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P R O C E E D I N G S

MR. GUYNN: Okay, great. Thank you. Oh, should I just get started? Okay. All right. Why don't we get started here if we could? I've been looking forward to this for many, many months. This is going to be a fun panel, at least for me, where we're talking about transparency and accountability in the bank's supervision. We've got a great panel. Two people I don't think need much introduction to the people in this room which is, you know, all the way down to my right is Mike Gibson who's the director of supervision and regulation at the Federal Reserve.

Next to him is Doreen Eberley who is the director of Risk Management Supervision at the FDIC, so we have two of the most senior, most experienced supervisors here on the panel which is a great thing for us. Next to Doreen is Julie Anderson Hill who is a law professor at the University of Alabama School of Law. She is also the author of several articles relating to bank supervision including regulating bank reputation risk, "When Bank Examiners Get It Wrong": "Financial Institution Appeals of Supervisory Determinations" and

"Bank Capital Regulation by Enforcement".

And then to my immediate right is Peter Conti-Brown who's a professor at the Wharton School at the University of Pennsylvania I think both at the business school and the law school, if I'm right. I know you teach at both.

MR. CONTI-BROWN: Yes, and just the business school.

MR. GUYNN: Okay, just the business school. And he is also the author of *The Power and Independence of the Federal Reserve* which is a great book on the history of the Fed that I highly recommend if you haven't read it, and he's working on a book on the history of bank supervision. So I'm just going to set the table here for a minute, and then we're going to have an interactive discussion and people in the audience should feel free with their apps to send questions up here or we may end up reserving, you know, 10 minutes at the end for questions from the audience in sort of a traditional way.

But as I mentioned at the outset, the topic today is Transparency and Accountability in Bank

Supervision. I'd just like to point out that the Federal Reserve really has made a new commitment the last couple of years to transparency and accountability. Just last Friday, they published their third Financial Stability Report, and I understand that in the very near future they will publish their next supervision of regulation report.

I assume most people in this room have read those reports in the past. They're really quite remarkable in the sense that they actually disclose a lot of what otherwise would be confidential supervisory information on a generic aggregated basis, but nevertheless disclose. I've heard one person with the Federal Reserve refer to it as revealing the secrets of the temple or at least some of the secrets of the temple. I like that. The reports actually describe themselves as increasing or they're being designed to increase the transparency and accountability of the Federal Reserve to the public.

Now, I'm probably restating the obvious to people in this room, but it's important for this panel discussion to understand the difference between, or the distinction between, supervision and regulation. Regulation is the body of law created by the banking agencies that interprets or implements regulatory mandates that are in laws that are duly enacted by Congress. In contrast, supervision is the process by which banking agencies examine whether banks are conducting their operations in compliance with law including laws that require them to act in a safe and sound manner.

The process by which regulatory law is made is highly transparent and accountable to the public. For example, the Administrative Procedure Act requires all rules and regulations to be subject to public notice and comment with only a few narrow exceptions. In contrast, supervision is largely conducted behind closed doors. Moreover, the Federal Reserve takes the position that it's a criminal offense for regulated banks, their representatives and, at least in theory, their examiners to reveal what goes on behind those closed doors.

There are two classic justifications for confidential supervisory information. The first is to avoid triggering bank runs, and it may well be that a lot of the supervision occurs in an environment where bank runs aren't likely, but in some ways the justification is to keep things confidential now so that in a situation when you might have a bank run that the succinct (phonetic) to disclose that information might actually trigger a bank run. And then the other classic justification is to encourage banks to freely share competitively sensitive proprietary information with their bank supervisors.

So let me ask the first question to Mike Gibson, the director of supervision at the Fed, so let me just -- from the outset of his tenure as vice chairman for supervisor, Governor Quarles has stressed the importance of transparency in preserving and enhancing the Federal Reserve's efficiency, effectiveness, accountability and even his political legitimacy and independence.

In light of those comments, but in light of the fact that, you know, supervision's been largely shrouded in secrecy, what is the right balance in your view, and I'm going to sort of ask other people on the panel the same question. In your view, what is the right balance between transparency and secrecy in the bank's supervision process?

MR. GIBSON: Okay. Well, first of all, let me just say thanks for inviting me to join the panel. It's a great topic and I'm happy to talk about it and looking forward to the discussion with other panelists, and let me also say that, what I say is my own opinions, not the official position of the Federal Reserve, so I'll just give that standard disclaimer to start with.

Certainly I agree with Vice Chair Quarles, that, you know, transparency is important to what we do as bank supervisors, and I'm glad you mentioned the supervision report that we're doing now because we have been doing a lot over the recent period to increase transparency, so we recognize the importance of transparency, and we are doing more to provide more transparency. You mentioned the supervision report and that is a big initiative that we've undertaken. We've published two of those, and as you mentioned we're working on another one, the next edition.

The supervision report has information on banking conditions; it has information on regulatory developments, and has information on supervisory developments, and it's really the supervisory development section of the supervision report that has the most additional transparency because that's where we talk about aggregated information on supervisory ratings, aggregated information on supervisory findings, which means what areas are supervisors finding shortcomings and giving feedback to banks.

