

**LEGAL SERVICES CORPORATION**

**OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE**

**OPEN SESSION**

**February 21, 1993**

**1:50 p.m.**

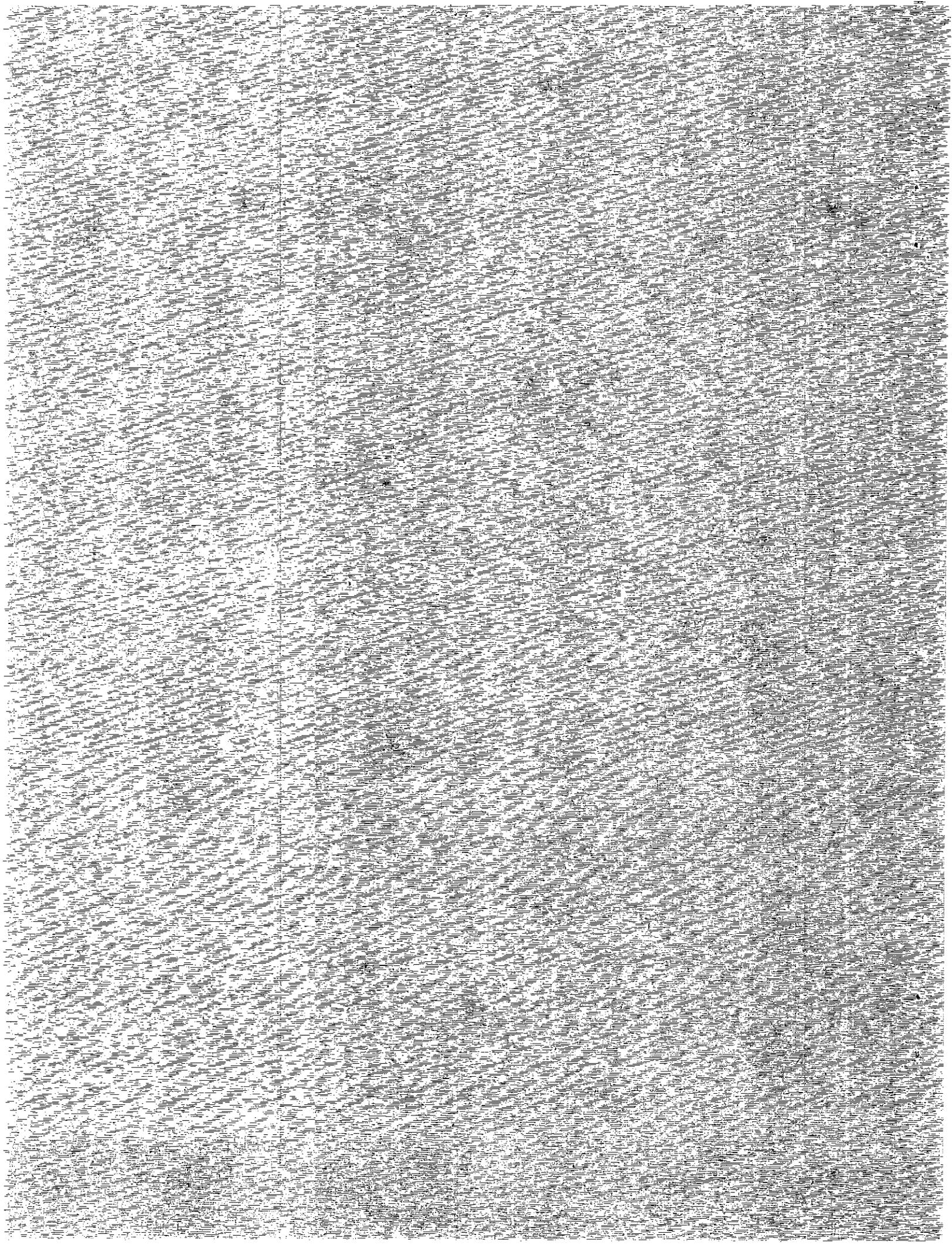
**The Doubletree Suites Hotel  
320 North 44th Street  
BALLROOM SALONS I AND II  
Phoenix, Arizona 85008**

**Diversified Reporting Services, Inc.**

**918 16TH STREET, N.W. SUITE 803**

**WASHINGTON, D.C. 20006**

**(202) 296-2929**



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**COMMITTEE MEMBERS PRESENT:**

William Kirk, Chairman  
J. Blakeley Hall  
Penny L. Pullen (via telephone)  
Basile J. Uddo  
George Wittgraf

**BOARD MEMBERS PRESENT:**

Howard H. Dana, Jr.  
Jo Betts Love  
Norman D. Shumway

**STAFF PRESENT:**

John P. O'Hara, President  
Emilia DiSanto, Acting Vice President  
Patricia D. Batie, Corporation Secretary  
Kenneth Boehm, Counsel to the Board  
Victor Fortuno, General Counsel  
Suzanne Glasow, Office of the General Counsel  
Edouard Quatrevaux, Inspector General  
David L. Richardson, Treasurer and Comptroller

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

1  
2 CHAIRMAN KIRK: I want to call to order the meeting  
3 of the Inspector General Oversight Committee. While they're  
4 trying to get Ms. Pullen on the phone, I'll call this meeting  
5 to order.

