

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

TELEPHONIC MEETING OF THE
BOARD OF DIRECTORS

OPEN SESSION

Tuesday, May 21, 2013

11:04 a.m.

Legal Services Corporation
3333 K Street, N.W.
Washington, D.C. 20007

BOARD MEMBERS PRESENT:

John G. Levi, Chairman
Martha L. Minow, Vice Chair
Sharon L. Browne
Robert J. Grey, Jr.
Charles N.W. Keckler
Victor B. Maddox
Laurie Mikva
Julie A. Reiskin
Gloria Valencia-Weber
James J. Sandman, ex officio

STAFF AND PUBLIC PRESENT IN THE CORPORATION'S OFFICES:

Lynn Jennings, Vice President for Grants Management
Richard L. Sloane, Special Assistant to the President
Rebecca Fertig, Special Assistant to the President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary

Mark Freedman, Senior Assistant General Counsel,
Office of Legal Affairs

Atitaya Rok, Staff Attorney, Office of Legal Affairs

Katherine Ward, Executive Assistant, Office of Legal
Affairs

Laurie Tarantowicz, Assistant Inspector General and
Legal Counsel, Office of the Inspector General

Joel Gallay, Special Counsel to the Inspector
General, Office of the Inspector General

Ronald "Dutch" Merryman, Assistant Inspector General
for Audit, 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

Carol A. Bergman, Director, Office of Government
Relations and Public Affairs

Rebecca Weir, Government Affairs Representative,
Office of Government Relations and Public Affairs

Lora M. Rath, Deputy Director, Office of Compliance
and Enforcement

Jon Asher, Executive Director, Colorado Legal
Services

Chuck Greenfield, National Legal Aid and Defender
Association (NLADA)

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Motions: 4, 21, 21, 22, 26, 41

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

2 (11:04 a.m.)

3 CHAIRMAN LEVI: I'm going to call the meeting
4 to order. This is the duly noticed meeting of the
5 Board of Directors of the Legal Services Corporation,
6 published in the Federal Register, I think, eight days
7 ago.

8 If I could have a motion to approve the
9 agenda?

10 M O T I O N

11 MS. MIKVA: I'll move.

12 CHAIRMAN LEVI: Second?

13 MR. MADDOX: Second.

14 CHAIRMAN LEVI: Okay. All in favor?

15 (A chorus of ayes.)

16 CHAIRMAN LEVI: We now have -- is the
17 Inspector General there in the room?

18 MR. MERRYMAN: Jeff is not, but this is Dutch.
19 I'm substituting for him. And we also have other
20 members of the IG shop here, Joel Gallay, Dave Maddox,
21 Tom Coogan, and Laurie Tarantowicz.

22 CHAIRMAN LEVI: We have a copy of the

1 Inspector General's Semiannual Report to Congress. Do
2 any of the board members have any questions for the IG
3 staff regarding the report? Any concerns? Any issues?
4 Anything that the Inspector General wishes to point
5 out?

6 MR. MADDOX: John, can you hang on a second?

7 CHAIRMAN LEVI: Yes.

8 MR. MADDOX: I just had a question about the
9 discussion on page 5 of the letter -- I'm sorry, page
10 3.

11 MS. TARANTOWICZ: Of the letter or the report,
12 Vic?

13 MR. MADDOX: Pardon me. The Legal Aid and
14 Defender Association, Inc. audit. And I wondered if
15 this is a common occurrence or if this is extraordinary
16 where it says that, "The grantee did not provide
17 requested user account profiles for the ADP payroll
18 system." Apparently refused to do that, so that the
19 OIG could not fully evaluate the internal controls?

20 MR. MERRYMAN: When we were onsite, we were
21 trying to get who had permission to do what to the
22 system and control logs in looking at the controls over

1 payroll because we had individuals who had access to
2 accounting as well as personnel.

3 We asked them to provide those at the time we
4 were there. They could not provide them to us. They
5 said they didn't know how, or they tried. And we did
6 not get a listing of the people who had access until
7 three or four weeks, maybe even longer, after that.
8 But there was no control log, so we don't know if that
9 listing was manipulated. So we could not rely upon
10 that data.

11 So without knowing who had permissions at the
12 time of the audit, without being able to look at
13 control logs to see what changes were made, it impaired
14 out ability to conduct the audit and be able to -- with
15 the degree of confidence that we need that the
16 information is correct.

17 CHAIRMAN LEVI: But the people who had the
18 information were available three or four weeks later?

19 MR. MERRYMAN: No. It took them that long to
20 finally send us something. But again, it was a
21 situation where, without control logs, we don't know
22 what if any changes were made in that period of time to

1 that listing. So we couldn't get computer control logs
2 to see what was done.

