCALPIN: And this vests in the Chair  
8 that responsibility.

9 CHAIR BATTLE: The only thing, now that you've  
10 mentioned that, that I have some concern about is, when  
11 you were giving the background and talking about this  
12 whole jurisdiction issue and how it comes to the Board  
13 and how the Board will make a determination as to  
14 whether it's within their power to resolve it, if the  
15 issue is something that is a staff-related issue, for  
16 example the chair thing that I mentioned --

17 MR. McCALPIN: The what?

18 CHAIR BATTLE: The chair. You know, this  
19 person says, "I'm filing a grievance against the  
20 President of the Corporation because I don't like the  
21 chair that's in my office," and we make the  
22 determination that, "We aren't deciding chairs here;

1 that's something that is decided by someone else,"  
2 which is someone on our staff.

3 Then, I think Suzanne's point is well taken.  
4 The dismissal is not intended to mean that that  
5 grievant can't go to whoever on the staff handles  
6 chairs. We're just simply saying it's dismissed from  
7 the Board making a decision as it relates to the  
8 President on this, because that's not something that we  
9 get involved in.

10 MR. ERLNBORN: I would disagree, if you mean  
11 that any kind of a grievance filed against the  
12 President or the OIG could be determined or resolved by  
13 anyone other than the Board.

14 I don't think any body other than the Board,  
15 or individual other than the Board, would have the  
16 authority to resolve a grievance against the President  
17 and the OIG.

18 CHAIR BATTLE: Why don't we just say  
19 "decided"? Because "decided" means we could say in  
20 that instance, "You go talk to somebody who handles  
21 chairs."

22 MR. ERLNBORN: And dismiss the grievance.

1 MR. McCALPIN: Dismiss the grievance. And  
2 basically, what you say is, "Go file the grievance  
3 against your office supervisor."

4 MR. ERLENBORN: Right.

5 CHAIR BATTLE: Okay. Which is someone other  
6 than the President.

7 MR. McCALPIN: In which case, it's handled  
8 internally under internal grievance procedures.

9 MS. GLASOW: This language seems to suggest  
10 that that would not be allowed.

11 CHAIR BATTLE: Yeah. It specifically sets out  
12 the only remedy for a grievance for which we have no  
13 jurisdiction. It says "dismissal." And what I'm  
14 saying --

15 MR. ERLENBORN: That's against the President  
16 or the IG.

17 MR. McCALPIN: That's right.

18 MR. ERLENBORN: Which leaves everything else  
19 available.

20 MR. McCALPIN: That doesn't bar filing against  
21 somebody else.

22 MR. ERLENBORN: Right.

1 MS. FAIRBANKS-WILLIAMS: Yeah, but it says  
2 "The grievance shall be found or the director of the  
3 Office of Administration will immediately transmit to  
4 the Chair."

5 MR. McCALPIN: That's right.

6 CHAIR BATTLE: Why don't we say "Grievance  
7 against the President or Inspector General will be  
8 dismissed," and that way you have the option of filing  
9 a grievance somewhere else.

10 What I would do is, in (c), we say, "If the  
11 determination is that the charge is not appropriate for  
12 Board action, the grievance against the President or  
13 Inspector General will be dismissed."

14 MR. McCALPIN: Well, the whole thing is a  
15 grievance against -- that's the initial sentence and  
16 the title of the procedure.

17 MR. ERLNBORN: It neither adds nor detracts.

18 MS. FAIRBANKS-WILLIAMS: Ed has his hand up  
19 down there.

20 MS. GLASOW: I just wanted to clarify that  
21 that's what you intended, that there's no other avenue  
22 of a grievance against the President or Inspector

1 General. That's what this says, and if that's what you  
2 intend, then --

3 MR. ERLNBORN: My feeling is -- and I feel  
4 very strongly about this -- that we can't have some  
5 employee of the Corporation imposing sanctions on the  
6 President or the IG.

7 CHAIR BATTLE: Okay.

8 MR. ERLNBORN: I think the Board is the only  
9 body that can resolve those complaints.

10 CHAIR BATTLE: Ed, you had your hand up.  
11 Would you come to the mike and identify yourself?

12 MR. QUATREVAUX: Thank you. I hadn't planned  
13 to speak, but a point was raised I thought I should  
14 attempt to clarify, and it deals with your example of  
15 chairs.

16 I think the grievance process you are speaking  
17 of is related to personnel matters. Anything, for  
18 example, that casts any doubt on the integrity of  
19 -- and I only speak for the Inspector General, not that  
20 part of this that relates to the President -- should be  
21 referred, according to that Executive Order, to the  
22 Integrity Committee of the PCIE and ECIE.

1 CHAIR BATTLE: We have a determination before  
2 that paragraph that deals with the Board making a  
3 determination as to whether it has the power or not to  
4 make a decision about certain things.

5 MR. QUATREVAUX: I know. But I heard you  
6 discussing, in essence, what kind of grievances, and I  
7 think definition would be useful here.

8 MR. McCALPIN: But the ECIE and the Integrity  
9 Committee are not empowered to grant relief to a  
10 grievant as requested.

11 MR. QUATREVAUX: No, that's exactly right.  
12 And what I -- I agree.

13 MR. McCALPIN: And we did refer it to the  
14 ECIE.

15 MR. QUATREVAUX: I understand that. All I'm  
16 saying is we've got two different things here.

17 MR. ERLNBORN: That could be a parallel  
18 process. It's not in lieu of the grievance procedure.

19 MR. QUATREVAUX: I just wanted to make clear  
20 that I think that you're dealing with personnel issues,  
21 possibly.

22 But in the grievance process, that's what a

1 grievance is in the Federal system. It's an assertion  
2 or allegation that the personnel system has not been  
3 adhered to.

4 Anytime, whatever quarter, wherever it might  
5 come from, any suggestion that the Corporation's  
6 Inspector General has been guilty of misconduct in any  
7 way or suggests any questioning of integrity, that's  
8 the place to go.

9 And I understand they don't declare relief,  
10 but they certainly find facts.

11 MR. McCALPIN: Well, that's right. And let me  
12 say that, as I understand it, if the investigation by  
13 the Integrity Committee should result in a finding that  
14 there had been some lapse in conduct by the IG in  
15 whatever he was doing, my understanding is that they  
16 likely would send a report to us, the Board.

17 Then it would be up to the Board to decide how  
18 it would deal with the IG in terms of that -- maybe in  
19 terms of an evaluation or something of that sort. But  
20 it would not relate to the grievance filed by the  
21 employee.

22 MR. QUATREVAUX: When they formed the

1 committee, they --

2 MR. McCALPIN: What?

3 MR. QUATREVAUX: When the committee was formed  
4 and it was being debated, in the deliberations, it was  
5 made clear that the committee did not desire to get  
6 into personnel matters, which are voluminous. I mean,  
7 there are thousands if not tens of thousands of them  
8 every year.

9 MR. McCALPIN: Those, I think, are the matters  
10 which apparently are handled by the Office of Special  
11 Counsel.

12 MR. QUATREVAUX: That's true, for Federal  
13 employees, that's right. I understand.

14 MR. McCALPIN: But outside their jurisdiction.

15 MR. QUATREVAUX: I understand.

16 CHAIR BATTLE: I think that we've gotten an  
17 excellent dissertation, essentially, on the  
18 jurisdictional issue thus far, so we're pretty clear on  
19 where we have jurisdiction and where our  
20 responsibilities are.

21 We now have before us, as amended, the  
22 grievance procedure. Are there any other questions

1 from any other members of the committee?

2 (No response.)

3 CHAIR BATTLE: From our President?

4 (No response.)

5 CHAIR BATTLE: Okay.

6 M O T I O N

7 MR. McCALPIN: Now, I'll move it as amended,  
8 as a recommendation to the Board.

9 CHAIR BATTLE: There's been a motion that we  
10 recommend to the Board the grievance procedure as  
11 amended. Is there a second?

12 MR. ERLNBORN: Second.

13 CHAIR BATTLE: All in favor.

14 (A chorus of ayes.)

15 CHAIR BATTLE: All opposed.

16 (No response.)

17 CHAIR BATTLE: The motion carries.

18 Thank you very much for all of your hard work  
19 in getting us to this point with regard to our  
20 grievance procedure. Renee?

21 MS. SZYBALA: I did want to elaborate on the  
22 background information. When this Integrity Committee

1 was set up by Executive Order, the agency and the IGs  
2 all got copies of the draft to review and make comment  
3 son.

4 We reviewed it, and it looked to us like the  
5 ECIE Inspector Generals, which includes us, were not  
6 covered by it.

7 We recommended to Mr. Eakeley that he comment  
8 back to the drafters of the Executive Order with  
9 changes that would make sure that the ECIE was covered  
10 by the Integrity Committee, and he did that, and the  
11 changes were made in the final that was signed by the  
12 President.

13 We gave the Board most recently I think, in  
14 November, a bound document that has a label on it  
15 called something like Reference Materials for the  
16 Inspector General, and it includes the IG Act.

17 It has a tab that says, "Allegations against  
18 the Inspector General." This Executive Order that sets  
19 up the Integrity Committee is in there. So, I mean,  
20 you all should have easy access to it.

