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2           law, I don't need them for that purpose.

3           So having got them anyway rule 1.2(b), so I  
4           don't see why it's necessary.

5           CHAIRMAN CHEEK: Thank you, Dean, we  
6           very much appreciate it. Thank you, Ms.  
7           Teslik, for joining us and we are pleased  
8           and appreciate you coming.

9           MS. TESLIK: Thank you very much. I  
10          appreciate the opportunity to address the  
11          group as this. I will not pretend to be  
12          the kind of expert that some of your other  
13          speakers are and I will therefore focus for  
14          a few moments on the corporate governance  
15          aspects of your proposal and for even fewer  
16          moments on the lawyer aspects.

17          As you know, I represent the Council  
18          of Institutional Investors, which is an  
19          organization representing \$2 trillion of  
20          corporate union on and public pension plans  
21          that exist to address investment issues.  
22          They don't exist to address legal issues  
23          and therefore I have a limited ability to  
24          speak, quite apart from my own ignorance  
25          because I have to be careful to imply that

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2           members think things they do not. With  
3           regard to the governance aspects of the  
4           proposed standards, I think they go in the  
5           right direction and I will suggest only a  
6           couple of ways where they perhaps could go  
7           further.

8           I think you're absolutely right that  
9           the board is the key, that if we believe in  
10          a private sector, we believe in it because  
11          we believe owners take better care of their  
12          property than people who are not owners  
13          because of motivational reasons, so you  
14          need a board that represents the owners to  
15          perform that function. As we all know, the  
16          board when it doesn't perform that function  
17          largely does because it isn't in fact  
18          selected by owners, it is in fact selected  
19          by management.

20          The obvious solution to that is to  
21          arrange that the boards are selected by  
22          shareholders, but there are all sorts of  
23          problems with making that rule in largely  
24          publicly traded companies and we are  
25          realistic enough to know that it would be

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2                   unwise for us to ask for things we can't  
3                   get, we would only be ridiculed. So we  
4                   tend instead, as you have, to nip around  
5                   the edges and try to find substitutes for  
6                   what there ought to be, which is  
7                   shareholders actually select the  
8                   candidates.

9                   Right now we can vote for but we  
10                  cannot vote against people that management  
11                  select. If fifth graders picked their  
12                  teachers fifth graders would get As. So  
13                  it's not surprising that boards act slower  
14                  than rating agencies, slower than banks,  
15                  slower than the press with respect to  
16                  corporate oversight. So some of these  
17                  suggestions that you have made I think are  
18                  as good as you can get in the real world  
19                  for substitutes for the right thing.

20                 I think executive sessions are very  
21                 important. I think it's very wise to  
22                 suggest that they occur for the general  
23                 counsel, as well as for the board without  
24                 managers. We were very naive in the first  
25                 decade of the Council's history asking for

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2                   it, because many of us are stymied where we  
3                   don't know to whom do we go.

4                   For example, if a board member has a  
5                   concern, some of them say they feel that  
6                   it's not team playing or going behind  
7                   someone's back to call another director.  
8                   If they have a lead director or chairman  
9                   they can call or if an employee has a  
10                  hotline they can call, it just gets over  
11                  the barrier of should I say something and  
12                  if so to whom. Again, it has relatively  
13                  low cost to companies. So I applaud you  
14                  for those things which I think are in the  
15                  real world as good a substitute as we are  
16                  going to get for the fact that shareholders  
17                  don't pick the boards.

18                  There are a couple of areas where I  
19                  might suggest improvement. I know that you  
20                  duck the definition of independent director  
21                  but reference the New York Stock Exchange  
22                  standards. That is probably the only thing  
23                  that the New York Stock Exchange package  
24                  revised that disappointed us. We were  
25                  thrilled with the package in general, not

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2           by the Sarbanes-Oxley area that we care  
3           about, like not allowing brokers to vote  
4           when shareholders don't, one of the  
5           atrocities of the democratic system, but  
6           the definition of independence is still not  
7           quite what it should be. I think in  
8           essence it's easy, without getting into the  
9           particulars, to say that it's independent  
10          if one's only connection to the company is  
11          one's board seat, one's only non-trivial  
12          connection to the company.

