

DRAFT

MINUTES

**AMERICAN BAR ASSOCIATION
SECTION OF PUBLIC CONTRACT LAW
ANNUAL COUNCIL MEETING**

**San Francisco, California
August 11, 2007**

Westin St. Francis

Chair Michael Hordell called the Council Meeting to order at 8:40 a.m.

Minutes

The reading of the minutes of the Spring Council Meeting held in Nashville, Tennessee was waived upon motion made, seconded and approved by unanimous vote. Council Member Jeri Somers made a point of order, requesting that the draft minutes be revised to delete the names of members who spoke on a non-attribution basis. The Council then approved the minutes, with the aforementioned revision, by unanimous vote. A copy of the draft minutes appears at Tab 1 in the Council Agenda Book.

Model Code for Public Infrastructure Procurement

Chair Michael Hordell requested that Past Chairs Norm Thorpe and John Miller make a presentation regarding the Model Code for Public Infrastructure Procurement (“PIP”). Copies of the draft PIP, and the Committee’s recommendation for Council approval, appear at Tab 2 in the Council Agenda Book. Thorpe described the PIP as a condensed version of the existing Model Procurement Code, which has been tailored for use in the provision of public infrastructure projects. The idea is to provide the PIP to state and local governments, just as the Model Procurement Code is currently provided. Miller noted that the State and Local Government Section voted to approve the PIP during that section’s meeting yesterday. Miller also noted that Rep. James Oberstar, the Chairman of the U.S. House of Representatives Committee on Transportation and Infrastructure, has already sent copies of the draft PIP to some states. As an example, the Agenda Book contains a copy of a letter transmitting the PIP to the governor of Georgia. Miller stated that the timing is good; Congress is interested in having a good, rational system for infrastructure and states are interested in pursuing infrastructure projects. The real issue is whether these projects are or are not procurement transactions.

Past Chair Pat Wittie moved to approve the PIP. Council Member Paul Haseman seconded the motion.

Council Member Stu Nibley complimented the committee for the “amazing piece of work,” which Nibley believes will be very helpful.

Section Member Paul Dauer questioned whether there had been any participation by state and local practitioners. Miller responded that Larry Ethridge is one of the co-chairs of the committee, and he is also a member of the State and Local Government Law Section. Dauer expressed his concern that the PIP appears to have been the work of the four co-chairs, in contrast to the Model Procurement Code, which enjoyed the active participation of a wide cross-section of the Section. Dauer stated that it would be inappropriate for the Council to adopt the PIP without having a thorough opportunity to read it.

Chair Elect Pat Meagher asked the committee to confirm that the PIP simply condenses the Model Procurement Code. Miller assured her that this was so. Miller stated that had the committee tried to change ABA policy, it would have taken extensive coordination and work. The PIP reflects existing ABA policy; it was taken directly from the Model Procurement Code and the ordinances, which have been approved by the House of Delegates.

Section Member Steve Sorrett stated that the Privatization and Outsourcing Committee believes the Council should approve the PIP. He asked how the PIP reconciles with the model legislation previously proposed by the U.S. Department of Transportation. Miller referred Sorrett to Rep. Oberstar's letter. Congress is concerned by DOT's posting of model legislation, and is telling states to look to the ABA instead.

Past Chair Ruth Burg questioned whether the PIP must be approved by the House of Delegates. There followed a discussion about whether this was necessary, and it was the consensus view that because the PIP merely repeats pre-existing ABA policy, it is not necessary to seek approval by the House of Delegates.

A discussion then followed on the need for the PIP and the fact that the Model Procurement Code was drafted years ago. Council Member Jennifer Dauer suggested that a way to resolve the concern would be to change the title of the PIP to show that it is an excerpt from the 2000 Model Procurement Code. Miller addressed the concern and the suggestion. He agreed with Jennifer Dauer's suggestion, and noted that the committee's report requests approval with any editorial changes deemed appropriate by the Chair. Jennifer Dauer moved to amend the title of the PIP to reflect that it is a condensation of the 2000 Model Procurement Code as applicable to public infrastructure. Nibley seconded the motion. Miller proposed the Chair be permitted to make any other changes he deemed necessary. Section Delegate Mary Ellen Coster Williams opposed leaving it wide open for the Chair, and suggested that it be limited to non-substantive changes. Miller seconded this motion. The Council voted unanimously to approve the PIP, with the amended title described above and such other non-substantive changes as the Chair may deem appropriate.

