

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

MEETING OF THE  
OPERATIONS AND  
REGULATIONS COMMITTEE

Saturday, October 27, 2007

11:14 a.m.

The Portland Regency Hotel  
20 Milk Street  
Portland, Maine

COMMITTEE MEMBERS PRESENT:

Thomas R. Meites, Chairman  
Lillian R. BeVier  
Jonann C. Chiles  
David Hall  
Michael D. McKay  
Bernice Phillips

OTHER BOARD MEMBERS PRESENT:

Thomas A. Fuentes (by telephone)  
Herbert S. Garten  
Sarah M. Singleton  
Frank B. Strickland, ex officio

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President  
Victor M. Fortuno, Vice President for Legal Affairs,  
General Counsel and Corporate Secretary  
Patricia D. Batie, Manager of Board Operations  
Mattie Cohan, Senior Assistant General Counsel  
Charles Jeffress, Chief Administrative Officer  
Karen Sarjeant, Vice President for Programs and  
Compliance  
John Constance, Director, Office of Government  
Relations and Public Affairs  
Ronald "Dutch" Merryman, Acting Inspector General  
Thomas Coogan, Assistant Inspector General for  
Investigations, Office of the Inspector General  
John Meyer, Director, Office of Information Management  
Guy Lescault, Program Counsel III, Office of Program  
Performance

Don Saunders, National Legal Aid and Defenders  
Association (NLADA)  
Linda Perle, Center for Law and Social Policy (CLASP)  
Delinah Hankman, American Bar Association (ABA)

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## 1 PROCEEDINGS

2 (11:14 a.m.)

3 CHAIRMAN MEITES: All right. I will call into  
4 session the meeting of the Operations and Regulations  
5 Committee.6 Our committee's meeting was supposed to have  
7 begun at 9:00 this morning. It is now 11:14. In order  
8 to catch up on our schedule, I'm going to suggest that we  
9 defer several items, and let me tell you why I'm going to  
10 -- my basis for my suggestion.11 First, let me ask for approval of the agenda as  
12 presented in the board book.

## 13 MOTION

14 MS. BeVIER: I move we approve the agenda.

15 MR. MCKAY: Second.

16 CHAIRMAN MEITES: Any discussion?

17 (No response.)

18 CHAIRMAN MEITES: All in favor?

19 (No response.)

20 CHAIRMAN MEITES: Noes?

21 (No response.)

1 CHAIRMAN MEITES: And it is approved.

2 Second, approval of the minutes of our meeting  
3 of July 28, 2007. Do I hear a motion to approve the  
4 minutes?

5 M O T I O N

6 MR. MCKAY: So move.

7 MS. BEVIER: Second.

8 CHAIRMAN MEITES: Discussion?

9 (No response.)

10 CHAIRMAN MEITES: None? All in favor?

11 (A chorus of ayes.)

12 CHAIRMAN MEITES: Approved.

13 The third item, approval of the minutes of our  
14 September 11, 2007 meeting. Is there a motion to  
15 approve?

16 M O T I O N

17 MR. MCKAY: So move.

18 CHAIRMAN MEITES: Second?

19 MS. CHILES. Second.

20 CHAIRMAN MEITES: No discussion?

21 (No response.)

22 CHAIRMAN MEITES: All in favor?

1 (A chorus of ayes.)

2 CHAIRMAN MEITES: It's approved.

3 The next item is consider and act on initiation  
4 of a rulemaking to adopt lesser sanctions. I understand  
5 that the Office of the Inspector General would like a  
6 chance to comment. And I don't think we've received the  
7 comment.

8 Is that correct, Dutch?

9 MR. MERRYMAN: For the record, Dutch Merryman,  
10 acting Inspector General. Based on the new memo, we  
11 really have no comments at this time. All our comments  
12 are taken care of with what the new memo presented.