3 So we knew if only those people had access or
4 other people. Usually you want to get that type of
5 information onsite immediately. Usually it's not
6 difficult. They had difficulty producing it. They
7 weren't refusing, except it was just overly difficult
8 to get, and by the time they supplied it after we left
9 the site, we could not with any confidence rely upon
10 that information.

11 CHAIRMAN LEVI: Vic's question is, is this a
12 typical occurrence?

13 MR. MERRYMAN: No. Usually we don't have a
14 scope limitation on most things. But this one was such
15 that -- it was over payroll, which is 80 percent of the
16 budget, or 70 to 80 percent.

17 CHAIRMAN LEVI: Yes.

18 MR. MERRYMAN: It was very significant.

19 CHAIRMAN LEVI: And are they aware of the
20 concern that we had?

21 MR. MERRYMAN: Yes.

22 CHAIRMAN LEVI: Okay. Vic, do you have any

1 further question on that?

2 MS. REISKIN: This is Julie. I have a
3 question. Is there any kind of explanation from the
4 director about what they're going to do to not have
5 this problem again?

6 MR. MERRYMAN: Not have the problem again? I
7 would have to look at the audit report and the
8 documentation on it.

9 MS. REISKIN: I mean, if they can't get into
10 this, that's pretty basic stuff and it's -- there
11 should be someone who knows how to do it. And I would
12 look at that as a staff -- like why did this happen and
13 what are they going to do to fix it? But maybe that's
14 too micromanagement. I don't know.

15 CHAIRMAN LEVI: Well, maybe this is a question
16 for Jim Sandman. At this stage of the game, when we
17 learn something of this nature, what should we be
18 doing?

19 PRESIDENT SANDMAN: The Office of Compliance
20 and Enforcement should be following up to be sure that
21 the program has taken corrective action to respond to
22 the finding of the IG.

1 MS. RATH: Lora is here.

2 CHAIRMAN LEVI: And that's what I wondered.
3 And so has this been referred for that purpose?

4 MS. RATH: Yes. Yes. This is Lora Rath from
5 the Office of Compliance and Enforcement. The LADA
6 audit was referred to our office. We reviewed the
7 report, we reviewed the information provided by the
8 grantee, and we agreed with the OIG's assessment.

9 We have written to them in early April, I
10 believe it was, asking for additional information and
11 what steps they've taken to correct the issues. That
12 information was returned to us too late. We're
13 reassessing the.

14 If it appears the program has not fixed the
15 problems, we will schedule them for an onsite visit.
16 But that's where we are right now. We're going back
17 and forth with the program to see what steps they've
18 taken since they received the OIG's report.

19 CHAIRMAN LEVI: This is the kind -- well,
20 anyway, I think it's appropriate, given the level of
21 questioning here, to basically -- the Board's
22 interested in this. This is payroll. And maybe at the

1 July meeting, there can be a further update on this.

2 MS. RATH: Okay. We can do that. We can let
3 you know what happened with the information that they
4 provided and what steps we're going to be taking in the
5 immediate future.

6 CHAIRMAN LEVI: Any other questions for the IG
7 about the report?

8 MS. MIKVA: This is Laurie Mikva. I had a
9 question on page 16 about the grantee employees engaged
10 in prohibited activities. Do we know about this? This
11 seemed news to me, and I guess I wondered what the
12 response of management was. I didn't see anything in
13 the letter addressing this.

14 MR. MERRYMAN: We'll get Mr. Coogan to talk to
15 that.

16 MR. COOGAN: If this is TRLA, this was
17 referred to Management.

18 MS. RATH: Yes. The Office of Compliance and
19 Enforcement had two referrals from the OIG, both from
20 the audit division and the investigation division.
21 Based on the audit division referral, which was earlier
22 in the year, we scheduled an onsite, focused fiscal

1 review, which was conducted in October of 2012.

2 At that time, we also looked into the findings
3 that were referred to us by the investigations side of
4 the OIG. The draft report on that -- and we once again
5 agreed with many of the findings. We also didn't on a
6 few, and found some of our own.

7 The draft report for that was issued probably,
8 I'm going to say, 30 days ago, and they requested,
9 because of the amount of findings, additional time to
10 respond. But we will be following up with them through
11 the corrective action process, and if need be, special
12 grant conditions as we go on. But Management is
13 investigating TRLA and has been onsite already.

14 MS. MIKVA: Oh, this is TRLA. It doesn't say
15 that, or I did not know that. Thank you.

16 MS. RATH: Sorry. I should have said that,
17 but yes.

18 MS. BERGMAN: Laurie, this is Carol. In the
19 letter you can see at the top of page 4 it's the first
20 bullet, in which Management responds to the concern.
21 But you're right. If I look at the IG report, it does
22 not identify the program. That's why.