Accounting, Cost & Pricing Committee Working Group on Harmonization of Cost Accounting Standards with the Pension Protection Act of 2006

Section Member Larry Rabyne reported on the white paper prepared by the Accounting, Cost & Pricing (“AC&P”) Committee Working Group on Harmonization of Cost Accounting Standards (“CAS”) with the Pension Protection Act of 2006. Rabyne reminded the Council that it had asked the committee to work on a white paper regarding issues raised by the Pension Protection Act of 2006. Rabyne noted that there is a conflict between the calculation of pension costs under the PPA and CAS. After the working group prepared an initial draft of the white paper, the CAS Board published a Staff Discussion Paper, seeking public comments in response to several specific questions. What appears at Tab 4 in the Council Agenda Book is a draft letter responding to the Staff Discussion Paper. The letter includes as an attachment the working group’s white paper.

Council Member Dan Doogan stated that it was unclear from the letter whether the committee’s position was to take a broad interpretation or to simply harmonize the calculation of pension costs. Rabyne responded that one of the issues is how quickly the CAS Board can act. The committee is advocating harmonizing the calculation of pension cost, but leaving it open if the CAS Board chooses to do more than that. The CAS Board must have a rule in effect by January 2010, which is not much time given the CAS Board’s four-step rulemaking process and the fact that it only meets every other month.

Secretary Karen Manos praised Rabyne’s leadership as chair of the working group, noting that this could have been a very contentious project on which the views of contractors and the government might have been diametrically opposed, but that Rabyne had done an excellent job of producing a consensus position.

Doogan stated that the Section should encourage the CAS Board to fully conform to the PPA in all areas possible in order to avoid litigation. Past Chair Greg Smith observed that the statute requires harmonization, but what that means is the rub.

Chair Michael Hordell asked Rabyne whether the committee had sufficient guidance to proceed with a second draft. Rabyne stated that he did. Hordell thanked Rabyne and the working group for doing such a good job.

Draft White Papers on Disclosure of Audits and Fixed-Price Contracts

Section Member Paul Pompeo reported on the draft white papers prepared by the AC&P Committee on two aspects of H.R. 1362, Accountability in Contracting Act. The white papers are contained in Tabs 5 and 6 of the Council Agenda Book. Pompeo stated that the white papers are intended to be educational rather than advocacy pieces.

The white paper on disclosure of audit reports explains that Defense Contract Audit Agency reports are merely advisory and preliminary, and may question costs for a variety of reasons having nothing to do with whether the costs are actually unallowable. The white paper cautions that public disclosure of DCAA audit reports may violate the Trade Secrets Act and cause substantial harm to contractors. Secretary Karen Manos suggested that section III of the white paper, dealing with confidentiality issues, be revised to delete

the reference to the Restatement of Torts and substitute the D.C. Circuit opinion in *CNA Financial Corp. v. Donovan*. Manos stated that the cases have held that the scope of the Trade Secrets Act is broader than the common law definition of trade secrets. The D.C. Circuit in *CNA Financial Corp. v. Donovan* described the Act's coverage as "oceanic."

The white paper on fixed-price contracts describes the considerations that go into selecting an appropriate contract type, and gives historical examples of problems with the inappropriate use of fixed-price contracts. Pompeo noted that the copy of the white paper that appears in the Agenda Book is missing a few pages. The missing pages describe the Federal Acquisition Regulation provisions regarding the selection of contract type.

