

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
GOVERNANCE AND PERFORMANCE REVIEW COMMITTEE

Saturday, July 25, 2009

10:21 a.m.

Capitol Plaza Hotel
1717 S.W. Topeka Boulevard
Topeka, Kansas

COMMITTEE MEMBERS PRESENT:

Lillian R. BeVier, Chairman
Herbert S. Garten
Thomas R. Meites
Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

Thomas A. Fuentes
Michael D. McKay
Laurie Mikva
Sarah M. Singleton

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President

Karen M. Dozier, Executive Assistant to the President

Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary

David L. Richardson, Treasurer and Comptroller, Office
of Financial and Administrative Services

Karen J. Sarjeant, Vice President for Programs and
Compliance

Charles Jeffress, Chief Administrative Officer

Ronald "Dutch" Merryman, Assistant Inspector General
for Audit, Office of the Inspector General

David Maddox, Assistant Inspector General for
Management and Evaluation, Office of the Inspector
General

Jeffrey E. Schanz, Inspector General

Thomas Hester, Associate Counsel, Office of the
Inspector General

John Constance, Director, Government Relations and
Public Affairs Office

Stephen Barr, Media Relations Director, Government
Relations and Public Affairs Office

Kathleen Connors, Executive Assistant, Government
Relations and Public Affairs Office

Marilyn Harp, Executive Director, Kansas Legal Services

James Murphy, Kansas Legal Services

Don Saunders, National Legal Aid and Defenders
Association (NLADA)

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

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

2 (10:21 a.m.)

3 CHAIRMAN BeVIER: I would like to call the
4 meeting of the Governance and Performance Review
5 Committee to order.6 MS. SINGLETON: Who do you need, Lillian?
7 I'll go get them.

8 CHAIRMAN BeVIER: I need Herb Garten --

9 MR. GARTEN: I'm here.

10 CHAIRMAN BeVIER: -- Tom Meites and Mike
11 McKay.

12 MS. SINGLETON: Well, you have them.

13 CHAIRMAN BeVIER: And I need the president.

14 MS. SINGLETON: Oh, well, you have her.

15 CHAIRMAN BeVIER: I know I do. Thank you,
16 Sarah.17 MS. SINGLETON: I was just going to be like
18 the court jester or somebody.

19 CHAIRMAN BeVIER: Yes, right. That's right.

20 MR. MCKAY: Mission accomplished.

21 MR. FUENTES: Bailiff, I think, is the term.

22 MS. SINGLETON: Oh, bailiff. Yes. That would

1 have been better. Thank you.

2 CHAIRMAN BeVIER: We are going to be working
3 from the revised agenda that was published in the
4 Federal Register and that you were given a copy of.

5 The first thing that we have to do is to
6 approve the agenda. Do I have a motion to approve the
7 agenda?

8 M O T I O N

9 MR. MEITES: Move approval of the agenda.

10 MR. GARTEN: Second.

11 CHAIRMAN BeVIER: Thank you. All in favor?

12 (A chorus of ayes.)

13 CHAIRMAN BeVIER: That passes.

14 Motion to approve the minutes of the
15 committee's meeting of April 25, 2009.

16 M O T I O N

17 MR. MEITES: So move.

18 CHAIRMAN BeVIER: Is there a second?

19 MR. GARTEN: Second.

20 CHAIRMAN BeVIER: All in favor?

21 (A chorus of ayes.)

22 CHAIRMAN BeVIER: Opposed?

1 (No response.)

2 CHAIRMAN BeVIER: So that passes.

3 The third item on the agenda is to consider
4 and act on procedures for conducting the performance
5 review of the inspector general.

6 If you recall, we had decided that we will
7 review Jeff at the next board meeting, the board
8 meeting in October. But Jeff and I have talked a bit
9 about how that review will proceed and in terms of what
10 criteria, and I have asked Jeff to talk to us today
11 about what his ideas are and his plan for proceeding.

12 MR. SCHANZ: Well, I went through the
13 transcripts very -- in a detailed manner from the last
14 meeting, so I'm speaking with a little bit of knowledge
15 as to where we proceed from here.

16 What we decided to do is pretty much tie a
17 performance discussion to the semiannual report. And
18 that's tied to the OIG work plan. And I think that's
19 one of the best performance measures we have, is this
20 is what we said we'd do. This is how I've achieved
21 what our goals have been.

22 And that will be -- the semiannual period

1 expires for this year at September 30th, and I will
2 have a lot of background information. I won't have the
3 report published by that time, but I'll have a lot of
4 the background information together and can provide to
5 the board for discussion in October.

6 CHAIRMAN BeVIER: Are there any comments on
7 what Jeff proposes to do with respect to his annual
8 review?

9 MR. MEITES: Just I'd like to make sure we get
10 the materials far enough in advance so that if we have
11 questions, we can get clarification before the meeting.

12 MR. SCHANZ: Certainly.

13 CHAIRMAN BeVIER: Herb?

14 MR. GARTEN: Jeff, do you contemplate that
15 your relationship and your dealings with management and
16 the board are part of this evaluation?

17 MR. SCHANZ: Well, there's -- let me back up.
18 First, there's a larger issue here, and it involves
19 the Sunshine Act, which is up next on the agenda. And
20 without knowing the results of that discussion, I'm not
21 sure whether we'll be in a closed or open session.

22 But yes, my relationships with, I believe, the

1 stakeholders of the Corporation, with management, with
2 the board, with Congress, are all part of my
3 performance.

4 MR. GARTEN: Would you like us to defer this,
5 continuing this, until we get to the next subject
6 matter?

7 MR. SCHANZ: I think that would be a prudent
8 course of action, yes.

9 CHAIRMAN BeVIER: Well, it makes good sense to
10 me, and I was almost going to suggest taking these two
11 things out of order. But I think you've given us
12 enough to go on, and we'll come back to this question
13 of open and closed when we have addressed the
14 third -- excuse me -- the fourth item on our agenda.

15 And we're actually going to take items 4 and 5
16 (sic) together because they are the same issue, in
17 essence. And with your permission, Jeff, I'm just
18 going to give a little bit of background. And I hope
19 that Vic -- you're here?

20 MR. FORTUNO: Yes.

21 CHAIRMAN BeVIER: Good, Vic.

22 MR. SCHANZ: I would note also that I'll be

1 having Tom Hester as legal counsel for that discussion.

2 CHAIRMAN BeVIER: That's good.

3 MR. SCHANZ: Okay. Thank you.

4 CHAIRMAN BeVIER: I'm glad to hear that.

5 That'll be nice to have his views.

6 MR. SCHANZ: Thank you.

7 CHAIRMAN BeVIER: Let me just provide a little
8 bit of background, if I can refresh the memory of
9 members of this committee as well as members of the
10 board.

11 Since we came onto the board, we have been
12 struggling with the question of how to do performance
13 reviews of both the IG and the president. One of the
14 issues that we've struggled with is the Sunshine Act
15 and whether or not we can do closed meeting evaluations
16 of the president and the IG.

17 We resolved that upon the advice of counsel
18 fairly early in our tenure in the following way. The
19 meetings were in executive session. The transcripts
20 were kept off the premises. They were kept in the
21 possession of the chairman of the governance and
22 performance review committee. The understanding was

1 that should those transcripts be requested, they would
2 be redacted and -- personal information would be
3 redacted and they would be made available to
4 appropriate people who requested to see them.

5 That procedure is the procedure we followed
6 until last meeting, at which it was decided, pursuant
7 to an opinion by the IG, that we should have the
8 transcripts be kept at the office of the Corporation,
9 in the secretary's office. And those have now
10 been -- possession of those has now been transferred.

11 It has been the feeling, I believe, the strong
12 sense of the board and of this committee, that a
13 meaningful evaluation of the performance of the
14 president cannot be done in open session.

