

LEGAL SERVICES CORPORATION

TELEPHONIC OPEN MEETING OF THE AD HOC COMMITTEE

Monday, March 24, 2008

4:33 p.m.

3333 K Street, N.W.  
Washington, D.C.

3rd Floor Conference Center

AD HOC COMMITTEE MEMBERS PRESENT:

Sarah Singleton  
Jonann C. Chiles  
Herbert S. Garten

BOARD MEMBERS PRESENT:

Frank B. Strickland, Ex Officio, Chairman  
Lillian R. BeVier, Vice Chairperson  
Thomas A. Fuentes  
David Hall  
Michael D. McKay  
Thomas R. Meites  
Bernice Phillips

## STAFF AND PUBLIC PRESENT:

Helaine Barnett, Ex Officio, President, LSC  
Victor M. Fortuno, Vice President for Legal Affairs,  
General Counsel & Corporate Secretary  
Karen Sarjeant, LSC VP of Programs & Compliance  
John Constance, LSC Office of Government Relations  
& Public Affairs  
Charles Jeffress, LSC Chief Administrative Officer  
Patricia Batie, Manager Board Operations  
Jeff Schanz, Inspector General  
Matthew Glover, LSC Office of Inspector General  
Terry Brooks, ABA  
Treefa Aziz, LSC  
Lynn Bulan, Sr. Assistant, GC, LSC  
Alice Dickerson, Director, OHR, LSC  
John C. Meyer, Director, OIM  
Katherine Ward, LSC Office of Legal Affairs

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## 1 P R O C E E D I N G S

2 CHAIRMAN STRICKLAND: I'll follow you with  
3 the board meeting.

4 MS. SINGLETON: All right. This is Sarah  
5 Singleton. I am the I guess the Chair of the Ad Hoc  
6 Committee. The proposed agenda is found on the last  
7 page of the call-in information that was sent by Pat.  
8 Did someone just join us?

9 MR. CONSTANCE: Yes. This John Constance  
10 calling in.

11 MS. SINGLETON: Hello, John.

12 MR. CONSTANCE: How are you?

13 MS. SINGLETON: Okay. We're just starting  
14 the Ad Hoc Committee meeting. All board members except  
15 David Hall are present, and there a number of people  
16 who are on the telephone either with LSC, and Terry  
17 Brooks I believe is the only public member who has  
18 joined the call. Does that sound correct?

19 (No response.)

20 MS. SINGLETON: All right. Thank you.

21 The agenda, does anybody have anything to add  
22 or change about the agenda?

1 MS. CHILES: No.

2 MS. SINGLETON: All right. Hearing nothing,  
3 we'll consider that the agenda has been approved as  
4 submitted.

5 Number two, we have "consider and act on  
6 recommendations that this Committee should make to the  
7 Board of Directors regarding proposed responses to  
8 recommendations made by the Government Accountability  
9 Office in its report on LSC grants management".

10 At this point what I would like to do is to  
11 simply tell you what we have done and where we are  
12 going on that matter, because I don't believe we have  
13 any formal recommendations to make to the Board at this  
14 time because it's an ongoing process.

15 After the Ad Hoc Committee was created, we  
16 divvied up responsibilities. Herb was given the  
17 responsibility to deal with the Board's Audit  
18 Committee, and that is going to come up as number three  
19 on our agenda. So Herb will speak to you at that  
20 point.

21 On the other recommendation which -- or the  
22 other charge to the committee, which was basically to

1 deal with the second GAO report, Jonann and I spent  
2 some time talking individually with members of the  
3 management team, with people from the IG's office, and  
4 reading various materials about the history of what I'm  
5 going to call fiscal oversight that's performed by  
6 various entities at LSC.

7           And in that regard, I'm distinguishing fiscal  
8 oversight from compliance oversight. I consider  
9 compliance oversight to be primarily looking at whether  
10 or not grantees are in compliance with the restrictions  
11 on their activities that have been imposed by Congress.

12       While we may look at that, we viewed the primary  
13 thrust of the GAO report to be fiscal oversight, and  
14 that's where we have been concentrating.

15           We held a day-long meeting, which was  
16 attended by members of the Management Team, the OPP and  
17 OCE, and the Office of Inspector General, and at that  
18 point Jeff was not yet on board, but he was able we're  
19 glad to say to attend this meeting with us anyway. He  
20 at that point went through -- all the types of  
21 oversight that we do with -- fiscal oversight, starting  
22 with things that we done even before we have a

1 particular audit, like we have the accounting manual;  
2 we provide consultation to new grantees about how to  
3 set up their accounting procedures and so forth, all  
4 the way through to, you know, the independent public  
5 accountant financial audit that goes on as well as the  
6 compliance audit.

