

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

TELEPHONIC MEETING OF THE  
AUDIT COMMITTEE

OPEN SESSION

Monday, June 25, 2012  
2:33 p.m.

Legal Services Corporation  
F. William McCalpin Conference Center  
3333 K Street, N.W.  
Washington, D.C. 20007

COMMITTEE MEMBERS PRESENT:

Victor B. Maddox, Chairperson  
Harry J.F. Korrell III  
David Hoffman (Non-Director Member)  
Paul L. Snyder (Non-Director Member)

OTHER BOARD MEMBERS PRESENT:

None

STAFF AND PUBLIC PRESENT IN THE CORPORATION'S  
OFFICES:

James J. Sandman, President  
Richard L. Sloane, Special Assistant to the  
President  
Rebecca Fertig, Special Assistant to the President  
Kathleen McNamara, Executive Assistant to the  
President  
Victor M. Fortuno, Vice President for Legal Affairs,  
General Counsel, and Corporate Secretary  
Katherine Ward, Executive Assistant, Office of Legal  
Affairs  
David L. Richardson, Comptroller and Treasurer,  
Office  
of Financial and Administrative Services  
Jeffrey E. Schanz, Inspector General  
Laurie Tarantowicz, Assistant Inspector General and  
Legal Counsel, Office of the Inspector General  
Joel Gallay, Special Counsel to the Inspector  
General,  
Office of the Inspector General  
Ronald "Dutch" Merryman, Assistant Inspector General  
for Audit, Office of the Inspector General  
John Seeba, Director of Audit  
Operations/Administrative  
Officer, Office of the Inspector General  
Emily Gydesen, Intern, Executive Office  
Flor Gardoa, Intern, Office of Legal Affairs

## C O N T E N T S

OPEN SESSION	PAGE
1. Approval of agenda	4
2. Approval of minutes of the Committee's meeting of April 15, 2012	4
3. Review of Audit Committee charter and consider and act on possible changes thereto	5
4. Public Comment	134
5. Consider and act on other business	Not done
6. Consider and act on motion to adjourn meeting	134

Motions: 4, 4, 134

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

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(2:33 p.m.)

CHAIRMAN MADDOX: I would call the meeting to order.

I think the first order of business is to approve the agenda. Is there a motion to that effect?

## M O T I O N

MR. KORRELL: So moved.

MR. SNYDER: Second.

CHAIRMAN MADDOX: All in favor?

(A chorus of ayes.)

CHAIRMAN MADDOX: Opposed?

(No response.)

CHAIRMAN MADDOX: The motion carries and the agenda is approved.

The second item of business would be the approval of the minutes from our previous meeting. Is there a motion?

## M O T I O N

MR. KORRELL: So move.

MR. HOFFMAN: Second.

1           CHAIRMAN MADDOX: All in favor?

2           (A chorus of ayes.)

3           CHAIRMAN MADDOX: Opposed?

4           (No response.)

5           CHAIRMAN MADDOX: And the minutes of our  
6 previous meeting are approved.

7           I guess that takes us, then, to the real  
8 item of business, which is the revision of our Audit  
9 Committee charter. And I first want to -- Vic, is  
10 Mattie Cohan still with us?

11           MR. FORTUNO: Well, she's alive, if that's  
12 what you mean. But no, no, she's no longer with  
13 LSC.

14           CHAIRMAN MADDOX: I see. Well, I was going  
15 to thank her for all the work she's done in getting  
16 us to this point, but I'll thank her --

17           MR. FORTUNO: I'd be happy to go ahead and  
18 convey the message.

19           CHAIRMAN MADDOX: Yes. I'll thank her on  
20 the public record, and hope that someone passes our  
21 thanks on to her. I also want to thank all the  
22 staff, including yourself, Vic, who've done great

1 work for us.

2 To get us going, I think I would like to  
3 make sure we're all working from the same document.  
4 And the document that I believe we're working on is  
5 the clean draft amended charter that Rebecca Fertig  
6 circulated, and I believe is available on the public  
7 website. Is that correct?

8 MR. FORTUNO: That's correct.

9 CHAIRMAN MADDOX: So anyone who wants to  
10 look at what we're doing and what we're working from  
11 has access to that.

12 I have gone through the various comments  
13 that we received from committee members and from  
14 anyone else that I'm aware of -- most importantly,  
15 the Office of the Inspector General. And I've tried  
16 to synthesize those comments and understand where we  
17 have disagreement or consensus.

18 And it seems like, for the most part, the  
19 Committee has a broad consensus about the language  
20 of what the new charter should look like. I know  
21 that there are some comments that the Office of the  
22 Inspector General has provided that we disagree

1 with, and I want to make sure that we have ample  
2 time to discuss those comments and to get the  
3 Inspector General's reaction to the Committee's  
4 position and, if it's possible, reach consensus with  
5 the Inspector General's office, and if not, to  
6 narrow the differences to the extent possible.

7           Paul Snyder and David Hoffman both provided  
8 extensive comments, and I had previously provided  
9 comments. I think what I would suggest, in order to  
10 facilitate this meeting, maybe expedite it, is to go  
11 through the draft of the document and to note any  
12 changes or to note where, so far as I'm aware, there  
13 is no change. Hopefully someone there at LSC is  
14 taking good notes, and at the end of the process  
15 we'll have a document that we can finalize.

16           Are there any other suggestions on how to  
17 proceed from the committee members?

18           MR. SCHANZ: Victor, this is Jeff Schanz,  
19 the IG. What I'm working from is what's known as  
20 the clean copy, with the Hoffman revisions of  
21 4/17/2012. At our last meeting, you requested for  
22 the IG comments to be sent to the committee members,

1 which we did on May 8th. We had 22 specific items  
2 that were not incorporated, or maybe you discussed  
3 them with the Committee. But I don't see any  
4 evidence that even the typos that we pointed out  
5 were changed into the Hoffman copy of 4/17.

6           So I'm not sure if you want to go through  
7 each of our comments. But we've put a lot of effort  
8 into that, checking other charters and checking --  
9 making sure with our counsel that it's consistent  
10 with the IG statute and our responsibilities and  
11 duties, as provided by the Congress.

12           I'm not sure if you had an opportunity to  
13 look at them. But they were sent to the Committee  
14 on May 8th. And, like I said, even some of the  
15 typos weren't reflected in the "clean copy" that  
16 Becky sent out on Friday.

17           So it's going to be a little laborious if  
18 we go through comment by comment. But we're willing  
19 to do that because I'm very confident with what we  
20 have recommended as the change.

21           CHAIRMAN MADDUX: I want to make sure that  
22 we're on the same wavelength, Jeff. I'm looking for



1 an email from Friday, and I'm not sure that I've got  
2 that in mine materials here.

3 MR. FORTUNO: While you're looking, maybe I  
4 can --

5 MR. SNYDER: Victor, are you looking at  
6 Rebecca's email?

7 CHAIRMAN MADDOX: I am.

8 MR. SNYDER: It was at 10:12 a.m.

9 MR. FORTUNO: Yes.

10 CHAIRMAN MADDOX: On Friday. For some  
11 reason, I'm not coming up with that one. I might  
12 have moved it to some folder accidentally. Let me  
13 just check another source here.

14 MR. SNYDER: Vic, I just forwarded it to  
15 you.

16 MR. SCHANZ: Well, with that concern that  
17 we've already gone through the clean copy and you  
18 haven't had a chance to see the 24 comments from the  
19 IG and had an opportunity --

20 CHAIRMAN MADDOX: Well, that's not true,  
21 Jeff. We received the comments on May 8th, and I  
22 circulated them to all the committee members. And

1 everyone is aware of those comments, which I  
2 appreciate.

3           And I think that the Committee has given  
4 considerable effort to consider, and I think we're  
5 going to be prepared to discuss, the extent to which  
6 we agree with them or disagree with them. So I  
7 don't think there's any need to delay this process  
8 any further.