13 CHAIRMAN MEITES: All right.

14 MR. MERRYMAN: So just for the record, there's  
15 nothing missing from the book. It's --

16 CHAIRMAN MEITES: So you are satisfied that  
17 we're in a position to proceed on that?

18 MR. MERRYMAN: We are. And the final rule, of  
19 course, we always reserve the right to comment when  
20 comments are asked for on the final rule.

21 CHAIRMAN MEITES: I understand. All right.

22 Let me -- I was going to suggest we defer this because I

1 was not aware that the OIG's comments had been  
2 incorporated. Let's skip this for a moment and go  
3 through the rest and see how our time is running.

4           The staff report on LSC corporate compliance  
5 program.

6           MR. JEFFRESS: Charles Jeffress, Mr. Chairman,  
7 chief administrative officer. There is a staff task  
8 force that is working on -- is this better? All right.  
9 There is a staff task force that is working on a proposed  
10 code of conduct.

11           We will be making recommendations to the  
12 executive team asking for input from other staff this  
13 month. And we expect to have a recommendation, the  
14 executive team expects to have a recommendation, to the  
15 board at its January meeting.

16           In the interest of brevity, I can leave it  
17 there. If you have questions and want more detail, I'll  
18 be happy to respond.

19           CHAIRMAN MEITES: Any questions from members of  
20 the committee on this? Mike, please.

21           MR. MCKAY: You say you're working on a code of  
22 conduct. But you're also working on a compliance side of

1 the code of conduct as well. Isn't that correct?

2 MR. JEFFRESS: Yes. In addition to the code of  
3 conduct, the task force then is going to take up other  
4 issues within the compliance plan in terms of a  
5 compliance officer or best practices for the  
6 organization. Thank you.

7 CHAIRMAN MEITES: One suggestion. At least I  
8 am not familiar with corporate compliance programs. And  
9 when you make your submission in January, it may be  
10 helpful if you can include some other models so we have  
11 an idea of what alternatives there are to what you're  
12 proposing.

13 MR. JEFFRESS: We will do so. And we have been  
14 using models from the American Bar Association, the New  
15 York Stock Exchange, nonprofit groups we have been using.

16 CHAIRMAN MEITES: That will be helpful in your  
17 submission.

18 All right. With that, if there's no questions,  
19 we'll go on to item 6, staff report on continuity of  
20 operations plan. Charles?

21 MR. JEFFRESS: Mr. Chairman, this is a very  
22 similar situation. We have a staff task group that is



1 working on a continuity of operations plan. We have  
2 completed a draft of the emergency plan should a disaster  
3 occur. It includes communications among staff,  
4 communications with grantees, communications with the  
5 board should a disaster occur and our not being able to  
6 occupy the building.

7           We have a draft contract which we expect to  
8 execute this week -- excuse me, this next month -- with  
9 an organization to provide backup for our computer  
10 systems so that should something happen and our computers  
11 in the building not function, that the backup system  
12 would be able to be up and running within the hour with a  
13 simple flip of a switch.

14           So we are making progress on this continuity of  
15 operations plan. We promised the Government  
16 Accountability Office that we would complete the plan in  
17 2008, and like with the compliance plan, there will be  
18 pieces of it coming at different times. And the first  
19 piece is this emergency response plan. And we expect to  
20 complete that this fall.

21           CHAIRMAN MEITES: Will you be in a position to  
22 give us a full report on that in January?

1           MR. JEFFRESS: Certainly. And the board will  
2 receive copies by then.

3           CHAIRMAN MEITES: Good. All right. If there  
4 are no questions, then we'll defer further consideration  
5 of this to January as well.

6           All right. Consider and act on locality pay  
7 issues. Are there any locality pay issues remaining?  
8 Yes, there are. Okay.

9           MR. CONSTANCE: Thank you, Mr. Chairman. John  
10 Constance, director of government relations and public  
11 affairs.

12           Let me just report on the progress on locality  
13 pay and the language within the Congress and the  
14 congressional action associated with this.

15           When the board last met in Nashville in July,  
16 the Senate Appropriations Committee had unanimously  
17 reported out the Congress Justice Science bill which  
18 contained specific language to authorize continuation of  
19 LSC's locality pay program.

