

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
GOVERNANCE AND PERFORMANCE REVIEWS COMMITTEE

OPEN SESSION

Saturday, November 1, 2008

9:01 a.m.

The Hilton Hotel
255 South West Temple
Salt Lake City, Utah

COMMITTEE MEMBERS PRESENT:

Lillian R. BeVier, Chairman
Michael D. McKay
Thomas R. Meites (by telephone)
Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

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

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary
Mattie Cohan, Senior Assistant General Counsel,
Office of Legal Affairs
Karen M. Dozier, Executive Assistant to the President
Matthew Glover, Assistant Counsel, Office of the
Inspector General
Joel Gallay, Special Counsel to the Inspector General,
Office of the Inspector General
Karen J. Sarjeant, Vice President for Programs and
Compliance
Patricia D. Batie, Manager of Board Operations
Charles Jeffress, Chief Administrative Officer
Jeffrey E. Schanz, Inspector General
Thomas Coogan, Assistant IG for Investigations
Anne Milne, Executive Director, Utah Legal Services

Linda Perle, Center for Law & Social Policy (CLASP)

C O N T E N T S

OPEN SESSION	PAGE
1. Approval of agenda	4
2. Approval of minutes of the committee's meeting of August 2, 2008	5
3. Consider and act on whether to recommend to the board:	6
• the draft Board Member Self-Assessment document	
• the draft board evaluation schedule	
4. Board succession planning	15
• Presentation by Victor Fortuno	
• Comments by John Constance	
5. Consider and act on the designation of the Ethics Officer	23
6. Consider and act on recommendation regarding the criteria and critical elements to be used to evaluate the performance of the Corporation's Inspector General	32
7. Consider and act on other business	46
9. Public comment	46
8. Consider and act on adjournment to closed session	46
Motions: 5, 10, 14, 39, 45	

P R O C E E D I N G S

(9:01 am.)

1
2
3 CHAIRMAN BeVIER: This is the open part of the meeting
4 of the Governance and Performance Review Committee. And I would
5 like to discover whether Tom Meites and Tom Fuentes are on the
6 line.

7 MR. MEITES: Yes.

8 MR. FUENTES: Yes. Tom Fuentes is.

9 CHAIRMAN BeVIER: Wonderful. Welcome. We're so glad
10 to have you. Please let us know if you need us to talk louder.
11 We'll do our best. And we'll do the same if we need to hear
12 more of what you have to say.

13 The first item on our agenda is to make a couple of
14 rather minor changes in the agenda itself. Excuse me. I have
15 to find it here in my book. The agenda says to consider and act
16 -- this is item 3 -- consider and act on whether to recommend to
17 the board the draft board member self-assessment doctrine, the
18 draft committee member self-assessment doctrine, and the draft
19 board evaluation schedule.

1 And we do not have for you a draft committee member
2 self-assessment. We have -- excuse me. What is it that we do
3 not have, Mr. Constance? You gave this to me -- please forgive
4 me -- yesterday, and I seem to have lost track of it. Okay.
5 One second. I found it.

6 We have the draft individual board member self-
7 assessment document and the draft board evaluation schedule and
8 the draft board self-assessment document. Is everybody clear
9 about that? What we do not have is the draft committee or
10 committee member self-assessment document because we have a
11 proposal to make about that.

12 So what I would invite is a motion to approve the
13 agenda, as amended to include those changes.

14 M O T I O N

15 MR. FUENTES: So moved.

16 MR. MEITES: Second.

17 CHAIRMAN BeVIER: Thank you. All right. The next item
18 on the agenda is the approval of the minutes of the committee's
19 meeting of August 2, 2008.

20 Is there a motion to approve those minutes?

21 M O T I O N

22 MR. McKAY: So move.

1 CHAIRMAN BeVIER: Second?

2 MR. STRICKLAND: Second.

3 CHAIRMAN BeVIER: All in favor?

4 (A chorus of ayes.)

5 CHAIRMAN BeVIER: Thank you. It passes without
6 objection.

7 The next item on the agenda is to consider and act on
8 whether to recommend to the board the draft individual board
9 member self-assessment document, the draft board self-assessment
10 document, and the draft board evaluation schedule.

11 We have those materials from John Constance, and I
12 would ask Mr. Constance to come up and tell us how we might
13 think about proceeding.

14 MR. CONSTANCE: Thank you, Madam Chairwoman. For the
15 record, I'm John Constance, director of Government Relations and
16 Public Affairs, and have volunteered to provide staff support
17 for this committee.

18 What we provided to you ahead of this meeting -- and in
19 fact, we have some additional copies that are being prepared

1 right now for those that may not have them; they'll be arriving
2 here shortly -- as Lillian mentioned, the draft individual board
3 member self-assessment document and the overall board self-
4 assessment document and an evaluation, proposed evaluation
5 schedule.

6 Let me explain for a moment what process we went
7 through in order to arrive at these drafts. We looked at --
8 first of all, to remind everyone, this is in response to the GAO
9 recommendation that the board conduct a self-evaluation.

10 And we examined a wide variety of choices of self-
11 assessment documents from a variety of nonprofit organizations.
12 And we looked at our partner organization, Corporation for
13 Public Broadcasting, and others that have comparable processes
14 and comparable documentation.

15 What we came up with was kind of a range of
16 possibilities, as I explained to Lillian, everything from
17 something that looks an awful lot like the SAT exam to something
18 as simple as a one-pager. We've come up with somewhat the
19 middle ground here, I think, as far as the documentation that
20 you have before you.

21 Let me mention what the purpose is of each of the two
22 specific forms that you have, and more importantly, explain what

1 they're not as much as what they are.