13                 Right now that's not the case, not  
14          only with the New York Stock Exchange  
15          definition but unfortunately the  
16          requirements of the SEC currently has  
17          allowed many important connections to the  
18          company not even to be disclosed. As you  
19          know, in many of the major corporate  
20          meltdowns we discovered there were board  
21          members who had undisclosed payments. If  
22          you give a big payment to their university  
23          or their charity it doesn't have to be  
24          disclosed, that's a more tempting payment  
25          than one to the law firm which has to be

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2                   disclosed.

3                   We have rule making payment at the  
4                   SEC for four years now, very conservatively  
5                   drafted, asks that those remaining payments  
6                   to directors be disclosed. Essentially  
7                   ones to their charities, to their  
8                   universities that we haven't even turned  
9                   down. That's an easy one where one could  
10                  ask for at least additional information.  
11                  It's not that payments to directors are  
12                  bad, because sometimes someone is valuable  
13                  enough that the payment they get on the  
14                  side for something is fine.

15                  It's just that you look for patterns  
16                  and if every single person on the board has  
17                  a payment from the CEO you think are they  
18                  trying to buy silence, so you at least  
19                  would like to know, especially if it is an  
20                  unnecessary payment or one that was added  
21                  afterwards. If you see that the longer the  
22                  directors serve the more payments get added  
23                  to their columns, you would like to know  
24                  those things. That's one area where  
25                  perhaps a little more could be done.

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2                   The other is that we asked in our  
3 rule making that you disclose not just  
4 director's connection to the company, which  
5 is what everyone is focusing on, but  
6 director's connections to the CEO and any  
7 financial connections. As you know, Rite  
8 Aid has four directors who were  
9 co-investors in a real estate deal with the  
10 CEO, I would be more interested in a  
11 financial connection to the CEO than to the  
12 company. It's like more likely to be in  
13 the line of normal business to have a  
14 financial connection to the company than  
15 one to the CEO, it's probably more apt to  
16 be corrupted to have a financial connection  
17 to the CEO. You might consider whether you  
18 reveal financial connections between board  
19 members, we would see that in boards where  
20 we've been particularly disappointed.

21                   So there are just a couple of little  
22 tweaks there that might be worth thinking  
23 about. Only one thing to add and I'm not  
24 suggesting the right answer, I'm suggesting  
25 that there be a discussion about it.

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2                   Everywhere I go to speak where the audience  
3                   is corporate directors or senior corporate  
4                   officials, I ask them what they think would  
5                   be the right guidance for communication  
6                   between board members and not management  
7                   and shareholders.

8                   This matters because if shareholders  
9                   aren't going to select the board, it would  
10                  sure help if they could communicate with  
11                  the board, because at least the board could  
12                  put faces on the shareholders or have a  
13                  sense that not only are management living  
14                  and breathing human beings but the  
15                  shareholders are and they have views and  
16                  their views are known.

17                  Yet in most cases even when members  
18                  as large as council members want to talk to  
19                  corporate directors they are told to talk  
20                  to the CEO. Now, it's not an easy issue to  
21                  deal with because you don't want to have  
22                  the anarchy of so many individual investors  
23                  who write the most bizarre letters to us,  
24                  writing letters to corporate directors and  
25                  taking up all their time. I was just at

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2                   we're exploring policies on this for how  
3                   you could have, not overwhelming, an  
4                   ideally focused on corporate bottom line  
5                   issues, communications between directors  
6                   and shareholders. That might be the best  
7                   thing we can do to substitute for  
8                   shareholders not selecting the directors.

