

LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE

OPEN SESSION

Friday, April 29, 2005
4:40 p.m.

The Caribe Hilton Hotel
Los Rosales Street
San Geronimo Grounds
San Juan, Puerto Rico

COMMITTEE MEMBERS PRESENT:

Thomas R. Meites, Chairman
Lillian R. BeVier
Michael D. McKay
Frank B. Strickland, *ex officio*

OTHER BOARD MEMBERS PRESENT:

Robert J. Dieter
Herbert S. Garten
David Hall
Maria Luisa Mercado
Florentino A. Subia

STAFF PRESENT:

Helaine M. Barnett, LSC President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary
David Richardson, Treasurer & Comptroller
Jonathan Asher, Acting Special Counsel to the President
Mattie Condray, Senior Assistant General Counsel
Thomas Polgar, Acting Director, Office of Governmental
Relations & Public Affairs
Patricia Batie, Manager of Board Operations
Richard (Kirt) West, Inspector General
Laurie Tarantowicz, Assistant Inspector General &
Legal Counsel
Michael Genz, Director, Office of Program Performance
Bernice Phillips, Nominee, LSC Board of Directors

PUBLIC:

Linda Perle, Senior Attorney, Center for Law & Social
Policy, CLASP

Julie Clark, National Legal Aid & Defender Association
(NLADA)
Don Saunders, NLADA
Jo-Ann Wallace, Senior Vice President for Programs,
NLADA
Steve McIntyre, Lone Star Legal Aid

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MOTIONS: Pages 4, 5, 7, 35

P R O C E E D I N G S

(4:40 p.m.)

1
2
3 MR. MEITES: I will call to order the meeting
4 of the Operations and Regulations Committee.

5 Let me first ask if Ernestine -- Ernestine,
6 are you still on the line?

7 No answer.

8 All right. The first item of business of our
9 committee is the approval of the agenda for today's
10 meeting.

11 Do I hear a motion to that effect?

M O T I O N

12
13 MR. McKAY: So moved.

14 MS. BeVIER: Second.

15 MR. MEITES: And the agenda is approved.

16 Second, since our last meeting at the February
17 4 and 5, 2005 meeting, our committee has met again. We
18 met on April 1, 2005 in Charlottesville, Virginia.

19 We have circulated the minutes of both the
20 February 4 and 5 meeting and the April 1, 2005 meeting,
21 and I'll ask if there's a motion to approve those
22 minutes.

1 M O T I O N

2 MS. BeVIER: So moved.

3 MR. McKAY: Second.

4 MR. MEITES: And they are approved.

5 The next item on our agenda -- April 1, 2005.

6 Yes. That's been approved, as well.

7 I'm sorry?

8 MS. MERCADO: Yeah. I was just going to point
9 out a correction on the minutes, on Page 17 of our
10 Board book, for the February 5th minutes.

11 MR. MEITES: Yes, ma'am.

12 MS. MERCADO: I believe that that -- well,
13 it's a long sentence, that last sentence, but it had
14 some language that dealt with, as allowed to, you know,
15 within the provisions of whatever your local
16 professional ethics require.

17 I mean, I know you want us to get off the
18 proceedings, but assuming that they were able to do so
19 without violating whatever the local operational
20 ethics, I thought we discussed that.

21 MR. MEITES: I'm looking at our committee's
22 minutes, which are on -- of that meeting -- which are

1 on Page 16 and 17 of the Board book.

2 MS. MERCADO: The very top paragraph.

3 MR. MEITES: "There was a brief discussion,"
4 is that what you're referring to?

5 MS. MERCADO: Yes, and the second sentence
6 says, "After a review of the information provided by
7 the staff, the committee instructed the staff should"
8 -- well, that "to" probably should be out -- "notify
9 the recipients who are still involved with class
10 actions and ask that they remove themselves from the
11 proceedings."

12 And all I was saying was, you know, without --

13 MR. MEITES: Right, that that's --

14 MS. MERCADO: -- hurting the clients --

15 MR. MEITES: That is correct, and I will treat
16 the minutes as so amended, "ask they remove themselves
17 from the proceedings if it were possible in light of
18 ethical considerations and local court orders."

