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LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE
Open Session

Friday, April 27, 2007

3:23 p.m.

The Peabody Hotel
Three Statehouse Plaza
Little Rock, Arkansas

COMMITTEE MEMBERS PRESENT:

- Thomas R. Meites, Chairman
- Lillian R. BeVier
- Jonann Chiles
- David Hall
- Michael D. McKay
- Bernice Phillips
- Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

- Thomas A. Fuentes (by telephone)
- Herbert S. Garten
- Sarah Singleton

1 STAFF AND PUBLIC PRESENT:

2 David L. Richardson, Treasurer and Comptroller

Patricia D. Batie, Manager of Board Operations

3 Karen M. Dozier, Executive Assistant to the President

Karen Sarjeant, Vice President for Programs and

4 Compliance

Victor M. Fortuno, Vice President for Legal Affairs,

5 General Counsel, and Corporate Secretary

Mattie Cohan, Senior Assistant General Counsel

6 Charles Jeffress, Chief Administrative Officer

Richard (Kirt) West, Inspector General

7 Laurie Tarantowicz, Assistant Inspector General and

Legal Counsel

8 Ronald (Dutch) Merryman, Office of the Inspector

General

9 Thomas Coogan, Special Counsel, Office of the

Inspector General

10 Joel Gallay, Special Assistant to the Inspector

General, Office of the Inspector General

11 Deborah Hankinson, Chairman, SCLAID Committee, American

Bar Association (ABA)

12 Julie M. Strandlie, Director, Grassroots Operations/

13 Legislative Counsel, ABA

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

14 Don Saunders, National Legal Aid and Defenders

Association (NLADA)

15 Chalk Mitchell, Board President, Legal Aid of Arkansas

Jean Turner Carter, Executive Director, Center for Arkansas

Legal Services

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4	2. Approval of the minutes of the committee's March 20, 2007 meeting	4
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6	3. Consider and act on recommendation to the Board for the adoption of Employee Handbook	5
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8	4. Consider and act on whether to recommend to the board for their consideration any or all of the following four resolutions offered by Director Bernice Phillips:	19
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10	a) Resolution Establishing the Board of Directors' Right of Access to Corporation Records;	
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12	b) Resolution Clarifying the Authority of the Board Chairman and Committee Chairmen;	
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14	c) Resolution Establishing That No Director Can Direct Staff to Withheld Corporation Records from Other Directors; and	
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16	d) Resolution Giving the Board Unrestricted Access to Corporation Employees that Report to or Serve the Board.	
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1 P R O C E E D I N G S

2 CHAIRMAN MEITES: I'll call to order the
3 meeting of the Operations and Regulations Committee.

4 The first matter of business is approval of
5 the agenda. Do I hear a motion to that effect?

6 M O T I O N

7 MS. BeVIER: So moved.

8 CHAIRMAN MEITES: A second?

9 MS. PHILLIPS: Second.

10 CHAIRMAN MEITES: All in favor, say aye.

11 (A chorus of ayes.)

12 CHAIRMAN MEITES: It's approved.

13 The next item on the agenda is approval of the
14 minutes of our meeting of March 20, 2007. I'll
15 entertain a motion to approve those minutes.

16 M O T I O N

17 MS. PHILLIPS: So moved.

18 CHAIRMAN MEITES: Is there a second?

19 MS. CHILES: Second.

20 CHAIRMAN MEITES: All in favor?

21 (A chorus of ayes.)

22 CHAIRMAN MEITES: It's approved.

1 All right. The first substantive item on our
2 agenda is to consider and act on recommendation to the
3 board for adoption of the employee handbook. Charles,
4 if you'll come forward.

5 And as a predicate, I would remind the
6 committee that there was a motion to recommend to the
7 board that the board get out of the business of
8 reviewing and approving the employee handbook, which we
9 deferred action on to this meeting.

10 So there are really two matters I think that
11 are before us under this heading. The first is to
12 consider and act on the recommendation for the adoption
13 of the employee handbook in its current iteration. And
14 I propose that when we finish that, we will then
15 consider the policy question of whether we want to stay
16 in this business.

17 Charles, can you address the first question,
18 please?

19 MR. JEFFRESS: Yes, sir. Thank you,
20 Mr. Chairman. Charles Jeffress, the chief
21 administrative officer.

22 In your board book beginning at page 27 is the

1 memo that was sent to you two weeks ago discussing the
2 five changes to the handbook that we discussed at the
3 last meeting of the Operations and Regulations
4 Committee. And then beginning on page 29 is the
5 revised employee handbook with the changes highlighted
6 in red in Track Change format.