2 They're not report cards. They are designed
3 specifically -- in the case of the individual self-assessment
4 document, they are designed for each board member to kind of
5 look at their own participation in the board, to look at the
6 tools that they have available to them to provide their
7 participation and inform their participation, and take a look at
8 that as a feedback mechanism to the overall board on what their
9 needs are regarding training or orientation or other things as
10 the process goes forward of working with the board.

11 The draft board self-assessment document is typically,
12 in these kinds of processes, designed more to inform a
13 conversation than the are to be a stand-alone document. And by
14 that, I mean that they are designed to be completed by each
15 board member with basically a look at the board as a whole.

16 They look at the goals of the board. They look at what
17 the board intends to do in the future, particularly in the next
18 year. And with that document and the accumulation of that
19 information, typically, governance committees will then use that

1 as an outline to inform a conversation, to inform a meeting, a
2 future meeting -- we're proposing one in January -- to take a
3 look at the board as a whole, the board's performance, the
4 board's past year, the board's future year, and to really on the
5 record have a conversation facilitating by the governance
6 committee and probably the chairman of the board to look back
7 and look forward as a board.

8 That's what these are designed to do. That was really
9 the core of the recommendation from GAO, to link up with the way
10 this is done in other organizations. And that is what's
11 outlined here today.

12 CHAIRMAN BeVIER: Thank you, Mr. Constance.

13 Are there questions for Mr. Constance about these
14 documents and about what we have in mind with respect to the
15 kind of information we hope that they will evoke from board
16 members?

17 (No response.)

18 CHAIRMAN BeVIER: No questions? Do you like the
19 format? I assume from the -- we have deafening silence that can
20 be interpreted in these meetings in a variety of ways. One is
21 that you think it's so wonderful, you're speechless. And I'm
22 assuming that that may be what's -- I'm going to infer that

1 that's what's happening from the silence.

2 MR. CONSTANCE: I'm an optimist. I'm an optimist,
3 Madam Chairwoman, as I always --

4 M O T I O N

5 MR. McKAY: For the record, there's that old Latin
6 phrase which I will not try to repeat which, interpreted, means,
7 "Silence means consent."

8 CHAIRMAN BeVIER: Right. Well, so we still need to
9 have a motion that we adopt these documents as the individual
10 board member self-assessment -- that we recommend that the board
11 adopt these documents as the individual board self-assessment,
12 the board's self-assessment documents, and that we adopt at
13 least the January aspect of the timetable for completing this
14 self-assessment.

15 Is there discussion of this motion? I would just like
16 to say I like thee documents because I think they are short and
17 they get to the essence, and they don't require us to know more
18 than we do or to evaluate more extensively than we are able.
19 But they do force us to sit down and think about this and put

1 our thoughts on record, so to speak.

2 We have a motion on the table. Is there -- are you
3 ready to vote?

4 MR. MCKAY: Yes.

5 CHAIRMAN BeVIER: All those in favor say aye.

6 (A chorus of ayes.)

7 CHAIRMAN BeVIER: Those opposed?

8 (No response.)

9 CHAIRMAN BeVIER: The motion carries. It will be
10 recommended to the board.

11 MR. STRICKLAND: Madam Chair?

12 CHAIRMAN BeVIER: Yes?

13 MR. STRICKLAND: I don't remember whether there was a
14 second to the motion, but I will second it, just to correct the
15 record.

16 CHAIRMAN BeVIER: Thank you. That's helpful.

17 The fourth item on the board (sic) is board succession
18 planning. Presentation by --

19 MR. CONSTANCE: Madam Chairwoman, can I just make one -
20 - excuse me. Can I just make one addition?

21 CHAIRMAN BeVIER: Of course. Absolutely.

22 MR. CONSTANCE: And that is to circle back on the issue

1 of committee assessments. The full recommendation by the
2 General Accounting Office was to -- or the Government
3 Accountability Office was to also do committee assessments.

4 As we discuss this, as I discussed this with Lillian
5 leading up to this meeting, it was clear that it's going to be
6 difficult for, you know, a committee outside of each individual
7 committee to really make that assessment on behalf of the
8 committee. That was really the way the conversation went at the
9 last board meeting.

10 But the feeling -- and again, I think this is modeled
11 in other organizations -- that the best way to proceed with that
12 is simply to take each committee charter and ask at some point
13 in time -- and again, yet to be determined -- ask the committee
14 chairs to conduct with their own committee an assessment of the
15 committee's actions or performance against those charters.

16 I mean, that seems to be -- we've covered the
17 waterfront with everything else in terms of committee
18 responsibilities with the documents that you just recommended
19 for approval by the board. But in terms of specifically what

1 each one of the committees are doing, typically those are done
2 by committee chairs on other organizations.

3 And we were just -- you know, we were recommending that
4 that be the way that we proceed. I'd be more than happy to
5 facilitate that, working with the chairs in terms of what those
6 formats would be for the future. But that's the reason that
7 that was taken out of this particular agenda item.

8 CHAIRMAN BeVIER: Thank you, Mr. Constance. Do we need
9 a motion to proceed in that way, do you think? I mean, it seems
10 to me that we can have a consensus that that is what we will do,
11 and perhaps on each committee's agenda for the January meeting
12 or perhaps for the April meeting.

13 Maybe we should have given each committee at least a
14 year to operate under its new charter. And we can proceed in
15 that way to make sure that these conversations with the
16 committees get put on the agenda at an appropriate time, and
17 that the committee chairs will be, with your help, facilitators
18 of those discussions.