Chair Elect Pat Meagher thanked the committee for its work, and stated that this is something the Section should do more of for pending legislation. Meagher asked, as a matter of procedure, what the Section should do with these white papers. For example, what is the status of Rep. Waxman's bill? Is it going to be introduced in the Senate? Pompeo deferred to the Legislative Coordinating Committee on the status of the legislation and how best to use the white papers. He stated that the white papers were intended to be an educational tool to help educate Congress. Pompeo stated that the committee was not sure what the next step would be, and thought it best to submit it to the Council for review and approval.

There followed a discussion as to whether the white papers should be posted on the Section's website and/or distributed to Congressional staffers, and whether blanket authority was necessary to do either of these things. Past Chair Ruth Burg recalled that in her day, the Section did not have a website, and white papers were distributed to Congressional staffers and to anyone and everyone who had an interest. Past Chair Pat Wittie stated that the Section had a problem with one white paper because the Labor and Employment Section objected to it. As a result of that experience, the Section came up with a disclaimer to include on the white paper, making clear that it had not been approved by the House of Delegates and did not represent ABA policy. In addition, the Council decided not to distribute that white paper, but merely to post it on the Section's webpage. Pompeo noted that the papers would not have much influence if they were not distributed. Section Member Mike Love stated that these white papers are very good and should be distributed. Secretary Karen Manos observed that posting a white paper on a public website is essentially the same as distributing them, and we either need blanket authority or we do not – but it does not depend on the medium of distribution. Council Member Paul Haseman stated that regardless of whether we request blanket authority, we should post the white papers on the website. Council Member Stu Nibley observed that the discussion was reminiscent of the Council's discussion in Nashville about the white paper on the Civilian Board of Contract Appeals subpoena power. In that instance, the Council decided to post a draft of the white paper on the website for the purpose of soliciting comments, and at the same time, seek blanket authority.

Chair Hordell stated that he would leave it to the AC&P committee to decide whether there was time to revise the draft, but that in the meantime, we should post it for comments and seek blanket authority.

Council Member Sharon Larkin recused herself from this discussion.

Civilian Board of Contract Appeals

Chair Michael Hordell informed the Council that Chairman Stephen Daniels of the Civilian Board of Contract Appeals (“CBCA”) had intended to make a presentation to the Council but was unable to attend because he has recently had surgery. Chairman Daniels asked his colleague Judge Jeri Somers to fill in for him. Council Member Somers stated that Chairman Daniels regretted that he could not be present at the Council meeting. Somers stated that there are 18 judges on the CBCA. The cases are assigned through an assignment wheel system based on the type of case. Cases previously assigned to the predecessor boards are, for the most part, still being handled by the same judges who were handling them before. The CBCA judges have monthly meeting to discuss issues before the CBCA. There are also a number of working committees. For example, there is an Alternative Disputes Resolution Committee. Somers stated that the CBCA actively encourages ADR, and is willing to engage in pre-dispute ADR. There is also a Rules Committee, which will be evaluating public comments received in response to the publication of the CBCA rules. The CBCA judges also meet regularly with the ASBCA judges. In addition, they continue to be actively involved in other panels and associations. Somers stated that the CBCA had a good relationship with the U.S. Court of Appeals for the Federal Circuit. Chief Judge Michel invited the Chair and Vice Chair of the CBCA to lunch, and then Chief Judge Michel had lunch at the CBCA with all of the judges. Chief Judge Michel has offered to let the CBCA use the CAFC’s electronic filing system. As a result, the CBCA may have electronic filing as early as next year. Somers concluded by noting that the CBCA rules have been published for public comments, and the comment period is six months.

Remembrance of Section Chairs No Longer with Us

Chair Michael Hordell stated that when a past chair dies, the Section typically sends a letter of condolence to the family, acknowledging the past chair’s achievements. Hordell thought it would be appropriate to do that every year. Hordell read the names of the past chairs who are no longer with us. A list appears at Tab 8 of the Council Agenda Book.