20           On the 16th of October, the full Senate passed  
21 that bill by a margin of 75 to 19. I can provide for the  
22 record a copy of the language that is in that bill, Mr.

1 Chairman. And also, it might be just useful to read that  
2 into the record.

3           Within the bill that has been passed by the  
4 United States Senate, it says, "Provided that the Legal  
5 Services Corporation may continue to provide locality pay  
6 to the officers and employees at a rate no greater than  
7 that provided by the federal government to Washington,  
8 D.C.-based employees, as authorized by 5 United States  
9 Code 5304, notwithstanding Section 1005(d) of the Legal  
10 Services Corporation Act, 42 United States Code 2996(d)."

11           So that was passed by the Senate at this point.  
12 The House passed their companion CJS bill just before we  
13 arrived in Nashville last July. While that bill did not  
14 contain specific locality pay bill language, the  
15 accompanying House report stated awareness of the issue  
16 and a willingness to work towards a resolution.

17           In a previous meeting, I had pledged to the  
18 board that if any controversy came up regarding this  
19 matter, I would go ahead and certainly affirmatively  
20 report that to the board.

21           I must say that during the debate, the floor  
22 debate the other evening on the Thune amendment, which

1 proposed to use LSC funding as a \$20 million offset of a  
2 supplemental of funding for the U.S. Attorney's budget,  
3 Senator Thune did bring up locality pay as a point when  
4 discussing the GAO report, and indicated that certain  
5 officers of the board -- or of the Corporation, rather --  
6 had been paid at a rate higher than the statutory limit.

7           During the debate, Senator Harkin responded to  
8 that, saying that, "I know they are acting to address  
9 it," meaning the GAO recommendations. "Their board of  
10 directors has publicly accepted all of GAO's  
11 recommendations. They have begun their implementation,"  
12 and then asked unanimous consent to have printed in the  
13 record the Legal Services Corporation response to the GAO  
14 report, "which outlined the steps they are taking to  
15 ensure better management at headquarters."

16           After that debate, the Senate then voted on the  
17 Thune amendment and rejected that amendment by a margin  
18 of 61 to 32. So that -- it in effect did come up on the  
19 Senate floor as part of that debate, and that is the only  
20 time publicly that the matter has come up before the  
21 Senate or the House.

22           We've seen no problems, follow-up problems or

1 issues, coming out of that debate. We have discussed and  
2 cleared this issue with Ms. Sanchez of California, our  
3 oversight chair in the House; Mr. Frelinghuysen of New  
4 Jersey, ranking member on our appropriations committee in  
5 the House; and also with Mr. Mollohan.

6           We've discussed it with the staff of  
7 Congressman Cannon, and I don't see any other concern at  
8 this point. It will be a matter in conference, but we  
9 have full expectations that it would be settled in the  
10 Senate language in conference based on the clearances  
11 we've already heard from the House.

12           As I have reported to you in closed session, we  
13 at this point hope for a reasonable conclusion to the  
14 appropriations process and that language to be in final  
15 law. But that has not happened at this juncture.

16           CHAIRMAN MEITES: Any questions for John?  
17 Charles?

18           MR. JEFFRESS: Mr. Chairman, if I might point  
19 out that in July, in discussing this issue, management  
20 announced that we had deferred any payment of the July  
21 locality pay because of this issue having arisen. And  
22 the board, by motion of this committee, recommended that

1 the Corporation seek resolution of the issue in Congress,  
2 which we have done.

3 In the course of that discussion, even though  
4 it wasn't in the motion, there was discussion that  
5 locality pay not be paid. It is possible now that the  
6 issue is resolved by Congress before this board meets  
7 again, in which case the July payment that was deferred  
8 could be paid.

9 And I guess as the chief administrative  
10 officer, I would feel more comfortable if we had some  
11 direction from the board that should Congress authorize  
12 us to continue the program, that it is okay to go ahead  
13 and pay the July payment that was deferred.