19 MR. McKAY: Well, I guess in light of the fact that
20 this -- normally I'd say no. But in light of the fact that the
21 GAO recommended this, it might be appropriate for us to have a
22 motion that would reflect our consideration of it and that,

1 because of our unique circumstances, that were are approaching
2 the committee self-assessment in this way.

3 M O T I O N

4 MR. McKAY: So accordingly, I would move that we adopt
5 the recommendation made by Mr. Constance, and that is that we
6 ask each committee chair some time in this following year to
7 take the committee charter and conduct its own committee self-
8 evaluation.

9 CHAIRMAN BeVIER: Is there a second?

10 MR. STRICKLAND: Second.

11 CHAIRMAN BeVIER: Thank you. Is there discussion of
12 the motion?

13 MS. SINGLETON: There's a question. This doesn't apply
14 to the ad hoc committee, does it?

15 CHAIRMAN BeVIER: No. You are not a standing
16 committee. You do not have a charter.

17 MS. SINGLETON: Good.

18 (Laughter.)

19 CHAIRMAN BeVIER: And I'm sure that you will agree with

1 me that the sooner you can disband, the better we all will be
2 because it will mean that you've accomplished your tasks.

3 MS. SINGLETON: I couldn't agree more with everything
4 you said.

5 CHAIRMAN BeVIER: I like her.

6 (Laughter.)

7 CHAIRMAN BeVIER: Okay. We had a second from Mr.
8 Strickland. Are you ready to vote?

9 MR. McKAY: Yes.

10 CHAIRMAN BeVIER: All in favor?

11 (A chorus of ayes.)

12 CHAIRMAN BeVIER: All opposed?

13 (No response.)

14 CHAIRMAN BeVIER: Thank you. Now we have finished with
15 item 3 on the agenda, and we will proceed to item 4 on the
16 agenda, which is succession planning, board succession planning,
17 with a presentation by Victor Fortuno.

18 MR. FORTUNO: Actually, that's -- the agenda seems a
19 little ambitious and the title there is a little grandiose,
20 board succession planning. I think all we have for this meeting
21 is at the last meeting, I think there was a question raised
22 about board tenure and whether board terms are staggered and

1 intended to be staggered.

2 So what we did was provided a very short memo which
3 simply addresses that and makes the point that the first board
4 consisted of board members with staggered terms, two-year terms
5 and three-year terms. And if the system had worked the way it
6 was designed in the statute, terms would have been staggered in
7 perpetuity.

8 As it happens, the practice with LSC has been that
9 terms expire, and under our statute, board members hold over
10 until such time as a successor is duly appointed and seated. So
11 the practical effect is that boards have held over. You've had
12 boards made up entirely of holdovers for some period of time.
13 When a new administration comes in, very typically what they do
14 is just go ahead and appoint a whole new board.

15 So the question, I think, at the last meeting was: Are
16 there staggered terms, and if so, how does that work? And I
17 think that it's the -- of course, the new administration will
18 decide for itself what it wants to do.

19 If the board is of a mind to communicate with the

1 transition team and take a position on staggered terms, either
2 pro or against, I think that the thought at the last meeting was
3 that the benefit of staggered terms would be that you would have
4 some institutional memory as you go on because I think some of
5 the board felt that there was a benefit to having watched the
6 old board in action and learned a little bit that way.

7 So this memo is just a short memo that sets out the law
8 on the terms of LSC board members, the fact that they were
9 intended to be staggered terms, the fact that in practice it has
10 been an entire new board put in place; but that while that's
11 been the practice, that's not what the law necessarily
12 envisioned at the outset, and just to be here to answer any
13 questions you might have.

14 CHAIRMAN BeVIER: Thank you, Vic. Are there questions
15 for Mr. Fortuno? I take it there's no problem with -- if we
16 were to decide to do this, there's no legal problem with us
17 approaching the transition team and telling them what we think
18 the administration ought to do with respect to the terms of LSC
19 board?

20 MR. FORTUNO: I think that to the extent that you can
21 share your experience and they can benefit from your experience,
22 I see no problem with it. I don't see a legal obstacle to it.

1 And I think from a practical standpoint, it's information that
2 might be of use to them.

3 My suspicion is that they will hit the ground running.
4 I assume that both candidates have teams in place and already
5 doing some work. I think what will happen is after the
6 election, we'll be contacted by a transition team and asked by
7 whoever is assigned to LSC and asked for materials on LSC.

8 And it may be that that would be the time for, if the
9 board wanted to weigh in on one issue or another, to go ahead
10 and make that communication. But certainly it would not hurt
11 for you to share some of the more salient lessons that you've
12 learned during your tenure here on the board.

13 CHAIRMAN BeVIER: Thank you. Are there comments from
14 committee members about this? Mr. Constance, you might be in a
15 position to help us think about this.

16 MR. CONSTANCE: The only thing that I would say is that
17 we would be more than happy to facilitate whatever the will is
18 of this committee and the board in that regard along the lines
19 of what Vic said and, you know, to the extent that -- relaying

1 some of that to Congress to support whatever the transition team
2 would want to do, we'd be more than happy to do that.

3 Again, that is assuming what the wisdom of this
4 committee and the board would be regarding staggered terms and
5 facilitating that.

6 CHAIRMAN BeVIER: All right.

7 MR. FORTUNO: I think that -- if I may, on the issue of
8 succession planning, of course, there will be additional work
9 done by staff and the board, this committee in particular, in
10 the months to come in terms of preparing materials, orientation
11 materials, for a new board and things of that nature.

12 But what we are addressing today is simply the question
13 of board terms and staggered terms and whether the board would
14 like to take a position on that and communicate it.

