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LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

PERFORMANCE REVIEWS COMMITTEE

Saturday, October 28, 2006

9:10 a.m.

Charleston Marriott Town Center
200 Lee Street East
Charleston, WV 25301

COMMITTEE MEMBERS PRESENT:

Lillian R. BeVier, Chairman

Jonann Chiles

Herbert S. Garten

Thomas R. Meites

BOARD MEMBERS PRESENT:

Thomas A. Fuentes

David Hall

Michael D. McKay

Bernice Phillips

Sarah Singleton

Frank B. Strickland, ex officio

1 STAFF AND PUBLIC PRESENT:

2 Helaine M. Barnett, LSC, President

Patricia Batie, LSC, Manager of Board Operations

3 Terry Brooks, ABA/SCLAID

Mattie Cohan, LSC

4 Victor M. Fortuno, LSC, VP for Legal Affairs,

General Counsel & Corporate Secretary

5 Joel Gallay, LSC, Special Assistant to the IG

Charles Jeffress, LSC Chief Administrative Officer

6 David Maddox, LSC Assistant Inspector General

for Resource Management

7 Ronald Merryman, LSC

Linda Perle, CLASP

8 Tom Polgar, LSC, Director, Office of

Government Relations & Public Affairs

9 Karen Sarjeant, LSC, VP for Programs and Compliance

Don Saunders, NLADA

10 Laurie Tarantowicz, LSC, Assistant Inspector General

and Legal Counsel

11 Kirt West, LSC, Inspector General (IG)

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

2 CHAIRMAN BEVIER: Good morning, this is a
3 meeting of the Performance Reviews Committee, meeting
4 in open session.

5 The first thing that we have to do is approve
6 the agenda.

7 M O T I O N

8 CHAIRMAN BEVIER: Do I hear a motion to
9 approve the agenda?

10 MR. MEITES: So moved.

11 CHAIRMAN BEVIER: Any second?

12 MR. GARTEN: Second.

13 CHAIRMAN BEVIER: All in favor?

14 (Chorus of ayes.)

15 CHAIRMAN BEVIER: The agenda is approved.

16 M O T I O N

17 CHAIRMAN BEVIER: I wonder if we can do the
18 next three minutes -- four minutes; items two through
19 six.

20 I would invite a motion to approve all of
21 those at once, unless anyone has an objection or an
22 addition or a correction. Do I have a motion --

1 MR. MEITES: So moved.

2 CHAIRMAN BEVIER: Second?

3 MR. GARTEN: Second.

4 CHAIRMAN BEVIER: All in favor?

5 (Chorus of ayes.)

6 CHAIRMAN BEVIER: Thank you. All opposed?

7 (No response.)

8 CHAIRMAN BEVIER: That motion carries.

9 The next item on the agenda is to consider an
10 act on whether to undertake an annual performance
11 review of the Legal Services Corporation Inspector
12 General for 2006.

13 As you all know, this is an issue that has
14 been brewing for some time. We have had two memos from
15 the IG's office, and one memo from our counsel. The
16 reach similar conclusions, I believe, on the law with
17 respect to the entitlement of this board to engage in a
18 review of the inspector general. There are substantial
19 differences remaining as to the policy questions
20 concerned. And I think that's where the committee and
21 the board needs to make a decision.

22 So, that's what I am going to invite, comments

1 and suggestions from committee members, with respect to
2 the issue of how and whether to proceed with respect to
3 this issue of a performance review of the inspector
4 general.

5 May I say, before we do that, that I think one
6 of the issues that has kind of perhaps been a bit of a
7 hang-up is the description of what is being considered,
8 which -- it's being called a performance evaluation.
9 And I have gathered, through all this stuff that I have
10 been reading, that in federal governments, that has a
11 particular -- it's a term of art, and it means certain
12 kinds of things when you ultimately -- then you get a
13 rating after it's over, and it's a very formal kind of
14 process.

15 I don't think that that's what the board was
16 actually thinking of as it undertook to engage in the
17 evaluation, both of the inspector general and of the
18 president last year. And so I just raise that issue
19 and put it aside.

20 I think the question for us first is the more
21 substantive one, whether we should proceed, and if so,
22 how. So I invite comments and questions. Mr. Meites?

1 MR. MEITES: I read the papers as well, and I
2 agree with you, Lillian, that the law is what it is.
3 But I think there is some confusion as to what we
4 undertook to do.