So appreciate the kind words about the report, and let me just say for the audience here, we're always interested in feedback, so if there's other things you'd like to see added to the report, we'd be happy to -- or I'd be happy to hear that in the future. We have actually other reports that we do that provide transparency into other aspects of supervision.

For a while now, we've been publishing a report on applications that talks about applications activity, how many applications come through, what the topics are, and the applications report does provide, again, some aggregated information on some of the areas that have caused difficulties for application which, you know, we think helps people understand the applications process and what are the factors that have led to applications not going through.

Another area that's important for transparency is that we publish all our supervisory guidance, so that's -- the main purpose of supervisory guidance is to provide transparency to the supervised institution so they understand how the supervisors are looking at particular issues. Often we'll seek public comment on the supervisory guidance, so we make sure we get the public input which often contributes to a better product, as we've learned.

You talked about the tradeoff between transparency or preserving banks' confidential information, and one area where we do provide firm-specific information on shortcomings that supervisors have found is through public enforcement actions, so those are usually the most serious violations of laws or regulations, and they are published with, you know, the name of the firm and a description of what were the shortcomings and what does the firm need to do to address the shortcomings, so it is used in, you know, limited cases, but all our enforcement actions are public; they're on our website.

And so that's how we have, you know, historically drawn the tradeoff between the firm-specific transparency versus aggregate transparency, and I guess last thing I would say on transparency is that it's very important in our training for our examiner that they understand that we have to keep confidential information confidential, so that includes the information we take in from supervised institutions that preserves the good dialog that you mentioned so there could be open discussion between the supervisors and the banks as well as our own information, as well as, you know, confidential data.

We lump that all under the heading of confidential information. We have a lot of training for our examiners around that. We have, you know, annual security reviews and things like that. So let me stop there, but definitely that's the way I would look at the tradeoff that you talked about.

MR. GUYNN: So, Doreen, I'd love to get a perspective from the FDIC supervision. Obviously Chairman McWilliams has also given various or delivered various speeches like Governor Quarles. I think one of our first speeches was Trust Through Transparency. In your view, what is the right balance between transparency and secrecy in this banks' revision process at the FDIC, and have things changed at all in the last, you know, year or two?

MS. EBERLEY: I'll pick up where Mike left off and I'll also say thank you for the invitation to participate today in the discussion. It really is the same. It's between the confidential supervisory information for an individual institution versus the aggregate information about the industry in trends that could be helpful in sharing more broadly.

That is what Chairman McWilliams challenged us to do with the trust through transparency initiative, so we have a website called Trust Through Transparency. It's on FDIC.gov. It's a webpage with that title where we publish the sorts of information that you would see in the Feds report. So Chairman McWilliams asked me a lot of questions when she first arrived at the FDIC, like, you know, what's your turnaround time on reports of examination; what about applications; do you have internal timeframes, what about appeals; are we publishing appeals information.

And so all of this information is now on this webpage. We're reporting our application turnaround time on an ongoing basis, rolling basis, for the most common types of applications that we receive and the ones that get the most interest, deposit and insurance applications. We tell you what our internal timeframe goals are for processing and what percentage of the time we make it, so trying to be very transparent about our processes.

We're reporting the information from the date the application was filed and the date the application was accepted as substantially complete. We know that's something that's raised questions in the past and wanted to be very transparent about that process.

We are reporting our report turnaround time. We're doing that from the start of the examination until the examination is mailed, so that's the day the examiners walk into the bank until the report of examination goes in the mail from the regional office, and we're publishing data on a request for review. So that's the first step before an appeal is filed with our Supervisory Appeals Review Committee.

The Supervisory Appeals Review Committee results have been public for a long time in redacted form. We are now publishing summaries of that first step because not every request for review that comes to me goes to the appeal process, so we're saying what were the issues and what was the result of the review that occurred at my level.

We're seeking feedback on all of our processes and I'm happy to take feedback today. We right now are conducting some outreach events. Ombudsman is engaging in roundtables in each of our regional offices to talk about the appeals process and to seek ideas and thoughts on ways that it could be made more robust. We don't mind being challenged. We embrace those conversations. We don't want institutions to be afraid to use the process.

And we're also, we have reassigned oversight of our survey process. After every examination, we ask bankers to give us some feedback on how it went, and we ask a variety of questions. We're looking to improve the response rate and so moved that over to our ombudsman office to see if we can encourage greater participation. We've been making public our internal procedures. So we've published the first part of our applications procedures. By the end of the year, we'll be pushing out our actual procedures for conducting examinations, the procedures examiners follow.

And then there is a number of other pieces of information that have been public for a number of years, the problem bank list. Not the list itself, but the number of institutions and the total assets. We publish that every quarter. I mentioned our supervisory appeals committee findings. And then we publish articles on examination trends, so you do have to look two places. It's not as convenient as the Feds one-stop shopping.

But through our supervisory insights we share information about trends on matters requiring more detention. You know, what percentage of institutions or examinations are having citations, what are they, what are the most common issues, commercial real estate reviews of institutions that have concentrations in commercial real estate.