7 The handbook, beginning on page 29, has not
8 only the five changes since the last committee meeting
9 highlighted in red, but all of the changes since the
10 January 20th presentation to the board. So there are
11 more things highlighted in red in this version. Since
12 the full board was not privy to the last ops and regs
13 meeting, this version of the handbook has all of the
14 changes since January 20th highlighted in red.

15 Mr. Chairman, perhaps the best way to proceed,
16 though, is for me to discuss with you those five
17 changes that were made following the operations and
18 regulations committee meeting at the last meeting.

19 CHAIRMAN MEITES: And those, I believe, start
20 at page 27, and indeed are on page 27 and 28 of our
21 board book. Is that correct?

22 MR. JEFFRESS: Correct.

1 CHAIRMAN MEITES: Why don't you walk us
2 through them, then.

3 MR. JEFFRESS: All right. And I'm going to
4 use the memo on page 27 and 28 of the board book as
5 what I'm speaking from.

6 At the last meeting of the committee, there
7 was discussion of the secondary employment policy.
8 While most of the changes made to the secondary
9 employment policy were accepted, there was discussion
10 that the phrase "reflects poorly on LSC" was not
11 sufficiently well-defined for people to understand what
12 types of outside employment they might not engage in.

13 In the course of reviewing that phrase and
14 what alternate phrases are used in other policies, as
15 was suggested by the committee, we went to the Society
16 for Human Resource Management, which has a model policy
17 on secondary employment and which has copies of
18 policies from various organizations.

19 Their model policy uses the phrase "adversely
20 affect the corporation's image." Other policies
21 adopted that and had various variations of that. So we
22 are recommending to you that we replace the language

1 "reflect poorly on LSC" with the language "adversely
2 affect LSC'S image," such that employees may not engage
3 in secondary employment that adversely affects LSC'S
4 image.

5 We also recommended something that was not
6 discussed in the committee meeting, that we change the
7 name of the policy from secondary employment to outside
8 employment, which is more consistent with current human
9 resource practices.

10 CHAIRMAN MEITES: Any questions about that
11 proposed change?

12 (No response.)

13 CHAIRMAN MEITES: All right. Go on, Charles.

14 MR. JEFFRESS: The second change, which is
15 actually on page 23 in the manual but is highlighted in
16 the memo, regards reduction in force. The previous
17 iteration said that bases for reduction in force would
18 be LSC'S business needs.

19 And during the committee meeting, people
20 discussed actually "business needs" sounds like only
21 business and not necessarily essential functions. So
22 we have proposed revising that to make the basis for

1 any reduction in force "retaining the essential
2 functions required to carry out LSC'S mission," as
3 opposed to simply LSC'S business needs.

4 So our recommendation is that that new
5 phraseology be adopted to replace what was previously
6 there.

7 CHAIRMAN MEITES: All right. Any discussion
8 on that proposed change?

9 (No response.)

10 CHAIRMAN MEITES: Thank you, Charles.

11 MR. JEFFRESS: The third change, there was a
12 request from the committee that we make a specific
13 provision in the manual that employees are not required
14 or expected to perform work while they are on vacation.
15 And we have done so, and have added a sentence in
16 section 9.2(d) stating that no employee is required or
17 expected to perform work while they are on vacation.

18 CHAIRMAN MEITES: Now, I could tell a very
19 lengthy anecdote about a public telephone booth at
20 midnight outside a villa in the countryside near
21 Sienna. But I won't.

22 Any discussion of this proposed change?

1 (No response.)

2 CHAIRMAN MEITES: Go ahead.

3 MR. JEFFRESS: All right. The fourth change
4 was really a clarification as opposed to a change. In
5 our performance appraisal cycle, the way the language
6 had been written, it sounded like the supervisor doing
7 a performance appraisal actually met with the higher
8 level manager and got instructions from the higher
9 level manager before writing the appraisal.

10 We rewrote this to clarify -- to remove the
11 phrase that led to that inference that the meeting
12 occurred prior to evaluating the employee, and rewrote
13 the sentence to make it clear that the supervisor meets
14 with his higher level manager and then meets with the
15 employee, but that it's the supervisor's evaluation and
16 it's not the higher level manager's evaluation.

17 CHAIRMAN MEITES: Yes. I believe that this is
18 responsive to a comment first made by Bernice, and that
19 this clarification is in response to that. Is that
20 correct?

21 MR. JEFFRESS: Yes. There was concern that
22 the higher level manager would be dictating the

1 appraisal, and we wanted to make it clear that's not
2 the case.

3 CHAIRMAN MEITES: Any discussion of this?

4 (No response.)

