

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
GOVERNANCE AND PERFORMANCE REVIEW
COMMITTEE

Saturday, April 25, 2009

9:17 a.m.

Embassy Suites Hotel
319 Southwest Pine Street
Portland, Oregon

COMMITTEE MEMBERS PRESENT:

Lillian R. BeVier, Chairman
Herbert S. Garten
Thomas R. Meites
Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

Jonann C. Chiles (by telephone)
Thomas A. Fuentes
David Hall
Bernice Phillips-Jackson (by telephone)
Sarah Singleton

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STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President
Karen M. Dozier, Executive Assistant to the President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary
Mattie Cohan, Senior Assistant General Counsel, Office
of Legal Affairs
David L. Richardson, Treasurer and Comptroller, Office
of Financial and Administrative Services
Karen J. Sarjeant, Vice President for Programs and
Compliance
Charles Jeffress, Chief Administrative Officer
Jeffrey E. Schanz, Inspector General
Joel Gallay, Special Counsel to the Inspector General,
Office of the Inspector General
Thomas Coogan, Assistant Inspector General for
Investigations, Office of the Inspector General
David Maddox, Assistant Inspector General for
Management and Evaluation, Office of the
Inspector
General
Mathew C. Glover, Associate Counsel, Office of the
Inspector General
John Constance, Director, Government Relations and
Public Affairs Office
Kathleen Connors, Executive Assistant, Government
Relations and Public Affairs Office
Laurie I. Mikva, Board of Directors Nominee

Don Saunders, National Legal Aid and Defenders
Association (NLADA)

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P R O C E E D I N G S

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(9:17 a.m.)

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CHAIRMAN BeVIER: Good morning, Bernice. Jonann,
are you also on the call?

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MS. CHILES: I am. Good morning.

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CHAIRMAN BeVIER: Good morning.

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MS. PHILLIPS-JACKSON: Good morning, Lillian.

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CHAIRMAN BeVIER: We're glad to have both of you
with us. Also here in the room are board members Tom
Meites, David Hall, Frank Strickland, Tom Fuentes,
Herbert Garten, and President Helaine Barnett are here
at the board table.

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This is a meeting of the governance and
performance review committee, which I will now call to
order. Members of this committee who are present are
Tom Meites, Herb Garten, Mike McKay, who is absent,
and Frank Strickland, who is ex officio.

18

19

The first item on the agenda is to approve the
agenda. Do I hear a motion to approve the agenda?

20

M O T I O N

21

MR. MEITES: So move.

22

MR. GARTEN: Second.

1 CHAIRMAN BeVIER: All in favor?

2 (A chorus of ayes.)

3 CHAIRMAN BeVIER: The second report is approval
4 of the minutes of the committee's meeting of January
5 31. Do I hear a motion to approve those minutes?

6 M O T I O N

7 MR. MEITES: So move.

8 MR. GARTEN: Second.

9 CHAIRMAN BeVIER: All in favor?

10 (A chorus of ayes.)

11 CHAIRMAN BeVIER: That carries as well.

12 The third item on the agenda is a staff report on
13 the transition manual and plan. And joining us now
14 will be John Constance and Jeffrey Schanz. John,
15 perhaps you should start.

16 MR. CONSTANCE: Thank you, Madam Chairman. I'm
17 John Constance, director of government relations and
18 public affairs for the Corporation.

19 We were tasked after the last meeting to take a
20 look at the LSC materials for board transition manual
21 found on page 100 of your board book. And I would
22 suggest that everyone turn to that point.

1 Vic and I have worked on taking what was provided
2 to us in the January meeting in terms of suggestions
3 for additions to the manual, right now a manual only
4 in the sense of a list of what might be in there. And
5 we have added to the list that was presented in
6 January those new additions and corrections that are
7 featured in red in the list that is before you.

8 What I would suggest, Madam Chairman, is that
9 everyone take a look at that. I would hope that it's
10 been reviewed prior to this session, but if not, now,
11 and possibly any kind of additions, discussion,
12 opinions on what is presented.

13 I might also add that I believe -- and we can
14 discuss this, obviously, separately -- that the
15 inspector general has provided also a table of
16 contents for what would be the separate and
17 independent orientation for the new members of the
18 board that you have before you as well. But possibly
19 taking them, as I might suggest, one at a time. Take
20 a look at page 100 and go from there.

21 MR. MEITES: I have several -- first of all, I
22 think it's really coming together. The additions in

1 red really flesh out what a new board member I think
2 would find helpful. I just have a couple very
3 specific suggestions.

4 Under Role and Responsibilities of the Board, I
5 suggest you add our conflict of interest provisions,
6 and also -- I'll call it lobbying, but the
7 expectations of board members regarding comments,
8 personal comments, versus comments as a board member
9 versus comments purporting to be what the board
10 thinks.

11 Under, maybe, Oversight, I think it would be
12 helpful if you summarized the important restrictions
13 on our grantees because that will be a useful
14 checklist for a new board member to have to know, this
15 is the current state of what the grantees cannot do.
16 I think a new board member has a very good idea of
17 what the grantees do, but not what they are not
18 supposed to do.

19 And since this is a moving target but it looks
20 like there will be at least consideration of
21 legislation that would have an important impact on the
22 Corporation's grantees, you might want to include a

1 summary of, if there is important legislation, like
2 the Harkin bill, at least put it in here so that a new
3 board member will be up to speed as to what might be
4 happening.

5 And the last, I, after years of close study, now
6 understand that you do two budgets at once. I think a
7 timeline in the appropriation process, kind of walking
8 a new board member through the dual act we do -- we're
9 waiting for this year's budget while we're already
10 asking for next year's budget -- some kind of a
11 graphic presentation of how two things go on at once
12 would be helpful.

13 Those are my very specific suggestions. But
14 again, I think this is very close to the product that
15 I would have found very helpful as a new board member.

16 CHAIRMAN BeVIER: Herb? Anybody else?

17 MR. FUENTES: While not a member of the
18 committee, I did have the opportunity to review this.

19 And I think something that would be of benefit as an
20 additional piece of this would be to include the list
21 of contacts that we receive in our board books. I
22 think it's back on 203 or -- you know, 203 and 204.

1 I think in a functional way, as somebody, a new
2 member, was going through this book, questions would
3 arise. And if they had these top level management and
4 board members, even the old board members list, call
5 us up or call up the individual who's responsible for
6 that and have access, I think that would be a
7 working -- a way that would make the book more
8 functional.

9 MR. GARTEN: Lil?

10 CHAIRMAN BeVIER: I think we agreed to call them
11 something other than old board members.

12 (Laughter.)

13 MS. PHILLIPS-JACKSON: Excuse me. This is
14 Bernice. I'm getting a lot of feedback when someone
15 talks into the mike. And I have -- even though I'm
16 not a member of the committee, I have several
17 questions or comments that I would like to -- forgive
18 me if I repeat something or that someone suggested.

19 Have we gotten to the part where we're looking at
20 the different sections?

21 CHAIRMAN BeVIER: You mean of the LSC materials
22 for board transition?

1 MS. PHILLIPS-JACKSON: On page 101 and 102. Have
2 we gotten to that part yet?

3 CHAIRMAN BeVIER: Well, I would say the answer to
4 that is yes because I think what we're doing is
5 starting with this in a whole way, and we're inviting
6 comments from committee members and the board.

7 So anything that you have to say, either about
8 the materials in general or specific parts of it,
9 would be useful. So go ahead. We'd love to hear what
10 you have to say.

11 MS. PHILLIPS-JACKSON: On page 101, section I,
12 what is the memo about as far as the general counsel
13 is concerned? What is this memo? What would his memo
14 be about?

15 MR. FORTUNO: Bernice, this is Vic. The memo
16 would describe for the new board members what
17 litigation we have pending, and get into some detail
18 on all litigation, but especially the major
19 litigation, so that they're fully apprised of where we
20 are on any matter that's in court or appears to be
21 headed for court.

22 In effect, it's the -- you know, the confidential

1 litigation report that you get for each meeting. It
2 would be something like that. You know, it might not
3 be as detailed because they've got so much material
4 here that it would overwhelm them.

5 But it would leave out things like specific
6 filing dates when things were filed. It might include
7 future filing dates. But it would try to summarize
8 what you get in your litigation report right now in
9 such a way that it would bring the new board members
10 up to speed on all aspects of our litigation -- cost,
11 for example, cost, insurance coverage, out-of-pocket
12 costs, that sort of thing.

13 Just because while that's not, strictly speaking,
14 the substance of the litigation, it's certainly
15 relevant for oversight purposes. So that kind of
16 information would be included as well.

17 And that's how I envision it, although obviously
18 that's all subject to discussion and direction from
19 the board.

20 MS. PHILLIPS-JACKSON: Could we put them in there
21 so that the new board members would have some type of
22 clue what it's going to be about? Or would that be

1 too much?

2 MR. FORTUNO: I'm sorry. I wasn't able -- that
3 didn't come across clearly to me. Can you repeat the
4 question?

5 MS. PHILLIPS-JACKSON: I didn't hear you, Vic.
6 Say that again?

7 MR. FORTUNO: Can you repeat the question?

8 MS. PHILLIPS-JACKSON: Could we add something to
9 this language here that allows the new board member --
10 it's just when I look at this, I don't have a clue of
11 what the memo would be.

12 MR. FORTUNO: Oh, okay.

13 MS. PHILLIPS-JACKSON: Add something saying
14 that -- you know, what it's about, what the memo would
15 be about?

16 MR. FORTUNO: Yes. So that this document here
17 right now at I just says, "Memo from General Counsel."
18 We would describe what information would be in the
19 memo so that they have a better idea of what it is.
20 We can certainly do that.

21 MS. PHILLIPS-JACKSON: Okay. And then I was
22 looking at page 102, section J, on description of

1 the -- I mean, not the -- the job titles here, job
2 descriptions. And I was wondering like should we add
3 vice president of legal affairs and corporate
4 secretary?

5 I just believe that the new board members coming
6 on should know what those descriptions are even though
7 that -- even though they're probably still being done
8 by the same person.

9 MR. FORTUNO: Yes. We can certainly do that.
10 And I think that's a very good point, especially the
11 corporate secretary. It's important for the board to
12 know who the corporate secretary is, or at least what
13 the functions of that office are.

14 So yes, we can certainly flesh that out. No
15 problem. Thank you.

16 MS. PHILLIPS-JACKSON: Okay. And section K, on
17 the same page, 102, the employees handbook. Since the
18 board approves changes to it, should it be added to
19 that section?

20 MR. FORTUNO: I think -- well, no. L has the
21 administrative handbook. You're asking about the
22 employee handbook because the board acted on IT,

1 adopted it? We can certainly make that available as
2 well, with a notation that that was something adopted
3 by the board and when. Is that what you mean?

4 MS. PHILLIPS-JACKSON: Right.

5 MR. FORTUNO: Should we include it under K or
6 under L?

7 MS. PHILLIPS-JACKSON: I'm sorry? It should be
8 included under what section?

9 MR. FORTUNO: Should we include it under K or L?
10 L is Other Reference Materials and, for example, it
11 includes right now the administrative handbook. It
12 was felt that that was important because it governs
13 how -- you know, expense reports and things of that
14 nature, business travel.