We provided updates on that a couple of times, and then also underwriting surveys, so on a regular basis we'll provide a report of what we're seeing through our examiners' underwriting surveys, so we've tried to really enhance and increase the amount of information that we're putting out, but if you do look at FDIC.gov and then go to the transparency webpage, you'll find it all there.

MR. GUYNN: Okay, then just finally, Julie, and Peter, if you could give your own, you know, respectfully, your thoughts on whether the line or where the balance is struck as described by Mike and Doreen. Do you think that's the right balance; do you have any thoughts on where the balance should be struck?

MS. HILL: So all that is great, but I would like to see more. (laughter) And I also think that this line drawing shifts from time to time, and so while people today are saying transparency is great. You don't know if, you know, a few years from now that that's going to be the same sort of thought, and so I'd like to see more of the supervisory appeals from the Federal Reserve.

When I try to get those through FOIA several years, I had several rounds of appeals to get them to give me a summary table with very little information about their findings, and, you know, their argument, well, this is confidential supervisory; maybe people wouldn't appeal if part of it came out, and yet the FDIC's been doing it for a long time, and as near as I know they don't think that that's caused any sort of bank run, and so I'd like to see more like that. I also think we can do more to see that policies and procedures think that that's a good move on the part of the FDIC, but wouldn't folks like to know how, for example, the Federal Reserve evaluates applications from Astor accounts, please? (laughter)

So there's a very few things I'd like to see. I think there's a lot more that can be done on the transparency front other than what's currently being done and I'd like to see us move in that direction, but that's not to say that the efforts that you've taken so far haven't been welcome. I think they're definitely a step in the right direction.

MR. GUYNN: Peter?

MR. CONTI-BROWN: You know, I think maybe only Ambassador Sondland feels more conflicted about being in front of a microphone today than I do, and that's because I agree that transparency has a quality to it that is instrumental and largely very positive. But it's an instrumental quality; it's not an end goal because transparency can have some pretty harmful effects as well. So let me tell you where I think the Fed has more to do -- especially I'll be talking about the Fed, although some of this applied to the FDIC as well -- and where I think the Fed and other banking supervisors risk doing too much with respect to transparency.

So let me speak to you first as a historian, then as a lawyer. So as a historian writing and researching this book on the history of bank supervision from the Civil War to Dodd-Frank has been a joy, but it's also been extremely frustrating because the secrets of the temple are in fact under very heavy guard. Not only have I seen FOIA request after FOIA request denied and rejected, but I also got word from another scholar that in response to our inquiries and his own at the reserve banks, they literally started destroying documents.

I'm not talking about documents from 2008. I'm talking about documents from the 1920s and '30s. That to me as a historian just feels like the museum at Baghdad being looted. Just for an example, the bank holiday of 1933 was an exercise in supervision and examination. It wasn't just FDR giving a fireside chat and restoring confidence. It was a corps of thousands of examiners trying to relaunch a financial system. And what we know about that is very, very little.

What documentation existed about that is very, very high, and what the reserve banks, not agencies of the government, have done has basically said, oh, it's confidential supervisory information; we can't share it with you, and if you keep asking we're going to light it on fire. That sounds just awful to me and I think that the Fed and the other banking regulators need to formalize and systematize their recordkeeping for future generations. The idea that an examination report from 1933 is confidential supervisory information disclosure, which is criminal, is itself, I think, criminal.

The second, though, I think the Fed goes too far in some respects. And that is supervision as Randy said at the outset, although I'd quibble a little bit with his definitional framing, is different from regulation, and those differences have virtues to them. This is an empirical reality. There's an article coming out in the *Journal of Finance* written by folks at the New York Fed where they control for everything under the sun and they show that well-supervised banks are robust to all kinds of different challenges.

But how supervision is different from regulation is in the exercise of discretion, and so if you try to force a transparency regime in a regularization of this, they'll make it look much more like rulemaking in the name of rule of law, you risk eliminating what is virtuous about supervision, its flexibility, the exercise of judgment, and you might quibble if you're a bank and you're on the wrong side of the exercise of judgment against a supervisor, that doesn't feel very good; I recognize that. But the sheer heterogeneity of supervisory experience is its virtue, and so I'm a little bit afraid of eliminating that, too.

I have more to say about stress test and transparency, but I'll save that for later in the panel because I think that's a risk that where the Fed is going too far in any transparency, but the main point is there's a lot more to do about transparency but we should recognize that this is a double-edge sword and so we should use that sword carefully.

MR. GUYNN: Any thoughts? Okay. Another question I'm actually going to ask, Doreen, you had mentioned that the FDIC is about to publish procedures about how the examination pro (phonetic) where it actually has some procedures. So does the Federal Reserve and so does the OCC. When I look at those, though, I see a lot of procedures about how one judges various aspects of safety and soundness and things like that. What I don't actually see are any constraints on the discretion; talking about Peter's discretion, I actually agree with Peter that there needs to be a fair amount of discretion, but are there any appropriate constraints on the discretion, so for a lawyer anyway, one would imagine things like if there's a new standard that's being developed that normally you would not apply a new standard, at least in the legal area.