6 The agenda has only one item of any substance on  
7 it. I presume for the sake of tradition we will approve the  
8 agenda. Do I hear a motion to approve the agenda?

## M O T I O N

9  
10 MR. WITTGRAF: So moved.

11 CHAIRMAN KIRK: It's been moved by Chairman  
12 Wittgraf. Seconded --

13 MR. HALL: Second.

14 CHAIRMAN KIRK: -- by Blakeley Hall. All in favor  
15 say aye.

16 (Chorus of ayes.)

17 CHAIRMAN KIRK: Opposed?

18 (No response.)

19 CHAIRMAN KIRK: The agenda is approved. Do I hear  
20 a motion to the approve the minutes of the meeting of  
21 December 6, 1992?

## M O T I O N

22  
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1 MR. HALL: So moved.

2 CHAIRMAN KIRK: Mr. Hall moves to approve the  
3 minutes. Chairman Wittgraf seconds?

4 MR. WITTGRAF: Yes, sir.

5 CHAIRMAN KIRK: All in favor of approving the  
6 minutes of December 6, 1992, say aye.

7 (Chorus of ayes.)

8 CHAIRMAN KIRK: Opposed?

9 (No response.)

10 CHAIRMAN KIRK: The sole item on the agenda is  
11 consideration of whether to formally adopt and, if so, to  
12 adopt a corporate position as to the Corporation's program  
13 operating responsibilities, as referred to the in the  
14 Inspector General Act. I don't know whether to call on  
15 Mr. Dana to comment on this, or Vic Fortuno.

16 Vic, why don't you come on forward.

17 Mr. Dana, would you like to comment on this?

18 MR. DANA: Not at this time, unless you would like.

19 CHAIRMAN KIRK: The Chair will recognize  
20 Mr. Fortuno.

21 MR. FORTUNO: Good afternoon, ladies and gentlemen.  
22 I guess the item on the agenda now -- and I guess it actually

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1 should have read a little differently, and that is whether  
2 this committee should adopt a recommendation to make to the  
3 Board as to a corporate position on Program Operating  
4 Responsibilities.

5 We were asked -- I guess it came up when this Board  
6 was wrestling with the annual audit for the Corporation,  
7 itself. The question arose as to what functions were  
8 properly transferable to the IG. There was some discussion  
9 about that at that point. We were asked to look into it and  
10 prepare a resolution. We have prepared a resolution. That  
11 resolution has been made available to the Board. Maybe I  
12 could just give you a little bit of basic statutory framework  
13 as a background.

14 The IG Act of 1978, as amended, imposes on the head  
15 of each designated federal entity responsibility for  
16 transferring to the Office of Inspector General such of its  
17 units or components as it determines are properly related to  
18 the functions of the Office of Inspector General and would,  
19 if so transferred, further the purposes of the Inspector  
20 General Act. However, only components that do not carry  
21 program operating responsibilities may be transferred.

22 There was some discussion about program operating

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1 responsibilities and what that meant and whether this Board  
2 had to make a determination as to which were the  
3 Corporation's program operating responsibilities. And that,  
4 I gather, is what you will be discussing today, what your  
5 views on that are and what you would like to do.

6           What we did was, it appeared to us that while the  
7 functions of other offices and components of the  
8 Corporation -- that is, grant-making functions,  
9 administrative functions -- are clearly unrelated to the  
10 functions of the Office of Inspector General, the functions  
11 of the Office of Monitoring, Audit, and Compliance, in  
12 carrying out the Corporation's statutory obligation to  
13 monitor and evaluate recipients of LSC grant funds, is the  
14 one office in the Corporation, or the one component, that may  
15 be viewed as in some way related to the functions of the OIG,  
16 since its activities may be considered to be in the nature of  
17 audits or investigations.

18           So rather than go through each component of the  
19 Corporation, we thought it easiest to just focus on the one  
20 that would seem to be most related to the functions of the  
21 Office of Inspector General to see if, in fact, that was a  
22 function that needed to be transferred or not. And if the

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1 component performs program operating responsibilities, then  
2 it doesn't have to be transferred.

3 The resolution says that you find that it performs  
4 program operating responsibilities. That is a determination  
5 for the Board of Directors to make. And that, I gather, is  
6 what you'll be discussing today.

7 CHAIRMAN KIRK: In refreshing my recollection, I  
8 believe that the appropriate act provides that -- if you  
9 will, tell me how the IG Act is set up. Remind me again of  
10 how it transfers to him functions but not program operating  
11 responsibilities.

12 MR. FORTUNO: Well, the IG Act -- and it may be  
13 easiest just to quote from the Act itself -- says that "The  
14 head of the designated federal entity shall transfer to the  
15 Office of Inspector General the offices, units, or other  
16 components, and the functions, powers, and duties thereof,  
17 that the head determines are properly related to the  
18 functions of the Office of Inspector General and would, if so  
19 transferred, further the purposes of this section. There  
20 shall not be transferred to such office any program operating  
21 responsibilities."