1 MS. MIKVA: All right. Thanks.

2 CHAIRMAN LEVI: Any other questions or
3 comments?

4 MR. KECKLER: I have a quick question, which
5 maybe the IG can respond to, or Management, and it has
6 to do with a followup on the Inland County Legal
7 Services issue. This is on page 4 of the letter. And
8 I do recall the IG's report on this earlier.

9 It says here that LSC is still considering
10 whether to initiate a questioned cost proceeding. I
11 guess my question is, how is that going about? And my
12 other question on it is that it says that there's
13 widespread implications for grantee compensation
14 systems.

15 So I was curious if there's a sense now of how
16 often or how common Inland County's system of bonuses,
17 if I recall correctly -- how widespread it is in the
18 grantee community.

19 MS. JENNINGS: Hi, Charles. This is Lynn
20 Jennings, VP for grants management.

21 MR. KECKLER: Yes.

22 MS. JENNINGS: And Lora and I and a couple of

1 other program counsel are working on the Inland County
2 questioned costs. The evidence we have is quite
3 voluminous, and we are going through that. We're also
4 doing investigations of benchmarking best practices and
5 what would be considered reasonable in the
6 circumstances. So that is ongoing.

7 In terms of how widespread this is among
8 grantees, I don't think that there -- because of the
9 fiscal issues that have confronted many of our grantees
10 over the past few years, we don't anticipate that this
11 is very widespread. We haven't encountered this.

12 MS. RATH: We haven't encountered it, but we
13 don't know. We don't know because of the way it was
14 done. So we're just worried that it might have
15 implications from either the past or the future.

16 Dutch?

17 MR. MERRYMAN: Yes. We did encounter this one
18 other time, but not in this manner. It was part of a
19 spend-down plan for a fund balance carryover greater
20 than 10 percent. And except for the proposal for
21 one-time bonuses for staff -- and got approval from
22 LSC, came forward to LSC and provided them all the

1 information and got approval.

2 That's the only other time I've seen something
3 like that. It was just a one-time thing because of a
4 large carryover, I think because of a real property
5 sale or something fell through and they had to keep the
6 earnest money.

7 PROFESSOR VALENCIA-WEBER: Hello. This is
8 Gloria.

9 CHAIRMAN LEVI: Great, Gloria. Welcome.
10 We're talking about the Inspector General's report, the
11 semiannual report.

12 PROFESSOR VALENCIA-WEBER: Yes. Right. And I
13 heard the discussion about the Inland Legal Services
14 issues to be resolved. Any idea how long that might
15 take?

16 MS. JENNINGS: Our goal is to have it wrapped
17 up by the board meeting, or at least have a direction
18 by the board meeting.

19 MR. KECKLER: That sounds great. The only
20 thing to keep in mind that I'm curious about,
21 naturally, is whether or not we're going to need some
22 guidance or something, a regulation going forward, on

1 this issue.

2 CHAIRMAN LEVI: On the issue that it presents.

3 MR. KECKLER: Yes. On the issue that it
4 presents. To clarify the issue for grantees in the
5 future.

6 MS. JENNINGS: Absolutely.

7 MR. KECKLER: Thanks.

8 CHAIRMAN LEVI: I assume you'll keep your eye
9 on that, obviously.

10 Any other comments or questions about either
11 the letter or the report from the Board?

12 MS. REISKIN: This is Julie. I really like
13 the letter. I thought it was very well done.

14 MS. BROWNE: And this is Sharon. If we're
15 going to talk about the letter, what we were just
16 talking about on Inland County and the statement at the
17 very end saying about potential widespread
18 implications, shouldn't we change that phrasing?
19 Because from what was said, there doesn't seem to be
20 widespread implications.

21 CHAIRMAN LEVI: Maybe we should be deleting
22 the word "widespread," just say "potential

1 implications." What about that?

2 MS. BROWNE: I think that would be much more
3 accurate, based upon this conversation.

4 CHAIRMAN LEVI: I do, too. Jim, is that okay
5 with you?

6 PRESIDENT SANDMAN: Well, let me just address
7 what that phraseology was attempting to get at. To the
8 extent that it might imply that we're concerned that
9 this particular practice is replicated in a widespread
10 way, we don't have any basis for thinking that.

11 But the approach that the IG took to
12 evaluating a compensation process and system within a
13 grantee, that approach could have implications for many
14 other programs in how they administer their
15 compensation systems, how they decide what to pay to
16 whom. That's what we were trying to get at.

17 MS. BROWNE: But based upon the information on
18 Inland -- I agree with that type of a clarification.
19 But that doesn't seem to be consistent with the report
20 on Inland County. It almost should be a footnote as
21 opposed to being part of that discussion on Inland.

