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LEGAL SERVICES CORPORATION IMPROVEMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

H.R. 6101

SEPTEMBER 26, 2006

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LEGAL SERVICES CORPORATION IMPROVEMENT ACT

TUESDAY, SEPTEMBER 26, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2 p.m., in Room 2141, Rayburn House Office Building, the Honorable Chris Cannon (Chairman of the Subcommittee) presiding.

Mr. CANNON. The Subcommittee on Commercial and Administrative Law will please come to order.

The Subcommittee on Commercial and Administrative Law is meeting this afternoon to consider H.R. 6101, the "Legal Services Corporation Improvement Act," a bill I introduced in response to a disturbing pattern of events that have come to the Subcommittee's attention. I will keep my opening remarks brief as I believe the testimony and the opportunity to ask questions of our witnesses will prove to be valuable.

Congress created the Inspector General system in 1978. The purpose of this system is to ensure that the Federal agencies follow proper Government procedures and policies. There are two types of IGs, those appointed by the President and those appointed by individual agencies. The presidential appointees can only be dismissed by the President. In contrast, agency appointees, such as the LSC IG, can be fired directly by the agency. As a result, agency-appointed IGs stand a greater risk of retaliation from agency heads. The only restraint on agency heads firing their IGs is they are required to provide notice to Congress of the removal along with reasons for their decision.

H.R. 6101 would simply amend the Legal Service Corporation Act to provide that the IG may at any time be removed, but only upon the written concurrence of at least nine members of the 11-member Board. The current law only requires a simple majority of the Board to remove the IG; namely, six members.

The purpose of today's hearing is to examine whether LSC's Inspector General needs increased protection from retaliation by the Board of Directors as provided in H.R. 6101.

The Legal Services Corporation's Board of Directors hired Kirt West as the LSC IG in 2004. One of his first reports was issued in response to an inquiry from this Subcommittee regarding the lease arrangement for LSC's headquarters. Rather than accept the IG's report on the lease and cooperate in implementing his conclu-

sions, the LSC Board of Directors instead rejected the report and contemplated removing the IG.

Whereas the most important characteristic of an inspector general is independence, there would appear to be an obvious and inherent conflict between any IG and the agency for which he or she serves. The IG is charged with oversight of the functioning of the agency and must as a matter of course conduct investigations of those who control the agency, the same people to whom he or she reports and with whom a working relationship must be maintained.

It is quite clear, based on comments made by LSC board members, that they either don't understand the concept of an IG or have no respect for the IG.

I drafted H.R. 6101, the "Legal Services Corporation Improvement Act," to provide some greater degree of independence for LSC's IG. I must stress that the measure was not drafted in response to problems limited to the current Board and IG, but in response to a pattern of problems that predate both the present IG and LSC administration. I cite a letter of support for this administration from former LSC's former Inspector General, Ed Quatrevaux, which underscores the need for H.R. 6101. I ask unanimous consent that a copy of this letter be included in the hearing record and hearing no objection, so ordered.

[The information referred to is available in the Appendix.]

Mr. CANNON. Mr. Quatrevaux states, "I fought numerous challenges to IG independence with the LSC Board of Directors and headquarters' management. My understanding that the current IG is facing many of the same problems with a different Board and management leads me to believe that LSC's propensity to challenge the authorities and dependence of the IG is an institutional problem."

Other agencies have experienced similar issues with their IGs. To remedy the conflict in two agencies, Congress created a bar for dismissal of the Inspector General for the United States Postal Service and a bar for the United States Capitol Police which is higher than that proposed in H.R. 6101.

I expect David Williams, our witness from the Postal Service, will explain why such protections for Inspector General are necessary.

Indeed, I look forward to receiving the testimony from each of our witnesses, and I anticipate this hearing will be very informative and constructive endeavor.

I now turn to my colleague, Mr. Watt, and the distinguished Member of my Subcommittee, and ask him if he has any opening remarks.

[The prepared statement of Mr. Cannon follows:]

PREPARED STATEMENT OF THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND CHAIRMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

The Subcommittee will please come to order.

The Subcommittee on Commercial and Administrative Law is meeting this afternoon to consider H.R. 6101, the "Legal Services Corporation Improvement Act," a bill I introduced in response to a disturbing pattern of events that have come to our attention. I will keep my opening remarks brief, as I believe that the testimony and the opportunity to ask questions of our witnesses will prove to be more valuable.

Also, I want to leave as much time as possible for Members of the Subcommittee to utilize this opportunity.

Congress created the inspector general system in 1978. The purpose of this system is to insure that federal agencies follow proper government procedures and policies. There are two types of IGs: those appointed by the President, and those appointed by individual agencies. The Presidential appointees can only be dismissed by the President. In contrast, agency appointees, such as the LSC IG, can be fired directly by the agency. As a result, agency-appointed IGs stand a greater risk of retaliation from agency heads. The only restraint on agency heads firing their IGs is that they are required to provide notice to Congress of the removal along with reasons for their decision.

H.R. 6101 would simply amend the Legal Services Corporation Act to provide that the Inspector General may at any time be removed, but only upon the written concurrence of at least nine members of the 11-member Board. The current law only requires a simple majority of the Board to remove the IG, namely, six members.

Today's hearing will examine whether LSC's Inspector General needs increased protection from retaliation by the Board of Directors, as provided by H.R. 6101.

The Legal Services Corporation's Board of Directors hired Kirt West as the LSC IG in 2004. One of his first reports was issued in response to an inquiry from this Subcommittee regarding the lease arrangement for LSC's headquarters. Rather than accept the IG's report on the lease and cooperate in implementing his conclusions, the LSC Board of Directors instead rejected the report and contemplated removing the IG.

Whereas the most important characteristic of an Inspector General is independence, there would appear to be an obvious and inherent conflict between any IG and the agency for which he or she serves. The IG is charged with oversight of the functioning of the agency and must, as a matter of course, conduct investigations of those who control the agency—the same people to whom he or she reports and with whom a working relationship must be maintained.

It is quite clear, based on comments made by LSC Board members, that they either don't understand the concept of an IG or have no respect for an IG.

I drafted H.R. 6101, the "Legal Services Corporation Improvement Act," to provide some greater degree of independence for LSC's IG. I must stress that this measure was not drafted in response to problems limited to the current Board and IG, but in response to a pattern of problems that predate both the present IG and LSC administration. I cite a letter of support for this legislation from LSC's former Inspector General, Ed Quatrevaux, which underscores the need for H.R. 6101. On unanimous consent, I ask that a copy of this letter be included in the hearing record. Hearing no objection, it is so ordered. He states, "I fought numerous challenges to IG independence with the LSC Board of Directors and headquarters' management. My understanding that the current IG is facing many of the same problems with a different Board and management leads me to believe that LSC's propensity to challenge the authorities and independence of the IG is an institutional problem."

Other agencies have experienced similar issues with their IGs. To remedy the conflict in two agencies, Congress created a bar for dismissal of the inspector general for the United States Postal Service and a bar for the United States Capitol Police, which is higher than that proposed in H.R. 6101 for the IG at LSC. I expect David Williams, our witness from the Postal Service, will explain why such protections for inspectors general are necessary.

Mr. WATT. Thank you, Mr. Chairman, and thank you for convening the hearing, I guess. For over 3 decades the Legal Services Corporation has provided legal services to the poor. Today there are currently more than 45 million Americans who qualify for assistance from one of the Legal Services' 143 grantees nationwide. Legal Services clients are as diverse as our Nation, consisting of individuals of all races, ethnic groups and ages. They include the poor, working poor, veterans, family, farmers, people with disabilities and victims of natural disasters. More than two-thirds of the Legal Services Corporation's clients are women, most of them mothers.

Because the Legal Services Corporation receives Federal funds, it is certainly appropriate that Congress provide oversight. The hearing on H.R. 6101 is the product of perceived threats to the

independence of the Inspector General. I would suggest to you that a bill introduced on September 19th, I guess having a hearing this soon shows the power that a Chairman in our institution has and perhaps indicates some institutional problems, too.

But that aside, Congressional oversight is certainly a valuable tool and one which enables us to ensure that Federal agencies and entities within our jurisdictions are operating effectively and within the mandates of the law. But Congressional oversight is a very powerful tool and must not be misused or abused.

In the past 2 months, newspapers and television accounts have vilified the leadership of the Legal Services Corporation based upon leaks apparently from Hill staff or from the IG's office itself. These leaks from a then ongoing investigation were inappropriate and unprofessional and, as it turns out, mostly inaccurate.

The IG's report provided to us yesterday has found some criminal violations, no deliberate malfeasance and in most instances no disregard for LSC policy. At most, the Inspector General has found that perhaps there should be a policy where there is none and LSC, according to his cover letter, has agreed to comply.

However difficult this investigation was for all involved, I simply do not believe that Congress is in the position to referee every discovery dispute or police every personality conflict that understandably arises in the course of IG's investigations.

There are processes in place to resolve those disputes and congressional intervention in the midst of pending investigation has proven not to be all that constructive. The LSC board is a volunteer, presidentially appointed Board. And this Congress seems to be giving it more trouble since this President has been appointing it than when other Presidents were appointing.

If we are to continue to attract qualified, dedicated professionals to fill these positions, they must be assured that they will not be subject to abuse and harassment. These are troubling allegations, however. They are troubling allegations that former disgruntled employees of the LSC who now happen to be Congressional staff have been very heavy handed, biased and the source of many of the substantiated complaints by the IG. Indeed, the IG's letter transmitting his report on certain fiscal practices of the Legal Services Corporation concedes that Congressional staff were the source of certain allegations he chose to investigate. While I do not know whether former employees of LSC who are now Congressional staff have misused their positions to harass or retaliate against LSC, I do believe that we must be especially vigilant in ensuring that all inquiries from this Subcommittee and from the Senate Subcommittees are made in good faith.

The bill before us today in my estimation unreasonably raises the bar for removal of an Inspector General by the LSC board excessively high, higher in fact than that required to remove a Board member. While any IG must be permitted to do his or her job without interference, the normal give and take of internal orders and investigations does not rise to the level of obstruction presumed by this bill.

Moreover, the suggestion that a Board with the statutory power to hire and fire cannot exercise the power to dismiss an IG simply because he is investigating or has the authority to investigate the

Board would probably invite endless illegitimate investigations by an IG desperate to maintain a job. If we are to create such an incentive, at least we are to provide for attorney fees if somebody finds that these things get personal and bear no fruit.

Similar provisions were included in the Independent Counsel Act to provide balance to the otherwise extraordinary, unfettered, independent, conferred response upon the special counsels under that.

I look forward to hearing from the witnesses. And I would have to say, Mr. Chairman, that this is yet another one of those instances where it seems to me that we are proposing to legislate to get a result rather than legislating to have a policy and practice that makes sense in the whole context of what we are doing.

We can't pick and choose results here. Sometimes we like the result, sometimes we don't like the result. But there ought to be processes in place that are consistent and not just based on personal animosities. With that, I will yield back the balance of my time.

Mr. CANNON. Without objection, the gentleman's entire statement will be placed in the record. Hearing no objection, it will be so ordered.

[The information referred to was not available at the time of the printing of this hearing.]

Mr. CANNON. Now will the gentleman be agreeable to inserting his legal fees in the bill and getting his co-sponsorship?

Mr. WATT. No, because I haven't looked at the bill. I mean, you introduced the bill September 19. Today is September 25. If you had any——

The CHAIRMAN. It is a very short bill.

Mr. WATT. If you had any interest in getting my support for this bill, I am sure I would have known about it before it got introduced.

Mr. CANNON. I am certain, sufficiently certain that staff has been talking about it on both sides. But if you would like to negotiate about attorney fees, I would love to include that into the system.

Without objection, all Members may place their statements in the record. Without objection, the Chair will be authorized to declare a recess at any point. Hearing no objection, so ordered. I ask unanimous consent that Members have 5 legislative days to submit written statements for inclusion in today's hearing record. Hearing no objection, so ordered.

I am now pleased to introduce the witnesses for today's hearing.

Our first witness is Kirt West, the Inspector General for the Legal Services Corporation. As I previously noted, he has served in this capacity since September 2004. Prior thereto, he served in very executive positions at the U.S. Postal Service Office of Inspector General from 1998 to 2004.

His Government service also includes a stint as assistant counsel to the Inspector General in the Central Intelligence Agency. In addition, he has spent more than 10 years at the United States Department of Labor as assistant counsel to the Inspector General.

Mr. West received his undergraduate degree from Lawrence University in 1969 and earned his Juris Doctor from the Northwestern University School of Law in 1984.

Our next witness is the Inspector General for the U.S. Postal Service, David Williams. His office has oversight responsibility of

the U.S. Postal Inspection Service, a Federal law enforcement agency within the Postal Service. Mr. Williams was sworn in as the second Inspector General at the Postal Service in August of 2003.

Mr. Williams previously served as IG for five Federal agencies. He was first appointed by President George H.W. Bush to serve as the IG for the U.S. Nuclear Regulatory Commission from 1989 to 1996. President Clinton next appointed him as the IG for the Social Security Administration from 1996 to 1998 and thereafter as the IG for the Department of Treasury in 1998. In 1999, President Clinton named him as the first IG for tax administration of the Department of Treasury, where he directed a staff of 1,050 to detect waste, fraud and abuse. In 2001 President George W. Bush named Mr. Williams to be the Acting IG for the Department of Housing and Urban Development.

Mr. Williams is the recipient of the Bronze Star and the Vietnamese Medal of Honor for service in Vietnam. He received his undergraduate degree from Southern Illinois University and earned his Advanced Degree in Education and a Masters in Education from the University of Illinois. He also attended the U.S. Military Intelligence Academy, the Federal Law Enforcement Training Center, and the U.S. Secret Service Training Academy. We like tough guys. Maybe I should speak generally, but I think Mr. Watt likes tough guys.

Our final witness is Frank Strickland, who is the Chairman of the Board of the Legal Services Corporation. He is a partner in the Atlanta firm of Strickland Brockington Lewis LLP.

President Bush nominated Mr. Strickland to the LSC Board of Directors in 2002, and he was sworn in as a member of the Board and elected Board chairman in April of 2003.

Mr. Strickland received his undergraduate degree from Vanderbilt University and his law degree from Emory University. He served in the U.S. Coast Guard and is Commander in the U.S. Coast Guard reserves on retired status. Also a tough guy, I might say.

In addition, I would also like to note that that we are missing a witness at today's hearing. The empty chair at the witness table is for the Legal Services Corporation President Helaine Barnett. According to Ms. Barnett, Chairman Strickland does not believe it is necessary for her to testify, perhaps an important topic for this Subcommittee to explore with him this afternoon.

I extend to all of you my warm regards and appreciation for your willingness to participate at today's hearing. In light of the fact that your written statements will be included in the hearing record, I request that you limit your oral remarks to 5 minutes. Accordingly, please feel free to summarize or highlight the salient points of your testimony.

You note we have a lighting system in front of you that starts with a green light. After 4 minutes it turns to a yellow light, and then at 5 minutes it turns to a red light. It is my habit to tap the gavel at 5 minutes. We could appreciate it if you could finish up your thoughts within that time frame. We don't like to cut people off in their thinking, but I find that it works much better if everybody knows that 5 minutes is 5 minutes.

Other people may be joining us here. If not, we may be a little more loose than that, but it is my tendency to tap with a pencil just to draw your attention the light has run and so we will move on and then strictly abide by the 5-minute rule when we go to questioning if we have other members. If it is just Mr. Watt and me, we tend to be a little more lax on that. After you have presented your remarks to the Subcommittee, in the order they arrive they will be permitted to ask questions to that witness subject to that 5-minute rule.

Pursuant to the directive of the Chairman of the Judiciary Committee, I ask the witnesses to please stand and raise your right hand to take the oath.

The record will reflect the witnesses answered in the affirmative.

[Witnesses sworn.]

Mr. CANNON. We will start with Mr. West. Would you please proceed with your testimony?

STATEMENT OF RICHARD "KIRT" WEST, INSPECTOR GENERAL, LEGAL SERVICES CORPORATION

Mr. WEST. Good afternoon, Chairman Cannon, Ranking Member Watt. My name is Kirk West. As you have mentioned, I have had nearly 20 years of experience with other IGs at Labor, CIA, and the Postal Service. I also had the privilege of working for David Williams when he was the—when I was at the Postal Service and in the capacity as IG. With your approval, I would like to submit my written statement for the record.

Thank you for giving me the opportunity to comment on H.R. 6101. Since the passage of the 1988 IG Act amendments, LSC has had an IG that reports to an 11 member part-time Board of Directors. The LSC board has been and is now comprised of honorable and dedicated individuals who brought with them a high degree of understanding and commitment to delivery of legal services to the poor. Past and current Boards, however, have not brought with them the same degree of understanding or experience concerning the role of the Inspector General.

The challenges faced by the LSC IGs are longstanding. They are neither new nor unique to the current Board. The longest serving is Ed Quatrevaux, who held the post from 1991 to 2000. Mr. Quatrevaux has lent his support to H.R. 6101. He has stated the problems that I am facing, the same problems he faced with a different Board and with a different LSC management, leading him, as I have also, to conclude that LSC has an institutional problem in recognizing the proper role of the IG.

The Board's failure to recognize the role of the IG has led some members to react negatively to my reports, calling them prosecutorial and inflammatory. However, Mr. Chairman and Mr. Watt, I can tell you that based on my experience in the IG community that my reports are no different in character than those of the other 57 IGs in the Government.

The Board's reaction to them, however, is different than my experience at other agencies. What may seem appropriate to the Board based on their non-Federal background and limited experience with IGs are from my perspective attempts to retaliate against me for issuing critical reports and asserting IG independ-

ence. As recently as this past weekend an Associated Press article described the Board's efforts to fire me or certainly to consider firing me.

Mr. Chairman, you and other Members of Congress have repeatedly put the Board on notice that any attempt to remove me would be construed as retaliation for conducting the very work that you have requested. I feel that if Congress had not intervened on my behalf it would have been impossible for me to fully carry out my statutory duty under the IG Act.

Unfortunately, my problems have continued. On August 25th, the Board's chairman and vice chairman provide a, quote, informal feedback, unquote, on my performance. This was highly questionable given that the Board knew at the time I was investigating allegations regarding expenses and other matters involving the Board. I found that not only threatening and retaliatory but also to have the potential of causing others, including Congress, to question whether the feedback could have influenced my report.

These events notwithstanding, I am pleased to report that my staff of highly experienced IG auditors, investigators and attorneys and I have not been deterred from carrying out the IG mission. Recently, I submitted a report to the Subcommittee in which the OIG found substantial evidence that an LSC grantee, California Rural Legal Assistance, Inc., violated Federal law by soliciting clients, working a fee generating case, requesting attorney fees and associating CRLA with political activities. Yesterday, I issued a report on the investigation that you requested regarding LSC spending practices, and I will be reporting to you later on your concerns about other LSC management practices and potential conflicts of interest.

I would like now to provide some comments on H.R. 6101, which is modeled after the similar provision of the United States Postal Service. As background, there are two categories of Inspectors General: Those appointed by the President and those appointed by their agency head. Presidentially-appointed Inspectors General cannot be fired by their agency head; only the President can do that. On the other hand, Inspectors General appointed by their agency head can also be fired by their agency head, which is the current situation at LSC. And usually it requires an appearance before the Merit Systems Reduction Board. The LSC IG, however, is an at-will employee and can be fired without cause and without a hearing. Thus, the LSC IG has the least amount of job security and therefore potentially the most easily subjected to undue or improper pressure.

Therefore, I support H.R. 6101 because it enhances Inspector General independence. In my opinion, H.R. 6101 is an appropriate, balanced, and thoughtful proposal to enhance Inspector General independence that will make LSC more transparent and accountable to Congress and the public.

Mr. Chairman, thank you for this opportunity to testify before the Subcommittee.

[The prepared statement of Mr. West follows:]

PREPARED STATEMENT OF R. KIRT WEST

INTRODUCTION

Chairman Cannon, Ranking Member Watt, and Members of the Subcommittee: my name is Kirt West. Thank you for giving me the opportunity to comment on H.R. 6101, which will improve the ability of the LSC Inspector General (IG) to function like any other Inspector General. By way of personal background, I have been the Inspector General of the Legal Services Corporation (LSC) since September 1, 2004. Before becoming Inspector General, I served for nearly twenty years as a career Federal employee in various legal and executive capacities for Inspectors General: at the Department of Labor, the Central Intelligence Agency, and the United States Postal Service. At the United States Postal Service which is a quasi-federal agency like LSC, I worked with a Presidentially-appointed part-time Board, comprised almost exclusively of outside directors who did not have any Inspector General experience. I also worked for Inspector General David Williams while at the Postal Service.

Since the passage of the 1988 Inspector General Act amendments, LSC has had an Inspector General. Throughout those years my predecessors and I have reported to and been under the general supervision of a part-time 11-member LSC Board of Directors, unlike most Inspectors General who report to a full-time agency head. The LSC Board has been and is now comprised of honorable and dedicated individuals who have brought with them a high degree of understanding of the delivery of legal services to the poor, which is an asset to the position. Past and current LSC Boards, however, have not brought with them the same degree of understanding or experience concerning the role of the Inspector General. Historical and institutional misunderstanding between past and current Boards and their Inspectors General has threatened the independence and effectiveness of the LSC Inspector General.

Efforts by LSC Boards and LSC management to stifle Inspector General independence through intimidation and retaliation appear to have existed throughout the history of the LSC Office of Inspector General. These problems are neither new to LSC nor unique to the current Board and Inspector General. The longest-serving LSC Inspector General, Edouard R. Quatrevaux, has lent his support to your bill and has stated that the problems I am facing are the same problems he faced with a different Board and with different LSC management, leading him to conclude that LSC has an institutional problem in recognizing the proper role of an Inspector General. Inspector General Quatrevaux was criticized for issuing reports that the former Board did not like and for communicating with Congress. He reported to Congress that the Board's criticism posed a potential impairment on his independence. As a result, GAO was called in to intervene but the disagreement between the Board and the Inspector General about the Board's proper role in evaluating the Inspector General still remains unresolved.

As a preliminary matter, I would like to note that I am not completely comfortable commenting on H.R. 6101, a legislative proposal that would have an impact on the Inspector General office that I currently hold. As someone who has worked in the federal Inspector General community for so long, it has become second-nature for me to try to ensure that whatever I say or do is legal and ethical and impartial. Ordinarily I would not volunteer to comment either one way or the other on a matter such as H.R. 6101, which could affect me personally. However, at your request I am prepared to offer my views concerning the proposed legislation. H.R. 6101 is similar to a provision enacted for the Inspector General of the United States Postal Service. The bill would, if enacted, require nine of the eleven LSC Board members to agree to remove me or a future incumbent from the position of Inspector General. It would require three more Board members than the current majority requirement of six to remove me or my successors.

When I agreed to become the Inspector General for LSC in 2004 I was aware that there had been an Inspector General at LSC since the late 1980's. I was relatively confident that the LSC Board had gone through the same familiarization process as other agency heads in dealing with the Inspector General concept. I lived through those processes at the Department of Labor, the CIA, and the Postal Service, where those agency heads eventually came to terms with having an Inspector General who was independent, who had access to information, and who reported openly and regularly to Congress. Over the past two years, however, I have become aware that LSC Boards have not developed the same understanding of the role of their Inspector General.

My initial experience of the lack of appreciation of the IG concept and the role of the Inspector General occurred when I issued my first report to Congress concerning the LSC headquarters lease. As I testified before this Subcommittee last

June, the report made several observations, including that LSC was paying too much rent and paying higher rent than other tenants. The then 10-member LSC Board (6 of whom remain on the current Board) unanimously "rejected" the lease report. The report, however, had undergone a quality review that ensured it contained accurate information. The report was predicated on the work of two independent real estate appraisal experts as well as very senior and experienced career IG auditors and lawyers. The fact that the Board "rejected" this report was an early indication that the Board did not fully comprehend the role of an Inspector General.

I have taken affirmative steps to help familiarize the Board with what an independent, effective Inspector General is supposed to do. I arranged for David Williams, a highly-respected Inspector General with many years of experience, to address the LSC Board, which he did. Mr. Williams, who served not only as Inspector General at the Nuclear Regulatory Commission, the Treasury Department, the Internal Revenue Service, and at the United States Postal Service, but also as the first chief investigator at the then Government Accounting Office, spoke to the Board at length about the role of an Inspector General. In addition, I arranged for a meeting with the LSC Chairman and Senate appropriations staff to share a Congressional perspective about the role of an Inspector General and how an agency should interact with its Inspector General. I offered to arrange more such meetings. I also suggested to the LSC Chairman that we meet with the Deputy Director for Management at the Office of Management and Budget, who serves as the Chairman of the Inspector General councils. Finally, I reported my concerns to the Vice-Chairman of the Executive Council on Integrity and Efficiency in an attempt to find other, informal ways of improving the LSC Board's relationship with the Inspector General.