Retroactively you would instead say, okay, this is a new standard; is this the right standard, and give people not necessarily an APA-like public notice and comment, but some ability to challenge or question the new standard, and then some period of time to conform their behavior to that standard before they're subject of penalties or various sanctions. Are there any kind of constraints like that, first, Doreen, and then Mike, in the, you know, written policies and procedures that are public now or that are used privately within the agencies?

MS. EBERLEY: Well, I would want to make sure. I mentioned that we issued in August of this year a new section of our manual of examination policies that actually describes the examination process from planning stages to actually mailing the report of examination, and so it does set forth our expectations for examiners throughout the process in terms of communication with bankers, in terms of risk focusing the examination procedures that they'll actually conduct throughout the examination.

And then once an examination is completed, there is always at least one level of review, depending on the complexity of the institution or the severity of the findings there'll be multiple levels of review, so we have an opportunity to make sure that we've got consistency in our policies throughout our examination program. That's just a basic part of our internal control structure when you talk about what kind of controls do we have around these things, and if there were, you know, a new guidance issued or a new rule, we do apply those prospectively, not retroactively, and if somebody were to do something like that, that's something we would catch in a review process.

MR. GUYNN: Mike, is there something similar in the Fed, and in particular, I guess, is there an audit process that would, you know, audit how the various examiners are actually carrying out their responsibilities to say, "Oh, wait, you were supposed to apply this. This is actually a new standard; you should be applying this prospectively instead of retroactively." Is there any kind of a internal process like that?

MR. GIBSON: Yes, so it works similarly at the Fed as it does at the FDIC, so, first, all of our examination manuals are public, so you can look at those on our website and those explain the supervisory expectations and practices. We have published our rating system including our new rating system for large holding companies with what are the factors that we look for, as well as what are the rating scales. In our supervision report it does talk about the examination process for different types of institutions.

We've been very focused recently on tailoring so that the last supervision report in May of this year focused a lot on describing how we tailor supervisory practices across community banks all the way up to the largest institutions because it is different and it is tailored. We have a lot of training for our examiners to make sure that they're applying the standards and practices consistently, and especially a lot of attention around the ratings process, so the sort of vetting that Doreen talked about is a big part of our practices and it's part of our culture where the preliminary findings will get a lot of internal discussion review by higher level officers both in the reserve bank and at times even from Washington.

We have quality assurance and quality control, so both as the examiner reports are being prepared and expos (phonetic) go back and check to make sure that the standards were followed. Part of our federal structure with the Board of Governors in Washington and reserve banks all around the country is that we have an oversight function where we go and look in the reserve banks to see how well are they doing and different aspects of execution of supervision, so that's an extra level of audit-like practices, and we have the ombudsman and we have an appeals process. We have the inspector general, does a lot of reviews, GAO does reviews, so there is a lot of that sort of activity that goes on.

MR. GUYNN: Then I guess Peter and Julie, could you -- Peter, actually let's start with you. You talked about the value of discretion. I just raised the possibility of written policies and procedures that would outline some constraints on the discretion. What is the right balance, in your view, between, you know, unbounded discretion and some kind of constrained discretion, you know, the extreme version of that would be, you know, very rule based approach?

MR. CONTI-BROWN: And so it's a great question and a moving target, of course, and one argument in favor of a more rules-based method of supervision is that that makes it much more sensitive to electoral consequences. So Randy Quarles is vice chairman for supervision at the Fed because Donald Trump won the 2016 election. He would not have been Hillary Clinton's choice, presumably, and so elections have consequences, and the vice chair's vision for supervision is necessarily distinct from Dan Tarullo who is his de facto predecessor. So all that is important. I think that's a really good argument.

There's something to be said, too, for even within the bounds of a rules system that says, "All right. Well, here are the rules from anything from, you know, pick your letter in Camel's plus (phonetic). Here are the rules that we'll be using when we engage in this kind of examination structure and there are the bands within which supervisors might operate. Here are the kinds of questions they might ask that were not disclosed to you ahead of time. And I think that that is still incredibly important for two reasons.

Number one, elections do have consequences, but ironically we want to have stability across elections, so we don't want to be whipped sod one election to the next, and a competent corps of supervisors exercising discretion within boundaries set by statute or regulation allows for some sense of that stability. And some people might complain and say, "Well, you know, the supervisors aren't following their political heads, and in some sense you should be glad for that." You should be glad for that stability. You should be glad for not going off adventuring into broad experiments, so having some sort of lag even after an election I think is desirable.

The second is, we can run the risk of forcing supervision to be regularized outside of the Administrative Procedures Act. So that if one supervisor who's covering JP Morgan Chase says, "Oh, gee, look at this. This is a really interesting idea," and mentions it to her boss and her boss says, "Well, we're rule of law supervision; everyone now must do this thing." Well, there are instances in history where you see exactly that kind of regularization, and I think that's not good.