7           When we discussed that, we then determined  
8 that what we were going to do is we were going to -- we  
9 had some issues as to definition as to what was given  
10 to which part of LSC as part of the 1996 Appropriations  
11 Act; and became pretty clear to people, I think, that  
12 if you were a non-auditor lay person reading the Act,  
13 you might have one definition you would apply, and if  
14 you were an auditor you would have another definition.

15           Be that as it may, while we couldn't get  
16 agreement on what those definitions mean, we decided to  
17 approach it in a different way, and that is to  
18 determine what the various roles are that we have now,  
19 and what the roles and responsibilities are that we  
20 would like to see in order to better fulfill our  
21 mission.

22           We charged then I believe it was Charles

1 ultimately with the responsibility of coming up with  
2 that, those definitions, and he is the process of doing  
3 that. We also have some other matters that are being  
4 addressed. Some of the things that I call protocol and  
5 procedure issues include things like review of manuals,  
6 a process we have for referrals from that IG over to  
7 the Office of Compliance and Enforcement. We have  
8 communication issues. And all of those are going to be  
9 dealt with, but they're not done yet.

10           Perhaps somebody from the IG or management  
11 could tell us where we stand on the (telephone beeps)  
12 -- Hello? Did someone just join? Somebody just leave?

13           Okay. Could you tell us where we stand on  
14 the memorandum regarding the communications between the  
15 three groups?

16           MR. SCHANZ: This is Jeff Schanz, the IG.  
17 We've reviewed three drafts regarding sharing  
18 information and communication. As Sarah appropriately  
19 says, we have bounced back and forth on tightening up  
20 the language, so it doesn't impinge on the independence  
21 of the IG but still maintains an open-door policy and a  
22 two-way street for both OPP, OCE, and IG information.



1 That was something that at the very initial meeting  
2 that Sarah mentioned before I was officially on board I  
3 talked about a shared database, and in order to  
4 something like that we need to bring in some IT  
5 technical people. I see John Meyer here, who would be  
6 able to assist us with that, perhaps.

7 But we have recognized the underlying need  
8 for communications and shared information. We're  
9 working towards that from a technical point of view  
10 now.

11 MS. SINGLETON: Right.

12 So we also are working on some various other  
13 aspects of trying to comply with the GAO report,  
14 identifying risks, identifying the controls that are in  
15 place in response to those risks; and this is all an  
16 ongoing process, and I expect we will have something  
17 ready for the Board at its April meeting in Oklahoma  
18 City, but I won't be completed even at that point.  
19 We're still going to keep going.

20 I think what we would like to do ultimately  
21 is to have something in the nature of an MOU between  
22 the LSC Management and the Office of Inspector General,

1 which sets forth who has what responsibilities, how  
2 they are going to communicate with each other, and that  
3 that MOU will then become the basis for a board  
4 resolution to be adapted by the Board.

5           Meanwhile we will still continue to work on  
6 the various technical things, some of which Jeff  
7 alluded to, database sharing and so forth, better  
8 coordination on visits, and red-flagging of the IPA  
9 accounts as they are being reviewed.

10           The one thing I also wanted to address that  
11 we have been looking into and keep getting reports on  
12 is you will remember that there were nine specific  
13 instances that GAO found. The IG is working on the  
14 referrals that it received of eight of those. Maybe  
15 it's even been updated somewhat, but three of those  
16 programs have been visited; the others will be visited  
17 within the next two months. And the last program that  
18 was a problem is Nevada; they were in the middle of a  
19 broader investigation beyond that which identified by  
20 the GAO, and the OCE is continuing with that, with  
21 those visits, and in fact will (phone beeps) --

22           CHAIRMAN STRICKLAND: Let's make sure we

1 identify anybody else who has joined the call.

2 MS. SINGLETON: Yes.

3 MS. CHILES: This is Jonann Chiles. I'm on a  
4 cell phone and I've got some spotty reception, so I was  
5 off the call for about 30 seconds.

6 CHAIRMAN STRICKLAND: Okay. Fine. I just  
7 wanted to see if it was the new person. Thanks.

8 MS. CHILES: Mm-hmm.

9 MS. SINGLETON: So they will have  
10 recommendations concerning that program. Jeff, or is  
11 Dutch there? I can't remember.