9                   I've seen no one who has a good  
10                  policy, although I was intrigued by the  
11                  U.K. example. That would be the only  
12                  addition that I would suggest where perhaps  
13                  the ABA might be very helpful in weighing  
14                  in, because you represent all the  
15                  constituencies that matter.

16                  Just a couple of words on your  
17                  actions with respect to your  
18                  recommendations regarding lawyers. First I  
19                  applaud you. I pick up today's papers and  
20                  read what the accounting profession is and  
21                  say thank goodness you're not there. What  
22                  has already happened with the Edwards  
23                  edition to the accounting process bill, if  
24                  you don't solve it somebody will do it for  
25                  you and the federal government is probably

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2                   going to be less good at it than you are  
3                   and the public relations effects will be  
4                   bad.

5                   My view of what's gone on with  
6                   respect to the regulation of accountants in  
7                   part of the document is that it's really  
8                   unfortunate and I'm not sure why it is that  
9                   the federal government is becoming what the  
10                  professional association ought to do for  
11                  most professions. I think it's partly  
12                  because there was outrage and the sense  
13                  that not enough was being done because the  
14                  POB was considered to be a non-entity.  
15                  Without regard for the Oxley decisions, I  
16                  think it's very wise to take a leadership  
17                  role because the door has been opened to  
18                  federal regulation of lawyers, as it has to  
19                  accountants, and I'm not sure that that  
20                  door is going to close.

21                  I attended part of a POI session  
22                  yesterday entitled "Ethics After Enron."  
23                  This was the only location, it was in  
24                  Washington and there were three people  
25                  there. Most of the morning was spent with

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2                   used at all.

3                   Some of the fretting over it reminds  
4                   me of the fretting I heard in some  
5                   conferences about the loans provision in  
6                   Sarbanes-Oxley, where lawyers are wringing  
7                   their hands saying because all loans to  
8                   executives are bad we can't have corporate  
9                   credit cards anymore. I said get a grip,  
10                  issue the credit cards, the SEC is not  
11                  coming after you for corporate credit  
12                  cards.

13                  I think there is some excessive  
14                  wringing of hands, although it is not my  
15                  area of expertise and it is not the area of  
16                  expertise of counsel or counsel policy. I  
17                  certainly feel personally that the  
18                  leadership shown by these rules might put  
19                  you in a very different position in the  
20                  accounting profession and might actually be  
21                  the right answer. That's all I have to  
22                  say.

23                  CHAIRMAN CHEEK: Thank you very  
24                  much. You and your organization obviously  
25                  have been really grand contributors to the

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2                   issuers.

3                   Plus, if we ask one to do it they  
4                   always say the other one is at a  
5                   competitive disadvantage. The best answer  
6                   is the SEC has to get a bid of courage here  
7                   and indeed, when I have been asked what  
8                   next after Sarbanes-Oxley, I would say I  
9                   would take the New York State Stock  
10                  Exchange standards and have the Commission  
11                  apply them with all the other exchanges.  
12                  The only thing fair that has gone on the  
13                  label is very good governance  
14                  recommendations that the other exchanges be  
15                  required to follow. I don't know another  
16                  way than a listing standard.

17                  I think the New York Stock Exchange  
18                  is secure enough about its position right  
19                  now compared to a number of years ago, that  
20                  it was willing to take the risk. There's a  
21                  lot more out there than this  
22                  recommendation, at least with respect to  
23                  our issuers, it seems like the easiest  
24                  thing is to get them to add it. I think  
25                  the Council would probably be happy to do

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2                   that jointly if this gets proposed and I  
3                   think they would be pretty receptive.

4                   MR. OLSON: It's quite remarkable  
5                   that the New York Stock Exchange, having  
6                   taken that strong leadership position, was  
7                   in effect told by the SEC to slow down  
8                   until NASDAQ could catch up. I refer from  
9                   your comments that you're not any happier  
10                  with NASDAQ proposing the independent  
11                  standards and they have objective  
12                  standards. For large companies the  
13                  objective threshold is so high that you  
14                  could drive a whole fleet of trucks through  
15                  it.