22 Now, originally -- again by way of background --

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1 with the passage of the '88 amendments and the making of the  
2 Corporation, designating the Corporation as a designated  
3 federal entity falling within the IG Act and requiring the  
4 establishment at the Corporation of an Office of Inspector  
5 General, that was followed by the publication by OMB of a  
6 list in the Federal Register designating the heads of each of  
7 designated federal entities.

8           Initially -- and I guess it was back in 1989,  
9 November 9th of 1989, the OMB designated the president of the  
10 Corporation as the head of the entity for IG Act purposes.  
11 So the responsibility of -- number one, establishing, because  
12 up until that time, there had been no IG establishment at the  
13 Corporation. So the responsibility for establishing the IG  
14 and for transferring appropriate components to the IG fell on  
15 the president of the Corporation.

16           The year later, OMB published a new listing of  
17 heads of the designated federal entities, and the designation  
18 was changed from president to board of directors. So that as  
19 of August 21, 1990, I believe it was, the Board of Directors  
20 has been considered the head of the agency for IG Act  
21 purposes. At that point, there was already an IG's office in  
22 existence, but the fact remains that it's for the Board of

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1 Directors to determine what offices, if any, need to be  
2 transferred.

3 I don't know what the IG's position on it is. He's  
4 here and could comment on it. I don't know that the IG is  
5 asking that MAC be transferred to him. But I do know that we  
6 were asked to prepare a resolution which requires this  
7 governing body to determine whether or not MAC satisfies the  
8 requirements for transfer, and whether it performs program  
9 operating responsibilities.

10 If it satisfies the two requirements and performs  
11 program operating responsibilities, it cannot be transferred  
12 to the IG. If, on the other hand, it doesn't perform program  
13 operating responsibilities but does satisfy the two  
14 requirements -- that is, it's properly related to the  
15 functions of the OIG, and it would, if transferred, further  
16 the purposes of the IG Act, specifically Section 8E of the IG  
17 Act -- then that would have to be transferred over to the IG.

18 We're not necessarily recommending that you take  
19 one position or another. I'm here to answer questions. And  
20 we have, on request, provided a resolution that you can look  
21 to and work with and either adopt as is, in some revised  
22 form, or reject altogether.

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1           CHAIRMAN KIRK: Board member Howard Dana made that  
2 request; is that right?

3           MR. FORTUNO: He had asked us for that when the  
4 notion of program operating responsibilities came up back in  
5 discussions about the Corporation's annual audit.

6           CHAIRMAN KIRK: May I go through a few questions  
7 with you?

8           MR. FORTUNO: Certainly.

9           CHAIRMAN KIRK: My recollection is that the IG Act  
10 states that there should be a positive transfer. It doesn't  
11 say there shall not be -- I mean, that you should issue a  
12 resolution determining that this is not a program operating  
13 responsibility. Is that correct?

14           MR. FORTUNO: The Act does use the term, "shall  
15 transfer," when talking about components of the Corporation  
16 that satisfy those two requirements. But it does have that  
17 clause at the end -- actually, the sentence at the end --  
18 that says that, "However, program operating responsibilities  
19 may not be transferred."

20           The Act does not require a resolution in this  
21 forum, if that's what you're asking. This resolution itself  
22 is not expressly required by the Act, no.

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1           CHAIRMAN KIRK: Could I just add -- finish my  
2 little --

3           MR. DANA: Yes. I would just like to indicate that  
4 that is not my understanding.

5           CHAIRMAN KIRK: My understanding is like  
6 Mr. Fortuno's, so maybe you ought to explain why that's not  
7 your understanding.

8           MR. DANA: That's why I thought I should interrupt  
9 at this moment.

10           I think that I am correct, Victor -- and if I'm in  
11 error, let me know -- that when this Act was passed, the head  
12 of this designated federal entity was supposed to have,  
13 within 90 days, delineated what the head regarded were his  
14 program operating responsibilities. This Corporation never  
15 did that, and that is why we have -- there has been some  
16 fuzziness about what is or what is not a program operating  
17 responsibility.

18           I don't have the Act with me, but I think one of  
19 the memos that your office has generated has so -- if not the  
20 most recent one that is here, but I think that is an accurate  
21 statement, that it was the responsibility that our head, not  
22 us, because we weren't the head at the time, but the head was

1 supposed to have done. He didn't do it, and the IG has  
2 subsequently expressed the view that, I believe, having not  
3 done it within the 90 days, we have no obligation to do it.

4 Is that correct, Ed?

5 MR. QUATREVAUX: Yes, Mr. Dana. I think the  
6 correct period is 180 days, April of 1989. I'm of the view  
7 that it is unnecessary, because that statement, the paragraph  
8 that Mr. Fortuno read, begins with the sentence that says,  
9 "There shall be established within 180 days," and it can be  
10 read coincident with the establishment that this transfer  
11 occur.