15 CHAIRMAN BeVIER: Sure. I understand that. Are there
16 thoughts of committee members or other board members who are not
17 members of the committee on this issue and whether we should
18 weigh in on it? Mr. McKay?

19 MR. MCKAY: I don't think there's any harm in doing so,
20 and I think it's a good idea. My concern is that this is going
21 to get lost in a lot of other things, and I'm not sure how much
22 progress we're going to make. But I think we ought to do

1 something, perhaps send a letter.

2 If there's someone who knows someone on the transition
3 team, they ought to reach out to them. But I'm concerned as to
4 whether or not it's worth the effort for fear that it's going to
5 get lost in a lot of other things. And you notice I'm not
6 saying more important things, just a lot of other things.

7 CHAIRMAN BeVIER: Right. I understand. My thought
8 would be, honestly, that the -- I understand what the issue is,
9 and that is that what you want is a board that starts its term
10 with some idea of what it is that it's doing.

11 I'm not sure that staggered terms is the answer to
12 that, especially since it would be a new administration
13 nominating and putting these people in place, simply because I
14 think the cohesion that happens with a board, the communication
15 among members of the board, how they get to know one another's
16 working relationships, and I just don't think that the
17 institutional memory aspect is a huge bonus. Everybody kind of
18 learns the institution at their own pace and so forth.

19 More important for us in my view is, as a

1 responsibility to the new board however the new administration
2 decides to populate the board, is to make some plans for their
3 training so that we take leadership to pass it on so that what
4 happened to us in terms of kind of a big of a vacuum in terms of
5 how we -- I mean, we tried to -- and everybody tried. But there
6 wasn't a mechanism that had been put in place, you know, in a
7 deliberate way to bring us up to speed.

8 MR. FORTUNO: Some institutionalized, structured
9 orientation program?

10 CHAIRMAN BeVIER: Sure, that we could have some input
11 on. So things that we needed -- would have liked to have known
12 and sort of how to do it generally. To my mind, that is a much
13 more valuable way of us having input into how the new board
14 starts and how they get going and how they proceed.

15 Unless I hear a motion to weigh in to send a letter to
16 the transition team, I'm just going to ask that something like
17 that be prepared for the January meeting and that we begin to
18 consider in a serious and careful way whether we can help the
19 new board members. Is that all right?

20 MR. McKAY: Yes.

21 MR. STRICKLAND: Sounds good.

22 CHAIRMAN BeVIER: All right. That's what we'll do.

1 MR. CONSTANCE: Madam Chairwoman, the only thing I
2 would say, I think the board's self-assessment documents and the
3 conversation that you'll have as a board in January would
4 dovetail nicely with what you're suggesting. And taking a look
5 at what the models are for board orientation, and preparing an
6 outline of what that might consist of to help that process, you
7 know, as Vic said, we certainly can facilitate.

8 CHAIRMAN BeVIER: Thank you very much. That will be
9 helpful.

10 The item on the agenda is the recommendation for us to
11 consider and act on the designation of the ethics officer. Our
12 IG has raised a sort of institutional issue with respect to
13 this, and I think it's something that we need to take under
14 advertisement. Mr. Schanz?

15 MR. SCHANZ: This is Jeff Schanz, the Inspector General
16 for the Legal Services Corporation. First off, I appreciate the
17 time and the committee placing this item on the agenda. I see
18 and I come at this issue with some fresh eyes from the
19 Department of Justice IG's office wherein the general counsel

1 has to be very careful to determine who the client is.

2 In LSC, the client is both the board and the
3 Corporation. And under the notion that no person can serve two
4 masters, I saw an inherent conflict in having the general counsel
5 either of the IG or of the Corporation reporting to two
6 different persons.

7 Now, in the IG's situation, the IG Reform Act, which I
8 can talk about in a little bit, requires any allegations against
9 the Inspector General to go to a newly formatted Integrity
10 Committee. But in the case of the Corporation, and this is
11 where I saw it as more of a systematic issue, I'm not sure that
12 there's an arm's length transaction between having the general
13 counsel, who is the board's counsel as well as the Corporation's
14 general counsel, serve those dual roles.

15 And when I first came on board, it seemed to me that
16 there wasn't a lot of discussion or forethought in the selection
17 of the general counsels as the ethics officers for both the
18 Corporation and, respectively, for the OIG.

19 And going back in the minutes of that selection
20 process, I didn't see any discussion. And my goal here today is
21 just to open that up for discussion so that some of these issues
22 that I see as inherent conflict can be discussed more fully.

1 CHAIRMAN BeVIER: And you're talking, I take it, just
2 institutionally?

3 MR. SCHANZ: Right.

4 CHAIRMAN BeVIER: That it's a generic conflict and one
5 that can't be --

6 MR. SCHANZ: I could be making this presentation to HHS
7 or -- yes. It would be -- I think it's endemic throughout
8 government service if you have too close a relationship between
9 an external board and an internal management. And same thing
10 with the IG. My general counsel reports to me.

11 We do have another option as an IG because there is a -
12 - used to be the PCIE Integrity Committee, but now it's the
13 Council of Inspector Generals Integrity and Efficiency. They
14 haven't come up with an acronym yet, but I like CIGIE.

15 CHAIRMAN BeVIER: We've given ciggies up. Didn't you
16 know that?

17 (Laughter.)

18 CHAIRMAN BeVIER: So what you're suggesting is that
19 insofar as there's a conflict of interest with the IG having the

1 Inspector General's general counsel serve as the ethics officer,
2 that -- I'm not sure that I understand it. That is -- the
3 CIGIEs are now, in effect, the ethics officers for IGs?