5 CHAIRMAN MEITES: Okay. Go ahead, please.

6 MR. JEFFRESS: And the final change that the
7 committee asked for and that we're recommending is that
8 board resolution 97-005, which previously was
9 incorporated as an appendix to the manual, to the
10 handbook, actually now be incorporated in the text.
11 The committee asked that it be incorporated in the
12 text.

13 So we have now a separate section within the
14 grievance section that specifies the exact steps that
15 are in the board resolution should there be a grievance
16 against the president or the IG. We have not made any
17 modifications whatsoever to that board resolution. We
18 have simply incorporated it word for word into the
19 handbook.

20 CHAIRMAN MEITES: Any discussion? I see
21 Mr. West has joined us.

22 MR. WEST: Kirt West, Inspector General.

1 When I first started as IG almost three years
2 ago, I discussed this issue with Chairman Strickland,
3 and I also discussed it with General Counsel Vic
4 Fortuno.

5 I have a problem with the way that resolution
6 is written because I think there's -- particularly
7 since now that our policy is sorted out in EEO
8 procedure because I think an EEO procedure is something
9 that the inspector general has to follow as a matter of
10 law, as opposed to a grievance procedure in which
11 there's really -- in terms of grievance, because the IG
12 has independent personnel authority, the board cannot
13 direct the IG to do certain personnel actions.

14 Vic Fortuno and my counsel, Laurie
15 Tarantowicz, had the plan of working on dealing with
16 this issue and coming up with some alternative
17 language, but because of various presses of work -- I
18 just want to point that out. I have concerns. I'm not
19 going to say, don't put it in there because nothing
20 is -- we haven't had the actual situation where this
21 has come to pass. But it is of some concern.

22 I do think that the general counsel and my

1 counsel need to take a further look at this resolution
2 and determine whether it's something they need to have
3 something separate with respect to the IG because there
4 is a procedure by Executive Order for problems with an
5 IG. They go to an integrity committee.

6 And there may need to be a separate policy for
7 grievances against the president, who is under the
8 direct supervision of the board, versus the IG, who's
9 under the general supervision of the board. And we've
10 had that whole discussion in another context. But I
11 just wanted to raise that for the record.

12 CHAIRMAN MEITES: Well, if there comes a time
13 when either you or management believes it appropriate
14 for us to look at our predecessor's resolution 97-005,
15 just contact me. We'll put it on the agenda and we'll
16 take it there.

17 But I gather from your remarks you understand
18 why actually putting the text of the present resolution
19 in the text of the handbook will aid employees in
20 understanding what at least the present procedure is.

21 MR. WEST: That's correct. And I will work
22 with the general counsel to try to ripen this issue for

1 this committee's consideration.

2 CHAIRMAN MEITES: Fine. Thank you. Any other
3 comments on the last of the five changes?

4 (No response.)

5 CHAIRMAN MEITES: All right. Now, we've all
6 had -- our committee has had a chance to study the
7 redlined version that has all the changes that have
8 been made in the prior version of this, that is,
9 changes made since our March 20th meeting. And I would
10 like, if we can, to bring this phase of our discussion
11 to a close.

12 Let me open the matter for committee
13 discussion on the present -- that is, the
14 current -- version of the revised handbook as proposed
15 by staff. Any of my colleagues on the committee like
16 to comment on it? Complaints? Praise? Whatever?

17 MS. PHILLIPS: I would just like to say that
18 the reason I believe that we should keep this
19 personnel -- or look at this personnel manual or be a
20 part of this personnel manual is to create some checks
21 and balances.

22 I thought the board was to make sure that

1 everything ran smoothly, and that we look at the rules
2 and regulations, just to make sure that we don't give
3 our duties to management. So this is the reason why I
4 believe that we should keep this personnel manual -- I
5 mean, be a part of this personnel manual.

6 CHAIRMAN MEITES: Let me save that for one
7 second and just ask if the committee is prepared to
8 recommend adoption of the handbook in it's present
9 form. And then we'll get to Bernice's point.

10 MS. PHILLIPS: Okay. I misunderstood.

11 CHAIRMAN MEITES: Lillian?

12 MS. BeVIER: Mr. Chairman, is a motion timely
13 at this point?

14 CHAIRMAN MEITES: It is.

15 M O T I O N

16 MS. BeVIER: I would move that we recommend to
17 the board the adoption of the employee handbook as
18 revised, the redlined version that we have in the board
19 book presently.

20 CHAIRMAN MEITES: Is there a second?

21 MR. HALL: Second.

22 CHAIRMAN MEITES: Do we have further

1 discussion? Sarah?