The Board's failure to recognize the Inspector General's role has led some members to react negatively to my reports, calling them prosecutorial and inflammatory. However, Mr. Chairman, I can tell you and members of the Subcommittee that based on my 20+ years of experience in the IG community my reports are no different in character than those issued by other IGs. The Board's reaction to them, however, is different than what my experience prepared me for. What may seem appropriate to the Board based on the members' non-federal backgrounds and limited experience with IGs are from my perspective attempts to retaliate against me for issuing critical report and for asserting IG independence. The Board's misunderstanding of the role of its Inspector General may not be so surprising given the background and experience of most members in the non-Federal sector, which is generally unfamiliar with the Inspector General concept, a concept that was also difficult in the early years of the IG Act for some agencies.

For example, as recently as this past weekend, an Associated Press article quoted the proceedings of a closed Board meeting which the article described the Board's discussion about firing me. There had been previous concerns that some Board members would like to fire me. As a result, Mr. Chairman, you wrote the LSC Board in July of last year to express your concerns. In addition, Senators Enzi and Grassley wrote to the LSC Board in April 2006 informing the Board that any attempt to remove the Inspector General would be construed as retaliation and obstruction of an investigation that they, along with you, Mr. Chairman, had asked me to conduct on a number of issues involving the LSC Board and the LSC President. I feel that if Congress had not intervened on my behalf, it would have been impossible for me to carry out my statutory duties under the IG Act.

My difficulties, unfortunately, have continued. On August 25, the Board provided "informal feedback" on my performance. Among other things, I was told that I take a prosecutorial stance towards management, I issue inflammatory reports and I am not a positive help to LSC. These and other criticisms by the Board are examples of a misunderstanding about the role of an Inspector General, which includes being independent and objective, obtaining necessary information, and reporting findings that could be critical of management.

The decision of the Board to provide "informal feedback" was highly questionable given that the Board knew I was investigating allegations regarding expenses and other matters involving the Board. While I respect the role of the Board, which is statutorily responsible for the "general supervision" of the Inspector General, and while the Board may have felt its actions were appropriate from the private-sector perspective, I found the "informal feedback" not only threatening and retaliatory but also having the potential of causing others, including Congress, to question whether the feedback could have influenced my report.

These events notwithstanding, I am pleased to report that my staff of highly experienced IG auditors, investigators and attorneys and I have not been deterred from carrying out the IG mission. Recently, I submitted a report to the Subcommittee in which the OIG found substantial evidence that an LSC grantee, California Rural

Legal Assistance, Inc., violated federal law by soliciting clients, working a fee generating case, requesting attorney fees, and associating CRLA with political activities. Yesterday, I issued a report on the investigation that you requested regarding LSC spending practices and will be reporting to you later on your concerns about other LSC management practices and potential conflicts of interest.

I would like now to provide some comments to H.R. 6101, which proposes to amend the Legal Service Corporation Act to provide appropriate removal procedures for the Inspector General. In addition to the Board's current authority to appoint and remove the Inspector General, the proposed legislation states that "The Inspector General may at any time be removed upon the written concurrence of at least 9 members of the Board." As background, there are two categories of Inspectors General: those appointed by the President, and those appointed by their agency head. Presidentially-appointed Inspectors General cannot be fired by their agency head; only the President can do that. On the other hand, Inspectors General appointed by their agency head can also be fired by their agency head, which is the current situation at LSC. However, because virtually every other Inspector General appointed by their agency head is also a Federal employee, they could not be fired without cause. The Inspector General at LSC, however, is an at-will employee and can be fired without cause. Thus, the LSC Inspector General stands out as the Inspector General who has the least amount of job security and therefore potentially the most easily subject to undue or improper pressure.

I support H.R. 6101 because it enhances Inspector General independence. The bill could go further by requiring removal for cause. At this time I would not recommend making the office a Presidential appointment. However, that is an option worth keeping available in the event it is needed. There is already precedent for Congress converting an agency-head appointed Inspector General into a Presidential appointee: this was done at the Federal Deposit Insurance Corporation and the Tennessee Valley Authority. The TVA Inspector General became a Presidential appointment as a result of the TVA Board trying to interfere with the independence of the Inspector General, resulting in a GAO investigation requested by then Senator Fred Thompson. The situation faced by the TVA Inspector General is not unlike the situation I am facing today. In my opinion, H.R. 6101 is an appropriate, balanced, and thoughtful proposal to enhance Inspector General independence that will make LSC more transparent and accountable to Congress and the public.

There is also precedent for requiring a super-majority to remove an Inspector General. In 1996, Congress created an Inspector General at the United States Postal Service who would no longer report to the Postmaster General but instead report to the nine Presidentially-appointed Governors who, along with the Postmaster General and the Deputy Postmaster General, comprise the Board of Governors. The Postal Service opposed the creation of an independent Inspector General who was not appointed by the Postmaster General. Congress, clearly concerned about having an Inspector General removed by a simple majority of a part-time Board, enacted 39 U.S.C. § 202(e)(3) stating that removal of the Inspector General required written concurrence of at least 7 of the 9 Governors. By requiring a super-majority, Congress implicitly recognized that, like at LSC, the Board could be unduly influenced by management and thereby helped balance that influence. This was the compromise struck between Congress and the Postal Service in lieu of establishing a Presidentially-appointed Inspector General.

Finally there are some additional reasons why H.R. 6101 is needed at LSC more so than at other agencies. At LSC it is not unusual for Board members and LSC senior managers to have close ties from working together outside LSC in the private legal services sector. These kinds of close relationships among LSC Board members and LSC managers and employees and LSC grantees and related organizations are part of the LSC culture and could be one of the reasons why the Inspector General role is not as well understood as it should be and why it is important to have an independent Inspector General.

CONCLUSION

Mr. Chairman, thank you for this opportunity to testify before the Subcommittee. I remain proud of the work being done by my staff which has been operating under difficult circumstances. I appreciate the support you and your staff have shown both for the work we have done and for the need to ensure that LSC's Inspector General can operate as Congress intended so that you, the Board and the public can be informed by our reports and ultimately LSC can be improved for the benefit of LSC, its client community and the taxpayer public. I also would be remiss in not extending my appreciation to those new members of the Board who have been supportive of my office. As someone who respects and values the work of lawyers who serve

the poor, and as someone who spent his first working years in the Cabrini Green public housing project and other inner-city slums, I can tell you that I have only the best interests of the poor at heart every day when I go to work. I look forward to ensuring that the poor will have our support by continuing to conduct independent and objective reviews so the LSC Board, Congress, and the public can be assured that LSC is being operated lawfully, efficiently, economically, and with integrity.

Mr. CANNON. Thank you, Mr. West.

Mr. Williams.

STATEMENT OF DAVID C. WILLIAMS, INSPECTOR GENERAL, LEGAL SERVICES CORPORATION

Mr. WILLIAMS. Mr. Chairman, Mr. Watt, and Members of the Subcommittee. I appreciate the opportunity to appear today to discuss the importance of Inspector General being able to speak independently about problems and concerns with an agency without fear of intimidation or retaliation.

I began my Government career with the U.S. Army in Vietnam and then as a Special Agent with the U.S. Secret Service. I was later an investigator and manager at the Department of Labor's Office of Inspector General for a total of 15 years. Since then I have served as an Inspector General for a total of 15 years, beginning with the U.S. Nuclear Regulatory Commission in 1989. I have also served as the Inspector General for the Social Security Administration, the Department of Treasury, the IRS and as the Acting Inspector General for HUD. I have been the Inspector General for the U.S. Postal Service since 2003.

In all of my assignments as the IG, a key element of being effective has been the ability to provide the agency's management, Congress and the public with independent reports concerning employee misconduct, agency programs and operation. Inspector Generals were established following the congressional investigations in 1974 to protect the public from Government abuse, waste and misconduct. An Inspector General must be able to speak honestly, without fear of retaliation or intimidation from anyone.

Anything less would have a chilling effect on the ability of Government investigators to do their jobs, and neither Congress nor the public would receive the full benefit of frank and truthful findings.

When instances of retaliation do occur, you must take action immediately to address it. Early in my period of Inspector General appointment at the Nuclear Regulatory Commission, Congress and the NRC commission asked me to conduct a high level internal investigation. The investigation concerned allegations about the executive director who at the time was being considered for a presidential appointment at the Department of Energy.

At the conclusion of the investigation, the executive director stepped down from his position. I also led an investigation of the President of the International Board of Teamsters while at the Labor Department. That individual complained to the Labor Secretary and the White House, but was ultimately indicted.

I have investigated a number of other senior executives who often possessed substantial what I call clout and had influential friends. These investigations could not have been successful without the independence provided without the IG Act. The independ-

ence of Inspectors General is ensured by the IG Act's requirement that the President or the agency's governing entity appoint them. Congress further mandates that the agency not prevent or prohibit the Inspector General from initiating, carrying out or completing an audit or an investigation.

The Postal Service Reorganization Act additionally protects my independence as IG for the Postal Service. The statute provides that the Postal Service IG may only be removed for cause and only with the concurrence of seven of the nine governors appointed by the President and confirmed by the Senate. This provision ensured that management cannot remove me for reporting information, for reporting information that they do not want me to report.

In conclusion, it is of paramount importance to me and to all Inspectors General that our independence be protected so that the work the Administration and the public expect can be performed under the IG Act.

While this independence is legislated in the IG Act, I have always strongly believed that Congress and the Administration can be relied upon to enforce the rule of law.

If it is clear that independence is being compromised and if Congress fails to act decisively, there will be little or no honest reporting, and that is not what the Government and the public deserve. Thank you.

[The prepared statement of Mr. Williams follows:]

PREPARED STATEMENT OF DAVID C. WILLIAMS

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear today to discuss the importance of Inspectors General being able to speak independently about problems and concerns with an agency without fear of intimidation or retaliation.

I began my government career with the U.S. Army in Vietnam and then became a special agent with the U.S. Secret Service. I was later an investigator and manager at the Department of Labor's Office of Inspector General and worked at GAO. Since then I have served as an Inspector General for a total of 15 years, beginning at the U.S. Nuclear Regulatory Commission in 1989. I have also served as the Inspector General for the Social Security Administration, the Department of the Treasury, and the IRS, and as the Acting Inspector General for HUD. I have been the Inspector General for the U.S. Postal Service since 2003.

In all of my assignments as an Inspector General, a key element of being effective has been the ability to provide the agency's management, Congress, and the public with independent reports concerning employee misconduct and agency programs and operations. Inspectors General were established following Congressional investigations in 1974 to protect the public from government abuse, waste, and misconduct. An Inspector General must be able to speak honestly without fear of retaliation or intimidation from anyone. Anything less would have a chilling effect on the ability of government investigators to do their jobs and neither Congress nor the public would receive the full benefit of frank and truthful findings. When instances of retaliation do occur, we must take action immediately to address it.

Early in my first Inspector General appointment at the Nuclear Regulatory Commission (NRC), Congress and the NRC commissioners asked me to conduct a high-level internal investigation. This investigation concerned allegations about the executive director, who at the time, was being considered for a presidential appointment in the Department of Energy. At the conclusion of the investigation, the executive director stepped down from his position. I also led an investigation of the President of the International Brotherhood of Teamsters while at the Labor Department. That individual complained to the Labor Secretary and White House, but was ultimately indicted. I have investigated a number of other senior executives who often possessed substantial political clout and had influential friends. These investigations could not have been successful without the independence provided by the IG Act.

The independence of Inspectors General is ensured by the IG Act's requirement that the President or the agency's governing entity appoint them. Congress further

mandates that the agency not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation.

The Postal Reorganization Act additionally protects my independence as the Inspector General of the Postal Service. This statute provides that the Postal Service IG may only be removed for cause, and only with the concurrence of seven of the nine Governors appointed by the President and confirmed by the Senate. This provision ensures that management cannot remove me for reporting information they do not want to hear.

In conclusion, it is of paramount importance to me and to all Inspectors General that our independence be protected so that the work the Administration and the public expect can be performed under the IG Act. While this independence is legislated in the IG Act, I have always strongly believed that the Congress and the Administration can be relied upon to enforce the rule of law. If it is clear that independence is being compromised and Congress fails to act decisively, there will be little or no honest reporting and that is not what the government and the public deserve.

Mr. CANNON. Thank you, Mr. Williams.

Mr. Strickland, you are recognized for 5 minutes.

STATEMENT OF FRANK STRICKLAND, CHAIRMAN OF THE BOARD, LEGAL SERVICES CORPORATION

Mr. STRICKLAND. Thank you, Mr. Chairman and Ranking Member Watt and Members of the Subcommittee. I am pleased to be here today to testify before you with respect to H.R. 6101, legislation that would require 9 of the 11 members of the Board of Directors of the Legal Services Corporation to agree in writing in order to discharge the corporation of the Inspector General. Accompanying me today are Professor Lillian Bevier, the Board's Vice Chairman and a distinguished Professor of Law at the University of Virginia, and Michael D. McKay, the Chairman of the Board's Finance committee. Mr. McKay is a partner in the law firm of McKay Chadwell in Seattle and a former U.S. Attorney for the Western District of Washington.

Both of them have traveled considerable distances today to indicate the Board's serious interest in the matters before the Committee today. And we thank you for accommodating our schedules so that we can be here today.

For my part, I have been in the private practice of law in private practice in Georgia in law firms ranging from 4 to 100 lawyers. I'm a past President of the Atlanta Bar Association. I have also served 11 years as a member of the Board of Directors of Georgia Legal Services and the Atlanta Legal Aid Society.

The Federal Legal Services program is often mischaracterized by some conservatives as being a liberal tool. I could not disagree more. This is a fundamentally conservative program. It is about giving poor people an equal shot to justice in our judicial system on civil matters. The leading early proponent of creating a system was Justice Lewis Powell. One of the original sponsors of creating LSC was the late Congressman John Erlenborn, who served as the most recent previous President of LSC.

Supporters of LSC over the years have included a conservative Republican Senator, Warren Rudman, John Danforth, and Pete Domenici and Members of the House such as Bill Livingston and Frank Wolf.

Mr. Chairman, with due respect and understanding that we are discussing a bill that you introduced, the LSC board cannot support H.R. 6101 or its predecessor, H.R. 5974. The Congress created 57

Inspectors Generals by statute. All of the IGs with the exception only of the IG of the Postal Service, to our knowledge, serve at the pleasure of either the President or the head of the agency, depending on who appointed him or her initially.

When the head of the agency is a multi-person body, such as the LSC Board of Directors, the decision to appoint or discharge the IG is made pursuant to the rules of the agency. In every other instance where the head of the agency is a multi-person body, it is my understanding that only a majority vote is required.

The LSC Board of Directors operates on a majority vote based on all matters pending before it except that under the statutory language in the LSC Act it takes 7 votes of the Board to remove a director for malfeasance. While our Board at full strength has 11 directors, during my 3½ years as chairman at most times there have been one or two vacancies. The Board presently only has 10 members. Thus, the effect of H.R. 6101 would be able to require actual or virtual unanimity with respect to the removal of the LSC IG no matter what the cause.

It takes only one-half of the House and two-thirds of the Senate to remove the President of the United States. We think it noteworthy that only the LSC IG would be affected by H.R. 6101. We have been unable to discern a rationale, and none has been offered for singling out the LSC for such extraordinary treatment. My colleagues on the Board and I, all of whom were nominated by President Bush and who were confirmed by the Senate, have worked diligently and in complete good faith on all matters coming before us, including our relationship with the IG.

Indeed, Professor Bevier and I have made several trips to Washington to personally meet with LSC management and the IG to work on communications issues and to improve the relationship between the two. We expect and pledge to continue to work on this relationship.

As we are the Board that appointed the incumbent IG, we have every interest in his successful tenure, but precisely because we are the Board that appointed this IG we think it would be quite unwise to legislate the unusual and extraordinary job protections that H.R. 6101 provides.

While the Board is not permitted to interfere in actions taken by the IG, and I should emphasize that we in no case would do so, the IG is under our general supervision as we constitute the head of the agency. The power to supervise presumes the power to remove. While I have spent my career in the private sector and never dealt with an IG before I took this position, I believe this must be why Congress did not provide the kind of job protection for any IG that H.R. 6101 would create for LSC.

I would like to touch briefly on two other points.

First, the LSC IG has in the past year asserted that the Board should not engage in a review of his performance. The power to remove the IG, whether or not with the supervisor majority as 6101 would provide, presumes the authority to review his performance. Absent a performance review, on what basis would we decide whether to retain or discharge him.

Moreover, the Office of Management and Budget on November 13, 1992 issued a memorandum to the heads of designated Federal

entities regarding their relationship with IGs. The memorandum provides specifically that the general supervision provision in the Inspector General Act includes, quote, conducting the annual performance review of the IG, end quote.

After our IG made the argument that we should not conduct a performance review of him, we sought outside legal counsel from Thomas Williamson, Jr., a former deputy IG at the Department of Energy. His legal memorandum states in no uncertain terms that we not only have the authority to review the IG's performance but also the obligation to do so. We would continue to be under such an obligation even if H.R. 6101 were to pass.

Second, there have been some suggestions that the Board should not review the IG's performance because he has been, at the request of Members of Congress, investigating certain allegations, some of which pertain to the Board.

The Board discussed undertaking a performance review of the IG's performance in 2005, months before the March 2006 investigation commenced. That discussion predated the investigation and is in no way related to it. According to the report issued by the IG yesterday, the IG found that the Board had done nothing improper and much less illegal. That investigation has no bearing on the Board's responsibility to conduct a performance review.

I would be happy to answer any questions.

[The prepared statement of Mr. Strickland follows:]

PREPARED STATEMENT OF FRANK B. STRICKLAND

Mr. Chairman, Representative Watt and Members of the Subcommittee, I am pleased to be here today to testify before you with respect to H.R. 6101, legislation that would require nine of the eleven members of the Board of Directors of the Legal Services Corporation to agree in writing in order to discharge the Corporation's Inspector General. Accompanying me today are Professor Lillian Bevier, the Board's Vice Chairman and a distinguished Professor of Law at the University of Virginia, and Michael D. McKay, the Chairman of the Board's Finance Committee. Mr. McKay is a partner in the law firm of McKay Chadwell in Seattle and a former U.S. Attorney for the Western District of Washington. Thank you for accommodating our schedule so that we can be here today.

For my part, I have been in the private practice of law in Atlanta, Georgia for forty years in law firms ranging in size from four to twelve hundred lawyers. I am a past President of the Atlanta Bar Association and was outside General Counsel to the Georgia Republican Party for many years and continue to represent Republican Party interests in the state, most recently filing an amicus brief on behalf of the Georgia legislative leadership supporting the State of Texas on its 2003 redistricting plan. While one piece of their plan was overturned and remanded, I would note that on the issues of concern to the Georgia legislature, we prevailed. I also served eleven years as a member of the Board of Directors of Georgia Legal Services and the Atlanta Legal Aid Society.

The federal legal services program is often mischaracterized by some conservatives as being a liberal tool. I could not disagree more. This is a fundamentally conservative program. It is about giving poor people a shot at equal access to justice in our judicial system on civil matters. The leading early proponent of creating the Legal Services Corporation was Justice Lewis Powell. One of the original sponsors of creating LSC was Congressman John Erlenborn, who served as the most recent previous President of LSC. Supporters of LSC over the years have included conservative Republicans such as Warren Rudman, John Danforth and Pete Domenici, and Members of the House such as Bill Livingston and Frank Wolf. I will stop there for fear of leaving people out.

Mr. Chairman, with due respect and understanding that we are discussing a bill you introduced, the LSC Board cannot support either H.R. 6101 or its predecessor bill, H.R. 5974. The Congress created 57 Inspectors General by statute. All of the IG's, with the exception only of the IG of the Postal Service, serve at the pleasure of either the President or the head of the agency, depending on who appointed him

or her initially. When the head of the agency is a multi-person body, as is the LSC Board of Directors, the decision to appoint or discharge the IG is made pursuant to the rules of the entity. In every other instance where the head of the agency is a multi-person body, it is my understanding that only a majority vote is required.

The LSC Board of Directors operates on a majority vote basis on all matters pending before it (except that it takes seven votes to remove a Director for malfeasance). While our Board at full strength has eleven directors, during my three and one-half years as Chairman, there have at most times been one or two vacancies The Board presently has only ten members. Thus, the effect of H.R. 6101 would be to require actual or virtual unanimity with respect to the removal of the LSC IG no matter what the cause. This is highly unusual to say the least. It takes only one-half of the House and two-thirds of the Senate to remove the President of the United States.

We think it noteworthy that only the LSC IG would be affected by H.R. 6101. We have been unable to discern a rationale—and none has been offered—for singling out the LSC IG for such extraordinary treatment. My colleagues on the Board and I, all of whom were nominated by President Bush and unanimously confirmed by the Senate, have worked diligently in complete good faith on all matters coming before us, including our relationship with the IG. Indeed, Professor Bevier and I have made several trips to Washington to personally meet with LSC management and the IG to work on communication issues and the relationship between the two. We expect and pledge to continue to work on this. As we are the Board that appointed the incumbent IG, we have every interest in his successful tenure. But precisely because we are the Board that appointed this IG, we think it would be quite unwise to legislate the unusual and extraordinary job protection that H.R. 6101 provides.

While the Board is of course not permitted to interfere in investigations undertaken by the IG—and I should emphasize that we would in no case do so—the IG is under our general supervision, as we constitute the head of the agency. The power to supervise presumes the power to remove. While I have spent my career in the private sector and never dealt with an IG before I took this position, I believe this must be why Congress did not provide the kind of job protection for *any* IG that H.R. 6101 would create for LSC's.

I would like to briefly touch on two other points. First, the LSC IG has in the last year been asserting that the Board should not engage in a review of his performance. The power to remove the IG-whether or not with a super-majority such as H.R. 6101 would require—presumes the authority to review his performance. Absent a performance review, on what basis would we decide whether to retain or discharge him? Moreover, the Office of Management and Budget, on November 13, 1992, issued a memorandum to the heads of designated federal entities regarding their relationship with their IGs. The memorandum provides specifically that the "general supervision" provision on the Inspector General Act includes "conducting the annual performance evaluation of the IG." After our IG made the argument that we should not conduct a performance review of him, we sought outside legal counsel from Thomas S. Williamson Jr., a partner at Covington & Burling and a former Deputy IG of the Department of Energy. His legal memorandum to us states in no uncertain terms that we not only have the authority to review the IG's performance, but also the obligation to do so. We would continue to be under such an obligation even if H.R. 6101 were to pass.

Second, there have been some suggestions that the Board should not review the IG's performance because he has been, at the request of some Members of Congress, investigating certain allegations, some of which pertain to the Board. The Board discussed undertaking a performance review of the IG's performance in 2005, months before the March 2006 investigation commenced; that discussion predated the investigation and is in no way related to it. According to the report issued by the IG yesterday, the IG found that the Board had done nothing improper, much less illegal. That investigation has no bearing on the Board's responsibility to conduct a performance review.

I would be happy to answer any questions.

Mr. CANNON. Thank you, Mr. Strickland.

Ask unanimous consent to add Ed Quatrevaux's letter into the record. Hearing no objection, so ordered.

Mr. WATT. Let me reserve the right to object. This is just his opinion.

I withdraw my objection.

Mr. CANNON. The objection is withdrawn, so ordered.

Mr. West, based on your 20 years, actually 20 plus years, in the Inspector General service, have you ever encountered such efforts to stifle independence as you have received at LSC?

Mr. WEST. I have not encountered such efforts. When I first started at the Department of Labor in 1986 in the IG's office, I heard the stories about the early days of where they were trying to keep the IGs from having access to documents, access to people, but I did not encounter that when I was there, that the IG concept had become premature. The same thing when I went to the CIA. They had independent IG statutory for a number of years and the agency had gotten used to the IG and the same thing with the Postal Service, with a couple of bumps because it was a relatively new IG, but the language that Congress put in giving the IG this extra job security was to enable the IG to start Congress doing its job.

So when I thought I was coming to Legal Services Corporation that had an IG for 16 years, I was expecting smooth sailing and I have run into a lot of obstacles in terms of access to records, took a lot of criticism of reports, trying to tell me what should be in reports. I didn't put a document in here. I should have said something differently, and I never experienced that before.

Mr. CANNON. Ed Quatrevaux was with LSC 15 years ago or so and—have you talked to him about these things? Has he expressed the problems and can you see a thread that draws these kind of problems together that he has referenced?

Mr. WEST. I have not talked to Ed personally. I have actually read his files, though. I have read his files where his notes to files regarding trying to curtail communications with Congress, criticizing his communications with Congress, the attempt to use a performance appraisal to get him to back off from some of the projects he was taking on. And my seniors, two of my senior staff members worked for both Ed and me and they can tell you if you can remember the movie Ground Hog Day, they feel like they wake up and it's 10 years ago.