4 MR. SCHANZ: No. They have an Integrity Committee. So
5 there is the appellate process if --

6 CHAIRMAN BeVIER: I see. But the first line of
7 complaint goes to the general counsel?

8 MR. SCHANZ: It would.

9 CHAIRMAN BeVIER: So that's --

10 MR. SCHANZ: But not the general counsel because my
11 general counsel has been with the Corporation for over 15-plus
12 years.

13 CHAIRMAN BeVIER: Sure. Well, but --

14 MR. SCHANZ: And I would like, out of my ethics
15 officer, to be -- I don't want to say more objective and
16 independent because I can't make that statement, but have more
17 of an arm's length transaction from all the history that has
18 occurred within the LSC.

19 CHAIRMAN BeVIER: Okay. Well, I think that it would be
20 helpful for this committee to -- I'm glad that you raised this
21 with us. I'd like to -- did you have some comments?

22 MR. GLOVER: No. I'm just here for moral support,

1 really.

2 CHAIRMAN BeVIER: Oh, good.

3 (Laughter.)

4 CHAIRMAN BeVIER: We need it. Are there questions and
5 issues? Mike?

6 MR. McKAY: When I knew this was coming, I was trying
7 to think about it. And I was trying to figure out why there
8 would be a problem, knowing our general counsel. And your
9 statements were quite clear. There's no question about his
10 strong ethical background and his quality as an ethics officer
11 but for the fact he's general counsel. And that's one of the
12 reasons why I enthusiastically supported that designation, with
13 some thought.

14 But I hadn't thought about it, and I actually look at
15 it a little differently from the way you're looking at it. We
16 as a board, and I'm assuming the rest of the leadership of the
17 Corporation, management and so forth, would like to have as a
18 resource the general counsel to advise us if and when the ethics
19 officer comes to us with an issue. And that really is a

1 manifestation of the problem that you presented, that is, the
2 servant can't have two masters.

3 And so it seems to me your suggestion is a very, very
4 good one in that it has to be someone other than the general
5 counsel for a series of reasons, not the least of which is we as
6 a board and management would need the general counsel to advise
7 us without also be carrying the burden as the -- the important
8 burden of being the ethics officer.

9 So I think it's a great idea, and it just seems to me,
10 unless I hear a screaming objection, that we start talking about
11 who -- or what position -- who should be feeling that slot.

12 CHAIRMAN BeVIER: Well, I agree that it's a good
13 suggestion, both from the IG's shop and our shop, for a whole
14 bunch of reasons. And I think that what occurs to me is that
15 I'm not sure that this is an issue that is something that we
16 ought to be sort of even trying to address now because it's
17 inevitably going to involve both institutional issues of
18 importance and sort of personnel issues, I guess I would
19 describe it as.

20 I wonder if it would be possible to and if the
21 committee's pleasure would be to delegate to the chairman of the
22 board the job on behalf of the board of identifying an ethics

1 officer and then reporting to the board. I see that you don't
2 think that's a good idea, Mr. McKay.

3 MR. MCKAY: No. It is. But it seems to me that this
4 is a management function, and it seems to me it might be more
5 appropriate to ask management to address the issue and come back
6 with a recommendation and consult with the chair rather than --
7 I mean, it is a management function to find an ethics officer.

8 CHAIRMAN BeVIER: I thought that the Code of Ethics had
9 the board identifying the ethics officer. So I certainly would
10 think -- and I think that's what the code says.

11 But I think that what -- let me just describe to you
12 what I had in mind, which is that the chairman of the board
13 would consult with management and the IG and, on behalf of the
14 board, identify the person institutionally who should be the
15 ethics officer for the inspector general's office and the ethics
16 officer for management.

17 It's a tricky thing because there's a sort of inherit
18 conflict of interest no matter who's talking about this. But
19 what we want is to resolve this problem of this generic and

1 systematic and inevitable conflict of trying to serve two
2 masters.

3 So I would recommend that we deleting this task to the
4 board unless our general counsel tells us --

5 MS. SINGLETON: To the board?

6 CHAIRMAN BeVIER: To the chairman of the board unless
7 our general counsel tells us that that's a problem. And he
8 seems to think that it's not. He's shaking his head no.

9 Ms. Singleton?

10 MS. SINGLETON: Madam Chairman, do you see the same
11 conflict carrying through to other members of the general
12 counsel's office in either the OIG or management?

13 MR. SCHANZ: No, I do not. I think, knowing the staff
14 in the Corporation and certainly knowing my staff, I think that
15 they could be very independent serving as ethics officers. My
16 concern is the head of the unit reporting to two different
17 people.

18 CHAIRMAN BeVIER: I think we should have this in the
19 form of a motion. I would like to have a motion that this
20 committee recommend to the board that the board delegate to the
21 chairman of the board, in consultation with the Inspector
22 General with respect to his shop and management with respect to

1 management, of an ethics officer. Is there such a motion?

2 (No response.)

3 CHAIRMAN BeVIER: Silence is golden. I guess we're not
4 going to do that, then. Maybe we'll just do it without a
5 motion.

6 M O T I O N

7 MR. McKAY: I would move that the chairman of the
8 board, in consultation with the IG and with management, come up
9 with a proposal for the designation of an ethics officer.

10 CHAIRMAN BeVIER: I thought that's what I said, but --

11 MR. McKAY: I didn't hear management.

12 MS. SINGLETON: Yes, yes. She said management.

13 MR. McKAY: Then I'm sorry. The second cup of coffee
14 hasn't kicked in.

15 CHAIRMAN BeVIER: That's fine. That's right. I
16 invited the motion. He accepted the invitation.

17 Is there a second?

18 MR. STRICKLAND: Second.

19 CHAIRMAN BeVIER: All in favor?

1 (A chorus of ayes.)