15 But we can include the employee handbook under L
16 if you'd like.

17 MS. PHILLIPS-JACKSON: I'm sorry. I don't
18 have -- wait a minute. Oh, is that the administrative
19 handbook?

20 MR. FORTUNO: No. That's a different manual.
21 But we can include it under L. We would list the LSC
22 administrative handbook, and separately list the LSC

1 employee manual.

2 MS. PHILLIPS-JACKSON: I'm sorry. I didn't hear
3 you. Under L instead of K. Okay.

4 MR. FORTUNO: Okay?

5 MS. PHILLIPS-JACKSON: Thanks.

6 CHAIRMAN BeVIER: Excuse me, Bernice. I just
7 would like to inject a question here. I'm not sure of
8 the rationale for including the employee handbook. I
9 do understand that we spent a considerable amount of
10 time on it at the board. But my understanding was
11 that the board adopted it and then it was basically an
12 ongoing document.

13 What I'm worried about is overwhelming the new
14 incoming board members with so much detail down at
15 such a level that the perception will be, this is
16 just -- I can't accommodate all of this.

17 So I might suggest that we might put that in
18 some -- we might make note of that in someplace, but
19 I'm not sure that the entire handbook --

20 MS. PHILLIPS-JACKSON: Well, what I was thinking
21 is that it shouldn't be a surprise that -- for the new
22 board members that they are making changes to an

1 employee handbook. So, I mean, especially when, you
2 know -- I just think that it should go somewhere in
3 this -- somewhere in this line so when the new board
4 members come on board, they're not taken by surprise
5 that they have something to do as far as the employee
6 handbook goes.

7 MR. RICHARDSON: Madam Chairman, John Constance.

8 Can I make a suggestion? And that is that I think we
9 could accommodate both sides of this by just putting
10 the table of contents of the employee handbook in the
11 reference materials, with a link to the entire book,
12 just to demonstrate to a new board member that this
13 level of granularity has been done by management with
14 the approval of the board.

15 But at the same time, they don't really need to
16 know, chapter and verse, every element. But if the
17 table of contents were there, they would at least know
18 that such a document existed.

19 CHAIRMAN BeVIER: Does that way of handling this
20 and getting at your concern, Bernice, appeal to you?

21 MS. PHILLIPS-JACKSON: I couldn't hear because,
22 like I said, I'm getting a lot of feedback. I'm just

1 concerned that -- I don't want them to be surprised by
2 what they have to do. I think we should include
3 everything. We should let them know whatever they --
4 everything that they need to do or expect.

5 CHAIRMAN BeVIER: Can you hear me better than you
6 can hear John Constance?

7 MS. PHILLIPS-JACKSON: I can't -- I really can't.
8 I'm getting a lot of feedback.

9 CHAIRMAN BeVIER: All right.

10 MS. PHILLIPS-JACKSON: So when you -- I hear some
11 words, but then some words are not so clear.

12 CHAIRMAN BeVIER: Well, let me put it this way.
13 I think that we have a way of satisfying your concern.
14 And hopefully this will not be finalized until the
15 next meeting, anyway, so that you can raise the
16 concern again if what we propose to do is not
17 sufficient for your purposes.

18 So do you have some more suggestions? These are
19 very helpful.

20 MS. PHILLIPS-JACKSON: No. That was the last
21 suggestion.

22 CHAIRMAN BeVIER: Thank you.

1 Herb?

2 MR. GARTEN: First of all, I think Bernice had a
3 good point of at least a reference to it, with an
4 asterisk, perhaps, "Available upon request."

5 Also, you have just sent to us the annual loose
6 leaf book version with the statute and everything
7 else. So that might also -- you're going to supply
8 that to the new board members, and you might have a
9 footnote here with respect to, "See the volume,"
10 whatever you called it. It's a compendium of
11 information. "See compendium." And the bylaws are in
12 it and number of other relevant --

13 MR. FORTUNO: Relevant authorities for legal
14 services.

15 MR. GARTEN: And I've spoken to management and
16 also to Jeff about additional items that I think could
17 be referenced under L. I had the employee handbook.
18 That doesn't mean we're going to give them the
19 employee handbook; it's available upon request so they
20 know it exists. And the risk management program
21 also, I think, could be listed, also available upon
22 request.

1 Going back to page 100 -- may I continue, Lil?

2 CHAIRMAN BeVIER: Please do. Thank you, Herb.

3 MR. GARTEN: I think that the charters of the
4 committees are short. They're one-pagers. And I
5 think it's important for new board members to be aware
6 of the responsibilities of it.

7 For example, with respect to the audit
8 committee -- and again, I've spoken to Jeff about
9 this -- there's oversight on the part of the audit
10 committee and the board that is specifically referred
11 to in the committee charter.

12 For example, the appointment of the independent
13 auditor for the Corporation itself is something that
14 could be noted.

15 MR. FORTUNO: All right. So, then, under -- page
16 100, under C, Role and Responsibilities of the Board,
17 the second bullet, which is, "Board committee
18 charters," we would include the charters there, of
19 course. But are you suggesting we have some brief
20 kind of highlights or summary of what --

21 MR. GARTEN: I think they're short enough that you
22 don't need it.

1 MR. FORTUNO: Oh, okay. Well, yes. The intent
2 was to include the charters as written, the documents
3 themselves.

4 MR. GARTEN: All right. Now, with respect to
5 oversight, there's nothing mentioned about the
6 responsibilities of the audit committee in particular.
7 That should be added to this.

8 And also with respect to the IG's memorandum --
9 and I talked to Jeff about this -- there should be
10 some reference to the fact that the audit committee is
11 involved in respect to the annual audit of the outside
12 independent auditor.

13 MR. FORTUNO: I think just, if I may, on one
14 point when you commented on Bernice's point about the
15 employee handbook, as she spoke -- and fortunately
16 we're able to hear her fairly clearly -- as she spoke,
17 I got the impression that what was of most concern to
18 her was not the actual details of the handbook but
19 simply some indication for the new board that the
20 board of directors has some role in the handbook, and
21 maybe some explanation as to what that is, with an
22 indication that anyone who wants a copy of the

1 handbook will of course be provided one.

2 MR. GARTEN: That's exactly right. But I think
3 new board members would like to know that these
4 documents exist, this management program, and
5 available upon request.

6 MR. CONSTANCE: One thing, Madam Chairman, let me
7 just add. And I think all these points are extremely
8 well taken, and taken under advisement. We'll
9 certainly do these additions.

10 One of the things that I would just remind
11 everyone in the last meeting that there was a plea
12 that I think will help solve some of these problems.
13 And the plea was that everything here really be
14 provided electronically, meaning that in some cases,
15 you know, we can provide a link under a list of these
16 items with an explanation, and that board member that
17 wished to go farther and farther into the abyss of
18 detail would be in a position to certainly do that.

19 But I think it'll be offered both ways. I'm
20 afraid it'll take a small U-Haul by the time we finish
21 this, you know, to get the material other than
22 electronically to someone. But I think that'll help.

1 MR. GARTEN: I had not considered that. I think
2 that's worthwhile.

3 MR. MEITES: If I may, if anyone is interested in
4 getting an idea as to what that might look like, we
5 had the same materials that were distributed to the
6 board and LSC staff, that is, the Red Book that's
7 sometimes referred to. But it's our book of
8 authorities, our compendium of authorities.

9 That's also available electronically so that if
10 anyone wants to see how we manage to get all of that
11 into an electronic document that actually consists of
12 the different statutes and regulations all in one
13 document, let me know and I'll send that to you so you
14 get some idea as to what this might look like in
15 electronic form.

16 MR. GARTEN: And Jeff has put together something.
17 But you might want to add the bibliography that has
18 been prepared by the audit committee under Other
19 Reference Materials.

20 MR. SCHANZ: If I may -- this is Jeffrey Schanz,
21 the inspector general -- if you look at the second
22 footnote at 102, we are and have developed an

1 electronic format that you could -- it's a live test.

2 You could demo that, if you would like to.

3 But what it includes -- and it was handed out to
4 you today and sent to you electronically Wednesday, so
5 I apologize for the lateness of this -- but this is
6 what we perceive to be important. And while we're
7 part of the Corporation, the IG does have an
8 independent function.

9 So we wanted to separate out our own transition
10 materials, and this is a live demo thanks to Dave
11 Maddox, sitting to my immediate left. And you can see
12 how it works and how it links.

13 And then, Herb, much like you recommend, we will
14 also put in here the electronic bibliography for the
15 audit committee. And that could go either under the
16 Corporation side or the IG side.

17 And then I would expect -- and this is just me
18 speaking off the cuff -- I would expect that in the
19 transition, each of the committee chairs would meet
20 with their successors to explain in excruciating
21 detail, as necessary, what the role entails.

22 CHAIRMAN BeVIER: Thank you.

1 MR. GARTEN: I have a couple of others. I'll be
2 very brief.

3 CHAIRMAN BeVIER: Oh, please. Please, Herb.

4 MR. GARTEN: All right. I don't know about the
5 others, but I have to make quite a bit of time to get
6 the acronyms together with the thing. So I suggest
7 you put the acronyms next to each of the items covered
8 under -- on page 102, which should not be a big job.

9 MR. FUENTES: How about a glossary of acronyms?

10 MR. GARTEN: That would be good, too.

11 CHAIRMAN BeVIER: We don't have enough electronic
12 storage space for that.

13 MR. GARTEN: But I was thinking right next to
14 the -- Director, Office of Program Performance (OPP).

15 And that would be helpful.

16 I'm finished.

17 CHAIRMAN BeVIER: Thank you. Other comments
18 about additions to the manual that we hope to give to
19 incoming board members? As I read this, Mr. Constance
20 and the rest of you there and fellow board members,
21 what I was struck by is, first of all, this is -- I
22 just give you all kinds of kudos for putting it

1 together. And I think we are getting to a place where
2 it makes for a complete record of information.

3 It strikes me -- I have just taught a class in
4 real property for which my students were preparing for
5 an exam. And we had a review session. And what they
6 wanted to know was, can you please just tell me
7 everything that is in the text in each one of these
8 things any way that will make it useful for me next
9 Tuesday morning when I take the exam?

10 And of course, that's not what --

11 MR. MEITES: That's their job.

12 CHAIRMAN BeVIER: Well, that is their job, it's
13 true. But if we consider ourselves in the position of
14 guides and leaders and helpful with respect to the new
15 board members, I think that probably more useful than
16 any of that was that I gave a review session, took an
17 hour and a half and we went through.

18 And here's what I'm confused about. Here's what
19 you need to know. Here's what you need to focus on --
20 those kinds of things done, just available to actually
21 learn the material, and always for reference.

22 But what will be most useful -- at least it would

1 be to me as an incoming board member -- would be what
2 we have to tell them about what all this means, and to
3 identify for them the places where we have learned the
4 most that were the most unexpected, and perhaps ought
5 to have been obvious to us when we came on the board,
6 but turned out not to have been.

7 I hope you see what I'm saying. I think that we
8 have a --

9 MR. FORTUNO: I think that what's envisioned is
10 an orientation, and whether it's a day or two or how
11 it's structured has, I think, probably yet to be
12 fleshed out. But it was understood that these would
13 be reference materials that they would have available
14 to refer back to during the course of their tenure,
15 and would serve as a springboard for the discussion at
16 a live orientation.