15 There's not an inclination on our part to keep
16 anything from the public. It's not a question of
17 trying to do our business in secret. We embrace open
18 government. But with respect to attempting to evaluate
19 the chief officer, whom we hire, and the inspector
20 general, whom we also hire, it has just seemed to us
21 just not sensible to have such evaluations proceed in
22 open meetings.

1 So we've been searching for some solution to
2 this problem. One of the things that I asked Vic to do
3 during the course of the time between this meeting and
4 our last meeting was to survey other public entities
5 who were analogous to ours. And Vic proceeded to do
6 that -- namely, public entities who have a board of
7 directors and some sort of executive officer.

8 Vic did that, and from my understanding, just
9 looking -- I won't share the whole matrix with you, the
10 spreadsheet; it's quite lengthy -- I learned an
11 important fact, which is we're the only government
12 entity that seems to proceed in the way we do, at least
13 according to the formal procedures of others who are
14 subject to the Sunshine Act and have a board. Either
15 they don't engage in any performance evaluation or they
16 do it in a confidential way.

17 So we have somehow managed to become unique in
18 this regard. The uniqueness stems from two decisions
19 that prior boards have made.

20 The first decision is to -- as I understand
21 it, Vic, the first decision was to adopt regulations
22 for the Legal Services Corporation that subject us to

1 more intensive -- more of our meetings to Sunshine Act
2 regulations, the sunshine law, than is required by law.

3 So we opted in to greater openness with our meetings.
4 That was one thing that we did.

5 A second thing that we did, that the prior
6 board did, was to formalize the evaluation process for
7 the president and the inspector general. You put those
8 two together and it has put us in this box.

9 MR. MEITES: Lillian, you have to stop there.
10 You said you learned a lot from this survey, this
11 matrix, and we're different from everyone else. Could
12 you make crystal clear what "everyone else" does that
13 we don't do, and what we do that no one else under the
14 sun does?

15 CHAIRMAN BeVIER: Well, I hope I can make it
16 crystal clear. Let me make a couple things clear.

17 First of all, it seems to be very, very
18 difficult to get information, judging from the way the
19 matrix is. There were lots of waiting for contact,
20 called back, they promised to return my call, haven't
21 returned my call, no, no, won't tell you, that sort of
22 thing.

1 So apparently what we do that is different
2 from the other federal entities with what we are
3 comparable -- and there are lots of federal entities
4 with what we're not comparable -- but what we do that
5 is different is to have this formal evaluation process
6 that is -- we don't follow it exactly, but we do the
7 best we can to proceed in the way that prior boards
8 resolved we should.

9 The second thing we do that is unique, I
10 gather, is to have all of our performance evaluations
11 subject to the Sunshine Act.

12 MR. MEITES: Which is something that we
13 chose -- our predecessors chose to do.

14 CHAIRMAN BeVIER: Yes. I'm not sure it was a
15 decision that was -- the full implications of which
16 were understood, all right, at the time they did it.
17 It was one of those well-intentioned moves to formalize
18 a procedure. Both of them were well-intentioned moves.
19 They just -- in combination, they put us in the box we
20 find ourselves.

21 I would like to report one other fact that I
22 learned over the course of the last three months, and

1 that is, we have held our meetings in closed session.
2 The transcripts have been held in my possession. There
3 have been no requests by anyone pursuant to FOIA to see
4 those transcripts.

5 There have been -- there was a request by the
6 prior IG. We let him -- of course, we -- he saw the
7 transcripts. We gave them to him. There were a couple
8 requests from Congress two or three years ago when we
9 redacted personal information and sent them to
10 Congress.

11 Members of the public do not seem to be
12 interested. The claim is that this is a matter of
13 great public interest. I don't know what to make of
14 that fact. I do know that in our view, it has seemed a
15 not sensible way to proceed.

16 Thus, what we have before you are three
17 possible ways of proceeding. One is the protocol for
18 provisional change of the governance and performance
19 review committee meeting, which Vic and -- I'm sorry --

20 MR. HESTER: Tom.

21 CHAIRMAN BeVIER: -- Tom will explain to us.

22 The other are two possible draft NPRMs. One is a

1 notice of proposed rulemaking that would un-subject all
2 of our committees to the Sunshine Act. The other is a
3 narrower NPRM that would only apply to a change in the
4 regulations insofar as they apply to performance
5 reviews. Those would be -- this small change would
6 permit us to conduct performance reviews in closed
7 session.

8 I'd like to ask Vic and Tom to sort of give us
9 some background about the protocol. It may well be
10 that the committee's not prepared to proceed just right
11 now on these NPRMs because the way the months between
12 our last meeting and this agenda-setting process
13 evolved, there was a lot of attempt to get information.
14 It was tricky to do.

15 And so you don't have now a background,
16 really, in writing. So you may want to put it off,
17 which is something that -- apart from Jeff's review,
18 certainly for the president, is, I think, a reasonable
19 course to suggest, that we put this off for a more full
20 report to the next meeting, remembering that since
21 Helaine is not going to be reviewed this year since her
22 contract expires and she has indicated that she intends

1 to retire at the end of this year, there's not going to
2 be a performance evaluation of the president until the
3 new president is hired and has been in harness for a
4 while. So this may be something that we want to leave
5 for another day.

6 But Vic and Tom, maybe you can bring us up to
7 date.

8 MR. GARTEN: Lillian, may I ask one question?

9 In your remarks, you indicated that some of these
10 organizations that you reviewed make the
11 decision -- and you used the word "in a confidential
12 manner," if I heard you correctly.

13 What is the confidential manner they do it?

14 CHAIRMAN BeVIER: Well, actually, we don't
15 have information that's quite that precise. There's
16 one that has an informal committee; one that
17 does -- the chairman of the board is delegated the full
18 responsibility to evaluate the executive director. And
19 the others don't indicate how they proceed or even
20 whether they do.

21 MR. FORTUNO: Well, most donate evaluate, was
22 the surprising thing.

1 CHAIRMAN BeVIER: Right.

2 MR. FORTUNO: If I may, what we did was we, at
3 the chairman's request, canvassed other organizations
4 that are similarly situated insofar as they are subject
5 to the Sunshine Act, they are governed by a collegial
6 body -- such a board of directors, a commission -- and
7 that collegial body appoints and removes the chief
8 executive, whatever title they may use, but that
9 function.

10 And we found, for example, that the
11 Corporation for Public Broadcasting does it in a more
12 confidential manner, but they are not subject to the
13 Sunshine Act. They're actually not in our table, our
14 matrix. They have their own sunshine provision, their
15 own open meeting provision in their organic
16 legislation, as did we, originally.

17 And then Congress at some point after '74, and
18 it occurred in connection with our '77 reauthorization,
19 made us subject to the Sunshine Act, which it did not
20 do to the Corporation for Public Broadcasting.

21 Of those that we found where, as I said, meet
22 that criteria, governed by a -- subject to sunshine,

1 governed by a collegial body which appoints and removes
2 the chief executive, almost all, the answer was, don't
3 conduct a performance review of the chief executive.

4 Two seemed to have a process where there was
5 some feedback. One was a little more formal but was
6 characterized as informal nonetheless, and the other
7 was the board chairman meeting with the chief executive
8 to provide feedback.

9 So bottom line is what we found was that other
10 entities weren't evaluating their chief executives.

11 As to our particular circumstances, back in
12 '77, when we were made subject to the Sunshine Act, the
13 Corporation went beyond what was required. What the
14 Sunshine Act did was required that the gatherings of
15 the board, or any executive committee or council of the
16 board, would be subject to sunshine.

17 Non-executive committees, that is, committees
18 not exercising the full authority of the board, with
19 the authority to bind, act on behalf of and bind the
20 board, it wasn't limited to that. It went beyond that.

