

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

TELECONFERENCE MEETING

O P E N S E S S I O N

Monday, November 28, 2005
12:00 p.m.

3333 K Street, N.W.
Washington, D.C.

BOARD MEMBERS:

Frank B. Strickland, Chairman
Lillian R. BeVier, Vice Chairman
Helaine M. Barnett, ex officio
Thomas Fuentes
Herbert S. Garten
David Hall
Michael D. McKay
Bernice Phillips
Florentino A. ("Licco") Subia
Ernestine P. Watlington

STAFF:

Helaine M. Barnett, President, *ex officio member*
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary
Patricia D. Batie, Manager of Board Operations
Luis Jaramillo, Acting Special Counsel to the President
Mattie Condray, Senior Assistant General Counsel
Dawn M. Browning, Assistant General Counsel, Office of
Legislative Affairs
Thomas Polgar, Director, Office of
Government Relations & Public Affairs
Charles Jeffress, Chief Administrative Officer
Karen Sarjeant, Vice President for Programs and
Compliance

PUBLIC:

Don Saunders, National Legal Aid & Defender Association
(NLADA)

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P R O C E E D I N G S

(12:04 p.m.)

1
2
3 MR. STRICKLAND: Let me call to order the
4 teleconference meeting of the Board of Directors of the
5 Legal Services Corporation for November 28, 2005,
6 called pursuant to notice published in the Federal
7 Register, and before we move to approval of the agenda,
8 let's have a roll call.

9 A PARTICIPANT: Lillian BeVier has joined.

10 MR. STRICKLAND: Lillian BeVier?

11 MS. BeVIER: Hi. Yes.

12 MR. STRICKLAND: Hey. Lillian, we just have
13 called the meeting to order and we're doing a roll
14 call. So you're first.

15 MS. BeVIER: I'm here.

16 MR. STRICKLAND: So we know we have Lillian
17 BeVier.

18 Let's go down the list.

19 And I have Ernestine Watlington. Are you
20 there, Ernestine?

21 MS. WATLINGTON: Yes.

22 A PARTICIPANT: Excuse me. Florentino Subia

1 is joining.

2 MR. STRICKLAND: Okay. Licco, welcome.

3 Ernestine, are you there?

4 MS. WATLINGTON: Yes.

5 MR. SUBIA: I'm here. Licco.

6 MR. STRICKLAND: Okay, Licco Subia is there.

7 And we also have Mike McKay?

8 MR. MCKAY: Yes.

9 MR. STRICKLAND: David Hall?

10 MR. HALL: Here.

11 MR. STRICKLAND: Tom Fuentes.

12 MR. FUENTES: Here.

13 MR. STRICKLAND: Bernice Phillips.

14 MS. PHILLIPS: Here.

15 MR. STRICKLAND: Any other Board member that I
16 missed.

17 MR. GARTEN: Herb Garten.

18 MR. STRICKLAND: I'm sorry. Herb.

19 All right. Any other Board members that I
20 overlooked?

21 (No response.)

22 MR. STRICKLAND: And then I believe we have

1 Don Saunders?

2 MR. SAUNDERS: Yes. Hi.

3 MR. STRICKLAND: Pat Batie and Helaine
4 Barnett, Karen Sarjeant, Charles Jeffress.

5 MS. BARNETT: Tom Polgar.

6 MR. STRICKLAND: Tom Polgar.

7 MS. BARNETT: Luis Jaramillo, Dawn Browning.

8 MR. STRICKLAND: Okay. Anyone else who comes
9 in --

10 MS. BARNETT: And Vic Fortuno.

11 MR. STRICKLAND: Let's first move to, does
12 everybody have a copy of the agenda and other materials
13 that were furnished?

14 If so, then is there any objection to approval
15 of the agenda?

16 (No response.)

17 MR. STRICKLAND: Hearing no objection, the
18 agenda is approved.

19 And the first item of business, in fact the
20 only item noted on the agenda is: "Consider and Act on
21 the Board of Directors Response to the Inspector
22 General's Semiannual Report to Congress for the Period

1 of April 1, 2004 through September 30, 2005."

2 All of you should have received a bound copy
3 of the Inspector General's Semiannual Report, and you
4 should also have received a draft of the Corporation's
5 response to that report, and --

6 A PARTICIPANT: You mean the Board's response?

7 MR. STRICKLAND: Right.

8 A PARTICIPANT: Is that the same thing?

9 MR. STRICKLAND: Yeah.

10 A PARTICIPANT: Okay.

11 MR. STRICKLAND: Correct, although it doesn't
12 say that on the face of it. It just says "Legal
13 Services Corporation."

14 A PARTICIPANT: It does on the face of mine.

15 A PARTICIPANT: Mine, too.

16 MR. STRICKLAND: It does?

17 A PARTICIPANT: Mm-hmm. "Semiannual Report to
18 the Congress" --

19 MR. STRICKLAND: Yeah, okay, down in the text.

20 Sorry. I was looking up at the top.

21 This morning, just for the information of
22 those assembled, and particularly to the Board, I had a

1 conversation with the inspector general, and he
2 suggested and I agreed that he would not attend the
3 meeting unless -- but he would be on call if we want to
4 address anything in particular to him.

5 And the rationale for that was that, since
6 we're discussing his report, he would simply be
7 available and on call rather than in attendance, so
8 that we're proceeding on that basis.

9 And I also talked to him about, he had raised
10 a few questions about our draft reply and I've talked
11 to -- after talking to him, I've discussed some of his
12 concerns and suggestions with Helaine, and I thought we
13 would do it in two or three parts here.

14 One is the preface to the report, which is a
15 page-and-a-half, and then the main substance of the
16 report is what Helaine could summarize for us, and that
17 is the activities of the Corporation for the same time
18 period.

19 And then the third part of it is the Board's
20 response to the OIG's semiannual report.

21 With regard to the preface, I have proposed a
22 slight change in the language of the last paragraph,

1 that is immediately above the signature block, to
2 indicate that both the Board and the OIG have made
3 efforts to improve the working relationship.

4 Helaine and I talked about some language, and
5 I didn't make a note of it. Helaine, did you note the
6 change, and if so, could you present it?

7 MS. BARNETT: Yes. The last paragraph of the
8 preface would read:

9 "The Board recognizes and appreciates that
10 during the past three months, the OIG has made efforts
11 to improve its working relationship with the
12 Corporation. The Board has also participated in these
13 efforts.

14 "We welcome this progress and look forward to
15 further improvement."

16 MR. STRICKLAND: All right. Okay.

17 So as I said, that's a -- it's a slight change
18 to indicate that it's been a two-sided effort to
19 improve the working relationship, and we're proposing
20 that that change be made in that paragraph.

21 Is there any objection to that change? If so,
22 we'll note it. Otherwise, we'll move on to the

1 remainder of the report.

2 MR. McKAY: Mr. Chairman, Mike McKay.

3 MR. STRICKLAND: Yes, sir.

4 MR. McKAY: I was troubled by that paragraph,
5 as well, because I think the efforts have been useful.

6 I do agree with the change to the first
7 sentence, but would like the second sentence to suggest
8 that we have made efforts to improve its working
9 relationships with the OIG and not just participated in
10 the OIG's efforts to improve its working relationship.

11 So I guess I would propose that the language
12 read something more like:

13 "The Board has also tried to -- has also made
14 efforts to improve its working relationship," something
15 like that, and then with the concluding sentence that
16 would say that, "We look forward to continued
17 improvement, continued efforts."

18 I just don't want it to appear like OIG has
19 reached out to improve the relationship, which it has,
20 but we, through the chairman, have also done that, so I
21 would like it to be clear that it's a mutual effort.

22 MR. STRICKLAND: Excellent point, and I think

1 it's accurate, and it's more accurate than what we have
2 here.

3 So while we're talking about some of the other
4 aspects, could someone take a stab at capturing Mike's
5 thoughts and putting it into that paragraph?

6 MR. GARTEN: I think it's clear that he's
7 just, if I understand it, is repeating the same
8 language that appears in the first sentence.

9 Isn't that right, Mike?

10 MR. McKAY: Yes.

11 MR. GARTEN: The Board has also made efforts
12 during the past three months to improve its working
13 relationship with the OIG.

14 MR. McKAY: Or else perhaps we could just
15 simply change the first sentence to say that, "We
16 recognize that during the past three months the OIG and
17 the Board have made efforts to improve their working
18 relationship."

19 MR. GARTEN: That's fine.

20 MR. STRICKLAND: Let's do that.

21 MS. BeVIER: Are we just taking out the first
22 few words, "The Board recognizes and appreciates," and

1 saying that, "During the past three months, the OIG and
2 the Board have made efforts to improve their working
3 relationship" or "to improve the" --

4 MR. McKAY: I would propose we keep it in,
5 because I think this is an important issue and we are
6 recognizing and appreciating, and I think --

7 MS. BeVIER: Okay.

8 MR. McKAY: -- we should tell Congress that.

9 MS. BeVIER: Okay.

10 MR. STRICKLAND: So we would say that, "The
11 Board recognizes and appreciates that during the past
12 three months both the Board and the OIG have made
13 efforts to improve their working relationship"? Is
14 that it?