19 MS. MERCADO: Yes.

20 MR. MEITES: Okay.

21 Can I have a motion to approve the minutes as
22 so amended?

1 M O T I O N

2 MS. BeVIER: So moved.

3 MR. McKAY: Second.

4 MR. MEITES: All right. Thank you.

5 Okay. And review, I find that we do not yet
6 have the April 1, 2005 minutes, so the only minutes we
7 have approved are the minutes of the meeting of April
8 -- of February 4 and 5, 2005.

9 At the meeting of April 1, 2005, our committee
10 spent an entire day reviewing the rest of 1611.

11 As many of you are aware, our committee has
12 spent at least four meetings considering the group
13 representation and retainer portions of that rule, but
14 there are numerous other changes in the rest of the
15 rule that we considered.

16 On April 1st, we literally went through the
17 rule, line by line. Staff members and stakeholders
18 were present, as well as the director. I think the
19 grantee was the Blue Ridge Legal Assistance Corporation
20 is our grantee in Western Virginia.

21 Also present was Jonathan Asher, who has
22 served as the director of the Colorado grantee.

1 Our committee's sense of that meeting I
2 believe is that with the input from staff, our
3 stakeholders, as well as two executive directors, we
4 were able, in at least our view, to understand the
5 areas in which change had been proposed.

6 Our committee, in effect, made a number of
7 suggestions as to how we thought the rules should --
8 rules should -- regulations should be changed. Some
9 agreed with the staff proposals, some did not.

10 But we now have been given by the staff a
11 revised proposed regulation which I believe, and I've
12 read it and I'll ask Lillian and Mike for their views
13 in a minute, at least I believe it accurately sets
14 forth our thoughts at that meeting.

15 Lillian and Mike, is that a fair statement?

16 MR. MCKAY: Yes.

17 MS. BEVIER: Yes.

18 MR. MEITES: And in light of that, I believe
19 it appropriate at this time for our committee to
20 forward the proposed rule to the Board with a
21 recommendation, but before I turn that into a formal
22 motion, I'd like to throw open the matter to the floor.

1 If anyone has any comments they'd like to make
2 to us before we formally consider acting to forward
3 this matter to the Board, I'd like to hear from them
4 now, please.

5 MS. TARANTOWICZ: Good afternoon. Laurie
6 Tarantowicz with the Office of Inspector General. I
7 just have a brief request with regard to the preamble
8 of the rule.

9 Under the section by section analysis, the
10 group representation portion discusses the OIG's
11 comments, and perhaps because of the quick turnaround
12 from the April meeting to getting the material to the
13 committee, we weren't able to work together with
14 management to capture our comments and what had
15 occurred in April, so I was just wondering if, with the
16 proviso that we would be able to go back and work on
17 that before it's published?

18 MR. MEITES: That's fine with me. You
19 certainly should be able to state what your comments
20 are yourself, rather than having someone else state
21 them.

22 Is that --

1 MS. BeVIER: That's fine. What page are you
2 talking about, Laurie, do you know?

3 MR. MEITES: It may be in a number of places,
4 because I know in the discussion, your office's
5 position is summarized.

6 MS. TARANTOWICZ: That's correct. It's in the
7 -- I'm sorry. I can --

8 MS. BeVIER: No, that's fine.

9 I'm just thinking, though, for the Board, you
10 might want to be able to pinpoint that so that we can
11 make sure that when we -- if we decide to go and say,
12 "with the exception of the following," we'd be able to
13 identify it in the Board book.

14 MS. TARANTOWICZ: Okay. I can do that.

15 MS. BeVIER: Thanks. That would be helpful.

16 MS. TARANTOWICZ: Thank you.

17 MR. STRICKLAND: All right. With that
18 proviso, I have been -- oh, yes, ma'am.

19 MS. MERCADO: Were we going to discuss any
20 parts of it, or are we going to approve it first and
21 then discuss it?

22 MR. MEITES: I -- well, we can do it either

1 way.

2 My thought was that, rather than discuss it
3 here, we'd just, if there's discussion, it would be at
4 the Board meeting tomorrow --

5 MS. MERCADO: That's fine.

6 MR. MEITES: -- if that's satisfactory.

7 MS. MERCADO: That's fine.

8 MR. MEITES: Now, I have been provided with a
9 script. I'd like to hold this up.

10 This is a script. It's wording for Ops & Regs
11 Committee recommendation to full Board re: publication
12 of 1611.

13 And this is the recommendation that I propose
14 our committee makes to the Board tomorrow. Let me read
15 it, and if we're in agreement, then we will -- this
16 will be what our presentation is tomorrow.