5 I agree with the inspector general, that it
6 would be inappropriate for us to critique the
7 substantive investigative decisions that he is making.
8 And I am confident that we -- our committee -- has been
9 aware of that. But it is not either beyond our
10 capability or beyond our responsibilities, I think, to
11 critique how the work is being done.

12 Now, obviously, you can push a critique of how
13 the work is being done into, "You shouldn't be doing it
14 at all," but that does not mean that the -- that that
15 immunizes from appraisal the question about whether the
16 materials are being presented clearly and fairly,
17 whether there are -- the procedural safeguards seem to
18 be provided, the usual kind of not whether he should be
19 doing the job, but having decided to do that job,
20 whether he is doing it in a professional way.

21 Since I believe that our committee has, from
22 day one, stayed well within those guidelines, I think

1 that the concerns raised by the inspector general and
2 by the GAO as well, about not infringing upon the
3 independence of the IG, are really not at issue in our
4 undertaking to determine for ourselves how well we
5 think the inspector general is doing his job.

6 So I, for one, think we should do it. In
7 fact, I think we have to do it. Because, otherwise,
8 both for ourselves and for the public generally, I
9 don't think we are doing our job.

10 CHAIRMAN BEVIER: Mr. Strickland?

11 MR. STRICKLAND: Just for the information of
12 the committee, I don't remember the exact date, but I
13 was invited to a meeting with the -- a member of the
14 staff of the Senate Homeland -- I'm sorry, the Senate
15 Committee on Homeland Security and Governmental
16 Affairs, and as I understand it, it was part of an
17 effort by that committee to review the relationship
18 between agencies and their inspector
19 generals -- although it's not necessarily isolated to
20 LSC.

21 Tom Polgar and I went to that meeting, and I
22 think we knew in advance that there would be other

1 staff members there. And when we got there, there was
2 representatives of the Senate Finance Committee staff,
3 and the Senate Committee on Health, Education, Labor,
4 and Pensions, and also the House Subcommittee on
5 Commerce and Justice -- Mr. Cannon's committee, in
6 other words. A total of seven staff members.

7 And it was a relatively cordial meeting. And
8 at one point during the meeting I asked a specific
9 question of all seven of those staff people. Is there
10 a prohibition on a performance review of an inspector
11 general? The answer was no. So -- and if Tom Polgar's
12 in the room, he could -- I think he is. Is that your
13 general recollection of the question and the answer,
14 Tom?

15 MR. POLGAR: Yes. For the record -- this is
16 Tom Polgar -- yes, that's basically my recollection.
17 There were actually nine staff people in the room.

18 MR. STRICKLAND: Sorry. I missed the count.

19 MR. POLGAR: But the conclusion of the staff
20 from the committee of jurisdiction, which was Homeland
21 Security and Government Affairs Committee, was that the
22 board did have a right to do a performance review, with

1 caveats similar to those just mentioned by Mr. Meites.

2 MR. STRICKLAND: Okay, that was just an
3 information item for the committee. I know there is a
4 debate about this in the inspector general community,
5 but we have to do what we think is right. And I
6 thought the committee ought to know that, that I put
7 that question to these staff people about whether or
8 not there was a prohibition. And the answer was no.

9 So, it seems to me that if there is no
10 prohibition, then it's permitted.

11 CHAIRMAN BEVIER: And the task for us, if we
12 decide to go forward, is to make sure that we are
13 careful to distinguish between evaluation of what he
14 decides to do, and evaluation of how, and the quality
15 of the work.

16 Now -- and it is a difficult and subtle line
17 to draw, but I do personally think that it is within
18 our ken to draw appropriately, and I would hope that
19 the inspector general would not feel threatened or
20 intimidated by the fact that we were undertaking to
21 evaluate the quality of the work that he has done,
22 because that is not an effort to effect, or determine,

1 or thwart any investigation that he decides to
2 undertake, and in particular, the investigation of the
3 board's activities that was just completed. That could
4 very well happen again, there could be another
5 investigation of the board. It's not our intention to
6 impede those in any way.

7 What about other members of the committee?

8 MR. MCKAY: Well, Madame Chairman, I agree
9 with everything that's been said, particularly Mr.
10 Meites, and I do want to just hasten to add certainly
11 in my experience in reviews that there is a -- Mr.
12 Meites used the term "critique," which of course, is an
13 important part of a review. But in my experience, most
14 reviews include positive, and normally starts with the
15 positives. And so it's the positive issues, as well as
16 the critiques.