15 MR. McKAY: Yes.

16 MS. BeVIER: Well, and also, the OIG's
17 relationship with the Corporation, with management.

18 MR. STRICKLAND: Their working relationship
19 and the OIG's relationship with the Corporation; is
20 that satisfactory?

21 MR. McKAY: Sure is to me.

22 MS. BeVIER: Yeah.

1 MR. STRICKLAND: All right. I appreciate that
2 good input, Mike and Lillian both.

3 Does anyone have -- the bulk of the report is
4 the work of the Corporation, beginning on Page 1.

5 MR. GARTEN: Can I just throw something in
6 here?

7 MR. STRICKLAND: Sure.

8 MR. GARTEN: In the first paragraph, where we
9 say we are continuing to look at changes, I had looked
10 at it as we're working on clarifying and confirming the
11 questions raised, confirming -- clarifying and
12 confirming the ultimate ownership of the building,
13 rather than look at changes.

14 I think that the intent is there, but I think
15 it's more like a clarifying situation, and confirming
16 what's going to take place.

17 Based upon -- I wasn't at the hearing, but
18 based upon what Tom Smegal had to say, it seemed to me
19 that it was more like a confirmation as to the ultimate
20 ownership of the building being in LSC's name.

21 You like the word "changes," that's the
22 question I had. I thought maybe we could use those

1 other two words instead of "changes."

2 MR. STRICKLAND: Okay.

3 MR. POLGAR: This is Tom Polgar.

4 We could do it this way. "We are continuing
5 to look to address the concerns raised by the chairman
6 and confirm LSC's ultimate ownership of the building."

7 MR. GARTEN: That's what my intent is. I
8 think it's clearer and I think it confirms what we've
9 been told.

10 MR. JEFFRESS: What was that? I'm sorry, Tom,
11 repeat that?

12 MR. POLGAR: Yeah. We are continuing to look
13 to address the concerns --

14 MR. STRICKLAND: What about just saying,
15 "We're continuing to address"?

16 MR. POLGAR: Sure. "We are continuing to
17 address the concerns raised by the chairman and confirm
18 LSC's ultimate ownership of the building."

19 MR. STRICKLAND: So instead of saying,
20 "regarding the," we say --

21 MR. GARTEN: Making a positive statement that
22 we're going to --

1 MR. STRICKLAND: LSC's ultimate ownership of
2 the building?

3 MR. POLGAR: Well, that was the big concern
4 raised by Chairman Cannon, that somehow we had gotten
5 ourself into a situation where we don't have our
6 proprietary interest in the building necessarily
7 confirmed.

8 MR. GARTEN: I think it's a stronger statement
9 if we say that we're looking to confirm the ultimate
10 ownership of the building in the LSC and adopt the
11 words that Tom had just previously mentioned.

12 That would get the spirit of what we have in
13 mind.

14 MR. STRICKLAND: Okay. So it's going to read
15 how after all this discussion?

16 MR. POLGAR: "We are continuing to address the
17 concerns raised by the chairman and confirm LSC's
18 ultimate ownership of the building."

19 (Pause.)

20 MS. WATLINGTON: Hello? Nobody is saying
21 anything.

22 MR. STRICKLAND: We are continuing to -- I

1 want to make sure the grammar works out here now.

2 "We're continuing to address the concerns
3 raised by the chairman" --

4 MR. GARTEN: -- "and confirm LSC's ultimate
5 ownership of the building."

6 I think grammatically it's okay.

7 MR. STRICKLAND: Okay. All right. Any other
8 comments about the preface?

9 MS. BeVIER: I just have one comment that I'll
10 hold, because it has to do with this very important
11 last paragraph on Page 5.

12 I want to sort of -- I think we may want to
13 talk about the side-by-side response and I think how
14 that paragraph -- I mean, it may be that we decide to
15 leave it exactly as it is, and that that may be
16 appropriate.

17 But I'd just like to suggest that I, for one,
18 may want to come back to that.

19 MR. STRICKLAND: All right. After we do the
20 side-by-side?

21 MS. BeVIER: Yeah.

22 MR. GARTEN: Lillian, what page are you

1 referring to?

2 MS. BeVIER: The first page of the preface:
3 "However, there continue to be differences of opinion."

4 MR. STRICKLAND: But we're not going to make
5 any change there just now.

6 MS. BeVIER: No.

7 MR. STRICKLAND: We'll await the completion of
8 our review of the side-by-side comparison.

9 MS. BeVIER: Yeah.

10 MR. STRICKLAND: Okay.

11 For the moment, then, if there's nothing else
12 on the preface, does anyone have any questions about
13 the main body of the report, which is Pages 1 through
14 14?

15 MS. BeVIER: One second.

16 MR. STRICKLAND: And if so, I would ask you to
17 address those to Helaine, because -- or to an
18 appropriate person on her executive team, since it is
19 their work product.

20 Okay --

21 MR. FUENTES: Frank, I would just offer a
22 comment for the record, of a bit of perspective from my

1 point of view.

2 I am concerned about process in the
3 development of this, and I realize we're having a
4 meeting today so that we can review a draft, but I'm
5 concerned about process, where management prepares a
6 response for the Board to send to Congress before
7 management solicits views of the Board. The proposed
8 response in a way can be interpreted in some of its
9 language as an "us versus them" kind of message with
10 the Office of the Inspector General.

11 And I'm wondering if, downstream, for future,
12 because I realize where we are already today on this
13 one, that we couldn't implement in our development
14 process the opportunity for constructive and more
15 initial input.

16 I think that this way that this comes to be as
17 a draft document in substantial language for the time
18 that it gets to us sets us up to be responding with
19 management or advancing a management perspective, and I
20 see our role as a Board or as objective overseers of
21 LSC's management, and I think that maybe if we gave
22 some thought to process of how we get to this first

1 draft, it might be more reflective of a Board opinion.

2 MR. STRICKLAND: Well, I appreciate those
3 comments and I agree with you that, in terms of this
4 report, I think, and you acknowledge this, we are where
5 we are.

6 MR. FUENTES: Right.

7 MR. STRICKLAND: Right. And but particularly
8 with regard to the Pages 1 through 14, which are -- it
9 seems to me is a summary of work that has been done by
10 the Corporation and its grantees over the reporting
11 period, and it's pretty much a factual summary of that
12 as opposed to advocacy, if you will. I think that's
13 the way I read it.

14 Whereas, the next thing that we're going to
15 look at, the Board response to the OIG's semiannual
16 report, we do have some time to edit and revise that
17 part of the report.

18 I think we would be on the phone for quite a
19 while if we tried to do that with regard to Pages 1
20 through 14.

21 So we will note for future reference, though,
22 Tom, your suggestion about process.

1 MR. FUENTES: Thank you.

2 MR. STRICKLAND: I didn't hear any other
3 comments. Are there any with respect to Pages 1
4 through 15 of the report?

5 MS. BeVIER: Mr. Chairman, I'd just like to
6 say I do have some questions with the next part, but I
7 think 1 through 14 is really, is very good and
8 excellent summary of the things that the Corporation
9 has been doing, and I think it, simply by telling the
10 facts, it puts the Corporation in a very good light.

11 So as a Board member, I'm proud to be part of
12 that organization.

13 MR. STRICKLAND: And I don't know, I presume
14 this was a team effort, Helaine. Perhaps you could
15 tell us how it came together, how Pages 1 through 14
16 came together.

17 MS. BARNETT: It is definitely a team effort
18 with each of the offices contributing the part of the
19 work that they did, and Dawn Browning in the Office of
20 Legal Affairs was the major scribe of putting it all
21 together. That was then reviewed by the executive
22 team.

1 MR. STRICKLAND: Well, I would congratulate
2 the entire team for a job well done. I echo Lillian's
3 comments about both what you've been doing and the way
4 you have reported on your activities.

5 MS. BARNETT: Thank you.

6 MR. STRICKLAND: Okay. Then if there's no
7 further question or comment about that part of the
8 report, let's move on then to the Board's response to
9 OIG's Semiannual Report.

10 In light -- and before we get into that, in
11 light of the discussion I reported to you a few minutes
12 ago, I had this morning with Kirt -- by the way, the
13 reason for a little bit of a time crunch on this is
14 that I was out of the country from the 16th to the
15 23rd, when there was some exchange of correspondence
16 about this part of the report, so I was not able to
17 engage in that conversation until this morning; so I
18 apologize for that, the timing of that.

19 But during the morning, I did speak to the
20 inspector general and to Helaine about this part of the
21 report, not the side-by-side part of it, but just this
22 page-and-a-half, and I have suggested that this be

1 rewritten to some extent, and in particular, in the
2 second paragraph, I suggested that we take out the
3 third sentence, "The Board has concluded that the OIG,"
4 et cetera, take it out in its entirety, and slightly
5 revise the remaining language of that paragraph.