21 And that's all. I was just elaborating  
22 informationally.

1 MR. McCALPIN: We do have that. We consulted  
2 it. We were aware of it.

3 CHAIR BATTLE: Is there anything else relating  
4 to this procedure?

5 (No response.)

6 CHAIR BATTLE: If there's nothing else, then  
7 we can resume our agenda.

8 The next item that we have on our agenda is to  
9 "Consider and act on final revisions to 45 CFR Part  
10 1610, the Corporation's regulation governing the use of  
11 non-LSC Funds."

12 We'll handle this one and then we'll take a  
13 lunch break.

14 (A discussion was held off the record.)

15 CHAIR BATTLE: Let's go ahead and take a lunch  
16 break now, and then resume in 45 minutes from now. In  
17 45 minutes from now, we'll resume with 1610.

18 (Whereupon, at 12:27 p.m., a luncheon recess  
19 was taken.)

20

## A F T E R N O O N   S E S S I O N

(1:28 p.m.)

1  
2  
3           CHAIR BATTLE: I think we have all of our  
4 Committee members and we are past our afternoon startup  
5 time, so I'm going to start the meeting and call it  
6 back to order, to continue along the agenda adopted at  
7 the onset of this meeting.

8           We now have for consideration the next item on  
9 our agenda, which is, "Consider and act on final  
10 revisions to 45 CFR Part 1610, the Corporation's  
11 regulation governing the use of non-LSC Funds."

12           You should have before you a copy provided by  
13 the staff with analysis of the commentary and a  
14 proposed final reg on the use of non-LSC funds under  
15 1610.

16           Suzanne and John, would you care to give us a  
17 summary of the commentary, and also just a brief review  
18 of the final reg?

19           MS. GLASOW: The Corporation published this  
20 rule as an Interim Rule on March 14th. We received  
21 three timely comments, and a total of seven altogether,  
22 all of which were thoroughly considered.

1           The purpose of the Interim Rule was to  
2 preserve the statutory system created by Congress and  
3 yet provide an avenue for free expression for any  
4 organizations with which recipients may have some  
5 dealings or relationship.

6           Probably the best way to describe this rule is  
7 to start with the text. I would suggest going to  
8 Section 7 first.

9           Sections 7 and 8 really contain the major  
10 changes to this rule, and then I can refer to other  
11 conforming changes in the rest of the rule as  
12 necessary, so it will make more sense in the context of  
13 the major changes.

14           In Section 8, which will be on Page 14 of the  
15 memo -- Section 7, excuse me -- in this section, we  
16 deleted the provision that stated that restrictions in  
17 this part would be applied to any non-LSC funds  
18 transferred by recipient. We deleted that provision.

19           CHAIR BATTLE: The language that we had in  
20 1610.7 previously stated "transfers of recipient  
21 funds," which could have been either LSC or non-LSC  
22 funds. And this change further clarifies that this

1 particular provision pertains solely to the transfer of  
2 LSC funds; is that correct?

3 MS. GLASOW: That's correct.

4 CHAIR BATTLE: Okay.

5 MS. GLASOW: And I would point out that the  
6 Interim Rule deleted the provision on transfer of  
7 non-LSC funds, and we recommend continuing the Interim  
8 Rule's deletion of that. We do not recommend putting  
9 it back in.

10 So this, the text we've given you today,  
11 reflects the deletion of the transfer of non-LSC funds  
12 provisions.

13 We made a few clarifying changes that you will  
14 see in bold, in Paragraph (a). It just clarifies the  
15 meaning, if a recipient transfers LSC funds to another  
16 person or entity. And throughout, we've added LSC  
17 funds to clarify that we're only talking about a  
18 transfer of LSC funds, now.

19 That's really the only change in Section 7.

20 In Section 8, where the major change to this  
21 rule was made, the Interim Rule contained two major  
22 parts.

1           The first part was called the Control Section,  
2 or the section that would have determined that there  
3 was an affiliation, because of control, between the  
4 recipient and another organization, and there were  
5 factors which were listed that would be considered to  
6 determine whether that control or relationship existed.

7           Comments on this provision basically stated  
8 that they didn't understand what the factors meant,  
9 that they were not clear.

10           And internally, the Inspector General's Office  
11 pointed out that a situation created by having this  
12 first part of the test was that the Corporation would  
13 have no avenue to regulate any kind of a relationship  
14 that a recipient had with an organization to which it  
15 was not affiliated, so that a recipient could transfer  
16 large sums of non-LSC funds to a non-affiliated  
17 organization and share facilities, staff, and other  
18 resources, and maintaining what we put in the Interim  
19 Rule would not give us authority to regulate that.

20           So we agreed with the comments that the  
21 factors in the Control Section in Paragraph (a) were  
22 unclear and, in our review, we determined that the main

1 factors that the GAO Report had done in 1985 to look at  
2 relationships of recipients with organizations were  
3 really reflected in the Program Integrity Standards,  
4 which is the next part of this test.

5 So we recommend taking out all of Paragraph  
6 (a) and dropping the inter-related organization test,  
7 which, with the few revisions we've made in the second  
8 step of this, which is in Paragraph (b), would allow  
9 the Corporation to look at relationships that a  
10 recipient has both with affiliated organizations and  
11 with organizations to which they are not affiliated.

12 The second part of this test also has very  
13 clear factors and it just simplifies the whole process,  
14 and I think it responds to the comments that were made  
15 in terms of, you know, a desire to have more clarity in  
16 the whole test.

17 CHAIR BATTLE: Isn't that really a new Section  
18 (a), as opposed to Section (b)?

19 MS. GLASOW: Yes. If you agree to delete the  
20 inter-related organization test, which was Paragraph  
21 (a), then what was Paragraph (b) in the Interim Rule  
22 will now become Paragraph (a).

1 CHAIR BATTLE: Let me see if I understand,  
2 just for clarification.

3 We're deleting the inter-related organizations  
4 and establishing an objective integrity and  
5 independence test for all organizations?

6 MS. GLASOW: Right.

7 CHAIR BATTLE: Which would cover everything?

8 MS. GLASOW: Right.

9 CHAIR BATTLE: Okay.

10 MS. GLASOW: And if you look at, on Page 17,  
11 the new Paragraph (a), we revised the introductory  
12 language to that paragraph to reflect the fact that  
13 we've dropped the inter-related organization test.

14 So now it requires a recipient to have  
15 objective integrity and independence from any  
16 organization that engages in restricted activities, and  
17 then we list the test.

18 We said, "A recipient will be found to have  
19 the objective integrity and independence," and we list  
20 three factors.

21 The first one is that the other organization  
22 is a legally separate entity. We did this for two

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1 reasons.

2 This prevents kind of a sham relationship, so  
3 it's really one organization and it's just they're  
4 trying to, in essence, suggest that it's another  
5 organization but they're really acting as one.

6 The other reason -- which I forget -- just a  
7 minute, I'll remind myself. I had another reason. Oh,  
8 I remember.

9 We didn't want to confuse this test with the  
10 one that was used in the Supreme Court case, the Rust  
11 v. Sullivan case, because, in that situation, you had a  
12 program within a recipient and the separation was  
13 between programs within a recipient.

14 It's very clear in our Appropriations Act that  
15 Congress considers the recipient to be the program and  
16 the project. So everything a recipient does is subject  
17 to the restrictions that apply to all the recipient's  
18 funds.

19 So the avenue we are allowing for free  
20 expression is through another organization. It cannot  
21 be a project within a recipient. So we are requiring  
22 that the other organization be legally separate.

1           The second requirement is that the  
2 organization receive no transfer of LSC funds and LSC  
3 funds do not subsidize restricted activities. There  
4 are two points to this I would like to make.

5           Number one, we've added the words "transfer of  
6 LSC funds." This was not in the Interim Rule, because  
7 it was not clear whether we meant any payment of LSC  
8 funds for, you know, a cleaning service or repair  
9 service to your machines or anything.

10           So we're using a term that is defined in this  
11 rule. And if you look on Page 12, you will see we have  
12 added clarifying language to the term "transfer" so  
13 that it's clear what that means in our Program  
14 Integrity Standard.

15           So we not only define what a transfer is. A  
16 transfer means a payment of LSC funds by a recipient.  
17 And we suggest adding "to a person or entity for the  
18 purpose of conducting programmatic activities." And  
19 you can read the rest of that.

20           We also define what a transfer of LSC funds  
21 does not mean. It does not include any payment to  
22 vendors, accountants, or other providers of goods or

1 services made by the recipient in the normal course of  
2 business.

3 That definition is consistent with the  
4 definition of "subgrant" that we've had in 1627 for  
5 many years.

6 CHAIR BATTLE: Would we need to amend the  
7 second sentence to read, "Transfer of LSC funds does  
8 not include any payment of" --

9 MS. GLASOW: Yes. That would be good.

10 CHAIR BATTLE: All right.

11 MS. GLASOW: If we go back to Page 18  
12 -- subsidization, where is that? -- 17, I'm sorry.  
13 Okay. (a)(2). The organization -- we describe the  
14 transfer part, but the second part says, "and LSC funds  
15 do not subsidize restricted activities."