2 MS. SINGLETON: I know I'm not on this
3 committee, but I wanted to point out that the change
4 that's in 2.2, which requires that an accommodation be
5 submitted as a written request, I don't believe is
6 consistent with current law.

7 I think current law would say any form of
8 request made by an employee for an accommodation needs
9 to be considered by the employer. I don't believe if
10 you said -- if LSC as an employer said to an employee,
11 I'm not going to consider this accommodation because
12 you did not put it in writing, I do not believe that
13 would withstand muster.

14 CHAIRMAN MEITES: I think you're right.

15 MS. SINGLETON: And I think you can say, "if
16 practicable, should put it in writing." But I don't
17 think you can make an absolute requirement.

18 CHAIRMAN MEITES: Yes.

19 MS. BeVIER: I would entertain a friendly
20 amendment to my own motion -- perhaps I'll make it
21 myself -- which is to change the language from -- in
22 2.2, "as a result of disability, should, if practical,

1 submit a written request to the director of OHR." I
2 think that change ought to accommodate your concern.

3 CHAIRMAN MEITES: And we will assume that your
4 motion is amended to that extent. If your motion
5 passes, the staff will make that change.

6 MS. BeVIER: Does my seconder go along with me
7 on that?

8 MR. HALL: Yes.

9 MS. BeVIER: Thank you.

10 CHAIRMAN MEITES: All right. Any other
11 discussion?

12 (No response.)

13 CHAIRMAN MEITES: Then I will entertain a vote
14 on the motion. All in favor say aye.

15 (A chorus of ayes.)

16 CHAIRMAN MEITES: Anyone opposed?

17 (No response.)

18 CHAIRMAN MEITES: All right. Now, let's now
19 consider the second issue, whether we should stay in
20 this business. Now, David, you spoke to that last
21 time, and let me ask you to say where you're at, having
22 had almost a month to think about it.

1 MR. HALL: Like with many things, in a month
2 nothing has changed. I still leave that we should stay
3 in this business. As Bernice indicated, there was some
4 benefit going through this process, at least for me. I
5 learned a lot about the internal structure of the
6 organization that I probably would not have otherwise.

7 And though we may not be here in the future
8 when this is needed again, the new board members will
9 probably be in the same situation. So I understand
10 that it does involve a lot of time, but I do believe
11 that part of our fiduciary responsibility is to try to
12 make sure that the rules governing the employees are
13 consistent, are fair, are balanced. And so I do think
14 we have a role to play.

15 CHAIRMAN MEITES: Lillian, please?

16 MS. BEVIER: Mr. Chairman, I initially thought
17 perhaps it was not something that the board ought to be
18 involved in. But I can see -- and I think the risk
19 that I was concerned about principally was a risk of
20 our confusing a role in the drafting of the rules of
21 the employee handbook to make sure they're consistent,
22 fair, and balanced and a micro-manager's role in the

1 application of the rules in particular cases, which is
2 something that I do not think the board should get
3 involved in.

4 But so long as we all understand that
5 distinction and are willing to abide by both the
6 responsibilities that we have and the limitations on
7 our day-to-day management oversight, then I'm happy to
8 go along with keeping it as a board function.

9 CHAIRMAN MEITES: Well, as am I. And I think
10 since we seem to have a consensus on this, there's no
11 need to adopt a resolution to confirm what I think is
12 the present status. So I think that we have completed
13 our work on the employee handbook, which is good news.
14 All right.

15 MS. BeVIER: I thought maybe we'd be able to
16 put it off for another couple of meetings.

17 CHAIRMAN MEITES: Oh, no, no. This committee
18 charges ahead.

19 All right. The next is consider and act on
20 four resolutions which were proposed by Bernice. They
21 are listed on the agenda. Let me ask Vic to come
22 forward and assist us in these four resolutions.

1 There is a little bit of history that I'd like
2 to remind the committee of, that at our last meeting I
3 asked Vic to prepare a memorandum on the law with
4 regard to these four resolutions. Vic had worked his
5 way maybe a little bit over half of the work, and it
6 turned out that the task was far more formidable than I
7 had imagined.

8 I have distributed to the committee the draft,
9 which is as far as Vic got. And I directed him to
10 cease work in that the man has other things to do
11 besides work for me and our committee.

12 However, there is a more important point here
13 in that the memorandum that Vic gave us and I
14 distributed to the committee is, I believe, covered by
15 the attorney-client privilege, and as such, I do not
16 believe it appropriate for myself or any of our members
17 to refer directly to the memo.