22 PRESIDENT SANDMAN: I'm fine with taking the

1 word "widespread" out. I don't think that renders it
2 inaccurate in any way, and may avoid misunderstandings
3 about what we mean.

4 CHAIRMAN LEVI: Yes. Because on the Hill, it
5 might be misunderstood. Okay. We'll make that change.

6 Any other comments?

7 MS. REISKIN: Is it within our purview to tell
8 people how to compensate, or just to make sure that our
9 money is used for the right purposes or the purposes
10 that are outlined in the regs?

11 PRESIDENT SANDMAN: That's the question that
12 we were trying to get at in that note. The
13 compensation system needs to be "reasonable." What
14 "reasonable" means and how much discretion a grantee
15 has within that term is what we're wrestling with. How
16 much second-guessing can or should we do about the
17 compensation scheme that a grantee has chosen to use?

18 MS. REISKIN: Right. Okay.

19 MS. BROWNE: This is Sharon. Then I had a
20 question on your table on page 7. On A, you say,
21 "Final action not taken by Management at commencement
22 of the reporting period." I'm not too sure I

1 understand the term "not taken."

2 Are you saying that no action whatsoever has
3 been taken? Or are you just saying that this is
4 pending action?

5 PRESIDENT SANDMAN: The latter.

6 MS. BROWNE: Okay. So should we change the
7 term "not taken" to "pending" or something similar?

8 CHAIRMAN LEVI: Where is this? What page?

9 MS. BROWNE: Page 7. It's on the statistical
10 summary. It's the table at the very end of
11 the -- second to the last page of the letter.

12 MS. BERGMAN: Sharon, this is Carol Bergman
13 and Rebecca Weir. The challenge is the language
14 tracked is the language of the statute of our reporting
15 requirements.

16 MS. BROWNE: And it uses the term "not taken"
17 as opposed to "pending"? It seems to me that if
18 Management is in the process of looking at this, then
19 "not taken" has a different connotation and a different
20 meaning than you're in the process of looking at this.

21 MS. REISKIN: Exactly. Sharon, you're saying
22 we don't want people to think that we're just blowing

1 it off. Right? That we're evaluating it?

2 MS. WEIR: This is Rebecca Weir in the
3 Government Relations Office. I just wanted to clarify
4 one point, that the statute itself differentiates
5 between the terms "final action" and "Management
6 decision."

7 So A already implies that a Management
8 decision may have been made. "Final action" refers to
9 when it's completely closed out and we've actually
10 recovered costs or made the decision that the costs
11 were allowable.

12 So some terms of art apply here, and because
13 of those terms, I think the folks on the Hill
14 understand the difference between "not taken" and
15 "pending."

16 MR. GALLAY: This is Joel Gallay from IG's
17 Office. I actually endorse that. This is pretty much
18 the best job that's been done of meeting precisely the
19 formulation set forth in the statute for the agency's
20 transmittal, the Corporation's transmittal of the
21 report. And it just marries up precisely with the
22 terminology as set forth in the statute.

1 CHAIRMAN LEVI: Now, could the footnote
2 be -- what about the footnote as it relates to that?

3 MS. WEIR: Well, the footnote does explain the
4 amounts that are going into the questioned cost figure
5 in A, and also identifies the reports that make up the
6 number 9.

7 But all of these matters are discussed in the
8 letter, the body of the letter above. So you can get a
9 sense of where Management is in the process of dealing
10 with these referrals in the body of the letter. So we
11 can certainly include additional details here, but it
12 might be redundant.

13 MS. MIKVA: Why is the language for A and D
14 different, "Final action not taken," "No final action
15 taken"? Is that relevant?

16 PRESIDENT SANDMAN: It's precisely the
17 language of the statute, the way --

18 MS. WEIR: Yes. This is the way Congress has
19 drafted it. So we're merely mirroring what they're
20 done. We don't have much control over this.

21 MS. MIKVA: (Laughs.) Okay.

22 CHAIRMAN LEVI: Any other comments or

1 questions?

2 (No response.)

3 CHAIRMAN LEVI: Well, could I have a motion?

4 M O T I O N

5 DEAN MINOW: So moved. It's Martha.

6 CHAIRMAN LEVI: A second?

7 MS. REISKIN: Second. This is Julie.

8 CHAIRMAN LEVI: All in favor?

9 (A chorus of ayes.)

10 CHAIRMAN LEVI: Thank you very much. Thank
11 you to the Inspector General's staff.

12 Now item 3 on the agenda. We have a
13 resolution thanking Amy Reagan for her service on the
14 Pro Bono Task Force. Could have a motion?

15 M O T I O N

16 MS. BROWNE: Move.

17 CHAIRMAN LEVI: Second?

18 MS. REISKIN: Second.

19 CHAIRMAN LEVI: All in favor?

20 (A chorus of ayes.)