16 Some of the comments asked us to define  
17 subsidize but, instead of putting the definition in the  
18 rule, we suggest explaining it in the commentary and,  
19 on Page 6, I have some language that will be basically  
20 in the commentary to the final rule.

21 What we mean by "to subsidize," it's intended  
22 to mean payment for a restricted activity or payment to

1 cover overhead relating to a restricted activity,  
2 payment for the activity, or for any overhead. It also  
3 includes any in-kind contribution for a restricted  
4 activity.

5 We basically have said that if LSC funds pay  
6 for equipment that is used by the other organization,  
7 the other organization doesn't pay fair market price  
8 for the use of those facilities, that will be  
9 considered a subsidation.

10 We also want to clarify that the fact that an  
11 entity is paying for the use of facilities or resources  
12 does not mean that they don't also have to comply with  
13 the separation factors. I mean, that's not sufficient  
14 separation, paying for it. They also have to keep  
15 real, actual separation according to the program  
16 integrity factors.

17 Okay. Back on Page 17. The third requirement  
18 is that the recipient is physically and financially  
19 separate from the organization, and your bookkeeping is  
20 not sufficient.

21 On Page 18, the language that's been taken out  
22 is again to reflect that we've changed the test

1 somewhat and gotten rid of the inter-related  
2 organization test and moved wording around.

3 The bolded language says, "Whether sufficient  
4 physical and financial separation exists will be  
5 determined on a case-by-case basis and based on a  
6 totality of the facts."

7 This was a question raised in comments. They  
8 were unclear as to whether any one factor would be  
9 determinative and whether it was a case-by-case basis,  
10 and basically asked that there be some flexibility in  
11 the test.

12 We've accommodated that by this language, and  
13 we've said that the presence or absence of any one or  
14 more factors will not be determinative. And then we go  
15 on to list the factors that the Corporation will look  
16 at to determine whether they have sufficient separation  
17 of physical and financial matters.

18 The first one is the existence of separate  
19 personnel.

20 The second is the existence of separate  
21 accounting and timekeeping records.

22 The third is the degree of separation of

1 facilities in which prohibited activities occur and the  
2 extent of such prohibited activities. And we mean the  
3 extent that prohibited activities are done within the  
4 facilities.

5 And the fourth is the extent to which signs  
6 and other forms of identification which distinguish the  
7 recipient from the organization are present.

8 So those are the factors we will look at to  
9 see whether there's financial and physical separation.

10 MR. ERLBORN: Could I ask, where is  
11 "prohibited activities" defined?

12 MS. GLASOW: Actually, the definitions early  
13 on in this rule define -- the first definition,  
14 "Purpose prohibited by the LSC Act," defines all the  
15 restrictions that are in the LSC Act that are  
16 considered to be prohibited purposes.

17 And then Paragraph (b) lists the restrictions  
18 that are in our Appropriations Act, which reach all  
19 funds.

20 Actually, I intended to change where I had  
21 "prohibited" in here to "restricted," and I would like  
22 to make that correction throughout, as I edit this,

1 because the word "prohibited" has a specific meaning in  
2 the LSC Act that's a little bit different than the  
3 restrictions in 504, so I would like to use a more  
4 generic term, "restricted," instead of "prohibited,"  
5 and I thought I had fixed that, but I see in a few  
6 places it's still there.

7 MS. BERGMARK: So, Suzanne, you would like to  
8 change the word "prohibited" to "restricted" --

9 MS. GLASOW: Right

10 MS. BERGMARK: -- in (iii)?

11 MS. GLASOW: Right. The reason we --

12 CHAIR BATTLE: What does that do to your  
13 definition that you just pointed out to John?

14 MS. GLASOW: The reason we're using  
15 "restricted" is because 1610 itself doesn't restrict  
16 the activities. We have different particular rules  
17 that deal with each of those restrictions.

18 What 1610 does is say where non-LSC funds  
19 apply to those restrictions. In one case, it's just  
20 private funds, in another case, it's all recipient  
21 funds.

22 So it was pointed out that this part, in

1 essence, doesn't really restrict them. It just applies  
2 private funds, non-LSC fund application to them.

3 So we can clarify in the commentary that when  
4 we say restricted activities, it would be those  
5 activities that are listed under those two definitions,  
6 and clarify that.

7 CHAIR BATTLE: In essence, before we get to  
8 the final provision in this reg, by removing the 1610-8  
9 section which dealt with program integrity of a  
10 recipient and adding a singular test under (a) in its  
11 place, we are ostensibly -- are we getting closer to  
12 mirroring what we are intending to mirror in terms of  
13 the appropriate screen for providing an alternative  
14 vehicle for expression under the First Amendment?

15 MS. GLASOW: That is correct. This test is  
16 very, very close to the Rust test. I mean, it's just  
17 about as close as you can get, except that you're  
18 dealing with different organizations.

19 And dropping the inter-related organization  
20 test, as I said, allows us to regulate more  
21 circumstances, which would be both organizations with  
22 which they are affiliated and those with which they

1 have some dealings, but there is no affiliation.

2 CHAIR BATTLE: Which was our initial intent in  
3 the first place, until we re-read this; is that right?

4 MS. GLASOW: We didn't realize, in essence,  
5 the loophole that existed there.

6 CHAIR BATTLE: Okay.

7 MS. GLASOW: The very last paragraph of this  
8 section, which we put in here to ensure accountability  
9 and enforcement, is Paragraph (d). We've made some  
10 revisions, so I will read this to you according to the  
11 revisions that the staff has made since we drafted  
12 this:

13 "Each recipient's governing body must certify  
14 to the corporation within 180 days of the effective  
15 date of this part that it is compliance with the  
16 requirements of this section. Thereafter, the  
17 recipient must certify such compliance to the  
18 Corporation on an annual basis."

19 MR. ERLNBORN: What is the annual basis.  
20 Would that be the anniversary date of the first  
21 certification, or would it be a date certain for all  
22 programs?

1 MR. TULL: It might not be the anniversary  
2 date of the 180 days. We are, with regard to all  
3 reporting from programs, seeking to have that happen  
4 simultaneously so we can minimize the burden to  
5 programs, and we would intend to do that with this, as  
6 well.

7 MR. ERLNBORN: And that could be accommodated  
8 within this language?

9 MR. TULL: Yes, I believe so.

10 MS. GLASOW: The last change made to this  
11 rule, other than technical ones -- you'll see in the  
12 table of contents on Page 9, we made technical changes.  
13 But also on Page 9, we added language to the purpose  
14 section to reflect this Program Integrity section that  
15 is now in the rule.

16 CHAIR BATTLE: Are there any other questions,  
17 comments? Are we prepared, then, to vote to recommend  
18 that the Board adopt a final?

19 MS. PERLE: I have several comments.

20 CHAIR BATTLE: Oh, okay. I'm sorry. I said  
21 comments, and I didn't see you.

22 MS. PERLE: Some of them are sort of -- I have

1 some problems with some of the language that's in the  
2 commentary that you received. But I think that, since  
3 that will be revised before it's actually sent to the  
4 Federal Register, we will have an opportunity to work  
5 on that, since you're not voting on that.

6 I'm going to same those comments for  
7 discussions with Suzanne and John, and I think that we  
8 will be able to work those out. I think we are  
9 basically in agreement about what the rules intended to  
10 say. I just have some problems with the way it's  
11 actually stated on occasion.

12 CHAIR BATTLE: Right. And our vote will be  
13 limited to the final rule which we are going to  
14 recommend that the Board adopt.

15 MS. PERLE: I understand that. I have some  
16 general problems with the way the objective integrity  
17 and independence standards are stated.

18 In our comments, we said that it was necessary  
19 to give programs some flexibility, but there were some  
20 lines that were drawn there that -- some of the lines  
21 that were drawn were reasonable, and I think that gave  
22 programs guidance. Others were drawn, I think, in the

1 wrong place, but were somewhat clearer.

2 I think that what this does is, it does set up  
3 a situation where potentially arrangements that  
4 programs have had with other organizations, which the  
5 Corporation decided were perfectly fine under the old  
6 set of guidelines, now are going to be called into  
7 question again, because this does not -- the way this  
8 is set up, it says these are factors to be considered,  
9 it's going to be on a case by case basis, nothing is  
10 determinative.

11 And, as a result, programs are going to say,  
12 "Okay, well, I have this. It was okay under the old  
13 rules. Is it still okay?" Or, "I want to do this and  
14 somebody else did something that's very similar that  
15 was okay. Is this going to be okay?"

16 And, as I said to Suzanne, I think that my  
17 office will get a thousand phone calls from programs  
18 that wish to have some sort of a relationship, rent  
19 space, or, you know, somebody comes to them and says,  
20 "I want to work part time for you and I'm going to go  
21 work part time for somebody else."

22 And those are kinds of things that are going

1 to be difficult to sort out, and what I've suggested is  
2 that the Corporation, within the 180 days that they've  
3 set out for the certification process, provide programs  
4 some guidance as to how these factors are going to be  
5 applied. I think that's going to be essential.