17 Because I agree with you. I think that just
18 giving them this without walking them through the
19 major points and explaining some of it does them a
20 disservice. And we miss an opportunity which could be
21 very valuable.

22 CHAIRMAN BeVIER: Right. And I was -- I mean, I

1 understand that. But I think that when we're thinking
2 as board members of what we can tell our successors,
3 not in terms of what all these terms mean but kind of
4 what we have learned about this process and the board
5 and so forth, that that sort of information, it may
6 not be information that is useful when you first begin
7 because it's hard to hear that kind of thing. But I
8 think if we have at least done our best to share it
9 with them.

10 And I'm really just saying this as a matter of
11 emphasis. I know that we have that next step to take,
12 anyway. But Herb?

13 MR. GARTEN: You recall that one of the
14 questionnaires -- and I don't know whether it was GAO
15 or someone else -- asked questions specifically about
16 orientation, did you have it. And it was one of the
17 few questions I had to answer in the negative.

18 So that I think it's vital that we do set up some
19 kind of orientation session for new board members. We
20 may have to wait until we know they've all been
21 appointed before we have that session.

22 CHAIRMAN BeVIER: Right. Right.

1 MR. STRICKLAND: May I ask a question? Vic
2 or someone who has -- is this on? -- who has the
3 institutional knowledge: Has there ever been an
4 orientation session for an incoming board?

5 MR. FORTUNO: Yes.

6 MR. STRICKLAND: And what was the format?

7 MR. FORTUNO: With this board, for example, there
8 was not the formal entire group session that occurred
9 in some instances in the past. And the orientation,
10 for example, in late '93 was in this kind of setting.

11 The board was convened, and the different
12 divisions of the Corporation made presentations on the
13 work that they do. We also made presentations on the
14 Sunshine Act and FOIA and the role of committees and
15 committee charters, if you will.

16 And so there was -- it wasn't anywhere near as
17 comprehensive as I think is envisioned here. But
18 there was an orientation of that sort.

19 With this board, what happened was individual
20 members, as they were confirmed, most, I think, that
21 were interested in or asked for an opportunity to come
22 to LSC and meet with staff, did in fact have an

1 orientation of sorts. Again, nothing like what's
2 being contemplated here, and it's not as structured a
3 program. But --

4 MR. STRICKLAND: Okay. Let me ask the question a
5 different way, and I'm trying to understand what Herb
6 had in mind. Were you talking about some sort of
7 session that, in effect, is a workshop where you've
8 got this board sitting down having an exchange with
9 incoming board members? Is that what you were talking
10 about?

11 MR. GARTEN: Yes. And a presentation.

12 MR. STRICKLAND: As opposed to -- and I don't
13 mean to minimize a presentation being made by staff.
14 But perhaps in addition to that or in conjunction with
15 that, some sort of -- and I'm calling it a workshop.
16 Maybe that's a bad choice of words, but --

17 MR. GARTEN: That's a good choice.

18 MR. STRICKLAND: Has there ever been anything
19 like that?

20 MR. FORTUNO: Not to my knowledge, no.

21 MR. STRICKLAND: And perhaps it's something that
22 can be worked out. I mean, it sounds like an

1 interesting concept. I guess there's two schools of
2 thought. One would be, what a great idea. I'd like
3 to hear what this board's experience has been.

4 And the other view would be, I don't want to hear
5 anything about that. In other words, I want to come
6 in totally new and fresh, and I don't want to be
7 tainted by the views of some sourpusses on the prior
8 board, or something like that.

9 (Laughter.)

10 CHAIRMAN BeVIER: You're not speaking of anyone
11 present.

12 MR. STRICKLAND: I certainly am not.

13 (Laughter.)

14 MR. STRICKLAND: But the other possible problem
15 with this, I assume, for discussion, a workshop might
16 be a good idea. And let's assume, then, that all of a
17 sudden there are -- well, there's one potential
18 nominee now. Suppose there are ten others all in a
19 bunch. And suppose all ten of them, on their own
20 motion, go get sworn in by a judicial officer.

21 Well, we're out. We don't have anything to
22 officer. I mean, we're out of office, the current

1 board is. So sort of thinking ahead, maybe there's a
2 way we could set up an arrangement that says to a
3 group of nominees, don't do that. We will arrange for
4 a swearing-in for the whole group. But don't do it
5 like that. Wait till we can have the workshop.

6 Now, maybe that's overkill. That's just thinking
7 out loud on the subject. It could be fleshed out
8 later. But what do others think about that concept?

9 MR. MEITES: Yes. I think that it's a good idea.
10 I didn't have any orientation, and I never met the
11 prior board members. We came to our first board
12 meeting, they were in the audience, but I didn't know
13 who they were. I was never introduced to them. I
14 don't know who they were to this day.

15 And that was not good. I think a presentation
16 where each of the committee chairs explains what each
17 committee does, how we run our meetings, stressing you
18 can run your meetings anyway you want to, some of the
19 issues we've confronted, would have been very helpful
20 to me. Just -- I'll leave it at that.

21 MR. FUENTES: Mr. Chairman?

22 CHAIRMAN BeVIER: I think David had his hand up

1 first, and then, Tom.

2 MR. FUENTES: Sure.

3 CHAIRMAN BeVIER: Thanks.

4 MR. HALL: Yes. I would just echo the sentiment
5 that I think it's a good idea. And I would encourage
6 us to try to be very thoughtful, though, about how to
7 do it, and be sensitive to the fact that we may have
8 to do it more than once because maybe the down side of
9 telling them to wait before they're sworn in is we
10 don't know how the nomination process is going to
11 occur. And from our past experience, it could be
12 dragged out over a whole year.

13 And I would hate for a person who could be sworn
14 in and assume the role to have to wait six months or a
15 year before they start performing their duties. So I
16 think if we are flexible enough to maybe understand
17 that we may have to do it more than one time, then I
18 think we should try to develop a process where we go
19 ahead and do it.

20 Hopefully most of them will be approved at the
21 same time, and the number of orientations would be
22 limited. But I would be a little reluctant to suggest

1 to them to delay it based on the fact that that could
2 last a very long time.

3 CHAIRMAN BeVIER: Thank you, David.

4 MR. STRICKLAND: I'm sorry. Tom had his hand up,
5 I believe.

6 CHAIRMAN BeVIER: Tom. He did.

7 MR. FUENTES: I heard that the old board, if they
8 would have met us, they were not going to give up
9 their old posts. So that's what --

10 (Laughter.)

11 MR. FUENTES: But the suggestion that I had was
12 that we have a nominee with us, and I believe that the
13 good lady from Chicago has probably received this in
14 the mail and has listened to this discussion. I
15 wonder if she might have any input that she's like to
16 offer to the committee as public comment or comment
17 from a real authority, the source.

18 CHAIRMAN BeVIER: The source of all ignorance,
19 but please forgive me. That's the way I was when I
20 started.

21 MR. FORTUNO: And I must say that as an observer,
22 this board is well on its way to setting the gold

1 standard for transition.

2 CHAIRMAN BeVIER: Ms. Mikva, we're delighted to
3 have you with us, and we hope that you have a
4 wonderful time here. Thank you so much for sharing
5 your thoughts with us.

6 MS. MIKVA: Thank you, and I think it's been
7 really helpful to be able to be here and see the old
8 board. So I can certainly imagine that some sort of
9 transition, some sort of training session from the old
10 board to the new board, would be great.

11 I still don't understand why it has to be this
12 complete turnover, but I guess that's not our decision
13 to make. But --

14 CHAIRMAN BeVIER: We think it's not. I'm not
15 sure we understand it, either, but that's -- thank
16 you. And if there's ever -- you know, if during the
17 course of our meetings as we proceed today and any
18 time you have any questions for any of us, I know that
19 we'd be more than happy to respond and to help you in
20 any way we can.

21 MS. MIKVA: Thank you very much.

22 CHAIRMAN BeVIER: With the caveat that -- which

1 has been stressed by two people -- it's very important
2 that you understand we're not trying to tell you how
3 to run the next board or what your decision should be.

4 Just kinds of, you know, when you think you see the
5 light at the end of the tunnel, we can tell you what
6 kind of train it's likely to be.

7 (Laughter.)

8 MS. MIKVA: Thank you.

9 MR. STRICKLAND: May I make one other comment?

10 CHAIRMAN BeVIER: Yes, please. Frank.

11 MR. STRICKLAND: Some of us on this board will
12 recall that at least a group of us, perhaps the
13 controversial group, we were nominees for about a
14 year. And some of us, including me, had the
15 opportunity to attend -- we were just like Laurie. We
16 were invited to attend meetings of the then-current
17 board.

18 And so I took advantage of that, and I guess by
19 osmosis, if nothing else, you sort of pick up -- well,
20 first I said, what are all these acronyms? And sooner
21 or later I figured out maybe one of them. But we did
22 observe the board in action conducting its business,

1 and I found that to be very helpful, as opposed to
2 walking in cold and having to take the reins, so to
3 speak.

4 So I think this is food for thought, and we ought
5 to continue the discussion on a real solid orientation
6 approach.

7 CHAIRMAN BeVIER: Thank you. Are there other
8 comments with respect to this orientation plan that we
9 have in mind?

10 (No response.)

11 CHAIRMAN BeVIER: Well, the issue, I take it, for
12 us now is apart from what goes into these written
13 materials and electronic materials, what do we think
14 are the next steps. And at that point, I'm a little
15 less certain about how to proceed than I am about what
16 it is that we want to do.

17 And perhaps you'll advise us, John, about what
18 you think the timing is and how much planning we can
19 do with respect to this before we have a more focused
20 idea of when it's going to be important that this
21 training session take place and for whom.

22 MR. CONSTANCE: Everyone, I think, is asking the

1 same question, certainly here and elsewhere, in terms
2 of what the timing of the transition will be. And the
3 only thing I can say is Greg Craig of the White House
4 on the record the other morning at an event sponsored
5 by ABA was asked the specific question about what the
6 timing would be of nominations in terms of the LSC
7 board.

8 To that, he responded it could be four or five
9 months before a slate, you know, were assembled. And
10 again, I even think that's a guess on his part in
11 terms of -- from the White House perspective. And it
12 might have been an off-the-top-of-the-head comment,
13 for all we know.

14 I would only say this, that I think we certainly
15 have the time to do the following next steps. One
16 would be certainly take what input we've received from
17 the board today and actually begin assembling this
18 group of materials so that we're just not conceptually
19 looking at it as a list, but actually put it together,
20 and provide it electronically for the board to take a
21 look at and then outline what next steps might be,
22 whether it be a workshop, whether it be something that

1 would be a facilitated session that would include
2 three parts, possibly.

3 You know, Vic and his folks with the experience
4 on many of these things doing -- working from the in-
5 house perspective of doing an ABC kind of orientation,
6 the second part being some kind of an offsite or, as
7 part of the board meeting, you know, having the group
8 together and having some of the dialogue that's been
9 suggested here.

10 And the third part, you know, could always be
11 something that would be facilitated by a consultant or
12 somebody from outside to talk about best practices in
13 general in terms of boards under Sarbanes-Oxley or
14 whatever else.