21 So even non-executive committees were subject to
22 sunshine.

1 And it may be that in -- if you look at the
2 legislative history, there was some back-and-forth
3 about whether too many things were happening in a
4 manner that wasn't sufficiently transparent, so there
5 was maybe some sensitivity to the reaction of Congress
6 to how things had been done prior to that.

7 But for whatever reason, the board decided,
8 let's implement sunshine, but implement it even more
9 strictly than is required by the Sunshine Act. We will
10 subject non-executive committees to sunshine. And
11 that's how it's been ever since then.

12 Some time about ten years ago, we started this
13 process of evaluating the chief executive. When that
14 process was commenced, we had this sunshine regulation
15 dating back to '77 or so that subjected all of our
16 committees, whether executive or non-executive.

17 And for the record, the standing committees of
18 the board are non-executive committees because they're
19 not formally -- the bylaws require that they be
20 established a certain way, and they have the authority
21 to act on behalf of and bind the board, which these
22 committees don't. These committees report to the

1 board. The board then takes the ultimate action.

2 So the situation we have is we have a sunshine
3 regulation that goes beyond what's required by the
4 Sunshine Act. We have this process for -- formal
5 process for evaluating the chief executive and the IG
6 which these other entities don't have. So we find
7 ourselves in a fairly unique circumstance.

8 Now, there is case law that says -- and, you
9 know, it's Common Cause and others -- that when subject
10 to sunshine, that you have to have these sessions in
11 open unless they qualify for executive session, and
12 that the exemptions have to be narrowly construed. And
13 Common Cause and some others speak to just how narrowly
14 it has to be construed, and suggest that if you're
15 subject to sunshine, you ought to have it in open.

16 In our case, we've looked at those cases
17 simply because while sunshine itself doesn't require
18 it, the sunshine reg we implemented does require it.
19 So we've looked at those cases, and what we came up
20 with is a compromise. We arrived at a solution that
21 essentially is this.

22 We have the session in closed session, with

1 the understanding that as soon as the transcript
2 arrives, it's reviewed for purposes of -- you know, we
3 determine whether or not anything in there is properly
4 withholdable.

5 Now, the "as for what is properly
6 withholdable" is actually technically fairly narrow.
7 It's privacy information, but privacy information is
8 drinking habits, medical condition, financial
9 circumstances, not issues concerning performance.

10 So the process that was adopted was intended
11 to ensure that if there was discussion in that closed
12 session by the subject of the evaluation or the board
13 about others, so that if the chief executive, for
14 example, said, you know, I have an individual with a
15 serious personal issue, that would be safeguarded.

16 It seemed that to have the session in open and
17 have that come up, once it's said on the public record,
18 then there's nothing you can do about it at that point.

19 It's public.

20 So the compromise was designed so that as
21 things like that came up, there was an opportunity to,
22 since it was in closed session, if that transcript was

1 released to the public, to redact that, to protect the
2 personal privacy information of the innocent third
3 parties. And so that was the process we had in place.

4 Now, at the last meeting, there was some
5 discussion because the OIG had looked at what the
6 practice has been. I think that -- and it was, I
7 guess, Matt who was there for your counsel's office at
8 the time, and I think he was directly asked, do you
9 think that that process, as described, satisfies
10 sunshine? And as I recall, his response was no.

11 My position was that while it certainly pushes
12 the envelope, the point -- to me it seemed like a
13 reasonable compromise to protect the privacy interests
14 of third parties in a practical way, while at the same
15 time ensuring that anything that didn't qualify for
16 that was available to the public because there is a
17 verbatim record, verbatim transcript. And that can be
18 released in its entirety if there is no personal
19 privacy information there.

20 It has some practical implications and
21 problems, and that is that whenever you have a session
22 behind closed doors, even though on the record and with

1 the understanding that this or much of this may have to
2 be made public, folks have a tendency to speak more
3 freely than might otherwise be the case.

4 But notwithstanding that, there was this
5 process which sought to reconcile and balance the
6 tension caused by the privacy interests of third
7 parties that were not the subject of the evaluation,
8 and the sunshine mandate that the activities of the
9 board -- that collegial body decisions be open to the
10 public.

11 Again, the IG's office doesn't feel that that
12 satisfies the Sunshine Act requirement. And that's
13 why, at the meeting, we were asked to consider
14 alternatives.

15 We did chat. I think the IG's position
16 remains that that compromise doesn't satisfy sunshine.

17 So instead, we focused on a proposal that I think it
18 was Herb put on the table, and developed a proposal
19 based on that principle, that there would be an open
20 session discussion but, where appropriate, the
21 committee could go into closed session.

22 And so we have a draft resolution for

1 discussion which I think we would all agree is
2 cumbersome. But in terms of what we were able to come
3 to consensus on, that, you know, at least technically,
4 does seem to satisfy sunshine, so that you would be
5 hearing not counsel saying, it's close but it probably
6 satisfies sunshine, and the IG saying, it's closed but
7 it doesn't satisfy sunshine.

8 We came with something that we can both agree
9 if you wanted something like this, this is a protocol
10 which would probably satisfy sunshine. So that's one.

11 Then something else we were asked to do was to
12 look at what could be done with respect to the
13 regulation itself; that is, since sunshine, the Act,
14 doesn't require subjecting non-executive committees to
15 the Sunshine Act requirements, could the resolution be
16 amended?

17 And the answer, of course, is yes, and there
18 are any number of ways to do it. The two that
19 immediately come to mind are: We could simply roll
20 back, if that was desired, the regulation requirement
21 so that it applies only as required by the Sunshine Act
22 and no further. That is, it would apply to executive

1 committees, but it would not apply to non-executive
2 committees.

3 The other is rather than rolling back as to
4 all committees, making a narrow -- carving out a narrow
5 exception. Now that the board has been doing
6 evaluations for over a decade and has experience with
7 trying to do these evaluations by committees that are
8 subject to sunshine -- not because required by the
9 Sunshine Act but by our implementing reg -- whether
10 having a -- carving out a narrow exception would be the
11 way to go.

12 So what we've done is given you two rulemaking
13 approaches. One is rolling back as to all
14 non-executive committees. The other is rolling back
15 only as to the performance review activities of the
16 Governance and Performance Review Committee.

17 That's the possible rulemaking solutions. And
18 then, as I mentioned a moment ago, if no change is made
19 to the regulation, then having a protocol which would
20 satisfy everyone that it satisfies sunshine but might
21 give the board a practical way of conducting an
22 evaluation, adhering to the open government -- the open

1 meeting requirement, but at the same time having the
2 option of going into closed session where warranted.

3 I hope that wasn't too confusing.

4 MR. MEITES: Perfectly clear.

5 CHAIRMAN BeVIER: Perfectly clear. Are there
6 questions or motions or comments? Tom?

7 MR. MEITES: Yes. I am -- the proposed
8 protocol is a solution to a problem we created
9 ourselves. And it's a very, very, very imperfect
10 solution because it doesn't address the real problem.

11 The real problem is not the privacy rights of
12 third parties. The real problem is discussing candidly
13 and fully our evaluations and our opinions of the
14 inspector general and the president of the Corporation.

15 It's like the protocol is a way to jump over a
16 10-foot-high wall when we don't have to have a wall at
17 all.

18 Now, as for removing the wall, of the two
19 options, I think a strong -- my overwhelming case has
20 been made for exempting the deliberations of the
21 Governance and Performance Review Committee for the
22 limited extent of evaluations of the president and the

1 inspector general.

2 I don't think a case has been made -- I don't
3 think we've had any problems, as far as I know -- with
4 the sunshine committee (sic) applying to our other
5 committee functions.