17 The wording is:

18 "The committee recommends that the Board
19 approve for publication in the Federal Register for
20 public comment the notice of proposed rulemaking on
21 LSC's regulation on financial eligibility, 45 CFR Part
22 1611."

1 And that is what we would -- the
2 recommendation we would make to the Board tomorrow.

3 Is that -- are we in accord with that?

4 MR. MCKAY: Yes.

5 MR. MEITES: And that is subject to the
6 inspector general's recent comment, subject to the
7 cleaning up the language, but we're -- if we're in
8 agreement, I think that that is what we will do
9 tomorrow for the full Board, and at that time, if
10 there's discussion at the full Board, that's the time
11 to bring it up.

12 Okay.

13 The next item on our agenda is, consider and
14 act on the petition to amend 45 CFR Part 1611 (sic).

15 At our last iteration on this, we had received
16 a report from staff as to those of our grantees that
17 still were formally of record in class actions. We
18 received that report.

19 The sense of our committee was that we ask the
20 staff to go back to those entities and to the extent
21 that they were in a position to withdraw, our sense was
22 that they should withdraw, subject to the real

1 possibility that, either because of obligations to
2 clients or because of the relationship of the counsel
3 to the court, it may not be possible.

4 So at this time, let me ask staff what
5 response it got to that request to bring us up to date?

6 MR. FORTUNO: If I may, Mr. Chairman, I
7 believe, just for the record, I believe the chairman
8 referred to this as a petition to amend 1611. I
9 believe it's 1617.

10 MR. MEITES: I misspoke. Correct.

11 MR. FORTUNO: And Jon, did you want to --

12 MR. ASHER: Mr. Chairman, I'm Jonathan Asher.
13 I am acting special counsel to President Barnett and
14 the Corporation. With me is Vic Fortuno, general
15 counsel and vice president for legislative affairs.

16 MR. FORTUNO: Legal affairs.

17 MR. ASHER: Legal affairs. Excuse me. I'm
18 learning, but not there yet.

19 As requested by the committee at its meeting
20 in Washington, D.C. in early February, LSC staff, the
21 general counsel and I, with consultation with other
22 staff and others, developed a script to be used in

1 speaking with the programs that had reported open class
2 actions in response to the Corporation's prior survey.

3 Vic and I did not contact the one program
4 which reported that it had withdrawn from an ongoing
5 class action, but that the case was open pending a
6 conclusion of the matter, and that a determination of
7 its future claim for attorneys' fees for the program's
8 work performed before the restriction became effective
9 in '96 would still be dealt with down the road.

10 Vic and I together, generally by speakerphone,
11 contacted the other six programs that had reported
12 class actions, and we both stuck to the script, but
13 also informed each executive director how they could
14 review the actual transcript of the committee's
15 proceeding in February, so we were not just trying to
16 capture what we thought, Mr. Chairman, you and the
17 committee's position was, but that they could actually
18 review the transcript of that.

19 We spoke with all six programs at various
20 stages, have heard back from them.

21 One program reported one open class action,
22 and it has agreed and has secured substitute counsel.

1 We've been provided with copies of the
2 substitution of counsel and a proposed order, which, as
3 of early this week, had been filed but not yet actually
4 signed by the court, but there is no reason to believe
5 that that will not be approved by the court and
6 entered.

7 One program reported five open class actions
8 originally. Each case has been closed for a long time
9 in court and in the program, and really, there's been
10 no action with one possible exception, and probably all
11 but that one should not have been originally reported,
12 and the executive director is sorry that he had
13 misinterpreted the request.

14 But there is one case where there has been
15 only minimal activity. That's a case against the then
16 Secretary of Health and Human Services. It's reported
17 that there have been infrequent, but there have been
18 requests by potential members of the class as to
19 whether they're covered by the order and the remedy or
20 not.

21 The last such request for such advice was in
22 2003. The program sought substitution of counsel.

1 That request was refused. They are engaged in efforts
2 to obtain other possible substitute counsel. Then they
3 will inform us.

