

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Friday, November 16, 2001

2:25 p.m.

Marriott at Metro Center
775 12th Street, NW
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

John T. Broderick, Chair
Hulett H. Askew

BOARD MEMBERS PRESENT:

Maria Luisa Mercado
Edna Fairbanks-Williams
Thomas F. Smegal, Jr.

STAFF AND PUBLIC PRESENT:

John N. Erlenborn, President
Victor Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary

STAFF AND PUBLIC PRESENT (CONT'D) :

Mattie Condray, Senior Assistant General Counsel
David L. Richardson, Acting Vice President for
Administration, Treasurer & Comptroller
Mauricio Vivero, Vice President for Government
Relations & Public Affairs
Leonard J. Koczur, Acting Inspector General
Laurie Tarantowicz, Acting Inspector General and
Legal Counsel
Dave Maddox, Assistant Inspector General for
Resource Management
Elizabeth Cushing, Communications Specialist & Board
Liaison
Michael A. Genz, Director, Office of Program
Performance
Robert D. Gross, Senior Program Counsel III/State
Planning
Linda Perle, Senior Staff Attorney, Center for Law and
Social Policy
Julie Clark, Vice President for Goverment Relations,
National Legal Aid and Defenders Association
Don Saunders, Director for Civil Legal Services, National
Legal Aid and Defenders Association

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1

P R O C E E D I N G S

2 CHAIR BRODERICK: We can call the meeting to order.

3 I apologize for the delay, but we wanted to make sure we had
4 a quorum here, and we do. Now, the first item on our agenda
5 is approval of the agenda. Hopefully that won't be a
6 controversial issue.

7 MS. MERCADO: I'm not a member of your committee.

8 I'm just here.

9 MR. SMEGAL: If I were a member of your committee,
10 I wouldn't approve the agenda, but I just don't understand
11 it.

12 M O T I O N

13 MR. ASKEW: I move its approval.

14 CHAIR BRODERICK: I second it. It passes.

15 Approval of the minutes of the committee meeting of
16 September 7, 2001, which I have reviewed, if there is a
17 motion.

18 M O T I O N

19 MR. ASKEW: I have a change there, Mr. Chairman.

20 It says that I was at the committee via telephone. I
21 actually was in attendance. My memory is so bad these days.

1 CHAIR BRODERICK: No, you were via telephone in New
2 Hampshire, but unfortunately, you were actually with us.

3 MR. ASKEW: I was with you.

4 CHAIR BRODERICK: Yes, in September. So, with that
5 correction that Bucky Askew was actually here in the flesh,
6 so moved. Seconded and approved.

7 The third item is consider and act on Draft Notice
8 of Proposal Rulemaking 45 CFR Part 1639, Welfare Reform.
9 Victor or Mattie, if one of you would like to talk to us
10 about that.

11 A PARTICIPANT: 1636?

12 MS. CONDRAY: It's actually 1639. Yes, the title
13 of the memo is, sadly, incorrect, but everywhere else it
14 correctly refers, I believe, to 1639.

15 This is a very straightforward draft of the Notice
16 of Proposed Rulemaking to make 1639 conform to the decision
17 in LSC v. Velazquez and peremptorily conforming to what will
18 be our new statutory language when the bill that was passed
19 by both the House and the Senate is signed by the President.

20 Really the only change being made -- and it's in '
21 1639.4 -- is deleting the end of the sentence where it says,

1 "if such relief does not involve an effort to amend or
2 otherwise challenge existing law in effect on the date of the
3 initiation of representation;" and changing the comma that's
4 after the word "agency" that precedes all of this verbiage to
5 a period, such that if someone is undertaking representation
6 of an individual seeking benefits, they are not precluded
7 from making a particular argument in that representation
8 relating to challenging the existing law in effect.

9 Really all we're doing is implementing the straight
10 language from the Supreme Court opinion. If there are any
11 questions, I'll be happy to answer them.

12 CHAIR BRODERICK: What, if anything, Mattie, do you
13 need from us?

14 MS. CONDRAY: We need a recommendation from the
15 committee that the board approve the draft for publication.
16 At that point, if the board approves it for publication, it
17 will be published in the Federal Register; comments will be
18 due 60 days from the date of publication; we will take the
19 comments, we will draft a final rule, which we will then
20 bring back in front of the committee to approve.