Mr. CANNON. I'll talk to Mr. Strickland a little later about this, but you suggested that presidential impeachment where you need a majority in the House and two-thirds in the Senate is a lower bar than having nine members of a Board to have you dismissed. That seems to me to be extraordinary because of the nature of the focus of the public and the number of people involved in impeachment.

But in the case of a Board, what seems to me here is that you have this consistent opposition to a person who exists in what should be an aid to, what is described as a volunteer Board, so these people don't come in here with the history of the organization, they don't come in with bylaws that they insist on happening. They join the organization that has ongoing rules, regulations and legislation to guide this activity and yet there are many lawyers working with or for—or under contract through the agency who seem to be sending signals back up about what they'd like and why the Board should like that.

And am I missing this or has this always been the problem with Mr. Quatrevaux and others from the beginning, that there is this tension of what the Board gets in its head to do in its inexperi-

enced nonprofessional context and what the rules and the regulations set forth.

Mr. WEST. I don't think you are missing anything, Mr. Chairman. I think one of the other problems is that the LSC by virtue of being a D.C. nonprofit corporation is really isolated from the mainstream Federal Government. I don't have—they don't have a cadre of senior executives like the other agencies do. Say in another agency a new secretary comes in or new administrator and they may get all bent out of shape about an IG report. They have their senior executives telling them we have been through this, we understand what's going on. And it's okay. LSC doesn't have any kind of continuity like that. There are only two senior officers of the corporation who have been—remained around from the early days and with some of the information that has been submitted to you, as a result of your investigation, you may notice that both of those officers were instructed by the LSC President not to directly be in contact with the Board. So the Board didn't even have the advice of their counsel.

And the report I submitted to you yesterday, the controller who was trying to enforce the travel contract that LSC has with the General Services Administration was not permitted to discuss the issue with the Chairman. So the Chairman did not receive information from the person who had the history and that kind of information.

So there is a definite problem with the Board getting the kinds of information they need.

Mr. CANNON. My time has expired.

Mr. Watt, the gentleman is recognized for 5 minutes.

Mr. WATT. I guess I am having a little trouble understanding how this bill would address that last point you made there, Mr. West.

You are saying there was lack of communication between who and the Board?

Mr. WEST. The senior officers, the general counsel.

Mr. WATT. Why was there lack of communication?

Mr. WEST. Because the President of the corporation issued directions that nobody was—neither the treasurer nor the general counsel were to be in—directly in contact with the Board, that all communications with the Board had to go through her, notwithstanding the fact that they are officers of the corporation.

Mr. WATT. And when the Board found out about that, would they have the authority to tell the Director that that is—that was something that they did not want or want?

Mr. WEST. That has eventually changed in the last few months, but it went on for some period of time and there was an indication——

Mr. WATT. And we are here in legislation stating about something that has changed that the bill wouldn't have any impact anyway? Is that—I don't—Mr. Chairman, I am feeling very frustrated here because I actually think we are doing a disservice to Mr. West and Mr. Strickland and the Legal Services Corporation by making what—making something that is delicate already worse. Mr. West being here appears to me to be, and I am sure it is not his fault, very self-serving. The Board being here to testify about this bill

seems to me to be very self-serving. And so nobody wins here. We are not getting any independent evaluation of whether this is a good bill or not from independent sources.

I appreciate Mr. Williams being here. You may be the only independent person in here on this, but we can't make public policy because of some personal personality dispute between an IG and a corporation.

And I think, I mean, I have been about at this point for a long time behind the scenes, but I think now we are at this point in front of the public view that this has just deteriorated into a petty squabble that probably nobody is completely right in or completely wrong in.

Mr. CANNON. Would the gentleman yield?

Mr. WATT. Not to mention the staffs of our Committees, which is what is beginning to irritate me substantially. You know, we sit in a room and talk about this stuff and we think we have it worked out and then everything that we think we have worked out gets undermined by some staff person who's got their own personal agenda at work. And now we are out playing it out in public as if we are the knights in shining armor to go and save this institution from itself.

These people were appointed by the President of the United States. They have responsibilities. They are all lawyers. They know how to distinguish between talking to Mr. West and making an evaluation of his performance, and the criteria that he is supposed to perform on and interfering in inappropriately with the work that he is doing. We make those judgements every day as Members of the Congress. Otherwise, I couldn't ever go up to the Intelligence Committee. I am a Member of Congress. I am communicating with my constituents every day and there are some things I can't tell him because I read it up in the Intelligence Committee.

I can make those distinctions, and I think this Board can make those distinctions, and we are doing this corporation and Mr. West and everybody a disservice, I think, having a hearing that relegates this into some petty dispute and makes us all look bad, in my opinion.

Now I am happy to yield to the Chairman.

Mr. CANNON. The gentleman's time has expired.

Mr. WATT. I ask unanimous consent for 1 minute and I will yield it to the Chairman so he can say what he wanted to say when he tried to interrupt me and when I got up on my soap box.

Mr. CANNON. If I knew you were getting on your soap box and going on a roll, I wouldn't have asked for time. Thank you for the 1 minute.

Let's go to a second round if that is okay. And so I'll recognize myself for 5 minutes.

Oh, I am sorry. We do have Mr. Franks here. And that means I probably need to accept your motion or your unanimous consent. And so I have 1 minute to respond.

There are a couple of things that are disconcerting to me that you talked about, the first being that this is a Board that is being run by people who are professionals. Having served on a Board and watched what has happened with Boards and the fall out that we have had at major corporations, recently including Hewlett Pack-

ard, odd problems subject to the mind that members of the Board should be saying to themselves I have a fiduciary position and I need some help. In fact, I might just ask Mr. Strickland, is it true that Ms. Barnett told the treasurer or the general counsel not to talk to members of the Board?

Mr. STRICKLAND. The way Ms. Barnett has organized the operation, we have a chief administrative officer. And the treasurer reports to the chief administrative officer. When they make presentations to the Board, when they, the chief administrative officer and the treasurer make presentations to the Board, they do so jointly. So the Board has access to the treasurer.

Mr. CANNON. Has she said to any officers at LSC that they shouldn't talk to Board members?

Mr. STRICKLAND. I don't know.

Mr. CANNON. Well, then we will leave it at that. But let me say that is appalling to me. I don't know how anybody could be on a Board who doesn't feel like he had the opportunity to walk into any employee's office, anybody's office and——

Mr. WATT. Can I reclaim my time? It might be appalling to you, Mr. Chairman, but that is a level of micromanagement that I think is not befitting this institution, the Board or this Congress and, you know, if we start micromanaging at this level, it is appalling to me.

Mr. CANNON. I think the gentleman is correct that any Board member who goes in to a secretary and looked over his shoulder while he is typing is probably an idiot. Unless there is something for that.

Mr. WATT. That is not what I am talking about. I am talking about us looking over the shoulder of the Board of—you know, hey, I wouldn't any more condone the Board going in and looking over the shoulder of a secretary than I would condone the Members of Congress going in and looking over the shoulder of the Board.

This Board has responsibilities. It has not violated those responsibilities that has been able to decipher. It has not violated those responsibilities even so near as the reports that Mr. West has submitted to us. And yet because we don't like lawyers or we don't like the Legal Services Corporation, we are out there micromanaging the business of this Board in a way that I think is inappropriate.

Mr. CANNON. Will the gentleman yield?

Mr. WATT. Yes, I will, and I will ask for another minute so you can respond to that.

Mr. CANNON. The point the gentleman is making is very, very important. The point is that we should not be micromanaging Legal Services Corporation and no Board member should go look over the secretary's shoulder. That said, if a Board member doesn't have the ability to look over a secretary's shoulder, if he doesn't have the ability to get to books, if he doesn't have the ability to look at whatever information he feels is important so that his corporation or in this case this Legal Services Corporation can operate in a reasonable fashion; that is, if he can't take on the responsibility that he actually holds to effectively perform his duties, then he is not going to work very well.

We don't have shareholders of LSC. We have taxpayers and our role is to make sure the Board is performing its function. We have had very serious discussions about what we are going to do with

the building that you have purchased or worked with Friends of Legal Services to purchase. We have some fundamental problems here where I think there is a true breakdown of understanding by Board members, and I think this was the deal you were talking about, Mr. Watt. There are some—I believe that what I see here are members of the Board who are getting the perks of an operation who are being directed by staff but who are not using the Inspector General for the purpose that he exists, which is to protect the Board from allegations of impropriety or for overseeing an operation that there is impropriety going on.

That is what I think this hearing is about. It is oversight of those things, and the issue about the reports that the Inspector General, Mr. West, has issued are not so much on point. It is the reaction of the Board to those reports that I think is significant here.

Mr. WATT. Mr. Chairman, I yield back the balance of think time if I have any.

Mr. CANNON. The gentlemen yields back. I doubt he has any. But the Chair appreciates his indulgence and the Chair recognizes the gentleman from Arizona for 5 minutes.

Mr. FRANKS. Mr. Chairman, I am learning a great deal here. Could you entertain—could I yield additional time to you, sir?

Mr. CANNON. I have a number of other questions if you don't have any.

Mr. FRANKS. I would be glad to yield.

Mr. CANNON. I'll take your time and probably my time again.

We have distracted somewhat Mr. West.

Mr. Williams, you have heard the discussions between the Ranking Member and me. Do you have comments on the issue?

Mr. WILLIAMS. Broadly speaking, the job of the Inspector General is a difficult one. I've investigated the heads of most of the departments and agencies that I have been a member of. With regard to Boards, they are normally evenly split. And it isn't unusual to vote along partisan lines. So a super majority is something that I take comfort in. And many times in the investigations that I conduct, members of the commission and now the Board are a party in interest and sometimes they are even the subject of the investigation.

I think people have a natural tendency to want to tell the truth, but they ought not to have to choose between telling the truth and feeding their families.

What seems to have occurred here, the timing between the investigation and discussions regarding firing Mr. West are very instructive and very damning and very serious. And I consider this a very serious matter, and I think that any provision that will provide levels of security for Mr. West and speaking the truth to powerful figures is welcome and is needed.

Mr. CANNON. So what you are saying as opposed to what Mr. Watt is saying is that this is an important investigation and needs—or this bill and what we are doing here is not micromanaging but creating a context that makes sense?

Mr. WILLIAMS. I think if you don't protect people speaking the truth, there are going to be a lot of people that won't tell you the truth. This was done at your request, I understand. It is the duty of the Committee to join in an effort to make sure that retaliation doesn't occur. In the case of TVA and HUD and other instances

where this sort of thing occurred, legislation followed and strong Congressional action followed, and I think it is appropriate in this instance as well if this is what it looks like.

Mr. CANNON. Mr. West.

Mr. WEST. Well, I would like to follow up with one example of, I think, sort of what is going on and again, as I said, I am trying to keep this off any kind of, you know, personal dispute or whatever. But back a year and a half ago your Subcommittee asked me to look into the lease and I issued a report, as you noted in your comments, Mr. Chairman, that the—my lease report was rejected subsequently to that. Your Subcommittee held an independent hearing, arrived at basically the same conclusions that I did regarding the building in the House appropriations.

Mr. CANNON. In fairness, there was no testimony that contradicted your position. The amazing thing was that having said that, it all turned on whether or not there was a conflict of interest. Someone I believe on the Board of LSC resigned because of the obvious conflict of interest. Others wanted to pretend the conflict didn't exist. We bent over backwards to try to construct a context where that would be straightened out, and I think we are of one mind on that issue. And yet we are here without that fundamental conflict having been resolved and we created I think the—I think we bent over backward to create a context where we could solve that problem about using those and others.

Mr. WEST. I had the privilege of, you know, or happened to look and be able to read some closed transcripts of the Board's performance review of me which, by the way, I am entitled to under the law. So it—I got them in the course of investigation by—I am also entitled to them on a case involving the firing of the first LSC IG back in 1991, I believe.

And what I found was that there is still disagreement over my issuing this report on the lease, notwithstanding the fact that the House, in the House report on appropriations, which was adopted by the conference report in which the conferees told the LSC that they needed to negotiate a more reasonable rent rate and try to lessen the amount of space they need.

So I'm sort of in a situation where I provided a report to the Congress. I believe I did, on my professional standards using independent outside appraisers who were referred to me by the General Services Administration and the facilities department Postal Service, I issued the report. Congress agreed with me. And I hear from the Board that my performance is bad because they disagree with how this lease report was issued.

I then find that I have been criticized because I didn't respond to why a particular appraisal—lender's appraisal—was included as part of my lease report. I hadn't seen it. I was told you didn't respond to our concerns, and I issued two reports regarding why I didn't consider it relevant.

And I don't know what to say when I am being criticized for things that I in fact have done, that I have been told that I haven't done, and I have done it. I have done things that Congress has agreed with and the Board tends to still disagree with my findings as well as Congress' findings.

Mr. CANNON. The time of the gentleman from Arizona has expired.

The gentleman recognizes himself for 5 minutes. Maybe this is a good time to shift to Mr. Strickland. You have heard the discussion here about whether this is relevant or important or micromanaging. And yet you are the chairman. You are concerned about your reputation. I know this is a matter of great importance to you. We have talked about the difficulties that the building represents.

Do you recognize the problem of a Board that rejects a general counsel—an inspector general, instead of using that inspector general to help protect the Board, its chairman and members and their reputations?

Mr. STRICKLAND. It is correct that the Board disagreed with the findings in that report. By way of follow-up to that, Mr. Chairman, we have taken two approaches to resolve that problem. One is——

Mr. CANNON. Mr. Strickland, would you mind focusing on the question, which is, as the chairman of the Board, aren't you concerned that you have someone who really is independent on the outside, who acts as an agent to protect you and your reputation and the reputation of the Board?

Mr. STRICKLAND. We appreciate the role of the inspector general and we are working very hard to gain a better understanding of the proper role of an IG. As I said a moment ago in my opening statement, none of us came to the Board with any experience with the inspector generals. It is a foreign concept to us.

Mr. CANNON. Have you served on boards of corporations?

Mr. STRICKLAND. No publicly traded corporations, no, sir. Nonprofits.

Mr. CANNON. Have any of your members that you know of served on boards of publicly traded corporations?

Mr. STRICKLAND. Not to my knowledge.

Mr. CANNON. Well, I certainly hope to the degree you have input, and we certainly will take the initiative to bring people on the Board—actually, I do know Tom Fuentes is on the board of at least one—a publishing company.

Mr. STRICKLAND. That is correct. I don't know that that is public, but he is on that board.

Mr. CANNON. That is not a public corporation, I don't think. Mr. Strickland, what I think we need here is a recognition of the role of a Board member in the context of the terrific legal responsibilities and burdens that come with being on a Board. Now, that is a little different when you are on a public board with funding—taxpayer funding. But I think that makes our role overseeing it a little more poignant than perhaps other activities. But you know, do you have lawyers on the Board who are corporate lawyers?

Mr. STRICKLAND. Yes.

Mr. CANNON. And who serve as general counsels for public or nonpublic——

Mr. STRICKLAND. I presume they do provide general counsel advice, yes. And I do myself for some clients.

Mr. CANNON. I apologize. I interrupted you and you had something else to say.

Mr. STRICKLAND. I was going to say with respect to the lease, it is true we had a disagreement with the lease report. It is also true,

I think, that I don't know anyone in the room would say inspectors general are infallible. So I think it is our responsibility to speak up if we have a disagreement, and we have done that.

Most of our disagreements with Mr. West have had to do with style rather than substance, and omissions of things that we thought were material to his reports. With respect to the lease, we attempted through the appropriations process to get some language that would help us on the ultimate ownership of the building. That process did not work. I wrote you a letter a few months ago suggesting another alternative for protecting LSC's ultimate ownership in the building, and I would like to explore that with you on another occasion, rather than in detail. But we have had not had a chance to discuss that letter since it was sent.

But it was a proposal that would provide for a supermajority vote to Friends of LSC, who is our landlord, and would also add some representatives of LSC to the Friends board, and impose the supermajority requirement before that board could take any action that would be detrimental to LSC. We thought that was the only safety valve we could think of that would have additional protection to the LSC's ultimate ownership of the building.

Mr. CANNON. My time is about to expire. But let me just ask, I have been personally involved in the issue of the building, and I talked to the Chairman of the Subcommittee, Mr. Wolf, who has a long association with LSC. And I thought we were making progress there. What happened between you and the Chairman of the Subcommittee that I'm not aware of that derailed ownership of the building by LSC?

Mr. STRICKLAND. I am not sufficiently conversant on appropriations language to give you an intelligent answer to that.

Mr. CANNON. Were you involved in those discussions or was it someone else on your staff?

Mr. STRICKLAND. Someone else on the staff. And the advice given to me was——

Mr. CANNON. Mr. Polgar raised his hand.

Mr. STRICKLAND. Yes, I believe he is the one who had those discussions, and I can't give you an intelligent answer to that, other than my understanding is that we were not able to work out any appropriations language that would help us in that regard, although we made the effort.

Mr. CANNON. Thank you. I see my time has expired Mr. Watt, are you interested in another round?

Mr. WATT. Mr. Chairman, I think I will pass.

Mr. CANNON. Mr. Franks.

Mr. FRANKS. Mr. Chairman, do you need any additional time?

Mr. CANNON. I do.

Mr. FRANKS. Mr. Chairman, I would be glad to give it to you, sir.

Mr. CANNON. I thank the gentleman for yielding.

Mr. WATT. If I had known you need additional time, I would have been happy to yield to you also. I just want the record to show that.

Mr. CANNON. I apologize for keeping the gentleman here longer, but I would really like to work through some of these questions.

Mr. West, I have heard from Mr. Strickland that the situation at LSC is no different from the situation at other entities with in-

spectors general appointed by the head of the agency. Do you agree with that?

Mr. WEST. I do not completely agree with that. I'll give you an example. At the Postal Service—and it is actually something I have mentioned to Mr. Strickland some time ago—but the Postal Service, the part-time governors have their own employee that works directly for the governors, who is not part of the management and does a lot of the day-to-day work. That is different than LSC where the Board relies on management to provide responses to it. Management prepared much of its response in the lease report. Management provides responses for its response to my reports and the semiannual reports to Congress and other things. So there is a tremendous reliance that the Board has on the very management that I am auditing and investigating to prepare information, provide information for it.

That is very different from the Postal Service—Mr. Williams could explain in greater detail—how the governors have their own employee whose only obligation is to be—to work for the governors. These employees then deal with both the inspector general and the postmaster general. And they're able to synthesize the important issues that need to go up to the governors. So it is a very different model.

Mr. CANNON. Mr. Strickland has suggested that the differences between you and the Board are differences of style. Is it a matter of style? Is it a matter of personality? Or is there something institutional here that is difficult?

Mr. WEST. It must be institutional, because the style that he is referring to—the IG reports that I issue are no different than the IG reports I issued and was involved in issuing when I was at Department of Labor, at the CIA, and the Postal Service. They are no more, quote, inflammatory, unquote, and no more prosecutorial.

So I think I am doing the job that Congress put me in to do that the IG Act says I should do. I am doing the same job that IGs are doing throughout Government. So I don't think that the problem is with the IG.

And looking at Mr. Quatrevaux's notes from the past, it was the same thing. I think there is a—there is something within the history—the way that the LSC is created, its culture or something, that is creating an aversion to having an independent IG who can report directly to Congress. And I think it is just different. I have not done a full analysis of it but that is my conclusion.

Mr. CANNON. Thank you.

Mr. Williams, based on your considerable experience in the inspector general community and your understanding of what is happening at LSC, do you believe that H.R. 6101 is an appropriate measure? And do you have any other recommendations?

Mr. WILLIAMS. As I said, the provision in the Postal Reorganization Act is one that I find comforting. It does—the provision would assure that the decision to dismiss the inspector general be taken very seriously and not be taken in the heat of the moment and that it not be a partisan decision.

And I think that in a job such as the inspector general, where you do speak frankly and you do conduct investigations that can be embarrassing or that can even involve criminal matters con-

cerning the Board in this case, that that kind of—that kind of considered judgment—it becomes very important.

Mr. CANNON. And do you think this bill—two questions since my time is about to expire—this bill will help in that regard? And, secondly, it is apparent the LSC is having difficulty recognizing the appropriate role of the IG. I understand you addressed the Board on this topic. Did you give the Board any advice at that time and is it still relevant today? Do you have any advice to the Board in coming to terms with the concept?

Mr. WILLIAMS. Actually, before Mr. West, Mr. Quatrevaux did ask me to come and speak to that Board as well. And it was the same issue. And on both occasions with both boards, I attempted to explain the importance of independence and being able to speak honestly about the things that you found, and that the purpose of the inspector general was to investigate waste and fraud and abuse and assure integrity within the workforce of the department.

I am not sure about the culture. I'm not close enough to it. But it is very unusual for me to have been asked to speak to both boards. Something—something inside that apparatus is causing a level of disrespect to be directed toward the fact-finders that can't be healthy.

Mr. CANNON. I have been asking Mr. Strickland about this. There does seem to be something missing. Is that just perhaps a lack of experience with the responsibility that the Board has in the case of LSC to taxpayers? Or is something else——

Mr. WATT. Chairman, I reclaim my time and yield you my 5 minutes.

Mr. CANNON. The time has expired. I thank the gentleman. The gentleman is recognized for 5 minutes and yields to the Chair. Thank you.

Mr. WILLIAMS. It could be that it is very difficult for people that have a very brief, part-time presence in the city to grasp the principle of this kind of hard-hitting reporting that was required of the inspector general. But it came about as a result of abuse within the Government and it was intended to be a very strong tool. And it could be that there is a difficult learning curve. And as Mr. West said, apparently there is not a permanent staff there to help the Board with the learning curve.

Mr. CANNON. Thank you, Mr. Williams.

Mr. Strickland, I know Mr. Watt needs to leave, but I have many questions, although we have made some serious progress, I believe, here.

In the Associated Press this morning, Mr. Polgar, who is the LSC Director of Government Relations and Public Affairs said: The board of directors never threatened to fire him and had no plans to take action in April when the lawmakers' warning letter arrived.

However, at your Board meeting in January, Board members said various things. Do you recall that discussion of Mr. West's activity in that Board meeting? It would have been, I think, in January.

Mr. STRICKLAND. I do recall that.

Mr. CANNON. Is what Mr. Polgar said consistent, do you believe, with what happened at that meeting?

Mr. STRICKLAND. It's important to note, Mr. Chairman, that the discussion in January 2006 pertained to Mr. West's performance during 2005, and has nothing whatsoever to do with the current investigation, which he undertook in March or April of 2006. It was past history that was being discussed. And a number of Board members at that meeting indicated dissatisfaction with Mr. West's report—reports—and found his work product shoddy, to quote one Board member.

Mr. CANNON. And what was that work product? Was that the Georgetown building?

Mr. STRICKLAND. It was one of his reports; I don't remember which one.

Mr. CANNON. You don't recall a discussion about the Georgetown building in particular?

Mr. STRICKLAND. I can't connect that description to a particular report. But the point I'm making is, it was a discussion of his previous work history and not having anything to do with the investigation that he has been doing this year.

Mr. CANNON. Mr. Polgar referenced April. That is this last April, the letter that we sent. And I believe that the meeting that we are talking about is the meeting in January of this year.

Mr. STRICKLAND. Right. The meeting in January——

Mr. CANNON. And that may have been past material, because we had had the Georgetown material already done. But things were said like he doesn't belong as inspector general of this organization. This could be interpreted as retaliation or an effort to undermine congressional restrictions. He has got to shape up or we will ship him out. I think he should be given notice; the only problem I have is how do we go about it.

Don't those things suggest that the Board was actually going to fire Mr. West? And that was prior to the April letter that Mr. Polgar referred to?

Mr. STRICKLAND. I can't quote from the transcript. I don't have it in front of me. But there was certainly some discussion at that meeting. There was no vote taken and no vote taken since.

Mr. CANNON. That is true. No vote was taken because you were anticipating an appropriations cycle.

Mr. WATT. Mr. Chairman, since this is my time, let me reclaim long enough to suggest that all of those things you read there suggest responsible inquiries that Board members would be making about any employee of theirs.

Mr. CANNON. Will the gentleman yield? These were not inquiries. These were conclusions. And they are conclusions——

Mr. WATT. You say that they are conclusions, but no action was taken by the Board. So they couldn't have been conclusions that resulted in Mr. West's termination. Mr. West is still sitting here today.

So you know, the fact that issues get raised in a Board meeting, that's what boards are supposed to do. They have an obligation, according to a legal opinion which Mr. Strickland has referred to, to evaluate this man's performance.

Now, I agree that they ought not be retaliating against him. They ought not be undermining the purposes for which an inspector general is employed. But it certainly wasn't related to an inves-

tigation that took place in 2006, if the conversation was taking place in January of 2006. So we are off on a far—far-out fishing expedition.

Mr. CANNON. The gentleman's time has expired.

Mr. WATT. I ask for one additional minute and yield it to the Chairman. That's what I took from him and I give it back.