4 It is -- they will let us know as soon as they
5 know whether they can secure substitute counsel,
6 although it should be noted that had the program not
7 handled that class action originally, under the
8 regulation, it could advise potential class members of
9 their rights under the order or even a notice of class,
10 but whether they can provide this assistance or not,
11 they're continuing their efforts to obtain substitute
12 counsel.

13 A program reported seven open class actions.
14 Of these, two have been completely closed and dismissed
15 by the court, one fairly recently, but two of the seven
16 are now officially and totally closed.

17 Of the remaining four -- excuse me -- of the
18 remaining five, they've requested substitution of
19 counsel by a non-LSC legal services public interest
20 provider and that request is under consideration by the
21 provider, but they've stated they are actively pursuing
22 substitution of counsel in those four cases.

1 In the last case that they reported, the case
2 is totally over, but a claim for attorneys' fees
3 remains open.

4 There's a stipulated allocation of previously
5 awarded fees. That case has been to the U.S. Supreme
6 Court twice, as I understand it. The last time, cert
7 was denied, a year ago or so.

8 There are six counsel in that case, two
9 organizations and four individual lawyers. Five of the
10 six attorneys or organizations with a claim for a
11 portion of the fees have agreed to the allocation of
12 those fees. The sixth has not.

13 The matter is still before the Court. It's
14 taken it under advisement. So the program is totally
15 out of the case, and is just waiting for its share of
16 the fees for its pre-1996 work on the case.

17 Another program reported two class actions,
18 and they are seeking but have not yet obtained
19 substitute counsel, and they will inform the
20 Corporation, I think we told them, to inform you of the
21 success of their efforts, and they're committed to
22 diligently seeking substitute counsel.

1 Two programs, one with a single open class
2 action and one program with eight open but inactive
3 class actions considered the request that was made by
4 LSC and then respectfully declined to withdraw or seek
5 substitute counsel and stated they felt they were
6 within the limited scope of allowable activities under
7 the current regulation.

8 One of those two, though, requested that we
9 let him know if he was alone in his response, and even
10 though he's not, we will recontact him in any event,
11 but neither of those two at this point have agreed to
12 seek substitute counsel.

13 MR. MEITES: Thank you for your report.

14 We do have compliance staff, and we're not the
15 compliance staff, and my sense is, now that management
16 is aware of the issue, we are confident that you will
17 stay on top of the issue, and like any possible
18 compliance issue, you will deal with it as you believe
19 appropriate.

20 My personal preference is that now that we've
21 raised this issue, the staff is clearly on top of it,
22 and we can pull back, although maybe we should get a

1 report in six months or so, to make sure that it's
2 being pursued.

3 Does that make sense, to just give them some
4 time to sort it out, and see if there's anything that
5 is of interest to us?

6 MR. MCKAY: It certainly does. I have a
7 question about the report.

8 MR. MEITES: Please.

9 MR. MCKAY: But first, I'm really pleased with
10 the report, particularly the first three quarters of
11 the report. The last part was troublesome.

12 And without going into detail, I'm wondering,
13 Vic, if you could tell us whether or not you agreed
14 with those two programs' assessments as to whether or
15 not it was appropriate for them to remain involved and
16 politely decline the invitation to withdraw and find
17 substitute counsel?

18 MR. FORTUNO: I think that if the activities
19 in which they are currently involved are limited to, it
20 says the necessary language of the regs, sort of an
21 adversarial monitoring, if they're simply monitoring a
22 court order, I think that the reg as written probably

1 permits that.

2 I think there was some discussion at the last
3 -- not the last committee meeting, the meeting before
4 last, about whether lawyers receiving reports and
5 evaluating those reports in their capacity as trained
6 lawyers might actually cross the line and constitute
7 something more than non-adversarial monitoring.

8 While the issue has been raised, there's never
9 been a determination to that effect, so I think that as
10 the regulation is written, without any further guidance
11 from the Corporation, the two grantees are probably
12 justified in taking the position that, so long as
13 they're not doing anything other than receiving reports
14 periodically -- and as I understand, they're few and
15 far between -- filing the report in the file for the
16 case, reviewing it, of course, and then filing it in
17 the jacket for the case, that they're not in violation
18 of the reg, I think they're right, because that is the
19 provision that was put into the reg.

20 So, so long as they're not actively
21 participating in or conducting a class action, and all
22 they're doing is engaged in the passive activity of

1 receiving a report, reviewing it, and putting it in the
2 jacket, that I think is probably permissible.