Special Report on ABA Recommendation 116A Regarding the State Secrets Privilege

At the invitation of Section Delegate John Pachter, three members of the Individual Rights and Responsibilities (“IR&R”) Section made a special presentation about that Section’s recommendation regarding the state secrets privilege. The three representatives were Greg Nojeim, who previously made a similar presentation during a meeting of the Contract Claims and Disputes Resolution Committee, Richard Mesias, who is one of the IR&R Section’s two delegates, and Dan Jarko, who was the principal drafter of the IR&R recommendation. Nojeim stated that the IR&R Section first got involved because of its concern about people who had been subjected to extraordinary renditions and electronic surveillance, but then had their civil cases against the government summarily dismissed

based on government claims of state secrets. The recommendation is intended to address this problem. Nojeim stated that in response to comments received from our Section and other groups, the IR&R Section revised its recommendation. He distributed copies of the revised recommendation. Among other things, the recommendation is no longer formatted as a recommendation to judges; it is now styled as a legislative proposal. In response to comments from the Criminal Law Section, the recommendation was revised to include an expedited interlocutory appeal. Nojeim stated that the issue is important and timely because one of the extraordinary rendition cases is pending certiorari at the U.S. Supreme Court and Congress is considering legislation regarding electronic surveillance.

At Chair Michael Hordell's request, Section Member David Kasanow gave a report on the state secrets doctrine in the context of government contracts case. Kasanow noted that in some cases, invocation of the state secrets doctrine could be to the contractor's advantage (*e.g.*, in disputes with subcontractors or when avoiding third party liability), but that in other cases, it can effectively deprive the contractor of any remedy because it makes it impossible to establish a claim.

Chair Elect Pat Meagher questioned why the Section should support a legislative solution if the problem was inconsistent decisions by the lower courts. Why not wait until the issue gets to the Supreme Court? Secretary Karen Manos asked Nojeim whether the intent of the legislative proposal was to overrule the Supreme Court's decision in *Reynolds*. Nojeim stated that the legislative proposal was largely consistent with *Reynolds* except in one respect: While *Reynolds* held that it was alright for the court to dismiss the case without reviewing the material the government claimed was privileged, the IR&R Section's legislative proposal would require court's to review the material before making that decision. Vice Chair Michael Mutek asked Nojeim to address the concern that in some circumstances, information may be so sensitive and important to national security that disclosure to a court could be problematic. Jarko stated that the judge would not have to review the material, but the government would have to make it available for the judge's review. Jarko noted that the role of the courts has evolved substantially since *Reynolds* was decided in 1954. As an example, in a recent D.C. Circuit case involving enemy combatants, the court rejected the government's argument that the court should not have access to the underlying information. Nojeim added that in *Reynolds*, which involved an accident report, the government released the report many years later, and it turned out that it did not implicate national security at all. Mutek questioned why the recommendation did not include an interlocutory appeal from the decision to require the government to make the material available for in camera review. Jarko stated that the IR&R Section did not include that because in their view the in camera review is essential to the court's decision as to whether the material is privileged.

Council Member Dave Ehrhart observed that the recommendation covers a wide-ranging area of government interests. For example, in *Reynolds*, the privileged was claimed on the basis of safety, *i.e.*, that those investigating an aircraft accident are more likely to obtain complete information and thereby prevent future accidents if the report is protected from release. Ehrhart noted Nojeim used *Reynolds* as an example, and asked if

he was suggesting that, had the Supreme Court looked at the report, it would have required the government to release it. If so, would that not do away with the safety privilege? Nojeim said no, the court would make a determination.

Ehrhart asked how the national security interest is protected by the IR&R Section's recommendation. Jarko responded that the national security interest is protected to a great degree. The parties and counsel never get access to the information unless the court determines it is not privileged. The recommendation requires courts to take a number of steps to get to that decision. If the court decides the information is privileged, the government must prepare a substitute for the privileged information to give to the party seeking the information. At the end of the day, if the case cannot be litigated, it cannot be litigated. Ehrhart stated that he challenged Jarko's contention that the information is protected if it is shown to judges or special masters. Ehrhart stated that he is concerned the policy does not protect against that.

