

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Friday, April 5, 2002

1:35 p.m.

Potomac III Room
The Melrose Hotel
2430 Pennsylvania Avenue, N.W.
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

LaVeeda Morgan Battle, Acting Chair
Hewlett Askew
Douglas S. Eakeley (ex officio)

BOARD MEMBERS PRESENT:

Ernestine P. Watlington
Edna Fairbanks-Williams
Maria Luisa Mercado
John N. Erlenborn

STAFF AND PUBLIC PRESENT:

Victor M. Fortuno, Vice President for Legal Affairs,

General Counsel & Corporate Secretary
Mauricio Vivero, Vice President for Government
Relations & Public Affairs

STAFF AND PUBLIC PRESENT (con'd):

David L. Richardson, Acting Vice President for
Administration, Treasurer, and Comptroller
Randi Youells, Vice President for Programs
Patricia Hanrahan, Special Assistant to the Vice
President for Programs
Michael Genz, Director, Office of Program Performance
John Eidleman, Deputy Director for Programs
Robert Gross, Senior Program Counsel, Office of Program
Performance
Bertrand Thomas, Program Counsel III, Office of
Compliance and Enforcement
Kim Heron, Program Analyst III, Office of Compliance
and Enforcement
Danilo Cardona, Director, Office of Compliance and
Enforcement
Joe Green, Program Counsel II, Office of Compliance and
Enforcement
David de la Tour, Program Counsel, Office of Compliance
and Enforcement
Laurie Tarantowicz, Assistant Inspector General and
Legal Counsel
David Maddox, Assistant Inspector General for Resource
Management
Leonard Koczur, Acting Inspector General
Reginald Haley, Program Counsel, Office of Program
Performance
Leslie Q. Russell, Director, Office of Information
Technology
Alice Dickerson, Director, Office of Human Resources
Ahn Tu, Program Counsel, Office of Program Performance
Julie Clark, Vice President for Government Relations,
National Legal Aid and Defenders Association
Don Saunders, Director for Civil Legal Services,
National Legal Aid and Defenders Association
Linda Perle, Senior Attorney, Center for Law and Social
Policy
Frank Strickland
Patricia De Marcos
Dean Reuter
Mattie Condray, Senior Assistant General Counsel,
Office of Legal Affairs
Julie Strandlie, Director of Grassroots Operations,
American Bar Association

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P R O C E E D I N G S

ACTING CHAIR BATTLE: Now that we have -- and I see our fearless leader has also entered the room, one of our fearless leaders -- I'd like to go ahead and call this meeting to order this morning. This is April 5, 2002, it's approximately 1:30, and this is a meeting of the Operations and Regulations Committee.

I will be, as has been -- I've been appointed to chair this meeting today by our chairman in the absence of John Broderick, who is not able to be with us today.

And I'd like to do something a little bit differently, if I can. I'd like for us to just entertain a moment of silence so that we can send our own silent prayers and well wishes and thoughts to John as he recovers from his surgery.

(A moment of silence.)

Okay. Thank you. Thank you to all.

We have before us a copy of the agenda, and I'll entertain a motion for approval of the agenda. I think that there may be a couple of items that we may

need to shuffle depending on who's present at the time for us to be able to address all of the items on the agenda. But if we can in substance, I'll entertain a motion to adopt the agenda as presented to us in our board book.

MR. ASKEW: I'd like to offer one amendment to the agenda.

ACTING CHAIR BATTLE: Okay.

MR. ASKEW: Item 9, "Consider and act on a protocol for access to records," the president will make a report on that tomorrow at his portion of the board meeting, and I'd like to remove -- recommend that we remove that item from the agenda.

ACTING CHAIR BATTLE: Okay. And with that removal and that amendment, are you going to move for adoption of the agenda in general?

M O T I O N

MR. ASKEW: Yes. Then I will move the adoption of the agenda, with that one change.

ACTING CHAIR BATTLE: All right. And I'll second that. All in favor?

(A chorus of ayes.)

ACTING CHAIR BATTLE: All opposed?

(No response.)

ACTING CHAIR BATTLE: The motion carries.

It's the two of us, Bucky. We've got to carry the day. Edna is not on this committee. It's the two of us and John Broderick, I think, is the composition of this committee.

The first item that we have on the agenda is approval of the minutes of the committee's meeting of January 18, 2002. A copy of those minutes are contained in our board book. Are there any corrections to those minutes? Changes?

M O T I O N

MR. ASKEW: I move the approval.

ACTING CHAIR BATTLE: Okay. It's been properly moved, and I'll second it, that we approve the minutes as provided in the agenda book. All in favor?

(A chorus of ayes.)

ACTING CHAIR BATTLE: All opposed?

(No response.)

ACTING CHAIR BATTLE: The motion carries.

The third item on the agenda has to do with consider and act on whether to authorize the president of LSC to extend the contracts of corporate officers for six months. And the president is not in here, so we'll come back to that when John Erlenborn returns.

The next item has to do with staff report on the status of current negotiated rulemakings, 45 CFR Part 1626, which pertains to restrictions on legal assistance to aliens, and 45 CFR Part 1611, eligibility.

We'll now hear the staff report on where we are on the negotiated reg/neg rulemaking.

MS. CONDRA Y: Hopefully I'll be able to keep you guys right on schedule.

Both rulemakings are going on. They are proceeding --

ACTING CHAIR BATTLE: Would you just state your name for the record?

MS. CONDRA Y: Oh, I'm sorry. I'm Mattie Condray. I'm senior assistant general counsel in the Office of Legal Affairs.