18 However, Vic is here, and if we have questions
19 that we'd like to ask him in the public meeting, I
20 think that that is appropriate to the extent that we
21 are not waiving any privilege. And so I would ask Vic,
22 if we are asking things that threaten to waive the

1 attorney-client privilege, I would ask him to point it
2 out.

3 If you look at these four resolutions, I
4 believe that resolution A and D -- A and C, I'm
5 sorry -- both relate to access to corporate records.
6 So with Bernice's permission, I would propose that we
7 consider A and C not at the same time but together
8 since they both relate to directors' access to records.

9 And I am open to the committee discussing this
10 any way it believes appropriate. If Bernice as the
11 proposer would like to start the discussion, that's
12 fine. On the other hand, we have the resolutions and
13 we've all considered it. If Bernice believes an open
14 discussion would be more helpful, I'm amenable to that.

15 MS. PHILLIPS: You're saying that A and D --

16 CHAIRMAN MEITES: No, A and C. They both deal
17 with --

18 MS. PHILLIPS: -- are the same thing?

19 CHAIRMAN MEITES: No, not the same thing. But
20 since they both relate to access to corporate records,
21 I would suggest we do those two first.

22 MS. PHILLIPS: Okay.

1 CHAIRMAN MEITES: If you'd like to make an
2 opening statement on this, or just leave it to general
3 discussion, it's up to you, Bernice.

4 MS. PHILLIPS: Well, we can just talk about
5 it. I just thought we might discuss it.

6 CHAIRMAN MEITES: All right. Let me open the
7 discussion to Vic, if you -- well, let's start with the
8 committee first. Lillian, do you want to begin?

9 MS. BEVIER: Well, I was actually going to
10 invite Bernice to put a motion on the floor. But
11 perhaps we don't need to do that. I don't know. I
12 just thought that it sometimes sort of focuses
13 discussion.

14 But my own sense about these two, as I
15 understand it, they simply restate what the law is, in
16 effect. And so to that extent, I'm concerned about the
17 need for them and whether simply having a resolution
18 that we're going to, in effect, abide by the rules that
19 govern the Corporation does not make a whole lot of
20 sense to me. So I just need to be, I guess, reassured
21 about that.

22 MR. FORTUNO: I think that's correct. I think

1 as a general proposition, it's fairly well established
2 that directors of a corporation, including nonprofit
3 corporations, have a broad right of -- rather than
4 access I would say inspection because that's the
5 terminology used by the cases. The directors of a
6 corporation have a largely unqualified rights to
7 inspect the books and records of the corporation on
8 whose board they serve.

9 MS. PHILLIPS: I just -- the law is restated
10 all the time. And I think it should be restated
11 especially for people who are not lawyers, for one,
12 that they understand it, and that they don't have any
13 doubt.

14 In my experience here as a board member, I
15 just think we need to be clear. There needs to be
16 clarity. Also, in our Sunshine Act and FOIA, the
17 statute is restated as far as the regulation goes. I
18 mean, it's saying the same thing, is it not, Vic?

19 MR. FORTUNO: I think, and correct me if I'm
20 mistaken, it sounds like the question is, do we restate
21 those statutes. We do have implementing regulations.
22 There's an implementing regulation for the Sunshine

1 Act, and there's an implementing regulation for FOIA.
2 And they implement for the Corporation and provide all
3 of the detail concerning who to contact and what the
4 process is.

5 So I may be mistaken. I don't know if that's
6 what you're --

7 MS. PHILLIPS: That's exactly what I mean.
8 When you look at them, they're saying the same thing.
9 I mean, they are restating the same thing. So I don't
10 understand why we can't restate it in a resolution.

11 CHAIRMAN MEITES: Let me interject. I think
12 that I actually found reading Vic's memo informative.
13 It's been a long time since I took corporate law, and
14 Bernice is blessed to never have taken corporate law.
15 And it doesn't do any harm for the directors to be
16 instructed as to what the law is.

17 And I think with A and C, it might be helpful
18 in our session tomorrow, our closed session, for Vic to
19 give us a little lecture on access to records so we all
20 are on the same page as to what our rights and
21 responsibilities are.

22 But my sense is that -- I agree with Lillian

1 that adopting resolutions that we obey the law
2 generally is kind of a slap on our own wrist, which I
3 don't think is necessary as long as we all informed of
4 what the ground rules are.

5 And I think that can be accomplished more
6 effectively by an information session from Vic. And I
7 would hope, Bernice, that if we do that -- and you've
8 read Vic's memo, and without talking about it, I think
9 it says what you believe are the principles that the
10 board should follow -- if we were to have that
11 discussion tomorrow, would you still see the need for
12 us to go ahead with your resolutions A and C?