21 CHAIRMAN LEVI: Becky, can you tell us what
22 we're supposed to do here to go to the executive

1 session? We keep our one line open and use another to
2 dial closed? Or we hang up and --

3 MS. FERTIG: So all of the board members are
4 going to need to hang up and dial into the same phone
5 number and different passcode that we sent you last
6 week. We have a second phone number, or a second phone
7 here.

8 For anyone who's called in who's on the public
9 line, we're simply going to put the phone on hold and
10 you'll hear background music. And when the Board goes
11 back into open session, we will unmute that line. So
12 if the Board could hang up now and call into the other
13 number, we will call into that one as well.

14 CHAIRMAN LEVI: Wait a minute. Wait a minute.
15 We have to authorize the session.

16 MS. FERTIG: Thank you.

17 M O T I O N

18 MS. BROWNE: So moved.

19 CHAIRMAN LEVI: Second?

20 DEAN MINOW: Second.

21 CHAIRMAN LEVI: All in favor?

22 (A chorus of ayes.)

1 CHAIRMAN LEVI: We'll see you in a minute.

2 (The Board recessed to executive session from
3 11:26 to 11:37 a.m.)

4 DEAN MINOW: Shall I chair this portion of the
5 meeting?

6 CHAIRMAN LEVI: Sure. Well, let me say why.

7 We now have in front of the Board the
8 consideration of a resolution of the appointment of the
9 Vice President for Legal Affairs, General Counsel, and
10 Corporate Secretary.

11 The individual that is being proposed to be
12 appointed, Ron Flagg, is a colleague of mine, and as a
13 result, when I heard that he was under consideration, I
14 recused myself from this process completely and Martha,
15 from the standpoint of the Board as vice chair, has
16 handled it. So it seems appropriate that even at this
17 juncture, she should handle this aspect of the meeting.

18 DEAN MINOW: There was a very thoughtful
19 process conducted by Jim that actually identified quite
20 a number of interesting candidates, and I was involved
21 with interviewing several.

22 Jim, do you want to describe?

1 PRESIDENT SANDMAN: Yes. We had a good number
2 of applications and a number of excellent candidates to
3 consider. At the end of the process, my recommendation
4 to the Board is that Ron Flagg be elected Vice
5 President for Legal Affairs, General Counsel, and
6 Corporate Secretary.

7 Ron is a long-time partner, now senior
8 counsel, at Sidley Austin. His practice has focused on
9 complex commercial litigation and administrative
10 litigation. I would describe Ron as both a lawyer's
11 lawyer and a leader. He is the kind of lawyer that
12 other lawyers look to for wise advice and counsel and
13 for good judgment.

14 The chairman of Sidley, Carter Phillips, the
15 well-known Supreme Court advocate, told me that Ron's
16 office is just down the hall from his, and there isn't
17 a day that goes by that he doesn't stop in to talk to
18 Ron to get the benefit of his advice and counsel on
19 matters that Carter is working on.

20 Ron has also had a number of leadership roles
21 with a number of organizations. He is a recent past
22 president of the 95,000-member District of Columbia

1 Bar. He's chaired the D.C. Bar's Pro Bono Committee.
2 He's chaired Sidley's firmwide Pro Bono Committee for
3 more than ten years, and has brought Sidley's pro bono
4 program to a very high level. He's increased pro bono
5 hours in the firm every year that he's chaired that
6 committee, and has turned Sidley's program into a model
7 for other firms.

8 He's currently chairman of the National
9 Veterans Legal Services Program. He's previously been
10 chair of the governing board of AARP Legal Counsel for
11 the Elderly. He has served on the board of the
12 Washington Lawyers Committee for Civil Rights. He's a
13 graduate of the University of Chicago and Harvard Law
14 School.

15 I think that his combination of skills and
16 experience will be enormously valuable to LSC, and that
17 we'd be very lucky to get him.

18 CHAIRMAN LEVI: Any questions for -- well,
19 Martha, I'll let you --

20 DEAN MINOW: Sure. Does anyone have any
21 questions or comments? I again was so impressed with
22 him and found his deep involvement in pro bono, and

1 particularly in veterans legal affairs, deep,
2 thoughtful, passionate, and he also had wonderful
3 general insights in response to each of the questions
4 that I asked.

5 (No response.)

6 CHAIRMAN LEVI: So we need a motion.

7 M O T I O N

8 MS. REISKIN: So moved. I'd like to move the
9 resolution that was provided to us, is to literally
10 appoint Mr. Flagg --

11 DEAN MINOW: Yes.

12 MS. REISKIN: -- to this position. I'll make
13 that motion.

14 PROFESSOR VALENCIA-WEBER: I'll second.
15 Gloria will second.

16 DEAN MINOW: All in favor?

17 (A chorus of ayes.)