Section Member Colonel Neil Whiteman stated that there were two points that warrant further consideration. First, Jarko talked about using the Classified Information Procedures Act as a model, but most of those cases have been settled, so it really does not provide a very good model. Second, the recommendation uses a standard of "significantly detrimental to national security." Whiteman questioned how one quantifies harm to national security. Jarko stated that the IR&R Section did not adopt the CIPA procedures wholesale. They used only those provisions that seemed useful. The assessment of risk to national security is something that the law already requires under *Reynolds*. Because the state secrets doctrine is an evidentiary privilege, courts have to balance the interests. The recommendation tries to flesh that out. Under the cases, there is substantial deference to the executive branch. Nojeim added that he thinks it is a standard the courts can apply.

Council Member Alan Chvotkin stated that while the recommendation looks at civil cases, and Kasanow looked at post-award cases, this issue also comes up in the pre-award area and in contractor responsibility cases.

Section Delegate John Pachter asked whether any consideration had been given to using a specialized court, such as the court that currently decides requests for electronic surveillance. Nojeim responded that the IR&R Section considered that, but decided they could not get the ABA as a whole to back it.

Section Delegate Mary Ellen Coster Williams invited Whiteman to make his comments to the House of Delegates. Chair Michael Hordell seconded the suggestion. Hordell thanked the IR&R Section for their presentation, and asked the Section's Delegates if they had any further questions since they would be attending the House of Delegates' session that would be taking up this issue. The Delegates indicated that they had no further questions.

Williams, Somers and Park-Conroy recused themselves from the state secrets discussion.

CBCA Subpoena Power

At Chair Michael Hordell's request, Council Member Stu Nibley reported on the white paper regarding the CBCA subpoena power. Nibley handed out two things to replace the draft white paper that appears at Tab 9 in the Council Agenda Book: (1) a draft request for blanket authority, and (2) a copy of an article that will appear in the next issue of the *Public Contract Law Journal*. Nibley briefly recounted what transpired at the Annapolis and Nashville meetings, and recalled that one jurist told the Section he could not imagine a forum that did not have subpoena power. Since that time, the CBCA published draft rules that include subpoena power, and also include a note that the Department of Justice does not believe the power applies to the United States. Nibley stated that one issue the Council should consider is whether to broaden the request for blanket authority to include commenting not only on the CBCA rules, but also on any related legislation.

Past Chair John Miller moved that we seek blanket authority more broadly as Nibley suggested. Past Chair David Hirsch stated that he had discussed the issue with Past Chair Marshall Doke, and it was their view that this is a bigger issue that should be presented to the House of Delegates and made a matter of ABA policy. Doke stated that the idea that any dispute resolution forum could not compel the production of evidence is so contrary to our fundamental principles that it would shock anyone who learned of it. The absence of that power makes the dispute resolution incomplete. This has a much broader appeal, and goes beyond the government contracts context. As an aside, Doke noted that, as a practical matter, it is unlikely to make much difference since the judge can simply direct the government – as one of the contracting parties before it – to obtain the information, and if the government fails to do so, the judge can draw an adverse inference.

Chair Hordell suggested a two-pronged approach: seeking blanket authority and also submitting it to the House of Delegates. Doke cautioned against that approach, stating that it would be better to just present the matter to the House of Delegates at the Mid-Year Meeting. A Section Delegate asked if Doke was suggesting that the Council come up with a pithy resolution and attach the white paper.

Hordell observed that there was a pending motion to seek blanket authority to comment on the CBCA rules and any proposed legislation. Miller withdrew his motion. Doke moved that the essence of the white paper be distilled into a resolution that would be presented at the Mid-Year meeting. Council Member Dan Doogan seconded the motion. Nibley stated that the Council should go back to the original motion, which was to seek blanket authority, and then as a second step, submit the resolution to the House of Delegates. The Council voted unanimously to approve Doke's motion to submit a resolution to the House of Delegates.

Nibley moved to reinstate Miller's motion to authorize the Council to seek blanket authority to comment on the CBCA rules and any proposed legislation. Immediate Past Chair Rob Schaefer seconded the motion, which was approved by unanimous vote of the Council.