We have our third meeting. Both rulemakings, we've had two meetings of each working group. The 1611 working group on eligibility is meeting for the third time at the end of next week, next Thursday and Friday. We are proceeding apace with both rulemakings. We're at the point that we're actually starting to draft some rule text for 1611. We're very close to completing our work as a working group on that.

We may not meet one more time face-to-face, but we'll do some follow-up work, certainly, by e-mail and by phone with the drafts that we're working on for that. So I'm hopeful that we might -- that we would have a draft notice of proposed rulemaking for the committee to look at at its next board meeting. Obviously, I can't guarantee that, but I'm hopeful about that.

1626 has been a little more difficult, but we are proceeding apace with that. Our next meeting for 1626 is taking place in early May. I believe it's May 9th and 10th. Probably one of the biggest challenges that we've faced has just been scheduling one, trying to get everybody in the room at the same time, as you well

know. So that one, we're meeting in May, plus that's giving us a chance to do a lot of homework.

I will say I personally think the working groups have been very productive. Everybody on the working group has worked very hard and very collaboratively, and I think we will have some very good products at the end that will serve the Corporation and our grantees for a very long time to come.

The only other note that I will make about the two rulemakings is that we are doing this under the auspices of a professional facilitator, who was hired by the Corporation and who serves with the support of the entire working group.

The original -- we've run out of money of that original contract, and we have extended the contract for both time and dollars. It's just -- it's a process.

The facilitator does a lot other than simply sit and run the meetings. The facilitator does a lot, working with a lot of the players in between meetings, facilitating, reviewing drafts, taking kind -- acting as a neutral to -- as a conduit of information. And so

that's kind of -- I think that ate up some more money in the contract than we'd originally anticipated at the outset, which is why we ran out of money sooner than we thought.

Plus to the extent that least everybody on the working group anticipates that 1626 will need a fourth meeting rather than simply three, which is what we'd originally hoped for at the outset.

ACTING CHAIR BATTLE: What are the anticipated additional costs?

MS. CONDRAV: We increased the cost by an additional \$30,000 for the contract for the two -- it's essentially doubling the cost of the contract. And the contract covers both of the rulemakings.

ACTING CHAIR BATTLE: Okay. Doug?

MR. EAKELEY: As I mentioned between sessions, I've been a little disappointed by both the pace and the cost of the parallel negotiated rulemakings. On the other hand, I was impressed by what I've heard about how the facilitated negotiation has actually generated more collaboration in the process.

And I take it from our discussions that the current judgment is that it's worth the extra cost, effort, and time. Is that a fair conclusion to reach at this moment?

MS. CONDRAV: That was my personal conclusion. I believe it is. As it's stated -- you know, our rulemaking protocol has embodied in it a presumption in favor of negotiated rulemaking. Even at the time, I'm not sure that we needed to have a presumption either way.

I personally think it's best that you look at each particular rulemaking as you're contemplating it, and the cost of it and the time involved --

MR. EAKELEY: Yes. That's where I'm going.

MS. CONDRAV: -- may be the sort of thing that we take a very close look at when we do future rulemakings. And I will say that the regulations review task force, in coming up with its -- I guess it was -- we had six high priority items in our list, and we had a priority order to them.

One of the things that we did look at was

our own initial judgment, although it's obviously not a final decision, but our own initial judgment about whether some of those rulemakings would be better susceptible to negotiated rulemaking, and some of them would be more susceptible to simply notice and comment rulemaking, as a way of being able to proceed on more than one rulemaking front, yet at the same time mindful of the time and effort that it takes.

I mean, I will say personally, since I'm the main LSC staff person, although there are several LSC staff people who are serving on both working groups, it's a lot of time just out of our own schedule doing more than one negotiated rulemaking at a time as well.

MR. EAKELEY: I just -- might I suggest that when we get to the point where lessons are appropriately learned and recorded, that maybe a further report of those lessons learned can be brought back to the board, of lessons arising out of these two negotiated rulemakings.

And I would suggest, while you have the collaborative groups still collaborating, trying to

generate those lessons from that group rather than simply from the LSC staffers participating.

MS. CONDRAV: Yes. I believe, in fact, a review of that was one of the things that was originally -- I'll have to go back and take a look. I believe that was originally in the facilitator's -- well, in the facilitator's proposal to us as one of the jobs of the facilitator that I suspect got cut out as a line item.

But notwithstanding the fact that even if the facilitator doesn't create that, we amongst ourselves with the work group will do that.

ACTING CHAIR BATTLE: Good point. Are there any other questions about the report that we've heard on the current negotiated rulemakings from any of the other members of the committee or the board?

MR. ASKEW: Mattie, I'm sorry. I may have missed it. Did you say when you think this is going to be able to be completed when you were making your report? Is there any prediction you can give us about --

MS. CONDRAV: Well, with 1611, I am hopeful that we will have a draft notice of proposed rulemaking

that the committee can take a look at at its next meeting.

I think that's not unreasonable. Presuming that the committee approves the draft notice of proposed rulemaking without too much change, that would be then published in the Federal Register for a minimum of 30 days. Presumably because we've done all the collaborative process up front, you won't need more than a 30-day time period, although whatever the committee chose and the board chose as appropriate.

Thirty days, we'd get the comments in, and then it would take a little while to develop a final rule from that that would address the comments. I would work on that. We would share that with the working group, give the working group a chance to respond to any comments that we may have gotten that hadn't already come up, you know, within the working group.