6 And then I also suggested that we should with
7 regard to the next three paragraphs, we should
8 recognize that there is a specific reference in the
9 Conference Committee report on our budget about the
10 concern that the Congress has about our rent and the
11 building, et cetera, and we should recognize,
12 particularly with regard to the tenant improvements and
13 the amount of space that we have, those are works in
14 progress, and no conclusions have been reached of a
15 final nature, and we should, instead of debating that
16 here, we should recognize that those things are in
17 progress and that we will deal with them when the
18 assessment is needed.

19 MS. BeVIER: Frank, is it possible for us to
20 have that language?

21 I mean, I certainly think I agree with you,
22 but is it possible? What is the language in the

1 Conference Report?

2 MR. STRICKLAND: Tom Polgar, can you tell us
3 what that is?

4 MR. POLGAR: Yeah. The language in the
5 Conference Report, per se, is less important. It just
6 goes, "The conferees incorporate by reference language
7 in the House Report regarding rent costs."

8 MS. BeVIER: And what is that -- oh, so
9 that --

10 MR. POLGAR: So they referred back to the
11 House committee report, which came out in May. The --

12 MS. BeVIER: And that says what?

13 MR. POLGAR: And what that says is:

14 "The committee is concerned about LSC's rent
15 payment for its current headquarters. The committee
16 expects LSC to reduce its rent payment by eliminating
17 unnecessary office space and negotiating a more
18 competitive cost per square foot."

19 Since that language appeared in the House
20 committee report five months ago, I've had a couple of
21 conversations with House staff about it, one to tell
22 them, this was back in June, that we were trying to cut

1 our rent costs by subletting space, which we actually
2 have done since then; and second, that there was
3 nothing we could do about the cost per square foot
4 because we were contractually bound for the next eight
5 years.

6 And they seemed to understand that, and we
7 haven't had a discussion about rent since.

8 MS. BeVIER: Except that they put it in the
9 Conference --

10 MR. GARTEN: Were they satisfied with your
11 explanation on the tenant improvements?

12 MR. STRICKLAND: I didn't hear the first part
13 of that, Herb. Sorry.

14 MR. GARTEN: All right.

15 With regard to the tenant improvements, were
16 they satisfied with your explanation?

17 MR. POLGAR: I have not discussed the tenant
18 improvement issue with the Hill at this time.

19 We responded to the inspector general's audit
20 at the end of September, on September 28th, to be
21 exact. There's been one meeting that Charles and I had
22 with Kirt and Dutch Merryman since then.

1 MR. JEFFRESS: October 12th.

2 MR. POLGAR: Okay, October 12th, and we
3 haven't heard anything from the IG since that meeting.

4 MR. GARTEN: But we do address the tenant's
5 improvements in the schedule.

6 MR. STRICKLAND: You mean in the side-by-side?

7 MR. GARTEN: Yeah. So --

8 MR. POLGAR: From our perspective, all tenant
9 improvement issues raised by the OIG in the SAR, which
10 were alluded to, which were raised also in his audit
11 from last spring, have been addressed, and we've walked
12 them through where we thought things were, and those
13 were the facts that are laid out in the side-by-side.

14 MR. GARTEN: Well, could we make a statement
15 to the effect that, "As of now we believe that tenant
16 improvements issues have been covered and explained,"
17 and have a reference to the chart?

18 MR. STRICKLAND: Well, if it's indeed
19 completed, we may be able to do that, but if it's still
20 a work in progress, I would think we wouldn't want to
21 say that it's been fully addressed.

22 MR. GARTEN: But what is the status of it?T

1 MR. JEFFRESS: This is Charles Jeffress. We
2 expect that the IG will come back to us with his
3 analysis and reaction to the information we provided to
4 him.

5 Some of the information we provided to him was
6 new to him, but I do not think that he will change his
7 opinion that LSC should not have included or agreed to
8 include certain things in the tenant improvement
9 allowance that LSC agreed to include back before the
10 lease was signed.

11 MR. FUENTES: This is Tom Fuentes.

12 One of the points that I would like to see
13 addressed is that I was under the impression that LSC
14 received a \$2 million build-out allowance from the
15 Friends, and as I read this report, it says that the \$2
16 million was not for LSC but was actually for Friends to
17 pay for building renovation, and I just don't want to
18 put us in the situation of, you know, speaking out of
19 both sides of our mouth. If we could have clarity or
20 consistence there, that would give me more comfort.

21 MR. JEFFRESS: Tom, the key point on that I
22 believe is that, prior to entering into the lease, LSC

1 and Friends agreed that certain things would be done
2 and they included it as part of the leasehold
3 improvements that were allowed up to \$2 million.

4 LSC and Friends agreed to that, and agreed to
5 include it in what was otherwise called tenant
6 improvements. It's about \$250,000 in money that was
7 spent for things like the roof of the building and some
8 other building issues.

9 The fact that that's what they chose to call
10 it, and that's how they included it, is a fact. The IG
11 believes it should not have been called that.

12 My belief after looking at it is that if it
13 had not been called that, then the amount of tenant
14 improvements would have been allowed up to 1.75 million
15 instead of up to 2 million.

16 The fact that they included it in that list
17 and had a \$2 million ceiling on what was allowed is
18 more important I think than what it was actually
19 called.

20 MR. GARTEN: The status of it now is, it
21 hasn't been resolved, and you have presented to the IG
22 information with regard to these tenant's improvements,

1 and you're awaiting a final response from them. Is
2 that correct?

3 MR. JEFFRESS: That's correct.

4 MR. GARTEN: Why can't we just say that?

5 MS. WATLINGTON: Yes. This is Ernestine.

6 I guess some of the reasons that are being
7 considered were not considered at that time, because
8 the majority of Friends were Board members at that
9 particular time.

10 MR. JEFFRESS: That's right. It did not seem
11 particularly important I think at that time whether it
12 was called funds paid by Friends --

13 MS. WATLINGTON: Right.

14 MR. JEFFRESS: -- or funds paid by LSC.

15 MS. WATLINGTON: So some of these words might
16 need changing at this particular time.

17 MR. STRICKLAND: Well, this is, as is quite
18 often the case, after the fact review, Monday morning
19 quarterbacking, or whatever you want to call it, and it
20 would present now the ideal way to have handled it
21 then.

22 I guess the point I was making is, if we're

1 not finished with that matter, then I think we should
2 report it that way rather than some other way.

3 MS. BeVIER: Mr. Chairman, this is Lillian
4 BeVier.

5 I'm inclined to agree. Part of my difficulty
6 with the side-by-side is that it seems to me that we
7 are, with Congress, trying to make points that we have
8 made and made and made and made, and they're not
9 hearing us.

10 And I'm not sure that it makes sense to make
11 our arguments again and, you know, to show where we
12 disagree, until we can resolve the question.

13 If we end up owning the building and we end up
14 resolving these other matters that we've been talking
15 about, we won't have to explain again.

16 And to my mind, a detailed "He's wrong/we're
17 right, he's wrong/we're right, he's wrong/we're right,"
18 business is just not -- it's not the way to put our
19 situation over to the Board.

20 Whatever -- whoever is right in this, I mean,
21 I guess I think we are, but I think it's an honest
22 disagreement.

1 And the problem is we haven't been able to
2 join issue with the IG. That bothers me. We still
3 haven't. He hasn't joined with us. We've tried to
4 join with him.

5 But to put this side-by-side business that
6 involves us in going over and over facts we have tried
7 to convey to Congress, I just think it's -- I just
8 think it's the wrong message to send and it's the wrong
9 way to send it right now.

10 So that if we could say, "We're working these
11 things out, we continue to be working on them, we do
12 disagree with some of the things that the IG has said
13 but we're continuing to work with him to resolve those
14 disagreements," words to that effect seem to me to be
15 much more productive, especially given the conference
16 report's indication that, whatever the staff members
17 said to Tom, there's clearly some lingering concern
18 here, and I think the Board needs to just be aware of
19 that.

20 MR. GARTEN: What I was suggesting a little
21 while ago, Lillian, was to express it in the report
22 that we each have our positions as indicated in the

1 appendix, and that as I understand it, the inspector
2 general is continuing to review it and that we hope to
3 work out our differences.

4 MS. BeVIER: Yeah. And all I'm saying, Herb,
5 is that I don't think that we need to put it all in the
6 appendix, because I think, to say it once again, our
7 point of view is, quite frankly, pointless, and for
8 the --

9 MR. GARTEN: But there's a lot of stuff that
10 people don't remember from time to time.

11 You have to point out what we're saying --

12 MS. BeVIER: Well, then I think we can
13 reference Frank's letter that he's written, and the
14 other communications that we've had.

15 I mean, I just -- I think this is -- this
16 unnecessarily roils these waters again.

17 If Tom is correct that there's less concern
18 now than there was, we should try to just work this out
19 so that the issue can be resolved without having to
20 have a victory over who's right and who's wrong about
21 what happened and who -- you know, good faith/bad
22 faith, and all of those issues that are distracting to

1 everyone, they're peripheral to our mission, and if we
2 get Congress bothered by our response to this, whether
3 we're right or wrong, even if we're right, it's not
4 going to help us.