12 That was November of 1989 or April of '89, when  
13 that 180 was up.

14 MR. DANA: You had a series of questions, Mr.  
15 Chairman. I just thought it important to note that at an  
16 appropriate time, some head of this entity had the duty to  
17 make this designation, and it wasn't made. I think there  
18 is -- for reasons that we can get into later -- I think there  
19 are some reasons why it might be helpful in the future to  
20 have such a finding.

21 CHAIRMAN KIRK: Can somebody tell me whether  
22 Mr. Dana's representation is correct, that it was -- my

1 understanding of what you just said, Mr. Quatrevaux, was that  
2 this was only in line with the actual creation of the IG.

3 MR. QUATREVAUX: That's my interpretation.

4 CHAIRMAN KIRK: Well, let me ask Mr. Fortunio. Is  
5 it your opinion that we could unilaterally decide whether  
6 something is a program operating responsibility and just make  
7 it that, or are we bound by, in fact, whether it is a program  
8 operating responsibility in accordance with the Congressional  
9 creation of our Board?

10 MR. FORTUNO: Unfortunately, nowhere is the term  
11 "program operating responsibility" defined. We are given  
12 some guidance. We were given guidance in the legislative  
13 history. More recently, we have been given guidance by some  
14 of the courts that have decided and handed down opinions on  
15 this, on what a program operating responsibility is. But  
16 it's not defined for us anywhere.

17 And the head of the entity -- and again, initially,  
18 it was the president of the Corporation, because the OMB  
19 designation was that he was the head of the entity and  
20 remained such, for IG Act purposes, for a period of a year or  
21 so. So it was for him, as head of the entity, to establish  
22 the office within 180 days.

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1           My recollection is that the office didn't actually  
2 get established during that time frame, that it was somewhere  
3 outside the 180-day time frame, but in establishing the  
4 office, funding it, providing it with the resources that it  
5 needs, transferring to it those activities, those components  
6 that are properly part of the OIG establishment.

7           And I think that the IG is correct. One way to  
8 read that -- I don't know whether it's the only way to read  
9 it, but one way to read it would be that you have 180 days  
10 within which to establish an OIG and to, as part of that  
11 establishment, transfer into it all of the components that  
12 satisfy those two requirements and that don't perform program  
13 operating responsibilities, and that if you don't do it  
14 within the 180 days, then you don't do it afterwards.

15           I'm not sure that you're precluded from doing it  
16 now. I don't know that you're required at this point in time  
17 to formally determine either what functions to transfer -- I  
18 think that they should have been transferred, and I think  
19 that if it becomes known to you that there is a component of  
20 the Corporation that should have been transferred, even  
21 though it's outside the 180 days, I think that you might want  
22 to look into, at that point, transferring it, even though

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1 it's past the initial 180 days.

2 Unless there's some reason to think that there are  
3 components of the Corporation that would fall within the two  
4 conditions that I outlined initially, and you have to think  
5 about whether they should be transferred at this time, I  
6 don't know that there's a reason to do it. I think the only  
7 operation, the only component of the Corporation that would  
8 arguably fall within those two parameters that we outlined  
9 before, would be the Office of Monitoring, Audit, and  
10 Compliance.

11 And I don't know that there's anything that would  
12 preclude you from considering that now and reflecting on that  
13 point. I don't know that you're required to do it, but I  
14 also don't know that you're prohibited from doing it.

15 CHAIRMAN KIRK: Apparently Penny Pullen has joined  
16 us. Welcome, Ms. Pullen.

17 MS. PULLEN: Hello, Mr. Chairman.

18 CHAIRMAN KIRK: We are on our single agenda item,  
19 and I am asking some questions of our general counsel right  
20 now.

21 Is it your opinion that we could, just by fiat,  
22 decide that monitoring, audit, and compliance is not a

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1 program operating responsibility and transfer that to the  
2 inspector general?

3 MR. FORTUNO: I think the determination in the  
4 first instance of whether something is a program operating  
5 responsibility is left to the head of the entity. I think  
6 that if this Board was to decide that it wanted to flip a  
7 coin and that heads would mean that it was program operating  
8 responsibility and tails meant that it wasn't, and on that  
9 basis made a determination that something was a program  
10 operating responsibility, and if that were judicially  
11 challenged, I suspect that it would be difficult to sustain.

12 I think, however, that if the Board engaged in a  
13 careful, reasoned, deliberative process wherein it considered  
14 what we know about program operating responsibilities, what  
15 the legislative history -- what guidance it offers us, what  
16 the opinions that have been handed down to date, what light  
17 they shed on it, and was to make a reasoned determination  
18 based on, "This is what we understand program operating  
19 responsibilities to be. Let's look at what the Office of  
20 Monitoring, Audit, and Compliance does. They're required  
21 under 1006 of the Act, I believe it is, to engage in  
22 monitoring and review, and let's make sure we understand what

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1 they do, and then let's make an informed decision or  
2 determination as to whether what they do, in fact, falls  
3 within what we understand to be program operating  
4 responsibilities," I suspect that if it's latter, that  
5 better, reasoned, well informed decision, that -- as I said,  
6 it's you who is charged with making that.