12 MR. SCHANZ: No. Myself and Matt Glover from  
13 the IG.

14 MS. SINGLETON: Do you want to say anything  
15 more about the eight programs that you're visiting?

16 MR. SCHANZ: Well, we're on the site of the  
17 fourth one currently in Iowa. Or not Iowa, we'll be in  
18 Chicago, and then Caspar, Wyoming next week. So we are  
19 proceeding. We haven't found anything that other than  
20 what GAO had indicated; but we are advising each of the  
21 sites we visit of the need for internal controls; we're  
22 following up on Helaine's advisory that was sent out to

1 all the executive directors, because that list what was  
2 found in the GAO report.

3           So ignorance will not be an excuse because  
4 between the IG visits reinforcing what GAO found and  
5 the corporation's advisory that went out, we think that  
6 they will have enough knowledge that these issues  
7 should not surface again. But I'm setting up a  
8 cyclical visit site of most of the grantees, and I'm  
9 going to work closer with the corporation, so we don't  
10 trip over each other with OCE and the IG. Now we each  
11 have different functions in going out there, but we  
12 will try to balance the coverage as much as we can of  
13 all the 137 grantees.

14           MS. SINGLETON: Okay.

15           Helaine, would someone like to report in more  
16 detail on Nevada, which is the ninth program?

17           MS. SARJEANT: This is Karen Sarjeant. We  
18 are currently finishing up the report on Nevada and  
19 will be in a position to take additional steps and  
20 action after we have finalized that shortly, very  
21 shortly.

22           MS. SINGLETON: Okay. All right. That's

1 where we stand in our response to the GAO report. We  
2 have in our meetings -- and we've done two of them  
3 now -- gone into quite a bit more detail about what  
4 should happen, or what could happen in terms of trying  
5 to make the oversight better, and we hope that that  
6 will be incorporated into what we will present to the  
7 Board probably on a rolling basis beginning in April,  
8 at our April meeting.

9           If you have any questions on that charge to  
10 us, I'd be glad to entertain them. Or Jonann, if you  
11 wish to add anything.

12           MS. CHILES: I have nothing to add.

13           MR. MEITES: Sarah, this is Tom Meites. Can  
14 you hear me?

15           MS. SINGLETON: Yes.

16           MR. MEITES: Something that has concerned me  
17 for some time, both with regard to the GAO report and  
18 generally is the problem with the issue of materiality,  
19 as used in the accounting profession versus materiality  
20 as used in the public arena. That is for example, the  
21 amounts spent from the grantees found to be  
22 questionable by the GAO were minuscule. And in terms

1 of materiality perhaps the IPAs and others would say in  
2 accounting terms they were not material.

3 But in fact given what has followed from the  
4 GAO's finding, in the public area they seem to me to be  
5 quite material. Has your committee given any thought  
6 to or had any discussions about issues with differing  
7 definitions of materiality between accountants and the  
8 public?

9 MS. SINGLETON: We've even had fisticuffs  
10 over it.

11 (Laughter.)

12 MR. MEITES: Okay.

13 MS. SINGLETON: Sorry. That was a joke, I  
14 think. Yes, we have talked about financial materiality  
15 and political materiality. We have also talked about  
16 efficient and effective ways of routing out things that  
17 might be politically material but not financially  
18 material. And frankly, I think if you ask the auditors  
19 in the IG's office, if you ask OCE, if you ask the IPAs  
20 for anyone to do what they keep calling drill-down to  
21 find the almost minuscule expenditures that at issue in  
22 some of the GAO reports, our grantees are going to be

1 spending all of their money on accounts and none on  
2 providing services to people.

3           So we're coming up with ways to have that  
4 IPAs deal with these what I consider political  
5 materiality items in such a way that they're not doing  
6 an across-the-board check of every receipt, because  
7 that would be inordinately expensive; but, for example,  
8 they may be asked to ask a question, "Did you spend any  
9 money on lobbying?" If the answer is yes, then they  
10 have to dig down and look into it.

11           The same kind of thing could be done with  
12 alcohol and those kind of expenditures. But there's no  
13 way that we can practically expect the IPAs to look at  
14 every bill that is paid by our grantees' budget.

15           Any other questions?

16           (No response.)

17           MS. SINGLETON: Okay.

18           If there's none, then I think we'll go on to  
19 part 3 on the agenda. Herb, would you like to walk us  
20 through what you're going to recommend to the Committee  
21 to recommend to the Board regarding an audit committee?