Council Member Jennifer Dauer stated that she understood Doke to have concerns about doing both. Past Chair Norm Thorpe observed that the problem with seeking blanket authority is that it will stir up all of the sections. Doke stated that seeking blanket authority would telegraph what we plan to do and allow the opposition time to develop. Doke advised that the best way to get a measure passed by the House of Delegates was to not give the opposition that opportunity. There followed a brief discussion about whether the Council should vote to rescind its previous vote. Doke noted that this would not be necessary because the Council had voted to *authorize* the Council to seek blanket authority, not to *require* that we seek blanket authority.

Section Delegate Mary Ellen Coster Williams, Finance and Budget Officer Carol Park-Conroy, and Council Member Jeri Somers recused themselves from the discussion and votes on this issue.

Memorandum from Shay D. Assad, Director, Defense Procurement and Acquisition Policy on Proper Use of Award Fee Contracts and Award Fee Provisions

Chair Michael Hordell recognized Vice Chair Michael Mutek for the purpose of commenting on an April 24, 2007 memorandum from Shay Assad. A copy of the memorandum is contained in Tab 11 of the Council Agenda Book. Mutek referred to Tab 6 in the Council Agenda Book, and noted that the white paper on fixed price contracts was an excellent piece of work by the Accounting, Cost & Pricing Committee. The purpose of the white paper is to inform members, capture history, and assist Congress. Rep. Waxman's bill targets cost reimbursement contracts and encourages fixed price contracts with the theory that fixed price contracts will protect the government from risk of cost overruns. Mutek stated history shows that this theory is fundamentally flawed. The white paper points out the relationship between contract type and risk. It also does a great job of showing the historical problems with using fixed price contracts. The paper was not meant to be an advocacy piece, just to say this is what has happened in the past. Mutek went through the history of the use of fixed price contracts, as described in the white paper. Mutek noted that section III of the white paper is missing from the Agenda Book, but that it discusses the FAR guidance regarding the selection of contract type.

Turning to Tab 11 in the Council Agenda Book, Mutek noted that Assad's memo also discusses the selection of contract type. Mutek highlighted the fact that Assad's memo discusses the use of cost-plus-award-fee contracts for low rate initial production contracts. The memo establishes Department of Defense policy that objective criteria will be utilized, whenever possible, to measure contract performance for CPAF contracts. Mutek stated that we can expect to see changes in the way that CPAF contracts are administered.

Special Report of the Acquisition Advisory Panel

Chair Elect Pat Meagher stated that Past Chair Marcia Madsen was not present today, but sent several copies of the Acquisition Advisory Panel's published report. Meagher noted

that the Council was privileged to have several members of the Acquisition Advisory Panel present today, including Marshall Doke, Ty Hughes and David Drabkin. Meagher stated that some of the panel's recommendations have already made their way into pending legislation. Past Chair Marshall Doke asked that the record reflect the enormous amount of work and effort put in by Marcia Madsen. Doke likened Madsen's task to herding cats. Just getting the report printed by the Government Printing Office was a task. Doke stated that we should all be proud of Madsen and her work. Doke stated that most of what appears in the printed report was previously posted on the panel's website. There are a few supplementary views in the report that were not posted, but will be as soon as the report is available electronically.

Special Report of the Legislative Coordinating Committee

At Chair Michael Hordell's request, Kristen Ittig made a special report about the activities of the Legislative Coordinating Committee. Hordell stated that the committee has done a good job and the Council appreciates the increase in activity. Ittig thanked Co-Chair John Janacek, who has done a tremendous amount of work, and will be stepping down from his position on the committee this year. Ittig stated that the committee is pleased to have Roger Waldron as co-chair this year. The committee meets at 8:30 a.m. on the third Thursday of each month at the offices of Arnold & Porter. A copy of the committee's report is contained in Tab 16 of the Council Agenda Book.