Hopefully, if the process works the way it's supposed to, we won't get many comments that we haven't already addressed because presumably the players are at the table. So depending on what the timing of the

comment period versus when the next committee meeting was -- but so that's how that would proceed.

With 1626, I don't have a great sense of that yet because at least at this point I think we're all anticipating at least one more meeting after the May meeting. Hopefully, the fourth meeting we would be where we are with this upcoming meeting with 1611, where we would be working on a draft and have a draft for the committee to look at at its next board meeting after that.

ACTING CHAIR BATTLE: So it will really be proposed rule at that time?

MS. CONDRAV: Oh, yes. What has to happen is we still have a statutory requirement --

ACTING CHAIR BATTLE: Still have to go -- exactly. To go through the process. So it will be a proposed rule, but you should have a draft of a proposed rule by the time this committee meets the next time.

MS. CONDRAV: Right. For 1611.

ACTING CHAIR BATTLE: On 1611. I understand.

MS. CONDRAV: I would think that's probably -- I would think that's likely.

ACTING CHAIR BATTLE: All right. Any other questions about the report on current negotiated rulemakings from any members of the board?

(No response.)

ACTING CHAIR BATTLE: Hearing none, we appreciate that report. And we will now move on to the staff report on the development and publication of grant assurances.

All right. Are you the presenter on this?

MS. CONDRAV: Well, I believe that I'm starting. And I'm talking about some the process issues.

ACTING CHAIR BATTLE: Okay.

MS. CONDRAV: Regarding how our -- at least how it's done now, how our grant assurances are revised on an annual basis.

There was a memo that should have been distributed to everybody in a packet, and I think that was waiting for them yesterday at the --

ACTING CHAIR BATTLE: There was a March 28,

2002 memo from Victor through you.

MS. CONDRAV: Yes. Right.

ACTING CHAIR BATTLE: -- on LSC reservation and adoption of grant assurances. Does everyone on the board have a copy of that memo?

MS. CONDRAV: So I'm just going to kind of walk through that fairly quickly, since you already have it.

The development and annual updating is run under the leadership of the Office of Program Performance, with input from each of the other offices. My understanding of the process is that prior to the publication of the request for proposals, OPP distributes the then-current list of grant assurance and certifications to each of the vice presidents and the inspector general requesting their review and comment.

Typically, each vice president provides it to the staff. I know what Vic does is, you know, he sends a copy of it to each of us in OLA saying, "If you've got anything to comment on, feel free to comment on it and send it back to me and I will put the comments

together and get them back in."

So there's kind of a fairly casual collaborative process amongst the offices about suggested changes. At the point that they are then gone through through the vice presidents and the inspector general, an agreed set of grant assurances for the year is agreed upon by them. And then that set goes to the president for the president's approval.

The grant assurances are made publicly available each year, obviously, through the publication of the request for proposals. The notice in the Federal Register notices the availability of the request for proposals. And the entirety of the request for proposals, which includes the grant assurances, is available, and it's entirely through LSC's website.

My understanding of how the board is updated every year is that OPP provides regular updates to the board. From my research, it seemed to be typically at Provisions Committee meetings. And it seems to have been in the context of the grant award and competition process there's a opportunity for the staff to brief the

committee and then the board about major changes and other issues relating both to the RFP and the grant assurances.

I provided a couple of examples in the memo that I have found. In 1997, there was a major revision to the RFP being made, and there was a briefing on that. In 1999, the committee was briefed on a change to the grant assurances related to Y2K computer issues.

From my research, it seemed like the last time that this committee, the Ops and Regs Committee, formally addressed the issue of the grant assurances, was at the very end of 1993 and the beginning of 1994, when there was a significant and what seemed to be a fairly wholesale set of changes to the grant assurances.

And it appears that since that time there hasn't been a project to completely overhaul the grant assurances. It's been kind of annual yearly update. And any individual changes that were deemed significant were reported probably in the context of the provisions committee.

That's about as much as I can tell you about

what the process has been. I can't tell you what the process has been before I got to LSC. I'd have to turn that over.

ACTING CHAIR BATTLE: Okay.

MS. CONDRAY: And in terms of some of the specifics of the grant assurances, I would also ask others to address those.

MR. ASKEW: I really have more of a question for the committee chair.

ACTING CHAIR BATTLE: Okay.

MR. ASKEW: And let me just say, I know we have -- Bill McCalpin is ill and unable to be with us for that. He's just gone back up to his room. But he had a particular interest in this particular subject, so --

ACTING CHAIR BATTLE: Do you want to defer it until tomorrow when he's here?

MR. ASKEW: No. I think we're okay. I think the question I have is what, if any, appropriate role should there be for the board in the oversight supervision policy review of grant assurances?

I think we've sort of -- this has been

something omitted by inadvertence rather than by deliberation. But I don't know the answer to the question, but the question is by no means rhetorical.

ACTING CHAIR BATTLE: Sure. And I guess, from my standpoint of view, I guess looking at the history that Mattie has just presented to us, the board, at least this committee's last look, goes all the way back to 1993 or 1994 when there was a wholesale review.

And it may be that the board never made a determination, if it's not wholesale, as to how it might be involved in the process of significant but not wholesale changes to the grant assurances.

So we probably do need to examine what we think is the appropriate way for the board to be, first, apprised of a determination that there will be a change in the grant assurances, and then secondly, what its involvement needs to be in just assuring that they're consistent with whatever we view as the appropriate overall policy for how that needs to be done.

MR. ASKEW: Yes. I would agree. I wasn't here at the January meeting, and I read the transcript.