9           I'm just now looking at -- okay. I'm  
10 looking at Rebecca's email from 11:12 a.m. on  
11 Friday, which I gather is the same one that we're  
12 talking about. And let's see if I have any -- okay.  
13 And just to make sure we're on the same page, that  
14 is the same email, I think, that, David, you just  
15 forwarded me.

16           So Jeff, to address your concern, the draft  
17 charter that was circulated on Friday does not  
18 incorporate your comments.

19           MR. SCHANZ: Correct.

20           CHAIRMAN MADDOX: Because I believe that it  
21 was originally circulated before we received your  
22 comments. But it is the draft that everyone has

1 worked from, and we have the OIG comments to that  
2 draft.

3           And what I'm hoping to do is to use this  
4 document and then to address the concerns anybody  
5 has with the Committee's suggestions, and we will  
6 note changes to this draft, whether they're changes  
7 from committee members, whether they're changes from  
8 your office, or anybody else that wants to make a  
9 suggestion during today's meeting.

10           And so at the end of that process, I'm  
11 hopeful that we'll take this document with whatever  
12 changes we've agreed to as a Committee and have a  
13 final draft charter. Does that make sense to folks?

14           MR. HOFFMAN: And Vic, just I want to make  
15 sure I'm clear I'm looking at the right thing. So  
16 Rebecca's email, I guess like the fourth attachment,  
17 it's DraftAuditCommitteeCharterCleanCopy.doc. That  
18 is what we're going to be looking at as we go  
19 through? Am I looking at the right document?

20           CHAIRMAN MADDUX: The draft. So with that,  
21 I want to start by looking at items -- looking at  
22 the various sections of the draft, with the Roman

1 numeral designations. And that will try to keep  
2 everybody on the same page.

3 In Roman numeral I, Establishment, I think  
4 the only change from the draft would be that we  
5 would put a period after the parenthetical, "(the  
6 Committee)," on the third line, and delete the rest  
7 of the sentence. And I believe that's actually a  
8 change that the Inspector General suggested in his  
9 May 8, 2012 comments. Any disagreement with that?

10 MR. SCHANZ: No, that's correct. That  
11 accurately reflects our concern. That would be  
12 comment A1 on your chart --

13 MR. HOFFMAN: I agree.

14 MR. SCHANZ: -- of the IG comments. So  
15 it's comment A1.

16 CHAIRMAN MADDOX: Correct. All right.  
17 Then I'll take it to Section II, Roman numeral II,  
18 Purposes. I thought -- sorry?

19 MR. KORRELL: Victor, this is Harry. Can I  
20 make a suggestion? And maybe this is what you  
21 already have in mind. But as we go through these, I  
22 anticipate we're going to have some discussion on

1 each of these items.

2 CHAIRMAN MADDOX: Correct.

3 MR. KORRELL: And that we may get a  
4 complete consensus, as we just did, and there may be  
5 situations where we do not get a complete consensus.  
6 I don't think that we want to do a vote on every  
7 one.

8 CHAIRMAN MADDOX: No.

9 MR. KORRELL: And so what I'd propose is  
10 that we have the conversation on each of these  
11 topics. If there appears to be a consensus among  
12 committee members, that we take note of that, and at  
13 the end of this process we'd have a motion to adopt  
14 the new charter based on the consensus reached on  
15 each of the items as we go through.

16 CHAIRMAN MADDOX: I think that makes  
17 perfect sense, Harry. I appreciate it.

18 MR. KORRELL: That will just require  
19 somebody keeping track on what we've reached  
20 consensus so that we can have an omnibus motion at  
21 the end.

22 CHAIRMAN MADDOX: Right. Vic Fortuno, is

1 there someone there who we can rely on to keep  
2 track?

3 MR. FORTUNO: Yes. She's taking copious  
4 notes.

5 CHAIRMAN MADDOX: Very good. So Roman  
6 numeral II, the section called Purposes, I don't see  
7 any change from the draft we're working with. Does  
8 anyone know of any change?

9 MR. MERRYMAN: We had a comment on that one  
10 -- this is Dutch Merryman speaking -- about  
11 overseeing the quality and integrity of auditing.

12 CHAIRMAN MADDOX: Correct.

13 MR. MERRYMAN: And I just want to make  
14 sure. Other than that comment, that's no change,  
15 even as a result of that comment? I just want to  
16 make sure I understand.

17 CHAIRMAN MADDOX: Dutch, I apologize. I  
18 meant to address that before I sort of called the  
19 motion on that one, even though I'm not really  
20 calling the motion. But your comment was that the  
21 OIG audits and investigates -- that the integrity of  
22 OIG audits and investigations is the responsibility

1 of the IG and the integrity committee and not the  
2 Board.

3           And my thought on that comment was that the  
4 Board has responsibility for overseeing the quality  
5 and integrity of LSC's auditing function, and that  
6 the charter language doesn't say anything about the  
7 OIG or its investigations. And I don't think that  
8 this reflects a substantive change from the existing  
9 charter.

10           Do other committee members have any  
11 thoughts on that?

12           MR. HOFFMAN: This is David. I agree that  
13 we should keep it as it is in the existing charter.

14           MR. SNYDER: And, Vic, Paul. I agree. I  
15 think to eliminate it, and we call ourselves an  
16 Audit Committee, is very inconsistent.

17           CHAIRMAN MADDOX: So Dutch, I think we  
18 agree that we want to leave the language that you  
19 were concerned about in the charter. And I think  
20 it's my view, at least, that this really does not  
21 reflect any change in the substance of the charter  
22 itself.

1 All right. We'll move on to Section Roman  
2 numeral III, Membership. I don't know if we have a  
3 change here or not. This is one where the OIG had a  
4 comment, which I took to be more of a housekeeping  
5 comment, Dutch, than a substantive comment.

6 MR. MERRYMAN: Correct. It was just that -  
7 - I think the delegation has already been provided  
8 to the chairman. It is just easier for the chairman  
9 to exercise those delegations rather than bringing  
10 everything to the Board. It's just housekeeping,  
11 that's all.

12 CHAIRMAN MADDIX: Yes. I think my view is  
13 that we can leave that language the way it is. I'm  
14 not aware of any different position on the  
15 Committee. Do any committee members feel  
16 differently?

17 MR. SNYDER: No.

18 MR. HOFFMAN: No.

19 CHAIRMAN MADDIX: Then we'll leave that  
20 language as it is in our draft document.

21 MR. SCHANZ: Vic, the IG again. Continuing  
22 with the housekeeping metaphor, "members" is either



1 capitalized or it's not. There's two members in  
2 that paragraph. One is capitalized, one is not. So  
3 we should be consistent with our grammar person,  
4 whoever that may be.

5 CHAIRMAN MADDOX: Well, I'm going to leave  
6 that to the grammarian on the LSC staff. I actually  
7 see one capitalized "Members," and I don't see --  
8 oh, I see where. You guys actually have stricken a  
9 capitalized "Members." And I think it probably  
10 should not be a capital letter, so if Becky is  
11 making notes of this, why don't we use lower case  
12 for "members" there. Thank you, Jeff.

13 MR. GALLAY: Just one additional question.  
14 This is Joel Gallay. Just to clarify, it is the  
15 intention of the Committee that a quorum could be  
16 comprised of non-director members? That's how this  
17 now reads. So I just want to make sure that's  
18 something you recognize.

19 CHAIRMAN MADDOX: Well, I don't think a  
20 quorum could be comprised of non-director members.  
21 We only have two.

22 MR. GALLAY: Well, that would be under the

1 present composition. But to the extent this is a  
2 charter that would permit additional appointments in  
3 the future, it would read, as I read it, so that if  
4 additional members, non-director members, were  
5 appointed. Reading the number II, that would permit  
6 that scenario.

7 CHAIRMAN MADDUX: I'm prepared to leave  
8 that to the good judgment of future boards or of our  
9 existing Board if we thought it necessary to add  
10 more non-director members.