5 So the important fact is we're working on it,
6 and we continue to work on it. The cooperation is
7 increasing and we're going to -- we're working to a
8 mutually satisfactory conclusion, or whatever --
9 conclusion that will be the in best interest of LSC,
10 you know, words to that effect.

11 I'm just very reluctant to put this side-by-
12 side in there. I understand your point, that they need
13 to be reminded, but they -- it doesn't matter how much
14 you tell them.

15 MR. STRICKLAND: And to support that,
16 Lillian's viewpoint from a different perspective, I had
17 a personal meeting with Congressman Wolf, I believe it
18 was at the end of September, and it was a very cordial
19 visit, and no -- just he and I plus his staff person.

20 And his major concern was, "How are you coming
21 on the working relationship with the inspector
22 general?"

1 So my report was that we have been working on
2 improving that relationship and we're going to continue
3 to do that.

4 So I would have to agree that it seems
5 counterproductive at this juncture to engage in the
6 same debate that we've had before in this report, that
7 we can state our position in a much more general way,
8 general and non-confrontational way, and make the same
9 point in a different way, and move ahead.

10 So I would encourage us to do that.

11 MR. FUENTES: I'd like to lend my voice to
12 that, to come at it from two very worthwhile points of
13 view and well-enunciated.

14 I just think that there has been such good
15 progress made and we ought to be putting our best foot
16 forward in the most positive of tone, and I think both
17 of your comments and suggestions would advance that
18 refinement of language that could be more positive, and
19 I think that's what we need right now on Capitol Hill.

20 MR. GARTEN: Can I -- I'm not disagreeing with
21 what you said, Tom, but I'd like to point everybody to
22 Page 4 of his report to Congress, where he talks about

1 the demand would fill that allowance, and ask
2 management, have we responded to the last paragraph
3 there where he recommended that LSC obtain from the
4 landlord a full and detailed accounting, and then it
5 goes on to say, "At the end of the reporting period,
6 LSC outlined the actions taken to close out OIG's
7 recommendation and the OIG will evaluate the proposed
8 actions, determine if they're sufficient to close out
9 the recommendations."

10 What are you -- what actions did management
11 offer to the inspector general?

12 MR. POLGAR: We generally noted that about a
13 little over 1.9 million of the 2 million have been
14 spent on the build-out, and if you go to the prior
15 paragraph, and it's what it says here in the SAR, where
16 he talks about \$200,000 for items paid for with
17 leasehold improvement funds, actually, it was 29,000
18 that we didn't pay. Their records are just wrong. It
19 was 5,000 that was a change order that LSC insisted on.

20 And it was 168,000 spent by the OIG on their own
21 office suite. He knows that.

22 And the reason we responded in detail is

1 because he chose to put out -- he didn't have to put
2 out those numbers while he was still reviewing our
3 report.

4 Similarly, of the 400,000 charged by the
5 landlord to LSC's allowance, 150,000 of that was the
6 lease termination fee for our prior lease, which
7 actually was an after-the-fact addition to the build-
8 out. It wasn't part of the original budget. And
9 250,000 was the base building improvements that got
10 mentioned earlier.

11 MR. GARTEN: Lillian and Tom, would you look
12 at this in a less confrontational manner, if instead of
13 having the side-by-side, that we just responded to each
14 of these audit categories, planned our build-out
15 allowance, and just refer back to his report and repeat
16 what our comments are with regard to the build-out
17 allowances?

18 MS. BeVIER: Tom, you go ahead. I --

19 MR. FUENTES: Well, I just don't see that we
20 need to do it right now. I think we can make some more
21 progress and be more positive in our final resolution
22 when we can put something forward that is a better

1 solution.

2 MS. BeVIER: I'm inclined to agree. I think
3 that right now, where we are in the process of trying
4 to make progress with the OIG and to begin to
5 communicate with him and have him communicate with
6 management and so on, and to clean up the
7 communications to Congress, it's not the time to
8 stress, once again, how much we disagree with him, and
9 point by point that we do.

10 I agree with you that there are issues in his
11 report with which we disagree, but I think that we are
12 still in the process of trying to clarify those and get
13 them resolved, and my hope is, and frankly, my
14 expectation is that we will be able to get those
15 resolved to everyone's satisfaction, because there's no
16 reason to think that any hanky-panky has been going on
17 here.

18 And so, given that that's the fact, we ought
19 to be able to proceed to get these resolved, and the
20 less confrontational this report is, the better we send
21 that message, and especially given the wonderful report
22 at the beginning of what the Corporation has

1 accomplished.

2 MR. HALL: Just a slightly different
3 perspective on this.

4 And I definitely agree -- this is David Hall
5 -- that the tone should be a cooperative and productive
6 tone.

7 And there are certainly times in the report
8 where the way in which we are describing the IG's
9 action probably needs to be toned down.

10 MS. BeVIER: You mean the side-by-side, David?

11 MR. HALL: Sometimes in the side-by-side, but
12 even in the actual -- the overview, where, you know,
13 where we specifically say "He has failed to," which I
14 think often, whenever you use that word, it sends a
15 notion that, you know, someone is inadequate, and
16 probably conjures up the wrong notion.

17 However, I guess the concern that I have is
18 that, as a Board, one of our responsibilities is to
19 respond to the IG's statement to Congress and to point
20 out factual inaccuracies.

21 I think we owe that to Congress, not so much
22 to say "We're right, he's wrong," but some of what is

1 contained in the side-by-side to me are factual
2 statements based on documents we have or based on these
3 interviews someone must have had with someone to come
4 up with these numbers.

5 And for us to say we're not -- even though we
6 may have said it to Congress in some other avenue, a
7 letter from Frank, et cetera, I think we are authorized
8 to respond in this setting, and therefore to not convey
9 that information in our official responsibility says we
10 are neglecting our responsibility, because some of this
11 is not going to be resolved in the sense that we
12 convince the IG to accept our numbers.

13 My sense is that he may not accept our
14 numbers. He may not accept our analysis of the facts.

15 What we can resolve is, hopefully, with him a
16 better and cooperative working relationship, which I
17 think is at the essence of it, and I think is what at
18 least some Members of Congress are wanting to happen.

19 And so it's not as if, if I were sitting here
20 and feeling like, with some more investigation, we
21 would come up with some better numbers in regards to
22 what was used for the build-out, et cetera, then I

1 would say, yes, let's not give a number if we're not
2 sure that's accurate.

3 But unless management is hiding something from
4 us that we aren't aware of, and unless we have our
5 independent investigator who is going to go and look at
6 that the stuff, I think we are probably going to go
7 with these numbers, because we believe that that's what
8 actually happened at that particular time.

9 So to me, a middle ground is trying to maybe
10 tone down the language and not try to make it seem as
11 if it's so confrontational or negative and thus feeding
12 into their perceptions that we can't work with the IG,
13 but at the same time, not just forego factual
14 information that we think is accurate, and thus our
15 responsibility as a board is sharing that with
16 Congress.

17 MR. STRICKLAND: Okay, David. Thank you very
18 much for those comments suggesting a middle ground.

19 What is the will of the Board? You've heard
20 these various points of view, and they are all good.

21 I think we are consistent, though, in saying
22 we need to be perhaps less confrontational in the

1 Board's response, but also we need to be factual.

2 MS. BeVIER: Well, there's always a choice of
3 how many facts you decide to tell Congress.

4 I think it is a fact that we are trying to
5 work through this right now with the OIG.

6 I think David is right, that of course there's
7 -- we have a responsibility to set the record straight
8 if there are serious misconceptions.

9 But right now, you know, I could be wrong
10 about what I think is happening and the possibility of
11 resolving this, but Congress is not going to fuss with
12 us about these figures, I believe, and we need to get
13 -- we need to be looking forward instead of looking
14 backward. That's what we need to be doing as a Board,
15 and we need to persuade Congress that we're doing that.

16 But others may disagree with that.

17 I have another question, though, about the
18 appendix. Would this be an appropriate place to raise
19 it?

20 It has to do with the eligibility of
21 trafficking victims under the TVPA audit.

22 I know nothing about that, and I'm very uneasy

1 taking a Board position at this point, given how
2 ignorant I am.

3 Did I just miss something at the last meeting?

4 This is on Page 21 of the appendix. And maybe, Frank,
5 you can rule me out of order, if this isn't the right
6 time to talk about it.

7 MR. STRICKLAND: No, I think we need to talk
8 about the entire appendix, although that's in such a
9 separate category --

10 MS. BeVIER: Yeah, okay.

11 MR. STRICKLAND: -- I wonder if we might
12 hold on that --

13 MS. BeVIER: Sure.

14 MR. STRICKLAND: -- until we complete -- it's
15 not out of order, because it is part of the Appendix,
16 but it is distinctly different from the tenant
17 improvement and other things --

18 MS. BeVIER: Right, yeah. Okay.

19 MR. STRICKLAND: So if we might just hold that
20 for a minute until we finish other --

21 MR. GARTEN: Frank, Herb here.

22 MR. STRICKLAND: Yes, sir.

1 MR. GARTEN: Just to bring it to conclusion,
2 if possible, I think side-by-sides are necessary.

3 If you're being charged with something, or
4 claims are being made, I think that you can't just not
5 respond to them, and I think that the middle ground, as
6 you put it, or as some of the others put it, is fine,
7 but I'd be in favor of including the appendix, because
8 response to the charges, the claims that are made --
9 and I pointed out one of them -- that you'd have to
10 respond to.