17 On the other hand, I am well aware of this
18 debate that we have here, whether or not we should
19 proceed. I am squarely on the side of absolutely, we
20 need to proceed, because it is our obligation. But how
21 we do it, as the chairman has just indicated, is very
22 important.

1 I am deeply troubled about the memo we
2 received from the IG in the wake of the informal
3 meeting that took place. I thought this informal
4 sharing of information was something that the IG had
5 agreed to. And something happened that he did not
6 like.

7 So, I was very surprised to read the memo, and
8 very troubled about it. And so how we proceed is very
9 important. So I am on the side of proceeding, because
10 we need to proceed. I think it needs to be done. But
11 I do think that the decision of proceeding now is
12 probably one step premature.

13 I think we need to -- and I guess I would
14 propose that we -- come up with a small group, one or
15 two or three members of this committee, that would meet
16 with the IG between now and our next meeting, and try
17 at least one more time to negotiate, or to try to agree
18 amongst ourselves -- that is, this small group and the
19 IG -- on a procedure of how to properly conduct a
20 review.

21 That is, the IG would agree with the
22 procedure, and of course we would agree with the

1 procedure, so that we do not receive another memo.

2 Because I have to say, I was very surprised. I thought
3 this was what we all agreed to, and it clearly was not.

4 So, perhaps we should -- I would propose that
5 we make one, an additional, effort to try to come up
6 with a procedure that we can all agree to, because I
7 thought we had already done that, at least in the short
8 term, with regard to the informal sharing of
9 information.

10 CHAIRMAN BEVIER: Do I take that as a motion,
11 Mike?

12 MR. MCKAY: Yes. CHAIRMAN BEVIER: That
13 you are moving that we have one or two -- two, probably
14 at least, maybe -- it depends on how many it's
15 appropriate to do -- but members of the committee to
16 meet with Kirt to the end of trying to identify a
17 procedure that will be mutually agreeable.

18 Now, I have to stop here and ask Tom Fuentes,
19 can you hear me now?

20 MR. FUENTES: I can hear you consistently,
21 Lillian, and I could hear Mike, but I could not hear
22 Frank, or I believe it was Tom Meites, who spoke before

1 them.

2 CHAIRMAN BEVIER: Tom Meites.

3 MR. FUENTES: So their remarks I was unable to
4 hear.

5 CHAIRMAN BEVIER: Okay. I hope -- Mike tried
6 to summarize them a little bit, and perhaps as we go on
7 you can ask questions to make sure that you have a
8 sense of what it is that we are doing, and where we
9 are. Do you have questions right now?

10 MR. FUENTES: No, thank you.

11 CHAIRMAN BEVIER: Could you hear Tom Polgar?

12 MR. FUENTES: No, I could not. If Tom Polgar
13 spoke, I did not hear him.

14 CHAIRMAN BEVIER: All right. Frank, he can
15 probably hear you, if you speak right into the mic.

16 M O T I O N

17 CHAIRMAN BEVIER: We have the beginnings of a
18 motion on the floor. I think that I would like to ask
19 Mike to kind of rephrase it, so that I know what we
20 have got to ask for a second to, that we appoint a
21 small group or a team of members of this committee that
22 will work with Kirt to the end of identifying and

1 possibly beginning to implement a procedure for
2 evaluating the quality of his work, both where it's
3 good quality, and where we -- if there are issues that
4 we have with it.

5 And hopefully, that procedure would be
6 mutually satisfactory. That would be the goal of this
7 team. Is that your motion?

8 MR. MCKAY: It is.

9 CHAIRMAN BEVIER: Is there a second to that
10 motion?

11 MR. STRICKLAND: Second.

12 MR. MEITES: I have a question. Now, I don't
13 remember if -- where we're at on the underlying
14 question of whether or not we are going to conduct an
15 annual review. Should that be part of the motion, as
16 well?

17 MR. MCKAY: Yes. I would accept it as an
18 amendment. I mean, it's implicit in -- clearly, we
19 need to proceed. And the goal of this motion is to try
20 to find a way to proceed that is mutually agreeable.
21 That is, agreed to by the board and by the IG.