11 Vic, is there any reason why we can't leave  
12 this language the way it is, from the OLA's  
13 perspective?

14 MR. FORTUNO: No. I believe that we've not  
15 looked at the issue of whether at some point there  
16 might be a Committee that consists of a sufficient  
17 number of non-directors, that that number alone  
18 would constitute a quorum of the Committee.

19 But the bylaws as they're written provide  
20 that it's a quorum of the members of the Committee.  
21 Non-director members are members. And so currently,  
22 they do count towards a quorum. But you're right.

1 You pointed out that counting them alone would not  
2 get us to a quorum.

3 I think the question here is potentially,  
4 in the future, if we had more non-director members  
5 on committees, whether there might be that  
6 situation. We'll certainly take a look at that to  
7 focus on exactly that point. We've not done so yet.  
8 But I think, for the time being, we're okay.

9 MR. KORRELL: This is Harry Korrell. I  
10 think we had some more extensive discussions of this  
11 topic back when the Chairman was appointing -- and  
12 I'm referring to the Board, not the Committee -- the  
13 Chairman was discussing appointing non-members, non-  
14 board members, to the Finance Committee. And there  
15 was some discussion about whether these would be  
16 voting or nonvoting members. I don't think we  
17 addressed the issue of quorum.

18 My view, and I think it's the same as  
19 Vic's, we don't resolve that in this charter one way  
20 or the other. I'm not sure that we should be taking  
21 a position in the charter that's different from what  
22 we do with respect to other Committees of the Board.

1           I do think it makes sense for someone at  
2 some point to decide whether that's possible. But I  
3 don't think we need to deal with it in this charter.

4           CHAIRMAN MADDOX: Yes. I agree with that.  
5 I think, Vic, if you guys could put that on your  
6 list of to-do items and then get back to us. But  
7 for now, I'm comfortable relying on, as I say, the  
8 good judgment of the Board overall in that respect.

9           MR. FORTUNO: I would note that --

10          CHAIRMAN MADDOX: So aside from changing --

11          MR. FORTUNO: Vic, if I may, just for the  
12 record, I would note that Section 502 of the bylaws  
13 provides, under Committee Procedures, that, "Except  
14 as otherwise provided in these bylaws or in the  
15 resolution establishing the Committee, a majority of  
16 the voting members, or over one-half of such members  
17 if their number is even, shall constitute a quorum."

18                 But we'll look at the issue carefully and  
19 report back. I just wanted to point to that one  
20 provision in case anyone wants to start looking at  
21 it as we are as well.

22          CHAIRMAN MADDOX: Well, I appreciate that.

1 So aside from changing the "members" to lower case,  
2 we'll not have any change in Section III.

3 Section IV, I'm not aware of any change to  
4 it, Terms.

5 Section V relates to Meetings. I'm not  
6 aware of any change.

7 Section VI relates to Resources. We have a  
8 comment from the OIG which -- Dutch, can you tell me  
9 exactly what your comment is here, again? I'm  
10 having trouble --

11 MR. MERRYMAN: Yes. What it deals with is  
12 in some cases there's confidential sources. Certain  
13 information cannot be revealed under the IG Act. So  
14 we just wanted to make sure that we participate, but  
15 it has to be consistent with the duties and  
16 responsibilities under the IG Act.

17 CHAIRMAN MADDOX: Right. And your concern  
18 is related to investigations and sources, I gather?

19 MR. MERRYMAN: That would be examples. I  
20 can't really give you the whole array of things that  
21 may be. That's why the term "consistent with the IG  
22 Act" would sort of cover those types of things, and

1 we would be, in my opinion, obligated to tell you  
2 why we could not and where it's in the IG Act that  
3 would prevent us from doing that.

4 MR. GALLAY: This is Joel again. The  
5 troubling language in that provision, I think, are  
6 the mandatory provisions, the "shall cooperate" and  
7 "all requests." That's a little too directive and  
8 is inconsistent with the underlying independence of  
9 the IG Act.

10 Certainly investigations is an area of  
11 concern, but even with respect to audit requests,  
12 which on the surface would be something we would, of  
13 course, be inclined to respond to. But the concern  
14 goes back to the underlying theory of the IG Act.  
15 The Committee might, or an establishment might, if  
16 you assumed nefarious intent, come up with an  
17 exhaustive array of requested audits that would  
18 eclipse the ability of the IG's office to determine  
19 its own agenda for audits.

20 MR. SCHANZ: In the past, also, the LSC OIG  
21 was tasked by Congress to review board activities  
22 and expenses. So we want to leave it to make sure

1 that we can be able to do that without really having  
2 a conflict of interest with the Audit Committee or  
3 the Board, as it were.

4 CHAIRMAN MADDUX: Any thoughts from  
5 committee members on this suggested change which --  
6 again, your change would be to add the words, "to  
7 the extent consistent with its duties and  
8 responsibilities under the Inspector General Act"?

9 MR. GALLAY: Correct.

10 MR. HOFFMAN: This is David Hoffman. I  
11 have a comment. And there's one person who's been  
12 speaking, and I don't think I've had the -- I'm not  
13 sure if we've met. Is it Joel?

14 MR. GALLAY: Yes. Joel Gallay.

15 MR. HOFFMAN: And I'm sorry, Joel. Nice to  
16 meet you by phone if we haven't met. I don't think  
17 we have. Are you with the IG's office?

18 MR. GALLAY: Yes.

19 MR. HOFFMAN: And what's your position  
20 there?

21 MR. GALLAY: I'm special counsel.

22 MR. HOFFMAN: Thank you. I figured you

1 were one of us, an attorney, but I wasn't -- I just  
2 wanted to say hello over the phone.

3           So my reaction, Vic and folks from the IG's  
4 office, is that I would keep the language as is.  
5 Obviously, there's nothing in the committee charter  
6 that can force the IG to do something that is  
7 contrary to the law. So even if this language is  
8 not there, it's unstated throughout the charter  
9 that, obviously, the provisions of the charter have  
10 to be consistent with other laws.

11           I was inclined to go along with it in sort  
12 of a narrow way. But given the comments over the  
13 phone now about how broadly you view what you'd like  
14 this language to do and the limitation on potential  
15 cooperation with the Committee, I would say we just  
16 leave it as is.

17           You know, the charter has been in place for  
18 several years with the language as it exists. I'm  
19 not aware of a problem developing. The IG's office  
20 is obviously free at any point, if it receives a  
21 request for information, to come back to the  
22 Committee and say that it doesn't believe it can



1 cooperate with that request or can't comply with  
2 that request because of its obligations under the  
3 law.

4           So there's nothing that, in any stretch of  
5 the imagination, compels you to violate the  
6 provisions of the IG Act as you interpret them. And  
7 I can tell from the comments throughout that there  
8 may be, in situations that arise, a difference of  
9 opinion about how broadly you interpret that Act,  
10 but there may not be.

11           And so I think the right thing to do, given  
12 your comments on the phone, is just to leave the  
13 language as is, and if a problem develops, we'll  
14 just address it when it comes up.

15           MR. GALLAY: Respectfully, I think, if  
16 that's the case, the conclusion would be just the  
17 opposite. If there's no objection to the notion  
18 that "to the extent consistent with the duties and  
19 responsibilities of the IG Act" is read in  
20 throughout this, then why not include it? Certainly  
21 --

22           MR. SCHANZ: State it right up front.

1           MR. GALLAY:  -- the intention of our office  
2 is to always be responsive to requests of the  
3 Committee.  But it's important, I think, in a  
4 charter of this nature, to recognize up front that  
5 underlying and overriding responsibility we have  
6 under the statute.

7           MR. HOFFMAN:  Yes.  Well, I disagree.  And  
8 so, in my view, you're free to raise issues if you  
9 think that they arise with regard to specific  
10 requests.  And obviously, I don't think it's  
11 anybody's intention on the Committee to be making  
12 requests that would be inconsistent with your  
13 responsibilities and duties, as properly understood.  
14 And so my vote and my view is that we leave the  
15 language as is.