6 So I would strongly advocate that of the three
7 options, we recommend to the board that it institute a
8 rulemaking to exempt just the deliberations and
9 consideration of the Governance and Performance Review
10 Committee as to its evaluations of the president and
11 the inspector general, which I believe is this
12 document, the one that says "Draft."

13 MR. FORTUNO: Yes. The notice of proposed
14 rulemaking dated 7/15/09.

15 M O T I O N

16 MR. MEITES: And to get the discussion
17 started, I'll so move.

18 CHAIRMAN BeVIER: Is there a second?

19 MR. GARTEN: Second.

20 CHAIRMAN BeVIER: Discussion.

21 MR. GARTEN: Yes. I have a -- thank you for
22 explaining this so adequately and clearing up the

1 status of our committee as not being one that we have
2 to be concerned about. We're a non-executive
3 committee.

4 Now, once this rollback occurs, can the
5 committee, this committee in session, go beyond hearing
6 that Helaine or the successor president is subject to
7 alcohol problems?

8 CHAIRMAN BeVIER: Yes.

9 MR. FORTUNO: I'm sorry. Can the committee go
10 beyond --

11 MR. GARTEN: Go beyond it. Go --

12 MS. SINGLETON: If the notice of proposed
13 rulemaking is adopted.

14 MR. FORTUNO: Oh, if this rulemaking, that is,
15 the narrow exception --

16 MR. GARTEN: Yes.

17 MR. FORTUNO: -- is carved out of the
18 regulation, then it seems to me that the committee
19 could conduct all of its deliberations concerning the
20 performance evaluation in closed session, I think right
21 now, without making any changes, if, for example --

22 MR. GARTEN: Well, you did mention that there

1 are restrictions if we went ahead and wanted to adopt
2 the resolution I had proposed at our prior meeting.

3 MR. FORTUNO: Yes.

4 MR. GARTEN: But then we could only discuss
5 matters dealing with abusive alcohol, and you mentioned
6 a couple of other things.

7 MR. GARTEN: That's right, because if -- under
8 sunshine, or now, because the reg applies to
9 committees, under our reg, if you -- in order to go
10 into closed session, you have to qualify for one of the
11 exemptions.

12 MR. GARTEN: All right. We're solving that
13 problem? That's my question.

14 MR. FORTUNO: Yes. No, no, I think we are.

15 CHAIRMAN BeVIER: Yes, but we're more
16 than -- we're not just solving that problem. What
17 we're doing is, in effect, empowering the performance
18 review committee --

19 MR. FORTUNO: Yes.

20 CHAIRMAN BeVIER: -- during the course of
21 its -- well, empowering them to talk about the
22 substantive issues that might arise, whether or not

1 they are matters of a personal nature. In other words,
2 they are to be confidential discussions not subject to
3 sunshine, period, end of discussion.

4 So if we make this -- if Tom's motion passes
5 and we recommend this to the board, those sessions will
6 be not subject to season.

7 MR. FORTUNO: That's right. Right now,
8 without any change, you have the authority to go into
9 closed session to discuss those personal matters.

10 CHAIRMAN BeVIER: I understand.

11 MR. FORTUNO: What this would do is --

12 CHAIRMAN BeVIER: But it's not -- excuse me,
13 Vic. I just have to be as clear as I possibly can
14 about this. This is not to be -- it is not to protect
15 personal privacy. It is to protect the substance of
16 the deliberations. Okay? And that's what we want to
17 make sure that we would be accomplishing if we do this
18 NPRM.

19 MR. FORTUNO: The answer is absolutely yes.

20 CHAIRMAN BeVIER: Okay. Thank you very much.

21 MR. GARTEN: I have a --

22 CHAIRMAN BeVIER: Sarah?

1 MR. STRICKLAND: I'm sorry. Go ahead, Sarah.

2 MS. SINGLETON: As I read this NPRM, it would
3 apply to anything this committee does, including
4 discussions of governance. Is that correct? As
5 written?

6 MR. FORTUNO: There are two --

7 MS. SINGLETON: I'm talking -- I'm just
8 talking about the one --

9 MR. MEITES: Which one are you reading?

10 MS. SINGLETON: The one that talks about this
11 committee only. Yes. It's called Draft 7/15.

12 MR. MEITES: Page 4, first full paragraph.

13 MR. FORTUNO: "LSC proposes to amend the
14 regulation to exempt from coverage under the
15 requirements of Part 1622 meetings of the Governance
16 and Performance Review Committee of the LSC board of
17 directors when it meets to discuss the performance
18 review of the LSC president or inspector general."

19 MR. GARTEN: What are we looking at?

20 MR. FORTUNO: The draft notice of proposed
21 rulemaking dated 7/15, page 4, first full paragraph.

22 CHAIRMAN BEVIER: It was designed to be

1 limited to just performance review of president and IG.

2 MS. SINGLETON: Yes. I apologize. I think
3 what confused me was the first sentence in the summary
4 that ends, "such committee meetings may more
5 appropriately be exempt." And I didn't see that that
6 was qualified.

7 MR. FORTUNO: Yes. We would have to work on
8 the language to make sure that we accomplished exactly
9 what was intended and not inadvertently go beyond that.

10 MS. SINGLETON: So the intent is not to also
11 permit closure of the governance discussions?

12 MR. FORTUNO: No, no. It's only to the extent
13 that it's performance review discussions.

14 MR. STRICKLAND: May I ask a question?

15 CHAIRMAN BeVIER: Yes.

16 MR. STRICKLAND: When you say that that
17 particular aspect of the committee's work would be
18 exempt, would there be a verbatim transcript made of
19 that portion of the meeting or not?

20 MR. FORTUNO: If it's exempt, you may not need
21 to. I'd have to look at sunshine and our bylaws
22 together to see what the result is. But my initial

1 reaction is if it's exempt, it wouldn't have to be.

2 MR. STRICKLAND: Well, it would seem to me to
3 make no sense --

4 MR. FORTUNO: For example, briefings.

5 MR. STRICKLAND: -- to go through this drill,
6 only to find you have to make a verbatim transcript,
7 and then it can be that the verbatim transcript can be
8 made public. The whole idea is to stop doing that, as
9 I understood the discussion.

10 CHAIRMAN BeVIER: Right.

11 MR. FORTUNO: Well, I thought the whole idea
12 was to allow for it being in closed session. But I
13 understand the point that what's the value of having it
14 in closed session if you still have a transcript. So I
15 agree.

16 MR. FORTUNO: And I don't think -- it may be
17 that it's not required. For example, right now
18 briefings --

19 MR. STRICKLAND: That's very important.

20 CHAIRMAN BeVIER: Yes, it is. I was assuming
21 that that would follow, as the night the day, if we
22 exempted this. But it may be wrong.

1 MS. SINGLETON: I seem to recollect, Vic, that
2 you told us at one point that even if sunshine doesn't
3 cover you, the members of Congress, who have some sort
4 of authority over you, believe that they get to look at
5 all your transcripts.

6 MR. FORTUNO: Yes. What it is is the Sunshine
7 Act itself has a provision that says that the
8 provisions of the Sunshine Act are not available as a
9 basis for denying a request from a committee of
10 Congress for a transcript of a closed session; so that
11 while you may have a situation where the Sunshine Act
12 authorizes you to have a meeting in closed session,
13 that if there's a transcript, that the Congress is
14 entitled to it if a committee asks for it,
15 notwithstanding the fact that it was properly in closed
16 session.

17 MS. SINGLETON: Well, I'm not certain that the
18 fact that there might be a transcript means you don't
19 want to close the session.

20 CHAIRMAN BEVIER: Well, I think the key aspect
21 of what Vic just said was, if there's a transcript.
22 And question is, must there be a verbatim transcript?