7 But I think that if you make an entirely frivolous  
8 decision based on flipping coin, that it wouldn't get much  
9 deference, and, in fact, if challenged, I think it would be  
10 difficult to sustain.

11 I think the decision -- my answer is, the decision  
12 is initially yours, yes. But I don't know that that means  
13 that you can be frivolous about it. I think it's discretion  
14 which is yours but can't be abused, and if it is abused, it  
15 can be challenged.

16 CHAIRMAN KIRK: I'm sorry to monopolize you. I'm  
17 just trying to get my questions through here. If we -- I  
18 mean, the initial directive was for us to transfer,  
19 positively transfer, not to designate negatively program  
20 operating responsibilities.

21 MR. FORTUNO: That's right.

22 CHAIRMAN KIRK: And we have not done that.

1 MR. FORTUNO: Transferred?

2 CHAIRMAN KIRK: Transferred positively the powers  
3 by resolution, or what have you.

4 MR. FORTUNO: This Board, no.

5 CHAIRMAN KIRK: Or by the head.

6 MR. FORTUNO: My understanding is that management  
7 at the time, that is the president management corporation,  
8 and the inspector general who first filled that office,  
9 Mr. Wilkinson, were engaged in discussions about what the  
10 office -- what, if anything, would be transferred to the  
11 office. And I'm not certain as to the specifics, but  
12 nothing, no component, no existing component of the  
13 Corporation was transferred.

14 I know that there were discussions between,  
15 principally, the Office of Monitoring, Audit, and Compliance,  
16 and the inspector general. There were reviews of specific  
17 matters that were being handled by MAC. There were questions  
18 about whether they would be retained by MAC or sent to the  
19 OIG. There was some uncertainty at the outset as to how all  
20 of this would work, but no existing component of the  
21 Corporation was at any time transferred to the OIG, as far as  
22 I know.

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1 CHAIRMAN KIRK: The answer, it was not done.

2 MR. FORTUNO: But it could be that it was not done  
3 because the head of the agency determined that there was no  
4 component which satisfied these requirements. You have to  
5 transfer certain components if they meet these requirements.  
6 If none exist, then there's nothing to transfer. So that the  
7 fact if nothing was transferred doesn't necessarily mean that  
8 that was wrong, that there was an oversight.

9 CHAIRMAN KIRK: Mr. Quatrevaux, do you want to  
10 comment on that?

11 MR. QUATREVAUX: Well, not on the history, because  
12 I really don't have a feel for that. In my view, the only  
13 element of the Corporation's operations that could even --  
14 that might be considered for such a transfer would be -- and  
15 not all of the functions performed by MAC, but solely that  
16 portion that deals with the annual financial statement audits  
17 of grantees.

18 Now, I've taken the position that the arrangement  
19 that we have now, the status quo, is fine, as long as that  
20 work, that audit work being done meets applicable standards.  
21 Now, I have no problem with that. I don't want to take over  
22 MAC or audits of the grantees and the responsibility for the

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1 administration thereof. I believe that we can operate in an  
2 oversight capacity.

3 Nothing that I'm saying, though, is meant to  
4 disagree with your skepticism regarding this resolution. My  
5 problem with the resolution is the expressed intent, which I  
6 believe was described as to circumscribe the OIG or draw  
7 boundaries around them, language of that type.

8 That is the problem for me, because our charter,  
9 our statutory charter goes as far as the federal dollar goes,  
10 and we will continue, I should say, to conduct audits or  
11 investigations or inquiries, or whatever form it might take,  
12 throughout the Corporation, throughout LSC and LSC-financed  
13 operations, as the situation requires. We have to do this.

14 CHAIRMAN KIRK: Are there questions from the  
15 members of the committee?

16 Mr. Hall.

17 MR. HALL: Ed, can you give me an example of how  
18 this resolution would draw a boundary around the OIG?

19 MR. QUATREVAUX: Well, I don't know precisely.

20 MR. HALL: Do you think it limits the OIG?

21 MR. QUATREVAUX: I think it could be interpreted  
22 that way, as currently worded. I think --

1 CHAIRMAN KIRK: Excuse me. Ms. Pullen? Ms.  
2 Pullen?

3 MS. PULLEN: Mr. Chairman, we're having difficulty  
4 with this. I don't know whether it's related to people not  
5 speaking directly into the microphone or whether it's  
6 technical problems. I heard Mr. Fortuno very clearly and  
7 essentially without any break in his transmission, and ever  
8 since then, occasionally I hear someone, but it comes in  
9 waves and goes out very quickly.

10 CHAIRMAN KIRK: We're going to ask Mr. Quatrevaux  
11 to have a love affair with the microphone and stand very,  
12 very close to it, and I think you'll hear him from now on.