11 If it wasn't in the appendix, you'd have to
12 respond to it as part of the text.

13 And I think that putting them side-by-side
14 gives it the clarity that somebody that's serious about
15 this will need.

16 So I'm in favor of the side-by-side.

17 MR. STRICKLAND: Okay. Well, we've got
18 certainly two different, maybe more than two different
19 points of view on whether to include the side-by-side.

20 You want to include them and Lillian doesn't.

21 MS. BeVIER: Do you need a motion, Frank, so
22 we could get a vote? Is that how you want to proceed?

1 MR. STRICKLAND: Yes, although before we do
2 that, I wonder, is there any objection to taking out
3 the sentence I suggested striking in the second
4 paragraph of the draft?

5 MS. BeVIER: No.

6 MR. STRICKLAND: About the --

7 MR. GARTEN: No, and I have no problem if you
8 wanted to tone down certain other paragraphs or
9 sentences that may bother you.

10 MR. STRICKLAND: All right. Without
11 objection, then, we're going to delete the third
12 sentence of Paragraph 2 in its entirety, and that may
13 require a slight change in the wording of that
14 paragraph.

15 But we're going to take out that.

16 MS. BeVIER: Well, Frank, then I have another
17 suggestion of how to proceed, but this may be improper
18 in terms of timing.

19 MR. STRICKLAND: Go ahead.

20 MS. BeVIER: Because I think it should be
21 clear to management now that we very much want this,
22 the tone of the side-by-side to be different, less

1 adversarial and so forth.

2 I don't know how it would look if they
3 redrafted it, and whether I would still say I think
4 it's a mistake. I may do that. But even if I were to
5 say that, others might say, "The problem is fixed now
6 that I had," and others may not have a problem.

7 I mean, would we have to -- I take it we'd
8 have to have another call, and we're late already or
9 something. I don't know what the timing is on getting
10 this done.

11 MR. STRICKLAND: The timing is that the report
12 is actually for a period which ended September 30, and
13 it's due on November 30, so --

14 MS. BeVIER: Wow.

15 MR. STRICKLAND: -- procedurally, whether we
16 can mean this call or just what, we might have to ask
17 -- is Vic in the team --

18 MS. BARNETT: Yes, he is.

19 We could certainly do a revision to the
20 appendix by day's end today, and circulate that to
21 Board members. The question, Vic, is how does the
22 Board respond to that? Do we need another telephone

1 call?

2 MR. FORTUNO: You could either delegate to
3 someone authority to review the comments, the changes,
4 to ensure that they're consistent with the will of the
5 Board or the consensus arrived at here today, or you,
6 if you take a vote now, the Corporation business
7 requires it, and if no earlier possible notice was
8 possible, you can schedule a second meeting.

9 I'm thinking frankly that since it is -- if
10 you do it today, it might not be a second meeting. You
11 could just recess and reconvene later in the day to
12 consider the revisions that are made. That may be the
13 easiest route.

14 MS. BeVIER: If we reconvene tomorrow, is that
15 a second meeting?

16 MR. FORTUNO: I think that going over to the
17 next day probably is, so in that case, what I would do
18 is take that vote -- that is, a vote that Corporation
19 business requires it and that no earlier notice is
20 possible -- and if you get a majority --

21 MS. BeVIER: I'm sorry, Vic. Would you say
22 that again? I didn't hear you.

1 MR. FORTUNO: What's required is, in order to
2 have, under the Sunshine Act, in order to have a
3 meeting on less than seven days notice, you can do so,
4 but the Board has to take a vote that the Corporation
5 business requires it, one, and, two that no earlier
6 notice is possible.

7 And I think if you can take that vote, then
8 you can schedule a meeting on less than seven days
9 notice and can schedule it for tomorrow.

10 M O T I O N

11 MS. BeVIER: Mr. Chairman, I would like to
12 move that we postpone -- that we meet again after
13 management has a chance to redraft the appendix
14 consistent with the comments and concerns that have
15 been raised today.

16 MR. FUENTES: Mr. Chairman?

17 MR. STRICKLAND: Yes.

18 MR. FUENTES: Lillian, could I speak before
19 you get your second?

20 MS. BeVIER: Please do.

21 M O T I O N

22 MR. FUENTES: I'd like to try to -- I think

1 that you two, Mr. Chairman and Madam Vice Chairman,
2 have heard the sentiments of the Board rather clearly,
3 and you've responded to them in this conversation.

4 I would like to suggest a motion to strike the
5 side-by-side, to direct a redraft of the other language
6 of the report, in more positive terms, and refer then
7 management's rework to the chairman and vice chairman
8 for signoff and forwarding, and we give our approval at
9 this time, and we don't have to come back to another
10 meeting.

11 MR. STRICKLAND: All right. Is there a second
12 to that motion?

13 MR. GARTEN: May I address that?

14 MR. STRICKLAND: No, let's have a second.

15 A PARTICIPANT: Second.

16 MR. STRICKLAND: Okay. Moved and seconded,
17 and now for discussion.

18 Go ahead, Herb.

19 MR. GARTEN: I think we're dodging the issue
20 by taking that approach, and I would vote against Tom's
21 motion.

22 I think that what Lillian had in mind before

1 Tom presented his amended motion was something that is
2 workable if you want to do it.

3 I also think having the meeting later today or
4 tomorrow, if we all have an opportunity to review the
5 changes, would be the best route to take, and would
6 enable the full Board to be involved in this, rather
7 than just the chair and the vice chair.

8 MR. STRICKLAND: Okay. Any other discussion?

9 (No response.)

10 MR. STRICKLAND: With regard to the motion,
11 Tom, I took it to mean that the -- striking the side-
12 by-side would -- perhaps we would omit from that the
13 side-by-side on the eligibility of trafficking victims
14 under the TVPA.

15 I think that's an important matter that
16 requires a direct rebuttal.

17 Is that acceptable?

18 MR. FUENTES: Yes, sir.

19 MR. GARTEN: I think the way to handle that
20 would be that the Board requires further study before
21 we could respond to it.

22 MS. BeVIER: Yeah.

1 MR. STRICKLAND: You mean on trafficking?

2 MS. BeVIER: Yeah.

3 MR. GARTEN: Yeah. That's exactly what
4 Lillian said, she doesn't know enough about it.

5 MS. BeVIER: I don't know anything about it.

6 MR. STRICKLAND: I don't think any of us are
7 fully informed on that.

8 MR. GARTEN: The answer there would be we need
9 to further review and study the matter, and not respond
10 directly to it or delete it.

11 We're responding, because he's made a certain
12 allegation, and we have to know more about it.

13 MR. STRICKLAND: Helaine, can you address
14 that?

15 Well, I'll tell you what. Procedurally now,
16 we've got a motion made by Tom Fuentes and seconded,
17 and we've had some discussion, and we've left out of
18 that motion the trafficking, the TVPA question.

19 This is really on the -- the motion is to
20 delegate to the chairman and the vice chairman the
21 completion of the review of management's revisions to
22 the Board's response, and we would do that without a

1 further meeting.

2 Are we ready to vote on that?

3 MR. GARTEN: And that, as I understand it,
4 that you're not going to respond to the trafficking
5 issue, or --

6 MR. STRICKLAND: I'm going to take that up
7 separately.

8 The way the motion was made, after Tom
9 accepted a friendly amendment, was that we would strike
10 the side-by-side, with the exception of the trafficking
11 side-by-side, and we would delegate to the chairman and
12 vice chairman the review function of management's
13 revision to the Board's response, and that we would
14 proceed without a further meeting. That's the motion,
15 as I understand it.

16 MS. BeVIER: Thomas, is included in your
17 motion the possibility that management would come back
18 with a significantly modified side-by-side?

19 MR. FUENTES: I think they can do without it
20 at this time.

21 MS. BeVIER: So that is not included in your
22 motion?

1 MR. FUENTES: Right.

2 MR. HALL: And since we are going to have to
3 vote on this, I think one needs to understand that if
4 you strike out the side-by-side, then you're in essence
5 voting for basically not responding to his -- to
6 inaccurate allegations that have been made by the
7 inspector general.

8 I mean, he says some things here on Page 4
9 that, you know, LSC did not have adequate accounting
10 records and documentation.

11 MR. FUENTES: I would expect that there would
12 be some response.

13 MS. BeVIER: But just not in the side-by-side.

14 MR. FUENTES: That's right.

15 MS. BeVIER: Okay. I see. Okay.

16 So that the response would be textual, not
17 side-by-side. Okay. I understand that now.

18 MR. FUENTES: The flexibility.

19 MR. FORTUNO: If I may, this is Vic, I
20 apologize for interrupting, but just so that the record
21 is clear, I think that Lillian had made a motion,
22 although there was no second, and then Tom made some

1 comments and offered a motion.