1 And you might be right, Sarah, because that is in fact
2 the way we have been conducting our business, which is
3 in closed session, knowing that the transcripts might
4 be available to members of Congress.

5 MR. STRICKLAND: May I pose the question a
6 different way? Suppose that we can just snap our
7 fingers now we could adopt this rule. Suppose that we
8 went back to a set of circumstances where, number one,
9 we've concluded -- and I think you've advised
10 us -- that our committees are not executive
11 committees --

12 MR. FORTUNO: That's right.

13 MR. STRICKLAND: -- simply because they do not
14 have the power to bind the board. And under the
15 Sunshine Act, as I understand it, non-executive
16 committees are not covered by the provisions of
17 Sunshine Act. Is that right?

18 MR. FORTUNO: That's right.

19 MR. STRICKLAND: All right. So if we
20 didn't -- if a previous board a number of years ago had
21 not opted to bring the committees under sunshine as if
22 they were in fact executive committees -- suppose that

1 had never occurred. And we were meeting under the
2 provisions of the Sunshine Act, and this is a
3 non-executive committee.

4 Wouldn't we be making a verbatim transcript of
5 the meeting, whether it's open or closed?

6 MR. FORTUNO: I'd have to check. I
7 haven't -- I haven't looked at that specific point. I
8 assume not, but again, I'd have to check. I haven't
9 looked at that specific -- I can do that easily enough.
10 It wouldn't take very long.

11 CHAIRMAN BeVIER: As I recall, we did have one
12 closed meeting where we didn't have -- because of the
13 way the reporter was working that time, we were not
14 able to have a reporter. We did -- I guess we --

15 MR. STRICKLAND: We may have done a recording.

16 CHAIRMAN BeVIER: We may have done a
17 recording. That's right. Sorry. My memory's faulty.

18 MR. STRICKLAND: And I don't want any of my
19 comments to be understood to say that we should not
20 operate under the Sunshine Act. That would be a
21 nonsensical statement for me to make, and I'm not
22 making that statement.

1 I'm simply inquiring about how things would
2 work if the previous board had never implemented or
3 covered all of its non-exempt committees voluntarily.

4 MR. FORTUNO: Again, I'd have to confirm this.

5 But I believe that what the answer is going to be is
6 that if it's not subject to sunshine, you don't have to
7 have a transcript. If it's subject to sunshine but
8 it's properly handled in closed session, that is,
9 subject to sunshine but, because of an exemption, can
10 be done in closed session, then we have to have a
11 transcript.

12 For example, we have briefings in closed
13 session. Briefings, by definition, are not subject to
14 sunshine because if you look at the definition of a
15 meeting in the Sunshine Act and in our reg, a briefing,
16 because -- while it may entail a gathering of a quorum
17 of the board at a duly convened meeting, doesn't
18 involve decision-making.

19 Since it's only a presentation to -- a
20 briefing of the board by staff, say, that's not subject
21 to sunshine. Because it's not subject to sunshine, you
22 don't have to record it. We do, as a practical matter,

1 because the briefings occur in the same room and as
2 part of the closed session, and so it's recorded.

3 But you could technically say, we're now going
4 to step into a different room because this briefing is
5 not subject to sunshine -- it's simply a
6 briefing -- and it wouldn't have to be on the record.

7 So that's why my reaction to this is if it's
8 not subject to sunshine, you're not going to have to do
9 a transcript. But I would want to check it to confirm
10 it since I haven't looked at that specific point
11 lately. But if you want to know what I think the
12 answer is, that's I think the answer is.

13 MR. STRICKLAND: That's what I wanted to know.

14 MR. HESTER: May I comment on our view, the
15 Office of the Inspector General? Tom Hester, Office of
16 the Inspector General.

17 The Sunshine Act itself defines a meeting as
18 the deliberations of members who are required to take
19 action on behalf of the agency, where such
20 deliberations determine or result in the joint conduct
21 or disposition of official agency business. So this is
22 the -- you know, this is why briefings are not subject

1 to the Sunshine Act.

2 CHAIRMAN BeVIER: Right.

3 MR. HESTER: It seems to us that if you are
4 conducting a performance appraisal or an evaluation,
5 that in and of itself is an action. And if a quorum of
6 members who are authorized to take action on behalf of
7 the agency are undertaking this action, then that in
8 and of itself would cause the meetings to be covered by
9 the Sunshine Act, regardless of the regulation that has
10 been enacted by the Corporation in the past or how you
11 might want to define committees.

12 CHAIRMAN BeVIER: Tom, excuse me. Could I ask
13 for a clarification?

14 MR. HESTER: Yes.

15 CHAIRMAN BeVIER: It seems to me that the
16 committees are not authorized to act on behalf of the
17 board. That's why they report to the board and the
18 board confirms. And they recommend things to the
19 board.

20 So you could have a committee, as we've done
21 in the past, have a meeting in closed session, report
22 in open session to the board. The board then makes a

1 decision, based on what the committee reports.

2 So the whole idea here is that the committees
3 are not -- they're not authorized to act on behalf of
4 the board. Only the board is authorized to act on
5 behalf of the board.

6 MR. FORTUNO: I think that Tom's point,
7 though, is that if you have a committee consisting of
8 fewer than a quorum of the board, that's certainly the
9 case.

10 But I think that the point he may be raising
11 is if you have a quorum of the board present for a
12 committee meeting -- so, for example, if you designated
13 a committee but you have all 11 directors
14 present -- that while it's designated a committee, the
15 fact is it's a gathering of a quorum, or in that case
16 the entirety of the board.

17 And any time you have a gathering of more than
18 a quorum of the directors in office, that that would
19 subject the gathering to sunshine. Is that your point?

20 MR. HESTER: Well, and also if the result is
21 to predetermine -- effectively predetermine agency
22 action, in the words of the Supreme Court decision, SEC

1 v. ITT World Communications, where the action of the
2 committee predetermines the action of the agency, then
3 that is also subject to the Sunshine Act.

4 So in other words, to quote the Senate report
5 on the Sunshine Act, "with meetings open by the actor
6 not intended to be merely reruns staged for the public
7 after agency members had discussed the issue in private
8 and predetermined their views."

9 So it seems to me that the amendment to the
10 regulation that's been proposed could result in a
11 situation where, in effect, you have a committee going
12 into closed session and in effect taking action, making
13 decisions, and then the board publicly will ratify the
14 result or stage a rerun of that action by the
15 committee.

16 But my understanding of the case law and the
17 statute is that that result is now allowed under the
18 Sunshine Act. That type of action is not allowed.

19 CHAIRMAN BeVIER: Sarah?

20 MS. SINGLETON: I guess I need some more
21 clarification of what your definition of "action" is.
22 Frequently, in performance evaluations, it is merely a

1 pointing out of things that were observed to be done
2 well and things that were observed to be done poorly,
3 and it doesn't lead to an action. It doesn't lead to a
4 consequence. It neither results in a pay increase nor
5 a contract extension or anything of that sort. It's
6 just a discussion of how you performed in the
7 workplace. Is that action?

8 MR. HESTER: I believe it is. I mean, it's
9 interesting. I mean, there are performance evaluations
10 and then there are decisions like contract renewals,
11 pay increases. And the valuation of itself, it seems
12 to me, even without -- even if a person's contract is
13 not up for renewal that year, the evaluation itself,
14 the rating that one gives to an employee, is an action.

15 If a person gets an outstanding rating, that's
16 a different action from getting a superior rating or a
17 fully successful rating.

18 MS. SINGLETON: But what if all I did was to
19 say to the person, when you make an oral presentation,
20 I think you need to be more attentive to the people who
21 are questioning you so that you directly answer their
22 questions? That --

1 MR. HESTER: That's probably not.

2 MS. SINGLETON: Well, so if that's the kind of
3 thing you were doing in closed session, you think that
4 would be okay. But if in fact you were saying, we
5 think your job is so poor we are going to determine
6 that you get no pay increase, that might be an action?
7 Or we're going to rate you as average on this skill?