13 MS. PULLEN: That's much better, Mr. Chairman. I  
14 appreciate your kissing the mike.

15 MR. QUATREVAUX: Mr. Chairman, you asked for an  
16 example, and I don't have a specific example. I believe that  
17 -- the general counsel made reference to certain case law,  
18 and I believe he's referring to the Burlington Northern case,  
19 which involves the questioning of a subpoena authority of the  
20 IG of the Railroad Retirement Board in conducting an audit of  
21 railroads. And I believe that this resolution possibly is  
22 intended to create the same sort of effect. The court in

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1 that case refused to uphold the IG's subpoena on grounds that  
2 the IG was not performing an oversight function, but  
3 performing a basic function of the Railroad Retirement Board.

4 There are some -- that case in on appeal,  
5 incidentally, but the most telling difference between that  
6 case and our own here is that there were no federal funds  
7 involved in the Railroad Retirement Board, Burlington  
8 Northern dispute. Of course, in this case, the funds that  
9 this Corporation dispense remains federal funds until they  
10 are dispersed from the grantees.

11 CHAIRMAN KIRK: Thank you.

12 Further questions from members of the committee?

13 (No response.)

14 CHAIRMAN KIRK: Other members of the Board,  
15 questions or comments.

16 Mr. Dana.

17 MR. DANA: Bud, thank you.

18 CHAIRMAN KIRK: Would you speak into the microphone  
19 so Ms. Pullen can hear you?

20 MR. DANA: Yes. Ms. Pullen, can you hear me?

21 (No response.)

22 CHAIRMAN KIRK: Penny, can you hear Howard?

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1 MS. PULLEN: No, I do not.

2 MR. DANA: Can you hear me now?

3 MS. PULLEN: Yes.

4 MR. DANA: I may be the instigator, if that's the  
5 right word, of this issue and this resolution, and I would  
6 like to give the committee a little background as to why I  
7 think it would be healthy for the Corporation to do this and  
8 to pass this resolution in this or some modified form.

9 I've only known two IGs. Both of them have  
10 asserted at various times a vision of their primary  
11 responsibility that I believe was larger than needed to be.  
12 It is -- and I think it is -- and I think one of the reasons  
13 for that is that we, as a Board, or as our -- in our  
14 predecessor, when the president was the head, never indicated  
15 what the core responsibilities of this Corporation were, or  
16 the program operating responsibilities of the Corporation, so  
17 as to give the IG an area where they -- so as to define those  
18 areas where the IG is not supreme.

19 There is -- and we've had, over the last two or  
20 three years that I've been on the Board, several flare-ups  
21 over that issue. I think it is healthy and I think that one  
22 of the primary functions of this Corporation is to make

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1 grants and to make sure that our grantees live within the law  
2 and regulations. And that, of necessity, requires that we  
3 look and determine that they are spending their money  
4 properly.

5 And I think that is a core function of the  
6 Corporation, and it has been assigned heretofore to MAC. And  
7 I think that there is absolutely nothing to prevent the IG  
8 from monitoring or auditing or investigating this Corporation  
9 or any of our grantees as -- because he has that  
10 responsibility.

11 What he doesn't have, in my view, is the exclusive  
12 responsibility to audit, monitor, and supervise that. If he  
13 does it on a spasmodic, oversight, or an as-needed basis, and  
14 he alone makes that judgement. We have almost no control  
15 over the IG, except to indicate that we think that he  
16 should -- there are certain functions which belong to MAC or  
17 to this Corporation that the Corporation will perform on a  
18 primary, ongoing basis, and he should make sure that we do  
19 that correctly, he should monitor and make sure that  
20 everything is on the up-and-up.

21 He is free to go off and duplicate and supplement  
22 and -- everything that the IG can do. There is no attempt to

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1 restrict the IG in this, and there shouldn't be -- if any of  
2 you vote for this, you should not be voting for it as a way  
3 of preventing the IG from doing anything the IG wants to do,  
4 except occupy a field exclusively and keep the rest of the  
5 Corporation out.

6 We've been talking about -- and the statute talks  
7 in terms of the transfer of "offices, units, and other  
8 components." It then goes on to say, originally, "and the  
9 functions, powers, and duties thereof," but that is not the  
10 statute that governs the Legal Services Corporation.

11 In the new, the designated federal entity, the  
12 amended version, it is disjunctive. It says, "the offices,  
13 units, or other components, or the functions, powers, and  
14 duties thereof." So that it is possible to argue that you  
15 don't have to transfer an office, you just take a function  
16 away from a particular office.

17 And I think it would be very helpful to have a  
18 statement of principle from this Board to indicate that MAC,  
19 as presently constituted, is doing what we want it to do, and  
20 we want that to continue. Otherwise, the IG is perfectly  
21 free, as he candidly indicated, to change his mind and grab  
22 additional responsibilities away from MAC.

1 I think that function ought to be a policy  
2 determination made by this Board, not by our IG, and that's  
3 the reason that I hope the committee will support this  
4 resolution, or some modification thereof, and that the Board  
5 will, too.

6 CHAIRMAN KIRK: Before I recognize Mr. Uddo, I  
7 would like to comment that I think that precisely what you  
8 say you don't want to happen is what this resolution says  
9 will happen.