If something is desirable for the entire system, then you should go through either congressional committees to rewrite a law to make it apply to everyone, or the APA; go through notice and comments, say, "Here, now, will be our new system. It's this hybrid place where you create supervisory rules that are specific, but they're only to supervision, where I start to feel very uncomfortable.

MR. GUYNN: Julie, your thoughts on the range of discretion versus constrained discretion?

MS. HILL: So I think that moves to clearly spell out the range of discretion that examiners have is terrific, but I still worry, sometimes, that it's very hard to see on the backend what regulators do to make sure that their examiners stay within the bounds that they have set. So, for example, regulators say, "Here's guidance. It's just guidance. It's not binding." And then, you know, is that how examiners treat it? Well, what's the remedy if they don't?

Another example, apparently the FDIC has recently settled a lawsuit over Operation Choke Point. They say, "Oh, look, it turns out we did have some examiner -- or we did have some people who are not acting consistent with FDIC policy." Would we have ever learned that without congressional investigations and a lawsuit? I think the answer to that is no. And could there be more transparency about the backend, what happens?

You know, you have this review process. People look at the examiner reports. If there is a problem with them, the higher-ups fix them. We have no idea whether they ever actually fix anything or not. I mean, maybe you do and maybe you don't, but I can't -- if I tried to request that information, it's all hidden. And so I think the way that things are now, we can kind of say that there is some cabins (phonetic) on this discretion, but we have no idea whether we actually work to keep people in these cabins or not, or maybe you all have a sense, right, because you see the examiners and you know how they treat you, but if you want to tell me about that and let me write about it, well, we both have to worry about going to jail, and that seems like the wrong answer.

MR. GUYNN: Okay, well, I guess continue this discussion a little bit. You know, depending on who I hear this from, I hear some people that will say, you know, the bank supervisors are just captured by the banking industry and they're too lax in supervision, and then I talk to a number of bank clients that say, "Wow, are they harsh?" (laughter) And so I guess I'll ask Peter first, start with the academics on this one. Do you think based on what you know that the supervisors are generally too lax, too harsh, or just about right?

MR. CONTI-BROWN: So anything I could tell you that's specific would disclose that I have violated federal law and have been the recipient of confidential supervisory information, and so I'm going to dodge your question and tell you as a lawyer, now, why I think that the government's reading of these statutes is irresponsible, and why I think CSI in fact is so overbroad a category as to really diminished the ability for academics, for shareholders, for customers, for banks themselves to have meaningful oversight and accountability here.

So the statute as written -- I mean, earlier, Randy, you said that, you know, arguable even the examiners themselves can't disclose that. That's the only part that's inarguable. Right? The statute does criminalize an examiner's disclosure of examination reports and other confidential supervisory information. That makes good sense to me. I loved following the Carmen Cigarro New York Fed Santan Goldman Sachs drama, read every word of it, and that shows up in my book on the history of bank supervision. I put a lot of space in it because there's a lot to say.

And she broke the law, probably. She wasn't prosecuted for it. But there's a good reason why when you are a bank sitting across the table from a supervisor that you should feel confidence that what you're saying is not going to be in the *New York Times* the next day. For everyone else, I am unpersuaded, both as a matter of law and policy, that CSI should obtain --

sometimes banks want to disclose the information and say, "Hey, look, we're really great." And from a securities law perspective that's material information that must be disclosed. We've got an exception in that federal statutory framework.

And I think that we should see a much more dramatic liberalization of disclosures that banks might initiate, that Congress might initiate, courts, and especially historians of bank supervision so that we can have a sense of what on earth is happening here and what's going on because the vital accountability function -- I'm talking about accountability of the government so that we can see what the supervisors are doing. Perhaps more importantly, accountability of these curious institutions that we call banks and other financial institutions to play this vital role in our economy and society.

We know so much about them from a supervisory perspective if the "we" here is the government. But when the "we" is depositors, shareholders, the public, the answer is we know virtually nothing, and that I think is extremely unfortunate. That makes your question, Randy, impossible for anyone to answer unless that we can grant them immunity from prosecution.

MR. GUYNN: Okay, Mike, I didn't anticipate that from Peter, but I think I need to give you a chance to respond, and Doreen, as well, to whether you think it's CSI is actually overbroad the way Peter says it is, or what's the other side of the view?

MR. GIBSON: So I'm happy to disclose that I'm not a lawyer, so I can't really speak to the legal definitions that you're talking about, but from the perspective of the supervisors, we feel like it's very important that we're able to have a confidential discussion with the bank about what are the problems, what are the issues, what are the strategies, where is the change happening so that we can, you know, monitor the safety and soundness and compliance that we're charged with doing.

So I think if a bank thought that everything they were telling to the supervisor was then going to be shared, you know, with the public, that would inhibit the dialog a lot. I know that's an extreme edge of it, but on the spectrum, I thin it is hard to judge the transparency and the accountability of supervision.