8 MR. HESTER: I think that would be an action.
9 And my understanding, you know, from our discussions
10 about the performance evaluation of the inspector
11 general, I mean, we have a fairly detailed, elaborate
12 process for doing that. There are sort of criteria
13 that he is to be measured against, and he's to be
14 formally evaluated against those criteria.

15 That strikes me as more of an action than if
16 you were just to bring him into a closed session and
17 say, Jeff, you know, I wish you'd, you know, speak up
18 more in the -- you know, whatever, the example that you
19 gave. That would be different.

20 But a formal performance evaluation strikes me
21 as something that is an action.

22 MR. FORTUNO: If it's something that you do

1 individually, if you had a meeting and made that
2 statement to -- whether it's the president or the IG, I
3 don't think that's deliberation of board action.

4 MS. SINGLETON: I'm talking about the
5 committee making no statements.

6 MR. FORTUNO: If the -- if the group, on the
7 other hand, discusses the point and reaches a consensus
8 or a group position and then communicates that to the
9 chief executive, I think that's more like an action
10 than an expression of an individual view.

11 MR. HESTER: Right. And then, in a case where
12 this would occur, and then the full committee were to
13 meet and in effect sort of ratify that action, that
14 does not appear to be a problem by the act.

15 CHAIRMAN BeVIER: All right. I think --

16 MR. HESTER: Regardless of what terminology
17 you use to denominate the various committees.

18 CHAIRMAN BeVIER: Right. It strikes me that
19 we are kind of at an impasse with respect to the legal
20 advice that we're getting from these two people, with
21 respect to what Vic has told us and what we
22 understood -- what I understood to be Vic's advice.

1 MR. FORTUNO: I don't think so.

2 MR. GARTEN: I think there's a safe harbor,
3 though.

4 CHAIRMAN BeVIER: What's a safe harbor?

5 MR. GARTEN: Recent precedent. As chair of
6 the audit committee of three individuals, upon advice
7 of counsel and reviewing it, it was clear that our
8 committee, the audit committee, could adopt a charter
9 and make a decision as long as the number of people on
10 the committee was less than a majority of the board.
11 Remember, that was the advice you gave me.

12 MR. FORTUNO: Yes. I think that the point
13 being made by Tom -- and I could be mistaken, so
14 correct me if I am -- is that while everything that was
15 said about exempting non-executive committees from
16 sunshine is fine, I think the point he wanted to make
17 was, you need to be careful because if that committee
18 consists of more than a quorum -- consists of a quorum
19 or more, then the fact that you have gathered a quorum
20 or more of the board would bring it within sunshine.

21 But I thought the committee would not entail
22 the whole board or more to quorum. If the committee,

1 for example, were to consist of the entire board, then
2 there's nothing you could do to get it out from under
3 sunshine because sunshine defines -- extends its
4 coverage to any gathering of a majority of the
5 directors.

6 CHAIRMAN BeVIER: Okay. So in other words --

7 MR. FORTUNO: Where deliberations occur.

8 CHAIRMAN BeVIER: So in other words, if fewer
9 than a quorum are members of the governance and
10 performance review committee, and fewer than a quorum
11 of the board meets in closed session to engage in a
12 substantive review of the performance of the president
13 and the IG, then this amendment to our regs would
14 permit that to proceed and not be subject to the
15 Sunshine Act?

16 MR. FORTUNO: If you have less than a quorum,
17 I don't know -- since they're non-executive committees,
18 I don't know that you could bind the board.

19 CHAIRMAN BeVIER: Well --

20 MR. FORTUNO: But any time you have less than
21 a quorum, you're right, it would not be subject to
22 sunshine.

1 MR. GARTEN: The answer is yes.

2 MS. SINGLETON: I still --

3 MR. HESTER: The problem is that it would be
4 impossible for the board to then make an informed
5 decision without having the same discussion again in
6 public.

7 MR. MEITES: Oh, that's absolutely not right.

8 We do that all the time. We've done that for years.
9 What we do is we make a recommendation to the board.
10 We've had many instances where the board has not agreed
11 with our performance evaluation. Some people agree;
12 some people don't agree.

13 You're hypothesizing a state that doesn't
14 happen here. And what you're doing is you're making a
15 record that's going to cause us gobs of trouble,
16 absolutely gobs of trouble, because you're describing a
17 situation which is counterfactual.

18 The way this works -- I've been on the
19 committee since it started -- is we meet. We talk. We
20 then summarize where we're at. Lillian makes a
21 recommendation to the board. And some board members
22 agree and some disagree.

1 Some will say, Lillian, you're full of hot
2 water. I would say that's the best evaluation I've
3 ever had. And then, on the basis of that discussion,
4 not on the basis of a committee discussion, the board
5 makes a decision as to what the performance review
6 shall be.

7 Now, under those circumstances, you would
8 agree, would you not, that the committee's
9 deliberations are not subject to the Sunshine Act?

10 MR. HESTER: I'm sorry. Could you repeat the
11 last part of that?

12 MR. MEITES: The committee is less than a
13 quorum of the board. The committee meets, deliberates,
14 and then reports to the board what its recommendation
15 is. The board then is free to follow the
16 recommendation, ask for more information, conduct its
17 own investigation, have its own debate. And then it
18 determines what the performance evaluation should be.

19 Under those sort of facts, you would agree,
20 would you not, that the committee's deliberation is not
21 action and it is not subject to the Sunshine Act?

22 MR. HESTER: Right. What I said was that it

1 would be difficult if not impossible for the board,
2 being fully informed --

3 MR. MEITES: Why in the world -- sir -- sir,
4 excuse me.

5 MR. HESTER: -- without having a discussion,
6 you said --

7 MR. MEITES: No, no.

8 MR. HESTER: -- the board would then discuss.

9 MR. MEITES: The board will determine what
10 it's capable of doing. You will not. This board has
11 been operating successfully, making decisions for five
12 years. We have never had any trouble reaching a
13 decision.

14 And for you to say, hypothesize, it would be
15 difficult for us to make a decision is simply wrong.
16 It is said out of -- with no basis in fact. This board
17 can make decisions, does make decisions, and we don't
18 need you telling us we aren't able to make decisions.

19 Assume we are capable of making a decision.
20 You would then agree with me, would you not, that the
21 action of the committee is not subject to the Sunshine
22 Act?

1 MR. HESTER: Assuming that the board could
2 make an informed decision without any discussion --

3 MR. MEITES: Sir, I hypothesized a discussion.
4 Don't change my question. The board does have a
5 discussion. It's capable of discussion. It's a
6 rational body, understands its responsibility, has
7 followed them for five years.

8 Under those set of facts you would agree,
9 would you not, that the action of the committee is not
10 subject to the Sunshine Act?

11 MR. HESTER: Well, the action of the committee
12 would not be --

13 MR. MEITES: Could someone else do this?

14 CHAIRMAN BeVIER: I just have a lot of
15 problems with the advice we're getting from the IG,
16 partly because -- what I don't understand is the lack
17 of any effort on the part of the IG to render a
18 sensible decision, a decision that is -- helps us to
19 conform with what makes sense. That has just not been
20 forthcoming from day one.

21 But I do not -- I would propose that we delay
22 a vote on this motion, given the legal uncertainties.

1 I don't know whether the committee thinks that.

2 But I want -- I would want a better job at
3 sort of describing why it is why anyone would ever
4 think that you would have to have meetings that
5 evaluated the president in open session and that were
6 genuine evaluations, with an effort substantively to
7 say things, to exchange views, on a committee level
8 with the president and the IG about the way they have
9 been conducting their jobs.