6 CHAIR BATTLE: Thank you.

7 MS. PERLE: I have one other point.

8 CHAIR BATTLE: Okay.

9 MS. PERLE: I have some problem with the  
10 language on Page 18, in (iii), where it says, "The  
11 extent of such restricted activities ...." It's not  
12 clear to me, just in terms of the sentence, what it  
13 means.

14 I don't disagree in terms of what they're  
15 suggesting that it means, and I think that we might  
16 want to think about working on some of the language so  
17 that the two things seem to be connected. The way it's  
18 written, they don't seem to be connected. So I have  
19 that problem with that language.

20 I mean, I think otherwise this -- assuming  
21 that the Corporation does provide that guidance to  
22 programs, I think that this version comes much closer

1 to what I think Rust was aiming at.

2 And, you know, I'm not in a position to judge  
3 whether the courts will agree or not, but I think that  
4 this is a legally better framework.

5 I also don't know exactly how much more  
6 flexibility in fact this is going to give the programs.  
7 It depends in part on how it's interpreted and how the  
8 Corporation applies the various factors.

9 But I think there are still the problems of  
10 small programs, or rural programs, and I don't think  
11 that this is necessarily going to make a whole lot of  
12 difference for some of those programs, but it may.

13 CHAIR BATTLE: Okay. Thank you very much.

14 MS. PERLE: I also am very happy about the  
15 clarifications in the language on transfer. I think  
16 that makes a big difference.

17 CHAIR BATTLE: Okay, thank you.

18 MR. ERLNBORN: I just wanted to make a  
19 comment, not really an answer.

20 But the fact that arrangements that had been  
21 approved in the past may still be carried on I don't  
22 think in any way should grandfather those arrangements.

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1 It really has to be looked at in the light of the test  
2 of this regulation.

3 MS. PERLE: I do understand that. But I don't  
4 think that this test was intended to be a stricter test  
5 than what was in place before. I think the Corporation  
6 needs to kind of bear that in mind when it's looking at  
7 these.

8 MR. ERLENBORN: It may be a different test.  
9 And, in the mind of the one viewing it, it might be  
10 stricter or it may be less strict.

11 I think that you're right about needing  
12 guidance. If we're talking about a test that takes  
13 into account the totality of the facts, it's a case by  
14 case analysis, and you will probably be getting a lot  
15 of questions, as you say.

16 MS. PERLE: Oh, I know. But I want to have  
17 some guidance as to how to answer them.

18 MR. ERLENBORN: Right. I just suggest you  
19 tell them to contact the Corporation, and they will get  
20 their guidance there.

21 MS. PERLE: Okay.

22 CHAIR BATTLE: Is there anything further on

1 this? We appreciate the comments that we've heard and  
2 the discussion that we've had, and I want to find out  
3 if my committee is ready to vote on this.

4 M O T I O N

5 MR. ERLENBORN: Move its adoption as amended.

6 CHAIR BATTLE: Okay.

7 MS. WATLINGTON: Second.

8 CHAIR BATTLE: It's been so moved and seconded  
9 that we adopt as amended as a final rule, 1610.

10 All in favor.

11 (A chorus of ayes.)

12 CHAIR BATTLE: All opposed.

13 (No response.)

14 CHAIR BATTLE: The motion carries.

15 Okay. Thank you very much for your diligent  
16 work with regard to this regulation.

17 Next, we have "Consider and act on final  
18 revisions to 45 CFR Part 1639, the Corporation's  
19 regulation proscribing involvement in welfare reform."

20 MS. PERLE: May I say something?

21 CHAIR BATTLE: Sure.

22 MS. PERLE: As you can tell, Alan Houseman is

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1 not here today. Alan is taking a well-deserved  
2 vacation in Italy, which he planned around your prior  
3 Board scheduling. As you all know, Alan has really  
4 been the person who has worked most closely with the  
5 staff on comments on this regulation.

6 So I have asked De Miller, who is the director  
7 of Legal Services in New Jersey, who knows a whole lot  
8 more about welfare issues than I do, to join is to  
9 answer questions and to raise issues that I might not  
10 be quite sophisticated enough to handle.

11 So if you don't mind, I would appreciate it if  
12 De was allowed to sit with us.

13 CHAIR BATTLE: Yes. Mr. Miller, would you  
14 come to the table and join us. And welcome.

15 MR. MILLER: Thank you.

16 CHAIR BATTLE: I think that, since we have now  
17 received comments, Suzanne, if we could get just a  
18 brief analysis or summary of the comments that we  
19 received, and then what it is that the staff proposes  
20 as a final reg on 1639.

21 MS. GLASOW: Okay. We received more comments  
22 on this rule. We received 17 timely comments.

1           Basically, in the Interim Rule, we asked for  
2 comments on two definitions -- what should be included  
3 in "Federal or state welfare system" and what should be  
4 included in existing law.

5           On "Federal or state welfare system," most of  
6 the comments agreed that the child support provisions  
7 of the -- we're going to shorten the name of that act,  
8 and we're calling it the Personal Responsibility Act.

9           But it was the big Welfare Reform Act on the  
10 Hill that was passed that basically made a lot of  
11 changes to "welfare system."

12           We included reference to this Personal  
13 Responsibility Act in the definition of "Federal or  
14 state welfare system," but we accepted the child  
15 support provisions of Title III.

16           Most of the comments agreed to not include the  
17 child support provisions, but they did want us to put  
18 back -- they also wanted us to exclude from the  
19 definition the rest of the Personal Responsibility Act,  
20 except those provisions that had already been in the  
21 definition, which was the AFDC Title I Program, and the  
22 general assistance programs of states.

1           There were a few comments from public welfare  
2 agencies, the state agencies -- four, I believe -- and  
3 they actually not only agreed with including most of  
4 the Personal Responsibility Act, they also wanted us to  
5 put in the child welfare, child support, Title III  
6 Provisions.

7           The comments disagreeing with including most  
8 of the titles of the Personal Responsibility Act really  
9 based their arguments -- well, it was a variety of  
10 arguments, which I've laid out for you in this  
11 commentary. I won't go through all of it.

12           In essence, the arguments were that either a  
13 specific program was not welfare, because it was  
14 administered by the Department of Agriculture or the  
15 Social Security Administration, or they dealt with  
16 disability, and that wasn't welfare.

17           We looked at all these programs, and we found,  
18 number one, there doesn't seem to be a one dispositive  
19 definition of welfare.

20           I have provided a dictionary definition  
21 footnote on Page 4, for you. But there doesn't seem to  
22 be one dispositive definition.

1           In our review of the titles in the Personal  
2 Responsibility Act and talk with the committee up on  
3 the Hill, and just review of the legislative history,  
4 we recommend including all of the provisions of the  
5 Personal Responsibility Act except the child support.  
6 We do agree that that should not be included in the  
7 definition.

8           The other point which is the reason for our  
9 changing the form of the definition is, we realized  
10 that originally our definition was really trying to  
11 define exactly what a welfare program was, and we  
12 realized that putting in the Personal Responsibility  
13 Act was no longer defining what a program was, it was  
14 defining what programs had been reformed by Congress.

15           So we have changed the term to be defined to  
16 "an effort to reform a Federal or state welfare  
17 system," and, in doing that, we merged two definitions.

18           We merged the definition of "Federal or state  
19 welfare system" and the definition of "reform." That's  
20 reflected in the bottom of Page 11.

21           And, "an effort to reform a Federal or state  
22 welfare system" includes all of the provisions except

1 for the child support provisions of Title III of the  
2 Personal Responsibility/Work Opportunity Act," et  
3 cetera, "and subsequent legislation enacted by Congress  
4 or the states to" -- and we need to add a word that was  
5 left out -- "to implement, replace, or modify key  
6 components of the provisions of the Personal  
7 Responsibility Act or by states to replace or modify  
8 key components of their general assistance" -- and we  
9 decided we need to add some more language.

10 We meant to include a provision that was in  
11 the old definition which covers the general assistance  
12 programs. So it will say "general assistance or  
13 similar state means-tested programs conducted by states  
14 or counties with state funding or under state  
15 mandates."

16 This is exactly the same terminology that was  
17 used in the old definition. We just didn't pull it all  
18 over.

19 We are convinced, through our study, talks to  
20 people on the Hill, and our study of the law, that  
21 Congress intended for all of these provisions to be a  
22 reform of welfare/public benefit programs. We can't

1 find any dispositive definition of "welfare," but we  
2 believe that Congress intended all of these to be part  
3 of welfare reform provisions in their view, and so we  
4 recommend including all of those.

5 The second term we asked comments on was  
6 "existing law," and we made two changes to this term.

7 It was changed to clarify that the term refers  
8 to a law enacted to reform a Federal or state welfare  
9 system.

10 The reason we did that is because the way we  
11 used it before, it made the exception almost broader  
12 than the restriction, and we realized that it was  
13 really only applying to laws enacted to reform Federal  
14 or state welfare systems. All of the comments agreed  
15 with that.

16 The other change was to add -- in defining  
17 what "existing law" is, to include in "existing law"  
18 regulations.

19 And, except for the welfare agencies, there  
20 was a lot of comment that opposed this change, mostly  
21 based on the fact of the effect it would have on  
22 serving clients, because so many of our programs do

1 public benefit representation.