15 so, I mean, there are a number of parts of this
16 that would be working parts that we could, you know,
17 get together and suggest, or at least have for the
18 board to take a look at as a proposal at the next
19 meeting.

20 CHAIRMAN BeVIER: That sounds like a good set of
21 next steps. And we ask you to take them and come back
22 to us in July. Thank you very much.

1 MR. FORTUNO: I understand that David Hall is
2 moving to his new post in July, and was wondering
3 whether he might host that get-together at his new
4 home in the U.S. Virgin Islands.

5 MR. HALL: I'd be glad to.

6 (Laughter.)

7 MS. SINGLETON: But then we definitely need to
8 wait until next winter to hold it.

9 MR. CONSTANCE: Let the record show that the
10 director of congressional relations was not at this
11 meeting.

12 CHAIRMAN BeVIER: Or would advise against.

13 (Laughter.)

14 MR. MEITES: Madam Chairman, are we going to be
15 told how to get to Topeka?

16 CHAIRMAN BeVIER: I think you just click your
17 heels together, don't you? What do you mean? I don't
18 understand the question.

19 MR. MEITES: Well, there's no -- my flight guide
20 does not list flights to Topeka.

21 CHAIRMAN BeVIER: Neither does mine, as a matter
22 of fact. But I was --

1 MR. FORTUNO: We were lining up a wagon train.
2 That, along with the question about the Virgin
3 Islands, was of course, for the record, a joke.

4 We will certainly see to the travel arrangements
5 for you. So no need to fear, we'll get you to and
6 from Topeka safely.

7 CHAIRMAN BeVIER: Not all of us are going to
8 Topeka from Chicago, though.

9 MS. SINGLETON: Well, you might be.

10 CHAIRMAN BeVIER: That's right. Thank you. We
11 appreciate the question, and we'll look forward to the
12 answer. Thank you, Vic.

13 The next item on the agenda is to consider and
14 act on the inspector general's memo on review of
15 compliance with the Sunshine Act. And we have Jeffrey
16 Schanz and -- I'm sorry. Please introduce yourself.

17 MR. GLOVER: Matthew Glover. I'm an associate
18 counsel with the inspector general.

19 CHAIRMAN BeVIER: Thank you, Matthew. Yes,
20 you've been with us before. I just lapsed.

21 MR. SCHANZ: Well, this is Jeffrey Schanz. As
22 you may or may not recall, and I'll talk a little bit

1 more in the IG report, we've been receiving quite a
2 few requests in my first year on the job from Senator
3 Grassley and Senator Grassley's staff.

4 One of the things that came out of the Salt Lake
5 City meeting was a request from Grassley's staff to
6 find out if the extension of the president's contract
7 violated the notice provisions, and if there were
8 Sunshine Act violations based on the discussion of the
9 president's performance.

10 In responding to Senator Grassley, I responded to
11 the Hill -- or to the board first. And you will have
12 that memo to the board dated March 17th. And the
13 Office of the Inspector General does just about
14 everything we can electronically, so you wouldn't have
15 received a formal memo from me, or I think you did
16 also. We usually cover both bases.

17 And we responded to Senator Grassley, and this is
18 what Senator Grassley requested by means of his
19 January 6 request to the OIG. "According to the
20 Federal Register notice," and this is in the e-mail,
21 the referenced e-mail of March 17th, "the governance
22 and performance review committee was scheduled to

1 review Ms. Barnett's performance on November 1st and
2 recommend to the full board to adopt their
3 recommendations on the same day.

4 "However, the subject of renewing Ms. Barnett's
5 contract was not in the Federal Register notice or an
6 agenda item on either day of the board meeting, as
7 required by LSC bylaws.

8 "Please advise me of whether or not the LSC
9 violated its bylaw and/or other applicable law as a
10 general matter, and more specifically to the matter
11 discussed above."

12 I've learned in my career to respond to Congress,
13 and as quickly and as authoritatively as I can. So
14 based on that, we developed -- we, including my
15 associate counsel who's here with me today, Matthew
16 Glover -- a board of directors advisory that we sent
17 to you for your consideration. That is also dated
18 March 17th, and it was, as I mentioned, an attachment
19 to the electronic e-mail.

20 And the board advisory is entitled, "Apparent
21 Sunshine Act Violations in connection with the
22 November 1, 2008 meetings of the board of directors

1 and the governance and performance review committee."

2 I'm assuming, and hopefully correctly, that the
3 board has had an opportunity to review this memo and
4 to gauge whether it's credible. What we decided to do
5 is we attached a contrary opinion from December of
6 1997, I believe it was, that came down on the other
7 side of the issue.

8 But since I was asked -- and I have legal
9 counsel -- I was asked to develop a response to the
10 Congress, I did that, and in so doing, submitted the
11 same or similar response to the board of directors for
12 their consideration and action.

13 CHAIRMAN BeVIER: Thank you, Jeff. I wonder if
14 we could hear from our general counsel.

15 MR. MEITES: Lillian?

16 CHAIRMAN BeVIER: Yes, go ahead. Tom?

17 MR. MEITES: Before we go any further, if we're
18 going to discuss apparent improprieties of the
19 board --

20 CHAIRMAN BeVIER: I'm sorry. If we're going to
21 discuss --

22 MR. MEITES: If we're going to discuss apparent

1 improprieties of the board, I would like to have in
2 front of me every document that's just been referred
3 to.

4 Because it sounded to me like we're going to
5 parse the language of a statute that's far from clear,
6 that we have conflicting opinions on both sides. And
7 I for one find in my notebook not one piece of paper
8 referring to this.

9 And if in fact we have done something wrong, I
10 want to see the exact words that we allegedly
11 violated, and I will form my own opinion as to whether
12 I agree with the IG or not. But I cannot do that with
13 a notebook that contains not one piece of paper
14 referred to by our inspector general.

15 Are these documents available for our committee?

16 CHAIRMAN BeVIER: I do not believe that we have
17 anything but this e-mail that -- the memo that we got
18 from the inspector general.

19 MR. MEITES: Well, I would like the statute. I
20 would like the prior opinion of 1990-something-or-
21 other. I would like any response to the IG's opinion.
22 I'd like any transmittal letters to Congress.

1 Because I for one do not, as I sit here, have any
2 view at all whether we acted properly or not, but I
3 believe as a board member I'm obliged to reach a
4 conclusion on that. And absent the underlying
5 documents, I am not in a position to do so.

6 CHAIRMAN BeVIER: I believe we do have the
7 opinion of our counsel as well that Jeff included with
8 the e-mail that he sent to us.

9 MR. MEITES: I must have received an e-mail that
10 I didn't retain. So if there's a document that other
11 people have, if I could have a copy of it and have a
12 minute to look at it, I'll let you know if I believe
13 it's adequate to have this discussion.

14 CHAIRMAN BeVIER: All right.

15 MR. MEITES: Because I don't propose to discuss
16 the propriety of my conduct without all the documents
17 underlying the allegations against me.

18 CHAIRMAN BeVIER: Fair enough. Would you like us
19 to take a short break?

20 MR. MEITES: Yes, please.

21 CHAIRMAN BeVIER: All right. We'll take a short
22 break.

1 (Whereupon, a brief recess was taken.)

2 CHAIRMAN BeVIER: The governance and performance
3 review committee is coming back in session. Could I
4 please ask you to come to order?

5 We took a short break, and what I'm hoping to do
6 before we hear views of the members of the committee
7 is actually to get a report from our general counsel
8 with respect to this.

9 I would like to have it noted on the record that
10 although the memorandum from Jeffrey Schanz to the
11 board does not so indicate, I am certain that he
12 shared this with management, with LSC management, so
13 that the contents of this memo does not -- was, in
14 fact, something that management aware of as well, in
15 addition to having it be shared with the board.

16 Mr. Glover, that's not correct?

17 MR. GLOVER: That is correct. There's one other
18 point that I think we should clarify. In responding
19 to Senator Grassley's request, the questions were
20 somewhat narrowly phrased. So we responded narrowly
21 to those questions.

22 In responding to it, we discovered the issues in

1 this memo. And because they weren't specifically
2 narrowly targeted to the Grassley questions, we sent
3 this memo to the board as opposed to Senator Grassley.

4 CHAIRMAN BeVIER: Thank you. Do I hear you
5 saying you did not send this memo to Senator Grassley?

6 MR. SCHANZ: That is correct. When we looked
7 into the issue to answer the questions, and that's
8 what I've learned to do from Congress, to answer the
9 questions, our research indicated a larger issue that
10 we wanted board feedback on.

11 And we wanted to notify -- as part of the IG's
12 function of governance, of helping govern a
13 corporation, we sent our embellished research as well
14 as a countervailing opinion to the board so we could
15 have this discussion today.

16 CHAIRMAN BeVIER: Thank you, Jeff. That's
17 helpful to us to know that part.

18 I'm going to ask general counsel now, Vic
19 Fortuno, to bring us up to date, perhaps remind us of
20 what our practice has been and why, and perhaps to
21 suggest there may be other ways of proceeding that
22 might satisfy all of us.

1 MR. FORTUNO: I think, breaking it up into two
2 points or two areas, one is as to the inquiry by
3 Senator Grassley and the response of the OIG. I think
4 that the response of the OIG, is correct that the item
5 probably should have been noted.

6 I think that there was no staff in the room at
7 the time, and I can certainly understand why. And
8 there was no one to point out that the renewal of the
9 contract wasn't noticed, so that there was that
10 technical deficiency.

11 Nevertheless, even in that case, it does not void
12 the contract, does not implicate the validity of the
13 contract. The contract, I believe, is valid.
14 However, the lesson to take from this is that we have
15 to be careful in terms of monitoring what actions are
16 taken and whether or not they're noticed in the
17 Federal Register.

18 If the board plans to take, or at least consider,
19 an action, it should be noticed in the Federal
20 Register. I think we all agree on that. And I think
21 it's just one instance of unfortunate circumstance,
22 but has no practical implications for any action

1 taken. It simply drives home the point that we need
2 to be mindful of that in the future.

3 I think that's really all there is to these --
4 yes?

5 CHAIRMAN BeVIER: I just have a question about
6 that. Is it not possible and perhaps a sympathetic
7 reading -- although not necessarily one we would want
8 to adopt in the future -- of the notice in the Federal
9 Register when you consider and act on a recommendation
10 regarding the performance review of President Helaine
11 Barnett, you are considering and acting on a
12 recommendation with respect to a contract, that that
13 seems so clearly implied in that notice that I think
14 that at least it could be understood that the board
15 was proceeding in good faith belief that it had the
16 legal authority to do so?

17 MR. FORTUNO: And I think that in fact is what
18 had been going on when the item was taken up. I don't
19 think anybody at any point thought, we haven't noticed
20 this but we're going to go ahead and do it anyhow. So
21 I think in fact that is what was going on, that folks
22 assumed that the notice of the appraisal of the

1 president necessarily or at least impliedly included
2 the action that would be taken on that, not just the
3 evaluation but whether or not to renew.

4 So I think that's a perfectly reasonable view. I
5 think, again, as a practice, best practice, what we
6 want to do is be as specific as possible so that the
7 public is on as clear a notice as to what's going to
8 be occurring as possible, and don't have to make any
9 assumptions.