Mr. CANNON. I thank the gentleman. If the gentleman would like to continue for a minute, that is appropriate. I thank the gentleman.

Mr. Strickland, I think we've just miss mixed up a fact here, if you could get that straight for us. This is January of 2006. We sent the letter in April, but the Board meeting of January 2006 was not about vague stuff that happened in the past. It is all the stuff that related to the Georgetown office and other criticisms that Mr. West directed to the Board for the Board's consideration. And it was in response to that, that I believe these conclusory statements were made at your Board meeting.

Do you recall those statements? Am I correct about the timing, first of all?

Mr. STRICKLAND. Yes, I believe the discussion was in January 2006, and Professor BeVier, who chairs our performance reviews committee, reminded me that we believe that discussion occurred during a meeting of the performance reviews committee. And it was a discussion about what are our alternatives here. Can we or should we review the inspector general's performance and so on?

So, ended up really putting that on a shelf and not delivering any feedback as such to Mr. West until much later in the year. And in the interim, of course, as he said in his testimony, he exercised his authority to obtain a copy of the closed-session transcript at which his performance was discussed.

Mr. CANNON. You are saying that is the closed-session transcript of the performance evaluation subcommittee of the Board?

Mr. STRICKLAND. Correct.

Mr. CANNON. Mr. West, you obtained a transcript. Were you thinking that was actually a Board meeting? Do you know?

Mr. WEST. It was a performance review committee meeting.

Mr. CANNON. Okay.

Mr. STRICKLAND. Mr. Chairman, may I make one other point? I don't want to have the record close today without making these points. That——

Mr. CANNON. The Chair recognizes himself for 5 minutes and we will go another round of questioning.

Mr. WATT. Mr. Chairman, if I can just interrupt you here briefly. I have another commitment that I must go to because I'm presiding over the meeting. So it is not—I don't want to be disrespectful. I want the Chairman to go as long as he wants to with as many rounds as the Chairman wants to, but I can't be here.

Mr. CANNON. We shall operate with decorum.

Mr. WATT. And since I think we are micromanaging, neither do I need to be here. I don't want to micromanage, Mr. Chairman. That is very sure.

Mr. CANNON. I thank the gentleman. I am sorry?

Mr. WATT. Could I interrupt long enough to ask unanimous consent to put the letter from—the memorandum to the board of directors from Covington and Burling in the record.

Mr. CANNON. Without objection, so ordered.

[The information referred to is available in the Appendix.]

Mr. CANNON. If we could just take one more moment, Mr. Watt, I'd like to make the following motion: The unfinished business before the Subcommittee is the adjournment of the Subcommittee's June 28, 2005 hearing, which was recessed subject to the call of the Chair. Without objection, the aforementioned hearing is so adjourned. Without objection, so ordered. We left it open.

I thank the gentleman for his indulgence and apologize for the time it has taken. I think that was adjourning the hearing we had before, so that record closes it out.

Mr. Strickland, you were about to make a point. I apologize for that interruption.

Mr. STRICKLAND. Thank you, Mr. Chairman. I wanted to emphasize to the Committee that we have been working for months to improve the relationship between the agency and inspector general. We think we have made considerable progress in that regard. And the fact that we take this matter seriously, I think, is indicated by the presence of two of our Board members today, one of whom has traveled from Seattle to be present. I have worked on this on a personal level. I said in my opening statement that Professor BeVier and I have made at least two trips to Washington to meet directly with the inspector general and his staff, and then with management, with Mrs. Barnett and her staff, and then jointly with the entire group. And we thought those were productive meetings and we continue to—we plan to continue those efforts in the future.

And I would point out also that as recently as last Friday in the preparation of the draft of the congressional investigation report which has now been released, we had a telephone conference discussion about some of the things that were in the report, and a good exchange between management and the inspector general and involvement of the Board relative to some of the factual assertions in the report that needed some revision. And the Inspector General's Office accepted those recommendations in large measure, and I think the report that was released is an improved product as a result of that.

So I say all of that to emphasize that we have made a considerable investment in time and effort to work on that relationship and I am pleased to report, from my perspective, considerable progress in that regard.

Mr. CANNON. We were talking with some particularity here about Mr. Polgar's statement to the press that the board of directors never threatened to fire him and had no plans to take action in April when the lawmakers' warning letter arrived. And you have made the distinction between the performance review and also—and the board of directors. But at the board of directors meeting, it appears that it was Ms. BeVier who is speaking and she speaks at some length, but the point of that is letting Mr. West go. She had reporting back, but she is very clear about letting him go and getting counsel to look at it and things like that.

Is that not contrary to what Mr. Polgar had said to the press?

Mr. STRICKLAND. I need to ask you to put that in context. I have been talking about the January 2006 Board meeting and I don't understand whether you are talking about another——

Mr. CANNON. You had a performance review meeting and then you had a Board meeting.

Mr. STRICKLAND. Yes.

Mr. CANNON. And apparently Ms. BeVier reported to the Board about the review meeting, the performance review meeting. And in that report, she was very clear that she was suggesting that this Board fire Mr. West; and that that would be, it seems to me, clearly contradictory to what Mr. Polgar told the press.

Mr. STRICKLAND. I can't give you a good answer to that, Mr. Chairman. The context is confusing. The way you posited the question, I simply can't deal with it.

Mr. CANNON. I mean, is the question confusing—in which case I will recast it. Or is the history confusing?

Mr. STRICKLAND. Perhaps a little of both. I don't know whether you are talking about Professor BeVier's presentation to the January 2006 Board meeting, and then we all of a sudden jump to April when we had another Board meeting.

Mr. CANNON. You had a letter from us and that is the April date.

Mr. STRICKLAND. Yes, I don't recall any action. I have not reviewed the transcripts. I don't recall any action at the April Board meeting to—with regard——

Mr. CANNON. Well, you had two meetings in January: the meeting of the performance review board and a meeting of the full Board.

Mr. STRICKLAND. Correct.

Mr. CANNON. In the performance review board these quotes that I gave you were apparently made, or something like that. In the full Board we had a conclusory presentation, by Ms. BeVier it appears, where she was saying that the Board needed to fire Mr. West. That is clearly in contradiction to what Mr. Polgar told the press if that is the case, unless I am missing something.

Mr. STRICKLAND. Ms. BeVier is here. She may clear the record on that.

Mr. CANNON. Perhaps she can explain to you and we will go to Mr. West and just ask if you were aware of these things, did you find that intimidating?

Mr. WEST. Mr. Chairman, I was not aware of that at the time because it was a closed Board transcript, I had not seen it. I had been—you know, I heard sort of rumors. I had nothing specific in information because I didn't see the closed Board transcripts until sometime—I think it was probably June.

I would like to clear up one other thing in terms of what is different about the Legal Services IG and other IGs who serve on boards. And that is something I addressed earlier, which is I am an "at will" employee. I can be fired without cause, without a hearing. And that is true of any LSC IG. That is different than most of all the other Federal IGs who are hired by their agencies. They have Merit System Protection Board rights and they have the rights of Federal employees. I don't have any of those rights, so it puts the IG at Legal Services Corporation in a much more tenuous position.

And another thing I would like to make clear—I said this in my larger statement—this is somewhat uncomfortable to support a bill like this because, as Mr. Watt said, it could appear to be self-serving. But I am doing this for the institution of the Office of Inspector General, not for myself. I don't know how much longer I will be in the job but I am concerned about the long-term prospects, that if I leave, the next IG is going to go through the same thing that I went through and Mr. Quatrevaux went through.

Mr. CANNON. That is the IG at LSC, and this bill actually would tend to have a tendency to solve that problem, would it not?

Mr. WEST. That's correct Mr. Chairman.

Mr. CANNON. Has a performance review ever been completed by the Board or by its subgroup?

Mr. WEST. As far as I know, there is—it has been told to me that they are still discussing it. It is a little disconcerting about this Covington and Burling memo, because I was told that I had an opportunity to respond to the memo before it was going to be considered; yet I have been told it is a dispositive memo.

I would also like to point out, Mr. Chairman, that I think the memo itself is flawed. There is—and I am really surprised that a law firm such as Covington and Burling would do this—they make an assertion in one of the footnotes that the Sarbanes-Oxley Act does not apply to nonprofits, and they make a point of trying to ridicule my seasoned attorney who put this together. However, if you go to the ABA Web site and you read the Sarbanes-Oxley Act, you realize there are two provisions of the Sarbanes-Oxley Act that do in fact apply to nonprofit corporations. So I would suggest that the corporation didn't get the value of the money they paid for this opinion, if it is flawed.

Mr. CANNON. I understand it is like $22,000?

Mr. WEST. I have heard it is somewhere in that ballpark.

Mr. CANNON. Mr. Strickland, have you clarified the timing here?

Mr. STRICKLAND. I did have a chance to speak to Professor BeVier, and her recollection is that in January, both in the performance review committee and at the Board meeting, in summary form, we were considering alternatives, we were considering fairness, and we were deciding, I think, to seek advice from outside counsel in terms of whether or not the Board should even do a performance review of the inspector general going forward. It is still an open question. There is a raging debate about it.

Mr. CANNON. My question to you is did Mr. Polgar tell the truth when he said that the Board had no plans to take action in April? Had no—prior to April. In other words had the Board threatened Mr. West or not?

Mr. STRICKLAND. I don't think the Board had threatened Mr. West. I take exception to that characterization.

Mr. CANNON. What would you call it?

Mr. STRICKLAND. I would call it a discussion of alternatives.

Mr. CANNON. This kind of discussion, It is very long and unfortunately I don't think we can read it all. We talk about conflicts of interest, breach of fiduciary responsibilities. These are conclusions about Mr. West: "So that to have that undermined by allegations that are deemed—that we regard as unwarranted, and that are at

least, presented in an inflammatory way, . . . seems to be not in the Corporation's best interest. . . .

"We plan to have outside counsel review that with an eye to the possibility, and I stress that, I really stress that we are only sort of thinking about the possible worst-case scenario, which would be possibly deciding that we had to let Kirt go, and we reduce that to writing, give it to counsel."

And so you are going to counsel to talk whether or not—there is a lot of equivocating language in there, but you are talking about firing the guy and getting counsel to cover you when you fire him; have the counsels look at it so as to make sure that what we have done is careful enough. So we have a conclusion. We are just looking to counsel to ratify it.

In the context of that, wasn't Mr. Polgar's statement to the press misleading?

Mr. STRICKLAND. I can't comment on Mr. Polgar's statement. I didn't make it and I don't care to comment on that, and I think the transcript speaks for itself as to what it says.

Mr. CANNON. I understand the Board has not completed a performance review of the IG, yet you told Subcommittee staff last week that a review had been completed last year. Did the Board conduct a review? Is it complete?

Mr. STRICKLAND. I would say it is in some stage of completion. The continuing debate about whether or not it is appropriate for the Board of LSC to review the inspector general is ongoing. We went through a process in the fall of 2005. We reduced that to writing. We elected not to present that writing to Mr. West. And that's my best recollection of it.

Mr. CANNON. So when you say then that it was reduced to writing, that means that what you told staff the other day—that you completed it—means that you completed it, and now you are saying it is not completed in the sense that you haven't given it to Mr. West?

Mr. STRICKLAND. Perhaps that is more accurate.

Mr. CANNON. What is the conclusion of that review?

Mr. STRICKLAND. I don't recall the specifics of it. Ms. BeVier wrote it and I don't think it is published anywhere. I think it is in her own notes. I don't have those notes.

Mr. CANNON. Are you aware of any instance in LSC history when the LSC president has refused to attend a hearing when her presence was requested?

Mr. STRICKLAND. Don't have the history on that, Mr. Chairman.

Mr. CANNON. And during a recent bipartisan briefing including House and Senate staff, I understand you emphasized that you are chairman of a part-time board, unfamiliar with the IG concept. Moreover, when speaking about your relations between the IG and the LSC, you said emphatically: "All I know is what I am told."

Given this admission, why do you think it is inappropriate for President Barnett to be here today, given the fact that you lacked understanding and that she is the one who apparently tells you what you're told?

Mr. STRICKLAND. I don't understand that question, Mr. Chairman, I'm sorry.

Mr. CANNON. Ms. Barnett is not here today, in part because you counseled her that her appearance is not appropriate. You said in the past that the only thing you know about is what she tells you essentially, because you only know what you are told.

Why is it that she is not here to answer some of these questions that you are vague on?

Mr. STRICKLAND. My understanding of her reason for not being here today is a level of discomfort relative to the fact that on its face the report released by the inspector general states that certain matters relative to Ms. Barnett are still open matters under investigation. And she—and, again, my understanding—felt that it would be inappropriate for her to testify while an investigation regarding her conduct is still ongoing.

Mr. CANNON. Have members of the Board had a discussion about the strategy of dealing with this Committee or firing Mr. West or dealing with Congress or appropriations generally in the context of the November elections?

Mr. STRICKLAND. No.

Mr. CANNON. The Board has never discussed the possibility of a change in the control of the House of Representatives as it relates to your strategy at LSC?

Mr. STRICKLAND. Not that I recall. If the Chairman is referring to something specific, I'll be glad to try to comment on it, but that is my best recollection.

Mr. CANNON. I see my time has expired. Mr. Gohmert, do you seek recognition?

Mr. GOHMERT. Thank you, Mr. Chairman. I appreciate the opportunity to be part of the hearing. And it breaks my heart that anybody would have a level of discomfort if they were to come here to this hearing.

But, Mr. Strickland, when you were having trouble understanding the Chairman's question, as a former judge and chief justice, let me explain my perspective on why it would have been nice to have the president here. I mean, you're the chairman of the board. I mean, somebody might make an analogy to the Board being a little like the grand jury, and you have the president that actually works there full time, comes and makes presentations. You have got to rely on them. You're counting on what they have to say. You don't get necessarily first person or direct evidence, you get hearsay through the president.

And so since the president appears to gather evidence, and we like to hear evidence here, we would prefer to have second-hand hearsay from the president rather than third or fourth hearsay from people that the president tells stuff and then sends out as a barrier between him or her and this hearing.

So it is just nice to have direct evidence or as close to direct as we can get. And I hope people here understand our concerns. My understanding is we spend about $330 million from Congress each year on the LSC. And having known people who tried to assist the poor, the oppressed, the downtrodden, often pro bono, working for basically free but being subsidized somewhat by the LSC to keep them out there in the field, helping the downtrodden and oppressed and the poor, it is kind of tough when you read that the Board of the LSC, I guess, spent over $8,700 for hotel food at its January

2006 Board hearing. And, see, it would be nice to know if any of the poor, the downtrodden, the oppressed were invited to enjoy that food with the Board of the LSC, or was that so that they could fully appreciate the plight of the poor, the downtrodden, and the oppressed?

LSC apparently, according to the report, spent over $100,000 since August of 2000 on coffee, holiday parties, picnics, working lunches, and business entertainment, and even thought the LSC doesn't have to follow the Federal spending practices. It is kind of nice for a group that is trying to help the poor, the oppressed, and the downtrodden if they don't look overly extravagant or twice as extravagant as other Federal agencies.

But to spend over a million in the last 10 years on settlement agreements with 27 departing employees tells me that there was a great deal of concern about maybe the mistreating of the employees who were assisting the poor and the downtrodden and the oppressed.

So I have concerns, again, when I read these kind of reports and then I see that the chairman of the board, rather than the one with closer evidence, closer to being direct and one step removed in the hearsay process, has to come and stand as a shield. And I'm sure you may disagree with that terminology, but if I put my judge hat back on, that is sure the way it looks from here. You got sent out as a shield from somebody who has been running things.

And it does cause me great concern when the inspector general is in a situation of, on the one hand, rendering a report about problems within any group or agency or something like the LSC, and then, on the other hand, can be fired if he reports things that are unpleasant to the Board. Boy, you talk about a catch-22.

Mr. West, you are not in a very enviable position. I don't know a lot of people that would want to be in your shoes, having to report sometimes negatively on the people that are out there and have the right to fire you without cause. Is that right; without cause?

Mr. WEST. I am an "at will" employee so it can be without cause.

Mr. GOHMERT. Obviously, if you go issuing reports talking about how much they overspend at their meetings and then when the president says, well they need to do these meetings at a hotel because their conference room is too small. And then, as I understand it, you issue a statement saying that actually the headquarters meeting room is slightly larger than the rooms used at the upscale hotel, that may give them cause to want you fired. You're not being very helpful to them.

So anyway I appreciate the opportunity to have this hearing, to hear from the folks. I have not been out here the entire time. I have been listening from the back room for much of the hearing. And it has been quite informative, but not informative enough.

And you know, I also see analogies to the boards of directors of banks back in the eighties back in Texas, who were only told what they needed to know by the president. And while the ship was sinking, they had no idea. They had no idea. They were just given information that everything is rosy, and have a good Board meeting. And never really got to the basics.

So Mr. West, let me just ask you, what do you think would give an inspector general over the LSC a comfort level to do the job very effectively without worrying about more arrows coming from behind than from the front?

Mr. WEST. I think the strongest protection that could be given is not something that Mr. Cannon has proposed, and that is to make the IG a presidential appointee, because then it would require a political process to remove the IG, which happens with those who are presidentially appointed. And I'll give you an example.

Mr. GOHMERT. Of course, you understand that making it a political process is not the prettiest picture.

Mr. WEST. I understand, but let me give you an example. I am friends with the IG at the Department of Agriculture. Last year——

Mr. GOHMERT. So you do still have some friends.

Mr. WEST. And Mr. Williams is my friend, too. She issued a report regarding the Department of Agriculture missing catching mad cow disease. When the Secretary of Agriculture wanted that issue dealt with, he was furious because, you know, she issued a report, they missed mad cow disease. That is a big concern to the American public. He went out and said he wanted her fired. But he couldn't fire her. He said it was outrageous what she did, and it was embarrassing to the Department of Agriculture, et cetera. It would have required the White House to do that. And I can tell you in Washington, that would not have flown. There is no way the President is going to fire an IG for reporting something about mad cow disease.

That is what I meant by the political process. It gets in there and it is not just within the agency but it goes beyond that. Mr. Cannon's bill doesn't go that far. It requires a supermajority, not unlike the supermajority that Mr. Strickland was proposing for the arrangement with Friends of Legal Services with respect to the interests regarding the LSC lease. So I think it is a compromise. It is not as strong as the Postal Service bill that Mr. Williams has, because that also not only has a supermajority but it has a "for cause" provision as well. But I think this would give more than adequate security.

It is my position that given the makeup of the Board, if 9 out of the 11 would so make that decision, then the IG probably needs to go. But there would be some built-in protections, much more than there are now.

Mr. GOHMERT. If I could finish by saying this: I know the LSC has done great things for people who could not get help any other place. And I appreciate those who have spent the time and their own resources to try to help people who desperately needed it. So don't misunderstand my feelings. I just hate to see somebody that is supposed to be helping the poor and the oppressed actually taking that money and it not getting to the poor and the oppressed or those actually doing the direct help. Thank you, Mr. Chairman.

Mr. CANNON. The gentleman yields back. I ask unanimous consent to make the January transcripts of the Minutes of the Board and the Performance Review Committee part of today's record. And hearing no objection, so ordered.

[The information referred to is available in the Appendix.]

Mr. CANNON. Mr. Strickland, your vice chairman publicly indicated in a recent interview that the Board had not decided whether to fire the IG, along the lines of what Mr. Polgar said. That looks like an attempt to communicate something outside that is probably inconsistent with the truth.

Have there been discussions about trying to look in public like you are not going to fire Mr. West?

Mr. STRICKLAND. Not that I recall.

Mr. CANNON. Could there have been those kinds of discussions?

Mr. STRICKLAND. Beyond what I just said, I don't think I can comment further.

Mr. CANNON. Board members are quoted as saying things like the IG should shape up or we will ship him out. As you know, Mr. Strickland, the Subcommittee generally accepted the IG's findings regarding the LSC lease and held a hearing last year on the matter. After that, the IG found more examples of profligate spending at the LSC. The IG has just concluded two investigations, requested by this Subcommittee, into spending practices at LSC and violations of the law by a California grantee. Reports on these matters have just been issued.

In what way did the Board want the IG to shape up?

Mr. STRICKLAND. Mr. Chairman, I think there is a disconnect there between those comments which were made in January 2006 and today. That was months ago those statements were made. And only in the past day or two has—or actually yesterday, I guess, the IG report was released in final form. And only a matter of a few days before that, the report on CRLA was released. So we are in the midst of dealing with those things on a current basis. So there is a total disconnect between remarks made in January 2006 and what we have to do——

Mr. CANNON. Does the Board like Mr. West today?

Mr. STRICKLAND. Like Mr. West?

Mr. CANNON. And his work?

Mr. STRICKLAND. I have no personal problems with Mr. West, other than some style issues, as I said a moment ago, and an occasional substance issue.

Mr. CANNON. But those are past now? You are referring to issues that are now long since past, I take it?

Mr. STRICKLAND. Yes. And Mr. West and I have had some frank discussions on those disagreements.

Mr. CANNON. Have you resolved those disagreements?

Mr. STRICKLAND. As I said a moment ago in a statement that you allowed me to make, I have invested a considerable amount of personal time in improving the working relationship between the Board, the management, and the IG. And I hope Mr. West would agree that we have had productive discussions. And I would commit on my own behalf, and I hope on behalf of the full Board, to continue that effort.

Mr. CANNON. Does that mean we can expect to you argue strongly in favor of retaining Mr. West in a Board meeting if the issue of his being fired comes up?

Mr. STRICKLAND. Well, it is a hypothetical question, and I can't speak for the whole Board.

Mr. CANNON. I'm just asking you about you arguing in behalf of Mr. West and against firing him.

Mr. STRICKLAND. I would argue that Mr. West needs to be treated fairly and in accordance with the law.

Mr. CANNON. If there is no further problem that gives you reason, so in fairness—I'm not sure where fairness comes in. He is "at will" as he pointed out. But if this bill doesn't pass and the Board wants to consider his removal, unless something new happens, will you argue strongly in his support?

Mr. STRICKLAND. I think that what I said a moment ago is an accurate portrayal of how the Board ought to function. The Board has the legal responsibility, according to the advice we have been given by counsel, that we are supposed to review his performance and treat him fairly. I would commit to you that I think our Board will do that. I certainly am not going to advocate firing Mr. West. That is not high on my agenda.

Mr. CANNON. But will you advocate to not fire him?

Mr. STRICKLAND. Under certain circumstances, I might, yes.

Mr. CANNON. I'm sorry; you might advocate to fire him, or not?

Mr. STRICKLAND. I might advocate not to fire him under certain circumstances, yes.

Mr. CANNON. We have a lot of water under the bridge here. And Mr. West has done, I think, a remarkably good job in meeting the interests of this Committee. Given that context, I'd like to know whether you want to see him fired or whether you will advocate to not fire him in the future. And I haven't had an answer to that.

Mr. STRICKLAND. I don't know what circumstances might confront us in the future, Mr. Chairman.

Mr. CANNON. Well, you have—let's move on it.

Apparently the LSC board does not support H.R. 6101, finding it unwise. Other than simply treating LSC differently, please describe what you think would be the consequence of passing this bill so as to make passage unwise or ill-advised. Are you aware of particulars?

Mr. STRICKLAND. Similar to what I said in my opening statement, that during my tenure on the Board for 3½ years, I don't know that we have ever had a full Board of 11 members. If we did it was only for a short period of time. We have 10 at the moment. The bill would require a vote of 9 out of 10.

Mr. CANNON. In your testimony you criticize us for not offering a rationale for H.R. 6101 which offers protection to the LSC IG. I find this more than a bit disingenuous in light of the actions by the LSC board to date with respect to the IG. We have all seen what the Board discussed. They discussed the firing of the IG. They did this at a time when the IG was conducting an investigation requested by me and two Senate Chairmen into the activities of the LSC and the LSC president. How can you not discern the rationale for this legislation?

Mr. STRICKLAND. I think I need to take exception to part of your question in that, unless I have gotten confused on the context. The discussion that was contained in the meeting transcripts, as I have said several times, was in January 2006, before the committees referred this investigation to Mr. West. We have not been engaged in discussions about—to my knowledge—we have not been engaged

in discussions about firing Mr. West since this investigation commenced.

Mr. CANNON. But what we're talking about is my rationale in introducing this bill, and your discussion of firing him certainly goes to my rationale. You recognize that there is reason behind this bill?

Mr. STRICKLAND. If your rationale dates back to January 2006, and you're saying it was not proper for us to have a discussion about the possibility, then perhaps that is some rationale.

Mr. CANNON. Thank you.

One final question. Do you perceive a difference between the general supervision authorized by the IG Act and the direct supervision that is the norm for employer and employee relationships? That is, how does the Board's supervision of the president, over whom the Board has direct supervision, differ from the Board's supervision of the IG, over whom you have general supervision? Given this important distinction I am sure the Board's processes for evaluating performance differed between the two. Would you please describe the approach that the Board took?