22 MR. MEITES: So your motion, then, is first we

1 recommend to the board that there be an annual
2 performance evaluation of the IG, and second, that it
3 be -- proceed as you have described it.

4 MR. MCKAY: For this interim time, to come
5 back with a final proposal to the board at the January
6 meeting.

7 MR. MEITES: All right.

8 CHAIRMAN BEVIER: You know what I would like
9 to suggest, with your permission, Mike? I would like
10 to suggest two separate motions.

11 MR. MCKAY: Okay.

12 CHAIRMAN BEVIER: One that would commit the
13 board to undertake to do a -- the performance review,
14 and second, to undertake to meet with Kirt and figure
15 out how to do it.

16 MR. MCKAY: You know, I guess I would
17 recommend we not do that.

18 CHAIRMAN BEVIER: Not?

19 MR. MCKAY: I believe we are ultimately going
20 to agree to that. But I think right now, instead of
21 saying we're going to do a review -- which I think is
22 probably going to happen -- why don't we just say let's

1 just take this period to work with the IG to try to
2 come up with a review procedure that we can all agree
3 with, and then we address the whole question in
4 January. I think it will create a better environment
5 for our discussions.

6 CHAIRMAN BEVIER: All right, I --

7 MR. GARTEN: Question. Wouldn't it make sense
8 to find out whether the inspector general is willing to
9 follow that procedure, and whether he is willing to
10 work out the procedure whereby there will be this
11 evaluation?

12 MR. MCKAY: It's a legitimate question. I
13 would -- and we could certainly ask him to come
14 up -- but I am confident that the IG is always willing
15 to talk about something without agreeing to anything.

16 (Laughter.)

17 MR. MCKAY: And that's -- this motion does not
18 assume anything, other than open communication. And if
19 the IG would like to come forward and say he doesn't
20 want to talk about something, then he is welcome to do
21 so.

22 CHAIRMAN BEVIER: He is welcome to do so. But

1 first of all, can we get the motion clear?

2 I think the motion, as you have identified it
3 now, it does not answer Tom's question in the
4 affirmative.

5 MR. MCKAY: Yes. The --

6 CHAIRMAN BEVIER: Basically, we -- the motion
7 doesn't say anything about our commitment to engage in
8 a review. There may be a consensus to that effect that
9 we should, and that we will, but before we do that and
10 before we commit ourselves to that, the motion says we
11 are going to try to work with the inspector general to
12 see if we can find a mutually satisfactory way to
13 proceed.

14 Now, is there a second to that motion?

15 MR. STRICKLAND: Second.

16 CHAIRMAN BEVIER: Now, is there any
17 discussion? Shall we ask Kirt to come and --

18 MR. MEITES: No, I don't think so. Unless he
19 wants to, I don't think we should put him on the spot.
20 We know what we want to do. I think there is a
21 proposal, and --

22 MR. GARTEN: But we have been taking all this

1 time and deferring it from one meeting to the next, as
2 to whether we're proceeding with the evaluation or not.
3 And now we have another delay. And it would be good to
4 know that the inspector general has finally concluded
5 that we have a right to do an evaluation.

6 MR. MCKAY: I think that's a subject for our
7 discussion. If it turns out that the IG does not want
8 to talk to us about this, then -- during this interim
9 period of time -- which, frankly, I will be surprised
10 to hear, but -- that we have nothing to talk about,
11 then it will be a lot easier for us to address this in
12 our January meeting.

13 But I think in fairness, we ought to give him
14 that opportunity, invite him to participate in the
15 process. Because, as I indicated earlier, I was
16 surprised, there must have been a miscommunication.
17 Let's try to work this out during this period of time.

18 MR. GARTEN: Well, let's --

19 MR. MCKAY: I just don't want us to have the
20 discussions -- the negotiations now, during this
21 committee meeting.

22 CHAIRMAN BEVIER: I think the inspector

1 general is here, he is -- I think he is going to put
2 himself on record, one way or the other, and I think
3 it's a good idea to have that happen.

4 MR. WEST: Thank you, Lillian. For the
5 record, Kirt West, inspector general. I am certainly
6 more than willing to engage in this dialogue that Mike
7 has talked about.