2 I'm just not sure what the status of Lillian's
3 earlier motion is.

4 MS. BeVIER: I withdraw it.

5 MR. FORTUNO: Okay. The record is now clear.

6 MR. STRICKLAND: Okay.

7 MR. GARTEN: I don't understand the additional
8 comment, though, where Lillian suggested the
9 possibility of the chair and the vice chair in their
10 judgment modifying the side-by-side if they felt that
11 was a good route to take, and my understanding was you
12 turned that down, Tom. Is that right?

13 MR. FUENTES: Fundamental to this is getting
14 rid of, at this point, the side-by-side.

15 MR. GARTEN: Okay.

16 MS. BeVIER: On the theory, Tom, that it is
17 just by its nature confrontational?

18 MR. FUENTES: Yes.

19 MS. BeVIER: Okay.

20 MR. STRICKLAND: Okay. Are we ready to vote?

21 All those in favor of the motion, please say
22 aye.

1 (A chorus of ayes.)

2 MR. STRICKLAND: Those opposed?

3 (A chorus of noes.)

4 MR. STRICKLAND: Okay, that was David Hall and
5 Herb Garten?

6 A PARTICIPANT: Right.

7 MR. STRICKLAND: Okay. I think that means the
8 motion passes.

9 MS. WATLINGTON: I'm abstaining, because I
10 don't understand it.

11 MR. STRICKLAND: I'm sorry, Ernestine. Did
12 you vote aye?

13 MS. WATLINGTON: I'm abstaining, because I
14 don't understand it.

15 MR. STRICKLAND: Okay, abstaining. Let me see
16 what that does. I that's still a majority.

17 MR. FUENTES: Mr. Chairman, I'm going to have
18 to sign off here, but I'm going to go get in the car
19 and I'm going to try my cell phone. Maybe I can plug
20 back in if you're still going.

21 MR. STRICKLAND: All right, thank you very
22 much, Tom.

1 All right, then, the next item then would be
2 on this portion of the side-by-side pertaining to the
3 trafficking.

4 A PARTICIPANT: Has everybody voted?

5 MR. STRICKLAND: Yes.

6 A PARTICIPANT: Okay. Is Mike still on?

7 MR. McKAY: I am here.

8 A PARTICIPANT: I didn't hear your vote.

9 MR. McKAY: I voted with the majority.

10 A PARTICIPANT: Okay, good.

11 MR. STRICKLAND: Okay. On the eligibility --

12 MS. BeVIER: Could I say something, Frank?

13 I just want to assure Herb and David, and I
14 know that you -- and I know they completely have
15 confidence in you that we will, if we do this, we will
16 do this in all good faith, attempting to take your
17 concerns into account, because I -- I think they're
18 important and I think we'll work with that, within that
19 parameter.

20 MR. HALL: Well, I appreciate that, and I
21 trust both of you to do that.

22 I would suggest, though, and again, it's a

1 suggestion, since the position we were taking was voted
2 down, is that if Herb could just work with the two of
3 you.

4 I think he has represented a very strong view
5 on these issues and has been very close to them in a
6 manner, so that, especially since the final document is
7 now going -- is going to go out, and the rest of the
8 Board probably is not going to see that document, I
9 think, you know, to me there were kind of two strong
10 views expressed here, and it seemed like if there was
11 at least one representative who was a part of that
12 other view, to at least be involved in that process, to
13 me, it would be, at least symbolically if not
14 substantively, an excellent representation of what the
15 Board is trying to accomplish here.

16 MR. STRICKLAND: We certainly will note that,
17 David.

18 MS. BARNETT: Mr. Chairman, I think the
19 reporter is a little confused as to the vote of each
20 member on that last motion.

21 MR. STRICKLAND: Okay. I think that we had
22 Ernestine Watlington abstaining, and I believe those

1 voting in the majority were McKay, Fuentes, I don't
2 know how Ms. Phillips voted.

3 MR. SUBIA: Licco

4 MR. STRICKLAND: Licco voted with the
5 majority. BeVier, Strickland, Fuentes, McKay,
6 Watlington abstained.

7

8 What about Bernice?

9 MR. SUBIA: Licco.

10 MR. STRICKLAND: Bernice? Bernice Phillips?

11 (No response.)

12 MR. JEFFRESS: I think Licco is just trying to
13 get attention, Mr. Chairman. I'm not sure how he
14 voted.

15 MR. STRICKLAND: Yes, Licco.

16 MR. SUBIA: I voted with you.

17 MR. STRICKLAND: Okay.

18 MR. SUBIA: Okay.

19 MR. STRICKLAND: One, two, three, four, five.

20 Okay. We had five affirmative votes, and I don't know
21 how Bernice voted, and she's not on the call, so that
22 was a no vote.

1 Five for, two opposed, and one abstention.

2 A PARTICIPANT: Mr. Fuentes has joined.

3 MR. STRICKLAND: Say again, please?MN

4 A PARTICIPANT: Mr. Fuentes has joined.

5 MR. STRICKLAND: He's back. Good work, Tom.

6 MR. FUENTES: Thank you.

7 MR. STRICKLAND: The wonders of modern
8 communications.

9 MR. FUENTES: Yeah.

10 MR. STRICKLAND: All right. Now, on the
11 eligibility of trafficking, can you, Helaine, can you
12 give us a comment or two on that?

13 MS. BARNETT: Yes, and I'm then going to ask
14 both Tom and Vic to supplement it.

15 The reason the Board doesn't know about this
16 is because the Board wasn't involved with the issuing
17 of the original program letter and the revised program
18 letter that was sent fairly recently to clarify what
19 LSC programs can do in the representation of victims of
20 trafficking under the revised federal statute.

21 And we probably would not have gone through
22 this whole discussion had the OIG's view been that we

1 were violating the law.

2 In fact, we have had a series of actions
3 before we came out with the decision that I'll let Tom
4 review, that included an opinion of general counsel
5 that I'll let Vic talk about, so that the Board has
6 some background and understanding of this issue.

7 MR. POLGAR: Basically, I have two things to
8 add to what Helaine said.

9 One is, there have been extensive discussions
10 surrounding this with the OIG, between Mattie, who is
11 not here today, and the committee on the Hill, which
12 was the House International Relations Committee, which
13 wrote the legislation in question, and so that we're
14 pretty sure, and we've also been in touch with the
15 administration, although they're more of "You can do
16 whatever you want."

17 It's clear Congress wanted this thing
18 interpreted broadly, and they want government agencies,
19 and for this purpose, we're specifically mentioned in
20 the statute, to interpret the language broadly.

21 But the second thing is, it's a very small
22 number of cases. We don't know how many precisely

1 would be at issue, but it's 170 total cases, including
2 some which are non-controversial, so the number of
3 controversial cases we're talking about may be 100, may
4 be even less than that.

5 This was intended to be worded, because we
6 didn't know -- we knew the Board didn't know about it,
7 to be a statement of management's views, and not to be
8 a statement of the Board's views. We may have failed
9 on that, but that was certainly the intent when we were
10 writing this.

11 So that was the -- and as Helaine said, we did
12 it because of the specific language in Kirt's SAR about
13 us being in violation of the appropriations rider,
14 which of course is a very sensitive subject for this
15 Corporation and potentially on the Hill.

16 MS. BeVIER: Yes, and one that the Board needs
17 to be pretty concerned about -- very concerned about.

18 MS. BARNETT: Vic, do you want to start and
19 then --

20 MR. FORTUNO: Why don't we start with Mattie's
21 conversation with Hill staff?

22 MS. CONDRAV: Oh, sure.

1 I spoke to someone on the committee and had
2 broached the issue.

3 Well, I don't know how much detail you guys
4 got into, so I -- when the trafficking amendments came
5 out, there was language expanding availability to
6 services for people with -- people's family members.

7 And there was also specific language in the
8 amendment related to HHS program's eligibility
9 specifically talking about that people who were in the
10 process of being certified could be served.

11 And I ended up -- I was trying to find the
12 legislative history of that, and ended up speaking to
13 one of the committee staffers who indicated to me that
14 essentially HHS had been interpreting the statutory
15 language too narrowly, and so they had written this
16 language into the statute to make sure that HHS
17 understood that it was intended to be understood more
18 broadly.

19 In the context of that conversation, it was
20 like, well, then, Congress intended that legislation to
21 be read, the general language about the subject of a
22 certification, to be read more broadly than meaning "is

1 already certified," and that she didn't have a problem
2 with how we had been interpreting it, and that if we
3 had a problem -- if somebody came to us with a problem,
4 that we should contact the committee.

5 So we took from that that the committee was
6 okay with what we had been doing with it all along.

7 MR. STRICKLAND: Notwithstanding a literal
8 reading of -- the inspector general tells me that his
9 comment in here is based on his office's reading of the
10 literal language of the statute.

11 MS. CONDRAY: Well, except that he keeps
12 insisting that the literal language of the statute,
13 which is "subject of a certification," necessarily
14 means "is certified," and I just personally, with all
15 due respect to the Inspector General's Office, disagree
16 that the words "subject of a certification" must
17 necessarily mean "is already certified."