18 DEAN MINOW: The motion carries.

19 CHAIRMAN LEVI: Public comment? Jim, did you
20 want to say something?

21 PRESIDENT SANDMAN: Yes. I just wanted to
22 note that Ron is prepared to start on June 3rd, the

1 first Monday in June. And in light of the Board's
2 action now, he will be prepared to start spending
3 considerable time at LSC between now and then to get
4 himself acclimated and in a position to hit the ground
5 running on June 3rd.

6 DEAN MINOW: Jim, I think this is just great.
7 And I know that Vic will spend a lot of time with him
8 and make himself available. And I would hope that we
9 would be able to download Vic's memory.

10 CHAIRMAN LEVI: Well, I have recused myself,
11 but I think, on the record, I do want to say that I've
12 worked with Ron for so many years, and this is just an
13 outstanding thing for the Corporation. And we are
14 very, very fortunate that he was willing to trade his
15 position here for this position with LSC.

16 When he called me, I almost dropped the phone.
17 I'm one of the folks that gets to continue to work
18 with him, so I'm lucky either way you look at it. And
19 I just want to say I think this is a wonderful,
20 wonderful thing for the Corporation.

21 DEAN MINOW: I have to say one of the
22 questions that I asked him was, was he thinking about

1 the rather notable drop in compensation. And he again
2 had just a wonderful answer, that he was looking for a
3 way to give back at this point in his life.

4 MS. REISKIN: Jim, I just --

5 CHAIRMAN LEVI: Public comment? Oh, sorry.
6 Julie, go ahead.

7 MS. REISKIN: Jim, I just wanted to say that,
8 again, your ability to create a team is just
9 remarkable. I don't even know how to describe it, but
10 it's incredibly impressive to me, and it's consistent.
11 I'm very, very pleased.

12 DEAN MINOW: Yes. Julie, I'm so glad you said
13 that because of course for Ron, another very notable
14 reason for his interest in the job was the chance to
15 work with Jim.

16 PRESIDENT SANDMAN: Thank you both.

17 CHAIRMAN LEVI: Any public comment?

18 MR. GREENFIELD: John, this is Chuck
19 Greenfield from NLADA. Can you hear me?

20 CHAIRMAN LEVI: Yes. Yes, we can.

21 MR. GREENFIELD: Thank you. I'd like to
22 congratulate Ron as well.

1 But I had another issue. I just wanted to
2 make the request that when the Board considers the
3 issue of the OIG's semiannual report and we listen to
4 it and discussion of it in detail, I feel like I'm in a
5 fog because I don't have the report or don't get the
6 report ahead of time.

7 I'm just wondering if there's a way to do
8 that. I think the Board and LSC, Jim, has been
9 wonderful about posting information about board
10 meetings ahead of time and documents ahead of time on
11 the internet, or at least on the website, I should say.
12 So it makes it much easier for the public to
13 understand what's going on.

14 I must say that it's hard for me to understand
15 what's going on because I don't have the document in
16 front of me, at least the semiannual report. I know
17 that it will be posted, and probably in short order, by
18 the IG on their website. But I just think it would
19 make more sense for the public, as part of this
20 discussion, if we would have the option of having that
21 ahead of time before the discussion. Thank you.

22 PRESIDENT SANDMAN: John, may I respond to

1 that? This is Jim.

2 CHAIRMAN LEVI: Yes, you may.

3 PRESIDENT SANDMAN: My understanding is -- and
4 I hope the people's from the IG's office who are there
5 in Washington, might be able to speak to this -- but my
6 understanding is that there could be potential problems
7 in our making public a report to Congress that Congress
8 itself has not received yet.

9 I've been given to understand that Congress
10 doesn't like it when other people get reports to them
11 before they do, and that is why we've done things the
12 way we have. But I'd invite comment from the IG's
13 staff.

14 MR. FORTUNO: If I may, this is Vic. We don't
15 have anyone from the IG's office here. But I can tell
16 you that the IG Act provides that, "Within 60
17 days" -- and here I'm quoting -- "Within 60 days of the
18 transmission of the semiannual report of each inspector
19 general to Congress, the head of each establishment
20 shall make copies of such report available to the
21 public upon request and at a reasonable cost."

22 So I think that what's contemplated in the

1 statute is that the documents themselves are not made
2 public until 60 days after transmission to the
3 Congress. In fact, the Corporation has typically made
4 them publicly available upon submission to the Congress
5 and not waited the 60 days. I think they've been
6 posted online shortly after being sent up to the Hill.