We've tried to draw a balance by disclosing more aggregated information, and, you know, as I mentioned earlier, only talking about firm-specific shortcomings in limited cases like enforcement actions, that's where we've currently drawn the line. You know, I think it's a good discussion to have and as long as the ability of the supervisors to, you know, have that confidential discussion with the bank and evaluate and give feedback, as long as there's some space for that, then, you know, I think that would be the thing I would ask from the perspective of good supervision and effective supervision that would be valuable to preserve, but, you know, it's a tradeoff and I think that's what we've been talking about on this whole panel.

I don't know what the answer is, but I would say probably both of the extremes, have issues with them, so I would look for somewhere in the middle.

MR. GUYNN: Doreen, any other further thoughts from there?

MS. EBERLEY: Really, no other further

thoughts. I mean, we've really sought to strike the same balance between keeping the individual institution information confidential and private and making aggregate data available including, too, academics. (laughter)

MR. GUYNN: Julie, any further thoughts on that subject?

MS. HILL: Well, (inaudible) the question formal enforcement actions, though, it's not clear, at least from the rules, that everything is released because your policies say, "Well, we're going -- the general rule is that enforcement actions are public, but we can on a

case-by-case basis keep them secret, and so from an academic's perspective, right, you use some of them they're the banks that you think are unimportant or have small problems or this big group of enforcement actions out there that we don’t see. I don't know.

MR. GIBSON: I mean, one thing that would probably be worth taking a look at what Peter mentioned already is the tradeoff between historical information versus current information, because presumably the sensitivity gets less over time, and there must be some period of time where the sensitivity has declined enough that the tradeoff tips the other way. We have a lot of government recordkeeping rules that we have to comply with with federal records, so I'm not sure how what I'm saying intersects with that.

There might be some conflict there. I don’t know. But in terms of things to look at, I would highlight that as something that would be worth another look.

MR. CONTI-BROWN: I would love you for that, (laughter) if you could make that work. Look, the Fed is famous for admitting its mistakes 80 years after it makes them, (laughter) all right? And wouldn't it be a thing if we could go through that accountability part -- the reason history matters so much? It's not a lark for people who are taking four years out work to go do college and, you know, study this or that esoteric thing.

History matters vitally for public citizenship and public accountability, and so our ability to interrogate, you know, what really was going on when continental Illinois failure in 1984, from a supervisory perspective, right, is richly enhanced if we can see what people experienced as the problems were being unfolded. And in that specific instance there were a huge number of congressional investigations and hearings.

But all that had a hindsight bias flavor to them. So I would urge FDIC and fed and comptroller and others to say, "You know what? If five years is a good enough lag for transcripts of the FOMC, then maybe something comparable for examination reports could exist." You'll get --

MR. GIBSON: Well, I was thinking about 50, but that's okay. (laughter)

MR. CONTI-BROWN: I would take 50 as an opening gambit.

MR. GIBSON: So I've actually gotten -- I have never seen before, but I've got this iPad with a whole list of questions from the audience on it. Several of them are actually pretty good that (laughter) fit right in.

MR. CONTI-BRWON: Some of them are very dumb.

MR. GIBSON: Some of them. Yeah, apparently. And some of them fit in with sort of what I was thinking of asking anyway. So in any event, one of the things that -- and this is a little bit of a variation on the question that came through here is that sometimes when you hear I think, gee, there's been a lot of effort the last year or two saying guidance isn't binding, so we have the inner agency release on that, guidance isn't binding.

We have the executive orders that just came out, and what you sometimes hear in the background is, is that the examiners say, "Huh, pay no attention to that because we'll just ding the banks for all those things, but we'll call it an unsafe and unsound practice." What are the limits on suing safety and soundness to get around some of these constraints that Congress is obviously trying to impose and even the agency principals are trying to impose to say that there should be some difference between guidance and laws and, you know, regulations?

Now, I say those things, but in fact a regulation is a law. It's just a certain type of law, but those are binding. What are the constraints on using safety and soundness as the catchall for anything that an examiner wants to criticize? Are there any constraints and should there be any?

MS. HILL: No, there are no constraints. If you look at how the regulators define safety and soundness, it's incredibly broad. The OCC says something like even if it makes you less resilient to harm in the future, that's enough, so you don't need to show financial impact now, even, or a likelihood of financial impact from this particular after event. The OCC says that's good enough for an unsafe or unsound condition. Now, would a court really agree with that interpretation?

Well, I don't know. Wonder would you want to take it to court and see how that goes, you know, fight with your regulator that you get a deal with every day for, you know, as long as you remain in business. So, no, I don't think there is any constraints.

MR. GUYNN: Okay, I'd actually like to hear from Mike or Doreen as to whether -- as a matter of practice, is their actually some self-imposed constraints in terms of how much discretion safety and soundness gives to the examiner? Do the examiners behave in a way, in your experience, that there is some constraints?

MS. EBERLEY: I think they do. (laughter) That might surprise you, right? You know, the thing that we train our examiners on and we describe this in our new section of the manual on our examination process which really just documents what we've been doing all the way along. It's focused on the safety and soundness standards that the agencies were required to adopt by either rule or guidance, guideline, rather, in the nineties.