22           MR. GARTEN: I'd be pleased to.

1           I would like to give you some background so  
2 you have the extent of what we took into consideration,  
3 coming up with a recommendation also with respect to  
4 what should be provided for in the charter. A proposed  
5 audit committee should, one, be established by the  
6 Board. As far as terminology is concerned from a legal  
7 standpoint, we usually refer to a charter as like  
8 articles of incorporation, bylaws; but the nomenclature  
9 and terminology used defined as charter of the  
10 respective committees.

11           And the charter involves detailed enumeration  
12 of the establishment of the committee, what its  
13 purposes are, and each of you was sent a final draft.  
14 In working up this final draft, early in February, I  
15 had asked Vic Fortuno to determine whether there are  
16 any other organizations similar to ours that had audit  
17 committees, and he found a few he pointed out of  
18 different --

19           MS. SINGLETON: Hold on, Herb. Let me  
20 interrupt you, I'm sorry. Did someone just join?

21           (No response.)

22           MS. SINGLETON: Jonann, did we just lose you?



1 (No response.)

2 MS. SINGLETON: Okay, go ahead.

3 MR. GARTEN: We found that a number of these  
4 organizations did not have an inspector general, and  
5 finding a similarly situated organization other than  
6 the five he had sent to us previously had proven  
7 difficult. However, in the end we were able -- and I  
8 was able to review some in greater detail than the  
9 others -- ten of these organizations, including the  
10 Corporation for Public Broadcasting, the Overseas  
11 Investment Corp., The Tennessee Valley Authority, the  
12 National Science Foundation, the FDIC, the  
13 Export-Import Bank, the Smithsonian, the U.S. Postal  
14 Service, and the Department of Defense.

15 And I was very impressed with the fact that  
16 the Department of Defense had gone into the background  
17 and the responsibilities of an audit committee in great  
18 detail, and that was done for each of their respective  
19 agencies. They had published a very fine book with  
20 describing the function of an audit committee, from  
21 their standpoint and also from the standpoint of other  
22 organizations, and there's quite a bit of reference in

1 the material of this Department of Defense best  
2 practices booklet on what is to be expected of an audit  
3 committee.

4 Now based upon a review of what was out  
5 there, and attempting to model something  
6 that -- departments, I had asked Vic to come over to  
7 Baltimore, and we spent most of the day reviewing many  
8 of these other charters, and I had questions regarding  
9 a number of them. And I had put together a draft for  
10 his consideration, and as a result of various matters  
11 we discussed that day, I prepared a draft charter,  
12 which I sent to Helaine, Jeff, who was then the  
13 designate, Dutch Merryman, and of course to the members  
14 of the Ad Hoc committee -- draft charter he asked in  
15 the cover letter for comments from each of them with  
16 regard to the draft that I sent on February 25th, with  
17 a request that we get the responses as promptly as  
18 possible, and we did responses --

19 MS. SINGLETON: Hang on, Herb, I'm sorry.

20 MS. CHILES: No, I apologize; I was off the  
21 call for one minute. I'm back on now.

22 MS. SINGLETON: Okay. Thank you. Go ahead,

1 Herb, sorry.

2 MR. GARTEN: -- Steve's  
3 comments -- management we received  
4 comments -- inspector general. We received a  
5 comment -- we received a copy -- in going through  
6 the --

7 MS. SINGLETON: Herb, I'm sorry. There's a  
8 lot of static on the line.

9 MS. CHILES: It's probably from me. I'm  
10 sorry.

11 MS. SINGLETON: Okay.

12 MR. GARTEN: How is this now? Can you hear  
13 me?

14 MS. SINGLETON: Yes.

15 MR. GARTEN: All right. We received  
16 responses from the various parties, very timely ones,  
17 and good comments, and as a result of those comments, I  
18 put together a final draft that was sent to the  
19 directors, and it bears the date of March 13th, and I  
20 believe that Helaine forwarded it, and I know that  
21 Helaine forwarded it on to the Board members. Now what  
22 does it provide for?

1           I guess the purposes are the most important  
2 part of it, and I hope that some of you have the final  
3 draft in front of you. "The purpose of the committee  
4 shall be to assist the Board in fulfilling its  
5 responsibility, to ensure that the corporations's  
6 assets are properly safeguarded, to oversee the quality  
7 and integrity of the corporation's accounting,  
8 auditing, and reporting practices, and to perform such  
9 other duties as assigned by the Board."

10           I was particularly careful to make certain  
11 that we addressed in this draft charter the comments  
12 that we had received from the GAO, especially those on  
13 pages 21 and 22 of where they -- back to -- the  
14 oversight and other matters and recommendations that  
15 the GAO had made. And later on in reviewing a draft  
16 charter, you will see that are specific references made  
17 to the kind of problems that the GAO believed existed  
18 within LSC.