13 MS. PHILLIPS: I just strongly believe
14 that -- how can I put this? If we had something
15 to -- I mean, it's said in Vic's memo. But I just
16 strongly believe we need something else to say the same
17 thing. That's just how I feel. I mean -- that's just
18 how I feel.

19 CHAIRMAN MEITES: Sarah?

20 MS. SINGLETON: I want to suggest something to
21 your committee, again not being on it --

22 CHAIRMAN MEITES: Go ahead.

1 MS. SINGLETON: -- and not having participated
2 in all the ins and outs. It seems to me that it is
3 restating the law to say that corporate directors have
4 the right to inspect the books of the Corporation. And
5 what we really need is not so much a restatement of
6 that principle, but we need some procedures for that,
7 that that's where the problem might arise.

8 What does that mean? Inspection of the books
9 and records, at least my understanding -- and I haven't
10 seen Vic's memo, not being on your committee -- my
11 understanding of that is you can, on reasonable notice,
12 go to the place of the corporate headquarters and look
13 at the books, and that the Corporation should
14 facilitate you doing that.

15 Well, maybe what we need is just some
16 procedures for a director to be able to say, I would
17 like to look at these records, and how can I do it? As
18 opposed to just a resolution that restates it.

19 So what I'm suggesting, Bernice, is maybe what
20 you need in the form of a resolution is something that
21 says, whereas the board of directors has a right to
22 inspect the Corporation's records, here is how that

1 right will be implemented, by bringing the director to
2 the Corporation to look at books and records; by, if
3 it's practical, sending the books and records to
4 the -- a copy to the director, or something along those
5 lines, as opposed to just a restatement.

6 Do you see what I'm getting at?

7 MS. PHILLIPS: I understand.

8 MR. MCKAY: Go ahead, Bernice. I just wanted
9 to get the attention of the chair.

10 MS. PHILLIPS: Vic, what do they mean by
11 "inspect"? Is "inspect" going to the Corporation,
12 reviewing the documents, and then talking about them?
13 What do they mean about "inspect"

14 MR. FORTUNO: I think Sarah captured it just
15 right. And that is what the case law talks about and
16 the terms in which they discuss it, that is, the
17 ability to go to the place of business of the
18 corporation on whose board you serve and, during
19 reasonable times, review the books and records that you
20 request, so that you notify them in advance. The
21 person doesn't just show up at the door and say, I'd
22 like to see these 6,000 records in the next 15 minutes.

1 So that's the discussion that occurs. There
2 isn't much more. There's some discussion about, in
3 rare instances, very rare instances, where a director
4 needs to see books and records to discharge his or her
5 responsibilities and, because of some highly unusual
6 circumstances, the director can't get to the records,
7 whether the records can get to the director or -- in
8 the one case I'm thinking of, the one case talks about
9 the records getting to the offices of the lawyer for
10 the one director.

11 In any event, I think that yes, it's
12 inspection. It's on the premises. And it's a
13 reasonable times. And that's the baseline. That's
14 what the cases talk about. They don't preclude more
15 than that, but they don't expressly require more than
16 that.

17 MS. PHILLIPS: So I'm just putting myself out
18 here on the chopping board. So I'm understanding as I
19 have to take off from work, take off from school, take
20 off -- put my family to the side, come to inspect
21 records that could be sent to me or should be sent to
22 me? Is that -- help me understand.

1 MR. FORTUNO: I think, as a legal matter, I
2 don't think there's a requirement that they be sent to
3 you. I think that's more of a practical issue. If you
4 want to take a look at one page, is it worth the
5 expense and trouble of having you go to Washington to
6 take a look at the one page absent some unusual
7 circumstances, or does it make sense to simply fax the
8 page to you?

9 That's a practical consideration. I haven't
10 seen anything in the law that specifically addresses
11 that, that is, the mere convenience when there's no
12 compelling need as in, for example, when the director
13 is hospitalized but yet able to discharge his or her
14 responsibilities.

15 CHAIRMAN MEITES: Mike, and then Herb.

16 MR. MCKAY: Well, I understand and sympathize
17 with Bernice's concern and actually support it. I
18 think it's important that, one way or another, we
19 reaffirm what the law is.

20 I do have a problem with the first and the
21 third resolutions, which I think are on the table right
22 now. There are some unintended, maybe some intended,

1 consequences that are not part of the law that are in
2 the resolutions that I don't support.