16                  MS. TESLIK: It's very  
17                  disappointing. Again, one could understand  
18                  why the first stock exchange was having  
19                  trouble doing it, but once the NYSE does it  
20                  why can't they do the same thing. Yes, it  
21                  was disappointing.

22                  MR. OLSON: Following up on your  
23                  U.K. experience, one possibility and maybe  
24                  two detailed for recommendation to be made  
25                  by a group such as this, is to give

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2           shareholders access to what is now going to  
3           be the mandatory ombuds person or  
4           confidential reporting process that  
5           companies are going to be implementing as  
6           these new standards come into play, both as  
7           a result of New York Stock Exchange  
8           proposal and Sarbanes-Oxley provisions  
9           requiring the financial reporting of  
10          confidentiality protection and the like.

11           The mechanisms are going to be in  
12          place, the cost is going to be sunk to put  
13          this in place. If your anecdotal  
14          information is correct, it wouldn't be  
15          terribly burdensome to give shareholders  
16          access to that process and then the  
17          ombudsman or the other confidential  
18          reporting vehicle within the corporation  
19          could prepare that summary of information  
20          and give it not only to management but to  
21          independent directors who can then  
22          determine whether follow-up was  
23          appropriate. It just occurs to me that one  
24          of the ideas is there could easily be a  
25          draft onto things that are already going to

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2 happen.

3 MS. TESLIK: I think that has a lot  
4 of appeal, in addition to the fact that the  
5 number of shareholders who file shareholder  
6 proposals want the board to know what they  
7 were thinking.

8 MR. OLSON: How useful is the  
9 shareholder proposal process?

10 MS. TESLIK: It has only one use and  
11 that is that it gets the issues in front of  
12 companies.

13 MS. PETERS: I have a question on  
14 this issues of communications as well. Has  
15 your organization, Council of Institutional  
16 Investors, ever attempted to communicate  
17 let's say in writing, I know that general  
18 counsel is apprehensive if you're  
19 telephoning their directors, but to send a  
20 direct communication to a member of the  
21 board of directors and found that you were  
22 stymied in doing so?

23 MS. TESLIK: Yes. It never occurred  
24 to us that we couldn't get through until in  
25 the Texaco bankruptcy, when it was agreed

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2                   that the institutional investors could have  
3                   a hand in selecting a director, and one was  
4                   selected who was punitively the one that  
5                   institutional investors wanted and a number  
6                   of our investors tried to contact him and  
7                   he said talk to the CEO.

8                   That was many years ago. Since then  
9                   we every now and then kind of for the fun  
10                  of it, keep testing the water and we keep  
11                  getting referred to management. You can  
12                  get the addresses, you can send it to the  
13                  company. Every now and then we will get a  
14                  call-back and I did. For example, a  
15                  director who resigned from one of the big  
16                  bank boards because of problems there I was  
17                  able to call and get a call back. The  
18                  person was no longer on the board but  
19                  generally speaking yes, it's a problem.

20                  HON. TENNILLE: You seem to have  
21                  conceded there is nothing that this group  
22                  can do about addressing and obtaining some  
23                  more accountability that way. If we were  
24                  to be so bold as to try to address that  
25                  issue, do you have any suggestions for us

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2           and do you have any response to the idea  
3           that former Chancellor Allen and Vice  
4           Chancellor Stein have recently voted that  
5           we perhaps go to the non-staggered  
6           three-year board and provide some changes.  
7           They did that in the mergers and  
8           acquisitions context, but it has some equal  
9           appeal when we're talking about governance  
10          issues.

11           MS. TESLIK: I have written  
12          editorials suggesting that we elect  
13          directors for one multi-year term. It's  
14          another substitute for the fact that  
15          shareholders are selected that they are more  
16          independent because they can't come back  
17          and once they are there they are there for  
18          five years and then they are gone. That's  
19          another way to get at the basic problem.