8 And as our memo said, I don't question your
9 authority to do this. My concern has always been there
10 is sort of a slippery slope from the authority of the
11 IG to conduct audits and investigations, and how he
12 goes about that, to the point of what's the appropriate
13 kind of critiquing and feedbacking that the board can
14 do, without stepping over the line. And I think it's
15 pretty complicated.

16 And I think there is a whole history of things
17 going on in the IG community with agencies and that,
18 that I think if we have a discussion -- and I would
19 really like to come to an agreement, because my overall
20 goal is for my office to be a positive force adding
21 value to Legal Services Corporation, and I think that
22 is -- I think we have a shared goal there.

1 And so I think Mike's suggestion is a very
2 good one, and I think a smaller group, where we really
3 get into sort of the nuances of where the line
4 is -- and I guess what my memo and the informal
5 feedback is I think it -- from my perspective, it
6 crossed the line. Obviously, from your perspective, it
7 didn't. And I think that's some of the discussion we
8 need to have, is where is that line, and we can come to
9 an agreement, here is the line, or that we're real
10 close to it.

11 Obviously, at the end of the day, it's your
12 authority to proceed however you choose. But I think
13 if we can -- I'm always into win-win, and I think that
14 should be the goal, and I'm committed to engaging in
15 however long it takes to discuss this to help out this
16 committee and the board.

17 CHAIRMAN BEVIER: Thank you, Kirt. I think
18 all of us are hoping that the IG can add value, and
19 will work together to see if this can be a step toward
20 that end.

21 MR. FUENTES: Madame Chairman?

22 CHAIRMAN BEVIER: Yes, Tom?

1 MR. FUENTES: May I offer a comment?

2 CHAIRMAN BEVIER: Certainly.

3 MR. FUENTES: Thank you. I certainly
4 recognize I am not a sitting member of this committee,
5 but I do look forward to this recommendation coming to
6 the board. I think that it is a significant step
7 forward.

8 I think Mike McKay's proposal is something
9 that would be well received, not only by board members
10 but by those on the Hill observing our actions. And I
11 think it's a very fine message to send, that we are
12 rolling up our sleeves in a cooperative fashion, that
13 we are, as a board, willing to go the extra mile.

14 I think the spirit of the motion, not only in
15 substance but in spirit, is very well intended, and I
16 would certainly like to have the opportunity to support
17 this when it comes before the general board.

18 CHAIRMAN BEVIER: Thank you, Tom. Is there
19 other discussion or comments on the motion.

20 (No response.)

21 CHAIRMAN BEVIER: If not, I think we are ready
22 to vote. All those in favor?

1 (Chorus of ayes.)

2 CHAIRMAN BEVIER: All those opposed?

3 (No response.)

4 CHAIRMAN BEVIER: The motion carries
5 unanimately. We will make that recommendation to the
6 board.

7 The next item on the agenda is to consider and
8 plan for the performance review of the president. And
9 I would invite committee members to share what their
10 views about how we ought to proceed with that, given
11 concerns that have been raised by a number of people,
12 with respect to personnel evaluations being productive
13 if they are -- being more productive if they are
14 carried on with some degree of confidence. Mr. Meites?

15 MR. MEITES: I have been doing employment
16 litigation for a great many years. And in the course
17 of that work, I have learned quite a bit about what are
18 good personnel procedures and what are not good
19 personnel procedures.

20 A cornerstone of employee evaluation is both
21 the expectation and realization of confidentiality.
22 And there are a number of reasons for this, some

1 obvious, some not so obvious.

2 The obvious ones are that: evaluations can be
3 embarrassing to the person being evaluated;
4 confidentiality is important to get from the people
5 commenting honest critiques; and confidentiality is
6 also important for the organization, because there is a
7 point where the organization -- the individuals in the
8 organization -- can know too much about each other, or
9 at least too much about what each other thinks of the
10 other employees.

11 So, it is universal, in my experience, that
12 employee evaluations be treated with the highest degree
13 of confidentiality.

14 Enter the Sunshine Act. Our outside counsel
15 with vast experience in governmental affairs, Covington
16 & Burling, has opined that, in fact, the proceedings of
17 this committee have to be public. Lillian, when she
18 received it, called me and said she was surprised. I
19 agreed I was surprised, but that is what our counsel
20 tells us. It confirms what Vic has told us. And so, I
21 think we will proceed on that basis.

22 So you have a well meaning statute which

1 produces, to my mind, a totally unpalatable result, in
2 terms of the operation of the organization.