21 CHAIR BRODERICK: Any questions?

1 MR. SMEGAL: Mr. Chairman, I was reminded in
2 reading through this stuff of watching a movie on television
3 where the ads keep getting longer and longer as you get near
4 the end, and you're waiting and waiting for the end. It
5 starts on page 8 and I had to read all the way over to page
6 13 before I found out what we were doing.

7 Is there any way that you might bring up the
8 deletion which appears on page 13 at the end somewhere up in
9 the body of the report?

10 MS. CONDRAY: Sure, I can redraft the memo if you
11 want, but what we're looking to --

12 MR. SMEGAL: My only point was that I had to read
13 to page 13 to figure out what we were doing. There's nothing
14 in the first part that tells me what we're doing is deleting
15 a few words. Why isn't that right up front, just here's what
16 we're going to do, here's what's happening? Unless I missed
17 something.

18 MS. CONDRAY: Well, I mean, there are two documents
19 that you are looking at. I'm sorry you found the
20 introductory memo confusing. It wasn't meant to be.

21 MR. SMEGAL: No, it wasn't confusing, but I had to

1 read to the end to find out what it was -- you didn't tell me
2 up front what you were going to do. I had to get to the last
3 line to find out what it was we were going to do; we were
4 going to delete those words. But nowhere up in front of that
5 was I told that. I mean, it's interesting. I liked what I
6 read. But I had to keep reading to find out what it was we
7 were ultimately going to do with respect to this regulation.

8 MS. CONDRAY: Okay, I guess I'm a little confused
9 because, to the extent that what we're looking to publish is
10 the three-page Notice of Proposed Rulemaking that starts in
11 your book on page 11 --

12 MR. SMEGAL: Right.

13 CHAIR BRODERICK: I think that may be the
14 confusion. The third page of that is page 13 in our book,
15 but it's only page 3 of the proposed --

16 MS. CONDRAY: Of the Notice of Proposed Rulemaking.
17 That's correct. And the format of the Notice of Proposed
18 Rulemaking is the standard Federal Register format for
19 issuing Notices of Proposed Rulemakings.

20 MR. SMEGAL: No, I'm not concerned about that. I'm
21 just wondering why I didn't read earlier than the last

1 sentence of page 13, which, as the chairman points out, is
2 only the third page of whatever is going to be published, why
3 I didn't read before that what it was that we were asking be
4 done. And what we're asking be done is some words deleted,
5 which is exactly what we should be asking for. But it seemed
6 to me that somehow we could put some clues up in front what
7 it is that we are going to do.

8 MS. CONDRAY: I will make sure that any of the
9 future memos are organized.

10 MR. SMEGAL: The summary, maybe?

11 CHAIR BRODERICK: I was going to suggest in the
12 summary you might be able to reference up front, alert the
13 reader, that it's a pretty modest change.

14 MR. SMEGAL: Mattie, whatever works. It was just
15 an observation I had which may or may not be of any
16 consequence because, when you get to the end of the day, it's
17 a very simple change.

18 MS. MERCADO: Yes, all you would need to do is on
19 page 11, at your summary, after the last sentence there is
20 just add specifically what it is the language that needs to
21 be changed. Both changes are necessitated to conform to the

1 regulations of the U.S. Supreme Court's decision, and then
2 just after that put in whatever that is, the language, the
3 deleted language.

4 MR. SMEGAL: Maybe right in the middle of it.

5 MS. CONDRAY: Will it be okay with you if I just
6 simply add a sentence that where -- instead of saying, "It
7 sets forth proposed changes," "sets forth a proposed deletion
8 of language," blah, blah, blah, just because if I repeat the
9 entire thing in the summary that's inappropriate and the
10 Federal Register people will call me and complain about it.

11 MR. SMEGAL: Good idea.

12 CHAIR BRODERICK: Good compromise.

13 MS. CONDRAY: Thank you.

14 CHAIR BRODERICK: Bucky, did you have nay questions
15 or comments?

16 MR. ASKEW: No.

17 CHAIR BRODERICK: So we need a vote of this
18 committee; is that correct, Mattie?

19 MS. CONDRAY: Yes.

20 MR. ASKEW: Do we want to see if there is any
21 public comments before we vote?

1 CHAIR BRODERICK: I suppose we could. Are there
2 any public comments on this Notice of Proposed Rulemaking
3 before the vote is taken?