18 MR. FORTUNO: And certainly -- and this is Vic
19 -- certainly if Congress meant that phrase to mean
20 certified, it could have used the more precise --

21 MS. CONDRAY: "Is certified."

22 MR. FORTUNO: -- "certified."

1 It did not do so, and so it's, to the extent
2 that there is a disagreement as to what the phrase
3 means, it's a matter of interpretation.

4 And we have looked at it, any number of
5 offices here have looked at it, from legal affairs to
6 government relations and program performance, and we
7 all agree that this, the Trafficking Victims Protection
8 Act, the relevant provision is intended to expand
9 representation to folks who would otherwise be
10 ineligible for LSC-funded legal assistance, and we, for
11 example, the Office of Legal Affairs, issued an opinion
12 so stating.

13 And it really all comes down to that phrase,
14 "subject of a certification" -- whether, as the IG
15 suggests, that necessarily means certified, or if it's
16 something broader -- and our conclusion was that, so
17 long as the person is the subject of a certification
18 process -- that is, they are in the process, have not
19 yet been certified but are in the process -- that that
20 comes within the phrase, "subject of a certification."

21 MS. CONDRAY: If I can add to that, part of
22 being a subject of a certification, it's a very long,

1 complicated process whereby somebody has to get what's
2 called a T visa from the, whatever the INS is called
3 now -- I know they have a new name, but I haven't
4 caught up with it -- and to be able to get that T visa,
5 there's lots of forms, and you have to get -- like the
6 attorney general's office has to file papers that you
7 are cooperating with an investigation. It's a very
8 cumbersome process.

9 And it struck us that if the intent of the
10 legislation was to help people who have been brought to
11 this country in servitude get their way out, and that
12 the statute specifically allows them to get legal
13 assistance, turning around and telling them, "You can't
14 get legal assistance until you've already gone through
15 the whole process," at which point, quite honestly,
16 they probably don't need nearly as much legal
17 assistance, would really thwart the underlying purposes
18 of the statute.

19 People need their legal assistance when
20 they're trying to run the maze of getting their
21 certification.

22 MR. STRICKLAND: It seems logical that they

1 might well need it in the process of getting
2 certification.

3 MS. CONDRAY: And it was our belief that
4 that's why Congress used the phrase, "subject of a
5 certification," intending that broader meaning, rather
6 than simply saying, "is certified," or "has been
7 certified."

8 MS. BARNETT: So this has been ongoing
9 discussions with the OIG. We are absolutely satisfied
10 that in discussions with congressional staff and in the
11 view of the legal affairs -- Office of Legal Affairs
12 opinion, and almost common sense, as Mattie said, that
13 the interpretation warranted us issuing the program
14 letter.

15 And the response in this SAR is simply based
16 on the assertion that the program letter allows
17 representation of ineligible aliens in violation of the
18 Act.

19 We took that as a very serious assertion, and
20 one that required the explanation that we've given you.

21 MS. CONDRAY: For what it's worth, I'll also
22 add that LSC's interpretation of the phrase "subject of

1 a certification," this goes back to our original
2 program letter on this matter, which has been out there
3 for a couple of years, to which the Office of the
4 Inspector General has not heretofore raised a peep. It
5 was only with the rewrite of the letter.

6 Now, that's not to say that they didn't think
7 of it before, that they didn't have a right to raise it
8 when they thought of it, but I just add that for what
9 it's worth.

10 MR. STRICKLAND: Okay. So there is -- our
11 management is saying that you feel very strongly that
12 this particular assertion in the SAR needs rebuttal?

13 MS. BARNETT: Yes, we do.

14 MR. POLGAR: As I indicated a few minutes ago,
15 we did try to write it in a way that we were expressing
16 management's views, not the Board's views, because we
17 knew that this was an issue you would be seeing for the
18 first time, and normally, it's general counsel's office
19 that interprets what the law means, anyway. We don't
20 run all those issues up to the Board.

21 MR. STRICKLAND: All right. Well, we're faced
22 with the -- that is, at the Board level, we are faced

1 with the difficulty of having to come to some decision
2 on this between now and November 30th.

3 Isn't that where we find ourselves?

4 MS. BeVIER: Yeah.

5 You know, at this point, I'm satisfied with
6 management's explanation, but I -- this is Lillian
7 speaking -- I'm still uneasy with putting it in this
8 particular way in the report to Congress, just because,
9 I don't know, it takes me a while to get things figured
10 out.

11 And so I understand the need to put that claim
12 on the record, you know management's position on the
13 record.

14 I'm perfectly happy to say, "The Board has
15 heard, and," I don't know what, "is inclined to be in
16 sympathy with management's position," or something.

17 I mean, but -- well, you can see, I'm
18 floundering here, because I just, I don't want to -- I
19 think it should be clear that at this point it's
20 management's position --

21 MR. FORTUNO: Or, Lillian --

22 MS. BeVIER: -- we think management's

1 position is certainly plausible, and that what we may
2 have here is -- and completely defensible, but apart
3 from that, at this point, maybe the Board doesn't have
4 a view, unless I'm wrong.

5 MR. FORTUNO: And Lillian, this is Vic, maybe
6 we can capture that by using some wording along the
7 lines of, "We have been advised by management," or
8 "We've been informed" -- "The Board has been informed
9 by management," to make clear that it's not something
10 on which the Board is expressing a view, but simply
11 passing that along.

12 MS. BeVIER: Yes. I mean, I'm perfectly happy
13 to express the view that management's position at this
14 point is plausible and defensible, and that what we
15 have here is a disagreement about how to interpret a
16 statute.R

17 MR. STRICKLAND: Right.

18 MS. BeVIER: And I don't have any objection to
19 taking a position that says that.

20 Calling it is another question. I mean, you
21 know, I guess I don't know why I'm uneasy about that.
22 I just think at this point that's as far as I can go.

1 MR. HALL: Well, I guess the part I would add
2 to it is that to me, it's a very compelling statement,
3 if management has conferred with a congressional
4 committee that is responsible for the original
5 amendment of the Trafficking Act, I think management --
6 and again, we have to take that this conversation did
7 occur, but if management is asserting that, and that
8 statement is true, then I think their position is more
9 than plausible, it's, you know, it's a very -- it is, I
10 would say as a Board member, it's the position to take.

11 MS. BeVIER: What I'm wondering about is
12 whether it could -- if we're going to do that, this is
13 all passive voice, and who it was that was spoken with
14 and who spoke to that person.

15 The congressional committee. I mean, was that
16 -- I mean, Mattie said a staff person, right?

17 MS. CONDRAY: Yes, I spoke with a staffer on
18 the committee.

19 MS. BeVIER: Yeah. Well, that's --

20 MS. CONDRAY: We have the name. I don't
21 remember her name off the top of my head.

22 MS. BeVIER: Right. And I think that that's,

1 you know, that's -- that a member of our staff spoke
2 with a staff member of the committee, because we didn't
3 speak with the committee, right?

4 So -- and I much prefer active voice than
5 passive, "Congressional committee was consulted," and
6 that sort of thing.

7 So as I say, I'm completely persuaded that the
8 conversation was had and so forth, and that
9 management's position is completely defensible and was
10 reached in good faith, and what we have is a good faith
11 disagreement about what the statute means.

12 MR. GARTEN: We have the situation occur in
13 corporate practice all the time where officers of a
14 corporation are not familiar with every aspect of the
15 law and they rely upon their legal counsel, and in this
16 case, we have legal counsel offering the opinion, and I
17 see no reason why, confirmed by management --

18 MS. BeVIER: Well, but --

19 MR. GARTEN: -- why we can't accept the
20 opinion that we're getting.

21 MS. BeVIER: Because, Herb, I think Vic is
22 management's lawyer, and if he were the Board's lawyer,

1 it might be different. I'm not sure -- you know, that
2 may seem a technicality, but it seems to me to be --

3 MR. GARTEN: Vic, that's a good question.
4 Aren't you counsel, also, to the Board?

5 MR. FORTUNO: Yes, I am.

6 MR. GARTEN: That's what I thought.

7 MS. BeVIER: Well, I don't understand that,
8 then. You're counsel to the Board and to management?

9 MR. FORTUNO: Well, it's to the Corporation,
10 which acts through its various agents and components,
11 sometimes through management, the chief executive, or
12 some other officer, sometimes by its Board. But it is
13 a balancing act, and I can certainly understand your
14 concern.

15 MS. BeVIER: Yeah. Again, I'm not saying that
16 I have any question about the -- I just feel like I --
17 I haven't thought about it enough.

18 MR. STRICKLAND: Well, all right. What's the
19 will of the Board here?

20 I thought that Lillian's suggestion was a good
21 one, that we rephrase this slightly so that we are
22 relying on management's representation regarding this

1 matter, and we find it plausible and defensible.

2 MR. GARTEN: In the opinion of our counsel.

3 MR. STRICKLAND: And also in the opinion of
4 our general counsel, and we present it that way, and
5 send it on.

6 MS. BeVIER: Yeah.

7 MR. GARTEN: That's agreeable to me.

8 MS. BeVIER: I think that's probably a fair
9 way to do it.

10 But do we want to put it in this side-by-side,
11 or do we want to just put it in the text of the -- I'd
12 be -- I'd prefer to put it in the text.