10 But I think certainly that's a fair reading, and
11 I can see how that would have been read that way.

12 CHAIRMAN BeVIER: Point taken. And I think that
13 for the future, the board certainly is eager to comply
14 with the letter. But we'll take that up in just a
15 moment.

16 Their second issue in respect to this memo, which
17 I think we need to get your advice and counsel on.

18 MR. FORTUNO: Yes. The response that I read that
19 went to Senator Grassley did say that in the course of
20 looking into this issue for them, other Sunshine
21 issues were identified that would be subsequently
22 taken up with the board.

1 I did see the subsequent memo addressed to the
2 board, and in short, I think thought it accurately
3 states the law. I think there is one area where maybe
4 some clear distinction needs to be drawn.

5 I think as a general matter, with the head of the
6 agency or the inspector general, for that matter, the
7 highest ranking officials charged with administering
8 this program, that those evaluations for better or for
9 worse are, under the current state of the law, to
10 occur in open session.

11 I know that there are concerns about that would
12 have a chilling effect. It would eviscerate the
13 evaluation process. Notwithstanding all that, that
14 does seem to be the state of the law and what the law
15 requires.

16 I think what was done in this case, the approach
17 that was taken, was that while the evaluation of the
18 highest ranking official, yes, does need to occur in
19 open session, because it was indicated that there
20 might be some discussion of others that were not being
21 evaluated, that is, some third parties, so that in the
22 course of the discussion with the individual being

1 evaluated there might be some reference to this staff
2 person or another staff person or just third parties
3 generally and possibly how that impacts on the
4 performance of the individual being evaluated, it was
5 that point that was a concern, that is, the privacy
6 interests of these third parties.

7 And so the approach was taken that the evaluation
8 will occur in closed session, with the understanding
9 that the transcript will then be reviewed, and if
10 there are any such instances of violation of the
11 privacy interests of some third parties, those things
12 could be withhold or redacted. The rest of the
13 transcript, however, would be made public.

14 So in effect, the evaluation of the highest
15 ranking official would be open. But using this device
16 would allow for protection of the privacy interests of
17 the third parties.

18 If, on the other hand, the entire evaluation was
19 done in open session to begin with, then you really
20 couldn't protect the interests of the third parties
21 because those things would come up. They're on the
22 record, and there's nothing you can do at that point.

1 So the approach was developed for the purpose of
2 protecting privacy interests of third parties. I do
3 understand that the transcripts have not been
4 reviewed, and I think that they should be reviewed
5 with an eye towards determining what can be withheld
6 and what can't. What can then is made public.

7 And I think that in terms of a recommendation for
8 the future, the better practice, I think, is to have
9 the transcripts go to the corporate secretary, have
10 them reviewed in due course, have that analysis done,
11 and then what is appropriate for closed session can be
12 held and what is not is made public.

13 I think that the only thing it doesn't provide is
14 the realtime, the public is watching the evaluation
15 discussion as it occurs. However, the public will
16 have access to the evaluation discussion because
17 they'll see the transcript. We have a verbatim
18 written transcript that can be made available. So
19 that interest of the Sunshine Act can be satisfied.

20 So I think, in short, the IG's recommendation
21 that the transcripts should be maintained at LSC
22 headquarters I would agree with. And I would

1 recommend that the board follow that practice. I
2 think it's the -- in terms of best practices, I think
3 that's certainly the best practice.

4 I think the transcripts should be reviewed. I
5 think the ones that exist now can be reviewed and that
6 determination made. And I think, henceforth, the
7 process can be structured so that the review is done
8 upon receipt of the transcript, and it can be disposed
9 of in that timely fashion.

10 I think that that would address the concerns of
11 the OIG in terms of our meeting our Sunshine
12 obligations, which at the same time being substantive
13 to the potential privacy invasion of -- invasion of
14 privacy interests of third parties.

15 CHAIRMAN BeVIER: Thank you. I wonder if other
16 members of the committee have views.

17 Tom?

18 MR. MEITES: Vic, I just read for the second
19 time -- oh, by the way, to make clear, I did receive
20 this by e-mail from the inspector general and I did
21 read it at the time I received it. And on rereading
22 it, I find that I did recall that I'd read it.

1 Vic, I just reread your 1997 memo, and it seems
2 to me your remarks this morning are not consistent
3 with that memo.

4 MR. FORTUNO: Yes. That's right.

5 MR. MEITES: Has there been any change in the
6 case law that you can cite to us that would explain
7 why your position has changed?

8 MR. FORTUNO: That memo was -- that, in short, I
9 think is in effect an advocacy piece disguised as an
10 opinion. I think that the person who wrote that was
11 asked for what is the best argument that can be made
12 for "the evaluation should be in closed session," and
13 I think she did an admirable job of putting together
14 the best argument that can be made.

15 I think that is the best argument that can be
16 made in terms of what is the best answer, not in terms
17 of advocacy but in terms of assessing the law.

18 I think the best answer is that especially in
19 light of the Common Cause opinion -- and in fact, even
20 in the case of LSC we have an opinion although it's a
21 district court opinion, not an appellant court opinion
22 the way some of the others cited in their memo are --

1 I think that the better read of the law I think
2 clearly is, and certainly has been mine, that those
3 evaluations -- while it's awkward and while I might
4 not structure it that way if I had a clean slate and
5 was designing the law myself -- I think that the law
6 calls for the highest ranking officials, when they're
7 evaluated by the board, for that to be done in open
8 session because the law seems to put a premium on the
9 public's ability to observe how the person running the
10 program is administering it.

11 MR. MEITES: So there has been no case law since
12 this memo was written?

13 MR. FORTUNO: Oh, there's been case law, but
14 there hasn't been -- there's been no real
15 breakthrough. It's not as though in '97 the case law
16 was one way, and there's been a radical turnaround. I
17 think that the case law has been consistent
18 throughout.

19 I think that that is -- that memo is not the best
20 answer in terms of, you know, what's the state of the
21 law. I think that memo is, if you want to know what
22 the best counter-argument that can be made is, here it

1 is.

2 MR. MEITES: I understand that. I had understood
3 this memo to express your position, and I'm now
4 hearing from you that it expresses the position of a
5 member of your staff, which I find surprising because
6 I was of the view this was your opinion.

7 I now learn -- I think I understand that it is
8 not your opinion, that you in fact agree with the
9 inspector general that our evaluation of the president
10 and the inspector general should not have been in
11 closed session.

12 Why, then, did we have it in closed session if
13 your view was to the contrary?

14 MR. FORTUNO: Because there were indications that
15 during that discussion, the dialogue between the board
16 and whether the president or the IG but in this case
17 it was the president, there might be references to
18 other individuals that maybe were not in the most
19 flattering -- would not reflect or place those
20 individuals in the most flattering light, so that it
21 might be an unwarranted invasion into the personal
22 privacy of individuals that were not being evaluated,

1 third parties.

2 So in order to protect them, the approach was
3 devised that it would -- the actual would be in
4 closed. But then the transcript would be reviewed.
5 Most of it would have to be made public.

6 But if there were those instances of discussion
7 of third parties and it was determined that that
8 discussion in fact constituted an unwarranted invasion
9 into their personal privacy, then that provided an
10 opportunity to protect the privacy of those third
11 parties. But the rest of the transcripts would be
12 made public.

13 MR. MEITES: Well, the net effect of that is from
14 the public's point of view, the actual session is
15 still closed. Isn't that true?

16 MR. FORTUNO: Yes. That's what I meant by the
17 public does not see the actual exchange live as it's
18 happening, but does get the actual exchange in terms
19 of verbatim after the fact, of course, in a written
20 transcript that is available.

21 MR. MEITES: Now, that may satisfy me. And the
22 reason I'm satisfied is I believe that Ms. McAndrew is

1 right, that I've learned in 40 years of practicing law
2 that if something doesn't make sense, it usually isn't
3 the law. And it doesn't make sense to me that we hold
4 evaluations in public, for all the common-sense
5 reasons that we all know.

6 What you're suggesting is a way to have your cake
7 and eat it, to hold the evaluations in private because
8 some hypothetical third persons may have made some
9 hypothetical statements that would be -- or might be
10 discussed in an unflattering way. So this hypothetical
11 third person may hypothetically have their reputation
12 hypothetically impugned.

13 I think that's fancy lawyering, Vic. And since
14 our tenure is almost over, I am going to say I don't
15 accept it. When I was younger, I might have accepted
16 that kind of expedience, but I don't.

17 I think Ms. McAndrew is right. I've read the
18 Wilkinson case and I think it's a sloppy piece of
19 judging. It's district court opinion which is not
20 precedent for us. Common Cause is amply distinguished
21 in this memo.

22 The Supreme Court has not acted on this.

1 Congress has not seen any need to clarify this
2 provision in the 35 years since the Freedom of
3 Information Act was passed. And I, for one, do not
4 believe that Congress ever intended that personnel
5 discussions be in public.

6 So I will accept your formulation, Vic, because I
7 think it is consistent with the law. But I think it's
8 a wiggle.

9 CHAIRMAN BeVIER: I'm sorry. I didn't hear the
10 last --

11 MR. MEITES: Wiggle. W-i-g-g-l-e. That which a
12 worm does on the end of a hook.

13 CHAIRMAN BeVIER: Yes. I don't appreciate the
14 characterization, but --

15 MR. MEITES: No. I was just explaining the word.
16 I don't mean --

17 CHAIRMAN BeVIER: I understand. Thank you.

18 Ms. Singleton?

19 MS. SINGLETON: I would like to observe that it
20 seems to me that Wilkinson does directly control us
21 because we were a party to it. It's not nothing to do
22 with precedent. It has to do with res judicata. And

1 we are bound by it until we get some court to say it's
2 no longer good law. So we are bound by it.

3 I would be interested in having the opinion from
4 either the inspector general or his associate counsel.

5 Do you think this proposal of holding the session in
6 a closed setting but making the non-private portions
7 of the transcript available is compliance with the
8 law?

9 MR. GLOVER: I think -- this is Matthew Glover --
10 I think that that is our one place where we disagree
11 with the general counsel, that we think that that sort
12 of closure ultimately is the sort of -- the term in
13 the case seems to be, is a presumption of closure,
14 which is disfavored under the Sunshine Act cases and
15 the Sunshine Act itself.

16 You know, it's my understanding that any of these
17 hypothetical references make up a very small portion
18 of the transcript, and may not even come up in
19 particular cases. And so to presume up front that the
20 whole meeting is able to be closed really sort of
21 sidesteps the Sunshine Act, which is in favor of
22 public meetings.

1 MR. GARTEN: Lil?

2 CHAIRMAN BeVIER: Yes. Go ahead, Herb. And I
3 have a question next.

4 MR. GARTEN: Is there any precedent where the
5 hearing is public, but when you're getting into
6 personalities, you go in executive session, and then
7 come back on the record?

8 MR. GLOVER: I don't know off the top of my head
9 of any precedent. But that seems to -- as far as what
10 you're describing, seems to me like something that
11 could be done.

12 MR. GARTEN: How do you feel about that, Vic?

13 MR. FORTUNO: I think it's cumbersome. I think
14 that it probably would satisfy the law. I think it's
15 awkward in terms of as somebody starts to say
16 something, communicating to others that I'm about to
17 say something that implicates the privacy interests of
18 a third party.