Mr. STRICKLAND. Your statement is correct that the Board has direct supervision over the president and can set her agenda. The Board has dual responsibility, if you will, with the Congress in terms of to whom the inspector general reports. We cannot set the inspector general's agenda, and we have not set his agenda and have no intention of doing so.

We do have—we believe, as we understand the law and we have been advised on the law—that we have an obligation and a duty to review his performance as a part of our general supervision. But in no way have we set his agenda, nor do we intend to do so.

Mr. CANNON. But my question went to what are the differences in how you evaluate his performance as opposed to how you evaluate the performance of the president of LSC?

Mr. STRICKLAND. What we did with respect to that in connection with our 2005 review was present to Mr. West a series of guidelines that the agency had used historically for the review of the inspector—performance review of the inspector general, and ask for his input on those guidelines. And as I recall it, after receiving his input we used his guidelines, which are not the same as we used for the president.

Mr. CANNON. Thank you. We appreciate you all being here. This is, I believe, an important issue: how we operate, what role the Congress plays. We have fewer investigators now than we have historically had, and I personally think we ought to have more. But in the absence of that, having an aggressive and effective IG I think is very important.

As I have said in the past to you, Mr. Strickland, and the Board, all should understand that I view the role of the inspector general as a bulwark of protection for you and your reputations.

Without objection, the witnesses will have 5 days—or the panel will have 5 days to make further questions in writing available to the panel. And with that, this hearing will be adjourned.

Mr. STRICKLAND. Thank you, Mr. Chairman.

[Whereupon, at 3:58 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

LETTER FROM EDOUARD R. QUATREVAUX TO THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND CHAIRMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

September 21, 2006

Edouard R. Quatrevaux
5000 Sharp Road
Mandeville, LA 70471

The Honorable Chris Cannon
Chairman
Committee on the Judiciary
Subcommittee on Commercial and Administrative Law
United States House of Representatives
B-353 Rayburn Office Building
Washington, DC 20515-6221

Re: Letter of Support for H.R. 6101

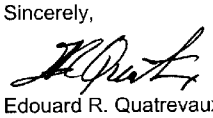
Dear Chairman Cannon:

As the former Inspector General (IG) at the Legal Services Corporation (LSC), from 1991 until 2000, I am writing you to support your bill H.R. 6101, the "Legal Services Corporation Improvement Act" to provide appropriate removal procedures for the Inspector General of the Legal Services Corporation, and for other purposes." For your information, I have enclosed a copy of my biographical sketch.

During my nine-year tenure as the LSC IG, I faced numerous difficulties and constant challenges in trying to fulfill the independent IG role as Congress intended in the IG Act. I fought numerous challenges to IG independence with the LSC Board of Directors and headquarters' management. Independent authorities explicitly granted by the IG Act were questioned including audit authority, personnel, contractual and access to LSC and grantee documents. IG access to grant recipient records required to ensure grantee compliance was denied by a grantee, and LSC failed to sanction the organization, choosing to conduct its own impaired investigation instead.

My understanding that the current IG is facing many of the same problems with a different Board and management group leads me to believe that LSC's propensity to challenge the authorities and independence of the IG is an institutional problem. I therefore wholeheartedly support your bill H.R. 6101.

Sincerely,



Edouard R. Quatrevaux

Enclosure

COVINGTON & BURLING LLP

**MEMORANDUM TO BOARD OF DIRECTORS
OF THE LEGAL SERVICES CORPORATION**

Response to Coogan Memorandum Regarding Authority of LSC Board of Directors to Conduct Performance Evaluations of the LSC Inspector General

Thomas S. Williamson, Jr.
Reenah L. Kim

Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 662-5438
twilliamson@cov.com

July 28, 2006

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July 28, 2006

MEMORANDUM TO BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION

Re: Response to Coogan Memorandum Regarding Authority of LSC Board of Directors to Conduct Performance Evaluations of the LSC Inspector General

SUMMARY INTRODUCTION

This memorandum responds to a June 26, 2006 memorandum entitled "LSC Board of Directors Rating Inspector General Performance" that was prepared by Thomas D. Coogan, acting as Special Counsel to Kirt West, LSC's Inspector General (hereinafter referred to as the "Coogan memorandum" or the "Memorandum"[1]). Mr. West forwarded a copy of the Memorandum to Lillian BeVier, in her capacity as Chair of the LSC Board's Performance Review Committee. In addition, in his transmittal memo to Ms. BeVier, Mr. West informed the Board that he had shared the Memorandum "with the LSC's Congressional authorities and appropriators as well as the committees with jurisdiction over the Inspector General Act."

You have asked us to make an assessment of the legal reasoning presented in the Coogan memorandum. The principal conclusions appear to be that the LSC Board lacks legal authority to conduct performance reviews of the Inspector General (the "IG") and that, in any event, it would be inappropriate to proceed with a performance review of the IG at this time because the Office of Inspector General ("OIG") is currently investigating allegations relating to activities of the Board.

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[1] When cited for quotations, the Coogan memorandum will be referred to as "Coogan Mem."

Our assessment is that the Coogan memorandum fails to support its principal conclusions for several reasons. First, as will be explained in detail, the Coogan memorandum is replete with conclusory legal assertions that are unsupported by relevant case law, statutes or regulations. Most significant in this regard is the absence of **any** reference to the one Supreme Court decision that bears most directly on the subject of the Coogan memorandum – namely, the extent to which the IG is subject to the general supervisory authority of the head of the agency, which, at LSC, is the Board of Directors. The omitted case is *NASA v. Fed. Labor Relations Authority*, 527 U.S. 229 (1999), where the Supreme Court specifically ruled that "each Inspector General has no supervising authority – **except the head of the agency of which the OIG is a part.**" *Id.* at 240 (emphasis added). The reasoning of the Coogan memorandum is also unpersuasive because it fails to take proper account of (i) the statutory language that expressly provides for "general supervision" of the LSC IG by the LSC Board of Directors and (ii) the Office of Management and Budget's (OMB's) official guidance which expressly interprets this authority as including performance reviews of the IG. *See* 5 U.S.C. App. 3 § 8G(d); Memorandum For Heads of Designated Federal Entities, M-93-01, dated November 13, 1992, at 4.

The credibility of the Coogan memorandum is also weakened by the extensive reliance on factual information and characterizations provided by the IG, without reference to documents or sources that would independently corroborate those facts. In addition, the Coogan memorandum lacks persuasiveness because its stated conclusions are both contradictory and confusing. The Memorandum argues, on the one hand, that the Board lacks legal authority to proceed with its existing procedures for an annual performance review of the IG; yet, on the other hand, the Memorandum repeatedly endorses the idea that the Board can and should provide

"feedback" to the IG regarding his job performance. The Memorandum does not explain why "feedback" on performance does not involve the Board's conveying the same type of information to the IG as a formal performance review or rating.

Lastly, the Coogan memorandum is deficient because it concludes that the decision to conduct a performance review of the IG is a "political decision" that requires consultation with the Congress. The relevant statutory provisions and the applicable OMB guidance strongly support the view that the Board's performance-review authority stems from sound management principles, not a "political decision" to be negotiated with the Congress.

ANALYSIS

I. The Board Has a Legal Basis for Conducting Annual Performance Evaluations of the Inspector General

A. The Inspector General Act Affirmatively Establishes the Board's Authority and Responsibility for Conducting Performance Evaluations of the Inspector General

In the Coogan memorandum, the OIG contends that the Board's current evaluation process is "not legally necessary," relying primarily on the following arguments: (1) the Board is not "legally responsible" for evaluating the IG; and (2) the Board is not "expressly authorized" to evaluate the IG. (Coogan Mem. at 10-11.) The OIG's reasoning is flawed on multiple grounds. As a threshold point, in making these assertions, the OIG fails to demonstrate how the question of whether annual performance evaluations are "legally necessary" is even relevant to the dispositive issue here – whether the Board is "authorized" as a legal matter to conduct such evaluations of the IG.

Moreover, the Inspector General Act of 1978, as amended, ("IGA") clearly provides the Board with the power to exercise "general supervision" over the IG. Nevertheless, the OIG discounts this express-authorization language from the IGA, without providing any

legally supportable basis for doing so. Most notably, the OIG also does not take into account the holding of U.S. Supreme Court precedent concerning the issue of whether an OIG should be treated as a "representative" of the agency that it has been tasked to audit and investigate.

As explained below, the "general supervision" provision of the IGA – particularly when viewed in conjunction with the relevant case law regarding OIG personnel as "representatives" of their affiliated agencies – gives the LSC Board both the statutory authority and a legal duty to supervise the IG. The Board's performance evaluations of the IG fall squarely within this scope.

1. The Board Has Statutory Authority to Exercise "General Supervision" Over the IG, Including the Use of Performance Evaluations

The IGA provides that each Inspector General ("IG") of a "designated federal entity" ("DFE") – including LSC – **"shall report to and be under the general supervision of the head"** of that DFE. 5 U.S.C. App. 3 § 8G(a)(2), (d) (emphasis added); *see also Wilkinson v. Legal Services Corp.*, 27 F. Supp. 2d 32, 37 (D.D.C. 1998). In short, the IGA provides explicit statutory authority for the LSC Board to exercise "general supervision" of the IG.

The Board's "general supervision" of the IG in this context includes performance evaluations. Specifically, the Office of Management and Budget ("OMB") has interpreted this "general supervision" provision of the IGA to comprise the following: "(i) developing a performance plan (including critical performance elements and performance standards) for the IG, in consultation with the IG; (ii) **conducting the annual performance evaluation of the IG;** and (iii) making decisions on IG budget proposals." Memorandum For Heads of Designated Federal Entities, M-93-01, dated November 13, 1992, at 4 (emphasis added). According to this OMB guidance, the IG also should "keep the entity head generally informed as to the OIG's plans, activities, and accomplishments." *Id.*

In the Coogan memorandum, the OIG cites an article by James Naughton as support for its view that the Board "is not expressly authorized to evaluate" the IG. (Coogan Mem. at 10-11.) Naughton himself, however, explicitly acknowledges that an agency head "may review and criticize an Inspector General's performance." James R. Naughton, "The Inspector General Act: The Meaning of 'General Supervision,'" The Journal of Public Inquiry at 23 (Spring/Summer 1998). The OIG contends that this ability to "review and criticize" an IG's performance is "a far cry from conducting a formal performance evaluation based on management input that may affect current or future employment prospects of an Inspector General." (Coogan Mem. at 10-11.) However, the OIG does not explain how the Board's conducting an annual performance evaluation for the IG would be a "far cry" from the Board's recognized ability to "review and criticize" the IG's performance. The "far cry" language has rhetorical flair, but it is not based on any case law or other applicable legal authority. Moreover, Naughton himself recognizes that agency heads may, in addition to "review[ing] and criticiz[ing]" an IG's performance, also "ask for an investigation of an IG's activities or even request the President to remove the Inspector General." Naughton at 23. The concept of the Board's conducting an annual performance evaluation of the IG appears to be wholly consistent with Naughton's interpretation of the "general supervision" provision in the IGA.[2]

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[2] In the Coogan memorandum, the OIG also contends that the Board lacks authority to supervise the IG because the IG "gets no authorities from the Board. . . ." (Coogan Mem. at 6.) In making this circular argument, the OIG overlooks a key point – whether the Board has legal authority to conduct performance evaluations of the IG is **not** dependent on whether the IG "derives authority" from the agency head. Rather, the Board's authority to do so is derived from the IGA statute itself. *See supra* at pp. 3-5.

2. The Board Has a Legal Duty to Supervise the IG

The LSC Board not only has the statutory **authority** to supervise the IG – the Board has a legal **duty** to do so, in light of the possibility that the activities of the OIG personnel may give rise to potential liability for LSC. Case law from the U.S. Supreme Court indicates that members of an OIG may be treated as "representatives" of the affiliated agency for purposes of granting relief in response to statutory violations that result from the actions of OIG personnel. *NASA v. Fed. Labor Relations Auth.*, 527 U.S. 229, 240 (1999). The *NASA* case held that investigators employed in NASA's OIG were "representatives" of NASA for purposes of determining whether unfair labor practices had occurred in connection with the IG investigator's interview of a NASA employee. In the *NASA* case, the Supreme Court specifically observed that "each Inspector General has no supervising authority – **except the head of the agency of which the OIG is a part**." *NASA*, 527 U.S. at 240 (emphasis added). The Court went on to state that the OIG investigators for NASA in that case were, "as far as the [IGA] is concerned, . . . **employed by, act on behalf of, and operate for the benefit of [the agency they serve**." *NASA*, 527 U.S. at 240 (emphasis added). Accordingly, both NASA's OIG and NASA itself were charged with responsibility for ensuring that the OIG's investigations were conducted in compliance with the applicable federal labor relations laws. *NASA*, 527 U.S. at 246. *See also Department of Justice v. Federal Labor Relations Auth.*, 266 F.3d 1228, 1230 (D.C. Cir. 2001) (holding DOJ liable for an unfair labor practice committed by personnel from its OIG). As the U.S. Court of Appeals for the D.C. Circuit in the *DOJ* case emphasized, the IGA "requires that

each Inspector General shall 'report to and be under the general supervision of the head of the establishment involved.'" *DOJ*, 266 F.3d at 1230 (quoting 5 U.S.C. app. § 3(a)).[3]

Given that the activities of OIG personnel may subject LSC to potential liability, LSC accordingly has a duty ensure that its OIG remains in compliance with relevant laws. The Board's annual performance evaluations of the IG, who oversees the activities of the OIG, are one such measure by which LSC may exercise appropriate supervision over the IG and thereby ensure that OIG activities are conducted in a manner that is consistent with governing law.[4]

3. The Statutory Prohibition on Interfering With the Inspector General's Investigations And Audits Does Not Negate the Board's Authority to Engage in General Supervision of the Inspector General

In addition to the provision in the IGA that subjects the IG to the "general supervision" of the Board, the IGA statute also precludes the Board from preventing or prohibiting the IG from "initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation." 5 U.S.C. app. 3 § 8G(d). This prohibition against interference with the IG's investigations and audits is **not,** as suggested by the Coogan memorandum, inconsistent with the Board's authority to provide "general supervision" over the IG and to conduct annual performance evaluations of the IG toward that end.

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[3] In the Coogan memorandum, the OIG protests that the IG is "clearly not a subordinate employee" of LSC. The OIG's view on this point apparently rests on its perception that the Board "has no responsibility" for the IG. (Coogan Mem. at 10.) But such a proposition would clearly be at odds with the holding of the Supreme Court in the *NASA* case, as demonstrated in the text above.

[4] The Board's supervision of the IG may be critical, for instance, in the Board's execution of its duty to demonstrate effective supervision of LSC employees – including OIG personnel – with respect to the implementation of proper anti-harassment policies.

The Board's evaluation procedures demonstrate how the Board's assessment of the IG's performance does not violate the IGA's prohibition against interfering with OIG investigations or audits. The LSC annual performance evaluation of the IG includes, for example, consideration of the IG's "occupational profile," "critical elements" for the IG position, and performance standards for each such critical element. LSC Board of Directors Resolution 98-006, at § 3. Relevant factors in this assessment may include items such as "the quality and quantity of work, timeliness, initiative, and exercise of judgment." *Id.* In addition, as part of this evaluation process, the IG submits an individual performance plan that details his responsibilities in achieving the goals set forth in the annual performance plans for his organization, which are developed in conjunction with the LSC's strategic planning and budget process. *Id.* at § 4(a). There is nothing in these evaluation protocols that suggests an intent by the Board to assert control over or impede in any way the IG's audits or investigations.[5]

B. The Board's Authority to Conduct Annual Performance Evaluations of the Inspector General Is Not Limited by the *NRC v. FLRA* Case

In an attempt to undermine the Board's statutorily-granted authority to conduct annual performance evaluations of the IG, the OIG cites a single case from the Fourth Circuit – *NRC v. FLRA*, 25 F.3d 229 (4th Cir. 1994) – for the proposition that the Board's "general supervision" of the IG is only "nominal." (Coogan Mem. at 5-6, 12-14.) The OIG's reliance on the *NRC* case for this proposition is misplaced.

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[5] Indeed, to the extent the IG reports to the evaluation committee regarding his activities and accomplishments under his individual performance plan, that report – as a practical matter – reflects past events. It does not implicate the IG's independent responsibilities under the IGA for "initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation." 5 U.S.C. app. 3 § 8G(d).

In the *NRC* case, the Fourth Circuit was addressing the issue of whether it was permissible to subject the IG's investigatory interviews to contractual limitations through negotiations between the agency and its union. The court decided that allowing the agency and its employee union to bargain over restrictions that would apply to the IG's investigatory interviews within the agency would improperly impinge on the IG's independence. *NRC*, 25 F.3d at 234. In the course of its discussion, the *NRC* court once described the agency head's power of "general supervision" over the IG as being "nominal" – but the court did so only in the context of its broader discussion concerning how the agency head's "general supervision" powers could not include any authority to "limit, "restrict," or "compromise" the IG's **investigatory** responsibilities. 25 F.3d at 234-35.

The *NRC* court's opinion was focused on protecting against the risk that the IG's investigatory process or prerogatives would somehow be impeded. In the Coogan memorandum, the OIG repeatedly attempts to conflate the court's prohibition against (a) impermissible infringements on the IG's investigatory powers with (b) the Board's annual evaluation of the IG's performance pursuant to the Board's statutory powers of "general supervision." (*e.g.*, Coogan Mem. at 11.) However, the OIG has presented no argument in its Memorandum to demonstrate how the Board's annual performance evaluations of the IG would present such a danger to the IG's investigatory powers. *See NASA*, 527 U.S. at 246 (observing that the agency's head retained "general supervisory authority" over the agency's OIG, and that the remedy imposed by the Federal Labor Relations Authority, which directed the OIG to comply with applicable fair labor rules when conducting its investigations of unionized agency employees, did not require the agency to "interfere unduly with OIG prerogatives").

The OIG has no basis for seizing upon the court's single use of the word "nominal," and taking it out of context to make a point that is simply not supported by the holding of the case. Indeed, the issue of performance evaluations does not even appear anywhere in the court's opinion. For the OIG to dismiss the Board's powers of "general supervision" over the IG as being merely "nominal" in this fashion would be contrary to the statutory authority explicitly provided by the IGA and would, in effect, render the Board's supervisory powers meaningless.[6]

The OIG complains of "the potential for impingement on the independence of the Inspector General" that supposedly is presented by the Board's performance evaluations. The essence of the IG's independence is to be able to decide, in an unfettered manner, what topics or issues the OIG will investigate or audit, and then to issue reports that are not subject to censorship or suppression by management or the Board. 5 U.S.C. app. 3 §§ 2, 8G(d) In its Memorandum, the OIG does not cite any specific incidents demonstrating that the Board's proposed annual performance evaluation would challenge or limit in any way the essential elements of the IG's independence. The performance reviews may, if the evidence warrants, question the fairness and accuracy of the OIG's findings or the efficiency and productivity of the IG's management, but such reviews would not seek to challenge or inhibit the IG's right to issue reports setting forth candid findings that may be contrary to management's or the Board's preferences. Moreover, since the Board contemplates conducting the performance appraisals on

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[6] The court in the *NRC* case expressly recognized that "Inspectors General are under the 'general supervision' of the agency head and one deputy," and noted only that "neither may 'prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation.'" *NRC*, 25 F.3d at 234 (quoting 5 U.S.C. app. 3 § 3(a)).

an annual basis, the intent is clearly not to micromanage on a day-to-day or month-to-month basis how the IG pursues his independent mission.

C. The Inspector General's "Dual Reporting" Role Does Not Impose Limitations On the Board's Authority to Conduct Performance Evaluations of the Inspector General

In its Memorandum, the OIG claims that "it is not reasonable" for the Board to evaluate the IG without consulting Congress, given the IG's "dual reporting requirement." (Coogan Mem. at 5.) The Memorandum fails to explain how the "dual reporting" processes set forth in the IGA would in any way prohibit the Board from conducting annual performance evaluations of the IG. A careful examination of the provisions of the IGA cited in the Coogan memorandum reveals that Congress is simply the recipient of reports that have been prepared by the IG. *See* 5 U.S.C. app. 3 §§ 2(3); 4(a)(5); 5. The Memorandum does not elucidate how the procedure by which the IG prepares and transmits (through the head of the agency) reports for Congress to review somehow creates a "reporting relationship" that confers onto Congress a primary supervisory role over the IG's activities and performance. Contrary to the OIG's arguments (Coogan Mem. at 5), the fact that the IG engages in "dual reporting" to both the Board and Congress does not undermine the Board's Congressionally-mandated authority to exercise "general supervision" over the IG.[7]

II. Practical Considerations Support Conducting Annual Performance Evaluations of the Inspector General

As previously discussed, the IGA effectively provides that the "IG shall report to and be under the general supervision" of the Board. The annual performance review represents the Board's effort to give practical meaning to fulfillment of its statutory duty. Presumably,

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[7] If anything (as discussed at p. 17) to conclude that Congress could inject such a layer of control over the Board's supervision of its IG likely would raise separation-of-power issues.

Congress entrusted the Board with this general supervisory authority with the understanding that, on occasion, the IG may be called upon to conduct investigations or issue reports that may question decisions of the LSC Board, or where the Board may be a direct party in interest. Nevertheless, Congress clearly expressed its will that the IG should be subject to the general supervisory authority of the Board. Accordingly, the Board is not free to ignore or fail to act affirmatively to carry out its statutory duty in light of the Congress's explicit allocation of supervisory authority to the Board. The Board's annual performance evaluation process for the IG effectuates these statutory objectives.

The Coogan memorandum discusses a number of grounds on which the OIG seeks to object to the Board's annual performance evaluation process as a practical matter. As discussed below, however, none of the OIG's arguments provides a valid basis for repudiating the authority for the Board's process.

A. Existing Mechanisms for "Review" and "Oversight" of the Inspector General Are Not Sufficient as a Substitute for Annual Performance Evaluations by the Board

The OIG contends that, because the IG's "general performance and conduct [are] already subject to many oversight mechanisms . . . [t]his relieves the agency head of any responsibility for evaluating their Inspector General's performance." (Coogan Mem. at 7-8.) The OIG's argument on this point is unsupported by any case law and is misguided. The question is **not**, as the OIG suggests, whether there happen to be any other "mechanisms . . . available to the Board" for reviewing the IG's performance that may arguably seem "far more preferable than the Board's current evaluation process." (Coogan Mem. at 6.) Rather, the key issue here is whether the Board has the legal authority to conduct annual performance evaluations of the IG; and, as explained above (*see supra* at pp. 3-6), the IGA clearly provides the Board with this authority.

The OIG's contentions on this point about existing "oversight mechanisms" are problematic for other reasons as well. For instance, the Memorandum claims that the IG is "already subject to a substantial array of review mechanisms that militate against the need for a review by the agency head." (Coogan Mem. at 7.) The Memorandum fails, however, to provide any relevant specifics relating to the alleged "substantial array of review mechanisms." It vaguely states, for instance, that "Inspector General audits are subject to a strict peer review process," and that "Inspector General criminal investigations are subject to prosecutorial review." (Coogan Mem. at 7.) Yet, the Memorandum provides no citations to any relevant statutory provisions or regulations that describe such review processes. Likewise, the Memorandum does not explain how the previous two statements provide satisfactory corroboration for the OIG's conclusion that the IG's "performance in the two most significant areas of responsibility – audits and investigations – are already 'evaluated' by independent, objective and expert outsiders." (Coogan Mem. at 7.) The Memorandum simply fails to identify who those purported "independent, objective, and expert outsiders" might be, the process by which those "expert outsiders" scrutinize the IG's audits and investigations, and the frequency of their review activities.

Similarly, the Coogan memorandum suggests that "oversight" of the IG takes place as a result of the IG's statutorily mandated, semi-annual reporting to the head of its agency and to Congress. (Coogan Mem. at 7.) This argument is clearly misplaced since, as a matter of statutory prescription, the focus of the semi-annual reports is IG oversight of the agency's programmatic activities, **not** the agency's oversight of the IG. 5 U.S.C. app. 3 § 5. The agency's

comments are typically directed at providing updates on corrective action by the agency in response to IG audit and investigative findings.[8]

In the Memorandum, the OIG also makes a number of arguably misleading statements regarding "other avenues" by which the head of an agency and Congress can supposedly communicate their "concerns about Inspector General performance." (Coogan Mem. at 7.) The Memorandum states, for example, that Congress "can request the Government Accountability Office" (GAO) to "conduct a review of OIG operations." (Coogan Mem. at 7.) GAO was originally established to investigate "all matters related to the receipt, disbursement, and use of public funds," and to make reports to the President and Congress with recommendations to improve "economy or efficiency in public expenditures." Budget and Accounting Act of 1921 (Pub. Law No. 67-13, 42 Stat. 20, 27 § 312 (a) (1921)). GAO continues to support Congressional oversight of executive branch agencies, such as by evaluating how well government policies and programs are working; auditing agency operations to determine whether federal funds are being spent efficiently and appropriately; investigating allegations of illegal and improper activities; and issuing legal decisions and opinions. It is true that GAO may respond to Congressional requests for information. However, this does not mean that GAO would be specifically reviewing and monitoring the operations of the LSC OIG on a regular basis.