2 Some comments said that regulations do not  
3 reform the law, they simply implement it.

4 However, again, we have decided that it is  
5 congressional intent that we include that term in the  
6 definition of "existing law," and that regulations do,  
7 indeed, make law. That's why this whole case history  
8 on the substantive laws. And they fill in the gaps and  
9 they implement, but they do make law, and it is  
10 required to be followed by grantees or whoever is  
11 subject to the regulations.

12 So we basically recommend keeping in the word  
13 "regulation" in the definition of "existing law" and  
14 also the other change we made to it, to clarify that it  
15 refers to law enacted to reform the welfare system.

16 CHAIR BATTLE: One other technical change to  
17 (c), I think, to make it parallel to the definition  
18 that you have of "an effort to reform the Federal or  
19 state welfare system" is to change that last statement,  
20 "which are enacted as an effort to reform a Federal or  
21 state welfare system," since our definition is, "an  
22 effort to reform a Federal or state welfare system."

1 MS. GLASOW: Yes. That would be a good  
2 change, "enacted as an effort to reform," because then  
3 it complies with the definition that we have now.  
4 Okay.

5 Also, I will point out that Paragraph (c) will  
6 be (b) if we do delete the prior stuff up above.

7 And I have made a few conforming changes  
8 throughout the rule, I believe.

9 CHAIR BATTLE: Okay. Are there any other  
10 questions about this regulation from members of the  
11 Board and the Committee?

12 MR. ERLENBORN: I guess I have a question. I  
13 was not convinced one way or the other, in reading the  
14 comments, but I did have some concerns about the issue  
15 of regulations, whether regulations really are to be  
16 equated with enactments of the law.

17 As some of the commentators pointed out, the  
18 regulations may not be implementing the law, they may  
19 be contrary to the law. But, of course, that gets you,  
20 I guess, into a sticky wicket. How do you determine  
21 which regulations are subject to attack and which are  
22 not?

1           So I guess I need some assurance that we are  
2 doing the right thing by including regulations.

3           MS. PERLE: I think that's exactly the point  
4 that the community is concerned about. Here, De, take  
5 the mike.

6           MR. MILLER: That's one, I would say probably  
7 the first and major point that I would want to make  
8 here.

9           I think it's not so much an issue in the first  
10 instance of whether a regulation is law. If that were  
11 the only question that were asked, I think all of us as  
12 lawyers would say -- and observers -- would say "Yes."

13           I think the issue is, given that we are  
14 reading from a statutory, essentially exception, the  
15 issue is what happens when "existing law" appears to be  
16 in conflict, that there's statutory provision over here  
17 and a regulatory provision over here, and the two are  
18 in conflict.

19           So I think that, in general, the approach I  
20 would suggest to the Corporation would be not to take  
21 regulations out of the definition, but to create an  
22 exception for situations where the regulation is in

1 conflict with a statutory provision.

2 If you block that, you've really left -- in  
3 addition to leaving people without representation --  
4 you've really left almost a kind of a nonsensical,  
5 circular situation in which, as you were saying, the  
6 reg actually is elevated to the level of the statute  
7 and it sort of enjoys some kind of equal presumption of  
8 validity.

9 I think, in fact, the comments, which I had  
10 the opportunity to read through this morning, represent  
11 almost an anvil chorus, from the programs, from the  
12 field programs perspective, and from the ABA.

13 This was the point that the ABA standing  
14 committee addressed, as well, that regulations which  
15 are in conflict with statutory provisions really raise  
16 questions essentially of law enforcement, that the  
17 legislature or Congress has spoken, has indicated its  
18 will.

19 If the agency has gone off the track somewhat,  
20 then the client, in effect, and the client's lawyer,  
21 wind up representing almost the public interest to get  
22 that agency promulgation back on track, or at least

1 have that adjudicated.

2 So I'll address the other definitional  
3 question separately, but I think, from the field  
4 perspective -- thanks, John; this is a good symbol to  
5 the field, taking the mike away -- I think from the  
6 perspective of the field, this is far and away the  
7 critical change or rethinking that they would urge that  
8 the Board do.

9 MR. TULL: This is a circumstance in which the  
10 comments from the field and the recommendation of the  
11 staff does differ.

12 While what Mr. Miller said is certainly true,  
13 and the initial consideration of the committee in the  
14 first regulation was based on an analysis quite similar  
15 to what was just stated, I think what we discerned from  
16 congressional intent, from reaction to that, was a  
17 recognition that the niceties of whether it is  
18 enforcing or not enforcing welfare reform is really not  
19 the issue, that the congressional intent was that they  
20 do not want legal services programs engaged at all in  
21 the playing field in which these issues are considered,  
22 and that that may arise in the context of the

1 regulation, it may arise in the context of the statute,  
2 and that, since the playing field is really what is  
3 declared off limits, that the distinction between  
4 whether it is enforcing or not enforcing the statutory  
5 intent is what led the staff to make the recommendation  
6 there you have before you.

7 MR. MILLER: If I might take the mike back,  
8 private conversations with congressional staff are one  
9 piece of information. I think I actually heard you  
10 make this exact point a meeting ago, or a committee  
11 meeting ago.

12 One can search the congressional actual  
13 legislative history in vain, in this case, for a  
14 suggestion of an explicit intention, either (a), to  
15 include regulations or, (b), to block the ability to  
16 provide representation where the regulation is in the  
17 statute.

18 I think, to be fair, and acknowledging that  
19 there have been at least some conversations with some  
20 staff people, it is not in the legislative history in a  
21 way that resolves this definitively for the Board's  
22 consideration.

1 MS. PERLE: I just want to make two points.  
2 One is that, particularly with respect to the passage  
3 of state welfare reform provisions, which has been done  
4 in the wake of the Taniff provisions, in a very quick  
5 way -- oftentimes, state legislatures were forced to  
6 deal with a very complex statute -- I have a copy of  
7 the Personal Responsibility Act, and it's 500 pages  
8 thick, and it's very opaque; it's not something that's  
9 easy to deal with -- and being forced to do their state  
10 plans by July 1.

11 And then I don't know what the exact timeline  
12 is in terms of when they have to actually have their  
13 welfare reform provisions implemented, but the way  
14 state legislatures work and the time frames in which  
15 they operate, it's a very short period of time. It's  
16 very compressed.

17 And it's a process that's going to result in,  
18 you know -- and then forcing their agencies to  
19 implement those things very quickly thereafter.

20 There may be enough problems with the statutes  
21 that the states pass, but then the regulations that are  
22 going to be passed in response to that, there just may

1 be things that are incorrect, and that don't reflect  
2 what the state legislatures intended or what the  
3 Federal law intended.

4 I think that exactly the point that you made  
5 originally is what is very important here.

6 There was another point that I was going to  
7 make, and I can't remember what it was, so I'll have to  
8 say it later.

9 CHAIR BATTLE: As I hear the concerns that  
10 have been raised, there are two views, and both views,  
11 it seems to me, have a basis in merit.

12 One is that, when you talk about existing law  
13 and not challenging existing law, that the  
14 congressional intent, though the record is silent in  
15 specific terms, was that LSC dollars not be made  
16 available for any challenges, period. That's one read.

17 Another read, which is what I heard De say, is  
18 that a regulation which is out of compliance with the  
19 state law, if challenged to bring it in compliance with  
20 state law, is not an effort to reform outside of state  
21 law.

22 So I hear your concern, and it has merit.

1 What becomes of concern to me about how we resolve this  
2 is where and how you make the judgment call as to when  
3 your challenge is actually bringing it in compliance or  
4 when your challenge is one that really seeks to reform.

5 And, once you open that gate, then I think  
6 that there is some potential risk that some actions  
7 will be brought in the name of seeking to bring it in  
8 compliance when, actually, there's the potential for  
9 reform.

10 So there is a dilemma here. Certainly, as we  
11 just reviewed in 1610, there are sometimes when a  
12 bright line is just not easy.

13 But I wonder with this one whether, as we walk  
14 down this road -- and Linda, I am sensitive to what  
15 you're saying about how -- since this is so new, and we  
16 have this implementation in a lot of states, and some  
17 states have clues and some don't about what it is that  
18 they're doing -- how and where do we get these issues  
19 resolved for our clients and what ability do we have to  
20 participate and what ability do we absolutely not have  
21 to participate in the process of getting them solved?

22 MS. PERLE: John made a point that he thought

1 Congress intended us not to be involved in the arena.  
2 But Congress specifically accepted the individual  
3 representation piece.

4 And the problem is that, for many legal  
5 services lawyers, they feel that they cannot  
6 confidently represent their clients in seeking relief  
7 from a welfare agency on their particular claim,  
8 without at least preserving for a later time the claim  
9 that the regulation is inconsistent with the law.

10 So that the results will be that legal  
11 services programs will not do welfare cases, unless it  
12 is absolutely clear that it's a matter of "You apply  
13 the particular regulations to me in the wrong way, it's  
14 a factual thing, you got my income wrong," or whatever,  
15 and there will be a very limited range of cases.

16 I don't really think that is what Congress  
17 intended. I think Congress intended legal services  
18 programs to serve individual clients.