And I think Mr. McCalpin said at that meeting that it was his understanding that the Ops and Regs Committee, and perhaps the full board, reviewed and acted upon all the grant assurances back in the '93-'94 time period. And his question was, why haven't we been doing that since?

My understanding is a review by OLA indicates that that really didn't happen that way, that there was a disclosure of all the grant assurances, but the committee itself didn't really review and act upon them. It just simply was -- they were presented to them.

So the question for us, I think, is that something we want to do in the future? What I would suggest, since both because Mr. McCalpin isn't here and because Randi has provided us with a very thorough, interesting report, that we put it on the agenda for the next committee meeting, give Mr. McCalpin the opportunity to review all of this and make his recommendation to us, and decide, and the committee decide at that meeting, is this something we want to do on an annual basis, to review and approve the grant assurances or not.

And I would assume that OLA would tell us

we're not required to do it. They can do with these from year to year as they see fit without board approval. But maybe the committee should decide if that's something we think we should be doing.

ACTING CHAIR BATTLE: Sure. Okay.

MS. MERCADO: LaVeeda, I would agree with Bucky on that point, and especially, I think, in conjunction with that is this memo that we just got a few minutes before we broke from the other committee on grant assurance number 10.

I mean, there's an at least 25-30 page document here that I didn't have time to read very much. And I'd really rather be able to read it and evaluate it and have a little bit better input into any thoughts one way or the other.

I think it's great work that you guys have put together. I just need time to digest it.

MR. ASKEW: Mattie, am I right that the board is not required to act on these?

MS. CONDRAY: I believe that would be correct.

MR. ASKEW: Okay. So it's really a

policy question of whether we think we should or not.

MS. CONDRAV: Right. And they are not -- the grant assurances are not subject to -- they're not among the things subject to the Federal Register notice and comment. We don't have to put them out for comment. And they do get noticed every year.

And I will say, at least from my interaction in changing them, you know, the changes, as you would expect, run the gamut of, you know, we just think this sentence could be written a little better, to, we got a -- I mean, one of the changes that we're looking at that I suggested for our certifications, which is a separate form but related to this this year, was, we've gotten a request for an internal OLA opinion about, this is what it says in the grant assurance. What do we really mean?

And we provided an opinion, but the thought was, well, then, next year let's fix the grant assurance to say what we really think it means, you know. To then addressing new issues. Occasionally we do have to address new issues as they come up.

MR. ASKEW: Like competition.

MS. CONDRAY: Right. Exactly.

MR. ASKEW: Competition happened in the meantime, and we obviously had to have grant assurances implementing some of those things that's perfectly appropriate. Is it something we need to be reviewing and approving?

ACTING CHAIR BATTLE: Well, I think if you will make that into a motion that we defer this particular item until the next meeting to give Bill an opportunity to look at it. We've gotten some information today that will be helpful to us in our review, and we can revisit this next time. We can make that into a motion that's what we'll do.

M O T I O N

MR. ASKEW: So moved.

MR. EAKELEY: I would just amend the motion to include that it permits -- hopefully permits Justice Broderick to review the issue as well before the next meeting.

ACTING CHAIR BATTLE: Yes. That's right. All the members of the committee, and the board as well.

MR. EAKELEY: Yes.

ACTING CHAIR BATTLE: If I hear a second from you on that?

MR. EAKELEY: Second.

ACTING CHAIR BATTLE: Then it's been properly moved and seconded. All in favor?

(A chorus of ayes.)

ACTING CHAIR BATTLE: All opposed?

(No response.)

ACTING CHAIR BATTLE: Motion carries.

The next -- I'm sorry.

MR. ASKEW: I was wondering, did we want to hear from Randi about this, or we want to put it all off till the next meeting?

MS. YOUELLS: Putting it off would be my preference.

(Laughter.)

MR. ASKEW: Not that you can tell us what to do.

ACTING CHAIR BATTLE: Okay. The next item on our agenda is consider and act on draft final rule 45

CFR Part 1639 on welfare reform.

We should have -- now, I received by fax, and I'm not certain if it's -- is it in our board book, Mattie, or --

MS. CONDRAV: It was not in the board book. I had -- we faxed it to you after we talked to you the other day, but it should have been in the packet of materials that you received yesterday that was at the hotel.

ACTING CHAIR BATTLE: Does everybody have a copy of the draft? Is it the draft dated 3/28/02?

MS. CONDRAV: 3/28/02, yes. Yes.

ACTING CHAIR BATTLE: This copy of the final rule on welfare reform? Just let's give all the board members a moment to locate their copies.

MS. CONDRAV: Let me know when you're ready.

ACTING CHAIR BATTLE: Okay. I see Maria is still looking for hers. Okay.

MS. CONDRAV: After the Supreme Court's decision in Velasquez invalidating that particular portion of the statute relating to taking on individual

welfare representations if that representation involves a challenge to current welfare reform law, we -- the board identified this as an issue and an appropriate subject for rulemaking so that we could clean up our regulation to make the regulation conform to the statute.

We issued a notice of proposed rulemaking in November proposing to do that. In the intervening time, our now-current appropriations legislation also changed, so statutorily there was a change made to conform the statute to the decision in Velasquez.

We received comments on the notice of proposed rulemaking. Everybody supported -- the comment, everybody supported the proposed change to the substantive section. We also had a good couple of careful commenters note that I had proposed retaining a definition that was only contained -- a phrase that was only contained in the part that we were looking to cut out, so they suggested that we also delete the definition, which makes eminent sense.