10 We have the power to hire. We have the power
11 to fire. To subject that process -- and there has been
12 no evidence whatsoever except from the IG that the
13 public is genuinely interested in how we go about
14 evaluating the president.

15 MR. SCHANZ: If I may, Madam Chairman, we'll
16 take this back. I hear you very, very clearly. I
17 think it's an opportunity for us to get together with
18 management's general counsel and provide to the
19 committee a unified position on this.

20 CHAIRMAN BeVIER: I don't care if it's
21 unified. I just want somebody to try to answer the
22 question of why we are in the box we are in, why there

1 isn't a way for us to conduct this in a way that is
2 sensible, intelligent, and works to be substantively
3 beneficial both to the board and to the particular
4 people who are being evaluated. That's what has not
5 been forthcoming, and that's what you are not
6 responding to, Tom.

7 MR. HESTER: Well, may I just say that we've
8 had an opinion from the outside law firm on this. What
9 was it -- I forget which firm it was.

10 CHAIRMAN BeVIER: We just can't take more time
11 on this. Could I --

12 MR. HESTER: I just want to make the point
13 that, I mean, somehow the idea that this is just our
14 view and that we're out of step, I mean, we derived the
15 same conclusion as the other people who looked at it.

16 CHAIRMAN BeVIER: Well, not that other federal
17 entities have done it. I don't want to argue and fuss
18 about this any more. And my time on the board has been
19 almost chewed up by this issue, and it makes no sense
20 at all. So I've really kind of reached the end of my
21 patience with it.

22 So I would -- there's a motion on the floor.

1 I guess we need to vote on that motion?

2 MS. SINGLETON: Or table it.

3 CHAIRMAN BeVIER: Let's --

4 MR. MEITES: It's my motion. I'll table it.

5 CHAIRMAN BeVIER: All right. We're going to
6 table that motion. We're going to invite some clarity
7 from our counsel and from the IG to -- here's what I
8 want done, and that is to address the substantive
9 concerns that are being expressed in terms of how you
10 proceed with this. So I just need to have some
11 responsiveness with respect to that question.

12 MR. MEITES: Move on.

13 CHAIRMAN BeVIER: So we'll move on. Jeff, I'm
14 not -- what that leaves us is with an issue about
15 whether your review is in open or closed session. We
16 could do a couple of things with respect to that.

17 We could wait and do your review at the
18 January meeting instead of doing it in October, but
19 still get together with you at our next meeting in an
20 informal way in open session, an open report to us, and
21 then make a decision next time about whether that's
22 going to be open or closed.

1 There are arguments for having -- for treating
2 the IG's evaluation differently from the president's.
3 So I'm open to that. I'm sure the board is open to
4 that.

5 MR. SCHANZ: Okay. Yes. I agree with that.
6 From point of fact, most IGs are not rated. LSC is
7 unique because I respond to a board of directors. I
8 was hired by a board of directors. So we will come up
9 with a position for you to be able to do that.

10 CHAIRMAN BeVIER: Thank you.

11 MR. SCHANZ: We have agreed in the past to
12 have informal discussions centered around the
13 semiannual report period when we measure performance
14 against work plan. And then we can go forward from
15 that point.

16 CHAIRMAN BeVIER: All right. So what we will
17 do, if the committee is amenable to this, we will
18 postpone the decision about the IG and the president's
19 performance review, open or closed, till the next
20 meeting, getting advice from both sides. And we will
21 invite Jeff in October to do an informal update on his
22 work plan and the semiannual report and the like.

1 MR. SCHANZ: Okay.

2 CHAIRMAN BeVIER: All right?

3 MR. McKAY: It would be helpful for us if you
4 can have something together soon enough to get it into
5 the board book, at the very latest, rather than sending
6 it to us after the board books go out, so we have a
7 little time to reflect upon it.

8 MR. SCHANZ: That is always our intent.

9 CHAIRMAN BeVIER: Yes. Thank you. It
10 just -- this time it just -- you know, it just didn't
11 work.

12 MR. McKAY: These things happen. We just want
13 to remind you all that we have other things to do. And
14 so when we something a week ahead of time, sometimes we
15 have other things and we can't get to it and give it
16 the kind of time that it requires.

17 CHAIRMAN BeVIER: I can't find my agenda.

18 We are ready, then, I think, to move on to the
19 staff report on the update of the list of transition
20 materials and so forth. John Constance has been our
21 staff person on this.

22 John, since we've taken more time than we

1 hoped to take on that last issue, I hope you'll respect
2 the fact that we're wanting a brief report. Thank you.

3 MR. CONSTANCE: Thank you, Madam Chairman.
4 John Constance, director of government relations and
5 public affairs for LSC.

6 You have on page 105 of the board book the
7 results of what have been several discussions in
8 previous meetings about the list of transition
9 materials that were recommended for providing
10 orientation to incoming board members.

11 What you have there is actually a directory
12 for what has been created as a wiki. I would explain
13 to you all the details of what that term means, but I
14 don't know that.

15 (Laughter.)

16 MR. CONSTANCE: Basically, what we will
17 provide to the board, to this board and to incoming
18 members, is code access to this document that's on our
19 website, and will provide you an opportunity to click
20 on these links and basically look at the materials that
21 have been accumulated now -- probably close to a
22 thousand pages of material -- accumulated for purposes

1 of the orientation.

2 I have told Laurie that we will be probably
3 within the week doing that, providing that to the
4 entire board, and obviously it'll be of assistance to
5 her incoming, as well as an opportunity for an incoming
6 board member to assess for us whether it is
7 understandable and does the job as requested.

8 So that's where we are with that particular
9 matter.

10 CHAIRMAN BeVIER: Thank you. Are there any
11 questions from committee members?

12 MR. GARTEN: I have a suggestion. I think
13 it's an excellent outline. Terrific. I think there
14 should be a reference to the Friends of LSC, their
15 existence, and some background material about our
16 headquarters building, where the funds came from and
17 the present status.

18 MR. MEITES: Can we appoint a committee to
19 quiz Laurie on this?

20 CHAIRMAN BeVIER: To quiz Laurie? No. We're
21 just going to watch her like hawks.

22 MR. MEITES: No quiz?

1 CHAIRMAN BeVIER: No quiz. We'll see how much
2 she understood by how she behaves.

3 MR. MEITES: Well, that's another issue.

4 MR. McKAY: In all seriousness, I think it
5 would be very -- now that Laurie's here, I think it
6 would be very helpful to hear from her as we go through
7 this process on how we can better brief her and her
8 soon-to-be colleagues.

9 What concerns me when I look at this -- and
10 agree with Herb; this is a wonderful list -- this is a
11 ton of materials.

12 CHAIRMAN BeVIER: Oh, it's huge.

13 MS. MIKVA: That's right. It's just enormous.

14 MR. McKAY: And that, coupled with -- and I
15 reflect on how long it took me, as long as I'm sure it
16 took everyone else, to figure out all this
17 stuff -- just a reminder again that some kind of a
18 retreat with the new board members I think would have
19 helped me considerably, to do nothing but sit around
20 and talk some of the previous board members to
21 understand stuff -- read it ahead of time, but to
22 better understand it.

1 And that would have helped me. And I'm
2 inclined to -- and I've mentioned this before -- but to
3 continue to press that. But I'm anxious to hear, not
4 from Laurie today, but as we go through this process.

5 MS. SINGLETON: Just don't take any action.

6 (Laughter.)

7 CHAIRMAN BeVIER: Yes. Dave Maddox?

8 MR. MADDOX: Just an update from the OIG side
9 of the house. I'm David Maddox, assistant inspector
10 general for management and evaluation.

11 We also have an online board orientation/
12 resource. Ours is meant to be more of a legacy type of
13 resource from here on out. Ours is -- we presented it
14 at the last board meeting, so it's up and running.