3 I think, therefore, that perhaps we should
4 look at the structure we adopted, a performance review
5 committee. Because as I understand the Sunshine Act,
6 the problem arises in that we are operating in this
7 kind of formal fashion.

8 And there is good reasons why we decided to
9 have a committee. That's actually how the LSC has
10 historically worked. And a committee can function
11 effectively as a performance review tool. But of
12 course, it has to have both the promise and the reality
13 of confidentiality. Since our committee doesn't have
14 that -- and, to my mind, the cornerstone of employee
15 evaluation is confidentiality -- I would suggest that
16 we consider recommending to the board another approach
17 to evaluations.

18 And in fact, most evaluations aren't done by
19 committees. They are done by the immediate supervisor,
20 in the first instance of the employee, and reviewed by
21 that person's supervisor.

22 What -- I thought about this a lot, and what

1 might make sense for the board to do, and it's not our
2 committee's decision, it's the board's decision, to
3 essentially delegate the evaluation to one or two board
4 members who will be able to, as I understand our
5 counsel's memo, to offer the reality of confidentiality
6 both to people who are asked to comment on the
7 employee, and also to the employee himself or herself.

8 Now, of course the employee could always make
9 the evaluation public. That's the employee's choice.
10 But that's not what I am talking about. What I am
11 talking about is getting to us, the board members, the
12 information we need to prepare an evaluation, and to
13 communicate that to the person at issue.

14 M O T I O N

15 MR. MEITES: So, what I would propose we
16 consider recommending to the board is that this
17 committee no longer be entrusted with the evaluations.
18 But instead, that the board or our president selects
19 one or two board members to conduct an evaluation and
20 give the board whatever report is felt appropriate.
21 That is my proposal.

22 CHAIRMAN BEVIER: Is that a motion?

1 MR. MEITES: It is a recommendation to the
2 board, yes. So it is a motion.

3 CHAIRMAN BEVIER: Okay, is there a second?

4 MR. STRICKLAND: Second.

5 CHAIRMAN BEVIER: Is there discussion? Mr.
6 McKay?

7 MR. MCKAY: I think this is a reasonable
8 attempt to resolve a problem that Tom has articulated.
9 That is, the problems associated with doing this in an
10 open session -- all the reasons that he listed. But I
11 am wondering how other agencies like -- or entities
12 like LSC have dealt with it. Clearly, there have been
13 other boards that have had presidents or directors
14 reporting to them that have had to review them, and
15 they have had to wrestle with this.

16 And I am wondering if maybe there is a
17 possibility we are re-inventing the wheel. Maybe there
18 is someone else who has wrestled -- I am sure someone
19 else has wrestled with this and come up with something.
20 This might be a good initial approach, but maybe we can
21 kind of steal some ideas from other folks.

22 CHAIRMAN BEVIER: I think that's an

1 interesting possibility. Would you suggest that we
2 delay action on the motion, or the recommendation,
3 while we find out what others have done, or do you
4 think that we should proceed with the motion and
5 proceed with finding out what others have done, at the
6 same time? On parallel tracks, in other words.

7 MR. MCKAY: I think parallel tracks makes
8 sense. I just -- you know, again, I think this is a
9 perfect -- and I was aware that Tom was going to make
10 this suggestion, I thought it made sense. But as I was
11 listening to him talk, I thought, "Well, gee, maybe we
12 ought to just check and see what else other folks are
13 doing."

14 CHAIRMAN BEVIER: Right.

15 MR. MCKAY: So, yes, I would suggest parallel
16 tracks.

17 CHAIRMAN BEVIER: Mr. Garten?

18 MR. GARTEN: I have a question, Tom. Once
19 this committee, or this group of two or whatever it is,
20 completes their evaluation, they then have to report it
21 to the board.

22 MR. MEITES: Yes.

1 MR. GARTEN: Then it becomes public.

2 MR. MEITES: Well, I -- that's right. But the
3 question is, what becomes public?

4 MR. GARTEN: That is what I am asking.

5 MR. MEITES: And that gets to what Mike has
6 said, how do other agencies handle it?

7 MR. GARTEN: And I think --

8 MR. MEITES: Is it just a summary report?

9 MR. GARTEN: We need to know the answer to
10 that.

11 MR. MEITES: That's right.

12 MR. GARTEN: So I think Mike's suggestion is
13 well taken. And I would think that we have waited this
14 long, that we should defer until the next board
15 meeting.