Agreeing with all of those definitions, we have provided this draft notice of proposed -- I'm sorry,

this draft final rule which implements that statutory and court decision, and makes those changes.

ACTING CHAIR BATTLE: And effectively, what it does is to delete the language if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation, and puts a period earlier --

MS. CONDRAV: That's correct.

ACTING CHAIR BATTLE: -- so the part that now has been ruled unconstitutional has been stricken.

MS. CONDRAV: Has been stricken. And we are also striking the definition of the phrase "existing law."

ACTING CHAIR BATTLE: Yes. That's right. All right. Well, well done. When you've got the Supreme Court on one hand and the Congress on the other, it makes it easy for us, doesn't it?

MS. CONDRAV: It sure does.

ACTING CHAIR BATTLE: All right. The next item that we have -- I'm sorry. Did you have something more on that?

MS. CONDRAV: Well, I guess we're -- you need to recommend to the board that the board approve this for publication as a final rule.

ACTING CHAIR BATTLE: I'll entertain a motion. I'll entertain a motion from my committee member.

MS. FAIRBANKS-WILLIAMS: Could I ask a question first?

ACTING CHAIR BATTLE: Sure.

MS. FAIRBANKS-WILLIAMS: This "otherwise challenged" business, what do they mean by challenge?

ACTING CHAIR BATTLE: What do they mean by challenge? By challenge, the reason, I believe, that the Supreme Court found this language to be unconstitutional is because it eliminated the opportunity for a lawyer representing an individual to raise issues to say that an existing law was unconstitutional or an existing law was -- to try to --

MS. FAIRBANKS-WILLIAMS: So it was just challenging the law, not whether the law was flawed in the beginning, like we just pointed out in Vermont that they had 17-1/2 as part-time workers and 20

in another spot as -- hours as part-time workers in the same law.

ACTING CHAIR BATTLE: Right. That would have been the same kind of challenge that you would have been precluded from engaging in if it had to do with welfare reform. And the Supreme Court said that's unconstitutional because it bars an opportunity to participate fully in the process.

MS. FAIRBANKS-WILLIAMS: I thought that was what we were taking out, but I wanted to make sure.

ACTING CHAIR BATTLE: Yes. You're absolutely right about that, Edna. Good.

M O T I O N

MR. ASKEW: So I will move the publication of this as a final rule.

MR. EAKELEY: Second.

ACTING CHAIR BATTLE: Okay. It's been properly moved and seconded. All in favor?

(A chorus of ayes.)

ACTING CHAIR BATTLE: All opposed?

(No response.)

ACTING CHAIR BATTLE: Motion carries. Okay.
Linda, did you have something to add to
this?

Okay. So the draft that we have before us
dated 3/28/02 is what we will present to the board
tomorrow.

All right. The next item that we have on
our agenda is consider and act on Property Acquisition
and Management Manual issues relating to incorporation
into LSC regulation at Title 45 of the CFR, the
application of the property manual standards to prior
acquired property, and the use of recouped funds.

MS. CONDRAV: I'm not sure entirely what I'm
supposed to say except the fact that my understanding is
we were asked to put this item on the agenda; that after
the adoption of the new property acquisition and
management manual and its effective date of October 15,
2001, subsequent to that, as several mergers and in the
light of grant competitions where there are several
grantees who are no longer grantees or about to become no
longer grantees, the real property issues have really

kind of come to the fore in terms of the rubber hitting the road.

And so now, of course, you develop a policy, and then you figure out what it really means. And there were a couple of issues that I understood some board members to have relating to some of these issues.

As I understand them, there's some questions regarding the application of the standards to prior acquired property. The PAMM, on its face, very clearly states that it applies only to property acquired after the effective date of the PAMM.

It's my understanding that that decision was made at the time to reflect that -- the belief was that almost all the existing real property purchased with LSC funds, that there was a governing property agreement. And obviously, we wouldn't be able to abrogate those prior existing property agreements.

ACTING CHAIR BATTLE: Have we found that not to be true?

MS. CONDRAV: That is apparently less true than we thought it was going to be, that there are more

instances where there is not a clear real property agreement than I think was anticipated at the time. So that's one issue.

And another issue is relating to the reuse of recouped funds for property.

ACTING CHAIR BATTLE: What does the manual presently say on that issue?

MS. CONDRAV: What the manual presently says is that if a property acquired with LSC funds is sold, that LSC has to be reimbursed in relative proportion to the initial investment. And I believe -- I'm not sure that I'm quoting the exact words, but I believe it's that funds will generally be returned to the same service area.

ACTING CHAIR BATTLE: Okay.

MS. CONDRAV: It is my understanding that that particular formulation was intended to embody the policy that has been existing at LSC for quite some time but had not been written down anywhere, and was generally used in cases of excess fund balances, and other instances in which LSC recoups money.

I think the excess fund balance is probably the most obvious one, and that the typical -- the policy has been that there's a preference for the money to go back to that same service area, but there's not a dictation of where the money needs to go because there's an acknowledgment that sometimes there are emergencies and special circumstances which require -- which would suggest that there is a more effective use of the funds somewhere else other than in that particular service area at any given time, and that there is not a desire on the part of the board or the management to tie anybody's hands about making those decisions, and that what we tried to do in the PAMM was simply reflect what that long-standing policy had been. ACTING CHAIR

BATTLE: Okay. Doug, I think you raised your hand a moment ago.

MR. EAKELEY: Yes. I thought I had the PAMM with me. I think I am responsible for the placement of this item on the agenda. We had a conference call some time ago. I have since changed my view of whether or not we should publish the PAMM as a regulation in the Federal

Register because it did go through a significant comment process before, and nobody has found a reason why we should publish it in the Federal Register, unless someone else thinks differently.