Special Report of the Regulatory Coordinating Committee

At Chair Michael Hordell's request, Kara Sacilitto made a special report about the activities of the Regulatory Coordinating Committee. A copy of the committee's report is contained in Tab 17 of the Council Agenda Book.

Special Report of the International Procurement Committee

At Chair Michael Hordell's request, Council Member Jenny Kim made a special report about the activities of the International Procurement Committee. Kim observed that the committee has formerly been dormant, but met three times this past year, and will be holding a teleconference on doing business in India. Hordell thanked Kim for reinvigorating the committee. Hordell noted that under Chair Elect Pat Meagher's leadership, we can expect to see more young lawyers get involved in Section activities and leadership. A copy of the committee's report is contained in Tab 16 of the Council Agenda Book.

Special Report of the Suspension and Debarment Committee

Section Members Fred Levy and Craig King made a special report about the activities of the Suspension and Debarment Committee. The committee's report was distributed at the meeting. Levy noted that the committee is somewhat unique in that the same core group has been meeting for more than 20 years. The committee includes practitioners and suspension and debarment officials or staff for most of the agencies. The

membership also includes the chair of the inter-agency suspension and debarment committee. Although the committee members are often adversaries in their practice, the meetings are very collegial. All of the comments are off the record and not for attribution. King stated that the committee has been working on a special project for the past year to study the effectiveness of the suspension and debarment process. The committee has a working draft of its final report, which includes 2 findings and 11 recommendations. One of the recommendations is to codify some of the existing practices, which are observed by the various agencies but have never been published. Hordell thanked the committee for its work.

Waiver of Bar Dues and CLE Requirements for Deployed Service Members

Section Delegate John Pachter reported on the Section's proposed resolution urging state bar associations to waive bar dues and Continuing Legal Education requirements for deployed service members. A copy of the resolution is contained in Tab 14 of the Council Agenda Book. Pachter noted that the issue first came to the Council's attention from Section Member Liz Fleming, who is currently serving in Iraq as an Army Reserve Colonel. Fleming was having trouble fulfilling her CLE obligations while deployed, and her state bar associations offered only the option of reverting to inactive status. Charlie Weiss drafted the resolution, and we subsequently gained several co-sponsors (which are listed on the resolution). Pachter stated that during this Annual Meeting, he would have the honor and privilege of presenting the resolution to the House of Delegates and moving for its adoption.

Guest Appearance by Past Chair Walter Pettit – 40 Years After the First Honolulu Meeting

Chair Elect Pat Meagher introduced and warmly welcomed Past Chair Walter Pettit. Meagher stated that Pettit was her first mentor, and she invited him to share his memories of the Annual Meeting in Honolulu forty years ago. Pettit noted that three of those in attendance at today's meeting had been with him at that Honolulu meeting: Marshall Doke, David Hirsch and Marilyn Neforas. He noted that the Honolulu meeting was the third Annual Meeting for the Section, and, to put it in perspective, it was before men landed on the moon, before the seven most recent presidents took office, and before the internet. Since then, most of the names of the people who attended that meeting became famous in the government contracts community, having assumed leadership positions in the bar, written law review articles, and gone on to become very successful practitioners. Pettit reminisced about some of his former colleagues who achieved celebrity status, including Gilbert Cuneo, Took Crowell and Hank Kaiser. Pettit stated that Marshall Doke has made one of the most lasting contributions to our Section. Pettit stated that there were about 30 members in attendance at the Honolulu meeting. He stated that it was exciting to see how the Section and its leadership have grown, and to see how the ladies of the Section have become increasingly more active. He noted that the Section previously used the word "Chairman" and now uses "Chair," which is emblematic of one of the biggest changes. Pettit stated that Allan Joseph has won national recognition in the ABA, having served as Treasurer and a Section Delegate. Pettit concluded with a tribute

to Meagher, stating that he worked with her for a long time on many different things, and no one is more qualified to assume the leadership of this Section.