20                 Yes, we have thought about a variety  
21          of ways that without breeding chaos might  
22          give shareholders some kind of access to  
23          the proxy. You could say that if a company  
24          knows a majority report on a shareholder  
25          proposal three years in a row, that

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2           shareholders through some process would be  
3           allowed to nominate two directors.

4                     It's an absorbing level on the board  
5           so they could put people, in the same way  
6           they do now when they put their shareholder  
7           proposal on a management proxy, they can  
8           put two people on a management proxy if  
9           over two years there was an indication that  
10          the shareholder's views were not terribly  
11          valued by managers.

12                    The shareholder proposal is binding.  
13          Some of the suggestions in the proposals  
14          may be idiot and you don't want to force  
15          the company too, but you certainly could  
16          say if the fact that a majority of your  
17          shareholder's think something year after  
18          year doesn't get your juices going, then  
19          maybe new people on the board will. We try  
20          to think of ways that don't open up a  
21          pandora's box but to target the settings  
22          that's most important.

23                    You can also try to limit it by  
24          size. We have been reluctant ever to  
25          propose something that says only our guys

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2           have access. If you could give an  
3           exemption to 13(d) so shareholders are  
4           representing at least 15 percent of the  
5           shares. Without saying the shareholder  
6           itself has to be of a certain size, it has  
7           to be a selective group.

8           MR. JACOBS: Certainly often here on  
9           the corporate governance side concerns  
10          being expressed about the willingness of  
11          people to serve and the burden that's being  
12          imposed on them and balancing that with the  
13          compensation issue. Personally I don't  
14          find much substance to the concept that the  
15          pool of capable people is so small that we  
16          need to give that much time.

17          I am concerned about the  
18          compensation issue, that is to the extent  
19          that people are generally independent and  
20          are going to take the responsibility  
21          seriously and particularly they will start  
22          rotating them so they will be in a new job  
23          periodically. How do you compensate those  
24          independent directors without in fact  
25          making that position as a director so

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2 important to them that it dwarfs their day  
3 job?

4 MS. TESLIK: For directors with day  
5 jobs it's probably a little less important,  
6 no matter what the payment of the day job.

7 MR. JACOBS: The Dean of a business  
8 school who may be compensated handsomely by  
9 academic standards, but who easily could be  
10 receiving compensation from a board  
11 position that would exceed his entire  
12 academic compensation.

13 MS. TESLIK: It's a problem. I  
14 don't think there is an easy answer because  
15 you do have to pay directors a lot if you  
16 expect them to do the work that they are  
17 expected to do, that is important enough.  
18 The nominating committee takes into account  
19 that it should have directors that can walk  
20 away from a job.

21 My number one criteria for directors  
22 is not walking away from a job. When I get  
23 gossip from a company that there is a  
24 problem, the first thing I do is pull out  
25 the yellow book and I look on the board,

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2                   where there's no board overlap because they  
3                   are the most people capable to walk.  
4                   People assume that we are a political group  
5                   who loves to see a tasteful smattering of  
6                   all sorts of walks life on the board. With  
7                   respect to the shortage of directors we can  
8                   worry about that when it happens.

9                   MS. HENNESSY: Do you or the Council  
10                  have a definition of independent directors?

11                  MS. TESLIK: We do and it's on our  
12                  web site. It's on three levels, there is  
13                  the one sentence level that says you're  
14                  independent if you're only non-trivial  
15                  relationship with the company is your board  
16                  seat. Then we have a one-page thing that  
17                  says this means, then we have the footnotes  
18                  because we're lawyers.

19                  CHAIRMAN CHEEK: Thank you very  
20                  much, we appreciate you joining us this  
21                  morning. Mr. Rosner.

22                  MR. ROSNER: Mr. Chair, I am daunted  
23                  by the prospects of starting as you're  
24                  scheduled to have lunch and I am prepared.

25                  CHAIRMAN CHEEK: We have distributed