19 And then, of course, there has to be a vote of
20 the board. There has to be a statement as to what the
21 basis for the closure is, and the board has to vote to
22 go into closed session.

1 So I think that certainly in theory, I think,
2 it's acceptable. But I think in practice it --

3 MR. GARTEN: It would seem to me there has to be
4 some precedent where this was done over the years.

5 MR. FORTUNO: We can certainly research that. We
6 can certainly look into that. I know of none, but I
7 can look into it.

8 CHAIRMAN BeVIER: Excuse me, but I have a
9 question because I did not read your opinion, the IG's
10 opinion here or the memo, as speaking at all to the
11 fact that during the course of an evaluation of the
12 president or of the IG, it's very likely that the
13 president or the IG would be asked specifically about
14 the performance of particular low-level people.

15 And even your opinion suggests that controlling
16 the performance evaluations that are not centered --
17 wait a second. I have this -- that it's important to
18 do the highest level people, to presume openness with
19 respect to that.

20 But there's nothing that suggests that the -- and
21 indeed, your memo even does squarely address the
22 sacrifice of genuine discussion that is going to take

1 place if you do all of those discussions in open
2 session.

3 On the other hand, it does not say anything about
4 why we should not care about the -- it may be
5 hypothetical, but of course, the whole point of
6 chilling these discussions is you don't know when
7 they're going to come up.

8 And therefore, if you know that you're going to
9 have to have this cumbersome procedure as soon as
10 somebody -- as soon as the discussion of office
11 performance, of particular people's performance,
12 begins to take place you have to say, oops, sorry, I
13 might be about to disclose something that might be
14 embarrassing to somebody, that might be information of
15 a personnel nature; can we go into closed session now,
16 you won't do it.

17 You won't even get to that point, so that it will
18 be even harder for the board to engage in anything
19 like an evaluation of the overall perfect because the
20 ability to talk about the performance of particular
21 people in the office has been thwarted in that way.

22 And your memo -- I mean, as much as it might be

1 persuasive with respect to why exemption 6 does not,
2 arguably, in terms of the case law, apply to
3 evaluations of the president and the IG, it does not
4 speak to how we might go about protecting the privacy
5 interests of other people for whom -- that work for
6 those people.

7 So it seems to me that although it's true that
8 our counsel's proposal is maybe a wiggle, it is, I
9 think, well within exemption 6, and certainly within
10 the rationale of ever engaging in anything like a
11 meaningful review. And it's hard for me to believe
12 that we can't try to engage in a little bit of a
13 meaningful review.

14 Sarah?

15 MS. SINGLETON: Madam Chair, I can specifically
16 recollect a situation where the head person's
17 performance was directly impacted by the performance
18 of a person who reported to the head. And the
19 discussion really did deal with that other person's
20 performance and how it was impacting the evaluation of
21 the head person.

22 But I also think that prior to having the

1 discussion, everyone knew that was going to occur,
2 that that discussion would be very important. I'm
3 wondering if maybe there is room for compromise to
4 make this decision on a case-by-case basis rather than
5 making a blanket rule, well, because we might
6 sometimes discuss things that implicate privacy
7 interests of a third person, we're always going to
8 hold these evaluations in closed session but keep a
9 transcript.

10 We might say, based on what the initial
11 investigation reveals, we will make a motion if it
12 appears as though this is going to come up during our
13 performance evaluation.

14 MR. MEITES: Lillian?

15 CHAIRMAN BeVIER: I think I remember exactly the
16 same situation. And I think it's a plausible way out
17 here. What my problem is is just in terms of the way
18 the evaluation has gone in past years, the committee
19 has engaged in private interviews with a number of
20 people.

21 We do not talk to the person being evaluated
22 until the committee begins to meet, nor do we get a

1 self-assessment by that person until the evaluation
2 begins to take place. So the production that we will
3 know there's going to be -- that was an extreme case,
4 and I think it was relatively high level, high
5 salience. At the same time, the level of concern that
6 had emerged was somewhat surprising.

7 And what I'm suggesting, Sarah, is that --

8 MS. SINGLETON: It may not be as obvious as I was
9 assuming.

10 CHAIRMAN BeVIER: -- it may not be as obvious
11 with other kinds of issues that arise. And so there
12 have been situations in which we knew that something
13 might come up about particular things, individuals,
14 but we weren't sure what.

15 Tom?

16 MR. MEITES: Small point/big point. The small
17 point is, in fact, Wilkinson is not res judicata as
18 cited, as stated on page 3 of the IG's memo. But
19 we're talking about exemption 6. "Defendant
20 originally relied on exemption 6 as well, but has
21 apparently withdrawn that reliance." The next
22 sentence is pure dicta since it wasn't urged.

1 But more to the point, if in fact the state of
2 the law is no more advanced than set out in these two
3 memos, I remain unpersuaded that exemption 6 does not
4 entirely shield this. But I gather that my colleagues
5 on the board do not read the law as I do, and are
6 attempting to find a real-world solution to an
7 intractable problem.

8 If that is the board's view, that you agree with
9 Vic's reading of the case law that exemption 6 does
10 not shield, in general, our performance review of the
11 IG and the president, then the solutions that are
12 being proposed apparently don't satisfy the inspector
13 general, and will not satisfy Senator Grassley.

14 So I have a suggestion -- and there may be some
15 expense involved, but the filing fee in the district
16 court can't be too great -- that we instruct our
17 general counsel to bring a declaratory judgment action
18 in the district court on our behalf to get the law
19 settled. And he could name the IG as the respondent, or
20 Helaine might want to bring it in her name as a
21 sitting president for determination of how and what
22 future presidents and I guess can expect.

1 I think this is a very important point, not just
2 for us but for all agencies that face the problem of
3 periodic reviews. And I for one would like it
4 settled -- not for us; we're not going to be around to
5 have to worry about it -- but so that we do not saddle
6 our successors with this open wound.

7 CHAIRMAN BeVIER: That's an interesting
8 suggestion.

9 Herb?

10 MR. GARTEN: Tom, there was one procedure that
11 was agreeable to the inspector general, and that was
12 going into executive session in anticipation of
13 something coming up. And if I heard correctly, both
14 counsel agreed that that procedure, although
15 cumbersome, perhaps, could be done. Is that right?
16 Both parties confirming.

17 I would rather take that route than get involved
18 in litigation in the federal courts. I'd be opposed
19 to that.

20 MR. MEITES: Well, if they can present at our
21 next meeting a protocol that they both sign onto, I'd
22 look at it. And that may be enough so that our

1 successors have a workable solution.

2 CHAIRMAN BeVIER: I think that's a possible way
3 out for the time being. This is an intractable
4 problem, and I believe it is a problem that if we
5 abide by either the compromise that you two have
6 seemingly signed onto and that Herb suggests we
7 pursue, what that essentially means is that we have
8 read Congress to insist that we never have a
9 meaningful performance review, that in the sense of
10 being free to discuss all aspects of the
11 administration of a particular head of agency or head
12 of division's work and how it's proceeding.

13 So if that's the solution, then we need to know
14 it. If there's no other way out than that, I think we
15 need to know that as well. And perhaps it would be a
16 good idea for us to -- I invite a motion that this
17 board --

18 MR. GARTEN: Point of information.

19 CHAIRMAN BeVIER: Yes?

20 MR. GARTEN: I didn't quite follow you. If you
21 followed that procedure, why couldn't you have a
22 meaningful interview? You're hearing all the --

1 you'll hear everything. You'll hear some of it in
2 executive session.

3 CHAIRMAN BeVIER: Well, my view is that if you
4 have a performance evaluation in open session, you do
5 not get the kind of candor and inquiry that you need
6 to have. It's not that I'm wanting to have a
7 presumption of closeness.

8 It's just simply what I believe is the way
9 performance evaluations work. They are very -- they
10 are not confidential, if they're not permitted to be,
11 but they're highly personal and the way they work the
12 best is if no one feels like they are going to be
13 charged later with having done something
14 inappropriate.

15 It needs to be a full sharing of information to
16 be useful to anybody, to the board or to the person
17 being evaluated, even if it's the head. But if
18 Congress wants us to do it that way, I will do it, if
19 that's the only way we have to do it.

20 MS. SINGLETON: Madam Chair, I, from the point of
21 view of what would be a meaningful evaluation, agree
22 with you entirely. However, as long as we accept the

1 premise that upper-level people who work for us and
2 for the government have to be evaluated in an open
3 session, which seems to be the Common Cause holding to
4 most of us, then closing the session doesn't really
5 enable you -- closing the session in the way you're
6 talking about does not really enable you to have the
7 kind of meaningful evaluation you want.

8 Because, as we know, even in closed session,
9 there is a recorded transcript. And I venture to say
10 we have more than once held our tongue because we know
11 that transcript is there and somebody in the public or
12 in Congress can read what's being said.

13 And so I think that the law is what's preventing
14 us from having a meaningful performance review, not
15 how we choose to comply with the law.

16 CHAIRMAN BeVIER: I think we have gotten a couple
17 of different points of view. Do I hear a motion from
18 a member of the committee about how to proceed?

19 MR. GARTEN: I'll make the motion, if you want.

20 CHAIRMAN BeVIER: Thank you, Herb.

21 M O T I O N

22 MR. GARTEN: I move that with respect to future

1 action by this committee, in dealing with the
2 president and the inspector general, that we adopt a
3 procedure whereby the session is open. And at such
4 times as testimony or material would be presented that
5 would constitute an invasion of privacy or other
6 matters that would present problems or embarrassments
7 to any of the parties or to -- of Legal Services
8 Corporation, then in such event further testimony be
9 taken in closed session.

10 CHAIRMAN BeVIER: Is there a second?

11 (No response.)

12 CHAIRMAN BeVIER: The motion fails for lack of a
13 second.

14 Does our ex officio member wish to second the
15 motion?

16 MR. STRICKLAND: No. I'll let it pass. But I'll
17 offer an alternate motion. If that motion has now
18 failed, I believe you were discussing, Madam Chairman,
19 a moment ago the idea of asking the inspector general
20 and the general counsel to consider a protocol that
21 might comport with the Sunshine Act and applicable
22 case law. Was that not your suggestion a moment ago?

1 CHAIRMAN BeVIER: I believe it was Tom's
2 suggestion.

3 MR. STRICKLAND: Oh, was it?

4 CHAIRMAN BeVIER: Yes. I want to give credit
5 where credit is due.

6 MR. STRICKLAND: Okay. Is that right, Tom? Was
7 that your suggestion?

8 MR. MEITES: That's correct, sir.

9 M O T I O N

10 MR. STRICKLAND: I would move that we ask the
11 general counsel and the inspector general to study the
12 matter and bring us a protocol at our next meeting, a
13 protocol on this subject.

14 CHAIRMAN BeVIER: Is there a second?

15 MR. GARTEN: I'll second it.

16 CHAIRMAN BeVIER: All those in favor?

17 (A chorus of ayes.)

18 CHAIRMAN BeVIER: All those opposed?

19 (No response.)

20 CHAIRMAN BeVIER: The motion carries.

21 MS. SINGLETON: A technical question. Is that a
22 recommendation of the board, or is that just an

1 internal --

2 CHAIRMAN BeVIER: It is a recommendation to the
3 board. I believe that's correct. Because it's the
4 board that has to make this decision, so it's a
5 recommendation to the board.