Special Report of the Privatization, Outsourcing & Related Transactions and the Financing & Transactions Committees

At Chair Michael Hordell's request, Section Member Steve Sorrett made a special report on the activities of the Privatization, Outsourcing & Related Transactions Committee and the Financing & Transactions Committee. A copy of the former committee's report is contained in Tab 20 of the Council Agenda Book. Hordell thanked Sorrett and the committee for its good work.

Special Report of the Acquisition Reform and Experimental Procurement Processes Committee

Chair Michael Hordell noted that contrary to the original agenda, Section Member David Drabkin would not be making a special report of the Acquisition Reform and Experimental Procurement Processes Committee. However, a copy of the committee's report is contained in Tab 21 of the Council Agenda Book.

Public Contract Law Journal Announcement

Secretary Karen Manos announced that the *Public Contract Law Journal* is seeking note topics and practitioners willing to serve as mentors for students who want to write a note for publication in the *Journal*. Manos noted that the *Journal's* annual writing competition is open to law students from all over the country, and many of them are completely unfamiliar with government contracts. Associate Editor Herman Levy maintains a list of note topics that prospective authors may consult. To help encourage those students to enter the competition, it would be good to have practitioners who are willing to explain the note topic and serve as a mentor. Past Chair John Miller suggested that in addition to providing lists of note topics, it would be good to just list practitioners who are willing to serve as mentors for any note the student cares to write. We could identify practitioners by area of expertise or interest. Manos agreed that this was a good idea. Section members willing to serve as a mentor for prospective student authors should contact Manos or Levy.

Commission on Women in the Profession

Past Chair Pat Wittie reported on the activities of the ABA Commission on Women in the Profession. Wittie commended to the Council's attention a recent report by the Commission on the issue of sexual harassment. For the younger women in the Section, Wittie recommended the Women in the Law Leadership Academy. It is a two-day program, which will be held on November 8-9, 2007.

Financial Report

Section Budget and Finance Officer Carol N. Park-Conroy stated that before making her financial report, she wanted to introduce a newly appointed judge on the Armed Services Board of Contract Appeals. Park-Conroy recognized Section Member Diana Dickinson, who is currently serving as the Air Force's acting Chief Trial Attorney. Dickinson will assume her ASBCA position in October.

Park-Conroy reported that the financial state of the Section is very good. She distributed copies of the proposed budget. Council Member Stu Nibley moved that the budget be approved. Council Member Jennifer Dauer seconded the motion, which was approved by unanimous vote of the Council.

Thank You

Chair Michael Hordell thanked the Council and everyone in the audience who participated in today's Council Meeting. He noted that the meetings have steadily gotten more substantive, and stated that the fact that the Agenda Book is very thick means that most of the committees are getting their reports in on time. Chair Elect Pat Meagher thanked Hordell on behalf of the Section and Council. Meagher stated that Hordell's modesty does not reflect all of the hard work he has put in. Hordell received a standing ovation from the audience.

The meeting was adjourned at 11:52 a.m.

Respectfully submitted,



Karen L. Manos
Secretary
Section of Public Contract Law
American Bar Association

DRAFT

**PUBLIC CONTRACT LAW SECTION
AMERICAN BAR ASSOCIATION
Saturday, August 11, 2007
San Francisco, California**

Last Name	First Name	Title	Phone Number
Doke	Marshall	Past Chair	(214)999-4733
Hirsch	Dave	Past Chair	(310) 476-5249
Miller	John B.	Past Chair	(339) 221-0401
Raines	Abby	Student Liaison	(615) 491-8119
Nibley	Stu	Council Member	(202) 508-4554
Smith	Greg	Past Chair	(703) 456-8163
Pachter	John	Section Delegate	(703) 847-6260
Haseman	Paul	Council Member	(303) 344-6102
Bell, Jr.	Hubert J.	Past Chair	(404) 582-8027
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Pushkar	Ray	Vice Chair Battle Space	(202) 496-7551
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San Francisco, California**

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Harrison	Nancy	Assoc. Member – Director	[???
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Lee	Tara	Associate, Cooley Godward Kronish	(703) 456-8087