10 You say that you want to make sure that the IG  
11 still has the right to duplicate and supplement what the  
12 Office of Monitoring, Audit, and Compliance does. But when  
13 you point out in your whereas clause that the IG Act  
14 prohibits the Corporation from transferring to the inspector  
15 general any program operating responsibilities, and then in  
16 the next one you identify as a program operating  
17 responsibility, "conducting fiscal and performance reviews of  
18 the Corporation's recipients," et cetera, I think that you  
19 are taking those precise items, "fiscal and performance  
20 reviews of the Corporation's recipients," identifying those  
21 as a program operating responsibility, and thereby  
22 prohibiting any duplicating or supplemental evaluation by the

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1 inspector general.

2 MR. DANA: No. I appreciate your -- I want to make  
3 it, as they used to say, perfectly clear that that is not my  
4 intent. My intent is to make sure that the MAC continues  
5 doing what it's doing and that the OIG continues to have this  
6 carte blanche power to investigate and to evaluate whether or  
7 not MAC is doing its job properly, not to take over its job.

8 In the sense that -- it's the difference between an  
9 exclusive responsibility and a -- which is what arguably --  
10 for instance, the desk reviews is the current issue. Every  
11 program around this country sends its financial statement  
12 into the Corporation, and desk reviews are done as part of  
13 MAC's supervisory authority.

14 Arguably, the IG could say, "We're going to do that  
15 from now on. You don't do it, because that's -- you stay out  
16 of it, Corporation. That's going to be our job." The next  
17 step would be, because when they audit something, they would  
18 like to have it done in accordance with governmental auditing  
19 practices, they start telling every auditing firm around the  
20 country that they should be using GAGIS instead of whatever  
21 the other one is called.

22 That could all be done on the IG's say-so, as I

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1 read it. And this basically says, "No. If you want to go  
2 out and audit somebody in the field, go ahead. If you want  
3 to go and audit MAC, go ahead. But the job that MAC is doing  
4 belongs to MAC; it is not your job to take."

5 And that's really the issue. And the reason we're  
6 having this debate is because we've never said that. And  
7 that's what this resolution does.

8 CHAIRMAN KIRK: I'm not disagreeing with your  
9 intent. I'm disagreeing with what this says. And that's  
10 where we're -- I don't think we need to go through your  
11 intent any more, it's just that I don't think it says that.  
12 I think that what this says is, "We prohibit the IG from  
13 doing any program operating responsibility, and fiscal and  
14 performance reviews of Corporation recipients are the  
15 exclusive domain of MAC."

16 MR. DANA: No. What our intent -- it's clear to me  
17 that that is not what these words say, and it is clear on the  
18 record that that is not the intent of at least this director.  
19 I don't know how much clearer you could -- I mean, how best  
20 could we clarify that, unless you have some language to  
21 suggest to amend it?

22 CHAIRMAN KIRK: Mr. Uddo.

1 MR. UDDO: Let me see, Howard and Ed, if I  
2 understand what I think is the situation, where there really  
3 is no fundamental disagreement, from what I can hear.

4 It sounds to me, Howard, like what you're trying to  
5 make clear, through this resolution or some sort of a  
6 resolution, is that both the inspector general and MAC might  
7 have overlapping authority with the distinction being that  
8 when the OIG engages in the exercise of this authority, it's  
9 in his capacity to perform oversight for waste, fraud, and  
10 abuse, primarily, as opposed to MAC's routine institutional  
11 responsibility to do fiscal and performance review.

12 MR. DANA: That is correct.

13 MR. UDDO: I mean, is that the distinction that  
14 we're making?

15 MR. DANA: That's precisely the distinction.

16 MR. UDDO: All right. So he agrees, now do you?

17 MR. QUATREVAUX: Well, I would have, except that we  
18 have two missions. One is the prevention of fraud, waste,  
19 and abuse. The other one is the promotion of economy,  
20 efficiency, and effectiveness, which is another way to say  
21 evaluate.

22 We have no interest in evaluating and are not

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1 capable of evaluating individual grant recipients. But I  
2 don't want to -- I would like to reserve and have you reserve  
3 the right for us to perform audits that might evaluate the  
4 effectiveness of the entire delivery of legal services, or  
5 some segment thereof. And this is oversight. This is  
6 routine oversight.

7 MR. DANA: And I have no problem with that. That  
8 is just exactly the -- that is the oversight, sort of,  
9 investigative function that the IG has. He can do any damn  
10 thing he wants to do.

11 MR. UDDO: If we just added that to my distinction,  
12 would that solve the problem?

13 MR. QUATREVAUX: Yes, yes.

14 MR. UDDO: In other words, you're performing that  
15 dual function in an oversight capacity; MAC's performing it  
16 in a routine, institutionalized capacity. I mean, is that  
17 the basic distinction? Is there a way that we can get that  
18 into this so that it's clear that that's all we're trying to  
19 say, is that we have a MAC office that has a routine  
20 institutional responsibility for doing certain things, and  
21 the OIG has overlapping responsibilities on an oversight  
22 basis?