19 CHAIR BATTLE: I think you're right. There  
20 certainly is that exception. Justice Dana, did you  
21 want to weigh in on this?

22 JUSTICE DANA: Thank you, Madam Chairman.

1 Howard Dana, speaking for the American Bar Association.

2 We submitted comments on existing law, and  
3 wish, as we did in our comments, to associate ourselves  
4 with the comments you've heard today from either end of  
5 the table.

6 But I would like to say that, speaking as  
7 someone who sat where you are, I can sympathize with  
8 the job you have. You are caught between congressional  
9 staffers and courts and politicians and advocates, and  
10 are trying to do a job that may, in fact, be  
11 impossible.

12 It's evident to the American Bar Association  
13 that you are trying to do the best you can. However,  
14 you may or may not agree with the job that has been  
15 given you to do.

16 But we think that, absent some evidence other  
17 than personal statements by staffers, that Congress  
18 intended existing law to include illegal regulations,  
19 that you ought to let lawyers in America represent  
20 their clients and bring those illegalities and failures  
21 to reflect Congress and legislative intent, bring that  
22 to the courts, or represent their clients consistent

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1 with their view of what both Congress and state  
2 legislators intended.

3 Thank you.

4 CHAIR BATTLE: We certainly appreciate those  
5 comments, Justice Dana.

6 MR. ERLENBORN: Yes, thank you for your  
7 comments. I was just looking at this language that was  
8 apparently in the Act -- appropriations bill, I guess  
9 it was -- last year.

10 It says, "If such relief" -- this allows the  
11 individual representation of the client -- "If such  
12 relief does not involve an effort to amend or otherwise  
13 challenge existing law in effect on the date of the  
14 initiation of the representation" -- I guess if you  
15 want to get strictly legal about this, regulations are  
16 law. They have the force and effect of law.

17 You've suggested that it may be an illegal  
18 law, one that is not supported by statutory law. And,  
19 if you really get down to nitpicking, then you say, if  
20 the lawyer is successful in challenging the regulation,  
21 he's okay, because that wasn't really law. But, if he  
22 fails, then he's violated the Act, because it was

1 existing law.

2 That's a pretty tough place to be. It's  
3 between a rock and a hard place. And it's not very  
4 easy to resolve, in my mind.

5 CHAIR BATTLE: I think that capsules the real  
6 concern that this Committee has. If there was a window  
7 which gave bright measure to either argument, I think  
8 that we would err on the side of allowing the lawyers  
9 of America who represent the poor to be able to  
10 advocate whatever their positions on behalf of their  
11 clients, fully.

12 But there are restrictions on that advocacy  
13 that come out of this appropriation, and the "existing  
14 law" piece is the one, for me, that is most troubling,  
15 because of precisely what John has said.

16 When you use the term "existing law,"  
17 "regulations have full force and effect," and it's an  
18 outcome based test -- if you're successful, then you're  
19 right, it wasn't a challenge -- and even going in,  
20 under the guise of saying you're challenging existing  
21 law, one could raise a regulatory provision in an  
22 effort to reform it.

1           So we don't a way -- if there was a way to  
2 carve this out that had a bright line around it, I  
3 think we could be willing to carve it out, but there  
4 isn't. And, without that bright line, we get into the  
5 fuzzy area of having challenges take place that may be  
6 truly an effort to reform under the guise of changing  
7 the regulation to make it conform.

8           Courts down the line and other may say that  
9 this is nothing more than reform efforts. So it's a  
10 difficult decision that we have to make.

11           John.

12           MR. ERLENBORN: I noticed one other change  
13 here in describing regulations that, I believe, gave it  
14 a new definition -- not just regulations, per se, but  
15 those that have been adopted pursuant to hearing and  
16 opportunity to comment and so forth -- which I think  
17 raises this to a higher level, and rightly so.

18           The other question on my mind -- and I realize  
19 this would not be helpful in a legal services context  
20 -- doesn't this give those other than legal services-  
21 funded attorneys an opportunity -- because it is after  
22 notice and comment -- an opportunity to challenge the

1 adoption of these regulations?

2 Some of the commentators said that regulations  
3 might be adopted without notice and so forth, and that  
4 you wouldn't even have an opportunity to challenge,  
5 unless you did that in attacking the regulation after  
6 it's been adopted.

7 But at least with this new definition,  
8 whatever the organization might be that is not  
9 restricted by the Federal Government or someone else,  
10 some organization that would have the interests of the  
11 poor in mind, would have an opportunity, at least, to  
12 appear, file comments.

13 As a matter of fact, if they're not restricted  
14 as legal services attorneys, whoever they might be, if  
15 they have the wherewithal and the desire, could attack  
16 legally in court these regulations.

17 MS. PERLE: I think that in a state like New  
18 Jersey, which is fortunate to have legal services in  
19 New Jersey, which is no longer LSC funded and has a lot  
20 of expertise on welfare long, that that opportunity  
21 exists.

22 But I think that in Nebraska and Wyoming and

1 maybe Alabama and other places, there isn't necessarily  
2 that -- there aren't necessarily those lawyers  
3 available, willing, with sufficient understanding of  
4 the issues to make those challenges.

5 So I think that, you know, it's fine as far as  
6 it goes.

7 MR. MILLER: I would very much agree with your  
8 comment, that the change that was made that you  
9 referred to does raise the stake and increase the  
10 likelihood that the reg will be one that has at least  
11 had more thoughtful consideration, and we very much  
12 applaud that.

13 I think at the end of the day, though, to try  
14 to make this as simple in my mind as I can, it's a fair  
15 question, LaVeeda, in response to your thing about  
16 bright lines and no bright lines, it's a very fair  
17 question from a legal services program, looking at the  
18 appropriations language and then the reg and the client  
19 in front of the desk, what are we to take here, in the  
20 case of what we read as lawyers as a conflict, what are  
21 we to take as existing law.

22 And ultimately, in a world without

1 restrictions, the framers of the Constitution left that  
2 to the Judiciary to arbit. That's the whole role of  
3 the third branch of Government.

4 I think that it's important that the Board see  
5 through its struggle here, to give at least as much  
6 content and meaning and viability to the exception that  
7 Congress put in the appropriations language, the  
8 exception allow --

9 CHAIR BATTLE: Of individual representation?

10 MR. MILLER: Yeah. -- as it does to the  
11 general prohibition.

12 Somehow, I think it's important if you can, if  
13 you can find a pathway to read the two in concert, so  
14 that the exception isn't -- as Linda was kind of  
15 raising the prospect a few minutes ago -- so that the  
16 exception isn't essentially vitiated.

17 CHAIR BATTLE: De, just to follow that up  
18 -- and I'm just going to test that, because I think  
19 that there is an intersection of intent, congressional  
20 intents, in the appropriations language, between the  
21 exception which does allow for individual  
22 representation of a client and this whole notion of an

1 effort to reform a system as opposed to a systems  
2 reform and an individual client's representation.

3           What would you say to what your understanding  
4 of congressional intent was if, in order to  
5 individually represent a client, and the circumstances  
6 in which that client finds himself under this new  
7 Welfare Reform Act, if you had to challenge some  
8 provision of the Act as having some constitutional  
9 infirmity? By that, I mean the Welfare Responsibility  
10 Act.

11           MR. MILLER: As you can well imagine, when we  
12 first read the appropriations language, we gave a lot  
13 of thought to that very possibility, among others.

14           I think it is a very -- it's a significantly  
15 different argument to say that we are going to have  
16 this client choose to ignore now, not regulatory law,  
17 but statutory law, kind of in the face of our vision of  
18 a constitutional violation which may -- I know you're  
19 familiar with constitutional law, very well -- be  
20 largely unexpressed, largely undetailed, largely  
21 uncharted waters.

22           I think that's -- I mean, we thought about

1 that. That's not the issue really before us today.

2 But I see that as a very, very different  
3 situation, and a harder one to argue for, than where  
4 you have an explicit statutory provision, and then a  
5 reg, which is lower -- I mean, it's implementing a  
6 congressional or legislative will, it is not equal  
7 -- that tends to violate that explicit statute.

8 I think that's the difference, for me, at  
9 least, and it's a much easier and, frankly, more,  
10 practically more important case for me to say that  
11 where there's a statute, and the statute appears to go  
12 in a different direction from the regulation, that  
13 statute really needs to be honored and there needs to  
14 be room within this individual exception for a client  
15 to test that, with the help of a legal services office.

16 I'm not making the constitutional argument  
17 today.

18 CHAIR BATTLE: Sure. I guess the bottom line,  
19 as I see it, is, based on that, there is an  
20 intersection between what Congress would allow as  
21 individual representation and the kinds of things that  
22 you can do in that, and it's not unfettered, based on

1 these restrictions.

2 And the question is how far you go and what  
3 you can do, because of the limitations placed by  
4 provisions of the Act.

5 Okay. Ernestine?

6 MS. WATLINGTON: You know, it's very sad that  
7 the Congress has mandated legal services of attorneys,  
8 trying to see what they're saying, but the person that  
9 is really out there, needing it most, if they can't  
10 understand what they can do, can you imagine just how  
11 frustrating it is to the client community, when you put  
12 all these legal things in there?