2 CHAIRMAN BeVIER: Opposed?

3 (No response.)

4 CHAIRMAN BeVIER: That will be done. Thank you so
5 much. This will be recommended to the board for their -- thank
6 you for bringing this issue to our attention, Jeff. We
7 appreciate it.

8 MR. SCHANZ: Thank you for listening.

9 CHAIRMAN BeVIER: This is item 6, and Mr. Schanz,
10 you're up again. So the item here is to consider and act on
11 recommendation regarding the criteria and critical elements to
12 be used to evaluate the performance of the Corporation's
13 Inspector General.

14 And you have sent me copies, and I've forwarded them to
15 the members of the committee and you have extra copies here, of
16 the criteria that you have identified and with which we plan to
17 evaluate you, probably in April. Those will be the criteria,
18 but in terms of which also we'd like to just keep in touch with
19 you from time to time.

20 So could you tell us a little bit about the criteria?

21 MR. SCHANZ: Well, what we've done or what I have done
22 is, as I've mentioned before in front of the full board, I've

1 been evaluated my entire career. That's part of being a federal
2 employee.

3 One recommendation I would make, though, is that if we
4 can, is to consider placing the evaluation process on a fiscal
5 year basis. Now, I'm a bit of an anomaly because I came in
6 through half of the rating period. My first day on the job was
7 March 3, 2008. And ideally, I would have had an interim rating
8 as of March 31st. Obviously, you didn't have any standards for
9 that.

10 So what I did is I've taken what was currently out
11 there from the prior IG. I've superimposed upon that what are
12 known as GPRA, the Government Performance Results Act, which
13 does not apply here.

14 But I was very intimately familiar in instituting that
15 throughout the entire Department of Justice, so what I did is I
16 took some of the standards that we had used for the inspector
17 general at Justice and applied them to the relevant work that
18 I'll be doing here at LSC. And those are the information that
19 you have in front of you.

1 A subsequent request from Herb Garten, who isn't here
2 right now, was to identify which were the statutory duties of
3 the IG. And those are highlighted in yellow, if you have the
4 document in your books, and if not, I have extra copies. But
5 those are the statutory duties that come right out of the IG
6 legislation.

7 In addition to that, in trying to keep any sort of
8 assessment system or performance management assessment system as
9 objective as possible, I've placed performance measures for
10 which you can rate me. And the performance measures are much
11 more quantifiable.

12 And the whole process -- excuse me, Madam Chairman.
13 We're getting copies for those that don't have them.

14 CHAIRMAN BeVIER: Oh, thank you.

15 MR. SCHANZ: And of the three main areas of evaluation,
16 the first two, A.1 through -- and we're passing these out so we
17 are all looking at the same document, hopefully -- A and B are
18 statutory duties per the IG Act. Included, they've been
19 reassessed in the IG Act, or IG Reform Act of 2008.

20 CHAIRMAN BeVIER: Would you say that again? Which
21 three?

22 MR. SCHANZ: Well, A and B, the statutory duties under

1 A, are from the legislation, from the IG Act.

2 MS. SINGLETON: Even A.8, which isn't highlighted?

3 MR. SCHANZ: Well, no. That one would not be. But
4 that is something that I think I should -- a standard I should
5 be held to.

6 MS. SINGLETON: I'm not objecting to the standard. I'm
7 just --

8 MR. SCHANZ: Yes. Particularly in light of our just
9 previously concluded discussion on ethics. And then B,
10 statutory duties is communications, and I just want to remind
11 the full board that I came on with my three Cs of communication,
12 cooperation, and coordination.

13 And this is a statutory duty to keep the board,
14 management, and Congress fully and currently informed of
15 appropriate aspects of OIG operations and findings. And as
16 we've discussed in the past, I will do that on an as-needed
17 basis, but at a minimum, at least quarterly at the board
18 meetings.

19 In addition to that, we now have a fully functioning

1 and robust audit committee that I communicate with fairly
2 regularly on any issue that they have or any issue that I have.

3 Now, the only statutory (sic) duty in the document that
4 has not been handed out -- or has been handed out to you is
5 executive functions, and that's just good management. That's
6 not required by the IG Act or by the board, but that's just
7 plain old good management, executive functions.

8 I do a strategic plan. I do an annual plan. I do the
9 annual budget presentation to the board. And as what I think is
10 a fully engaged manager, I want to make sure that my staff has
11 all the expertise that they need, which is item C.4,
12 "collectively pes the core competencies needed to accomplish the
13 OIG mission."

14 I believe in training. I believe in on-the-job
15 training. And as I continue down the path of my IG tenure here,
16 I want to make sure that my staff becomes one of the best IG
17 staffs in the now-CIGIE.

18 CHAIRMAN BeVIER: I'm not going there. That is an
19 admirable goal. Is that your presentation, so I can ask for
20 questions if board members have --

21 MR. SCHANZ: Yes, it is. Yes, it is.

22 CHAIRMAN BeVIER: Members of the committee have

1 questions for Jeff?

2 MR. McKAY: I think these look great.

3 CHAIRMAN BeVIER: Other comments?

4 (No response.)

5 CHAIRMAN BeVIER: I think they do, too. And I think
6 they'll be very helpful, and they will help us to guide our own
7 thinking, and they will help you to have something to work to.
8 And I appreciate them very much. At the last meeting, we talked
9 a little bit, as I recall, about the agreement that we had --
10 the protocol that we had managed to enter into with the previous
11 IG.