14 CHAIRMAN MEITES: Well, we've missed one  
15 payment of locality pay to date? Is that correct?

16 MR. JEFFRESS: For those whose pay is at the  
17 top of the range. That's correct.

18 CHAIRMAN MEITES: And when would the next  
19 payment be?

20 MR. JEFFRESS: Well, it would have been -- the  
21 July payment is what we missed.

22 CHAIRMAN MEITES: Right.

1           MR. JEFFRESS: At this point there is no  
2 further payment scheduled because unless Congress acts,  
3 it would not be appropriate, I don't think, to pay --

4           CHAIRMAN MEITES: Right. But according to our  
5 usual schedule, when would it have been?

6           MR. JEFFRESS: It would have been in January.

7           CHAIRMAN MEITES: And that would be before our  
8 next meeting. Is that correct?

9           MR. JEFFRESS: It would be before the next  
10 meeting.

11          CHAIRMAN MEITES: Yeah. The difficulty I have,  
12 Charles, is unless we know how Congress resolves the  
13 issue, I feel somewhat uncomfortable leaving it to your  
14 judgment along as to whether "a satisfactory resolution"  
15 has been researched.

16          If the House adopts the Senate's language, let  
17 me get a sense of the committee. Would that be  
18 satisfactory for Charles to proceed on, the exact wording  
19 that the Senate now has?

20          MS. SINGLETON: The question is, if the  
21 language that we've heard is adopted by the full  
22 Congress, can we pre-authorize --

1           CHAIRMAN MEITES: Exactly.

2           MS. SINGLETON: -- the payment of the July  
3 locality pay, not the January pay?

4           CHAIRMAN MEITES: Well, it will also be the  
5 January payment because January will be due before we  
6 meet again.

7           Mike? Or are we more comfortable waiting and  
8 seeing?

9           MR. MCKAY: I guess I would be more comfortable  
10 waiting. But there is a possibility -- well, I guess --  
11 I was just going to say we'll be meeting before then.  
12 But it would probably require notice and all that. So  
13 no, I don't have any significant insight. Sorry.

14          CHAIRMAN MEITES: Charles, I think the sense of  
15 the committee is we probably would prefer to wait and see  
16 what the final action is.

17          MR. JEFFRESS: Well, then, I would -- as Mr.  
18 McKay noted, that if language passes that would appear to  
19 authorize us to continue the program, we might well seek  
20 at least a telephonic vote from the board on that issue.

21          CHAIRMAN MEITES: Oh, you can do that. That's  
22 of course a possibility. But -- Sarah?



1           MS. SINGLETON: This is a legal question in  
2 terms of encumbering government money. This pay would  
3 have been -- the July payment, at least, would have been  
4 due for a given year, fiscal year. Are you allowed to  
5 carry that over into a future fiscal year if you have not  
6 -- well, I don't know. Are you allowed to do that? I  
7 guess that's the end of my question.

8           MR. JEFFRESS: Yes. As a D.C. nonprofit  
9 corporation, our funds do not revert to the federal  
10 government at the end of the year. So we do carry these  
11 funds forward. And we have -- what the finance committee  
12 will hear later this morning, we have in the temporary  
13 operating budget for '08 allocated money for that payment  
14 should it be authorized.

15           CHAIRMAN MEITES: Wel, I guess the sense of the  
16 committee is if language is adopted in a bill that is  
17 enacted after signature by the President that you believe  
18 solves the problem, then our sense is you should notify  
19 us and see if we want to call a special meeting to  
20 authorize it because it could be done with a phone vote.  
21 It even be done by a notational vote without the phone  
22 meeting.

1           It will be helpful if we could get an opinion  
2 from Vic at the same time that the language is, in his  
3 view, satisfactory.

4           Okay. Next item is the OIG's report on IPAs.  
5 And I have an idea on that as well. I have read the  
6 report, and I trust my committee members have read the  
7 report. In the course of other matters, we've actually  
8 learned something about the IPA reporting.

9           And I, at least, would find it helps -- and as  
10 I understand the process, which is reflected in the OIG's  
11 memo, that management also has a role to play with regard  
12 to the IPA reports.