I think the real issues -- the generating issue, and I'll let Bucky address this at greater length in a minute, had to do with those instances where property was sold and there was no controlling rule as to whether or not it would remain in the service area or could be reclaimed by the Corporation.

And the PAMM's policy is to presume that the proceeds from a sale or disposition of property remain in the service area. But we wanted to clarify that particular policy and articulate it perhaps differently if it needed further clarification or articulation.

The second issue is the retroactivity. The PAMM is prospective only, and none of us could remember at the time why we left it that way and why we left it for property previously acquired that is later disposed of to be handled on an ad hoc basis.

Again, we had a review of the internal

agreements with grantees. We looked to see whether or not we had other -- we addressed this in other predecessor documents to PAMM. I think that there's basically no single written source to go to for a rule of decision in those situations.

My own inclination, again, is that that means that unless the Corporation has a legal claim that it can point to for recoupment of the proceeds, that the proceeds should remain in the service area, applied for the purposes of the original grant.

But Bucky, I may be misstating the first point that we discussed some time ago now.

MR. ASKEW: No. I think you covered it rather well. I was part of that conference call, and I remember the discussion vividly. But I don't remember why we thought it needed to be published as a regulation, although there seemed to be some general agreement.

MR. EAKELEY: Well, John --

MR. ASKEW: Again, I don't remember why we did that. And so I'm not -- that's not one of my issues.

MR. EAKELEY: John Erlenborn had actually

discovered an absence of internal policy and procedure for --

MR. ERLNBORN: Well, that actually -- that was limited to procedure. What I discovered was that there was no clear record made of who decided for the disposition of the property or of the proceeds if the property is sold.

And so internally, what I've done is to spell out this president's intention, and that was that there would be a process when there was property in question or proceeds in question to go to the staff, and it's spelled out how that's to be done, and then finally a recommendation from the staff to the president, whoever that may be at the time.

And then the president would determine the disposition, citing reasons in writing. And that would be the final record. And there would be a record, not only as to the decision made and by whom, but also why.

MR.

MR. ERLNBORN: In the PAMM. That's correct.

MR. ASKEW: And I think that's a good

development and something that we obviously needed to have.

MR. ERLNBORN: And I don't think that the PAMM says, barring a legal right to the Corporation. I don't think it says. I think you have to read the -- what is the wording the PAMM?

MS. CONDRAV: I believe the phrase is, funds will generally be returned to the service area. I remember we had a question, and every -- I believe you were the generator of the word "generally," and everybody liked it.

MR. ASKEW: Actually, I can read the actual wording to you.

MS. CONDRAV: Oh, good.

MR. ASKEW: "Such grants will generally be made to the same service the returned funds originally supported." Emphasis added.

ACTING CHAIR BATTLE: And the word "generally," in part, was given -- service areas are reconfigured and renamed, and I think that the intent was that it go back to basically the same client population

base in some way.

But go ahead, Maria.

MS. MERCADO: No. That is my recollection. The whole discussion about the property, sale of property, came up both under the Finance Committee and under the Ops and Regs Committee when former Inspector General Ed Quatrevaux worked with it as well in looking at the language of property.

But the final end discussion is that these monies that were in that state or that particular service areas for client communities should go back there regardless of who the new entities are; as long as there were poverty clients in that community, those funds go back into it.

And how they reprocessed or reassessed, you know, is a different issue. And I'm sure that if we go back and look at the transcripts going back to those committee meetings when we actually did publish the PAMM, you know, we will see how the decision was made.

MR. EAKELEY: Yes. But I don't think we explicitly focused on the potential for discouraging

voluntary reconfiguration or mergers of programs who might, because one building is no longer necessary, find that the proceeds get recouped by the Corporation.

And I think we just wanted the clarification that that was not the intent, and the policy in the PAMM is for those resources to remain in the service area even if there is a consolidation or a merger or something.

MR. ERLNBORN: Barring unusual circumstances. MR. EAKELEY: Barring unusual circumstances. But also a right to recoup. You had to have both.

MR. ASKEW: Given that discussion, I would recommend that we don't need to take any action under this item. And I think we have a clear understanding now, much better than we did at the prior meeting, of where we are with this.

ACTING CHAIR BATTLE: There's one issue that I guess I agree I want to -- is that a motion that we don't take any action, or are you just suggesting it now?

MR. ASKEW: It's my opinion.

ACTING CHAIR BATTLE: Let me just -- it's

your opinion.

MR. EAKELEY: I don't think if there's a motion that's made and passed, there's no action taken. You don't need a no action motion.

ACTING CHAIR BATTLE: That's right. Yes. Well, the one issue, and I think this is the issue that you raised, Doug, and Mattie in your presentation, the recoupment issue, I think, is decided by the language already existing in the PAMM.

There is this issue about the fact that the PAMM itself is prospective from October 15, 2001 forward, and that there is no language or present written policy, in the absence of a written agreement in property that's already recorded as part of the deed, to allow for a policy from the standpoint of LSC for agreements that were reached prior to that date because our PAMM is very prospective and doesn't deal with the retroactive issue.

And I just want to know, where are we on that?

MR. EAKELEY: I don't see how -- I mean, I raised the question because I didn't have an answer. My

further view now, having been a bit more informed on this, is that we can't really impose a retroactive policy that would affect policy rights of grantees or the Corporation.