16           CHAIRMAN MADDOX:  This is Vic Maddox again.  
17 The language that we have in the draft before the  
18 suggested change by the OIG, is that the language of  
19 the current charter?

20           MR. HOFFMAN:  Yes.  So the language --  
21 let's see here.  Yes.  The language that is in the  
22 clean copy draft that we're looking at --

1           CHAIRMAN MADDOX:   Correct.

2           MR. HOFFMAN:   -- is unchanged from the  
3 current charter.

4           CHAIRMAN MADDOX:   So Joel -- I guess it was  
5 Joel who was talking last -- did the OIG object to  
6 the language when it was initially proposed?

7           MR. MERRYMAN:   This is Dutch responding to  
8 that because I was the one mainly involved with  
9 that.  I would have to go back and look at the --  
10 there were iterations of comments given back in  
11 2008.  I have three or four sets.  I'd have to go  
12 back and research that.  I can't say with any  
13 certainty one way or another.  I would think we  
14 would have, but I can't say that for sure.

15          CHAIRMAN MADDOX:   Yes.  Well --

16          MR. SCHANZ:   Well, I would further support  
17 Joel on that.  "Shall cooperate with all requests,"  
18 that seems to tie my hands.  And I do cooperate with  
19 Management, with Congress, and with the Board, but  
20 "all" is an all-inclusive term.  And in an audit  
21 report or an investigation, "all" bothers me a  
22 little bit.

1           MR. GALLAY:  There are circumstances where  
2 we wouldn't be able to, if the request was, for  
3 example, grand jury material.

4           CHAIRMAN MADDOX:  Correct.

5           CHAIRMAN MADDOX:  David, isn't that  
6 basically what you're suggesting, that if such a  
7 circumstance came up, that we would all deal with it  
8 in good faith and resolve that problem if there were  
9 one?

10          MR. HOFFMAN:  Yes.  And I think that's  
11 implicit throughout everything that's in this  
12 charter or other charters of other committees that  
13 the IG is interacting with.  It's always the case  
14 that you're responding or interacting with the Board  
15 and its Committees consistently with the law,  
16 whether the IG Act or other laws.  And I think that  
17 if an issue arises, you can bring it to our  
18 attention.

19          MR. GALLAY:  Again, if that's the case, and  
20 certainly we think it is, why not state that?  
21 Either here or someplace else -- you know, at the  
22 conclusion of the document -- nothing in this

1 document shall be construed as --

2 MR. SCHANZ: The very last paragraph says  
3 that.

4 CHAIRMAN MADDOX: Yes. That's a good  
5 point, Jeff. The last paragraph says, "Nothing  
6 contained in this charter shall be construed as  
7 authorizing the Committee" -- I'm sorry, the  
8 paragraph before that.

9 MR. GALLAY: Yes. The paragraph before.

10 CHAIRMAN MADDOX: "Shall be construed as  
11 circumscribing the authority of the Inspector  
12 General under the Act or is intended to restrict the  
13 authority of the Inspector General to conduct,  
14 supervise, and coordinate audits and  
15 investigations."

16 So Joel, it seems like your concern -- I  
17 mean, I wouldn't want to include that language in  
18 every paragraph where there's some at least  
19 potential clash --

20 MR. GALLAY: Nor would I. I guess, Vic --  
21 excuse me -- the reason for wanting the language or  
22 some change here is, again, because of the way that

1 paragraph VI is phrase, with the sort of dual  
2 mandatory, and all-encompassing language, "shall  
3 cooperate with all requests." That's what triggers  
4 the concern, and I think it's appropriate in this  
5 case.

6 MR. HOFFMAN: Well, you know -- Joel, it's  
7 David -- you may be over-interpreting the word  
8 "cooperate." I mean, there's nothing in the charter  
9 where the word "cooperate" is going to be used that  
10 can be said to cause the IG's office to do something  
11 that's illegal or contrary to the law.

12 So "cooperate" means cooperate, and I can  
13 imagine circumstances where it is consistent with  
14 cooperation to come to the Committee and say that  
15 you believe that you're legally prohibited from  
16 complying with the request for the following  
17 reasons.

18 So "cooperate" doesn't mean you shall  
19 violate other laws and give the information we want,  
20 regardless. I think, if we interpret the word  
21 "cooperate" properly, I really just don't think it's  
22 a concern.

1           I think you, of course, continue to be free  
2 to raise the concerns about where you think the IG  
3 Act might limit your ability to provide information.  
4 And, as I said, I haven't heard of instances where  
5 that bridge has been crossed in the past, even  
6 though this charter's been in place for four years,  
7 and it might not happen again.

8           But I certainly respect and appreciate your  
9 views.

10           MR. SCHANZ: Well, we can agree to  
11 disagree. At bottom, this is a board charter and  
12 it's not an IG charter.

13           CHAIRMAN MADDOX: Correct.

14           MR. SCHANZ: So we will note our concerns,  
15 and the Board will make the ultimate decision if  
16 they want to abide by this charter for the Audit  
17 Committee. And while we understand because we're  
18 talking about it, but future, we have to remember  
19 that there'll be future boards and future IGs,  
20 heaven forbid, that will be bound by this.

21           CHAIRMAN MADDOX: Well -- this Vic Maddox  
22 again -- I think that David's suggestion is a good

1 one. I don't think that "cooperate" means  
2 "capitulate," and I don't think that we have a  
3 history of a problem with the existing language. So  
4 my personal view is and my position on the Committee  
5 is we probably leave this language the way it is.

6 Other committee members?

7 MR. SNYDER: I'm fine with the way it is.

8 CHAIRMAN MADDOX: Paul? Harry?

9 MR. SNYDER: No. I'm fine with leaving it  
10 the way it is.

11 CHAIRMAN MADDOX: Harry?

12 MR. KORRELL: I'm sorry. Can you say that  
13 again?

14 CHAIRMAN MADDOX: We're proposing to leave  
15 the language as it is in light of the history of the  
16 last four years, where we haven't really had a  
17 problem. And I think --

18 MR. KORRELL: No. That's fine with me.

19 CHAIRMAN MADDOX: Very good. Thank you.

20 And Jeff, thank you for your position. I appreciate  
21 it.

22 Let's move on to item number Roman numeral



1 VII, Authority. There are a number of comments to  
2 this section, and I'm trying to understand what the  
3 full IG comment is. Dutch, can you explain what  
4 your concern is here with Roman numeral VII,  
5 paragraph (1)?

6 MR. MERRYMAN: Yes, sir. The first  
7 paragraph of that section, we said, "Wording is  
8 consistent with intent." -- and we think that we  
9 discussed at the April committee meeting. To  
10 oversee the IG in its independent contracting  
11 authority, I think, impinges upon independence.

12 And while we have no issue with providing  
13 information, discussing the selection and retention,  
14 if contracting stays with the IG, then the IG needs  
15 to have the independence to exercise their  
16 independent contracting authority on whether or not  
17 to retain or not retain the corporate auditor.

18 So it's not to lock out the Committee at  
19 all. It's to request input from not only the  
20 Committee but also from Management. And so that's  
21 the first one.

22 CHAIRMAN MADDOX: And again, am I correct

1 that the existing charter uses the word "oversee"  
2 that the OIG has proposed we strike from our new  
3 charter?

4 MR. HOFFMAN: This is David. That's  
5 correct. The word "oversee" is in the current  
6 charter.

7 CHAIRMAN MADDOX: Yes. My own view is that  
8 the Board and the Committee has the authority to  
9 oversee the selection. I think that that is what  
10 the original charter provided, and I believe it's  
11 consistent with the supervisory power of the LSC  
12 Board regarding the Office of the Inspector General.

13 I gather that the practice has been, for 15  
14 years or more, that the OIG exercises that authority  
15 without any oversight or supervision. Jeff, is that  
16 your view of it?