4 MS. PERLE: I'm Linda Perle. We have no objection
5 to the publishing of the proposed rules in the Federal
6 Register.

7 CHAIR BRODERICK: Thank you for that. Any other
8 comments?

9 (No response.)

10 CHAIR BRODERICK: If not, I'll entertain a motion.

11 M O T I O N

12 MR. ASKEW: I move that we recommend to the board
13 that we go forward with the regulation, go forward with the
14 publication in the Federal Register.

15 CHAIR BRODERICK: I will second that, and it
16 passes.

17 MR. ASKEW: Unanimous.

18 CHAIR BRODERICK: The next item on our agenda is a
19 staff report on public comment received in the final report
20 of the regulations review task force. And so I guess,
21 Mattie, either you or Victor could talk about that. I know

1 Linda is here and I would like to give her an opportunity to
2 come forward.

3 But before we do any of that -- and speaking only
4 for myself at the moment and Mr. Askew can make some comments
5 if he disagrees -- but what I would like to see is some
6 discussion obviously about what those comments are and where
7 the areas of disagreement are, and I would like to have Linda
8 to have an opportunity to address that as well.

9 But I think it would make more sense, rather than
10 trying to hash out those differences, to the extent that can
11 be done, rather than doing it here at this meeting, it would
12 be my suggestion, subject to further discussion and comment
13 obviously, that following today's session that the parties
14 involved get together and take a look at the differences, see
15 to what extent they may be narrowed so that everybody can
16 come back to us and the differences that remain we can then
17 isolate on and attempt to either resolve them or to reject
18 them at another meeting.

19 I don't know whether Mr. Askew has a different view
20 on that or not.

21 MR. ASKEW: No. The only thing I would add to that

1 is whether the regs review task force -- is that what it's
2 called -- in the Corporation has a chance to review these,
3 sort through them, before you meet with people on the
4 outside, and see what you can hone out, accept, reject,
5 whatever, based on that, and then get together with some of
6 them and then come back to us after that at the next meeting.

7

8 CHAIR BRODERICK: Maria.

9 MS. MERCADO: Yes, I was just curious. I know,
10 even though I am not a member of your committee, Mr.
11 Chairman, in reading the report and the comments to the
12 report that it seemed that there were several of the regs
13 that had a high priority. And I was wondering whether in
14 those that had a higher priority whether waiting till the
15 January board meeting to deal with whatever the differences
16 are in narrowing the scope of the regulation, whether that
17 will create any problems as far as to the timing of that.

18 CHAIR BRODERICK: Mattie, do you want to address
19 that?

20 MS. CONDRAY: Well, I guess I would end up throwing
21 that back to you. Certainly I think having the task force --

1 the task force has received obviously a copy of the comments
2 that we got from NLADA, and having us kind of go through them
3 first and then sit down with the folks from NLADA and trying
4 to narrow our differences makes a great deal of sense, and I
5 couldn't really do it any other way because, while I was a
6 member of the task force, I don't feel that I can
7 unilaterally speak for the rest of the task force about what
8 I may or may not agree with in NLADA's comments.

9 Any other action which the committee and the board
10 may or may not wish to take I think is yours. I think what
11 the task force did was this was our cut on what we thought
12 where things fell out, kind of here's your snapshot of what's
13 going on right now, here are the things that we think are
14 higher priority for action, lower priority in these very
15 large groupings.

16 One of the things that the task force didn't do --
17 because it was, quite honestly, outside the scope of our
18 charge as we understood it -- was to actually prioritize or
19 rank from within those things that were seen as a higher
20 priority. I don't think that the task force at this date was
21 prepared to make a specific recommendation that any of the

1 rules be identified under our rulemaking protocol by the
2 board as appropriate subjects for rulemaking.

3 That said, obviously it's clear which ones we felt
4 were higher priorities and lesser priorities. But as among
5 the things within the higher priority, I don't think staff
6 was prepared to make a recommendation on that day. But if
7 the committee or the board has a recommendation that you
8 would like us either to do that or pick out things that you
9 think are the highest of the high priorities where there
10 seems to be no disagreement about which is a high priority
11 item, and want to direct us that that's an appropriate
12 subject for rulemaking and trigger the start of the process,
13 that's obviously fine.

14 CHAIR BRODERICK: I don't know that we are prepared
15 to do that today, but looking at the summary which was
16 prepared by the task force -- I guess it's Attachment C -- it
17 appears that the areas, unfortunately, where there is no
18 disagreement are the areas where no action is recommended.
19 So everyone agrees that there should be no action. And I
20 guess I would agree that if you agree there is no action,
21 there should be none.