16 MR. MEITES: Yes, I -- rather than putting my
17 proposal as a motion, I would accept an amendment from
18 Mike that we -- in the next board meeting, an
19 exploration be conducted of how agencies like ours
20 handle this problem.

21 CHAIRMAN BEVIER: Handle the problem of the
22 evaluation of their chief executive officer?

1 MR. MEITES: Right, or officers.

2 CHAIRMAN BEVIER: Or officers.

3 MR. GARTEN: And their disclosure of it to the
4 board.

5 MR. MEITES: Right.

6 CHAIRMAN BEVIER: And the disclosure to the
7 board and the public --

8 MR. GARTEN: For example, what information do
9 they have to disclose, with regards to meeting with
10 various employees of an organization?

11 CHAIRMAN BEVIER: Right, and who said what,
12 and those kinds of things, right.

13 We have a motion on the floor that has been
14 seconded. I take it that what we need to do now is
15 vote the motion down and --

16 MR. MEITES: Well, I will withdraw my motion
17 and then substitute another motion instead, if I can.

18 CHAIRMAN BEVIER: Is that kosher?

19 M O T I O N

20 MR. MEITES: That we recommend that the board,
21 between now and the next board meeting, consider
22 abandoning the performance review committee structure,

1 and instead, explore what other agencies like ours use
2 to evaluate their principal officers.

3 MR. GARTEN: Second.

4 CHAIRMAN BEVIER: Discussion of this motion?

5 MS. SINGLETON: Who is doing it?

6 MR. MEITES: Yes. We left that out.

7 CHAIRMAN BEVIER: We are just recommending
8 that it be done.

9 MS. SINGLETON: The Great It --

10 MR. MEITES: Well, you don't want to -- in a
11 way, this is a task that we usually ask staff to do,
12 but there is some sensitivity about asking staff to
13 tell us how we should review their chief executive
14 officer. That doesn't really sound like the pieces fit
15 together.

16 Do we have any other resources to find out
17 what other agencies do? I don't know if any of us
18 wants to be calling other agencies. That doesn't seem
19 to work, either.

20 CHAIRMAN BEVIER: Part of the problem is, it's
21 a pretty small group of agencies that have independent
22 boards, and are covered by the Sunshine Act to the

1 extent we are. So --

2 MR. MEITES: Yes --

3 MR. GARTEN: I don't see any problem with
4 staff inquiring on our behalf.

5 MR. MEITES: That's ---

6 MR. MCKAY: Yes, I think this is a ministerial
7 act.

8 MR. MEITES: Okay.

9 MR. MCKAY: Indeed, most of these entities
10 probably have the process reduced to writing, and it's
11 simply to ask for a copy of their procedure. And if
12 not, ask that staff person to summarize their procedure
13 and get it to us ahead of time. And if we have
14 questions, follow-up questions, we can pursue them.

15 MR. MEITES: All right.

16 MR. MCKAY: Yes.

17 MR. MEITES: Well then, I will modify my
18 motion to ask staff to undertake this inquiry.

19 CHAIRMAN BEVIER: You are going to have to do
20 your whole motion again.

21 M O T I O N

22 MR. MEITES: All right. We recommend that the

1 board consider abandoning the performance review
2 committee structure, and adopt a -- in light of the
3 Sunshine Act -- another structure, and in the interim,
4 that staff be asked to survey agencies like ours to see
5 what they do. You don't have to put the Sunshine Act
6 in, that's --

7 CHAIRMAN BEVIER: I wasn't going to.

8 MR. MEITES: Okay.

9 CHAIRMAN BEVIER: Is there a second to Mr. --

10 MR. GARTEN: Second.

11 CHAIRMAN BEVIER: Discussion?

12 MR. MCKAY: The -- and I know we're coming up
13 into the holiday season as well, but when we get our
14 board books 10 days out, and there might be questions
15 that would be in the report, I think this is the kind
16 of report that would not take a lot of time.

17 But if the committee receives this report by
18 December 15th or so, it would give us the opportunity
19 to look at it. And if follow-up work needs to be done,
20 kind of addressing the issue that we were worried
21 about, we can ask for it. Because if we received it in
22 the board book, it would be too late to get that

1 follow-up work done.