And it's probably more prudent to leave it to the individual case-by-case situation. If there's an agreement between the parties, that will govern. In the absence of an agreement, there may be other circumstances that will control. But I think these things don't come up that often, and it ought to be just left to the Corporation and the particular grantee on a case-by-case basis to negotiate it out.

MR. ERLLENBORN: I think we ought to note that we have had more of these cases arise recently, and I think that as long as we're going through reconfiguration, that's going to continue to be the case. Because you will be changing the boundaries, and you may want to shift locus of the facility that is giving the service.

Let me say, as far as this president is concerned, that the same rationale as is in the PAMM will

be utilized, and that is that generally, it will be -- these proceeds will be returned.

The property or the proceeds will be returned to generally the area that was being served in the past, which might be something akin to the configuration before. It might be quite different. It might be the whole state is one service area. But generally, that would be my intention.

What a former -- I mean, a subsequent president might do is going to be up to that president, though I would think that this policy, unless it was overridden by a new president, would be followed.

MR. EAKELEY: Actually -- or that's really the new board that would have to take another look at the PAMM, I suppose, and make that alteration at that level, too.

MS. MERCADO: But, I mean, the bottom line was not to have the Corporation as an entity take a windfall on all this -- let's assume that you've got umpteen properties in all these different states that have been reconfigured and consolidated. And if you take

the extent of generally we'll give back to the service areas, but that can also mean that you can decide that that's going to be pulled back and brought into the Corporation, then you still have the vacuum of resources.

Because that money can be utilized for that service area. There's a client community that originally had those funds, and they had the building -- because we're talking about real property, basically -- but that they still need it in some other form or fashion for this new entity that has been reconfigured to provide services to clients.

MR. EAKELEY: The Congress has really had the first and last word on this, because the Congress determines how federal funds get distributed. And it's on a demographic basis, on a per capita poverty count. And therefore, we don't have the discretion to move assets around from state to state.

ACTING CHAIR BATTLE: I also thought that "generally" was a modifier on "service area" -- in other words, that the whole purpose of the word "general" was not to say that you could recoup them and bring them

back, but that "general" meant if the service area changed a little bit, then --

MR. EAKELEY: But unfortunately, we don't have the PAMM in front of us.

MR. ERLNBORN: I don't think that's clear in the PAMM.

ACTING CHAIR BATTLE: You don't think that's clear? Okay.

MS. CONDRAV: I would like to make one thing very clear, though. Under no circumstances can the Corporation get a windfall from this, because these are grant monies. They have to stay in the grant money line.

The Corporation can't take any money that it gets through recruitment from a sale of property and use it for Corporation purposes. We can't take that money and put it into the M&A line and spend it on employee bonuses or anything like that.

That money stays in the grant line and is given back out. And certainly it's my understanding that that's been what has happened with things like excess fund balance money, is that that money stays in the grant

line and goes back out as grants. And I remember we talked about this in the discussion of the PAMM. We talked about that money staying in the grant line, that it goes back out to a grantee whether or not it's the same service area.

MS. MERCADO: I think there needs to be some correction on that.

MR. RICHARDSON: Past practice with this board is yes, that the money does stay with the grantee. We do fund our grants from other funds available or emergency grants with that money. However, I must say that past boards have used that money to support management and administration.

MS. MERCADO: Yes. So --

ACTING CHAIR BATTLE: Okay. But it's been our policy, and continues to be our policy, and it is embodied at least in this PAMM as we have promulgated it, that those funds would generally go back to the service area.

MR. EAKELEY: Can we just take a look at the PAMM overnight, maybe, Mattie, and if there's some

further discussion at the board meeting tomorrow, just --

MS. CONDRAV: Sure. The PAMM's not going to -- I can tell you that the wording of the PAMM isn't going to shed any light on this particular issue. The PAMM doesn't discuss whether the word "generally" was meant to modify "service area" or was meant just in terms of --

ACTING CHAIR BATTLE: Generally so that there could be exceptions to that rule?

MS. CONDRAV: -- returning the money from -- as long as it goes back out to a grantee. The PAMM doesn't discuss that, so you're not going to find an answer to that question in the PAMM, and you're not going to find an answer -- I mean, I'm happy to bring it.

ACTING CHAIR BATTLE: However, I think that this board can interpret its intent. And I think that that might be what we can do when we meet tomorrow, that is, to look at the language and interpret our intent in a way that does breathe some clarity where there might not be some today.

And so with that, Doug, I think if we get a

chance overnight to take a look at the language and to, with that review of the language, breathe our intent into what that language says, what we intend for it to mean in its application, I think that would help to clarify any questions that people have about the intent of the language of the PAMM.

And with that --

MR. ERLENBORN: Just one last statement.

ACTING CHAIR BATTLE: Yes?

MR. ERLENBORN: Just to highlight what I said a few moments ago, I believe that there's been some concern out across the country by grantees as to what this president might have intended to do with the proceeds of property that was sold.

And let me say that I think this was a misreading of why I held up a disposition of some properties which were going to be sold and would become then funds available to a new service area.

What I found was, as I said a few minutes ago, that there was no procedure. There was nothing in writing saying who made the decision or why. And there

was also another dispute with that particular executive director.

And so it was in escrow and could have been closed momentarily. So I ended the escrow and gave this some thought, worked with the staff, and came up with the policy, a presidential policy which I described a few minutes ago.

That was not a change in my thinking. It was not my intention to bring the money back to the Corporation. But I wanted to make it very clear that the disposition would be done by the president and after advice and with written reasons, and would not -- this won't really change that at all.