1 Where the task force identified certain higher
2 priorities, it is usually in those areas where there is
3 absolute disagreement or the sense is it should be a lower
4 priority. So I am flexible on it today, but I think it would
5 not serve much purpose here, particularly if the task force
6 is not prepared to prioritize its recommendations, I don't
7 think it makes much sense for us to try to do that
8 artificially.

9 And I think it would be beneficial for two things
10 to happen for that process to take place, and in the course
11 of that to do with the amendment that Mr. Askew proposed, to
12 meet with the NLADA group and see if you can narrow your
13 differences and draft those differences out of these things,
14 if you can, and to provide us with some sort of memorandum as
15 to where the differences remain and why they are important
16 differences that we should be concerned about. I think that
17 makes the most sense.

18 MS. MERCADO: Could they also in that process look
19 at some serious priorities, top priorities?

20 CHAIR BRODERICK: I think they will. I think I had
21 suggested that they should prioritize the specific parts that

1 we need to focus on pretty promptly. But, unfortunately,
2 those are the very areas where the disagreements exist, so I
3 think somebody needs to do some examination of that and some
4 drafting, and then a memorandum to us as to the priorities
5 that we should have and, if there are differences on those,
6 why they exist and why they are important.

7 MS. CONDRAY: That is certainly very doable. Not a
8 problem.

9 MR. ASKEW: I want to say this is very well done.
10 This is helpful to have it. And I think it is exactly what
11 we asked you to do, so you didn't do more than we asked you
12 to do. And I think it is getting to the point of honing
13 down.

14 And then the response from CLASP I think raises
15 some interesting points.

16 MS. CONDRAY: Yes, I think so too.

17 MR. ASKEW: And you didn't have much time and we
18 didn't have much time, and I think a better use of the time
19 would be to take that time between now and the next committee
20 meeting to do what John is suggesting, and then the use of
21 this committee's time would be much better used. And I think

1 we would reach better decisions, frankly, than if we tried to
2 do it today.

3 CHAIR BRODERICK: And maybe during our 10th or 11th
4 year on the board we'll get to those.

5 MS. CONDRAY: I agree. That will be done.

6 CHAIR BRODERICK: I just also want to commend the
7 task force. It was a very good report and very helpful well
8 presented and easy to read and to follow. So I applaud the
9 effort.

10 MR. ASKEW: Are there any of these you would want
11 to bring to our attention particularly, as opposed to any
12 others, that probably if we're going to -- assuming we've got
13 at least one more board meeting left, maybe at the outside
14 two, that we should get on as quickly as possible?

15 MS. CONDRAY: No. One, I am not prepared to speak
16 for the whole task force. And, second, we have three extant
17 open rulemakings going on at the moment, so I think we're
18 going to be busy enough at the moment as it is trying to do
19 the two negotiated rulemakings that we have started to embark
20 on. I mean, 1639 will, I presume, be pretty simple, but the
21 two negotiated rulemakings will keep us a little busy.

1 CHAIR BRODERICK: Okay. Linda, before we move on,
2 do you want to say anything to us on that issue?

3 MS. PERLE: You know, I think our comments are
4 relatively self-explanatory. There are some differences in
5 approach between the task force -- between the suggestions of
6 the task force and NLADA's suggestions.

7 I think that some of the issues really revolve
8 around whether the issues that are raised are things that
9 should be dealt in the rulemaking process or some other way.

10 Some of the concerns that we had were because we didn't
11 think the task force -- and maybe it was beyond its charge,
12 but we didn't feel like the task force creates enough
13 information about what it really thought needed to be done in
14 order to make a determination about whether it agreed or we
15 didn't agree.

16 And then I think there were some places where there
17 was a substantive disagreement, particularly around the
18 sanctions rules.

19 And some of the things that we were suggesting were
20 that you did these rules in 1995, they're there, they were a
21 really good start, why don't we just go ahead and continue

1 that process. And I think that because as -- well, Mattie
2 wasn't there but Vic may remember. I mean, that was really a
3 real negotiated rulemaking process, although not formally
4 termed that. There were representatives from the community,
5 there were representatives from the LSC staff, and worked
6 very hard to develop proposals, which then went through a
7 long process of review by the Ops & Regs Committee. And so
8 we just thought that those were a good place to start.