19           The membership provisions basically are  
20 simple. They were a little more complex in the first  
21 draft -- in many of these organizations of the  
22 membership of the audit committee and most of all from

1 the chairman is not part of any other committee of the  
2 organization. I gather for complex purposes, they felt  
3 that an audit committee should be very separate and  
4 apart. It's almost like the organization having an  
5 internal inspector general -- no pun intended -- who  
6 are creating any competition here.

7           But the gist of it is that -- committee is  
8 assuming a great deal of responsibilities. Of course,  
9 there are disclaimers throughout -- a committee that a  
10 lot is expected from. The chair has the right to  
11 appoint the three directors, at least three directors  
12 other than himself to serve on the committee, and also  
13 has the authority to appoint the chair. The terms are  
14 for one year. Meetings are definitely held at least  
15 four times per year.

16           As far as resources are concerned, most of  
17 the other -- not most -- a good number of the other  
18 audit committees authorize the committee to even retain  
19 independent advisors. We have such a provision, but  
20 it's still under the direction -- we have to get  
21 permission of the Board before we incur any expenses  
22 from independent advisors.

1           The authority provision on page 2, article 7,  
2 provides for us, or the committee, to oversee the  
3 selection and retention of the external accountant,  
4 external auditor. Then the external auditor would  
5 still -- the way it reads unless otherwise directed by  
6 the Board, "the committee shall oversee the selection  
7 and retention of the external auditor by the inspector  
8 general of the corporation, shall have unlimited access  
9 to that corporation's books, records, et cetera, is  
10 authorized to carry out the duties and responsibilities  
11 described in the charter, may delegate authority to one  
12 or more designated members of the committee." This is  
13 an important one: "may rely on the expertise and  
14 knowledge of management, the OIG, external auditors,  
15 and such consultants and experts that the Board  
16 approves for carrying out its oversight  
17 responsibilities." That is the committee's oversight's  
18 responsibilities.

19           "may authorize to be conducted or itself  
20 conduct a review into any matters within the scope of  
21 its responsibilities, and may require any person,  
22 including the external auditor or any officer or

1 employee of the corporation to attend committee  
2 meetings or to meet with any member of or advisor to  
3 the committee."

4           It then goes in section or article 8 a big  
5 list of duties and responsibilities. There are 16 of  
6 them. And of course it ends with "shall perform such  
7 other duties consistent with the charter as are  
8 delegated to the committee by the Board. But the  
9 duties and responsibilities of additional oversight  
10 responsibilities of working, however, with management,  
11 working with the finance committee, working with the  
12 OIG, and making certain that many of the problems that  
13 were referred to in the GAO reports are taken into  
14 account.

15           For example, I added 15: "The committee  
16 shall review any significant deficiencies in internal  
17 control over financial reporting identified by  
18 management, the inspector general, or the external  
19 auditors, and ensure that corrective action is taken by  
20 management."

21           One of the recommendations of management was  
22 to delete this thinking. It had already been covered.

1 But my judgment was that it wasn't completely covered,  
2 and I thought that this would be something that would  
3 be well worth highlighting, especially since it's been  
4 highlighted by the GAO committee.

5 Then there's a series of limitations. We're  
6 not intending to expand the applicable standards of  
7 liability under statutory or regulatory requirements  
8 for the Board of Directors -- more generally. The  
9 committees and panel rely on the expertise, knowledge,  
10 and judgment of management, the IG and external  
11 auditors and any consultants retained by them.

12 The committee's responsible is not to be  
13 interpreted as a substitute for the professional  
14 obligation of others. It's not the committee's duty to  
15 conduct audits or determine that the corporation's  
16 financial statements are in accordance with generally  
17 accepted accounting principles, generally accepted  
18 government auditing standards, which are known as the  
19 Yellow Book; and other applicable rules, regulations,  
20 guidelines, and instructions.

21 These are the responsibilities of the IOG,  
22 the external auditors, and management. And believe me,



1 there's a lot out there that they are required to  
2 follow, both from general accounting standards,  
3 government accounting standards, and a large number of  
4 rules, regulations, guidebooks, guidelines, and  
5 instructions that are supposed to be reviewed by  
6 management, the IG, and certainly the external auditor.

7           Then we have a disclaimer that we're not  
8 doing anything circumscribing the authority of the  
9 inspector general or intended to restrict the authority  
10 of the inspector general, to conduct, supervise, and  
11 coordinate audits and investigations relating to the  
12 programs and operations of the committee.