13 It's very sad. You know, just being conscious  
14 of the client community, because I'm out there all the  
15 time and, you know, it's so confusing with all these  
16 legal minds. You can just imagine what this is doing.

17 MS. PERLE: And I'm really worried that the  
18 result of this change is going to be that more and more  
19 programs are just going to basically say, "It's too  
20 complicated, it's too" -- "We don't want to go close to  
21 the line. We're not going to do welfare work." You  
22 know, I think I made that point before.

1 I'm really, I'm concerned about that, very  
2 much, because they'll feel that what they can do for  
3 their clients is so limited that either they'll take  
4 the narrowest view, or they won't do it at all. And  
5 that concerns me.

6 As I said, I don't think that's what Congress  
7 intended, and Congress put in the exception for a  
8 reason.

9 MR. ERLENBORN: It's always difficult to tell  
10 what Congress intended.

11 MS. PERLE: I'm sure that's right.

12 CHAIR BATTLE: Spoken as someone who knows.

13 MS. PERLE: And there's probably 400 and  
14 however many views of what Congress meant.

15 MR. ERLENBORN: At least.

16 MS. GLASOW: This is a very difficult issue.  
17 I'll just point out that the exception has an  
18 exception, and it's really just before this Committee  
19 to determine which arguments have the most force in  
20 terms of what "existing law" in the exception to the  
21 exception means. That's what it boils down to.

22 CHAIR BATTLE: Tell me what you mean by

1 exception within an exception.

2 MS. GLASOW: Because the exception is that you  
3 can provide individual representation, but the  
4 exception to that is, as long as --

5 CHAIR BATTLE: It's not a challenge.

6 MS. GLASOW: -- that representation does not  
7 challenge, right.

8 CHAIR BATTLE: Okay.

9 MS. GLASOW: So it's really determining  
10 whether you -- you know, where you're comfortable in  
11 terms of the definition of "existing law" and what it  
12 includes.

13 CHAIR BATTLE: Well, I think we certainly have  
14 heard all of the arguments and reviewed the comments  
15 and recognize that there are some significant  
16 meritorious points made on all sides of this particular  
17 issue, and it is up to this Committee to make a  
18 decision about our understanding of what Congress  
19 intended, and rely on our best judgments in making that  
20 determination at this point.

21 Ernestine, you spoke to the frustration of  
22 clients in this whole situation, now knowing where they

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1 can go and get full representation on the issues that  
2 they need. And I think that's something that we  
3 certainly are concerned about and recognize.

4 And yet, the limitation, there is a limitation  
5 on individual representation that we all acknowledge,  
6 and the question is how far it goes and where we cut it  
7 off, is the real issue before us.

8 From what I heard you say, John, when you get  
9 down to it, when you start talking about what existing  
10 law is, it does include regulation.

11 And we have put a stricter definition on  
12 regulations to make it conform to those that have gone  
13 through a process of notice and comment, so that we're  
14 not talking about opinions and other things that might  
15 guide the system that haven't been through that  
16 process.

17 So that does give some definition, but it's  
18 not a complete exemption of the whole regulation issue  
19 that we have before us. It's splitting it, on a level  
20 that we at least acknowledge that there has been notice  
21 and comment and some formality to the process of what a  
22 regulation is in implementing a welfare law.

1 Do I have a motion on this? First, before we  
2 do that, are there any other issues that we need to  
3 address? Yes.

4 MR. MILLER: The second issue, which was  
5 covered in virtually all of the comments by legal  
6 services programs, was the sweep of your operational  
7 definition of the words "Federal or state welfare  
8 system," and specifically and narrowly whether the  
9 judgment this time around, as distinguished from the  
10 judgment that the Board made in passing the interim  
11 final regulation originally, to extend the sweep of  
12 those words past what is Title I of the Personal  
13 Responsibility Act -- I, too, will use the shorthand,  
14 because I can't pronounce the acronym. I make a fool  
15 of myself every time I try -- that section directly  
16 dealing with what I think 100 percent of the people  
17 here would agree is welfare, to the other titles in the  
18 Personal Responsibility Act.

19 And I just want to highlight what they are,  
20 just for the purposes of clarity.

21 CHAIR BATTLE: Okay.

22 MR. MILLER: One is, the next is Supplemental

1 Security Income, which essentially deals, as everyone  
2 here I think knows, with people who have varying forms  
3 of disability.

4 The next is a Child Support System, which the  
5 staff recommendation continues to be pulling that out  
6 of the definition of "welfare system," not including  
7 that.

8 Food Stamps; Child Care -- another  
9 title; Child Protection, otherwise known as the Child  
10 Welfare System, typically a division of Youth and  
11 Family Services in a particular state; Child Nutrition;  
12 and then a miscellaneous, catchall category, which has  
13 provisions relating to housing and other things.

14 I think the pretty strong conviction of legal  
15 services people, as you can see from the comments, is  
16 that it pushes the everyday understanding of welfare  
17 system -- not welfare. Not welfare in the sense of  
18 state constitutional law and broad delegations of  
19 authority, not sort of health and -- but welfare  
20 system.

21 It pushes that everyday definition well beyond  
22 normal margins, to start to rope in Child Protection

1 System, for example, whether or not a state agency is  
2 doing its job to move in and intervene and protect  
3 kids; Child Nutrition programs, which are typically  
4 feeding programs placed in school and that sort of  
5 thing.

6 Those are not the kinds of things that most  
7 people mean when they talk about a welfare system.  
8 It's part of a much broader system of government.

9 And, indeed, that very observation is what I  
10 think is most troubling at bottom about the  
11 comprehensive sweep of the staff recommendation at this  
12 point, because Congress did not say that it meant to  
13 bar legal services lawyers from representing clients  
14 who had grievances with Government agencies that were  
15 trying to provide services or act in the general public  
16 welfare. That's not what this language is.

17 I would respectfully submit that, if you give  
18 it the sweep of covering all of the titles of the  
19 Personal Responsibility Act, we begin to inch or maybe  
20 leap toward that kind of consequence.

21 So we would urge that you give very careful  
22 consideration to whether you want to expand it in that

1 way or whether you want to limit it to something that's  
2 much more conventional.

3 Here again, unfortunately, in terms of your  
4 task, just like with the issue you just discussed, you  
5 can look utterly in vain in the Congressional Record  
6 for any clarity in the expressed record about this.

7 Here again, there have been conversations at  
8 least with a staffer of one of the committees that was  
9 involved with this, as to what that staffer's  
10 impression was.

11 But the broader view of Congress is really  
12 just not in the written record here to provide you with  
13 guidance.

14 MS. GLASOW: I'd like to point out a couple of  
15 things. First of all, there were no comments on Title  
16 V and VI, which were the Child Protection and Child  
17 Care, so there was no argument not to include those.

18 Also, the fact that the programs that were  
19 mentioned are almost all based on income. Some serve  
20 higher income areas than others do. Either they serve  
21 the working poor or the poor.

22 And we just -- you know, those types of public

1 benefits, in our view, are welfare, because they are  
2 meant for the poor and the needy, and they're based on  
3 income. They're not provided to all citizens equally.

4 So, in our view, that's a form of welfare, at  
5 least from the indications we got from the different  
6 sources.

7 And we talk about the common, everyday view.  
8 I mean, I'm having a problem finding out where that's  
9 set out anywhere. There doesn't seem to be a common,  
10 everyday view. It certainly wasn't provided  
11 sufficiently in the comments to give us that type of  
12 authority that we could hang anything on.

13 CHAIR BATTLE: Now, Suzanne, let me  
14 understand. Out of the comments that we received,  
15 there were no comments saying which sections ought to  
16 be excluded. That would be helpful to me. Which ones  
17 did everybody agree ought to be included in the  
18 commentary?

19 MS. GLASOW: They all agreed that Child  
20 Support should be out except the social welfare  
21 agencies. They argued for the SSI not to be included.  
22 They argued for the Child Nutrition plans not to be

1 included, Food Stamps not to be included, and the alien  
2 provisions not to be included.

3 MR. MILLER: With all respect, Suzanne, the  
4 representation you made, which is that the none of the  
5 comments reached those titles, is simply inaccurate.

6 The very first comment in your book, which is  
7 from the Legal Services Corporation of Iowa, their  
8 point is a much more general point, as is true of  
9 several of the comments, that it shouldn't go past  
10 Title I.

11 It shouldn't be changed, is their position.  
12 Don't change what you have in the interim final reg.  
13 That is, I think, what most of them say.

14 In particularly, the Iowa one mentions Child  
15 Nutrition programs, and says, and I quote, "The same  
16 can be said for Child Protection, Food Stamps, SSI, and  
17 Child Care programs." So they do reach it.

18 MR. TULL: I think the issue here is a  
19 different one from precisely the way it is being framed  
20 in the colloquy which was just had.

21 This obviously is an area of extreme  
22 difficulty, to discern precise meaning, because it

1 revolves around a set of words which has to do with  
2 welfare reform, which is not well defined, and this  
3 regulation represents a continued effort on the part of  
4 this Board to define that in a way which is as  
5 reflective as possible of what Congress intended.

6 What we do have -- and I recognize the extreme  
7 danger of suggesting legislative intent from the  
8 popular name of an act.