2 CHAIRMAN BEVIER: So, do you want that to be
3 part of the motion?

4 MR. MCKAY: Not necessarily, just --

5 CHAIRMAN BEVIER: As part of the
6 legislative --

7 MR. MCKAY: Just as long as it's clear that we
8 get it with enough time to respond, if necessary.

9 CHAIRMAN BEVIER: To respond.

10 MR. MCKAY: Yes.

11 CHAIRMAN BEVIER: Right. Other discussion of
12 the motion? The motion is that the committee recommend
13 that the board consider abandoning the performance
14 review structure, with respect to evaluations of both
15 the president and the IG, I suppose, but right now it's
16 only as to the president, and consider adopting another
17 structure.

18 And in the meantime, ask staff to investigate
19 the way in which other agencies "like ours" that have
20 independent boards who evaluate their chief executive
21 officer and other executives how they proceed, with
22 respect to undertaking their evaluations and reporting

1 them to the boards. Is that a fair summary of the
2 motion?

3 MR. MEITES: Yes.

4 MR. MCKAY: That's fine.

5 CHAIRMAN BEVIER: Are we ready to vote?

6 MR. MCKAY: Yes.

7 CHAIRMAN BEVIER: All those in favor?

8 (Chorus of ayes.)

9 CHAIRMAN BEVIER: All those opposed?

10 (No response.)

11 CHAIRMAN BEVIER: The motion carries. Thank
12 you.

13 The next thing that is on our agenda is to
14 consider and act on other business. Is there --

15 MR. MCKAY: Madame Chairman?

16 CHAIRMAN BEVIER: Yes?

17 MR. MCKAY: I believe there was a deficiency
18 in my motion, with regard to the performance review of
19 the inspector general. That is, who is going to
20 appoint the individuals that will have these
21 discussions with the IG. And I think that was left
22 open.

1 And I think implicit in that -- if I could
2 make it clear -- I would envision the chair of the
3 Performance Reviews Committee, after consulting with
4 the chairman of the board, would appoint those members.

5 So, either we could amend the motion or
6 however the committee wants to proceed. So that's what
7 I envision, but I did not articulate that.

8 CHAIRMAN BEVIER: Thank you, and that's a good
9 idea to get that specified. I wonder if we can -- you
10 made the motion?

11 M O T I O N

12 MR. MCKAY: I made the motion, and so maybe I
13 will just amend the previous motion that was approved.
14 That is that a group of members of the committee be
15 appointed to conduct these discussions with the IG, as
16 previously discussed, that those members be chosen by
17 the chairman of the Performance Reviews Committee after
18 consulting with the chairman of the board.

19 CHAIRMAN BEVIER: And does the seconder to
20 that motion accede to that?

21 MR. MEITES: That's fine.

22 CHAIRMAN BEVIER: If that's all right, is

1 there any discussion of that amendment?

2 MR. MCKAY: I think the appointment should be
3 done promptly.

4 CHAIRMAN BEVIER: The appointment?

5 MR. MCKAY: So we can get cracking on it.

6 CHAIRMAN BEVIER: I will put "promptly" in
7 there. Is there any discussion? Are we ready to vote?

8 (No response.)

9 CHAIRMAN BEVIER: All those in favor of that
10 amendment to Mr. McKay's motion?

11 (Chorus of ayes.)

12 CHAIRMAN BEVIER: All those opposed?

13 (No response.)

14 CHAIRMAN BEVIER: Other business to come
15 before the committee?

16 (No response.)

17 M O T I O N

18 MR. MCKAY: Move to adjourn.

19 MR. GARTEN: Second.

20 CHAIRMAN BEVIER: All in favor?

21 (Chorus of ayes.)

22 CHAIRMAN BEVIER: All opposed?

1 (No response.)

2 CHAIRMAN BEVIER: One moment. We must stop.

3 I need to identify for the record the minutes that the
4 board approved of the meetings, the dates of the
5 minutes. I apologize for this, I did not do it
6 initially.

7 We approved the minutes of the committee's
8 closed meetings of: February 4th and 5, 2005; of April
9 29, 2005; of July 28, 2005; of October 28, 2005; and of
10 January 27, 2006. Okay?

11 That being so, the meeting is adjourned.

12 Thank you, everyone.

13 (Whereupon, at 9:50 a.m., the meeting of the
14 Performance Reviews Committee was adjourned.)

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