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[8] At one point, the OIG lists four examples of instances when Congress purportedly "provided feedback about the work being performed by [the IG] and the LSC OIG." (Coogan Mem. at 14.) The examples cited in the Memorandum do not establish this proposition. In one such instance, the House Appropriations Committee on Science, State, Justice, Commerce, and Related Agencies merely approved a funding bill that happened to include an increase in the budget for the OIG. It is too tenuous to conclude – based on this budget decision – that Congress had thus somehow provided the equivalent of a formal, annual performance evaluation or meaningful oversight of the IG's work.

Similarly, in this Memorandum, the OIG also implies that "anyone, including the agency head," can contact the Integrity Committee of the President's Council on Integrity and Efficiency ("PCIE") to "raise concerns and request a review." The Integrity Council was established to provide an "independent investigative mechanism" for addressing "certain administrative allegations" against IGs and OIG staff. Executive Order 12993 preamble. Language in the Executive Order that establishes the Integrity Committee indicates that the entity was intended specifically to investigate "allegations of wrongdoing" by IGs and OIG staff. Executive Order 12993 § 1(a). As such, it appears that reviews by the Integrity Committee would largely be focused on addressing "certain" types of allegations of wrongdoing, which is not indicative of an intent to appraise the overall performance of the LSC OIG on an ongoing basis.

Likewise, the Memorandum states that the Office of Management and Budget ("OMB"), "through the auspices" of the PCIE and the Executive Council on Integrity and Efficiency ("ECIE") "can be engaged by agency heads with concerns about their Inspector General's performance." (Coogan Mem. at 7.) There is no explanation here as to what actions the OMB is authorized to undertake in response to such allegations, nor does the Memorandum cite actual examples demonstrating the effectiveness of this particular "avenue" for IG oversight. Moreover, there is no indication of any intent that the OMB would displace the Board's statutorily granted general supervisory authority over the IG.[9]

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[9] The OIG cites the GAO 1999 report on the dispute between the Chairman and IG of the Tennessee Valley Authority ("TVA") to claim (1) that the Board may not "direct its own review" of the IG's conduct or performance when "independent, outside authorities are responsible for conducting such reviews;" and (2) that the 1988 amendments to the IGA provide that only federal audit entities, such as the GAO and other OIGs – not the agency or agency heads – are permitted to perform a review to determine whether an IG has internal quality controls and is (continued...)

B. "Consultation with Congress" Is Not Warranted for the Board to Conduct Performance Evaluations of the Inspector General

Throughout the Coogan memorandum, the OIG claims that it is "not reasonable" for the Board to evaluate the IG without "consulting Congress," but fails to articulate a valid basis for this assertion. As an initial matter, the Memorandum omits citation to any statutory or caselaw authority that would impose such a "consulting" requirement. Similarly, the Memorandum either does not cite any legal authority for many of the other various claims it asserts on this topic, or draws conclusions that are materially incomplete.

First, the Memorandum incorrectly asserts that "Inspectors General **are creatures of Congress**, not the executive . . . ." (Coogan Mem. at 14, emphasis added). The OIG does not cite any legal authority for this proposition, which raises serious questions concerning the separation of powers under the Constitution. The OIG's proposition on this point flies in the

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complying with audit standards established by the Comptroller General. (Coogan Mem. at 7-8.) A closer examination of this GAO publication reveals that it is a fact-specific accounting of a particular dispute involving the TVA. "Tennessee Valley Authority: Facts Surrounding Allegations Raised Against Chairman and the IG," GAO Report to the Chairman, Committee on Governmental Affairs, U.S. Senate, GAO/OSI-99-20 (Sept. 1999). The GAO report does not purport to carry the weight of Supreme Court precedent or even agency guidance concerning the Board's authority to provide general supervision over the IG. The Memorandum is correct in noting (at point (2) above) that the 1988 amendments to the IGA do set forth a particular provision regarding procedures for determining an IG's compliance with the Comptroller General's audit standards. However, this provision is narrow in scope, as it is focused solely on audit standards; in no way does this particular provision undercut the Board's general supervisory authority to conduct performance evaluations of the IG. Likewise, the GAO report contains statements to the effect that the TVA Chairman's conduct in this particular instance "could have been viewed as an attempt to undermine the independence of the IG." But these statements appear to have been directed to the specific facts at issue in the TVA dispute. This GAO report makes no reference to the OMB guidance regarding the scope of the Board's "general supervision" authority, nor does it hold in any way that other agency heads are somehow categorically prohibited from ever conducting performance reviews of their IGs. Indeed, it would not fall within GAO's authority to repudiate or invalidate the previously issued OMB guidance, *i.e.*, Memorandum for Heads of Designated Federal Entities, M-93-01, dated November 13, 1992.

face of clear Supreme Court authority to the contrary. *See NASA*, 527 U.S. at 240. Despite the extreme and unprecedented nature of this characterization, the Coogan memorandum offers no cites to caselaw, statutes, or regulations in support of its theory.

Second – although the Memorandum is correct in observing that, pursuant to the terms of the IGA, IGs are expected to "report to Congress, not just the head of the agency" (Coogan Mem. at 14) – the OIG overlooks a crucial point regarding the sequence of events in this reporting process. The IGA provides that the IG shall prepare reports summarizing the activities of the OIG, and that those reports shall then be "furnished" to the head of the establishment involved. Within 30 days **after** receiving the report from the IG, the head of that establishment then transmits the report to the appropriate committees or subcommittees of Congress, "together with a report by the head of the establishment" containing, among other things, "any comments such head determines appropriate." 5 U.S.C. app. 3 § 5(b). Likewise, in the event that the IG "becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment," the IGA provides that the IG "shall report [this] immediately to the head of the establishment involved." 5 U.S.C. app. 3 § 5(d). It is the head of the establishment who then "shall transmit any such report" to the appropriate Congressional committees, "together with a report by the head of the establishment containing any comments such head deems appropriate." 5 U.S.C. app. 3 § 5(d). In short, the IG's reporting function is, in effect, channeled through the head of the agency **before** reaching the relevant Congressional committees.[10]

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[10] This sequence of reporting events appears to be consistent with the scheme contemplated by Congress when it enacted the IGA legislation. Indeed, the court in the *NRC* case quoted language from the IGA legislative history regarding the goals of the statute, which explained that "the audit and investigative functions should be assigned to an individual whose independence is (continued...)

The idea that agency heads would be required to "consult" Congress **before** making any decision that might adversely impact an IG is not only impracticable – it squarely contradicts the terms of the IGA statute. The IGA makes clear that advance "consultation with Congress" is **not** required for the removal of an IG. Pursuant to the provisions of the IGA, IGs of federal agencies are appointed "without regard to political affiliation," and "may be removed from office by the President." 5 U.S.C. app. 3 § 3(a)-(b).[11] The statute provides that the President must communicate the reasons for the removal of an IG to Congress, but does not require the President to consult or confer with the Congress before making this removal determination. *Id.* Likewise, the IGs of DFEs are appointed by the head of the DFE. 5 U.S.C. app. 3 § 8G(c). If the IG is removed from the office or transferred to another position, the head of the DFE must "promptly communicate in writing the reasons for any such removal or transfer" to Congress. 5 U.S.C. app. 3 § 8G(d). To be sure, the IGA requires the DFE head to communicate the reasons for the IG's removal to Congress – but only **after the fact**. The statute does not require the head of the DFE to consult or confer with Congress, or otherwise seek its approval in advance of making this determination.

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clear and whose responsibility runs directly to the agency and ultimately to the Congress." *NRC v. FLRA*, 25 F.3d 229, 233 (4th Cir. 1994) (quoting Senate Report at 2682). In other words, Congress contemplated that the IG's responsibility would run "directly" to the agency, and then "ultimately" to Congress.

[11] *See also* Naughton, *supra*, at 23 (recognizing that agency heads may, in addition to "review[ing] and criticiz[ing]" an IG's performance, also "ask for an investigation of an IG's activities or even request the President to remove the Inspector General.")

C. The Board's Current Performance Evaluation System Properly Addresses Potential Issues Concerning Conflict of Interest

1. The OIG Has Not Established That Impropriety Results from the Board's Consultation with LSC Management in Connection with the Inspector General's Performance Evaluation

The OIG complains that it is "not reasonable" for the Board to evaluate the IG in consultation with LSC management. (Coogan Mem. at 11.) The Memorandum does not cite any legal authority for the OIG's contention on this ground, however; and OIG's complaints appear to lack merit as a practical matter.

A restriction on the Board's ability to consult LSC management in preparing the IG's performance evaluation would mean that the Board could only seek evaluative information from IG staffers who are directly accountable to the IG and who may have carried out or authorized the IG activities that are being evaluated. The objectivity of the IG staff inevitably would be colored by their affiliation with the IG and their OIG colleagues.

In addition, the reality is that a significant portion of the IG's work involves interacting with LSC management; accordingly those individuals have firsthand knowledge of how OIG is performing its functions. Those management staffers would know, for example, how IG interviews were being conducted, what documents management had made available for IG review, and whether the IG's report fairly and accurately reflected information that management had made available in the course of an OIG investigation or audit. It is no doubt conceivable that some management officials might harbor resentment toward the IG because of past or potentially unflattering audit or investigative findings, but the OIG cites no specific evidence to suggest that the Board would be unable to differentiate management's pique or ire from legitimate, verifiable complaints about deficiencies in the OIG's performance.

In sum, the Board's consultation with LSC management officials provides the Board with a more complete (albeit not dispositive) portrait of how the OIG has performed during the course of the year. Accordingly, such consultation with LSC management would be a reasonable measure for the Board to undertake in order to make the performance evaluations meaningful.

2. The Memorandum Does Not Articulate a Valid Basis for the OIG's Assertions Concerning "Actual" or "Apparent" Conflicts of Interest

In the Coogan memorandum, the OIG contends that agency head evaluations of the IG "can create actual or apparent conflicts of interest." (Coogan Mem. at 8.) The Memorandum does not, however, articulate a relevant basis for these contentions. At one point, for example, the OIG suggests that there may be a risk of "apparent" conflicts of interest arising from the fact that the LSC Board consists of Presidentially-appointed directors, but this analysis does not appear to extend beyond pure speculation. (Coogan Mem. at 8.)[12]

D. The Coogan Memorandum Offers No Substantiated Grounds for the OIG's Proposal That the Performance Evaluation Process Should Be Suspended During a Pending Inquiry Involving the Board

In the Coogan memorandum, the OIG proposes that the Board "establish a safety mechanism to avoid evaluating an Inspector General when the Board is being investigated." (Coogan Mem. at 15.) As an initial matter, the OIG's reasoning is questionable because it automatically conflates any action the Board undertakes for purposes of conducting a proper

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[12] Similarly, the OIG's discussion of circumstances in which IG performance evaluations bear some relationship to the IG's bonus compensation simply does not apply to the facts of the LSC OIG. The Board's proposed performance review of the IG is not linked to any bonus compensation scheme. The OIG's support for its theory on this point is largely based on opinions articulated in a single treatise, quotes from a newspaper article, and anecdotal information regarding the compensation structures of Presidentially-appointed IGs that do not appear to be corroborated by objective sources.

performance evaluation with presumed improper conduct that supposedly seeks to prevent or discourage the IG from conducting his own investigation of the Board. The OIG's proposal puts the Board in a no-win situation – according to the OIG, a positive evaluation from the Board would imply that the Board is attempting to curry favor with the IG, whereas any criticism of the IG (no matter how warranted) would risk being viewed as intimidation. As a result, the Board is forced into an untenable situation in which the IG may, in effect, delay being subjected to any sort of performance evaluation perhaps indefinitely, so long as he continues conducting an investigation of the Board.

In setting up this scenario, the IG apparently overlooks a benefit of the Board's current evaluation protocol. As long as the Board were to continue administering its performance evaluations of the IG on an annual basis each year pursuant to a standard schedule, this practice would greatly diminish any implication that the timing of the Board's performance evaluations was tied to an improper motive to dissuade or otherwise influence the IG's activities with respect to a particular investigation matter.

The Memorandum offers only speculative justification for the OIG's novel theory proposing that the Board suspend performance evaluations of the IG whenever it is being investigated. The support for this theory rests entirely on anecdotal hearsay accounts purportedly relaying on various conversations that the IG had with unidentified individuals, or unattributed comments that supposedly had been directed at him. (Coogan Mem. at 15.) The Memorandum cites no authority whatsoever for the proposition that the Board has "the duty not to conduct an evaluation." (Coogan Mem. at 16.) Similarly, the Memorandum includes no citations to any caselaw, statutes, regulations, or legislative history to support the OIG's claims that the Board

"has the discretion not to conduct an evaluation."[13] Even if there were such support, this is a red herring point, since having the discretion not to do an evaluation implies that there is legal authority to conduct such an evaluation.

In connection with this proposal that the Board suspend its performance evaluations pending an investigation of it by the IG, the OIG offers various other theories, but does not cite to relevant authority or provide sufficient detail to substantiate these theories. For instance, in the Coogan memorandum, the OIG suggests that the Board may face "possible allegations of retaliation." The sole basis for this proposition consists of a single sentence cryptically excerpted from a letter from Senators Enzi and Grassley and Representative Cannon; the Memorandum does not cite any case law authority for this point.

The Memorandum also suggests that the IG may be unable to share certain information with the Board regarding particular investigations. The OIG, however, does not provide any specific explanation, other than general speculation, regarding the likelihood that these concerns would even become an actual issue for the LSC IG.

In addition, the Memorandum makes vague references to a "possible conflict of interest" and "possible allegations of obstruction," but fails to provide sufficient explanations demonstrating how those charges would apply to the Board under the present circumstances. The first provision cited in the April 28, 2006 letter from Senators Enzi and Grassley (Coogan Mem. at 17) concerns the criminal penalties that would apply to an individual who, for the purpose of obstructing compliance with a civil investigative demand, willfully removes,

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[13] The Memorandum refers in passing to the judicial doctrines of abstention and recusal, but omits any reference to caselaw and does not offer any explanation as to why either of those judicial practices would apply to the Board's practices in effectuating its statutory authority to exercise "general supervision" over the IG.

destroys, or alters documentary material that is the subject of that demand. 18 U.S.C. § 1505. This provision also penalizes anyone who "corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede" any proceeding pending before a federal department or agency, including any inquiry or investigation by Congress. *Id.* It is difficult to comprehend how the Board's administration of an annual performance evaluation for the IG would subject it to criminal penalties under this provision, and the Coogan memorandum offers no illuminating explanation.

Likewise, the OIG's memorandum also cites another provision, 18 U.S.C. § 1513(e), which imposes criminal penalties on anyone who, with the intent to retaliate, "takes any action harmful to any person . . . for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense," or who conspires to retaliate against a witness, victim, or informant. Again, for the OIG to suggest that the Board may have somehow committed a crime under this provision because it sought to conduct an annual performance evaluation of the IG's work is manifestly speculative and illogical.[14]

Finally, the OIG cites Section 3.05(a) of the LSC Bylaws. This section of the Bylaws refers to the LSC's provisions regarding "outside interests of directors," There is no indication here that this particular provision of the Bylaws was intended to apply to the Board's actions in conducting a performance evaluation of the IG. And, there is no identification of any

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[14] Somewhat paradoxically, the Coogan memorandum cites 18 U.S.C. § 1513(e) in connection with the Sarbanes-Oxley Act ("SOX"). The OIG relies on this statutory provision for the proposition that "retaliation against employee whistleblowers" is "clearly" prohibited. (Coogan Mem. at 17.) In making this point, the OIG apparently disregards the fact that the Act only protects whistleblowers who are employed by publicly traded companies. 18 U.S.C. 1514A. LSC is not a publicly traded corporation; SOX would therefore be inapplicable to the LSC OIG and Board.

Board members' "outside interests" that would be implicated as part of the Board's annual performance review of the IG.

E. The OIG's Assessment of Performance Appraisal Practices at Other Organizations Appears to Be Unreliable and Incomplete

In the Coogan memorandum, the OIG asserts that "By and large[,] other Inspectors General do not undergo a formal performance rating or evaluation" (Coogan Mem. at 18), but fails to provide a valid factual basis for this premise. The OIG's assertion on this point appears to be based entirely on its own "survey" of the performance appraisal practices at other organizations. The results of the OIG's "survey" supposedly "show that performance appraisals of comparable ECIE Inspectors General are not required unless in connection with performance awards and in the absence of such a requirement it is not the practice of agency heads to evaluate their Inspectors General." (Coogan Mem. at 18.) The OIG's reliance on this purported "survey" is suspect for numerous reasons.

First, the Coogan memorandum fails to cite any source for these purported "survey results," other than a reference to "information" that apparently had been supplied directly by the IG. (Coogan Mem. at 18.) Second, the "survey results" themselves consist of a single-page chart that simply lists "yes" or "no" as to whether the IG at each entity receives a performance appraisal. The chart does not indicate how that information was obtained, nor does it cite any sources for the conclusory statements that appear in the second footnote at page 19 of the Memorandum.[15] Third, the OIG's "survey" data appears to be incomplete on its face. The

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[15] That second footnote discusses the five organizations in the OIG's "survey" at which the IGs do receive performance appraisals, but does not explain how the circumstances of the IGs at those organizations might be distinguished from the LSC IG's position. If a performance evaluation conducted by an agency head were to be inconsistent with the notion of an objective and independent IG, this would present even more of an issue for agencies where IGs earn (continued...)

IGA created OIGs in 30 different federal agencies and 32 different "designated Federal entities" (of which LSC is one). 5 U.S.C. app. 3 §§ 8G, 11. By contrast, the "survey" chart presented in the Coogan memorandum refers to only 12 IG organizations in total.

Finally, the OIG does not appear to have applied consistent criteria for its selection of the 12 organizations that were included in its chart of "survey results." In the first footnote on page 19 of the Memorandum, the OIG states that IG offices with fewer than ten full-time equivalent staff were "not surveyed due to their lack of comparability with the LSC OIG." (Coogan Mem. at 19 n.*.) Yet, the Memorandum provides no explanation for why the size of OIG staff would be relevant for purposes of this exercise. Even within its own selection of organizations, the OIG includes the U.S. Postal Service, which is listed as having 850 full-time equivalent staff – a dramatic contrast to the 19 full-time equivalent staff listed for LSC.[16]

III. The Coogan Memorandum's Conclusions Are Both Contradictory and Confusing

Although the Coogan memorandum vigorously argues that the LSC Board lacks authority to engage in an annual performance review of the IG, the same Memorandum repeatedly asserts that the Board is entitled to provide the IG with evaluative commentary on his performance. Specifically, the Memorandum declares that "the Board should provide feedback

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bonuses that are tied to their performance ratings. The more logical view is that annual performance evaluations are consistent with the statutory "general supervision" that the agency exercises over the IG, regardless of whether the IG is eligible to earn a bonus.

[16] The Memorandum concludes with a brief discussion of the fact that, because the LSC IG is an at-will employee, he lacks the due process or civil service protections that are supposedly afforded to other IGs. In raising this topic, the OIG overlooks the fact that, as the IGA makes clear, other IGs are "appointed by the President" and "may be removed from office by the President." 5 U.S.C. app. 3 § 3. In other words, those IGs serve at the will of the President. The Memorandum also makes vague references to so-called "retreat rights" that other IGs have. Throughout this discussion, the Memorandum does not cite any case law or statutory authority, or even attribute the source of the alleged quote from one IG regarding those purported rights.

. . . to the Inspector General in open sessions," "review and comment on the Inspector General's annual audit work plan," and "request a self-evaluation by the Inspector General." (Coogan Mem. at 2, 21.) Similarly, as noted earlier, the Coogan memorandum cites with approval the Naughton article in which Naughton declares that "an agency head 'may review and criticize' an Inspector General's performance." (Coogan Mem. at 10.) These apparently contradictory lines of argument are difficult to reconcile since a performance review is normally understood to be a form of providing "feedback" or a method to "review and criticize."

Finally, the Coogan memorandum is confounding because of the assertion that "[t]he decision to evaluate an Inspector General is a **political** question that **must** involve the agency head . . . Congress . . . , the Office of Management and Budget . . . and the Executive Council on Integrity and Efficiency." (Coogan Mem. at 21) (emphasis added). As with many other propositions advanced in the Coogan memorandum, this insistence that undertaking a performance review of an IG is a "political decision" to be negotiated between the executive and legislative branches is bereft of citation to any supporting legal authority. The nonpartisan design of the IGA[17] and the applicable OMB guidance[18] strongly indicate that the decision to conduct a performance appraisal of an IG should be based on sound management principles, not a "political decision."

Thomas S. Williamson, Jr.
Reenah L. Kim

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[17] 5 U.S.C. App. 3 § 8G(d).

[18] Memorandum For Heads of Designated Federal Entities, M-93-01, dated November 13, 1992, at 4.

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

COPY

ANNUAL PERFORMANCE REVIEWS COMMITTEE

CLOSED SESSION

Friday, January 27, 2006

9:10 a.m.

The Melrose Hotel
2430 Pennsylvania Avenue, N.W.
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

Lillian R. BeVier, Chairman
Herbert S. Garten
Thomas R. Meites

BOARD MEMBERS PRESENT:

Frank Strickland, Chairman
Thomas A. Fuentes
David Hall
Michael D. McKay
Bernice Phillips
Florentino A. Subia
Ernestine P. Watlington (via telephone)

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President
Richard (Kirt) West, Inspector General

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Washington, DC 20036
(202) 467-9200

extremely informative and interesting, and we congratulate you.

MS. BARNETT: Thank you so very much.

CHAIRMAN BeVIER: Yes. You're welcome.

(A discussion was held off the record.)

CHAIRMAN BeVIER: The Annual Performance Reviews Committee meeting is back in session, and we're going to begin to address the evaluation of the Inspector General, and as our -- as the summary of our interviews, I hope, makes clear, we have received quite different evaluations of the Inspector General from his own staff, who seems -- who seem to give him high marks on a lot of issues that would seem to matter if you're evaluating his management and his ability to set the direction of his office and generate an atmosphere in which they feel free to do their work and have confidence in him.

That is at least the impression that I got from the people on his staff that we talked to.

The impression of management is wildly different, and what I think it's important for this committee to do is to keep in mind that it's not our

job to evaluate his substantive agenda, I guess one would say, although one might raise issues, conceivably, about his priorities in terms of spending so many of his resources investigating what happens in Washington, D.C., as opposed to what happens out in the field.

He's got reasons for doing that, and I don't even know whether it's something that we have the right to raise issues about or questions about.

I think that what we discern from the -- putting together all the reactions of management, there -- there are issues of the accuracy, the completeness, and the responsiveness to their comments and concerns of his reports.

I don't think I need to say anymore. It's pretty well summarized in the summary that I gave you of our interviews.

So, our next issue is what to do now.

MR. MEITES: I'd one thing.

Just as you were speaking, oddly enough, we, as a board, have had much more contact with the substantive work of the Inspector General than I think

we have of LSC's staff and management.

I actually know a lot about what the IG has done, and I have personal views on the adequacy of his work, in a way I don't have of Helaine's.

So, I'd add to the mix we're bringing to this evaluation our own personal experience with the Inspector General and his work.

CHAIRMAN BeVIER: Right. I think that that's true. I think we -- clearly, we could do that.

You have received from him his own self-evaluation, in which, on all measures, he has put what -- he has put his interpretation of what he's been trying to do and how he's done it for our review.

Now, I have to say that our -- my summary of the interviews that we had and of our evaluation did not put things in the same categories that he did, but I'm not sure that that makes a difference in terms of what it is we're going to -- the conclusions we're going to draw.

So, I think it's time for us to talk about that, and I'd solicit the views of the committee.

MR. STRICKLAND: You mean in terms of how

we'll proceed?

CHAIRMAN BeVIER: How we're going to proceed, that's right.

What -- again, I think this is an issue where you can take the details and say, well -- you might take issue with the details or you might say yes, that's good, or no, that's bad, and so on, but to my mind, that's not -- I'm much more inclined, I should say, to talk about that seem to us to be some systemic issues.

Whether they are problems we need to talk to him about, whether they're our business in terms of this evaluation are issues I think we need to address, but there are some reasons to think that there are some difficulties that seem not to be able to be resolved that don't have to do with what he has chosen to investigate, at least as I see it.

MR. STRICKLAND: In terms of our process today, are you going to give the general comments as to what we found through our interviews, and then we start having a discussion after that?