7 But the statute itself provides for a 60-day
8 period between submission and making available to the
9 public.

10 MS. BERGMAN: This is Carol Bergman. The
11 statute also indicates that management's response to
12 the IG's report that is submitted to the Hill is due 30
13 days after the IG's report is submitted to LSC. So
14 that's what triggers this, and then this is sent to
15 Congress, LSC's response. That historically, as Vic
16 said, when we would make that public.

17 But I would certainly echo Jim's perspective
18 that when things are due to the Congress, they go there
19 first.

20 MS. REISKIN: This is Julie. Can I ask a
21 question? Would it be permissible to have maybe like a
22 secure -- like a GoToMeeting or something with a

1 password where people who want to listen and possibly
2 comment could dial in and look at it while we're
3 talking but not actually get a copy of it, not have it
4 downloadable or anything, so that they could at least
5 follow; and then if they wanted to make a comment, they
6 could, without actually giving it to someone.

7 Would that be a compromise or possible, or
8 would that go against the congressional intent?

9 PRESIDENT SANDMAN: I'm interested in Carol's
10 views on that. But I think that would still raise the
11 same concerns, Julie.

12 MS. BERGMAN: Yes. I would agree. This is
13 Carol. I think, from Congress's perspective, that when
14 something is due to them, you certainly don't make
15 something public, which would mean making it accessible
16 whether or not it's a hard copy or in any other form,
17 until it's been sent to Congress.

18 DEAN MINOW: This all makes sense to me. But
19 then I do wonder how we can go ahead and have a public
20 conversation about such a document -- isn't that
21 public? -- without Congress having received it yet.
22 Maybe this shouldn't be a public conversation until

1 it's public.

2 PRESIDENT SANDMAN: I think that implicates
3 the Sunshine Act. I'd ask Vic to comment on that.

4 MR. FORTUNO: I think there is some tension
5 between the Sunshine Act and the IG Act. Many of the
6 SARs, that is, the entity component of the SAR, there's
7 the report by the IG and then the report by management
8 in response -- is not that of a body. It may be a
9 secretary. So in cases like that, it's a lot easier.

10 In the situation where we've got a collegial
11 body serving as head of the entity, and the entity is
12 subject to Sunshine so that deliberations of that body
13 are subject to the Open Government statutes, we've got
14 tension. And the practice has been to have the
15 discussion in open session unless there was a basis
16 that would qualify some portion of the discussion for
17 closed session.

18 In this instance, there was none, so the
19 entire discussion was in open session. And I think
20 it's just been a recognition of the tension and the
21 difficulty of justifying having some portion of it in
22 closed session.

1 But there is that option, when warranted. But
2 unless there is a basis under the Sunshine Act for
3 having some portion in closed session, the discussion
4 has traditionally been held in open, and actually
5 worked well.

6 CHAIRMAN LEVI: So how do we solve Chuck's
7 issue?

8 MR. FORTUNO: Well, I think, in some respects,
9 the compromise is that this discussion is taking place
10 in open session.

11 CHAIRMAN LEVI: But he hasn't --

12 MR. FORTUNO: I'm not sure that we can -- the
13 IG has been clear -- I'm sorry they're not here to
14 speak to this themselves, but they've been clear that
15 the report that they share with us for preparation of
16 the management response is embargoed and not to be made
17 public until after it's submitted to the Congress.

18 I think we have to respect that wish. And I
19 think that the compromise here is a fair one, that is,
20 that the public is in a position to observe the
21 deliberations concerning the management response, but
22 that they don't get the document in advance, and in

1 particular don't get the IG's document in advance since
2 that's not something that the OIG wants done.

3 CHAIRMAN LEVI: Moreover, other than that they
4 get to read it, review it, and they can make whatever
5 comments, they don't have any ability to editorially
6 manage that report. That's the IG's report.

7 MR. FORTUNO: That's right. The IG's report
8 is done and set in stone when we receive it.

9 CHAIRMAN LEVI: Right. Yes.

10 MR. FORTUNO: So it's not yet ready to go to
11 Congress because the board transmits it to Congress
12 with its own comments and tables, which are called for
13 by the IG Act.

14 I think that was discussed earlier today, that
15 there are some fairly detailed instructions in the IG
16 Act as to what information is to go in both the IG's
17 report and management's response, what tables and how
18 they're headed. But the IG's part of it is done when
19 it's received by the Board. It's only the response
20 that's still in flux.

21 MS. MIKVA: This is Laurie. Did somebody say
22 we had 30 days, though, to file our response? And

1 maybe would that be a way to deal with it, is we don't
2 file our response with the report, but 30 days, within
3 30 days?

4 MS. BERGMAN: The 30 days, Laurie, is
5 triggered by -- so the reporting period, for example,
6 is a six-month period for the IG.