17 MR. SCHANZ: Well, there's two points here.  
18 One, we do have the contracting authority. And two,  
19 we also have the resources to make sure that when we  
20 select an contractor, an IPA, to do the annual  
21 corporate audit, we have looked at their working  
22 papers and done a mini peer review of the selectee

1 before we go forth with the full engagement. And --  
2 go ahead, Dutch. I'm sorry.

3 MR. MERRYMAN: I was going to say, the  
4 problem and concern I have, I think was -- like you  
5 said, if you look at the -- we put a paper out on  
6 this back in 2008. Given the history, we referenced  
7 the 1992 resolution -- I think it was to the Audit  
8 and Appropriations Committee, I feel it was called  
9 at that time -- and all the changes that have  
10 occurred in federal law at that time, where when the  
11 IG was given responsibility under the CFO Act in  
12 other federal agencies, that it was at the  
13 discretion of the IG to engage the corporate  
14 auditor.

15 We thought that was a good model. Still  
16 think that's a good model from the standpoint that  
17 there are some issues and concerns about auditors  
18 being not rehired because they didn't like the  
19 outcome or the findings that were reported. This  
20 provided a layer of protection to the Board and to  
21 Management, by having an independent party that most  
22 private companies do not have access to, to do the

1 selection and the vetting.

2 We follow the Financial Accounting Manual  
3 required by GAO and by the Council of Inspectors  
4 General in this matter and monitoring it, including  
5 looking at independence of the auditors.

6 We sign independence statements for our  
7 work, to work on these contracts, to make sure no  
8 one has any contact, business or otherwise. And it  
9 just provided a lot simpler, cleaner way of dealing  
10 with it, in the selection and the retention, but  
11 still including the Board to the extent they wanted.

12 Now, if I remember the 1992 resolution  
13 correctly, there was a provision in there to provide  
14 the list of selectees, and like the Board would make  
15 the selection then of the three presented to them or  
16 however many was supposed to be presented to them.

17 I think that run contrary to the IG's  
18 contracting authority because then someone else is  
19 making the selection and deciding who and how the  
20 money's being spent. Also, that puts the Board back  
21 in the middle of it, and I don't know what would  
22 have to be done from a contracting standpoint, if

1 you're making a selection, as far as what work you'd  
2 have to do in order to make sure all these other  
3 types of things were done.

4           It is a fact that we do not have to do the  
5 contracting. It can be done by the Board. I think  
6 we still have a responsibility under the IG Act for  
7 monitoring the work that's done. So we could  
8 actually be taken completely out of the contracting  
9 process, should the Board so desire. And I'll defer  
10 to counsel if I misstated anything.

11           CHAIRMAN MADDOX: Dutch -- Vic Maddox again  
12 here -- I don't see, for the language that we have  
13 in the clean copy draft we're working from, anywhere  
14 it suggests taking the OIG out of the process or,  
15 really, circumscribing the process that the OIG has  
16 followed, or at least has the authority to follow.

17           In fact, I don't read the word "oversee" as  
18 the charter equivalent of preemption. We're not  
19 proposing to occupy the field here, as far as I can  
20 tell. I'm going back to your memo, Dutch, the 2008  
21 memo -- it's actually Laurie's, or I guess Tom  
22 Hester to Laurie Tarantowicz and then to you memo --

1 and it explains this '92 resolution.

2           And then it says, "The Corporation did not  
3 long adhere to this procedure. By the mid to late  
4 1990s, OIG had assumed sole responsibility for  
5 selecting the auditor."

6           Can you add any insight into whether there  
7 was some discussion or agreement of some sort on how  
8 that happened? Or was it just --

9           MR. MERRYMAN: All I have is hearsay, sir.  
10 I was not here then. But what I remember from  
11 hearing about that was more or less that the IG and  
12 someone from the Board would talk, and things would  
13 sort of -- would happen after that. I don't know  
14 that to be true.

15           I don't think it ever went back to the  
16 Board for confirmation. The committees that were  
17 included in the resolution have since been  
18 disbanded. And I think it was a matter of  
19 convenience for people involved at the time, but  
20 that's just an impression. I was not there.

21           But it was consistent with the process that  
22 the federal government community had moved to, the

1 CFO Act, by the time I got here, what was going on  
2 as far as the selection and the solicitation and all  
3 the things that go along with that.

4 So I'm sorry, I really can't speak to  
5 exactly why that changed at that time.

6 MS. TARANTOWICZ: This is Laurie  
7 Tarantowicz, counsel to the IG. When we were  
8 preparing that memo --

9 CHAIRMAN MADDOX: Hi, Laurie.

10 MS. TARANTOWICZ: When we were preparing  
11 that memo that you referenced, we were unable to  
12 find any indication of how the change occurred or  
13 any Board activity around that change.

14 And going back to the language of the  
15 charter, I think our main concern is with the  
16 "oversee" language, and to ensure that we have a  
17 sort of consistent understanding of what general  
18 supervision means.

19 And from our perspective, it doesn't mean  
20 oversight of our day-to-day activities in terms of  
21 exercising our contracting authority, and so we see  
22 it as a more general supervision rather than a

1 point-by-point oversight. And I guess that's our  
2 main concern with that section.

3 MR. KORRELL: This is Harry. It seems to  
4 be that everyone is under agreement that if the  
5 Board wanted to take this back, the Board could take  
6 this back. And if that's the case, and there's not  
7 some statutory requirement that the OIG have this  
8 unfettered authority to do the contracting on this,  
9 I don't see any reason to move off of the old  
10 "oversee" language.

11 And actually, I worry a little bit that by  
12 changing "oversee" to something else, it suggests  
13 that we've agreed that we have narrower authority.  
14 I don't think anyone is questioning what the best  
15 practices are here; everyone seems to be in  
16 agreement that the current approach is good.

17 But it seems to me that what we're doing as  
18 a Committee is overseeing, and whether that's  
19 general or, in the future, we determine it needs to  
20 be very specific, that's within our authority. I  
21 would suggest we keep overview and not make a change  
22 that would imply that we've done something else.



1           CHAIRMAN MADDUX:  Harry, it's Vic Maddox.  
2   I agree with that analysis and that rationale.  I  
3   again don't read the word "oversee" as requiring or  
4   involving any specific level of involvement by the  
5   Committee.

6           And I also think that the purpose with this  
7   revision to the committee charter was to clarify  
8   and, I think, address a number of concerns where I  
9   thought there were very specific substantive issues  
10  that the Committee might not be well suited to  
11  address.  And I don't think that the word "oversee"  
12  is one of those.  I think that that's consistent  
13  with the general supervisory role that the Board has  
14  over the IG's office in general.

15           So I tend to agree with you, Harry.  I  
16  gather, David, you do as well.  Paul, where are you  
17  on this?

18           MR. SNYDER:  Well, I agree.  I take a  
19  different view and maybe that's -- I look at LSC as  
20  being -- at least my view is it's a different  
21  organization that has an independent board, that  
22  when we look at -- and an independent committee,

1 that when we look at the CFO Act as it relates to  
2 federal agencies, my understanding is federal  
3 agencies for the most part do not have outside,  
4 independent board of directors and the audit  
5 committees like LSC has.

6 CHAIRMAN MADDOX: I think that's correct.

7 MR. SCHANZ: In my 30-plus years, yes, in  
8 federal government, that is correct.

9 MR. SNYDER: So I think sometimes when I  
10 look at this -- and again, newness, I'll admit to  
11 being the newbie -- sometimes I think when we look  
12 at what's happening in others, we're not  
13 recognizing, I think, the unique nature of LSC, the  
14 task force. What we're trying to do is get the  
15 independence.

16 There is an independent audit committee.  
17 And I think for us to exercise that responsibility  
18 and exercise our fiduciary responsibilities, we have  
19 to have some of these things that we can look at.  
20 And I don't think it -- it strengthens the controls.