CHAIRMAN BeVIER: I don't know. I mean I

think we need to decide what the substance of our evaluation is, and then we can -- I mean I'm happy to share with Kirt the fact that, you know, internally -- but again, I don't want us to do anything that sort of permits him to attribute comments to one or the other, you know, to say, well, your staff really likes you, but management has issues, because I think we should say we -- but that's my view.

I mean I'm really quite at sea here, as I think you can probably guess, about how to proceed and what to do tell him.

MR. MEITES: Well, let me take a different approach.

Where do we want to end up?

I think your analysis of the interviews squares with mine, my impressions.

My views as a board member very definitely corroborate the management's view of his performance rather than his own staff's.

I think we owe it to him to tell him problems that we see with his work.

I am totally indifferent whether he thinks

we're exceeding our mandate or not.

I know what my job is, and he's not going to tell me what it is.

I am a board member.

I've been nominated by the President and confirmed by the Senate, and I think that he is a disservice to the Legal Services Corporation, and I'm prepared to tell him that.

I think he is burning a tremendous amount of valuable staff time on his activities.

I think his work product is shoddy or worse.

I think that his staff is either delusional or else his -- does not understand what Legal Services is all about.

I think that he has had ample opportunity to provide the staff and us with analyses and reports that, in fact, will be helpful, and I have not seen one report that I would say is helpful.

That's my personal view.

Now, if others share those views and think that, by telling the Inspector General the criticism that we have, things will get better, we should do it,

and he obviously can't be written off, because he hasn't heard this from us, if that's our view, but I am not really interested in getting into a fight with him, you know.

I think I have -- one thing I learned from our interviews is he has all of the time in the world to fight, and we don't -- we're supposed to be running this corporation, and I don't want to spend a lot of time on it, so that if telling him this is going to embroil us into a huge fight, with him running to Congress and all that stuff, forget it. We have other things to do.

I don't really care if he runs an efficient office or not, in the sense that I'm going to convert this board into an argument pit for disputes with the Inspector General.

I don't think that's profitable.

But if we think that a constructive exchange of views would be fruitful, then we should do it.

That's where I'm at.

MR. STRICKLAND: Having heard that statement, I wish he had heard it just the way you said it.

CHAIRMAN BeVIER: Yeah.

MR. STRICKLAND: And I think it's important that he does hear it.

MR. MEITES: Well, the problem is, Frank, that everything I've seen of him and his staff is -- we're going to get ourselves into a fight that I don't care about winning, but it's just going to burn a tremendous amount of time on what I think is a truly insignificant part of our mission. But I am prepared to take it on if we think that it will further the interest of the corporation.

MR. GARTEN: Prepared to take what on?

MR. MEITES: Take him on.

MR. STRICKLAND: He said he's not afraid to take him on.

MR. GARTEN: Obviously, I'm not either, and I have to echo your sentiments, but I think the -- Frank and the rest of us have exhibited tremendous patience over the time we've had to deal with him, and I have spent, myself, way beyond the amount of time as a board member that I anticipated as a result of having to deal with him, particularly with regard to the lease issue,

and I've seen him demonstrate as recently as this report that was delivered to us yesterday an arrogance and use of adjectives and words that I think is misleading, and we've got somebody that I think we should not get embroiled in, but I think we can do a lot better and have an Inspector General that would perform in accordance with what's required of an Inspector General.

So, I personally am in favor of giving him notice or of discussing the matter with counsel and taking what appropriate action we are advised to take at this time.

MR. STRICKLAND: Well, I think it's important to make a record, and this is the first time that we have had a formal review of the Inspector General via the Performance Reviews Committee and by the board. So, I think we should proceed in an orderly fashion and establish a record, and if it includes some or all of Tom's comments, I think that would be entirely appropriate, or to state it another way, if a board member has that viewpoint relative to his work product, I think it's important that that be -- that message be

delivered directly to the Inspector General.

MR. GARTEN: Well, I think it would be helpful if the other board members or the members of this committee, and possibly the rest of the board, also had some input --

MR. STRICKLAND: Oh, I agree.

MR. GARTEN: -- with their own personal experiences.

We've done the interviewing, and we all concur with the comments that we've heard.

Incidentally, one person that works for him and who was with the post office for many years and is on what I call detached service, in his presentation, he said that communication with his staff was -- he thought he could improve there.

I said does he have any other faults? He has no other faults.

And if you read his own evaluation of himself, you didn't hear what we heard from Helaine about where she had matters that could be improved upon, and I personally feel that he is not fit for a small organization like the Legal Services Corporation. He

came out of the post office. He had a succession of supposedly promotions over a period of three or four years, many jobs over three or four years.

There was a sentiment expressed by a number of the people we interviewed that this is a stepping stone, that he's really looking for a job with a big organization, and I don't even want to say he's overqualified.

He isn't qualified.

He doesn't belong as the Inspector General of this organization.

CHAIRMAN BeVIER: I was very disturbed, and continue to be, about the -- the inaccuracies, the incompleteness of his reports, the -- the incendiary tone of them, the unnecessary character assassination implicit, and the threats of I'm going to go to Congress -- well, Congress won't like this -- those implicit in so many of his responses, and my sort of almost last straw -- I don't know whether I've gotten to my last straw yet, but when it turns out that he's not going to participate in discovery for this lawsuit, and counsel says if you don't participate in discovery,

it's going to be extraordinarily harmful to LSC, it may result in a default judgement -- well, that's not something that is --

MR. MEITES: I don't know what you're referring to.

CHAIRMAN BeVIER: If you read the board book, the -- I think it's the Oregon case, the litigation report -- yeah, it's the litigation report, and he's -- he won't turn over documents, because he says that turning them over would be -- I don't know -- jeopardize his independence or something.

MR. STRICKLAND: Or is he saying that he's got -- he has to be represented by other counsel, the U.S. Attorney or the Department of Justice, and they'll manage his discovery production?

CHAIRMAN BeVIER: Right. But his present attitude is one of obstreperous refusal, as I understand it, but -- but that's troublesome to me.

I mean I think that there is not a spirit of -- I would feel differently about the Inspector General if any of these issues upon which he has spent so much of his own time, so much of the board's time,

so much of management's time, had turned out to raise serious issues of fraud, waste, and abuse, but as far as I can tell, that is not the case. So, none of them have been productive.

I mean there might be a need for a space assessment, but I'm not even persuaded that that's a big issue, and yet, much has been made of it, and so, I'm not particularly helpful about where to go, although I don't think that we should give him notice right now.

I think that's precipitous.

Mike.

MR. McKAY: I don't understand your last comment.

CHAIRMAN BeVIER: I mean I understood Herb to say we should basically say you're fired.

MR. GARTEN: Yes, that's my opinion, but I concur with Frank.

In fact, I think that we ought to do it through independent counsel, and tell independent counsel what our findings are, and rely on the advice of independent counsel as to how to proceed, and that

might be, as you say -- if I were the counsel, I'd say, well, give me a written report of what your problems are and I will tell you -- I will give you advice on how you are to proceed, and as I understand it, we have to give Congress -- we have the right to fire, we have the right to hire, but in questioning this, I understand that we have to advice Congress as to the reasons why we're taking this action.

MR. STRICKLAND: Right. But it's notice, as opposed to permission.

MR. GARTEN: It's notice, that's correct.

MR. McKAY: With regard to that, there's a serious legal issue, and so, I certainly support going to independent counsel to assist us, but it also raises a significant policy question, getting back to Tom's comment.

Pretty darn near our most important chore here, as a board member, board members, is to find more money for the corporation. Our number one source of money is Congress.

To what extent will this action undermine our effort to obtain funding?

I'm not afraid to take on a fight, but we certainly have to consider the potential costs, and so, this is a real authority issue, and I agree with everyone's observation of the quality of his work. But we do have to think through the implications of this and how we would manage this up on the Hill, because I don't think it will be a positive note, particularly, when we're aware of the number of times he's run to the Hill previously.

This could be interpreted as retaliation or an effort to undermine congressional restrictions because of what the inspector is doing, Inspector General is doing, and it can be a problem.

Since I have the floor, let me go to the other point, a couple of other points I wanted to make.

Number one, this is different. Our review of the IG is different from president.

As I understand it, we can look at how he does his work but not comment on what projects he takes on. Is that correct?

Okay. Great.

Well, that's what I'm considering as we're

going through this.

Finally -- well, if we're going to be following the charge that Herb put out on the table, this might not be appropriate, but if we do reach a conclusion on a review for him, we definitely need to reduce it to writing and not do something verbal, I mean -- and be more careful about what we write, so we have a clear record.

MR. GARTEN: After consulting with independent counsel.

MR. McKAY: Absolutely, yeah.

CHAIRMAN BeVIER: Is the sense here that this is it, or I mean -- what I heard you saying, Tom, was that you're just willing to tell him this and -- or not tell him, just move on and -- and take the steps to get him removed, as opposed to a probationary period or you've got six months or something. Here, these are rather specific faults we've found in your work, you've got to fix them or else.

MR. MEITES: I think, in light of Frank's remarks, we better take the latter course, because we -- just basic fairness requires you to lay it on the

line and give him a reasonable chance to disagree and we say, well, we appreciate your disagreeing, but this is the way we see it and we expect change.

MR. GARTEN: I interpreted your remarks differently.

MR. MEITES: Well, the other alternative is -- I can't tell you how little I want to spend any time with this guy.

MR. GARTEN: Well, that's -- you're going to spend a lot of time if you go the probationary route.

CHAIRMAN BeVIER: Well, I agree with that. This is not something we want to do, but I'm not sure that the kind of risks on the other side -- and fairness to him -- I mean, okay, so part of the fairness or the perceived unfairness to him from our not giving him a chance to correct stems from the fact that he seems to be not a very good listener when we're talking to him, but at the same time, I think that -- for example, I think I've been more willing to give him the benefit of the doubt, on a variety of occasions, than have others, but I'm at the end of my rope now.

He doesn't know that, and so, I think that he -- he should know that he's got -- he's got to shape up or we will ship him out.

MR. MEITES: Well, is this a decision for us or for the board?

CHAIRMAN BeVIER: I think we probably recommend it to the board.

MR. STRICKLAND: I think it's a board decision, and I think that it is -- at least in my view, it's important to make a record, and I think if we had an independent counsel sitting here, that's the advice we'd get, I believe. So, as a part of making the record, I again emphasize that I think it's important that the message you imparted to us a few moments ago be delivered.

MR. MEITES: Yeah, but I think it should be in writing.

Well, I guess this is in writing.

MR. STRICKLAND: It is in writing.

MR. MEITES: But I'm reluctant to say anything spontaneously, because if it's going to be part of the record -- that's what we spend our life reading, are

incautious remarks made for the record, and I'd much prefer we bring him in here, we listen to what he has to say, and thank him for his time, and tell him we will give him a written evaluation.

MR. McKAY: Well, I really agree with that. That will give us a chance to -- in spite of what -- I mean I agree with Tom. I don't want to spend a ton of time on this either, but there are reasons I think we need to, and take the time to cite -- I'm assuming this is advice we're going to get, but I'll wait -- and rely upon -- but take the time to cite those instances where there were clear problems that fall within our province of a review.

Lillian mentioned one, and I'll just toss this out to make sure my reading of this is correct. I think he sent us something last week where he was expressing pleasure that the integrity board had cleared him of inappropriate activity.

There was an allegation that we did not believe his report on -- his report to us about overlooking that appraisal.

I don't think anyone questioned his integrity

and said that he lied about it. You know, we just said it should have been addressed in the report.

It was his judgement, not his integrity, and yet, he characterized our position inaccurately. Is my reading of that correct?

MR. GARTEN: Yes.

MR. McKAY: I mean I don't think -- I mean we were tough on him, I thought, but we didn't say, geez, you're not telling the truth.

We just simply said you should have put it in the report, and it's a listening thing. It's like there are prisms on his ears, we say something clearly and it's translated differently.

CHAIRMAN BeVIER: Well, plus which he didn't tell us about that before. I mean there's the other issue of the contributions to NLADA, when he sent -- when he sent the report to us without giving management a chance to look at it after -- I mean he sends it directly to the board.

MR. GARTEN: Worse than that, because there was a legal opinion which he says was not relevant, and he sent it up, the complaint, without offering a legal

opinion that said that what we were doing was perfectly legal.

MR. STRICKLAND: Well, it's one thing to say that the opinion is not relevant, but I think the disagreement I had about it was I knew that the legal opinion existed -- I don't know when I discovered it, but I said my view on this is, okay, you say it's not relevant.

You need to include the fact that the opinion exists, and then you say it's not relevant for the following reasons --

CHAIRMAN BeVIER: Exactly.

MR. STRICKLAND: -- as opposed to just submitting the report with full awareness that the opinion exists and not even mentioning it. It's the same thing as the appraisal.

MR. GARTEN: That's exactly correct.

MR. STRICKLAND: That's just nonsense, and that's not the way to do business.

MR. GARTEN: I think we're just delaying something.

I think that we ought to refer it to counsel

and get a road map from counsel as to how to proceed.

MR. STRICKLAND: Let me raise this question.

Is it a mistake -- here's this committee convened for the first time and doing its first review of our two charges here, the president and the Inspector General, and we're going to have him in front of us and perhaps not confront some of these things directly right now but, instead, say you'll hear from us in writing.

MR. GARTEN: Why can't we just defer meeting with him until you get this road map from counsel?

MR. MEITES: We'd give him the written statement first and then have a session.

MR. GARTEN: No. I'd feel more comfortable if we had a road map from counsel as to this is how you should proceed.

CHAIRMAN BeVIER: Well, wait a minute.

Are we going to not give him a chance to correct what he's --

MR. MEITES: No, no, no. I don't think -- is that what you -- I don't think that's what Herb said.

MR. GARTEN: No.

I would -- I think that -- I think he should be given notice, but the manner in which -- I think there's enough experienced dealing with him to make us concerned.

The only problem I have is how do we go about it?

MR. MEITES: Herb, let me take a step back. I want to work the process through. You know, he's a very pleasant guy, and there is a chance that he may respond positively.

Now, you know, we have our personal assessment, we've been frustrated, but I wanted to go into this straight up.

I'm willing to -- you know, with somebody advising us -- to put in writing what our problems are, listen to him, give him X time to -- he'll keep working, and tell him that we think these are problems that you can solve.

This isn't hard to do right, and if you do it right, that's great.

Now, Herb, I think you think there is one chance in 100 billion that he'll be able to shape up to

what we expect, but I'm willing to go into this, you know, really start giving clear lines, what you have to do, and if he doesn't fine. If he does, fine. But I'm not going into this with the notion that we're setting him to be fired.

I don't think that's an appropriate mind-set to go through this process.

CHAIRMAN BeVIER: I don't either. I don't think it's fair, and I think it's pre-judging, and I grant you that we can get pretty close to that in terms of where we are, but I think --

MR. GARTEN: I'll defer to your judgement.

CHAIRMAN BeVIER: -- at this point, we probably -- but the question, then, is to how to convey to him -- now, we've got -- we can say something now or say just we want to hear what you have to say. Frank and I can say something to him.

If you're worried about it being on any record, it's already on the record.

MR. MEITES: I'm not worried about the record, but I feel strongly, if we're going to go through this, we should go through it in good faith -- you know, I

say what I said, but I'm willing to put it in writing, give -- give him a chance to look at it, give him X time to see if he responds in a way that we think is satisfactory or not.

CHAIRMAN BeVIER: So, do you think that, when Frank and I go up on Friday -- and we're going to talk to Helaine and say what we said -- shall we talk to Kirt, as well, and be specific -- because by Friday, we will not have -- I mean I don't know that I -- I won't be able to draft what -- all the things that we want to say, and I think we need -- I mean the question is whether we have counsel now or whether we try to do it ourselves, but should Frank and I address some of these very specific issues, other than -- rather than just say, well, you need to work more cooperatively with management, which is what we were going to say?

MR. GARTEN: I think this requires independent outside counsel.

MR. McKAY: I recommend one of us take a shot at a letter, get counsel involved now to look at the letter.

Once it's finalized, consistent with the

strategy we come up with, the letter is given to him, and then the two of you meet with him after he's had a chance to look at it. Obviously that can't be done by next Friday.

MR. MEITES: We've spent almost a year on Helaine's appraisal. We can spend -- you know, I don't think we have to try to push Kirt into such a short time period.

CHAIRMAN BeVIER: Okay.

So, we are presently scheduled to meet with Kirt on Friday.

Shall we not meet with him?

MR. MEITES: I don't think we'll be ready.

MR. STRICKLAND: Might not be ready.

MR. MEITES: Just tell him that, that we got extensive comments, and we want to reduce them to writing, so you know where we're coming from, and when it's ready, we'll give it to you, and then -- give you a chance to digest it, and then we should meet. Does that make sense?

MR. McKAY: Yes. And just to make clear my position, I agree that we ought to -- not to suggest

that Herb's comments were not in good faith. I do think there's a chance we can turn this thing around, but give him the chance, after we have clearly set forth the problems, give him a chance to turn them around.

I'm assuming that's the advice we'll receive from counsel, but we ought to get that advice from counsel, and then give him the letter, and the fact that the two of you would personally meet with him to answer his questions and to express in a forthright way our collective desire to work all this out, I think is the best way to solve the problem, but if it doesn't solve the problem, we're that much closer to doing what Herb suggested in the first place.

CHAIRMAN BeVIER: And it's fair.

MR. McKAY: Yeah.

CHAIRMAN BeVIER: Right.

MR. STRICKLAND: And you don't want to express any of those views to him today.

MR. McKAY: No, I don't.

MR. MEITES: I don't think you should, and I concur with your comments.

CHAIRMAN BeVIER: All right. Well, I think that we should try to reduce this to writing.

Here's what I understand, where we're reaching consensus.

We should try to reduce what we have said today to writing, and some of the other comments, with both general and specific instances of our concern. We give that letter to independent counsel.

The second step is I would be inclined to send -- if I draft the letter, I will send it around and have comments from each of you.

I will not e-mail it. I will snail-mail it, and you can do your editing, or fax it, and then you can send it back to me, and then we'll get it to counsel, and we'll try to work -- I don't know how fast I can get this done, but we'll try to work on -- we'll try to work with all deliberate speed, or is that just not the way to do things?

Okay. Well, all right.

Next question.

MR. MEITES: When are we going to report to the board?

CHAIRMAN BeVIER: That was my next question. Okay. We know what we're going to say to Kirt.

We're going to say -- he can talk to us, and we will say we're -- we've received some comments, and we need to give them some more thought, and put them in a format that will make it easier for us to convey to you what our concerns are, and we will be prepared to talk to you when that's done.

How does that sound?

MR. GARTEN: We aren't making any commitment to him one way or the other.

CHAIRMAN BeVIER: What do you mean? To meet with him again?

MR. GARTEN: No, no. A commitment, good or bad, about him.

CHAIRMAN BeVIER: Oh. Right. No, we really have not completed the evaluation yet, and we want to put -- we need to do a little more work and put what we discover in a form to which he will have an opportunity to respond, or maybe put it in a report that makes whatever we have concluded clear to him, as transparent as we can, and then, at the very least, Frank and I

will meet with him, and perhaps we'll meet with the whole committee, but something like that?

MR. MEITES: That's good for me.

CHAIRMAN BeVIER: Okay.

What do we do to the board? How do we report to the board?

MR. GARTEN: We have to tell them exactly what we're doing.

CHAIRMAN BeVIER: And does it go to the board as a recommendation or not? We just say we're continuing our work.

MR. GARTEN: Further investigation.

CHAIRMAN BeVIER: Right.

Okay.

MR. MEITES: This doesn't require any board action.

CHAIRMAN BeVIER: No, I think it doesn't, no, at this point.

MR. GARTEN: The committee is still functioning --

CHAIRMAN BeVIER: Yeah.

MR. GARTEN: -- and once we get a report from

counsel, we're going to have to meet again.

CHAIRMAN BeVIER: Yes.

MR. MEITES: Actually, the fact is -- I missed one board meeting, the one in California.

CHAIRMAN BeVIER: Louder.

MR. MEITES: I missed one board meeting, and I am not as up to speed on some of these issues as, apparently, some of the others.

So, a report actually would help me to pull it all together in one place.

So, I think it's not only for his benefit, but I think for my benefit.

CHAIRMAN BeVIER: Okay. That's good.

MR. STRICKLAND: Lillian, I think we should ask the reporter to prepare a transcript of this meeting.

CHAIRMAN BeVIER: A transcript of this meeting ASAP, because I want to work from that initially, and I -- when -- if I draft a letter, I want you all to know it's a draft, and I won't make any pretense that it's inclusive of all the -- inclusive or accurate, because I'm not sure I've got all of this straight

either, and that's why I feel the need to have input from everybody before we even send it to counsel.

So, please know, when I send you that draft, that it's really just my best shot, and I may not spend as much time on it as I should to make sure it's accurate, because I'm going to be able to count on you guys to help me.

MR. McKAY: And one of the things -- and I'm assuming we'll receive this advice from counsel -- that is, be specific, with specific examples, and perhaps we can start working on them.

I heard a good one from Herb, and perhaps we can use the one that I used, and we should add those when we get this draft.

My sense is we should give specific, concrete examples of problems, not just to give notice to Kirt but also if, down the line, there is ugliness -- I know there's a confidentiality issue -- I mean we'll be able to say forthrightly that this was not a -- you know, we gave specific examples and gave him an opportunity to turn it around.

CHAIRMAN BeVIER: Right. And I think,

too -- remember when we did the report to -- management's report to Congress, and we were concerned that management was being just too -- sort of too strong, sort of too defensive, and so forth, and we made that -- we softened it quite a bit, I think, with a lot of factors in mind for doing that.

I think that will be a useful source for us of some specific examples, so -- if only we -- I'm not sure I still have the draft of that initial one, but perhaps I --

MR. GARTEN: I have it.

CHAIRMAN BeVIER: Do you? Maybe you can send it along.

MR. MEITES: Yeah, that was very -- I remember seeing that.

That was -- that was specific --

CHAIRMAN BeVIER: Yeah, it was very specific.

MR. STRICKLAND: So, the action we're taking today is that, after we conclude this meeting, we're going to just inform Kirt --

CHAIRMAN BeVIER: Well, Kirt's going to come in.

MR. MEITES: The finance committee is supposed to start at 11:00, so we're -- we can go on as long as we want, but that's an issue.

MR. GARTEN: I think you have to do something if he's --

CHAIRMAN BeVIER: Yeah, he's been waiting. So, we should call him in and say --

MR. GARTEN: -- we haven't finished our work.

CHAIRMAN BeVIER: We haven't finished our work, but we are interested in hearing what you have to say, and -- we haven't finished our work. When we finish it, we -- we plan to put it in a form that will be transparent to you and you will understand what our evaluation consists of, and we'll go from there.

MR. GARTEN: Okay.

CHAIRMAN BeVIER: We don't say anything other than that, right now.

MR. GARTEN: Short as possible.

CHAIRMAN BeVIER: All right.

MR. STRICKLAND: Yeah, because we do have another meeting stacking up right --

CHAIRMAN BeVIER: Yeah.

(Pause.)

CHAIRMAN BeVIER: Kirt, good morning.

MR. WEST: Good morning.

CHAIRMAN BeVIER: This is a reconvening of the Performance Reviews Committee, and with us is Kirt West, the Inspector General.

I'm sorry for keeping you waiting for so long. We've had a long meeting and a lot of information with respect to our evaluation of you and of the president, and at this point, Kirt, we have not finished our evaluation of your work, so -- or your performance, and so, at this point, we don't have anything to offer you by way of sort of feedback and a program or agenda, but we have -- we have marching orders about further collecting information and data and a plan for presenting that to you in a form in which it will be accessible and transparent and you will know what it is that we're telling you about the evaluation, so that -- and we hope to do that as expeditiously as we can. We don't have a timetable at this point, but we really would like to hear from you and your -- whatever you choose to tell us to add to or elaborate upon your

own performance self-assessment and your plans for the coming year.

So, I do appreciate your being here with us.

MR. WEST: If you'll give me a second --

(Pause.)

MR. WEST: The first thing -- I did bring copies for the other board members. You had asked -- you had mentioned in the e-mail --

CHAIRMAN BeVIER: Yes. I think that perhaps you might hold those for --

MR. WEST: Okay.

CHAIRMAN BeVIER: -- the board meeting, and that will be fine.

I think it's a good idea to have each member of the board have one of those self-assessments.

MR. WEST: All right.

I think, generally, I'd just sort of like to sort of talk about the challenges of the job, and part of the challenges, for me, as the IG, is dealing with a board that I think I'm an unusual and somewhat uncomfortable creature for, and it's probably not an intuitive concept to have hired somebody who is

independent, that you can't directly supervise, you can't directly control, and coming to that balance, and I appreciate that, and it's been extremely difficult for me. I think we had a real rocky time in the spring and in the summer, but I think we -- from my perspective, we've turned the corner, and I'm optimistic that things will improve over the course of the next year, and that's certainly my commitment. I made that statement several months ago, and that is my commitment.