We did end up adopting them by guidelines and we've got interagency guidelines on standards for safety and soundness, and that's kind of the core of our training for our examiners as we talk about how do you talk about safety and soundness, is looking at those standards. What are the standards for underwriting?

You know, they speak about ability to repay, they talk about what kind of collateral protection there is, and that the guidelines are applicable to institutions on kind of a scalable basis based on the nature of their activities, their size, sophistication, complexity. That's the kind of training that we give examiners and the guardrails within which we ask them to operate.

And, again, we've got the report review process before reports of examination go in the mail. We, too, have an OIG that did investigate our response to Operation Choke Point and did confirm what we found ourselves, that we found some examiners that did not follow guidance, so it didn’t actually take a lawsuit to bring that out; we brought it out ourselves, and issued guidance to our examiners to address that.

So we've got processes in place to kind of keep those guardrails in place, I think.

MR. GIBSON: Yes, so I think it's pretty similar for the Fed as it is for the FDIC. You mentioned at the beginning, Randy, that laws and regulations come from the statutory authority and then supervision is how do you enforce the laws and regulations, so that's the way I look at it, too, and, you know, I think that's reflected in like Doreen said, there are guidelines that are in the regulation that talk about what does safety and soundness mean and then what's the role of guidance?

Well, that's to explain, like given the current practices in the, you know, commercial real estate market, just for example, that we're seeing these types of loans being made or this type of collateral; how should we think about that in terms of, again, referring back to the laws and regulations and the guidelines on safety and soundness, so it's all anchored in laws and regulations and all of the review and examiner training tries to keep it, you know, anchored to that.

MR. GIBSON: One of the things that Doreen mentioned, I thought it was really (inaudible) she used the word "training" several times, and I've at least heard some people suggest that in the last 10 years or so there have been a lot of -- that if you went back before 10 years, every examiner went through a very rigorous training process where they were certified and that that hasn't necessarily been followed in recent years; is that accurate or is that inaccurate? I mean, how much of the work force is actually fully trained into all of these procedures and policies?

MS. EBERLEY: So that's inaccurate. Our examiner training program remains largely as it was when I went through it which is a set of core schools that examiners are trained on. We actually have more schools now than when I went through on-the-job training using an apprenticeship model where new examiners, assistant examiners sit next to senior examiners and learn the trade on the job and in the classroom setting.

We have a fairly robust comprehensive technical evaluation at the end of the process to make sure that examiners understand how to apply all the principles that they've used and then they have to demonstrate their ability in practice assignments, so none of that has changed. We have about 1,500 examiners at the FDIC, and at present I would say probably I think it's about 300 are pre-commissioned, so they are going through that process. It takes about four years for an examiner to earn a commission and go through that process, so nothing's changed there.

I should add, too, the training that I've been mentioning so far has been post-commission training, so we don't stop. Every other year we train our entire cadre of commissioned examiners, so this year more than a thousand examiners went through that training program between April and September. They all spent an hour with me and Q&A. But we talked about the inner agency statement on guidance; we talked about the safety and soundness standards; we talked about the sorts of things we're talking about today.

MR GUYNN: So just to tie together that, Mike, just to make a slightly different question, one of the things that Governor Quarles said in a recent speech is, at the end, he said he'd welcome greater legal scholarship on the due process considerations, the associated bank supervisions, a process distinct from bank regulation. I'm sure that you have similar training at the Fed for examiners. What sort of training is given in basic legal principles of due process and fairness; is that part of the training or should it be more of the training?

MR. GIBSON: So we have a similar training program to what Doreen described of the FDIC. It's a multi-year program for new examiners that leads to a commission and that's really the credential that someone needs to go on and have a career as a Fed examiner, so we've actually re-done our curriculum recently to be -- not all, but it's mostly online now. There's a lot of on-the-job training attached to that as well.

There's a proficiency exam at the end that's got, you know, external validation by learning, experts, so we've invested a lot in examiner training and we actually have a new examiner training track for large financial institutions that's distinct from the traditional examiner training that was focused on supervising community banks, so we have invested a lot in examiner training. It includes the basic practices that we've been talking about.

To answer our question about how much legal training is there, I don't think there's much legal training. I think it's mostly focused on how do you do the work of a bank examiner, how you analyze a loan to know if it's been -- you know, like is it likely to be paid back or not. It's more of a financial analyst sort of toolkit and a legal toolkit, but they definitely get the basics of what's the process we go through, what are the laws and regulations that we need to cite, and in fact a lot of the modules of the training are focused on particular regulations.

Like, you have to take the module on Regulation O, so you know how to supervise against Regulation O, and that sort of thing.

So it's anchored in the regulations, but the process I think is ongoing and it really comes from the on-the-job training and learning how do you prepare the examiner for it, how are your officers reviewing that, how does that get overseen and maybe it's more learning by doing than the formal legal training.

So Tom Baxter, who's the former head of enforcement at the New York Fed wrote an article, I don't know within the last year or so, that talked about the rise of risks and the decline of legal and talked about the tension that has developed over the last few years between the risk management functions within the banks and also between supervision and legal at the regulators, and I have certainly read about, you know, internal lawyers being excluded from meetings with the examiners, at least the allegations are that that's because the lawyers are troublemakers.