21 So I would like to see it stay. Otherwise,  
22 I think we start to lose the independence, quite

1 honestly, of the Board because we're not active  
2 where we should be.

3 CHAIRMAN MADDOX: It sounds like -- I'm  
4 sorry.

5 MR. SNYDER: No. I was just saying, I  
6 realize that's that balancing act because we're  
7 unique and we've also got the IG. But I just don't  
8 think we can get these up and still exercise our  
9 responsibilities.

10 CHAIRMAN MADDOX: Well, it sounds like --  
11 I'm sorry. Go ahead. Who is this?

12 MR. MERRYMAN: This is Dutch. One of the  
13 things that I was asking about back in 2008 all the  
14 time was the charter itself, okay, had certain  
15 authorities and responsibilities. But nobody  
16 defined what these terms meant in reality and in  
17 practice. Like what does "oversee" mean, and how is  
18 that going to be carried out by the Board?

19 Having seen what the Board feels that is  
20 and what they expect from that would provide a lot -  
21 - I mean the Committee; I'm sorry -- would provide a  
22 lot to understanding whether we really would have an

1 objection or not because again, we use a lot of  
2 words, but I was always concerned and always ask,  
3 who's going to put the procedures and processes and  
4 determine what those procedures and processes are  
5 going to be in order to implement the charter?

6           So I'd just ask as an aside, after the  
7 charter is put together, that for these areas that  
8 require Board action, what is the expectation of the  
9 IG? I mean, of Management you need to know, too.  
10 But what is your expectation so we can get a better  
11 idea on whether we feel that in practice, as opposed  
12 to the charter itself, is going to cause any concern  
13 to us.

14           So that would be helpful. I don't want it  
15 defined here, don't get me wrong. I'm not trying to  
16 get that here, just a thought as we go forward.

17           MR. SCHANZ: Well, I would like to add also  
18 that the reason the charter is in play is because  
19 there was a concern that there were too many  
20 activities that the Audit Committee was responsible  
21 for.

22           And there was a concerted effort, I

1 thought, to try to clarify and define exactly what  
2 they were to do by limiting some of the things that  
3 the current Audit Committee didn't feel comfortable  
4 doing. So you might want to consider where this  
5 started from, also.

6 We're willing to do -- as I said earlier,  
7 this is a Board document. It's not an IG document.  
8 But we certainly have a role in it.

9 CHAIRMAN MADDUX: Well, no question about  
10 that, Jeff, and I think that your comments and  
11 Dutch's are both good. I think that we're dealing  
12 with a charter here -- I'm reminded of an oral  
13 argument I had at the Ninth Circuit, where Steven  
14 Reinhardt, who was one of the most liberal judges in  
15 America, was looking at Rule 45 of the Civil Rules  
16 of Procedure.

17 And he was presented with a very expansive  
18 interpretation of it, and he said, "Counsel, we're  
19 dealing with a Rule of Civil Procedure here, not a  
20 constitution." And I think his point was that you  
21 don't get into the weeds necessarily so much with a  
22 constitution. And a charter, I think, is the same

1 sort of document.

2 I would imagine that we leave the language  
3 as it is, and then perhaps in future committee  
4 meetings where your office participates or in  
5 sessions that we have with your office between  
6 meetings, we discuss some of this and adopt  
7 something like the regulations that the Committee  
8 might have that give more context to the broader  
9 charter itself. And I think that we can probably  
10 come up with some guidelines and some understandings  
11 that are all well-accepted.

12 But I don't think we want to change the  
13 word "oversee" here, and I gather that the Committee  
14 doesn't, either. Is that fair to say?

15 MR. SNYDER: Yes.

16 MR. HOFFMAN: Yes.

17 CHAIRMAN MADDOX: Okay. Harry, I think  
18 that's your position as well.

19 So thank you to Jeff and Dutch for his  
20 comments. Let's move on to Section (2) under Roman  
21 VII, Authority. This is the section that deals with  
22 access to the books and records of the Corporation

1 as well as its external auditors.

2 And Dutch, I think your comment is that  
3 neither the Board nor any other LSC official has  
4 unrestricted access to OIG books and records, and  
5 that this is particularly true with (inaudible)  
6 materials. Is that the essence of your concern?

7 MR. MERRYMAN: That's the essence. Using  
8 unrestricted -- those types of terms seems to imply  
9 that everything has to be provided.

10 CHAIRMAN MADDOX: Correct. What if we add  
11 language here -- I think that David offered a  
12 suggestion, which would say, "shall have  
13 unrestricted access to the Corporation's books,  
14 records, facilities, and personnel, as well as the  
15 External Auditors," and then add, "except with  
16 regard to confidential information in the possession  
17 of the OIG that is prohibited by law from sharing  
18 with the Board"?

19 David, is that basically what --

20 MR. HOFFMAN: Yes. Yes, let me -- Dutch  
21 and others here, I thought your point was well  
22 taken. And as a former IG, I would have a somewhat

1 negative reaction as well to anything that says that  
2 other body, other than perhaps the Justice  
3 Department, gets unrestricted access to my books and  
4 records, especially when, as you point out, you're  
5 conducting investigations which at one end of the  
6 spectrum are grand jury investigations subject to  
7 Rule 6(e). And I also think that, as you point out,  
8 there might be other things other than federal grand  
9 jury investigations where the law prohibits you from  
10 disclosing it to us.

11           So, on the other hand, I thought that the  
12 change that you recommended, which takes the IG out  
13 of this paragraph entirely and changes "Corporation"  
14 to "Corporation Management," I disagreed with.

15           So I think the language strikes an  
16 appropriate middle ground because it allows you, if  
17 the situation arises, whether it relates to a grand  
18 jury investigation or otherwise, where you have  
19 confidential information that you're prohibited by  
20 law from sharing with us, then of course we don't  
21 want to have access to that.

22           So that was the thinking behind the change.



1           MS. TARANTOWICZ: This is Laurie  
2 Tarantowicz again. I'm not sure -- I mean, I can  
3 understand trying to reach a compromise, which is  
4 fine. But I'm not sure that I would be comfortable  
5 with the "prohibited by law" language because  
6 there's not going to be a specific statutory  
7 prohibition in every instance.

8           And as an example of that, let's take my  
9 function. I'm counsel to the OIG. The OIG by law  
10 has an independent counsel. We have an attorney-  
11 client privilege, and we wouldn't want to breach  
12 that by providing information that might be  
13 requested. I can't really envision a situation  
14 where it might be, but it might be requested. And  
15 we would want to protect that private.

16           But there's no statutory provision that  
17 states that there's attorney-client privileged  
18 information. So I think maybe a broadening of that  
19 language is in order.

20           MR. HOFFMAN: Well, my reaction to that is  
21 that "prohibited by law" is a very common phrase in  
22 the law, and I'm unaware of any situation where it's

1 interpreted to mean "prohibited by statute"; and  
2 that when you see laws or things that are passed  
3 that use that phrase and intend it to mean  
4 "prohibited by statute," they say that.

5           So it doesn't say "prohibited by statute."  
6 It says "prohibited by law." And if the IG in the  
7 future believes that there's something in the law  
8 that prohibits it from sharing something with the  
9 Board, then this language certainly is consistent  
10 with the IG coming forward and saying that. And to  
11 do otherwise would require an enumeration of each  
12 portion of "the law" that you believed you might  
13 refer to in the future.

14           So I don't disagree with the point. I  
15 don't think it needs to be just statutes, but I  
16 don't think the language says that.

17           CHAIRMAN MADDOX: David, what if we add the  
18 words "prohibited by law or by ethical prohibitions  
19 or limitations," to address the conflicts or, excuse  
20 me, the privilege issue? I mean --

21           MR. KORRELL: This is Harry. I think  
22 "prohibited by law" is just fine. We deal with this

1 in civil discovery all the time, and people have  
2 agreements that they're not allowed to share stuff  
3 unless specifically ordered to by court order or  
4 what have you. And everybody recognizes that the  
5 privilege exists and will be protected.