3 If, however, there's anything in the report
4 that causes them to think that they need to take some
5 action, then they do need to get out and find
6 substitute counsel to take the action that they think
7 needs to be taken.

8 Of course, they would have to petition the
9 court for leave of court to withdraw, or to substitute
10 counsel, and that's subject to ruling by the court.
11 The court might deny the request to substitute counsel
12 or leave to withdraw.

13 But that I think is, in short, how it would
14 have to play out.

15 MR. McKAY: I now, after hearing that
16 response, fully embrace our chairman's admonition that
17 we send this down to compliance and make sure that they
18 watch instead of us trying to do it.

19 Thanks again for your good work.

20 One last question if I may, Mr. Chairman.

21 Do you, have you, or do you intend to
22 memorialize what you've done into a short memo to a

1 file indicating the telephone calls that you made and
2 responses that you received?

3 MR. ASHER: Yes, we will. It had been -- the
4 reason for the delay was, up until Wednesday, it was
5 our hope the order in the Tucson case would actually
6 have been entered and that we would have heard even
7 more updated responses.

8 It would be my hope that we not only will
9 memorialize it in writing, but within a couple of week,
10 we will have greater information.

11 Let me clarify just, Vic, if I may, two
12 things.

13 One, technically monitoring, it is non-
14 adversarial activity. It doesn't even include
15 monitoring. And we have no reason to believe that in
16 any of these cases there even are regular reports being
17 submitted.

18 So in the course of compliance, there of
19 course will be a review, but we have no reason to
20 believe that anything other than what is currently
21 allowed by the limited language of the regulation is
22 being undertaken by those two grantees.

1 Not to say I wouldn't have preferred a
2 different answer, but we have no reason to believe they
3 aren't correct in their interpretation based on what
4 they are doing.

5 MR. McKAY: I'm sorry, if I could just, one
6 more, and it's not a question, just a comment.

7 Again, wonderful work, and I do -- I think it
8 was your idea, Mr. Chairman, that we put this on the
9 agenda for six months from now and see where we are,
10 because it is something of high importance.

11 Thanks again for your work.

12 MR. MEITES: Lillian?

13 MS. BeVIER: Is the problem that they're
14 encountering one of finding people willing to take it
15 up, or one of getting the court to agree to the
16 assignment?

17 MR. ASHER: In the three programs I told you
18 about, they're having trouble finding counsel willing,
19 even though it's totally dormant, to assume the legal
20 responsibility of taking over a complex, albeit close
21 to dead, matter that they know nothing about.

22 I know the one program is trying to get a

1 fairly new public interest firm to take over four of
2 the cases. Another program talked to a former staff
3 member who respectfully declined.

4 So even though there is virtually or
5 absolutely no legal work to be done, you are
6 nonetheless entering an appearance in what was and
7 potentially could be a complex and, to the new lawyer,
8 unknown sort of case.

9 So it does take some time and some effort,
10 despite the fact they really -- nothing is currently
11 going on.

12 That's my understanding from at least the
13 three that are continuing to seek alternative and
14 substitute counsel.

15 MS. BeVIER: Thank you.

16 MR. MEITES: Then, if that is our sense, let
17 me try to summarize.

18 First of all, I think it's now appropriate for
19 us to recommend to the Board that Mr. Andell's petition
20 formally be denied, which will end the petition part of
21 the phase.

22 Actually, I've talked to Mr. Andell some time

1 ago, and told him that that was my sense of what was
2 more likely to happen, and he told me he appreciated a
3 chance to appear before us, and I thanked him for
4 bringing this matter to our attention and told him at
5 least some of what we'd done to follow it up, and he
6 appreciated the efforts we'd taken.

7 So that's the first part.

8 The second part, I'd like staff just to make a
9 calendar memo probably at our -- I think we're meeting
10 in October -- our October meeting, is that right, to
11 just put this on our agenda, and just our followup
12 report would be appropriate.

13 Okay.

14 The next item on our agenda is to consider and
15 act -- thank you very much -- consider and act on
16 future activities of the committee.

17 We are definitely feeling our oats. We're
18 looking for more work.

19 We, of course, have as our next order of
20 business our consideration of 1626, which is the alien
21 regulation, which you'll recall has some group aspects
22 that we tabled.