7 MS. MIKVA: Right.

8 MS. BERGMAN: Their reporting period was
9 through March 31st. So they have 30 days to submit it
10 to Management. So we received their report on April
11 30th. The Board then has 30 days to transmit the IG's
12 report, with the Board's response, to Congress. So the
13 response from the Board is due, with the IG's report,
14 to Congress by May 31st.

15 MS. MIKVA: Got it.

16 MS. BERGMAN: And then it triggers the 60-day
17 rule that Vic read from the statute, that 60 days after
18 that transmittal to Congress on May 31st, it must be
19 made public; but that historically, as Vic noted, LSC
20 has made the IG's report and the Board's transmittal
21 letter public after it has been submitted to Congress
22 and not let the 60 days go by before making it public.

1 MR. FORTUNO: I should make it clear that the
2 statute provides that within 60 days --

3 MS. BERGMAN: Right. It doesn't have to --

4 MR. FORTUNO: -- we do that. We do, within 60
5 days of transmission to Congress, make it available.
6 We make it immediately available upon transmission.

7 MS. BERGMAN: Yes. So in other words, when we
8 send this up on May 31st to Congress with the IG's
9 report, that's when we would put it up on our website.

10 PRESIDENT SANDMAN: This is Jim. I think
11 we're doing the best that we can under the
12 circumstances, balancing conflicting obligations.

13 CHAIRMAN LEVI: There are always -- I guess
14 one of the other responses is to say that public
15 comment is available at all of our meetings. And if
16 something strikes the public, upon reading the report,
17 that it wishes to express at a further meeting, they
18 have that opportunity.

19 MS. REISKIN: Maybe we can just, if we're
20 discussing something, just try and be a little more
21 conscious of summarizing -- not reading the whole
22 thing, but maybe summarizing. On page 6 it says, blah

1 blah blah, you know, so people don't feel so lost. I
2 don't know how easy that'll be to do, but --

3 CHAIRMAN LEVI: Any other public comment or
4 discussion on this comment?

5 MR. GREENFIELD: John, this is Chuck
6 Greenfield again. Thank you for talking about this. I
7 understand the intricacies involved, or at least I'm
8 learning the intricacies involved.

9 CHAIRMAN LEVI: Yes.

10 MR. GREENFIELD: In trying to be an informed
11 advocate for the field, it's hard to do that sometimes
12 when there's not complete transparency. And that's
13 sort of where I was coming from.

14 My understanding is that the Board doesn't
15 change the IG's report, so it's sort of set in stone
16 when they've finished it. And the IG wants their
17 independence, et cetera. So it's not a question of
18 changing the IG's report.

19 But just like Julie was saying, if you're
20 saying, paragraph 6 of comment 12 or footnote,
21 whatever, it's just hard to follow what's happening.
22 I'm just expressing my frustration at not being able to

1 follow it as I think I should as a good advocate.

2 CHAIRMAN LEVI: Yes. But I have to take you
3 up on the word "transparency" because we're trying to
4 be as fully transparent as we're allowed to be here,
5 given the strictures that we're under.

6 So I think we are being fully transparent. We
7 appreciate the position you're in. I think you have to
8 appreciate the position we're in. So we'll try to
9 make -- I guess we can, in the future as we discuss
10 these reports or the letters, give it a few minutes for
11 people to review it.

12 But I don't know that there is much other
13 solution that we can come up with as it relates to the
14 actual meeting at which the report is presented and
15 then ultimately has to be transmitted. As I say, if
16 there's something in a report that is of concern that
17 you wish to raise at a future time, the public comment
18 is always available then.

19 I take issue with the use of the word
20 "transparent" because I think we're being fully
21 transparent here, Chuck, and you hear the discussion
22 that we're having. And unless you have some other

1 solution to this situation or to the circumstance we're
2 in, I'd suggest that that's not a characterization that
3 would be fair for the process we're engaged in.

4 MR. GREENFIELD: Thank you, John. I wanted to
5 thank you for considering it. I understand the
6 situation you're in, but I'm going to advocate for an
7 ability to get the information as quickly as I can. So
8 thank you.

9 CHAIRMAN LEVI: Any other comment, from the
10 public or otherwise?

11 (No response.)

12 CHAIRMAN LEVI: Can I have a motion to -- is
13 there any other business, rather?

14 (No response.)

15 CHAIRMAN LEVI: From Denver, is there any
16 other business?

17 PRESIDENT SANDMAN: No business here.

18 CHAIRMAN LEVI: Okay. Well, we can consider
19 and act on adjourning the meeting, then, and wish
20 everybody a good Memorial Day weekend.

21 (Several thank yous.)

22 CHAIRMAN LEVI: Motion to adjourn?

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M O T I O N

MS. BROWNE: So moved.

CHAIRMAN LEVI: Thank you.

(Whereupon, at 11:59 a.m., the meeting was
adjourned.)

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