15 We also have taken a look at OIG community
16 resources, and we have such items -- briefing about the
17 background of the OIG, as the OIG is such a unique
18 entity. You know, we hope to get the new board read in
19 as soon as possible.

20 CHAIRMAN BeVIER: Thank you. Other questions
21 or comments for the staff?

22 (No response.)

1 CHAIRMAN BeVIER: Thanks very much, John.

2 The next item on our agenda is to receive a
3 staff report on the proposed format and agenda of
4 orientation minutes for newly appointed board members.

5 I think this is probably somewhat responsive to the
6 concern just expressed by Mr. McKay?

7 MR. MCKAY: It would be, Madam Chairman. We
8 have put together an outline, which we'll share with
9 the board, regarding our approach to this or
10 recommended approach. Much of it is feeding back to
11 you what we have already from the board as to what the
12 board's recommendations would be.

13 In a perfect world, well, judge by those in
14 front of me rather than myself. A large group
15 opportunity here rather than a small or one at a time
16 opportunity would be probably the most efficient way to
17 do this.

18 In the world in which we live, it's clear that
19 we will be certainly, first of all, working with Laurie
20 individually to go over the material, not to leave her
21 alone with that but to have a face-to-face with the
22 board secretary and others to basically go through the

1 material.

2 As this process moves forward, we are going to
3 have to allow for probably what would be a small group
4 orientation, as appointments are made.

5 We also have heard the utility, expressed
6 before, of a full board retreat. What we have said is
7 that once the new board has been confirmed and a new
8 chair has been selected, a board retreat separate from
9 a regularly scheduled board meeting might be
10 appropriate.

11 Given the cost factors, location would be
12 planned to facilitate air travel, reasonably priced
13 accommodations, et cetera. And a one- or two-day
14 program would be planned with opportunities for
15 discussion with members of the current
16 board -- training sessions on responsibilities,
17 governance, and administrative matters and facilitated
18 planning sessions on goals in the year ahead. That
19 would be something that management would certainly work
20 with the board to coordinate and move forward on.

21 The other thing that has been mentioned in
22 previous meetings are one-on-ones with committee chairs

1 and the importance of, either in person, by phone, or
2 videoconference, we would facilitate separate meetings
3 between current board chairs and new board committee
4 chairs to talk about the mission, responsibilities, and
5 experiences of current board chairs, and help moving
6 that forward.

7 So that's where we are at this point. We will
8 flesh this out in some more detail as we go forward.
9 And certainly we'll have an opportunity to plan, as we
10 have discussed with Laurie, a one-on-one to start off
11 the process and have the process itself evaluated from
12 her perspective.

13 CHAIRMAN BeVIER: Thanks very much. Sarah?

14 MS. SINGLETON: I just wanted to make one more
15 suggestion to consider. I have a feeling that we're
16 not going to get a wholesale replacement of the board.

17 I think it would be good to assign like a mentor
18 between an existing board member and a new board member
19 and have that kind of one-on-one also, and that it
20 wouldn't have to be a committee chair.

21 I mean, just the experience of a non-chair
22 board member talking with a new board member might be

1 useful to them.

2 MR. MCKAY: That's a great idea.

3 MR. MEITES: I'll be Sarah's mentor.

4 CHAIRMAN BeVIER: I'll be Tom's.

5 (Laughter.)

6 MR. MEITES: You're too late.

7 CHAIRMAN BeVIER: The next item is consider
8 and act on procedure for oversight of LSC officers'
9 compensation. This has to do with a recommendation
10 that -- of GAO that John is going to fill us in on.
11 And it is something we're probably going to need more
12 staff time to consider how to respond.

13 MR. CONSTANCE: Thank you, Lillian. The
14 process that you're aware of that we have briefed on
15 regarding GAO coming in and following up on the
16 previous two audits resulted a couple of weeks ago in
17 one item popping to the surface in a meeting that they
18 had with Charles Jeffress.

19 In that, the recommendation that had come to
20 the board from GAO about establishing either a
21 compensation committee or adding to an existing
22 committee the functions of a compensation committee

1 were reviewed by GAO in terms of looking into
2 documentation we had provided.

3 Specifically, their recommendation had been to
4 make it part of a governance and performance review
5 committee, which is looked at as best practice under
6 Sarbanes-Oxley in terms of, you know, in the corporate
7 world and larger in the non -- in, more specifically,
8 the nonprofit world.

9 We had added, when we created the charter for
10 this committee, the provision that, as had been
11 practiced, "The committee shall annually review and
12 report to the board on the performance and compensation
13 of the president and inspector general," as has just
14 been discussed.

15 They felt a broader application of a
16 compensation committee was in order. I don't know
17 that, out of hand, we particularly agree with that.
18 But it's not for us to agree or to disagree. It was a
19 recommendation to the board.

20 We felt we had covered it under this aspect,
21 given the fact that of the way the pay is structured in
22 a band system, they feel that we need to revisit that.

1 And we would certainly, you know, assist in
2 facilitating revisiting that with the committee.

3 MR. MEITES: I don't understand. Is it what
4 we pay those two people now? Or the system by which we
5 determine what the pay should be?

6 MR. CONSTANCE: Both, I think, is GAO's
7 expectation in terms of the way that's normally --

8 MR. MEITES: But we have such limited
9 flexibility about what the president -- what are we
10 going to say? Congress says we should do this. We do
11 this. Is that the review they want us to conduct?

12 MR. CONSTANCE: I will be more than happy to
13 pass that back, Tom, as a question. But I think at
14 this point they are looking at -- these auditors are
15 coming in and looking at what had previously been
16 recommended.

17 And as they were going down the list of
18 committees, they obviously had recommended an audit
19 committee. They had recommended a compensation
20 function be looked at or committee. Our response back
21 to them had been that it had been placed under the
22 governance and performance review committee.

1 I've just read for you how that was done. And
2 there's an attitude -- or not an attitude -- there's a
3 position by the auditors on site that that might not be
4 adequate.

5 CHAIRMAN BeVIER: Sarah?

6 MS. SINGLETON: Maybe I misunderstood what
7 they wanted. I thought they wanted to have a committee
8 that looked generally into salary issues for the whole
9 Corporation, not just the two --

10 MR. CONSTANCE: Both. Both are there.

11 MS. SINGLETON: Right. So they might want a
12 committee that might revisit that 97 percent rule,
13 whoever adopted that. Or where is that?

14 MR. FORTUNO: The board, by resolution.

15 MS. SINGLETON: Yes. All right. So they
16 might want a committee that would look into that. They
17 might want a committee to say, we think it's time to do
18 a market capability survey, that kind of thing.

19 CHAIRMAN BeVIER: Right. Well, in that case,
20 I think we definitely need a more complete staff report
21 on this. I think it's something that the board is
22 certainly willing to undertake to consider what GAO

1 wants once we get a better fix on what that might be
2 and what our options might be with respect to that,
3 assuming that there's more than one way to skin this
4 cat, as often there is.

5 MR. CONSTANCE: We'd be more than happy to
6 take that back and work with Charles.

7 CHAIRMAN BeVIER: Thank you.

8 Is there other public comment on the work of
9 this committee?

10 (No response.)

11 MS. SINGLETON: Anyone who's brave enough to
12 come up.

13 CHAIRMAN BeVIER: Is there other business to
14 come before this committee?

15 (No response.)

16 CHAIRMAN BeVIER: I would entertain a motion
17 to adjourn.

18 M O T I O N

19 MR. MEITES: So moved.

20 MR. GARTEN: Second.

21 CHAIRMAN BeVIER: We're adjourned. Thank you.

22 (Whereupon, at 11:34 a.m., committee adjourned.)