1 Also, there was a petition filed by a grantee
2 in Wisconsin -- perhaps our grantee, I don't know if
3 there's more than one, but certainly a grantee in
4 Wisconsin -- asking that we reconsider our 12-1/2
5 percent PAI regulation, which we will consider.

6 There was some time ago a discussion of a
7 priority list presented to us, that the negotiated
8 rule-making committee I think had together, of rules
9 that may merit looking at again, but rather than go
10 through their list, I invited the staff to give me an
11 idea of how we should go about soliciting ideas for
12 where we go from here.

13 Vic?

14 MR. FORTUNO: Yes. For the record, Victor
15 Fortunato, general counsel.

16 I have been asked to convey management's
17 recommendation on that point, and it's management's
18 view that the committee should solicit comment from
19 interested parties in developing a rulemaking agenda,
20 and that the committee should decide based on what
21 feedback it gets from staff and stakeholders on its
22 list of priorities, and we would then take direction

1 from the committee on what order you would like to take
2 up work on rules.

3 I do know, I think the chair indicated that
4 there was a petition concerning the PAI rate. I do
5 know that there was a petition that's actually limited
6 in scope, doesn't request wholesale consideration of
7 the rule. I think it's just focused on the 12-1/2
8 percent, and a request that that be changed from a
9 specific figure to some language to the effect of "a
10 reasonable amount."

11 The petition, of course, can be acted on by
12 the committee or the committee may elect to develop a
13 rulemaking agenda, and if the committee decides to take
14 up PAI at some point, it could put off action on the
15 petition until it takes up the PAI, if that's something
16 it wants to examine.

17 Otherwise, it could act on just the narrow
18 petition presented, but it need not be done in any
19 particular order.

20 I don't think that the committee should feel
21 that its rulemaking agenda is driven by whoever files a
22 petition. Certainly, you can take it up when it's

1 filed, or you can take it up when you take up that rule
2 in the course of an agenda that you establish for
3 rulemaking overall.

4 I believe that the work that was done several
5 years ago was not by the negotiating rulemaking group,
6 but by an in-house task force, which generated a report
7 that was produced in 2002.

8 There was some consultation with a class. It
9 wasn't a -- it was largely an in-house effort with some
10 consultation and that's why we thought it would be best
11 to at this point solicit comment, which we can do by
12 posting a notice in the Federal register and posting
13 the same notice on LSC's website, inviting public
14 comments so any interested party that wants to weigh in
15 on the issue of the Board's rulemaking agenda can do
16 so.

17 And you could hear from interested parties if
18 you chose to at the July 29th meeting in California,
19 and we have enough time to put a notice in the Federal
20 Register and to -- we could make it a 30-day notice, if
21 you'd like. We could make it a 60-day notice, if you'd
22 like.

1 But whatever period of time it's decided to
2 run the notice, there should be enough time remaining
3 after that to get the information that we get back from
4 the public to you, and to allow for scheduling of in-
5 person presentations if you'd like to hear them.

6 MR. MEITES: Let me ask you a question.

7 Can our committee direct that that notice be
8 entered, or do we need Board action for that?

9 MR. FORTUNO: Technically, the Board should do
10 so. The committee would recommend to the Board and the
11 Board would instruct staff to go ahead and do so.

12 MR. MEITES: Thank you.

13 And the second part.

14 I appreciate your remarks on the Wisconsin
15 petition. My concern, and the reason I brought it up,
16 is I want to make it clear that this petition has not
17 been lost in the wash, that we are aware of it.

18 In fact, I would like the staff to communicate
19 with the Wisconsin petitioner that we did raise --

20 MS. BARNETT: If I could interject for a
21 moment, we did correspond --

22 MR. MEITES: Okay.

1 MS. BARNETT: -- and we indicated that it
2 could not be on this agenda, and that we would expect
3 that management could have a position, if the Board so
4 directed, for July.

5 So we are happy to follow up your directions
6 at this meeting.

7 MR. MEITES: Well, with that, what do you
8 think of the suggestion about advertising for bids,
9 opening the floor to comments?

10 MS. BeVIER: I think it's a good idea to get
11 interested parties to let us know what they think of
12 our regs that might be outdated, or that we might be
13 wanting to take a look at now.