6 But that doesn't strike me that that  
7 requires an additional carveout, and I worry that  
8 adding more language to it risks some confusion.

9 MR. SCHANZ: Okay. Just so it's  
10 recognized. And once again, I said that this will  
11 be a document for future boards unless they choose  
12 to change it. We have in the past -- we, the LSC  
13 OIG -- done investigations of board members. And  
14 that is certainly going to be protected by this IG.

15 MR. GALLAY: Just again to amplify the  
16 concern here a little bit, it's not just grand jury  
17 material. One of the underlying notions is that the  
18 IG is a place where people can come with complaints  
19 or concerns and have their confidentiality  
20 respected.

21 To the extent this is read as saying  
22 unfettered access to anything in the IG's records,

1 that runs counter to the whole notion of creating  
2 the institution of the IG within agencies.

3           And I guess it's David -- you know, at the  
4 outset of this whole exercise, you indicated to Vic  
5 that one of the interests of doing this was to be  
6 able to go through and establish a charter that  
7 addressed in a cooperative fashion the concerns of  
8 this organization or others that were weighing in on  
9 it.

10           This is really a pretty fundamental  
11 concern, as some of the others were. So I think,  
12 rather than trying to parse the word "statute"  
13 versus "law" and what's the extent of that, we ought  
14 to be able to come up with a way to address this  
15 that's more satisfactory, recognizing our concerns  
16 here.

17           MR. HOFFMAN: Yes. Look, I appreciate the  
18 concern, and I can relate to them completely, having  
19 been an IG for four years. But I'm absolutely  
20 convinced that the language "prohibited by law" is  
21 both quite broad and absolutely satisfies the  
22 concern.

1           In that hypothetical of whistleblowers or  
2 complainants, there is going to be a source that  
3 creates confidentiality where if some future  
4 committee has the extremely bad judgment to say to  
5 you, "Tell us the confidential complainants who have  
6 come to you," there are going to be a myriad of ways  
7 under the law for you to be able to say that, "We're  
8 prohibited from disclosing that."

9           So I don't think it's a good idea to draft  
10 language based on situations that are extremely  
11 unlikely to occur. And the phrase itself,  
12 "prohibited by law," is very broad, and it --

13           MR. GALLAY: Why not simply exclude the IG,  
14 say, "unrestricted access to the Corporation, to  
15 Management's books," something that indicates that  
16 you're not really looking for access, unrestricted  
17 access, to ours, which is what I understand you'd be  
18 saying.

19           MR. HOFFMAN: Yes. Well, we're not -- I  
20 think that this strikes the right balance in terms  
21 of the role that this Committee and the Board must  
22 have regarding general supervision of the IG and

1 having the IG report to the Board in the way that is  
2 described by the statute.

3           And all of these changes and the review of  
4 the charter was done with an eye toward out belief  
5 that the independence of the IG is of critical  
6 importance. It's a tremendous strength for the  
7 Corporation. And at the same time, we have to  
8 strike the right balance in terms of conducting  
9 supervision/oversight, just as we do of Management,  
10 recognizing that the IG is a unique and different  
11 creature because of its independence and creation by  
12 the other statute.

13           So I do think that that's why my reaction  
14 to this proposed change of just taking the IG out  
15 entirely I did not agree with. But I thought that  
16 this language certainly protected from any difficult  
17 situation that might arise.

18           MR. SCHANZ: Well, this is the IG. And if  
19 we add to this, I agree with taking the IG out of  
20 the equation entirely because there is something --  
21 and David, you'll recognize this -- auditor's  
22 judgment, and then if you extrapolate that to IG

1 judgment.

2           And I'm in this position because I have the  
3 experience and the knowledge to be in this position.

4 And I'd like not to have any sort of restriction  
5 tethered to my judgment based on my experience and  
6 the fact that the Board had the confidence to hire  
7 me initially.

8           So the more we try to carve out an  
9 exception, the more concerned I get that we're  
10 chipping at the margins of my independence and my  
11 authority.

12           MR. HOFFMAN: Well, I can appreciate the  
13 concern. But the language has been in place in the  
14 charter, again, for four years. A difficult  
15 situation has not arisen. We're talking about  
16 moving backwards from the language as it existed.

17           And remember, Jeff, the flip side of what  
18 you said is that the Board has to make a continuous  
19 decision about whether to keep the IG in place, and  
20 to do that, it has to assess the performance of the  
21 IG's office. And that has to be done in a way that  
22 preserves and is consistent with the IG's

1 independence.

2           But the fact that the Board chose you  
3 initially doesn't insulate it from asking questions  
4 about the decisions and judgments that are made.  
5 And again, none of this -- this has to be done with  
6 great sensitivity to all the operations that the IG  
7 engages in and its independence. And again, I  
8 believe this language accomplished that, and I  
9 wasn't in favor of just taking it out entirely.

10           MR. SCHANZ: The original --

11           CHAIRMAN MADDOX: David and Jeff, I have  
12 the impression that the reference to "prohibited by  
13 law" is a broad reference. And the idea is that  
14 that would encompass the entirety of the Inspector  
15 General Act. And going back to the suggestion about  
16 a whistleblower, I mean, it's part of the organic  
17 nature of the IG that certain matters involving  
18 investigations are going to be confidential.

19           So I'm pretty confident that this language,  
20 "prohibited by law from sharing with the Board,"  
21 will be interpreted by your office as necessary.  
22 And it's a highly theoretical proposition to imagine



1 sort of a constitutional crisis between your office  
2 and the Board. But I think that the language we've  
3 proposed accomplishes what we need without being so  
4 specific that it creates more problems than it  
5 solves.

6 So I appreciate your concerns. I think  
7 that the Committee is of one mind on this. Unless I  
8 hear otherwise, we'll use the language in the clean  
9 draft we're working from, with the addition of the  
10 words, "except with regard to confidential  
11 information in the possession of the OIG that it is  
12 prohibited by law from sharing with the Board."

13 Any disagreement with that on the  
14 Committee?

15 MR. SNYDER: No.

16 MR. HOFFMAN: No.

17 CHAIRMAN MADDOX: Okay. We're going to  
18 move on down through the items in Roman numeral VII.  
19 I don't think there are other comments on items (3)  
20 through (7). And so unless I'm mistaken, we'll use  
21 the language in the draft for those sections.

22 And Dutch, I don't think you had any

1 comments to those sections, if I'm correct?

2 MR. MERRYMAN: That's correct, sir.

3 CHAIRMAN MADDOX: So that takes us, then,  
4 to Roman numeral VIII, Duties and Responsibilities.  
5 And item number (1), there are no comments, and I'm  
6 not aware of any changes to that language.

7 And item number (2), we had a comment from  
8 the OIG. Dutch, can you fill us in on your concerns  
9 here?

10 MR. MERRYMAN: Right. One thing was it  
11 talked about responding to external auditors. The  
12 IG does not receive findings from the external  
13 auditor, especially in the fact that we're  
14 monitoring their work and monitoring -- it would be  
15 like a conflict, almost. So I was just trying to  
16 correct that wording.

17 And then the audit is of Management, so the  
18 disagreement would really arise between Management  
19 and the auditor. We might disagree with the audit  
20 and the audit findings, but we take that up directly  
21 with the auditors. Ultimately, they have to be free  
22 to express their opinions. But if we have concerns,

1 we go directly to them. And so I was just trying to  
2 clarify those two points.

3 CHAIRMAN MADDOX: Right. So you would  
4 strike the reference to the OIG's response --

5 MR. MERRYMAN: Correct.

6 CHAIRMAN MADDOX: -- on the grounds that  
7 there is no OIG response.

8 MR. MERRYMAN: No. In terms of the  
9 external auditor. There's always the responses we  
10 have to give to peer reviews as well as GAO, those  
11 types of things. But as far as external auditors, I  
12 can't imagine what it would be, especially since  
13 we're monitoring their work.