9 But it was quite clear that what Congress  
10 intended, whether it's one which is accepted happily or  
11 not by those who would work on behalf of the poor, it  
12 is quite clear that Congress intended for recipients of  
13 LSC money not to be engaged in advocacy related to  
14 welfare reform.

15 When the Board first considered this, the  
16 definition of what is welfare reform was particularly  
17 difficult, because there was no Act yet. That was  
18 something that was on the floor of Congress and it had  
19 not been determined.

20 The Personal Responsibility Act does represent  
21 what was considered to be welfare reform by the  
22 Congress that passed it, and it does indeed cover a

1 number of aspects of a very broad system.

2 But the charge to this committee is to  
3 determine what Congress did mean by welfare reform, and  
4 we certainly have received very strong indications from  
5 them that their belief is what they said, which is that  
6 welfare reform is what is in that Act.

7 There is an exception, which is reflected in  
8 this regulation, which is on very specific grounds, and  
9 is an effort to respond to a particular problem  
10 regarding Title III.

11 But beyond that, it's difficult, based on the  
12 impact or the kinds of arguments -- unfortunately  
13 -- the kinds of arguments that were presented in the  
14 comments to parse among the various aspects of the  
15 Personal Responsibility Act and say, "This is included  
16 and this is not included."

17 CHAIR BATTLE: I think that John makes a point  
18 that at least I recall, about how we came to this,  
19 trying to come up with some sort of definition of what  
20 welfare is.

21 So maybe starting on the opposite end of the  
22 spectrum, as to who ultimately gets served out of these

1 various titles -- in Child Support, we do know that the  
2 provisions of that apply to people, irrespective of  
3 their income circumstance.

4 So with that, you know that it's not a  
5 particular provision that is reflective of  
6 congressional intent to serve our client base only. It  
7 affects people that aren't part of our client base.

8 Are there other sections that are not, in  
9 their basic intent, intended to serve our client base  
10 out of this?

11 When I think of Child Nutrition, I think of  
12 people who basically would -- their parents would  
13 qualify for our services, and they're getting a free  
14 lunch at school, as well and, if the parents don't like  
15 the fact that they've not been able to get that lunch  
16 or need to get that lunch, those parents would  
17 basically qualify for our services, for us to go and  
18 challenge whether or not they should or should not be  
19 in the program.

20 MR. MILLER: Just to accept what might have  
21 been an offer to pursue that line of thinking, the same  
22 could clearly be said, for openers, for the so-called

1 Child Protection or Child Welfare System.

2 The services of that activity, of the state  
3 agencies in that system are not at all income-linked.  
4 They are defined and generated by a set of statutory  
5 descriptions about the conditions of kids.

6 If that were a line that you were going to  
7 pursue, that comes up immediately.

8 There are others in the roster of things that  
9 are covered by the Personal Responsibility Act, and the  
10 next I would mention is Child Care, which are services  
11 some of which are targeted on low-income people and  
12 many of which are not Government-funded. They're on  
13 sliding fee scales and all sorts of things.

14 So the line, then, begins to get blurry fairly  
15 quickly.

16 The same is true of Child Nutrition programs,  
17 which are available usually again on a scale, for  
18 certain of the programs, depending on wealth, but it  
19 gets to be more complex.

20 There's four or five titles in there that are  
21 not, strictly speaking, only available in a means-  
22 tested or linked way.

1 MR. ERLNBORN: I have a question about the  
2 Child Support provisions.

3 In reading this, and seeing the comments from  
4 attorneys general and state welfare agencies, I had a  
5 question in my mind. What is it the legal services  
6 lawyers have done that have ticked off the attorneys  
7 general and the social welfare agencies to the extent  
8 that they seem to have been?

9 MS. GLASOW: Actually, I believe some research  
10 was done into this, and those agencies that commented  
11 apparently have the worst record of implementing Child  
12 Support under the Federal guidelines or laws, and they  
13 don't, clearly, want any litigation from attorneys  
14 further challenging their efforts to comply with the  
15 Federal Child Support issues.

16 I think the bottom line is, there, that want  
17 to preclude any litigation against them.

18 MR. ERLNBORN: Yes. I just couldn't imagine,  
19 because I'm not that familiar with the system, and I  
20 thought, what are they doing? Are they representing  
21 errant fathers and trying to keep them from being  
22 forced to support their children? It's not that.

1 CHAIR BATTLE: Well, we've, I think, fully  
2 fleshed out all of the various issues that we have  
3 before us on this front, and we have a recommendation  
4 from our staff with regard to it, and we've had a  
5 chance to hear, as well, from the field, legitimate  
6 concerns about the sweep of this proposal that we have  
7 before us.

8 Is there any other discussion that we need to  
9 have?

10 MR. ERLNBORN: I don't believe so.

11 CHAIR BATTLE: Okay.

12 MR. ERLNBORN: I wish we had all of our  
13 members here. We are a very small group to make this  
14 decision.

15 CHAIR BATTLE: We are. But I'll entertain a  
16 motion with regard to this, if that's all the  
17 discussion about -- I think those were the two major  
18 issues.

19 MS. GLASOW: I just want to get on the record,  
20 you can look on Page 13, the few changes.

21 On the very top line, take out the word "of"  
22 after "reform." That's an errant word. And, on Page

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1 12, "to reform a Federal" -- we just didn't drop that  
2 when we made the revision.

3 And, on Section 5, where it says,  
4 "1612.6(a)-(e), we're going to replace the dash with  
5 the word "through."

6 CHAIR BATTLE: Okay.

7 MS. GLASOW: I think that's it. And also just  
8 note that we're deleting Paragraph (d) because that's  
9 no longer applicable after the passage of the Personal  
10 Responsibility Act.

11 CHAIR BATTLE: Okay. Are there any other  
12 changes? This is, I guess, subject to us reading this  
13 whole thing aloud without all the other stuff in here,  
14 so we know that it reads well and makes sense.

15 Is there a recommendation from the committee?

16 M O T I O N

17 MR. ERLBORN: Realizing that this is a very  
18 difficult decision to make, and that it's not an easy  
19 call either emotionally or legally, but bearing in mind  
20 that I guess most lawyers would think that regulations  
21 come within the definition of law, and also bearing in  
22 mind the various forces that will be looking at what we

1 do here today and commenting on them, and taking  
2 further actions, and for a whole host of other reasons  
3 unexpressed, I will move that we recommend to the Board  
4 the adoption of 1639.

5 CHAIR BATTLE: As amended today?

6 MR. ERLNBORN: As amended.

7 CHAIR BATTLE: Okay. All right. Is there a  
8 second to that?

9 MS. WATLINGTON: To all that he said, yes.

10 CHAIR BATTLE: Okay. It's been properly moved  
11 and seconded.

12 All in favor.

13 (A chorus of ayes.)

14 CHAIR BATTLE: All opposed.

15 (No response.)

16 CHAIR BATTLE: The motion will carry.

17 With that very weighty and meaningful  
18 discussion, I think that we are at the end of our  
19 agenda for this afternoon, with the exception of  
20 "Consider and act on other business."

21 As I understand it, the Draft Personnel Rule  
22 we simply did not have an opportunity to get to this

1 time, and will at our next meeting, hopefully.

2 Is there anything else that we need to  
3 consider today, that anyone is aware of?

4 (No response.)

5 CHAIR BATTLE: Okay. If not, then I will  
6 entertain a motion to adjourn.

7 M O T I O N

8 MS. WATLINGTON: So moved.

9 MR. ERLENBORN: Second.

10 CHAIR BATTLE: Okay. Moved and seconded.

11 All in favor.

12 (A chorus of ayes.)

13 CHAIR BATTLE: Thank you very much for your  
14 very, very hard work. I think this is the end. This  
15 is a moment in time. We have now addressed every  
16 single reg that came out of the Appropriations Act and  
17 we have all the final regs.

18 MS. GLASOW: On the record, I would just like  
19 to say a "Thank you" to Joanne Gretch, who is not here,  
20 but she's been my right arm in doing all these  
21 regulations, and they would never get to the Federal  
22 Register in correct form if it weren't for her heroic

1 efforts, sometimes.

2 So I would just like to say "Thanks" to her,  
3 even though she's not here at the moment.

4 MS. PERLE: I have a footnote to what you  
5 said, LaVeeda, that you still have to finalize the  
6 provisions on the Kennedy Amendment under 1626.

7 CHAIR BATTLE: Oh, do we?

8 MS. PERLE: Yeah. That's going to be pretty  
9 pro forma.

10 CHAIR BATTLE: Well, we're not at the end.

11 MS. PERLE: We're pretty close.

12 CHAIR BATTLE: We will celebrate this moment  
13 when we get through 1626, is it?

14 MS. PERLE: Yeah. The alien provisions, the  
15 section for the victims of domestic abuse. If you  
16 recall, we issued that rule as a final, but those  
17 provisions were interim, because you hadn't received  
18 comments on them.

19 CHAIR BATTLE: Okay.

20 MS. BERGMARK: And not premature, to expand  
21 Suzanne's thanks to one staff member, to all of the  
22 staff members, Suzanne, you in the forefront of that,