1 MR. DANA: I think you could say it. I think that  
2 it is implicit that an IG's function is to investigate and  
3 look over program operating responsibilities of a corporation  
4 or any federal entity. That's the primary job. So we could  
5 say it again, but I don't think it needs to be said. I think  
6 that the program operating responsibility is the core  
7 responsibility of an entity that the IG had complete  
8 responsibility to have oversight responsibility over, if  
9 that's -- that syntax is wrong.

10 CHAIRMAN KIRK: Further comments?

11 MR. UDDO: Let me just go a step further. I guess  
12 the problem then comes down to this, at least in, my mind.  
13 Ed wants to make sure that what you say is implicit is  
14 explicit, I guess. And where I agree with Howard, Ed, is  
15 that I look at the OIG function is terms of office, not who  
16 happens to be in the job at the time. And as you know, I  
17 didn't like the guy that was in that job before you because  
18 of the way he ran the office.

19 And I think that Howard's concern is that at some  
20 future date, someone else might be occupying this office, and  
21 this is a confusing area, and maybe we need to make explicit  
22 from both standpoints what we're trying to say here, that

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1 your office is protected in what its function is, and MAC is  
2 protected in what its program responsibility is.

3 So, is there a way to resolve that, Howard, so that  
4 Ed is comfortable about what you're saying is implicit, and  
5 we're comfortable about what we're saying MAC ought to  
6 continue to be able to do?

7 MR. DANA: We could add a whereas clause that would  
8 say something along the following: "Whereas it is not the  
9 intent of the Board to in any way limit the IG's authority  
10 to -- "

11 CHAIRMAN KIRK: Why don't we take a five-minute  
12 recess and see if we can --

13 MR. HALL: I've kind of scribbled one down that  
14 might -- Mr. Chairman?

15 CHAIRMAN KIRK: Yes, Mr. Hall.

16 MR. HALL: Let me just read this out, and maybe  
17 it's not what you want, but how about, "This resolution is  
18 not intended to limit or restrict the rights, powers, duties,  
19 and authorities of the OIG to also engage in monitoring,  
20 auditing and compliance in oversight thereof, as the OIG sees  
21 fit"?

22 CHAIRMAN KIRK: My comment is that that should be,

1 if it is accepted, in a whereas clause and in the resolution  
2 itself, a specific grant thereof, so that there is no doubt  
3 that we are not just reaffirming one, we're reaffirming both.

4 Mr. Dana, are you in favor of taking the five-  
5 minute recess and working on it further?

6 MR. DANA: I think it might be helpful, if we have  
7 the time.

8 MR. UDDO: The next thing starts at 2:30, but I  
9 think we could take five minutes to do that. I think we  
10 could probably work it out.

11 CHAIRMAN KIRK: We'll stand in recess for five  
12 minutes.

13 (A brief recess was taken.)

14 CHAIRMAN KIRK: I'd like to call the meeting to  
15 order. Mr. Dana has suggested an amendment to the resolution  
16 that would amend the last paragraph on the second page.

17 "Be it hereby resolved, without in any way  
18 restricting or limiting the scope, rights, powers, duties,  
19 and authority of the Office of Inspector General in dealing  
20 with field programs, that having carefully considered this  
21 matter, the Board of Directors has determined that the  
22 aforementioned functions and duties of the Corporation's

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1 Office of Monitoring, Audit, and Compliance -- " it goes on  
2 from there.

3 MR. UDDO: I'll second the amendment.

4 CHAIRMAN KIRK: Actually, I think you have to move  
5 it be amended.

6 M O T I O N

7 MR. UDDO: Oh, I thought you were going to -- I'm  
8 sorry. I move the amendment.

9 MR. HALL: Second.

10 CHAIRMAN KIRK: Mr. Uddo has moved, Mr. Hall has  
11 seconded the amendment. Is there any discussion?

12 (No response.)

13 CHAIRMAN KIRK: There being none, we'll vote.

14 All in favor say aye.

15 (Chorus of ayes.)

16 CHAIRMAN KIRK: Opposed?

17 (No response.)

18 CHAIRMAN KIRK: The ayes appear to have it. the  
19 ayes do have it. The resolution -- this committee now  
20 recommends to the full Board the adoption of that resolution.

21 Is there any other business to come before this  
22 committee?

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1 (No response.)

2 CHAIRMAN KIRK: Hearing none --

3 M O T I O N

4 MR. WITTGRAF: I move to adjourn.

5 MR. UDDO: Second.

6 CHAIRMAN KIRK: It's been moved and seconded that  
7 we adjourn. This meeting stands adjourned. Thank you, and I  
8 apologize for the delay to those that are waiting for the  
9 forum.

10 MS. PULLEN: Mr. Chairman, thank you for your  
11 courtesy in permitting me to join you.

12 CHAIRMAN KIRK: Thank you for your contributions.

13 (Whereupon, at 2:40 p.m., the meeting of the Office  
14 of the Inspector General Oversight Committee was adjourned.)

15 \* \* \* \* \*

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