13           I'm pleased to advise that I've had no  
14 further comments from anybody since I sent out this  
15 last draft to deal with anything substantive here. So  
16 Helaine's comments, management's comments, the  
17 inspector general's suggested changes, we had a several  
18 comments from Sarah Singleton, which were also  
19 incorporated. We had the comment from the Board Chair,  
20 and again, no comments from any Board members. And I  
21 think that it would be appropriate, Sarah, for perhaps  
22 some resolutions of the Ad Hoc Committee be made;

1 recommendations to the Board meeting, which I  
2 understand will follow this meeting.

3 MS. SINGLETON: Well, would you like to make  
4 a motion, Herb?

5 MR. GARTEN: Yes. I would like to move on  
6 behalf of the Ad Hoc Committee that the Board of Legal  
7 Services Corporation approve the creation of an ordered  
8 committee that would be regulated and have authority  
9 under the draft charter submitted of the ordered  
10 committee of Legal Services Corporation as of March 13,  
11 2008.

12 M O T I O N

13 MS. SINGLETON: Is there a second from an Ad  
14 Hoc Committee member?

15 (No response.)

16 MS. SINGLETON: I'll second it.

17 CHAIRMAN STRICKLAND: Jonann must have  
18 dropped off.

19 MS. SINGLETON: I believe so.

20 CHAIRMAN STRICKLAND: And may I ask you a  
21 question in the discussion -- are you ready for some  
22 discussion?

1 MS. SINGLETON: Yes, I'm ready for discussion  
2 now.

3 MS. SINGLETON: This is Frank for the  
4 reporter. Point of clarification, Herb. Under Article  
5 7, "Authority" and then No. 1 under that, "where the  
6 committee shall oversee the selection and retention of  
7 the external auditor by the IG," who has the final  
8 authority under your proposal under this article, who  
9 has the final authority over the collection and  
10 retention of the external auditor?

11 MR. GARTEN: All right. My understanding  
12 based upon advice from Vic Fortuno, who is present on  
13 this call, I presume?

14 MR. FORTUNO: That's correct.

15 MR. GARTEN: Is that the Board actually has  
16 the right to select the external auditor, but that the  
17 practice for many years has been for the Board to  
18 authorize the IG to select and retain the external  
19 auditor, but that the Board was in effect overseeing  
20 that selection, being part of it; and the language  
21 incorporated in Article 7, paragraph 1, was changed  
22 from an original draft that I had submitted, and we

1 adopted the language requested by the inspector  
2 general, and I've had no additional comments beyond  
3 what you're seeing in front of you now.

4 MS. SINGLETON: So, as I understand it, Herb,  
5 under this charter, unless the Board direct otherwise,  
6 it's going to be this committee which will oversee the  
7 selection, which will actually be made by the IG, is  
8 that correct?

9 MR. GARTEN: That's correct.

10 MR. SCHANZ: And that's my understanding also  
11 is the IG.

12 MR. GARTEN: Okay. Vic Fortuno, would you  
13 want to comment on this?

14 MR. FORTUNO: No. I think you've --

15 MR. GARTEN: A past history of this.

16 MR. FORTUNO: I think you capsulized it. I  
17 don't know of anything that requires that the IG be the  
18 one at LSC to recruit and select and auditor. But I  
19 think that the practice has been for some years now  
20 that the IG does so, that the IG recruits and selects,  
21 appoints an auditor. And I think that what was  
22 intended here in paragraph 1 of Article 7 was that

1 unless otherwise directed by the Board, that practice  
2 would continue, and this paragraph also makes clear  
3 that it's under the general supervision of the  
4 committee.

5 MR. GARTEN: All right. And we're following  
6 the practice that has existed for a number of years.  
7 And I'm not disagreeing with that, but just to pose a  
8 hypothetical, suppose the -- I'm just making up a  
9 reason, whatever reason -- and I understand the  
10 rationale for having the IG interview candidates for  
11 external auditor and so on, and perhaps apply other  
12 tests and make that selection -- but suppose the  
13 committee said -- disagreed with the selection and  
14 said, "Go back and start over," I presume that would  
15 mean that the committee has by that action directed the  
16 IG to go find some more candidates and bring another  
17 one.

18 MR. GARTEN: Of course, the Board would have  
19 to direct the committee. In theory I guess the  
20 committee would say "We'd like additional selections to  
21 be made," come back to the Board, get their okay on it  
22 and direction, and then present that resolution to the

1 inspector general.