12 It's your view that we don't need a protocol, and I
13 think -- I just want to make sure that we are all on the same
14 page about this -- I think that we are in agreement with you
15 that at least given your commitment to communication,
16 cooperation, and coordination -- are those the right Cs?

17 MR. SCHANZ: Yes, ma'am.

18 CHAIRMAN BeVIER: -- and we believe that that's going
19 to be helpful, and you have said that you want to be -- that you

1 are willing to be reviewed, I think we're all on the same page
2 about what this is about. So we can proceed without the
3 protocol, and we thank you very much for that.

4 Now, I don't think we need to have a motion to
5 recommend these criteria to the board. We haven't done that
6 with respect to the president's performance criteria, and I
7 think we should just adopt them as kind of working for this
8 committee unless someone feels that we ought to have a motion.
9 I'm perfectly happy to entertain one.

10 Ms. Singleton?

11 MS. SINGLETON: Madam Chair, I feel it would be useful
12 for the future to have a motion so that it's in the records or
13 the board minutes that these are the criteria by which an
14 inspector general will be evaluated. And I do think that might,
15 if anybody looks at history, have the effect of forestalling
16 some problems we got into before.

17 CHAIRMAN BeVIER: That makes sense. I can see the
18 argument for doing that. And I don't think it hurts to have a
19 motion, in any event, especially since there has been an issue
20 generally in the government about whether IGs get evaluated and
21 the processes by which that occurs.

22 I would invite a motion that we recommend that the

1 board adopt these as the performance criteria for inspectors
2 general. Do I hear a motion?

3 M O T I O N

4 MR. MCKAY: So move.

5 CHAIRMAN BeVIER: A second?

6 MR. STRICKLAND: Second.

7 CHAIRMAN BeVIER: All in favor?

8 (A chorus of ayes.)

9 CHAIRMAN BeVIER: Thank you very much.

10 MR. SCHANZ: I would like to make one point of
11 clarification if I may, Madam Chairwoman. Most IGs in the
12 government sector do not get rated.

13 CHAIRMAN BeVIER: We're not going to rate you. We're
14 going to evaluate you.

15 MR. SCHANZ: Okay.

16 CHAIRMAN BeVIER: I regard it as an important
17 distinction, I mean, I think, because it's less formal and
18 there's -- but nevertheless --

19 MR. SCHANZ: No. That's fine. I just wanted to

1 clarify that point because I do report to the board. So that
2 makes perfect sense.

3 CHAIRMAN BeVIER: Right. And we do appreciate your
4 willingness to have these continuing conversations, and also,
5 that you're going to make your shop the best one in the
6 government. That's very encouraging, and we wish you well.

7 MR. SCHANZ: Thank you very much.

8 CHAIRMAN BeVIER: Ms. Singleton?

9 MS. SINGLETON: Before you go, the fiscal year request,
10 does that mean that -- and are you going on the government
11 fiscal year or on the calendar fiscal year?

12 MR. SCHANZ: I would like to go on a government fiscal
13 year. I have an annual work plan that will be presented a
14 little bit later in this meeting that will set out our goals and
15 objectives for the '09 fiscal year, which starts October 1,
16 2008. That can be modified --

17 MS. SINGLETON: So it's started already?

18 MR. SCHANZ: It has started already, yes. That can be
19 modified, but what I would like to do is have my performance
20 assessment on the same period as what I'm telling the board I'll
21 be able to achieve within that same period of time. And it's a
22 12-month block.

1 It would make sense because the Corporation -- and
2 correct me if I'm wrong here, Matt -- the Corporation is --
3 their performance measures are -- ratings are on a fiscal or
4 calendar year basis? Okay. I'll get back with you. We don't
5 know the answer on that. I haven't been here long enough to
6 have rated anyone.

7 MS. SINGLETON: But what I'm wondering is does that
8 mean you want to have an evaluation some time this quarter for
9 last fiscal year, for the time you were here during the last
10 fiscal year, or not?

11 MR. SCHANZ: You could do an interim. But my
12 suggestion is to make the performance rating or performance
13 measurements relevant, it should be tied to actual work that I
14 propose to do during that 12-month period.

15 Now, since I came in -- I mentioned a little earlier it
16 was an anomaly. I came in the middle of the year. You could do
17 a -- it would be to the board's pleasure and the committee's
18 pleasure. You could do an interim rating and then have the
19 formal rating on the same schedule as you do with the president

1 and with the rest of the LSC employees.

2 CHAIRMAN BeVIER: Right. What is the committee's
3 pleasure on the timing of this? Whether we should do an interim
4 review in April and a full review in October, consistent with
5 the fiscal year? Are there thoughts?

6 MR. McKAY: That makes sense to me.

7 CHAIRMAN BeVIER: To do an interim review?

8 MR. McKAY: Yes.

9 CHAIRMAN BeVIER: How full do you think the interim
10 review ought to be? Let me explain my question because the full
11 review that we did, that we were prepared to do right before the
12 former inspector general left the corporation, was one that
13 entailed, you know, a day of interviews of his staff and things
14 of that nature that -- I mean, it was rather time-consuming and
15 fairly thorough.

16 Now, I don't know whether that's what we contemplate if
17 we think about ginning up for an interim review, whether it be
18 in essence a full review but without the year plan to go by. So
19 what is it that you have in mind in terms of that review?

20 MR. McKAY: The interim review?

21 CHAIRMAN BeVIER: Yes.

22 MR. McKAY: I would envision us getting a copy of the

1 criteria --

2 CHAIRMAN BeVIER: Yes.

3 MR. McKAY: -- looking at it ahead of time, and then
4 sitting down with the IG in closed session and just having a
5 discussion. If we've picked up things during that previous six-
6 month period of time, we can share all the positive things we've
7 heard, which I'm sure will overwhelm whatever other concerns we
8 might have.