6 MS. SINGLETON: I guess this could be a way of
7 deferring your recommendation to the board so that
8 just this committee gets that recommendation from the
9 two -- from the counsel.

10 CHAIRMAN BeVIER: We could do that. I understood
11 that this was a recommendation to the board. I'd
12 rather prefer it myself to have the board just say,
13 we're content to handle it this way. We're content to
14 try to make sure that we get it right from now on.

15 MR. GLOVER: Excuse me.

16 CHAIRMAN BeVIER: Yes?

17 MR. GLOVER: Just one more thing to add. The
18 inspector general's memo on this issue does have a
19 significant component that looks forward. But it also
20 looks back at the transcripts that are being -- that
21 are currently held and not reviewed.

22 Is there -- do you plan on addressing that

1 issue, or is that going to be addressed in the future
2 session?

3 CHAIRMAN BeVIER: I think we should address that
4 issue. And I would invite a motion with respect to
5 how we handle those. They have been not handled the
6 way the IG suggests, and yet they have been released
7 on occasion to a number -- to anyone who has -- well,
8 not anyone; but when they have been requested by
9 people who seem to want them or have a need for them,
10 we have let them be -- you know, we have released
11 them.

12 CHAIRMAN BeVIER: So I would invite a motion to
13 make those open, with the appropriate redactions that
14 might protect the privacy of particular individuals.

15 MS. SINGLETON: And with your motion include that
16 they should be held by the corporate secretary?

17 CHAIRMAN BeVIER: Yes. Held by the corporate
18 secretary.

19 Is there a second?

20 MR. STRICKLAND: Second.

21 CHAIRMAN BeVIER: I mean, is there a first? Is
22 there a motion?

1 MR. GARTEN: Who is going to do it?

2 MR. STRICKLAND: I'll accept that as a motion
3 from you, and I will second it.

4 CHAIRMAN BeVIER: Okay. I don't know that the
5 chair is able to make a motion, so maybe you could
6 make a motion.

7 M O T I O N

8 MR. STRICKLAND: I'll make the motion you just
9 made.

10 MR. GARTEN: I have a question. Who is going to
11 do the redaction? Is it the secretary or is it
12 counsel?

13 MR. FORTUNO: In this case --

14 MS. SINGLETON: Aren't they the same?

15 MR. FORTUNO: -- the secretary and counsel are
16 one and the same.

17 MR. GARTEN: Okay. I was thinking of David.
18 He's the treasurer. Okay. Fine.

19 MS. SINGLETON: May I ask one question, just for
20 information? Suppose the person whose privacy is at
21 issue is the counsel or the secretary. Who would do
22 the redacting in that situation?

1 MR. FORTUNO: I think --

2 MS. SINGLETON: Not that it's happened, Vic.

3 (Laughter.)

4 MR. FORTUNO: No. I think in that case, unless
5 the board designates somebody else for that specific
6 purpose, I would look to the chairman to either make
7 the decision or to bring it to the board for a
8 delegation.

9 MS. SINGLETON: Do you think that's satisfactory,
10 Matt?

11 MR. GLOVER: Not having thought about it in
12 depth, it seems reasonable to me.

13 CHAIRMAN BeVIER: I don't understand the process,
14 you ever, that is, that Vic reviews them, and when he
15 encounters anything, should he do so about himself?
16 He sends them to the chairman of the board or the
17 chairman of the committee?

18 MS. SINGLETON: No. I think the chairman of the
19 committee at the time they --

20 CHAIRMAN BeVIER: Before they get sent to --
21 arit.

22 MS. SINGLETON: Before they have it transcribed,

1 before they get sent to Vic, would say, in this
2 instance we think you need to delegate the redaction
3 to someone else.

4 CHAIRMAN BeVIER: The redaction of all of it?

5 MS. SINGLETON: Yes.

6 CHAIRMAN BeVIER: All right.

7 MR. FORTUNO: And if for whatever reason it was
8 to end up inadvertently coming to me, I think it is
9 clear, at least in my mind, that I should not -- or
10 anyone in my position should not be redacting anything
11 relating to themselves.

12 So that I think that, again, even if for whatever
13 reason it inadvertently ended in my lap, I could not
14 redact anything concerning myself and would have to
15 refer that to the board, either for the chairman to
16 evaluate whether it gets redacted or the chairman to
17 bring it to the board for delegation to someone else.

18 CHAIRMAN BeVIER: I take it that your motion,
19 Frank, includes these procedural ways of handling
20 this, making them public?

21 MR. STRICKLAND: Correct.

22 CHAIRMAN BeVIER: Which involve -- I just need to

1 be clear. The motion seems to say that -- seems to
2 propose that we recommend to the board that we make
3 the transcripts public.

4 The procedure for doing that is to have the
5 chairman of the governance and performance review
6 committee initially review them to make sure that it's
7 appropriate to let the general counsel/corporate
8 secretary review them and decide appropriate
9 redactions of other people than himself, and so that
10 that's the procedure that's contemplated. And then
11 they will be made public.

12 MR. STRICKLAND: And a subset of that resolution
13 or motion was that all transcripts be maintained in
14 the office of the secretary of the corporation.

15 CHAIRMAN BeVIER: Yes. I'm sorry. I keep
16 forgetting that one.

17 All those in favor of this --

18 MR. MEITES: I'd like to speak to the motion.

19 CHAIRMAN BeVIER: Yes, Tom? Sorry.

20 MR. MEITES: I oppose the motion for the reasons
21 I have given, that in my view section 6 exempts from
22 the Sunshine Act the entire subject matter of these

1 transcripts.

2 CHAIRMAN BeVIER: Thank you. So let's take a
3 vote on the motion to make this recommendation to the
4 motion.

5 MR. STRICKLAND: Tom wants to --

6 CHAIRMAN BeVIER: Tom?

7 MR. FUENTES: Madam Chairman, as a non-attorney
8 member of the board and not a member of this
9 committee, I want to say it's a joy to have the free
10 input of eight attorneys, all practicing law.
11 Appreciate that.

12 But I'm wondering if maybe we could have a
13 comment from our good president because she's been at
14 the core of this. And I could either ask now or I
15 will ask her out at the board meeting. I'd like to
16 hear if she has an opinion on it.

17 CHAIRMAN BeVIER: Ms. Barnett? Your seat just
18 got hotter.

19 (Laughter.)

20 MR. FUENTES: I didn't mean to do that. I want
21 to give comfort to get your input.

22 MS. BARNETT: I think there have been times, in

1 order to engage in a meaningful evaluation --

2 MS. SINGLETON: Could you bring that a little
3 closer, please?

4 MS. BARNETT: -- by the board of my performance
5 as president, there have been times where it has been
6 relevant to comment on other members of the LSC staff.
7 I don't believe I would do that in open session.

8 CHAIRMAN BeVIER: Tom?

9 MR. MEITES: Tit for tat. The IG is the only
10 other person who would be directly affected by this.
11 I'd like to have his views.

12 MR. SCHANZ: Well, we recently heard, and I
13 alluded to this earlier, at the April 1st
14 appropriations hearing Congressman Wolf -- and I think
15 the term "ballistic" may be very appropriate here --
16 was incredulous that the board of directors hires the
17 IG and has the authority to fire the IG.

18 His notion, and I believe this is part of the
19 Council of Inspectors General, is that all Inspectors
20 General should be presidentially appointed, and then
21 we would not be in this box that we are in currently.

22 I've been rated my entire career. That

1 doesn't -- I stand on my record. So if the board
2 decides, notwithstanding Congressman Wolf's and
3 whatever law comes out from the Council of IGs as far
4 as reviewing is concerned, one thing I did do, coming
5 from my Department of Justice background, I did call
6 my former boss, Glenn Fine.

7 And he is not reviewed, and was somewhat
8 flabbergasted that I was even discussing that issue
9 with him because that seems to fly in the face of the
10 legislative intent behind an independent inspector
11 general.

12 MR. MEITES: But if you are reviewed, having the
13 review in public does not make it that much worse?

14 MR. SCHANZ: No. It does not. But if it does, I
15 would agree that the transcripts be made available.
16 And then if you want a frank and candid discussion,
17 then that could be in closed session.

18 MR. MEITES: Thank you.

19 MR. STRICKLAND: May I ask Mr. Schanz a question?

20 CHAIRMAN BeVIER: Certainly.

21 MR. STRICKLAND: When you say you've been
22 reviewed for your entire career, have those been

1 public reviews or private reviews?

2 MR. SCHANZ: Those have been private reviews.
3 There's a different set of standards in the federal
4 government, where the FOIA Act is invoked -- not FOIA,
5 I mean, Privacy Act has been invoked. So those have
6 always been one-on-one with my immediate manager or
7 supervisor.

8 MR. STRICKLAND: Thank you.

9 CHAIRMAN BeVIER: Sarah?

10 MS. SINGLETON: Not to add any more wrinkles, but
11 can the board delegate to one person the authority to
12 review the president and not have a public meeting on
13 it?

14 MR. FORTUNO: Well, that's not something that
15 we've really reflected on at all, let alone at any
16 length. My initial reaction --

17 MS. SINGLETON: Well, you can say, "I don't
18 know."

19 MR. FORTUNO: No. My initial reaction is that
20 the board can probably delegate to one person. And I
21 think the difficulty is that for Sunshine purposes,
22 it's the deliberation, the exchange of views between

1 board members.

2 When you have one board member making the
3 decision, I don't see how Sunshine would address that.

4 So while I think you can delegate it to one person,
5 I'm just not sure how that plays out under Sunshine.
6 I'd have to think about that.

7 MR. SCHANZ: What I would like to offer also is
8 if you had not seen -- and I know I did send out the
9 initial Grassley request of the inspector general on
10 this issue. It was very specific as to what -- the
11 inside information Grassley's staff had actually
12 surprised me.

13 And what they asked for was: Was the meeting
14 properly noticed? Was the evaluation properly
15 noticed? Were the transcripts being held properly?
16 And was the Sunshine Act violated? Those were the
17 questions that I attempted to answer. And you see --
18 you don't see Grassley's response here, but I can
19 certainly make that available, the incoming as well as
20 our response to the good congressman -- Senator. I'm
21 sorry.

22 MS. SINGLETON: So have you responded twice to

1 Mr. --

2 MR. SCHANZ: No.

3 MS. SINGLETON: Oh, so you --

4 MR. SCHANZ: No. This was based -- as I
5 mentioned a little bit earlier, this was based on some
6 of the research that we did. And we wanted to get
7 clarification from the board, which is what this
8 discussion is about.

9 CHAIRMAN BeVIER: You say that -- but you have
10 answered the questions that Grassley sent to you.

11 MR. SCHANZ: Correct.

12 CHAIRMAN BeVIER: And have you received a reply
13 from him? I thought you said the Grassley response.

14 MR. FORTUNO: I think he meant the response to
15 Grassley, not a response from --

16 CHAIRMAN BeVIER: I see. That's fine.

17 MR. SCHANZ: Oh, no, no.

18 MS. SINGLETON: Oh, I see. I had the same
19 confusion.

20 MR. SCHANZ: No. We don't have an ongoing
21 dialogue like that. I get a request and I respond.

22 CHAIRMAN BeVIER: Okay. That's fine. That's

1 right.