3 For instance, the first resolution, 2007-005,
4 indicates that if a particular member of the board
5 wants to have copies of the records, then the same
6 copies will be sent to every other board member unless
7 the board member affirmatively declines receiving
8 copies of those records. It seems to me that's
9 burdensome on the on the other board members as well as
10 management. The five-day requirement I think also is a
11 requirement, in the next paragraph.

12 With regard to the third resolution, which is
13 2007-007, this is access to the employees. Is this the
14 other one we're talking about?

15 CHAIRMAN MEITES: Yes, sir.

16 MR. MCKAY: Yes. I believe, as a board
17 member --

18 CHAIRMAN MEITES: Wait, wait, wait. Hold on a
19 second. We're talking about 08. I misspoke.

20 MR. MCKAY: 08. I'm sorry. Then I'll hold
21 off on the other comment. I do have a problem with
22 that first resolution.

1 CHAIRMAN MEITES: Well, at this point, since
2 we are talking about the resolutions, Bernice, why
3 don't you, if you care to, make a motion to move your
4 resolution for adoption. That's the next step.

5 MR. GARTEN: Mr. Chair?

6 CHAIRMAN MEITES: Herb, you go first.

7 MR. GARTEN: Yes. May I have a comment?

8 There are literally hundreds and thousands of cases and
9 statutory requirements and legislation in this area.
10 And we're trying to put everything down on one page or
11 one page and a half. I think it's a tremendous burden
12 on whoever drafted these resolutions to come up with
13 it.

14 Now, I haven't seen your opinion, but aren't
15 there statutory requirements dealing with the right to
16 inspect records?

17 MR. FORTUNO: Some jurisdictions do. Mostly
18 it's common law. The District of Columbia --

19 MR. GARTEN: Well, but we're incorporated
20 under what law?

21 MR. FORTUNO: We're a District of Columbia
22 corporation, nonprofit corporation.

1 MR. GARTEN: All right. And the District of
2 Columbia statutory law covers situations like this, I'm
3 certain, on production of records. I know it does, it
4 has to, with regard to stockholder requests. Usually
5 it requires 5 percent or a certain percentage of the
6 ownership of the corporation to have the right to
7 demand.

8 And if the statute doesn't provide for
9 directors, then as you point out, there are many cases
10 dealing with this. And trying to put what corporate
11 law evolved over hundreds of years of time in the
12 District of Columbia into resolutions is pure folly, as
13 far as I'm concerned.

14 CHAIRMAN MEITES: All right. Lillian?

15 MS. BeVIER: Mr. Chairman, I wonder, is there
16 some sort of middle ground of kind of, as you
17 suggested, perhaps making sure that we have a briefing,
18 that it is thorough and complete, and that -- I mean,
19 any board member, I take it, can be given the attorney
20 work product --

21 MR. FORTUNO: That's correct.

22 MS. BeVIER: -- so that that tells us exactly

1 what it is. That makes it clear. Every single member
2 of the board has access to that. It's as clear as it
3 can be.

4 I'm just worried -- I thank Mike McKay for
5 calling attention to the details of these resolutions,
6 which are a little bit troublesome in terms of what
7 they actually would involve. And even if you might say
8 in principle we don't mind affirming that you have this
9 right, to get the resolution properly worded in
10 resolution form is a problematic.

11 And now I realize that I'm not sure what the
12 effect of a resolution is. It is a little bit like a
13 constitutional amendment? Is it sort of an amendment
14 to the bylaws? How does it fit within the grand scheme
15 of what it is that governs us?

16 MR. GARTEN: I can answer that. It's not an
17 amendment of the bylaws, that's for certain, because
18 there are specific required procedures to amend bylaws.

19 MS. BeVIER: So it doesn't change anything.
20 It's essentially symbolic?

21 CHAIRMAN MEITES: No.

22 MS. BeVIER: No?

1 CHAIRMAN MEITES: It's more than that. Just
2 like we talked about resolution 97-005, it is a
3 restriction that we have voluntarily adopted on
4 our -- the board's -- method of doing business. And it
5 governs how management has to respond under certain
6 circumstances. So it's not nothing.

7 MS. BeVIER: I see. It's not nothing, but
8 insofar as this does replicate what would already be
9 done, it's also not something, then.

10 CHAIRMAN MEITES: Right.

11 MS. BeVIER: It doesn't change anything. So
12 in this particular case --

13 CHAIRMAN MEITES: Well, unless it is more
14 restrictive than what we would otherwise do under the
15 cases -- and what Herb has suggested, it is not a
16 compendium of what we would do, and said, for example,
17 there's a five-day requirement here. Well, I doubt
18 very much that the cases have a five-requirement. It's
19 imposing a greater obligation on the staff than they
20 might otherwise have.