That doesn't mean we won't disagree, and I know the chairman and I have disagreed on some things, and I understand that.

I think that's also the nature of Inspectors General throughout the government, that that is a -- that's just -- that's how the job is, that it's -- I am the messenger, and I will tell you -- and I said it in the newsletter, report that I sent to the board, that my goal is to be accurate, objective, and fair. I don't have an agenda.

I'm reporting facts as I find them under the professional standards that I try to work under, that

all IG's work under, and I use a pretty rigorous process for determining the information that I provide you is accurate, that we -- it's called this independent referencing process, which I actually extended beyond the audit process, what's required in the Yellow Book, but even my testimony, written testimony that was submitted to the Congress was independently referenced to make sure that there were lines in each statement that could be supported by documents, and so, that's my commitment, to continue to do that.

It's my hope that I will get more input from this board, as IG, for suggestions of work. I have asked for it, and frankly, I haven't gotten much. I mean that's part of -- I think, part of the dialogue that -- and maybe I have not done a good job of creating the atmosphere for the dialogue, but I am looking for suggestions of things that you would like me to do, because I think I can be the eyes and the ears for the board, you know, and that's what I want to do.

When I interviewed with this board -- it was

almost two years ago, year-and-a-half ago -- and that's still my goal.

Now, that may not happen, and maybe this is part of, you know, the process of interacting and getting more comfortable with each other.

I think I have a lot of challenges that are a two-way street with working with management. I think that is a challenge.

I would be naive to say things are, you know, working smoothly, but actually, today, we worked something out.

During this meeting, we worked something out regarding the litigation report, where I think we talked and we communicated, and as a result, there will be one less contentious issue for this board to deal with in closed session, which I think you would probably take as a good thing.

One of my challenges, upon inheriting my office, is I inherited an office that -- don't take me wrong, but I would almost describe as dysfunctional. My predecessor had a lot of morale problems, I think evidenced by some of the actions that had been filed

against him, a view of discrimination, a feeling of people being told they can be fired any day, and sort of a real tyrannical kind of leadership, and there's still some of that residual feeling that I have been trying to work to overcome.

I also inherited an office that was totally based on audit, and my view of the mission that I have currently, prescribed through the -- through Congress and the regulations, are -- it can't be audit-based. I need a different kind of workforce.

So, one of my challenges is coming up with a new and better model for our compliance work, and that's sort of transforming the organization from an audit-based organization to something else, and I'm struggling with what exactly that is, other than I know that I need more people with a legal background who can look at regulations and look at the practice of law.

One of my other challenges, I think, is to build more trust among rank-and-file LSC employees, because there is a real concern on my part -- and I have heard from both former employees, as well as some current employees -- these are outside of OIG, within

the rest of LSC -- that they're not -- you know, current employees are not comfortable coming in my office with information, that they are -- for whatever reason, there's some intimidation and some concern. So, one of my goals is to work on that.

I tried to do that when I opened up the office, so that anybody could come in the office, but I have heard from some -- a number of people -- that people are really kind of afraid of being associated with me.

So, I need -- that's a burden to overcome.

I don't think any of these things are insurmountable.

I will tell you, from a personal point of view, that probably, for me, the lowest point was the meeting in Puerto Rico and the whole issue of whether I had withheld something from the board.

I was -- it took me a while to sort of rebound from that.

That was a -- as I mentioned in my newsletter, I did refer the allegation to the integrity committee, because I believed that was the right thing to do.

Even though I disagreed with it, I wanted -- that's what IG's have to do when there are allegations about them, and just recently, integrity committee did come back and said that, based on the information provided them in my explanation, they determined it was unintentional and they closed the case, and it was unintentional. It was something I was unaware of. But that was a very tough meeting for me, because I felt like I had been -- and I think I may have used this word with the chairman -- I had been sandbagged, because nobody had asked me about that. I came in a meeting, and I didn't know what it was about, but I'd like to think I've moved beyond that, and I really do want to work with the board.

That is my commitment.

My commitment is to -- and this is where it gets complicated.

I want to see LSC do better.

You know, obviously, I'd like to see more funding.

That's not my job, however, is to see that LSC gets more funding.

My job is to provide information to both the board and to the Congress, and then it's up to whoever gets that information to use it in whatever way they see fit, and that may be some of the problem, is that my reports may be viewed as, you know, causing harm or injury to LSC, and that's not my goal.

My goal is to provide information and then for the board to do what it sees fit to do with that information.

If there are questions about my information, you know, I've got documentation, I have backup.

I can tell you that there's a lot of things I haven't reported, where I've toned down, I've moderated, because I thought it would be inflammatory.

Now, my reports nevertheless may have been seen to be inflammatory, but I have actually taken some steps, when I get things written by my staff, to look at tone, look at do we really need to go into all this detail, and I've cut a lot of things out, because I thought it would actually cause more -- that it didn't need to be said.

So, you know, I'm really trying to do this.

It's really difficult.

It's really difficult to be the person to bring information that you may not want to hear, and I have talked to a lot of IG's, and they all have the same problem.

You know, the IG at Justice is bringing information to the director of the FBI that said you aren't running your informant program in the right way, and that's why, you know, there's a bureau agent involved with organized crime in Boston and people got killed, or the IG at Homeland Security is bringing stuff to the director of Homeland Security and said this is how you screwed up in Katrina. That's kind of what we do, and so, I'm trying to do it the best way I can.

By no means, I'm not perfect. I don't think any of us are.

I'm certainly open to suggestions.

One thing I have tried to do -- and I'll try to do more -- is share drafts of things before they go out, and I think we've gotten better products because of that.

I think, in my statement in the semi-annual report, I shared drafts with management, and in fact, with management, I've actually been providing discussion drafts, that this is what we're thinking of saying, take a look at it, let's discuss it.

We may not agree on everything, but let's make sure the record is correct and that, you know, we're not -- you know, we may agree on the facts, we disagree on what they mean.

So, I really want to continue that process and be as open and as transparent as I can.

I guess those are the things.

Would you like me to address where I'd sort of like to head next year? Because that was in your e-mail, in terms of -- I did, you know, mention this new model for OIG compliance, and without getting into a whole lot -- I may get into more about this, but the work that I've done to date -- not I, but my staff has done to date -- regarding the CLA and the allegations we got from Mr. Cannon has indicated to me that the -- what I had said back in, I think, the October meeting, concern about the IPAs not being as effective

as they can be, has been confirmed.

I think it's too preliminary to get into all the details, although I think maybe it's something I need to maybe brief Frank and Lillian on in terms of stuff -- I'm not sure I should get into that depth, but I would like to brief you, because I really do need to share some things, and so, I'm really concerned that, you know, Congress has given a certain responsibility and that I'm not sure that the model that was provided is working. But that gets into then transforming the organization and having the right people do the right job.

I really do have a goal next year of trying to demonstrate to the board, as well as management, that -- that my office can add value, that I can assist you; when you have questions about things you're hearing from management, that you'll ask me to look at it and to sort of do a validation for you.

I mean, as an example where I think I could have been used, although I'm probably just as glad I didn't, because I'd still be doing the work, but with the question when there were concerns raised about the

justice gap report, to have -- talked about somebody independent looking at it, but I think that would be a role for my office.

I think I probably would have said I didn't have the -- if you had asked me, I probably would have said I probably don't have the skill set to do that, you probably need social scientists to do it, but -- and I probably would have said I can't do it, but I would -- on those kinds of things, where you have questions, concerns about anything coming from management that you're hearing in order for you to exercise your -- your responsibilities, I am willing to go look at those questions, try to get the quickest turn-around possible, without a particular agenda, just to provide you information.

And that's what I -- I'd like to -- you know, my goal in 2006 is to get further into that process.

I mentioned the communications with management, and hopefully -- I gather a little bit of the meeting we're going to have next week is to help facilitate that process.

The last thing I -- sort of as a goal -- I'd

like to do is expand our use of technology, just in terms of moving towards more of a paper-less environment.

We have way too much paper and too many files, and I think the technology -- that we can really cut back and reduce needed space, storage, and things like that.

So, that's sort of my -- as well as, you know, continue the work we're doing and try to do it faster and better.

So, that's --

CHAIRMAN BeVIER: Kirt, thank you.

Any questions from members of the committee?

(No response.)

CHAIRMAN BeVIER: Appreciate your bringing us up to date on your plans, and we will be in touch.

MR. WEST: Okay. Thank you.

CHAIRMAN BeVIER: Thanks.

M O T I O N

MR. McKAY: I move that the committee adjourn.

MR. STRICKLAND: Second.

CHAIRMAN BeVIER: In favor?

(Chorus of ayes.)

CHAIRMAN BeVIER: The meeting is adjourned.

(Whereupon, at 11:23 a.m., the meeting was adjourned.)

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CONFIDENTIAL Executive Session Transcript - Not For Sharing/Dissemination

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

CLOSED SESSION

January 28, 2006

2:14 p.m.

The Melrose Hotel
2430 Pennsylvania Avenue, N.W.
Washington, D.C.

BOARD MEMBERS PRESENT:

Frank B. Strickland, Chair
Lillian R. BeVier, Vice Chair
Thomas A. Fuentes
David Hall
Herbert S. Garten
Michael D. McKay
Thomas R. Meites
Bernice Phillips
Florentino A. Subia
Ernestine P. Watlington (by telephone)

CONFIDENTIAL Executive Session Transcript - Not For Sharing/Dissemination

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President and *ex officio* member
Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Corporate Secretary
Richard (Kirt) West, Inspector General
Laurie Tarantowicz, Assistant Inspector General and Legal Counsel
Sarah Singleton, Nominee, LSC Board of Directors

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19 Now, coming to the inspector general, the picture
20 is more complicated, for a variety of reasons.

1 First of all, he's only been in office for about,
2 what, nine months or something, so it's not quite a full
3 year.
4 CHAIRMAN STRICKLAND: No, it's actually a little
5 over a year now.
6 MS. BeVIER: It's over a year?
7 CHAIRMAN STRICKLAND: Yeah, it's --
8 MS. BeVIER: Oh, a year ago. Sorry. A little over
9 a year. Pardon me. Time flies when you're having fun.
10 Secondly, we have -- our role with respect to
11 evaluating the IG is somewhat limited by the constraints
12 imposed by the fact of his independence.
13 We are not free to second guess his investigative
14 priorities, or so we understand.
15 We are required, as we understand it -- I hope the
16 committee will feel free to jump in if I'm mischaracterizing
17 our job, but we are required to oversee and to engage in
18 general supervision of how he does his work.
19 So that's a little bit odd, in terms of kind of
20 placing some constraint on what we look at.

1 But to be honest with you, I don't think that it's
2 particularly relevant to the kinds of judgments and
3 conclusions that we reached.
4 I should say that a third reason that our task with
5 him is more complicated than with Helaine is that we got
6 wildly different assessments of him from his staff and from
7 management, and in saying that, I've probably gone too far
8 even in attribution, but they just are very different, and
9 you should know that.
10 His own staff is very pleased with him, thinks he's
11 a good delegator, thinks he has done a good job, and that
12 he's not been confrontational, and really, his work has not
13 posed a problem.
14 Management, and I have to say several members of
15 the committee, have a different view of what the inspector
16 general's work quality has been to date.
17 I think I'm being fair in saying that they believe
18 that his work is neither accurate nor fair nor -- excuse me,
19 I'm going to try to find a word here. It's neither accurate,
20 thorough, nor complete.

1 They believe, and to a certain extent, and with
2 respect to some particular instances, I think members of the
3 committee agree with them, with their belief that he has on
4 important occasions withheld information from his reports,
5 important and relevant information.
6 And three specific reports I think you need to --
7 we need to just sort of cite to illustrate this:
8 First of all, the lease report, about which we've
9 heard perhaps enough already, but I think we're all pretty
10 familiar with that report, with the differences in terms of
11 what the relevant facts were, and in terms of the conclusions
12 that were drawn from them between management, the Board, and
13 the inspector general.
14 Secondly, the report on office space; and thirdly,
15 the report on the NLADA grant.
16 The management and members of the Performance
17 Reviews Committee believes that when they have pointed out
18 differences of opinion or outright errors or different
19 interpretations of things that have happened, the inspector
20 general does not respond to them.

1 He does not say, "Yes, but." He just leaves his
2 conclusions standing; and that's a problem for people,
3 because he then doesn't quite explain what it is that he --
4 the source of his own disagreement.
5 The inspector general exhibits an attitude that he
6 has made a fetish to date of his independence, and is fond of
7 saying, "I can't do that because I'm independent; I can't do
8 that because of the IG Act," without making an effort to be
9 cooperative.
10 And this has been -- one of the things that's
11 troublesome as far as the members of the committee is that
12 management has spent a lot of time, an inordinate amount of
13 time, dealing with the inspector general and his reports.
14 This would not have been a problem if, in fact,
15 what he had been doing was to uncover major instances, or
16 even minor instances of fraud, waste, and abuse, but the fact
17 is that he hasn't.
18 And in part, the reason that management has had to
19 spend so much time responding and thinking about how to
20 present their side is that the inspector general will often

1 in his reports include rather inflammatory language of
2 accusation, and talk about "conflicts of interest" and
3 "breach of fiduciary responsibility," and "If this were a
4 criminal statute, they would probably be subject to
5 indictment," things of that nature that are very challenging
6 to the integrity of people whose good faith is somewhat hard
7 to credit.
8 So management has had to respond in order to
9 counter those insinuations, and also has had to respond on
10 account of their disagreements on the basis of facts.
11 And those are issues that, in particular the ones
12 that are presented to Congress in these reports, written the
13 way they are written, that it's the view of management and I
14 think it's fair to say it's the view of several members of
15 the Performance Reviews Committee that it has not served LSC
16 well; in fact, in two respects, it's done a disservice to
17 LSC, because it's put us in a defensive posture with respect
18 to Congress at a time when the fact is that if you look at
19 the Board's response to the IG's semi-annual report and you
20 take a look at the initiatives that have been started, nm the

1 strategic moves that have been made by LSC, and all the
2 positive things that the Corporation has done in the last six
3 months to a year, it's not a time for us to be defending
4 ourselves in Congress.
5 We should be celebrating ourselves and we should be
6 proud of our accomplishments, and anybody working with the
7 Corporation should be.
8 So that to have that undermined by allegations that
9 are deemed -- that we regard as unwarranted, at the very
10 least, presented in an inflammatory way, in addition, seems
11 to be not in the Corporation's best interest.
12 Moreover, the distraction of time from management's
13 efforts to do their substantive work has not been a useful
14 exercise.
15 So what does the Performance Reviews Committee want
16 to do about this, and where do we plan to go?
17 I think at present, what we're all hopeful of is
18 that the IG will begin to understand what the sources of our
19 dissatisfaction are, and why it is that we are unhappy with
20 him, and what we regard as the necessity for him to work more

1 carefully with and more cooperatively with management and
2 with the Board.
3 We are -- in candor, we have -- we are sufficiently
4 distressed at his performance to date that what we plan to do
5 is reduce our -- the sources of our hopes for his
6 improvement, the sources of our dissatisfaction to writing,
7 so that he will have a very clear idea of what it is that we
8 are bothered about.
9 We plan to have outside counsel review that with an
10 eye to the possibility, and I stress that, I really stress
11 that we are only sort of thinking about the possible worst-
12 case scenario, which would be possibly deciding that we had
13 to let Kirt go, and we reduce that to writing, give it to
14 counsel.
15 After counsel has looked at it to make sure that
16 what we've done is careful enough, and accurately enough and
17 specifically enough expresses our ideas about what we think
18 has bothered us in the past, what we think ought to change,
19 then Mike and I will talk to Kirt and take that writing to
20 him and say, "Look, we have these concerns and we hope that

1 they can be addressed."

2 And, you know, the hope is that he will hear them,

3 he will understand the letter, he will help us to understand

4 his positions a little bit more clearly, if that is possible,

5 and that he will respond with a more cooperative attitude.

6 So we are hopeful that the situation can be

7 resolved and that he can stay with us. So --

8 CHAIRMAN STRICKLAND: May I add a comment on the

9 subject of thoroughness in his reports, or the lack of it?

10 One, you mentioned the NLADA report. Now,

11 fortunately for us, that was an internal report. It was just

12 delivered to the Board, as I recall.

13 But the difficulty I had with that report is this,

14 that the Office of Legal Affairs, Vic's office, had issued an

15 opinion of counsel relative to the subject, which was not

16 mentioned in the IG's report.

17 And so I inquired about that, and he said, "Because

18 I didn't think it was relevant."

19 And I said, "Well, look, Kirt, here's my view on

20 it. What you need to do then is mention the existence of the

1 opinion of the general counsel and tell why you think it is
2 not relevant, as opposed to not including it and making any
3 reference to it."
4 I said, "I'm not going to argue with you about the
5 relevance of it, but I am going to say to you that I think it
6 is a mistake on your part in the conduct of your office just
7 to sort of blow off the existence of an opinion of counsel
8 that at least appeared to me to be on point."
9 And he could disagree as to whether it's on point,
10 but it simply was not mentioned in his report, and my point
11 that I made directed to him at the time was I thought it
12 should have been, and then he could have commented on the
13 lack of relevance.
14 I mean, it's somewhat analogous to the discussion
15 we had about excluding the Bank of America appraisal on
16 another occasion because he didn't think it was relevant.
17 And the point then was the same as now: "Okay, if
18 you don't think it's relevant, that's one thing, but to fail
19 to include it means your report is not as thorough as it
20 should be, and it could have the effect of, for example,

1 painting the Corporation in a bad light, or for the reader of
2 the report not to be fully informed on the subject."
3 So that's an example of the most recent instance
4 that I can recall, that is, on this NLADA report.
5 His final conclusion was that the Corporation had
6 improved its arrangement whereby it makes a contribution to
7 the ABA in support of the Equal Justice Conference, and
8 previously that contribution had been made to NLADA for the
9 support of the same conference, and it's now pursuant to a
10 contract that he has found to be an appropriate contract.
11 So the end game is that he doesn't think it's any
12 longer a problem, but between those points was this exclusion
13 of this report that I just mentioned.
14 So I don't want to beat that anymore, but that's a
15 recent example, in my view, of lack of thoroughness.
16 MS. BeVIER: Well, in addition to that, he sent,
17 after getting that from management, he -- in addition to
18 that, after getting the opinion from management and other
19 documents having to do with that contribution, Kirt did not
20 communicate with management at all, and the next thing they

1 knew was he had sent his report, which had some negative
2 implications about what had happened before it had been
3 corrected to his satisfaction, he sent that to the Board,
4 without alerting --
5 MS. WATLINGTON: Frank, this is Ernestine.
6 CHAIRMAN STRICKLAND: Yes.
7 MS. WATLINGTON: It's after 3:00, so I'm going to
8 cut off.
9 However, whatever I can do, if I can be of any
10 help, just let me know. I have no problem of helping in any
11 way you want me to --
12 CHAIRMAN STRICKLAND: Well, we thank you so much
13 for participating today, and we understand that you may need
14 to --
15 MS. WATLINGTON: I understand.
16 CHAIRMAN STRICKLAND: -- hang up, and --
17 MS. WATLINGTON: And I'm going to, you know, close
18 up, and I thank you and Helaine for everything. Okay?
19 CHAIRMAN STRICKLAND: Yes. Thank you very much.
20 MS. WATLINGTON: All right. Goodbye.

1 CHAIRMAN STRICKLAND: 'Bye.

2 Go ahead.

3 MS. BeVIER: I forget where I was.

4 CHAIRMAN STRICKLAND: Well, it was the delivery of

5 the --

6 MS. BeVIER: Well, the delivery of the report to

7 the Board without a heads-up to management and so forth.

8 You know, that's not illegal. That's not immoral.

9 It's not something that is likely to encourage good will

10 between management and the IG, to encourage efforts to be

11 cooperative and work together.

12 So it's the kind of thing that tends to put

13 people's back up, when you seem to be sandbagging them, and

14 there's no reason to have done that in the view of several of

15 us on the committee.

16 So with that, I've told you what I think we're

17 planning to do, and I'll leave it to questions.

18 MR. HALL: I think just from my own observation, I

19 tend to concur with the analysis.

20 My concern is, is the committee comfortable that,

1 in proceeding the way you are, and I'm glad that you will get
2 outside counsel to look at the, I guess, corrective action
3 that you're suggesting, that this would be done in a way
4 where it's not interpreted on his part as us invading this
5 independence shield that he continues to raise.
6 I guess my point is, do you feel confident, based
7 on either how this Board has dealt with other IGs, or that
8 giving this type of detailed, you know, corrective action is
9 consistent with our authority, despite this cloak of
10 independence that the IG is under?
11 MS. BeVIER: Well, that's a good question, and it's
12 one that I think we will talk to counsel about, because we
13 did not address that explicitly.
14 We thought long and hard, and talked a lot about
15 what to do next, given that we have some very specific issues
16 that we think need to be addressed, given the absolute
17 requirement for us to be fair to him, to let him know
18 precisely what our concerns are, to give him, you know, as
19 many -- another chance, at the very least, to mend this
20 relationship.

1 We think there's been some movement in the right
2 direction with respect to this relationship with the Board,
3 although I have to say that this NLADA report came out in
4 December, and so after the Board meetings at which we had
5 asked him -- you know, expressed our concerns about that.
6 So you're quite right. You should know, however,
7 that Kirt's position initially was, "You don't have any right
8 to review me at all."
9 MR. HALL: Yeah, I remember that.
10 MS. BeVIER: So we had to get counsel to persuade
11 him that we did. And so --
12 CHAIRMAN STRICKLAND: One other point, in response
13 to your question, David.
14 Originally, when we started down the road of doing
15 the review, we were working off some criteria that had been
16 used by the Board in reviewing previous IGs.
17 We submitted, the committee submitted those to
18 Kirt, and he responded by saying, "Let me take a shot at
19 setting up the performance criteria for me."
20 So we got back from him his version, and we used

1 that, and discarded what we had been using before.
2 So we're using -- and I think he based his own criteria on
3 things he gleaned from the IG world. I don't know what his
4 source documents were. But we accepted that and we're
5 operating within those criteria.
6 And then further, we asked him to self-evaluate
7 under those criteria, so --
8 MS. BeVIER: And that's what you have.
9 CHAIRMAN STRICKLAND: That was it. I just wanted
10 to add that to the mix.
11 MR. FUENTES: Mr. Chairman, I would seek a point of
12 personal privilege here, just because of flight and time, and
13 I think that the report given by the committee was very well
14 digested by virtually everybody here at the time.
15 I think we have an understanding of the task, but I
16 don't envy you having to come back here to the city of
17 Washington this week, and I think we could go on with all
18 kinds of comment and debate, and I mean, I think point by
19 point there's oodles of things that could be discussed, but I
20 don't think it's going to take us anywhere. I think you

1 understand your task.

2 I felt very good about the spirit and tone of Dick

3 and Kirt earlier, and I don't think we should miss that.

4 I think both of them are at a point of seeking not

5 to exacerbate the situation, and I just would pray and hope

6 that you go there with a genuine intent of achieving a

7 resolution that is positive.

8 And I trust both of you, and that's why I voted for

9 both of you to lead this body again.

10 And then I would just say one other thing, and that

11 is that the name of our magazine is "Equal Justice," and by

12 golly, that's important to me, that these folks be treated

13 equally.

14 The report began with, "Well, we gave Helaine the

15 first year to get her act together," quote unquote, and the

16 inspector general, we're at his first year; so that, to me,

17 mandates equal treatment for equal justice.

18 So I say God bless you, go do your task, and we

19 ought to adjourn this meeting.

20 MS. BeVIER: I agree. That's a very fair point,

1 Tom. Just one second.

2 I should suggest, and want you to know that on

3 Friday, we are not planning to do this, the detailed

4 presentation, because we're not going to be ready for that.

5 That's -- we need to really think about that letter very

6 carefully.

7 And I wouldn't be surprised if we decided to wait

8 even until the next meeting to vet the draft and to make sure

9 that we are all on the same page. So there's no particular

10 hurry there.

11 On Friday, I think we will express some concerns,

12 for example, in particular, having to do with the cooperation

13 and with the effort to work together for the good of LSC.

14 But your point is well taken, and we'll certainly

15 take it under advisement.

16 CHAIRMAN STRICKLAND: Most definitely.

17 And I met privately with Helaine and Kirt before we

18 got started on the closed session, and that was the subject

19 of the discussion, was we were trying to come to some

20 agreement on the production of documents, and things of that

1 sort.

2 So they are already thinking in a positive way, so

3 we'll think the same way as we go into this meeting.

4 M O T I O N

5 MR. FUENTES: I move to adjourn.

6 CHAIRMAN STRICKLAND: Okay. Any objection?

7 We're adjourned.

8 (Whereupon, at 3:16 p.m., the meeting was

9 adjourned.)

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