2 MR. SCHANZ: And if it's not satisfactory, I'm
3 sure I will hear back. But I have not heard back.

4 MR. GARTEN: Lillian, can I ask Tom a question?

5 CHAIRMAN BeVIER: Of course.

6 MR. GARTEN: What objection do you have to them
7 presenting us a protocol?

8 MR. MEITES: No, I don't. I do not oppose that.

9 MR. GARTEN: Well, the motion is on --

10 MR. MEITES: No. I supported that motion. I
11 oppose the release of the transcripts.

12 MR. GARTEN: Okay. All right.

13 CHAIRMAN BeVIER: This is the release of the
14 transcripts.

15 MR. GARTEN: Okay. Thanks.

16 CHAIRMAN BeVIER: Which we have not yet voted on.
17 Are we prepared to vote on this as a committee?

18 All those in favor of releasing the transcripts
19 with the procedures that were specified and having
20 them be kept from now on in the secretary's office say
21 aye.

22 MR. GARTEN: Aye.

1 CHAIRMAN BeVIER: Aye.

2 All those opposed?

3 MR. MEITES: No.

4 MR. STRICKLAND: Nay.

5 CHAIRMAN BeVIER: We have a tie.

6 MS. SINGLETON: No, you don't.

7 CHAIRMAN BeVIER: I just voted.

8 MS. SINGLETON: You don't vote unless there is a

9 tie.

10 CHAIRMAN BeVIER: Oh, sorry.

11 MR. MEITES: SO you can vote.

12 MS. SINGLETON: No. There is no tie.

13 CHAIRMAN BeVIER: There's no tie.

14 MS. SINGLETON: It's two against and one in

15 favor.

16 CHAIRMAN BeVIER: It's two to one, so the motion

17 fails.

18 MR. MEITES: Why is that? You voted yes.

19 MS. SINGLETON: I'm not on the committee. I

20 didn't vote at all.

21 MR. MEITES: You're not on the committee? Okay.

22

1 CHAIRMAN BeVIER: Okay. We are now in a position
2 to invite another motion.

3 MR. MEITES: Could I just make a suggestion?

4 CHAIRMAN BeVIER: You may.

5 MR. MEITES: That since our committee, as
6 augmented by our assistants, is unable to come up with
7 a conclusion, I suggest we table this and put it on
8 the agenda for the next meeting.

9 If people have thoughts between now and then,
10 they prepare them for the next meeting. And no vote;
11 we just do that.

12 CHAIRMAN BeVIER: I think that's a good idea.
13 Does it take a motion to table?

14 M O T I O N

15 MR. MEITES: I so move.

16 MR. STRICKLAND: Second.

17 CHAIRMAN BeVIER: All those in favor?

18 (A chorus of ayes.)

19 CHAIRMAN BeVIER: Opposed?

20 (No response.)

21 CHAIRMAN BeVIER: We will recommend -- we won't
22 recommend. We will just table that. Thank you. I

1 appreciate that effort.

2 Now we have -- we are already over time. So I
3 don't want this inspector general, 5 and 6, to be
4 truncated. But I would remind the inspector general
5 that you do have a report to the board to give. And
6 so if we can just avoid repetition, that would be a
7 wonderful idea.

8 Perhaps what we should do is ask about whether
9 the progress with respect to the work plan for fiscal
10 2009 is a matter that would be as efficiently reported
11 to the whole board so that we could move to the annual
12 performance review of the inspector general, the issue
13 there with just the --

14 MR. SCHANZ: Based on our prior discussion of the
15 last half hour or so, I'm not sure where we are on
16 item No. 6.

17 CHAIRMAN BeVIER: On item No. 6?

18 MR. SCHANZ: Item No. 5 I can present to you now
19 or during the IG's report because we have a semiannual
20 report ready to go out. We've responded to three
21 congressionals during the reporting period.

22 We've become very much accelerated in our field

1 presence and the work that we're doing. We've hired a
2 couple additional people. All that is based on the
3 increase in funding that the Congress provided to the
4 IG, unsolicited, I may add.

5 CHAIRMAN BeVIER: Well, my thought, Jeff, was
6 that the annual performance review of the inspector
7 general was not whether we should do it, not when we
8 should do it.

9 But if you'll recall, what we had decided to do
10 was not something that had to do so much with the
11 specifics of your performance, the report to Congress,
12 but rather a report to us from you that's sort of an
13 interim report.

14 MR. SCHANZ: Okay.

15 CHAIRMAN BeVIER: How are things going? Do you
16 have any issues that you think we ought to be aware of
17 that will help us going forward as we engage in this
18 evaluation.

19 MR. SCHANZ: Well, what you will hear a little
20 later on the agenda is an issue of great importance to
21 the independence of the inspector general's office.
22 It had to do with access to records.

1 We have been in fruitful discussions with
2 management, and it involves the employee handbook,
3 section 2.4. And we can discuss that now, but I'd
4 prefer to discuss it at the appropriate point on the
5 agenda because Charles would be involved in that and
6 he's not at the table.

7 But we have made, I think, tremendous progress in
8 my three Cs of communication, coordination, and
9 cooperation. In working with the Corporation, we're
10 getting access to the records we need. We are
11 performing internal -- and I will explain a little bit
12 about internal and external audit work -- we're doing
13 internal audit work of the Corporation.

14 We have an ongoing contracting audit, taking a
15 look at the contracting procedures in place within the
16 confines of the Corporation. We use contractors a
17 lot; I wanted to make sure that we're using them in
18 the most efficient and effective manner practical and
19 in compliance with the law.

20 In addition to that, we've gained an additional
21 staff person and I've set up two audit teams,
22 ostensibly one to do internal work of the Corporation

1 and the activities and functions thereof, and the
2 other to increase the inspector general's field
3 presence.

4 In so doing, in the last year we've been able to
5 follow up on all the GAO reports, and we've extended
6 now using some of the information and the experience
7 that we've gained in those grant audits to be doing
8 some other grant auditing based on our risk
9 assessments. So in furtherance of that objective of
10 the inspector general's office, we've been to Miami,
11 Cleveland, and Northwest Texas.

12 So we are expanding our reach into the 138
13 grantees. We're coordinating those efforts with
14 management so that we don't duplicate efforts. And of
15 course, as I've explained before, the IG has a
16 different function in doing our field visits than
17 necessarily the Corporation does.

18 I'm pleased with my progress. I haven't done a
19 self-evaluation, but I've been in place since
20 March 3rd of last year. And in 13 months, I think I
21 have made a difference in increasing morale,
22 increasing the workload and the productivity of the

1 OIG.

2 CHAIRMAN BeVIER: Thank you, Jeff.

3 Are there questions of Jeff with respect to that?
4 Tom?

5 MR. MEITES: I just have one. Are you planning
6 to prepare a self-evaluation?

7 MR. SCHANZ: It depends what the new protocol
8 will require.

9 MR. MEITES: Because that may -- just thinking
10 aloud, that may be helpful.

11 CHAIRMAN BeVIER: Right. But this is not the
12 formal thing.

13 MR. MEITES: I understand.

14 CHAIRMAN BeVIER: I think that, yes, for --

15 MR. MEITES: I'm just thinking aloud. That might
16 be a useful working document for us.

17 MR. SCHANZ: Right. Okay.

18 CHAIRMAN BeVIER: In particular, when we get to
19 the formal evaluation, which my understanding is we
20 decided to do six months from now, not at the next
21 meeting but the meeting following that.

22 MR. SCHANZ: Correct. Correct.

1 CHAIRMAN BeVIER: Other comments from the board?

2 I'm delighted to hear that the ongoing discussions
3 are fruitful and productive, and that you are finding
4 that you and management are cooperating in productive
5 ways. That's very nice information to have.

6 Sarah?

7 MR. SCHANZ: A caveat to that is it's an ongoing
8 process. It's not at a point in time, and it requires
9 vigilance and a lot of work and communication.

10 CHAIRMAN BeVIER: I understand that it requires
11 effort on both sides.

12 MS. SINGLETON: Jeff, I'm looking at the draft
13 inspector general critical performance elements, 2008.

14 MR. SCHANZ: Correct.

15 MS. SINGLETON: Can you explain the color coding
16 to me?

17 MR. SCHANZ: Yes, I can. This would be on page
18 103 of your board book. At one point during the
19 discussion of inspector general critical performance
20 elements of 2008, a board member -- and I can name
21 Herb if you would like or I can just try to say it
22 wasn't Herb --

1 (Laughter.)

2 MR. SCHANZ: -- but no, he asked to find out
3 which elements of my performance are statutorily
4 required. The statutorily required ones through the
5 Government Results and Performance Act as well as the
6 IG Act and -- the IG Reform Act didn't address that,
7 but these are the core functions of any IG, whether it
8 be in DOD or whether it be in LSC or DOJ.

9 So those were the statutory requirements of what
10 an inspector general is tasked to do.

11 MS. SINGLETON: So, for example, on 106, A.8.,
12 "Adheres to the highest ethical principles," nobody
13 requires you to do that?

14 (Laughter.)

15 MR. MEITES: The statute doesn't require you to
16 do that.

17 MR. SCHANZ: Yes. The statute doesn't require
18 it. I require it.

19 MS. SINGLETON: Okay. My other question is do
20 you remember the memo that came out from I think it's
21 OMB -- I know it's on your website -- that talks about
22 the relationship between IG and management or IG and

1 its program, whatever it is?

2 MR. SCHANZ: Yes. Yes, the chairman of the board
3 provided that to both the president and my
4 predecessor, on how to gain a good working
5 relationship between management with the inspector
6 general. Because obviously, and I'm stating the
7 obvious, there's always going to be a tension. But
8 with all professionals, and we all have our -- in my
9 case, my statutory functions to perform.

10 MS. SINGLETON: In terms of that, the principles
11 embodied in that memo, are they incorporated into your
12 performance evaluation anywhere?

13 MR. SCHANZ: I believe so, under B, under
14 Communications on page 107. And that involves my
15 communications with the board and with Congress. It
16 could be implicit in those yellow summaries that this
17 can't occur without the cooperation of the host
18 entity, in this case the LSC Corporation, or in the
19 Justice Department or DOD, the overall agency.

20 MS. SINGLETON: Thank you.

21 CHAIRMAN BeVIER: Anybody else, questions for
22 Jeff?

1 (No response.)

2 CHAIRMAN BeVIER: I believe the next item on the
3 agenda is public comment. Is there any public comment
4 to be offered and shared with the committee at this
5 time?

6 (No response.)

7 CHAIRMAN BeVIER: Consider and act on other
8 business. Is there any other business to come before
9 the committee at this time?

10 (No response.)

11 CHAIRMAN BeVIER: I will consider -- I will
12 invite a motion to adjourn.

13 M O T I O N

14 MR. MEITES: So move.

15 MR. GARTEN: Second.

16 CHAIRMAN BeVIER: All in favor?

17 (A chorus of ayes.)

18 CHAIRMAN BeVIER: The motion carries. Thank you.

19 (Whereupon, at 11:17 a.m., the meeting of the
20 governance and performance review committee was
21 adjourned.)

22 * * * * *