13           MR. JEFFRESS: That is correct.

14           CHAIRMAN MEITES: And I think it would be  
15 helpful for our consideration of the IPA reports if, as a  
16 supplement to what you've written, we get something from  
17 management as to how it sees its role and what use and  
18 value the IPA reports have to management.

19           And if we could have that before the January  
20 meeting, we'd like a joint presentation from both you and  
21 management with regard to the question of how we can  
22 improve or whether the IPA process can be improved.

1           Is that satisfactory to the committee?

2           MR. MCKAY: Yes.

3           CHAIRMAN MEITES: All right. Why don't we do  
4 that as well.

5           All right. The only substantive item we have  
6 is the lesser sanctions. Who is going to speak to that?

7           MS. COHAN: I will.

8           CHAIRMAN MEITES: Mattie?

9           MS. COHAN: For the record, I'm Mattie Cohan,  
10 senior general counsel with the Legal Services  
11 Corporation. I've got my laptop up here in case I need  
12 to refer to a couple of the regulations.

13          CHAIRMAN MEITES: Thank you.

14          MS. COHAN: So I didn't have to bring the whole  
15 book with me.

16          As you know from your materials, management has  
17 made a recommendation in a rulemaking options paper  
18 presented to the committee. The summary of the  
19 recommendations is that management is recommending the  
20 initiation of a rulemaking amending current 45 CFR Part  
21 1623 to extend the maximum suspension period from the  
22 current limit of 30 days to a maximum of six months, and

1 initiation of a rulemaking to amend Part 1606, the  
2 Corporation's termination procedures, to provide  
3 procedures for limited reductions of a grantee's funding,  
4 meaning less than 5 percent of a grantee's funding.

5 In addition, management is recommending that  
6 these rulemakings be undertaken by notice and comment  
7 only, with the convening of a limited scope regulatory  
8 workshop on the development of the process for the  
9 imposition of limited reductions in funding.

10 As it says in the rulemaking options paper,  
11 although management believes that monetary-based  
12 enforcement tools should be tools of last resort, they  
13 can be useful options for their deterrent effect and as a  
14 meaningful sanction in the infrequent instances in which  
15 they would be needed.

16 I was going to talk about some of the  
17 background about LSC's enforcement authority. In the  
18 interest of time, I am looking for guidance whether you  
19 wish me to continue that way or just kind of skip ahead,  
20 skip some of the background stuff. I don't know what  
21 would be most helpful to the committee.

22 CHAIRMAN MEITES: Well, I had some informal

1 discussions about this earlier today with regard to some  
2 matters that came up earlier today. And I think it's the  
3 sense of our committee that this may be in some ways the  
4 tail wagging the dog; that my sense is that our committee  
5 would like to look at a broader question, broader  
6 questions, not just sanctions, but to learn more about  
7 the process followed by OCE, and indeed by the  
8 Corporation, from when it received a complaint until it  
9 decides whether to issue sanctions.

10           And if that's the sense of the committee,  
11 rather than start a rulemaking process on the sanction  
12 end, I think we'd like to know more about the entire  
13 process so that we can, I think, get a better sense about  
14 if the approach which the Corporation now uses, and has  
15 used for some time, is adequate.

16           So I think what we would prefer to do rather  
17 than address, this morning, the proposed rulemaking is  
18 again ask you in January -- and we'll have to have some  
19 time for this, and Karen would also participate in this -  
20 - to really educate us on the entire process. And in the  
21 context of that, we can talk about the end game of the  
22 process, the sanctions, but get a better idea how you get

1 to that question.

2 Is that agreeable to the committee?

3 MS. BeVIER: Yes, Mr. Chairman. It certainly  
4 is agreeable to me. I'll tell you what my own concern is  
5 and what I'm interested in learning about, Mattie, and  
6 that is the sanction process seems to me to be  
7 troublesome and limited.