ACTING CHAIR BATTLE: Okay.

MR. EAKELEY: Other than improving the situation.

MR. ERLNBORN: I hope it improves the situation.

ACTING CHAIR BATTLE: And clarify.

MR. EAKELEY: I think we all agree on that.

ACTING CHAIR BATTLE: All right. The next

item that we have on our agenda is staff report on practices resulted to Corporation access to grantee records.

Now, I know that we've already pulled the protocol. Does that -- Bucky, just let me ask you, does that satisfy the concerns that we have in needing a report on the access to records, or is that different?

MR. ASKEW: It does as far as I'm concerned.

ACTING CHAIR BATTLE: Okay.

MR. ASKEW: I realize now that I probably should have made this a part of my motion to amend the agenda, pulling item 10, too, because those are really part and parcel of the same issue.

MS. MERCADO: So is it items 8, 9, and 10?

ACTING CHAIR BATTLE: So is it 8, 9, and 10?

MR. ASKEW: Items 8, 9, and 10. Can we amend the agenda?

ACTING CHAIR BATTLE: Yes. We'll just -- since those are just reporting items, we just simply at this point can say that we no longer need a report.

Let's take a quick break while we -- before

we -- yes, while we take a look at this and make sure that that's accurate.

(A brief recess was taken.)

ACTING CHAIR BATTLE: Back on the record to complete this meeting. Get everybody's attention one way or the other.

We are now back on the record with the continuation of the Operations and Regulations Committee meeting. We broke briefly to discuss whether we needed to have a staff report on practices relating to the Corporation's access to grantee records.

And there were three items on the agenda that really pertain to the development of a particular protocol that I think we'll hear from the president on tomorrow.

So I think that the committee has decided that there's no need at this juncture to hear from the staff on practices related to Corporation access to grantee records, and we'll defer our discussion around that particular issue until we hear from the president tomorrow during our board meeting.

There was one item that we skipped on our agenda earlier on that we'll go back to. I think at the time that we got to item 3 on the agenda, we had -- we didn't have the president of the Corporation available here with us, and we do now. So item 3 pertains to consider and act on whether to authorize the president of LSC to extend the contracts of corporate officers for six months. Mr. President?

MR. ERLLENBORN: Thank you, Madame Chairman. It is a standard practice in the private corporate world when there are changes coming on and there might be disruption in the operation of the corporation's business to say that there's a change in the top number of executive employees.

But there is a custom to make contracts available to these top-level employees so that they know that they will have a job for X number of months or however long it might be. I think that's a good corporate practice, and a corporate practice that we have used here in the Legal Services Corporation for the last several years.

At this time, of course, we are looking forward to -- and I'm sure that for some of these board members for a long time, six years or so -- to a new board coming on board. Oh, excuse me, board on board -- but a new group of people coming on board as the board of directors of the Legal Services Corporation.

At the present time, there are certain corporate officers who have in their contracts a particular length of time for which they are employed so that if they were asked to leave before that time, there would be certain compensation for them, which is the standard practice in the private sector as well.

Therefore, with the idea that -- well, let me say this: When the new board of directors comes on, I would expect -- and, of course, it's their determination -- but I would expect that they would first want to put into effect a search for the new president. I am not going to ask for an extension of my term; I'm looking forward, as a matter of fact, to the hiring of a new president by the new corporate board when they are finally nominated and confirmed.

But for the other officers, several officers, they have contracts that give them a tenure until July 1st of this year. And it's my proposal to the board, and I hope that this committee will recommend to the Board, that we extend for an additional six months the contracts for these officers. And they are, particularly, Victor Fortuno, vice president; Mauricio Vivero, vice president; and Randi Youells, vice president. And I ask the committee to make this recommendation to the board of directors.

M O T I O N

MR. ASKEW: So moved.

ACTING CHAIR BATTLE: It's been moved. Is there a second?

MR. EAKELEY: I'll second.

ACTING CHAIR BATTLE: It's been properly seconded. Are there any questions?

MR. EAKELEY: I have a comment, just -- John McKay had originally recommended to the board that we enter into written contracts with the vice presidents in order to assure management stability at a time of

transition, in order to provide for that core management team to remain in place so that the new board could come in and decide what it wanted to do in a manner that would assure the continuity of the organization and its operations during that transition.

And this really is simply the application of that recommendation for a further moment, given our increased and unexpected longevity.

ACTING CHAIR BATTLE: Okay. Any other questions or concerns about that motion?

MR. ASKEW: I'll just make a comment. This isn't part of the motion. But I would hope that the new board, in its wisdom, will ask Mr. Erlenborn to stay on during a presidential search process so that that continuation that Doug just spoke about -- and that these vice presidents will stay on until a new president is hired and make a determination then what direction she or he would like to take the Corporation in.

But I'd just like to say for the record I hope in their wisdom they will keep Mr. Erlenborn on as the interim president until that process works its way

through.

MR. ERLNBORN: Barring unforeseen circumstances, you are granted your wish.

ACTING CHAIR BATTLE: Okay. All in favor of the motion?

(A chorus of ayes.)

ACTING CHAIR BATTLE: All opposed?

(No response.)

ACTING CHAIR BATTLE: The motion carries.

The next item we have on our agenda is consider and act on other business. Is there any other business that needs to come before this committee?

(No response.)

ACTING CHAIR BATTLE: Is there any public comment?

(No response.)

ACTING CHAIR BATTLE: Hearing none, then we stand adjourned. Thank you very much.

(Whereupon, at 2:34 p.m., the meeting was concluded.)

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