2 I think it's implicit the way this reads that  
3 unless authorized directed by the Board, so that if we  
4 were otherwise directed by the Board, in response to  
5 your question, I don't see any doubt that we could ask  
6 the IG to re-do the selection. But I would rely on  
7 Vic -- do you agree with that, Vic?

8 MR. FORTUNO: I think that the clause,  
9 "unless otherwise directed by the Board," my  
10 understanding was it relates to whether the IG will  
11 continue to be charged with the selection and retention  
12 of the auditor. I think since the Board delegated that  
13 to the IG, while the Board has the authority to rescind  
14 that, that clause is intended to recognize that, that  
15 the Board may rescind that.

16 In terms of 'in practice,' unless if the  
17 Board hasn't rescinded the function of selection and  
18 retention, I'm not sure that in a specific instance the  
19 IG would be instructed to do something different. The  
20 Board could certainly withdraw that delegation, but  
21 until it withdraws the delegation, I think that the IG  
22 exercises a function which the committee oversees, and

1 if they have concerns they can certainly express those  
2 concerns to the IG and to the Board, if necessary, but  
3 maybe the IG --

4 MR. GARTEN: Well -- the ultimate authority  
5 of the selection is really in the Board.

6 CHAIRMAN STRICKLAND: I agree with that. And  
7 the reason I'm raising the question is because on the  
8 one hand, GAO has suggested that we study that  
9 possibility of having a separate audit committee, and  
10 we apparently are going to have -- we've already got a  
11 resolution the consider to that effect. I just wanted  
12 to make sure that in so doing that we are going as far  
13 as the GAO recommendation might suggest that we should.

14 And if everybody's satisfied with this  
15 language, then I am too. But I just wanted to raise  
16 the hypothetical possibility of a disagreement, and I  
17 think Vic, you have made it clear that the ultimate  
18 authority remains with the Board if there should be  
19 some disagreement or dissatisfaction with the selection  
20 made by the IG.

21 MR. GARTEN: That is my understanding of the  
22 intent of this, and we've modified this particular

1 paragraph considerably based upon requests made by the  
2 IG.

3 CHAIRMAN STRICKLAND: Okay. I'm satisfied  
4 with it. I just wanted to get a little further  
5 clarification.

6 MR. MCKAY: This is Mike McKay. Herb, a  
7 question relating to the duties section, Roman Number  
8 XIII, and listing 16 separate duties, I'm wondering if  
9 the Committee has discussed this audit committee having  
10 the responsibility of supervising the compliance  
11 program?

12 MR. GARTEN: I think that the duties are so  
13 broad here. I had about I'd say at least eight or ten  
14 additional paragraphs with duties, and requests were  
15 made to delete them or they felt they were repetitious.

16 But I think that it's clear that certainly a  
17 compliance program; but there's no problem, and if you  
18 want to add language to that effect and there's no  
19 objections from anybody --

20 MR. MCKAY: I'm not member of the Committee,  
21 but it seems to me with the compliance program being so  
22 important and that a good compliance program reflect in



1 it Board involvement, that I would feel more  
2 comfortable having it listed specifically in the  
3 Committee's responsibility. It seems to me it should  
4 be the audit committee. It could be the finance  
5 committee. But I really think it should be audit, and  
6 I personally would like to see it specifically listed.

7 MR. GARTEN: I don't have any problem with  
8 that if the rest of the Board doesn't.

9 MS. SINGLETON: Well, I'm sorry, but when you  
10 say "compliance program," what are you talking about?

11 MR. MCKAY: I'm talking about the item that  
12 the Board itself is going to be considering later on  
13 today that there be a Board member or a committee  
14 responsible for supervising, checking in on, being  
15 available for consultation, if there's a problem  
16 associated with the compliance program.

17 MS. SINGLETON: Compliance with the Code of  
18 Ethics, right?

19 MR. MCKAY: Exactly. That's what a  
20 compliance program is.

21 MS. SINGLETON: Right. No. That's what I  
22 thought but I just wanted to be sure. It doesn't seem

1 to me that that's necessarily financial, though. I'm  
2 interested in your thinking as to why the audit  
3 committee would be the appropriate place for that to be  
4 housed.