13 MR. STRICKLAND: Why don't we do that, and
14 give it the same direction, unless there's objection,
15 we'll give it the same direction that we did with
16 respect to the other revisions to the report under the
17 delegation.

18 Is that acceptable to the Board?

19 A PARTICIPANT: Yes.

20 MS. BARNETT: My understanding, Mr. Chairman,
21 is that we will then redraft the section on the Board's
22 response to the OIG's semiannual report, incorporating

1 the factual points from the side-by-side, and being
2 very mindful of the tone with respect to not looking to
3 be confrontational, however pointing out where there
4 are factual disputes.

5 MR. STRICKLAND: Correct.

6 MS. BeVIER: Yes.

7 MR. GARTEN: That's a good summary, Helaine.

8 MR. STRICKLAND: And the Board is otherwise
9 approving the Board's report, and subject to these
10 revisions and the approval of those revisions by the
11 chairman and the vice chairman, consistent with the
12 directives given to us.

13 MS. BeVIER: Yeah. We have to work on the
14 preface, then.

15 MR. STRICKLAND: Right.

16 MS. BeVIER: Okay.

17 MR. STRICKLAND: All right. Unless there's
18 further objection, we'll consider that the action of
19 the Board.

20 Is there any dissent to that being the action
21 of the Board?

22 (No response.)

1 MR. STRICKLAND: All right. Hearing no
2 dissent, we'll declare that to be a unanimous vote as
3 to that action.

4 And is there any other business to come before
5 the meeting?

6 MS. BARNETT: Mr. Chairman, if I might just
7 announce to the members of the Board that our April
8 Board meeting, April 2006 dates remain exactly the
9 same, the last Friday and Saturday in April, but the
10 Board will be meeting in St. Louis, Missouri, and will
11 be visiting the Eastern Missouri Legal Services Program
12 as the program visit instead of going to Portland,
13 Oregon.

14 MR. STRICKLAND: All right. Thank you.
15 That's a good announcement. It meets some concerns
16 expressed at our last Board meeting.

17 MR. FORTUNO: Mr. Chairman, this is Vic
18 Fortuno again.

19 If I may, I know that there is one other issue
20 relating to the SAR, and that is the management had
21 been thinking of sending, since the statute requires
22 that it be transmitted -- that is, the IP's SAR

1 management's response -- that it be transmitted
2 together to the appropriate committees or subcommittees
3 of Congress.

4 Management was contemplating sending it as one
5 bound volume, so it's simply a packaging issue, but I
6 know that the IG has taken issue with that. He called
7 me today, and Mr. Chairman, I believe he may have sent
8 you, he said he was going to send you an e-mail
9 message.

10 MR. STRICKLAND: He did send me an e-mail.

11 MR. FORTUNO: The IG seems to feel strongly
12 that the reports should not be packaged together and
13 sent out as one package.

14 His feeling is that the IG report should be
15 separate and apart from the Board response, and that
16 while the statute says they are to be transmitted
17 together, that they are to be transmitted together but
18 as two separate documents.

19 So I don't know if the Board would like to
20 take that issue up and discuss it.

21 MR. MCKAY: Mr. Chairman, Mike McKay.

22 I do have to ring off because of another

1 commitment, so I will ring off and let you all decide
2 this last issue.

3 MR. STRICKLAND: Thank you, Mike.

4 MR. MCKAY: Thank you.

5 MR. STRICKLAND: What is your legal advice,
6 Vic?

7 MR. FORTUNO: Well, first, as a backdrop, let
8 me -- it's Section 5 of the IG Act that addresses the
9 SAR.

10 Section 5-B says, "The semiannual reports of
11 each inspector general shall be furnished to the head
12 of the establishment ... and shall be transmitted by
13 such head to the appropriate committees of the Congress
14 together with a report by the head of the
15 establishment."

16 That says they go together. It doesn't
17 address specifically whether they are two separate
18 documents in one mailing or whether they can be
19 packaged as one.

20 The IG, however, takes a position that Section
21 5-C makes clear his position, because Section 5-C says
22 that the semiannual reports of each inspector general

1 will be -- "shall be made available to the public by
2 the head of the establishment within 60 days at
3 reasonable cost and also within 60 days of
4 transmission, the semiannual reports of the
5 establishment head shall be made available to the
6 public at reasonable cost."

7 And because Section C is broken down in that
8 way, the IG has argued that it must be -- that his
9 report must be a separate document.

10 I think that it's certainly not clear in the
11 SAR, but I think that since the IG's report must be
12 sent together with the Board's report, there's nothing
13 to prevent the Board from choosing to package both
14 reports in one printed volume rather than as two
15 volumes transmitted in the same envelope.

16 By requiring the reports together, it seems
17 that Congress was expressing an interest in having the
18 two reports with each other so that the information
19 would be viewed in light of the other, and not as
20 separate documents that might be viewed entirely
21 separately from the other.

22 So it seems that fairness would support the

1 notion of packaging it together.

2 The IG's report is not changed in any way.
3 It's simply presented along with the Board response.

4 So I don't see how that does violence to the
5 IG Act or the IG's independence. It simply, by
6 packaging them together, ensures that anyone who has
7 one has the other, and views the one in light of the
8 other.

9 To me, that seems fair and reasonable, but I
10 understand the IG's very narrow reading of the IG Act,
11 especially Section 5-C, in that it says that if the
12 public asks for the IG's report, they can get it; if
13 the public asks for the management response or the
14 Board response, it can get it.

15 I don't see how that necessarily means that it
16 must be to the exclusion of the other.

17 MR. STRICKLAND: Isn't there a way -- I mean,
18 this could be viewed as a tempest in a teapot.

19 I mean, is there a way to print these things
20 and then put them in a binder so that if somebody
21 subsequently wants a separate IG report or a separate
22 management report, they can get them?

1 MS. BeVIER: The plastic things that go around
2 and around and around?

3 MR. JEFFRESS: Yes, that was the way we were
4 proposing to bind them, just those plastic spirals.

5 MR. STRICKLAND: What I got from Kirt was that
6 he had been asked to submit the Word document so that
7 they could be merged and printed as one, and he
8 objected to that.

9 MR. JEFFRESS: Actually, Mr. Chairman, his
10 document, that you already have in your hands and all
11 the Board members have in your hands, is already
12 printed. It's already in the electronics of the
13 machine, the printing machine. It would not be changed
14 in any way. But when we print your preface, we would
15 then print his entire report following your preface,
16 and then print the Board response following that.

17 So it would not be changed in any way, but
18 simply inserted between your preface and the Board's
19 response.

20 MR. HALL: And how have we done it in the
21 past, and what has been the response from Congress when
22 they have received it?

1 MR. JEFFRESS: It's been two separate reports
2 in the past. As to the response, I'll have to defer to
3 others.

4 MR. FORTUNO: Yes. In the past, it's been two
5 separate documents in one envelope with a transmittal
6 memo, a short one-paragraph, "Transmitted herewith
7 are," and there's been no response one way or the
8 other. That's just never been an issue for Congress.

9 Actually, it's never been an issue for anyone.
10 This is the first time that this question of whether
11 they could be packaged together or not has come up.

12 MR. POLGAR: Well, in the context of LSC.

13 MR. FORTUNO: Yeah.

14 MR. POLGAR: We haven't checked.

15 MR. JEFFRESS: Mr. Chairman, this is Charles
16 Jeffress.

17 I have checked other semiannual reports by
18 inspector generals, and many of them do include some
19 preface by the head of the agency, and at least on the
20 web site when you call it up, response is immediately
21 following it.

22 So I do think the language of the Act that

1 talks about the chairman submitting -- the head of the
2 establishment submitting the reports together certainly
3 suggests that the two not be separated, particularly
4 since one is a response to the other.

5 MR. GARTEN: This seems to me to be so clear a
6 decision that I'm wondering where the cooperation is
7 coming from from the inspector general that we're
8 hearing about.

9 This is something that should be a very simple
10 solution, send them in together, and whatever he wants
11 to do, let him do.

12 You know, we're taking a lot of time on
13 something to me that is very, very simple.

14 MR. STRICKLAND: Yes, we are.

15 What's the will of the Board?

16 MS. BeVIER: Mr. Chairman, I don't think we
17 need a motion on this, do we? I mean --

18 MR. STRICKLAND: I hope not. Let's just get
19 this worked out.

20 MS. BeVIER: Yeah. You guys figure this one
21 out.

22 MR. STRICKLAND: We're punting this back to

1 the team.

2 MS. BARNETT: We'll get it out.

3 MR. GARTEN: I assume that's what the word
4 "together" means.

5 MS. BeVIER: They will figure that out.

6 MR. STRICKLAND: Okay. Is there any other
7 business?

8 (No response.)

9 M O T I O N

10 A PARTICIPANT: Motion to adjourn.

11 A PARTICIPANT: Second.

12 MR. STRICKLAND: Okay. Thank you very much,
13 everybody, and we are adjourned.

14 (At 1:37 p.m., the meeting was adjourned.)

15 * * * * *