9 MS. MERCADO: Had day-long Ops & Regs committees on
10 that.

11 MS. PERLE: Long meetings, right, by the committee,
12 and prior to that by the group that put them together. And
13 we just felt like there were a lot of really important issues
14 that were thrashed out at that time and so that's a good
15 basis on which to go forward, and so that might make some
16 sense.

17 So I think that the process that you have laid out
18 is appropriate and we will be happy to meet. And, you know,
19 we really haven't had a chance to do that other than one very
20 brief meeting early on where we identified -- helped identify
21 1626 and 1611 as appropriate --

1 CHAIR BRODERICK: Well, I think it would be
2 helpful, and I appreciated the comments that your group made.
3 They were easy to follow and pretty succinct.

4 MS. PERLE: We followed the format the task force
5 set forth.

6 CHAIR BRODERICK: Yes, and you did a nice job. And
7 there were some areas, as you pointed out, where you
8 indicated you didn't have enough information as to why they
9 were making these changes or why they were combining various
10 regulations, so I think further discussion will be helpful.
11 So at the next board meeting, assuming we are still here,
12 which seems likely at this point I guess, we would be pleased
13 to receive that.

14 MS. CONDRAY: We'll sit down.

15 CHAIR BRODERICK: Thank you. The next item on the
16 agenda is a staff report on the status of current negotiated
17 rulemaking 45 CFR Part 1626, Restrictions on Legal Assistance
18 to Aliens, and 45 CFR Part 1611, Eligibility.

19 MS. CONDRAY: Just wanted to let everybody know
20 that the working groups have been appointed. You have the
21 list. That is what I handed out today. That is what is

1 sitting in front of you is the list of the confirmed members
2 of each of the working groups. We are currently in the
3 process of trying to set up initial meetings, the 1611 group
4 being a little smaller, it's been a little tiny bit easier to
5 identify a date. I'm thinking we're looking at early
6 January. For 1626 there is still one person I have not yet
7 heard from. I am hopeful that we will be able to find a late
8 January date to start that meeting off.

9 The only other thing that we are kind of really
10 waiting for is we are still in the process of evaluating the
11 proposed contractors to act as the professional facilitator
12 and are in the process of selecting, making the final
13 selection, on that, which hopefully won't take too much
14 longer. And then once that is done, we will kind of get a
15 roll on.

16 So it is a very brief status update, so there's not
17 much to report on at the moment except that the process is
18 moving, albeit with the holidays it was hard to find a -- I
19 was hoping we would find a date to meet sometime before the
20 end of this year, but that just was not physically possible.

21 CHAIR BRODERICK: Any questions of Mattie on this

1 issue? The only -- it's not a question, just an observation.

2 I noticed that the Newton proposal is \$159 an hour; is that
3 right? I just wondered how you got to \$159.

4 MS. CONDRAY: That's the rate that he proposed at.
5 That's his hourly billing rate.

6 CHAIR BRODERICK: I just wondered why it wasn't
7 160. It just struck me as kind of an odd hourly rate.

8 MS. CONDRAY: Because it looks more like more of a
9 bargain that way. That would be my guess.

10 MR. ERLENBORN: Forget the 95 cents.

11 CHAIR BRODERICK: It just struck me as funny.
12 Anything else on that issue? Any other questions or
13 comments?

14 MS. CONDRAY: No, not unless you have questions.

15 CHAIR BRODERICK: Consider and act on other
16 business, if there is any other business.

17 MS. CONDRAY: I have no other business.

18 CHAIR BRODERICK: This meeting was scheduled from
19 2:00 to 5:00. How am I doing?

20 MS. CONDRAY: It is a lovely day out, and
21 Washington is a lovely city.

1 CHAIR BRODERICK: I am not complaining. And now we
2 will have two and a half hours of public comment.

3 (Laughter.)

4 CHAIR BRODERICK: If there is any public comment,
5 now would be a good time to make it.

6 (No response.)

7 CHAIR BRODERICK: If not -- and I thank you for
8 that. If not, I would entertain a motion to adjourn.

9 M O T I O N

10 MR. ASKEW: So moved.

11 CHAIR BRODERICK: Seconded. We are adjourned.

12 Thank you.

13 MR. ASKEW: Thank you, Mattie.

14 MS. CONDRAY: Thank you.

17 * * * *