They challenge things as opposed to just saying whatever you ask, you know, I will do. What do you think; does that actually happen? I guess this is for Mike and Doreen. Should it happen and what's the appropriate role in terms of cooperation or tension between supervision and legal within -- or I should say risk and supervision and legal within the banks and within the agencies?

MR. GIBSON: Well, I haven't read the article, but it sounds interesting. (laughter) I guess I should. Let me talk about large bank supervision because that's where I think I have the best answer to your question which is that as we read on our approach to large bank supervision since the financial crisis, we've explicitly adopted a multidisciplinary approach which means we want to have multiple perspectives looking at the supervisory issues, vetting the decisions, vetting the ratings, so all of our programs at the largest institutions and supervision for capital, for liquidity, for governance and controls are run by committees that include lawyers on almost all those committees, I think.

In addition to supervisors, there's lawyers, there's economists, there's folks from other areas of the Fed, and markets group in some cases, so we're getting that multidisciplinary perspective which includes the legal perspective, and we think that's essential for supervising the biggest institutions and that's really based on the lessons from the crisis where supervision wasn't able to see around the corners and see the risk management weaknesses clearly enough. So that's one change we've made that maybe goes in that direction.

MS. EBERLEY: I would just add that we work very closely with our legal and do not exclude them from anything, and including meeting, you know, with our regional directors, meeting with examiners, and, likewise, they ask us to come talk to the legal division.

MR. GUYNN: Peter?

MR. CONTI-BROWN: So my coauthor Sean Vanatta, a visiting professor at NYU, and I had the experience of doing some oral histories with this history of bank supervision, and one of them that we did was with Steve Antonakis, who is eventually the deputy director of the CFPB, and he described the launch of supervision at the CFPB and it was the decision made at the top that before every examination an enforcement lawyer would be present.

And for the people in this room, you might not -- you've anticipated or even lived through what that did for the supervisory conversation, completely changed it, so that it wasn't about coordinator or cooperation or information sharing, it was about, "Wait, what can I say and how much, and are you going to use what I've just said as a liability in future kinds of actions and lawyers scribbling notes in the corner suddenly cast a very different call over this?" So I think -- and I say this as a lawyer, I think that we should have a different epistemology in supervision than law, than managing liabilities than enforcing rules.

I think it should be, and this is where I think I would differ from both Randy and Mike saying: Well, if statues and regulations is about the rules and supervision is about the implementation of those rules, I don't think that's correct. I think supervision is a different conversation. It's much more like a dance. It's where the world of government and private markets meet and collaborate and sometimes confront each other about risk management, about accounting for the past, about predicting the future, and I think preserving that space, including from lawyers, is valuable and can give us a sense of what's happening in a very real way.

The thing that I think that happened before the 2008 crisis is that supervisors weren't given, and the banks who interfaced with them, weren't given that voice, and I think that's the voice that I think we should continue to try to hear as much as possible and not just the voice of regulators and legislators.

MR. GUYNN: Okay, I'm a traditionalist, so I need to give at least the opportunity for one person from the audience to stand up and ask a question, even though I got a whole bunch of them from the audience here, I just like transparency and accountability (laughter). Any questions from the audience? Yes. There's one right up here in the front, John Court (phonetic).

MR. COURT: Well, I'm happy to (inaudible).

MR. GUYNN: Okay.

MR. COURTE: I just want to pick up on Peter was just saying the value of not having a lawyer in the room, so a supervisor and a bank can have a frank discussion, and I totally get your point, but hasn't this -- isn't it true that the supervisory process even at the Prudential agencies has kind of merged with the enforcement process because if you get a supervisory rating, a three or a four, that necessarily has implications for your ability to expand, to branch, to borrow money through the discount window at a primary credit rate. It has an impact on your -- it's the quantity of deposit insurance assessments that you have to pay to the FDIC.

So in some senses, your supervisor actually does wield an enforcements tool against you, and so if we want to preserve the value of what you've just identified, should we think about ways to back out those automatic enforcement penalties out of the supervisory process and restore them into the enforcement space?

MR. CONTI-BROWN: Let me say this very briefly because every single person on this panel is more qualified to answer this. Julie's got a terrific article about the internal appeals process of examination ratings. It's not that law doesn't matter. It's (inaudible) not that lawyers don't matter. It's not they don't have a role eventually, but what you just described has a whole process attached to it well short of once you get to a point where here's what the examination report requires for that dialog to continue, well short of any entrance to a federal courthouse, and so I think it's preserving that conversation in a stage that will allow lawyers to have their space and their place even when the real teeth of supervision enforcement come out, but not having that turn into pure enforcement.

We've seen that. The SEC is great at non-supervisory enforcement or the SEC is truly terrible at this, depending on your perspective, but the SEC doesn't have a supervision culture, banks do, and I think that culture is worth preserving.

MR. GUYNN: All right, thanks a lot. Thanks a lot to our panelists for a great discussion (applause) and thanks to you in the audience for the discussion. (applause)

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