21 But I'm troubled by having this in the
22 abstract. Mike has asked us to look at the actual

1 resolutions. It's Bernice's resolution. If Bernice
2 wants to go ahead and move the adoption of -- we'll
3 start with A, resolution A, we should do it.

4 MS. PHILLIPS: Well, now I'm confused. And
5 Vic, can you help me out here? Because I'm not sure
6 where everybody is at this point. And the reason why
7 that I brought these up was because I was having
8 difficulties obtaining records from management.

9 So this is the reason why I said -- put this
10 into the resolution. If I'm wrong, tell me I'm wrong.
11 Let me know that I'm wrong. I mean, this is the only
12 way I thought that things could be changed or done
13 because of --

14 MR. FORTUNO: By resolution?

15 MS. PHILLIPS: Right.

16 MR. FORTUNO: I think one of the things to
17 keep in mind about a resolution is that directors have
18 certain rights that they enjoy under the law that, for
19 the most part, can't be altered by resolution. So, for
20 example, a majority of the board can't deny a minority
21 of the board access or, I should say, the opportunity
22 to inspect books and record because that's something

1 guaranteed to you under the law.

2 But the board may, if it's adopting a
3 resolution, be conferring upon itself greater rights
4 than it's guaranteed as a minimum under the law. And I
5 think that's what Mike kind of suggested. The law
6 doesn't say records have to be produced within a
7 specific time frame. I think they talk more in terms
8 of reasonableness.

9 And I think that adoption of a resolution,
10 among other things, has -- I was looking at these
11 reasons, and I notice they have a number of "whereas"
12 clauses which would probably involve some discussion on
13 the part of the board because I suspect that there
14 wouldn't be agreement on the wording of all or any of
15 the "whereas" clauses. But that would have to be
16 discussed. And then the substantive provisions that
17 confer rights do seem to be a little along the lines
18 that Sarah was describing before, which is a process.

19 I think that the basic principle is well
20 established, that you have a right to inspect. And
21 unless you're going to change that by enhancing those
22 rights, there probably isn't a need for the resolution.

1 I think the principle is established. I think what you
2 may want, and what I see some of here, is
3 implementation of that principle, that is, the process
4 by which you can exercise your right of inspection.

5 And it may be that that's really more the
6 question, is how do you exercise that right, and less a
7 question of -- because I don't think anybody has
8 questioned -- I don't think anybody on this board
9 has -- at least I haven't heard anyone say that they
10 questioned the directors', any director's, right to
11 inspect.

12 So that doesn't seem to be the issue. The
13 issue seems to be more one of implementation and how
14 that right is exercised. So that's why I, when I heard
15 Sarah's suggestion, thought it sounded like a good one
16 to me.

17 CHAIRMAN MEITES: David?

18 MR. HALL: Yes. I guess I'd like to be a
19 little bit more direct because I do think we need to
20 find a middle ground, a better place than the
21 resolution, because as Vic just indicated, I think we
22 are all clear on what the rule is or what the law is.

1 I think we have a director who feels that she
2 has had some problems in being able to get access. So
3 it seems like what we need is just some clarity around
4 how this should play out. It may be as far as what
5 Sarah is talking about, which is outlining the process,
6 that is, the implementation stages.

7 But it may be, in executive session, just
8 talking about it so that we're all clear about how it's
9 going to work, as opposed to feeling like we have to
10 codify it. Because I don't think this is about
11 codifying a rule. This is about some understanding
12 between management and one or more board members who
13 may have had some concerns.

14 And I would hope that that spirit of resolving
15 how we get the work done is something that we could
16 reach without feeling like we've got to legislate.
17 So --

18 CHAIRMAN MEITES: I've been told -- let me
19 just -- not to cut you off, but I've been told by my
20 timekeeper that we are going to have to recess. And
21 I've also been told by Bernice that she'd like to think
22 about some of the things we've said this afternoon

1 before she either moves her resolution or doesn't.

2 So I would like to adjourn our committee, as
3 we're supposed to, at 4:00. We'll start with this
4 tomorrow, and I believe we've made progress along the
5 lines that David just stated, that it may be more of an
6 implementation problem than philosophical problem.

7 So if I hear a motion that we go into
8 adjournment, I will accept it.

9 M O T I O N

10 MR. HALL: So moved.

11 CHAIRMAN MEITES: Is there a second?

12 MR. MCKAY: Second.

13 CHAIRMAN MEITES: And we are in adjournment.

14 Thank you.

15 (Whereupon, at 4:03 p.m., the committee
16 meeting was adjourned.)

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