5 MR. MCKAY: I'm trying to figure out what  
6 other committee would do that.

7 MR. FORTUNO: If I may, this is Vic Fortuno,  
8 for the record. I think a draft was earlier  
9 circulated, I believe, that did have this identified as  
10 an audit and ethics committee. The reason for that was  
11 just to present an alternative because some of -- not  
12 all of -- but some of the organizations that have audit  
13 committees have something a little broader, and call it  
14 an audit and ethics committee. And why is it that that  
15 committee over some other committee, unless there's a  
16 specific committee devoted entirely to the ethics  
17 program is that the audit committee is seen as part of,  
18 you know, the governance concerns that also drive the  
19 desire for an ethics program?

20 So it's just that when you see some other  
21 committee of the Board with ethics responsibilities or  
22 ethics oversight responsibilities, it more often than

1 not is the audit committee; although the title is  
2 generally such that it reflects that additional  
3 function.

4 MS. SINGLETON: Well, in the corporations  
5 that I'm familiar with that have audit and ethics  
6 committee, most of the ethics issue that arrive deal  
7 with things like conflicts or attempt to influence  
8 through, you know, giving gifts or other kinds and  
9 gratuities, which does seem more related to an audit  
10 function than the kinds of things that I think might  
11 arise in our context.

12 And I am not sure that the criteria for  
13 serving on the audit committee is the criteria that you  
14 would want for people who are going to be reviewing  
15 compliance with the ethics code. And I think that  
16 might be housed in a different board committee that  
17 would be more appropriate rather than the audit  
18 committee.

19 MS. CHILES: I agree with Sarah. This is  
20 Jonann Chiles.

21 MR. GARTEN: I think we deleted the provision  
22 for that very reason.

1           MR. MCKAY: I certainly would defer to the  
2 collective wisdom of folks on the phone. I just think  
3 it's important that maybe we should delay this  
4 conversation to when we get to the compliance and  
5 ethics code consideration by the full Board. I just  
6 think it's important that we have it listed somewhere.

7 I personally think it should be with audit, but if it  
8 should be somewhere else because people think so,  
9 that's fine with me, as long as someone has  
10 responsibility or it is specifically listed.

11           MR. GARTEN: Mike, I'm looking at the charter  
12 of the Tennessee Valley Authority, and they have a  
13 combination charter of the Audit and Ethics Committee.

14 I think early on we concluded that the  
15 committee would have enough work on its own and not be  
16 involved in the compliance programs dealing with the  
17 Code of Ethics.

18           MR. MCKAY: Fair enough. I mean I hear what  
19 you're saying and perhaps this can go to Ops and Regs.

20 But one way or another it should end up somewhere, it  
21 seems to me.

22           MR. GARTEN: I agree with you.

1           MS. SINGLETON: And I agree with that too. I  
2 just would like to find the best place to house it,  
3 that's all.

4           CHAIRMAN STRICKLAND: And I move the question  
5 on Herb's resolution.

6           MS. SINGLETON: All right. All in favor of  
7 moving the question, say "Aye". That's all we're  
8 voting on now is whether we should cut off discussion.

9           (Chorus of "Ayes".)

10          MS. SINGLETON: Opposed?

11          (No response.)

12          MS. SINGLETON: All right, the Ayes have it.  
13 The question's been called.

14          All in favor of the motion -- actually I  
15 think only the Ad Hoc Committee should be voting --

16          MR. GARTEN: Right.

17                                   M O T I O N

18          MS. SINGLETON: But I heard both Jonann and  
19 Herb say aye. So we've got it. The motion is that the  
20 Ad Hoc Committee should recommend to the Board that  
21 they approve creation of the audit committee that will  
22 operate under the draft charter that is dated March the

1 13th. All in favor, Ad Hoc Committee people say "Aye".

2 MR. GARTEN: Aye.

3 MS. CHILES: Aye.

4 MS. SINGLETON: Opposed?

5 (No response.)

6 MS. SINGLETON: The Ad Hoc Committee will so  
7 recommend to the Board at its meeting, which will  
8 follow immediately after.

9 All right. In terms of the Ad Hoc Committee,  
10 is there any other business that we need to act on at  
11 this time?

12 (No response.)

13 MS. SINGLETON: All right.

14 M O T I O N

15 Hearing none, I'm going to go on to a motion  
16 to adjourn.

17 MR. GARTEN: Second it.

18 MS. SINGLETON: Thank you, Herb.

19 MS. CHILES: Second it.

20 MS. SINGLETON: Thank you, Jonann.

21 All in favor say "Aye."

22 (Chorus of "Ayes".)

1                   MS. SINGLETON: The meeting of the Ad Hoc  
2 Committee is adjourned.

3                   (Whereupon, at approximately 5:15 p.m., the  
4 meeting in the above-entitled matter was adjourned.)

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