9 So really informal. Just touch base, which I heard
10 that our Inspector General would like to do anyway. But I do
11 not want to create an undue burden on either the committee or on
12 Jeff.

13 CHAIRMAN BeVIER: So that it would be not as formal as
14 a performance review that will take place, I take it, if we're
15 thinking on the same page, in October; but it would be less
16 informal than what we're doing with you now. It would be more
17 careful, more deliberate, going through with you and sort of
18 checking as a committee.

19 MR. SCHANZ: Right.

1 CHAIRMAN BeVIER: Okay. I think we'd better have
2 another motion, then, to recommend this to the board, that we
3 adopt -- I mean, this is the motion -- well, maybe you can come
4 up with a motion. I can try, but I'll let you do it.

5 MR. McKAY: Were you looking to me?

6 CHAIRMAN BeVIER: Yes.

7 M O T I O N

8 MR. McKAY: Well, I would move that we conduct a formal
9 performance evaluation of the Inspector General every year at
10 our October meeting, and that in the April meeting, we conduct
11 an informal performance review along the lines that we've
12 discussed.

13 MR. STRICKLAND: Second.

14 CHAIRMAN BeVIER: Is that a recommendation to the
15 board, Mike, or is it --

16 MR. McKAY: Yes.

17 CHAIRMAN BeVIER: Okay. That we recommend to the board
18 that we adopt that -- calendar that schedule for reviews of the
19 Inspector General.

20 MR. McKAY: Correct.

21 CHAIRMAN BeVIER: And there's a second. Is there
22 discussion of the motion?

1 (No response.)

2 CHAIRMAN BeVIER: All those in favor?

3 (A chorus of ayes.)

4 CHAIRMAN BeVIER: All those opposed?

5 (No response.)

6 CHAIRMAN BeVIER: We will do it.

7 Is there anything else that we need to talk about with
8 you, Jeff, in this particular meeting?

9 MR. SCHANZ: No. Thank you for the opportunity to be
10 heard.

11 CHAIRMAN BeVIER: Thank you very much. We appreciate
12 it.

13 Next we have to consider and act on other public
14 business -- on other business. Do we have any other business to
15 come before the open session of this committee?

16 (No response.)

17 CHAIRMAN BeVIER: Public comment?

18 (No response.)

19 CHAIRMAN BeVIER: Finally, we have to consider and act

1 on whether to authorize an executive session of the board to
2 address items listed below under the closed -- no, no. Sorry.

3 Excuse me.

4 MR. FORTUNO: I'm sorry. The executive session, any
5 executive session of the board or any of its committees, is
6 pursuant to a vote of the board. And I assume that vote was
7 taken at the dinner.

8 But this committee wouldn't vote to close. It's the
9 board that does that. So you need not -- item No. 9 is there in
10 error, should not be on your agenda.

11 CHAIRMAN BEVIER: I do not believe that the --

12 MR. STRICKLAND: Wasn't it published? Wasn't the
13 agenda published in the Federal Register, that there would be a
14 closed session?

15 MR. FORTUNO: The agenda was published -- there was a
16 Federal Register notice that indicated there would be a closed
17 session pursuant to a vote of the board. So it has been duly
18 published.

19 The question here was whether agenda item 9 was
20 properly on this agenda, and no, committees do not vote to close
21 their own meetings. The board would vote to close any session
22 of the board or one of its committees.

1 MS. SINGLETON: Can we convene a board meeting right
2 now solely for the purpose of taking such --

3 MR. FORTUNO: You don't actually have to convene a
4 meeting. That's why it could have been done -- I thought it was
5 done at -- so long as you have the members here, it doesn't have
6 to be at a formally convened meeting.

7 You could just take a vote of the directors. It
8 wouldn't be limited to this committee. And you have to have a
9 majority of the directors approving the closure.

10 CHAIRMAN BeVIER: All right. So I would -- the first
11 thing I would do is vote to adjourn the open session of the
12 Governance and Performance Reviews Committee. Is there a motion
13 to adjourn the open session?

14 MR. STRICKLAND: So moved.

15 CHAIRMAN BeVIER: Second?

16 MR. MCKAY: Second.

17 CHAIRMAN BeVIER: All in favor?

18 (A chorus of ayes.)

19 CHAIRMAN BeVIER: All opposed?

1 (No response.)

2 CHAIRMAN BeVIER: The open session of the Governance
3 and Performance Reviews Committee is adjourned.

4 (Whereupon, at 9:53 a.m., the committee was adjourned
5 and the full board was called into session.)

6 MS. BeVIER: Frank, would you mind convening the board
7 to --

8 CHAIRMAN STRICKLAND: Yes. Well, you heard the
9 discussion by Vic Fortuno, and we have a quorum of the board
10 present. So is there a -- I would entertain a motion to have a
11 closed session of the Governance and Performance Reviews
12 Committee, to commence immediately. Is there such a motion?

13 MS. BeVIER: So moved.

14 MR. McKAY: Second.

15 CHAIRMAN STRICKLAND: Any discussion?

16 (No response.)

17 CHAIRMAN STRICKLAND: All in favor, please say aye.

18 (A chorus of ayes.)

19 CHAIRMAN STRICKLAND: Opposed, nay.

20 (No response.)

21 CHAIRMAN STRICKLAND: The ayes have it and the motion
22 is approved.

1 MS. BeVIER: Thank you.

2 (Whereupon, at 9:55 a.m., the board was adjourned, to
3 commence the closed session of the Governance and Performance
4 Reviews Committee.)

5 * * * * *