8 And what I think ought to be in the forefront  
9 with respect to compliance and the sanction as the hammer  
10 is that whatever happens with any particular grantee,  
11 service to the client population be continued  
12 uninterrupted.

13 And so it's kind of -- I'm interested in sort  
14 of how -- there have got to be other options than  
15 sanctions to bring grantees into compliance or to make  
16 sure that their clients don't go without service while  
17 the grantee is being sanctioned.

18 And so that's -- I think that's what the chair  
19 is getting at. And it's a much more complete picture  
20 involving other things than the threat of withdrawal of  
21 funds.

22 MS. COHAN: Oh, absolutely. And I'll just say,

1 without trying to steal my own thunder and Karen's staff  
2 thunder for January, that the current basic enforcement  
3 regulation that we have kind of starts at a place of  
4 informal resolution. When the Corporation, you know,  
5 investigates and finds some noncompliance, the first  
6 place is trying to resolve the issue informally so that  
7 there's the least disruption to everybody's operations.

8           And as another example, our current suspension  
9 regulation makes clear that funding -- during the process  
10 leading up to whether there's a decision to suspend,  
11 funding is continued. And at the end of the suspension  
12 process, the money is returned at the end of the  
13 suspension period.

14           And so there's already -- you know, that's part  
15 of it. And we'll obviously provide you with a lot more  
16 kind of -- maybe a timeline of the life of a complaint,  
17 if that's helpful.

18           CHAIRMAN MEITES: Yes. Another thing that  
19 would be helpful, I think, and this would be for Karen,  
20 is to get some idea of the magnitude of the problem: How  
21 many of these you initiate, how many are resolved at the  
22 informal -- and maybe for the last two or three years or

1 whatever period is easy for you to compile. So is this  
2 something that's happening, you know, to 140 of our 142  
3 grantees every year, or is it happening to two of our  
4 grantees? That would help us get a handle on the  
5 problem.

6 So let's defer it until January. You I think  
7 have an idea of what we're looking for.

8 MS. COHAN: Absolutely.

9 CHAIRMAN MEITES: We don't want you to spend  
10 the next six weeks doing nothing else. Just some  
11 educational --

12 MS. COHAN: No fear of that.

13 CHAIRMAN MEITES: All right. That is all I  
14 have. Are there any public comments on this particular  
15 issue, the proposed rulemaking, or indeed what I've just  
16 suggested, that it be really expanded into an educational  
17 process for us?

18 MS. PERLE: I'm Linda Perle from the Center for  
19 Law and Social Policy. I did prepare some comments about  
20 the proposed lesser sanctions rule, which I am obviously  
21 not going to give now. I think that this is a good way  
22 to proceed, and we have no objections to going forward in



1 that way.

2 CHAIRMAN MEITES: Thank you. Any other public  
3 comments.

4 MR. FUENTES: Hello?

5 CHAIRMAN MEITES: Tom?

6 MR. FUENTES: Is the mike on?

7 CHAIRMAN MEITES: We can hear you. Okay.  
8 Linda did not speak as loudly as you wanted. What she  
9 said on behalf of the NLADA (sic) is that the  
10 organization had prepared remarks with regard to this  
11 specific proposal, but they were happy to defer them  
12 until we have our January meeting; and also that they  
13 appreciate the approach we are taking.

14 MR. FUENTES: Thank you.

15 CHAIRMAN MEITES: Okay. That gets us through  
16 our agenda quickly. And I'll ask if there's -- we will  
17 consider and act on any other business, if there is other  
18 business.

19 (No response.)

20 CHAIRMAN MEITES: Any other public comment?

21 (No response.)

22 CHAIRMAN MEITES: Hearing none, I will accept a

1 motion to adjourn.

2 M O T I O N

3 MS. BeVIER: I move to adjourn.

4 MS. CHILES. Second.

5 CHAIRMAN MEITES: All in favor?

6 (A chorus of ayes.)

7 CHAIRMAN MEITES: We are adjourned.

8 (Whereupon, at 11:39 a.m., the committee was  
9 adjourned.)

10 \* \* \* \* \*

11