14 It's not something that I am intuitively adept
15 at identifying, so I need help.

16 MR. MEITES: Mike?

17 MR. McKAY: It's unanimous.

18 MR. MEITES: All right. So we will make that
19 recommendation to the Board.

20 Our meeting is -- when is it? Is it July
21 30th?

22 MR. FORTUNO: July 29th and 30th, I believe.

1 MR. MEITES: So if that were published, say,
2 next week, say May 10th, it would be like 45 days, that
3 will give you a chance to pull it together, a 45 day
4 comment period?

5 MR. FORTUNO: It could.

6 MR. MEITES: Whatever time your staff needs at
7 the end to summarize the report.

8 MR. FORTUNO: Why don't we -- my suggestion
9 would be that you give staff some leeway and ask that
10 notice be provided in the Federal Register allowing 30
11 to 45 days, whichever is needed, in order to allow time
12 for a compilation of information received, to have it
13 available to the Board in advance of the meeting, so
14 that you have an opportunity to review it.

15 MS. BeVIER: That's fine.

16 MR. McKAY: Yes.

17 MR. MEITES: And since you stated that so
18 well, why don't you draft up our recommendation to the
19 Board so we get it right for tomorrow?

20 MR. FORTUNO: Yes, will do.

21 MR. MEITES: Thank you.

22 All right. Please.

1 MS. BeVIER: I would -- I have a suggestion
2 about something I would like to be brought up to speed
3 on. I don't know whether it's something that I think
4 the Board ought to be looking at.

5 But I've been confused since day one on this
6 Board, to be honest with you, about the Sunshine Act
7 and the regs, and I do understand that our regs are
8 different from the requirements of the Sunshine Act,
9 and I would propose that we ask the staff to help us
10 understand that and to give us a history, if possible,
11 a kind of chronology of how the -- when the regs were
12 adopted and the thinking behind -- I think they're
13 tighter than the Sunshine Act itself requires, because
14 I don't think that we can even think sensibly about
15 whether we want to continue or revise that reg until
16 we've had a look at why they were done the way they
17 were done and the thinking behind that.

18 So --

19 MR. MEITES: Can you do that for our July
20 meeting?

21 MR. FORTUNO: Yes, we can certainly do that.
22 I think that the difference, the salient difference is,

1 one, and that is, there are others, but the major
2 difference is that the government, the Sunshine Act
3 applies to agency head, the Board of Directors, the
4 Commission, and in this case it would be the Board of
5 Directors or executive committees.

6 The LSC implemented the Act because the Act,
7 by its own terms, applies only to government agencies.

8 The LSC Act, however, provides that LSC is subject to
9 the Sunshine Act.

10 LSC then implemented that Act for LSC in a
11 regulation. It appears that Part 1622 of 45 CFR, that
12 implementing reg goes beyond what the Sunshine Act
13 does. That implementing reg extends to non-executive
14 committees.

15 That's probably the salient difference,
16 although there are others, and what we can do is
17 develop something for you that kind of walks through
18 the history and the differences and rationales and
19 respond to questions.

20 MR. STRICKLAND: What is a non-executive
21 committee?

22 MR. FORTUNO: That is, an executive committee

1 being one that is empowered to act on behalf of and
2 bind the Board.

3 Technically, the Board has no executive
4 committees, because it was -- you can change that at
5 any time, but until now, the LSC Board has decided that
6 rather than appoint an executive committee that could
7 reach a decision and take action that's binding on the
8 Board, that it would have non-executive committees,
9 which are, in effect, kind of study groups, that
10 develop the issues, flesh them out, and then report to
11 the Board, and the Board makes a decision.

12 Up until now, the Board has reserved to itself
13 the power to make any decision binding on the Board,
14 and not conferred that power on any sub-group of the
15 Board.

16 MR. MEITES: All right. If you'll have that
17 for us by the July meeting, that would be quite
18 helpful.

19 MR. FORTUNO: Yes, we'd be happy to.

20 MR. MEITES: All right. That completes our
21 formal agenda, I believe.

22 If there's any public comment or other matters

1 to be brought before our committee?

2 (No response.)

3 MR. MEITES: Hearing none, I will entertain a
4 motion to adjourn.

5 M O T I O N

6 MS. BeVIER: So moved.

7 MR. McKAY: Second.

8 MR. MEITES: And we're in adjournment. Thank
9 you very much.

10 (At 5:18 p.m., the Operations and Regulations
11 Committee adjourned.)

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