14 CHAIRMAN MADDOX: Right. Committee  
15 thoughts?

16 MR. HOFFMAN: This is David. So, Dutch, I  
17 thought you were right to point out that the  
18 language was imprecise and suggest that OIG responds  
19 in the same way or at all to an external audit  
20 report.

21 I thought that even though we are almost  
22 certainly talking about external auditors' findings

1 with regard to Management, that OIG might have some  
2 comment with regard to that. In a certain  
3 situation, it's conceivable, especially if  
4 Management's response is, well, we didn't do that  
5 because the IG does that or is supposed to do that.

6           And so let's broaden the language to pick  
7 up if there's any of response or reply or something  
8 regarding the IG that -- I think the intent of this  
9 paragraph was just to make sure that it's inclusive  
10 enough to include anything the IG or Management  
11 might be saying on the subject of the external  
12 auditor report. And if there's nothing from the IG,  
13 then there's no harm.

14           So what I suggested was that in the fourth  
15 line of the paragraph, right after the semicolon, I  
16 agree with you I would delete "the OIG and the  
17 Management's response," but I would insert instead,  
18 "any response by Management or the OIG." And so if  
19 there's no IG response, then there is none.

20           And secondly, I would not take out the  
21 reference to the OIG with regard to "any areas of  
22 significant disagreement." You're right, it's

1 unlikely. But again, the situation I was  
2 describing, I could imagine -- especially if  
3 Management gets dinged on something and its response  
4 is, "Well, you know, the IG does that," and you  
5 might properly reply, "Well, we do, but Management,  
6 you're supposed to still do X, Y, and Z," and so on.

7           So I think that would be my recommendation  
8 about the language. It certainly doesn't bind you  
9 guys to anything. It was just an effort to describe  
10 -- to make sure that we're being as inclusive as  
11 possible in what we're going to do.

12           MR. SCHANZ: Well, I disagree -- this is  
13 the IG -- respectfully disagree because the CPA firm  
14 that does the annual audit of the LSC, they do it of  
15 the LSC. They don't do it of the OIG.

16           Now, you're trying to build in  
17 contingencies that may or may not occur. So I would  
18 just leave it silent because the OIG, by overseeing  
19 -- there's that word again -- the external auditor  
20 and hiring, would be in a position of conflict if we  
21 tried to interpose ourself in between a finding  
22 between Management and internal (sic) auditor.

1           So I think in this case, instead of trying  
2 to clarify, I think keeping the IG out of this  
3 equation would be much more preferable -- once  
4 again, with the notion that the charter came into  
5 play to try to streamline, not to add to.

6           CHAIRMAN MADDUX: Your thought is that if  
7 there were some finding that might precipitate an  
8 OIG response, as David has suggested it, that that  
9 would be creating a conflict position for the OIG?

10           MR. MERRYMAN: No. It --

11           MR. SCHANZ: Go ahead.

12           MR. MERRYMAN: I was going to say, there  
13 could become a situation of us monitoring an auditor  
14 who's being paid by us, who's going to -- we're  
15 knee-deep in their work papers; we're monitoring the  
16 process; we're deciding on payment schedules --  
17 where it could be a conflict, if you look at us just  
18 as an IG.

19           First of all, external auditors can't look  
20 at us from the standpoint of dealing with Government  
21 Auditing Standards, which wouldn't be part of the  
22 financial statement, anyway. But because of the

1 nature of the audit, which is of the LSC account as  
2 a whole and materiality issues, I don't think there  
3 -- there hasn't been a finding directed specifically  
4 at the IG, requiring the IG to response to it, in --  
5 well, ever since I've been here. That's since the  
6 2004 audit I've been here.

7 I can't envision that happening. But I can  
8 envision that if it is starting to happen, we have  
9 to very carefully look at, is there some type of  
10 conflicts that may be there that we have to account  
11 for under independence requirements under the Yellow  
12 Book?

13 MR. HOFFMAN: Well, this is David. Let me  
14 just jump in. I think what you guys are talking  
15 about is something that I'm not talking about and  
16 this charter paragraph doesn't talk about, which is  
17 you're worried about the prospect of the external  
18 auditor turning and auditing the IG's office, and  
19 you're pointing out the conflict. That to me is a  
20 given --

21 MR. MERRYMAN: No.

22 MR. SCHANZ: No. That's not our

1 interpretation at all.

2 MR. MERRYMAN: That's not what I'm trying  
3 to point out.

4 MR. HOFFMAN: Well, the point is that a  
5 response or whatever word you want to use, whether  
6 it's response or comment or some other thing, the IG  
7 might write something that's responsive to something  
8 that the external auditor has written.

9 The external auditor's findings presumably  
10 will be with regard to Management. And it's  
11 possible that the IG might have some comment in that  
12 regard. And again, as I say, your comment might be  
13 responsive to something Management says in response  
14 to the external auditor. That's all.

15 So the issue of the conflict with the  
16 external auditor possibly looking at or having  
17 findings with regard to the IG is not what this  
18 language is or this paragraph is discussing at all.  
19 I mean, I think the concern is valid. I just don't  
20 think it's at play here in this paragraph.

21 MR. SCHANZ: Well, I will restate that this  
22 is the Committee's charter. The IG is providing



1 some comments to it. The ultimate decision of what  
2 goes into the charter will be the Board of Directors  
3 of the LSC. So if we agree to disagree, we  
4 disagree.

5 CHAIRMAN MADDOX: Jeff, you guys don't have  
6 an objection to the first part of that, the first  
7 clause in the draft, "review and discuss with the  
8 External Auditor(s) the OIG," et cetera, "the  
9 results of the External Auditor's year-end audit."  
10 Correct?

11 MR. SCHANZ: Correct.

12 CHAIRMAN MADDOX: I mean, that would be  
13 basic.

14 MR. MERRYMAN: Correct. we don't object to  
15 that.

16 CHAIRMAN MADDOX: So your objection is to  
17 the suggestion that we might review and discuss the  
18 OIG's response to any audit findings because you  
19 don't believe that they should provide any such  
20 response. Is that the essence of it?

21 MR. MERRYMAN: The purpose of the comment  
22 was, I do not believe we will be providing any

1 responses in the nature of responding directly to an  
2 audit report.

3 CHAIRMAN MADDOX: Okay.

4 MR. SCHANZ: We have not done that --

5 CHAIRMAN MADDOX: Sorry, Jeff?

6 MR. SCHANZ: Well, we have not done that  
7 during my tenure, which is now four years. There  
8 has been independent auditor findings on the TIG  
9 program, which is what we audited, but we didn't  
10 respond to that. That's Management's  
11 responsibility, not the IG's responsibility, to deal  
12 with independent auditor findings.

13 CHAIRMAN MADDOX: I'm going to propose to  
14 the Committee that we use the language David  
15 suggested, which would modify the second independent  
16 clause after the semicolon in subparagraph (2), and  
17 to say, as follows, "any response by Management or  
18 the OIG to any audit findings." And the only other  
19 change would be that -- that there wouldn't be any  
20 other change to that sentence.

21 Is that agreeable to the Committee?

22 MR. SNYDER: Vic, just to be clear, when we

1 talk about areas of disagreement between Management  
2 and OIG and external auditors, OIG is going to be  
3 left there?

4 CHAIRMAN MADDOX: Correct.

5 MR. SNYDER: Okay. No, because that's  
6 probably where I felt the strongest about that, as  
7 Dutch just said, the OIG reviews the auditor's work  
8 papers. They're constantly monitoring the contract.  
9 There's the fee discussions.

10 And I'd be more concerned to make sure I  
11 understood what disagreements may occur between the  
12 external auditor and the OIG as far as audit process  
13 or procedures. So I just wanted to make sure that  
14 was included in there.

15 CHAIRMAN MADDOX: Right. And Dutch has  
16 proposed deleting the referring to OIG in that  
17 second clause, we are proposing to leave it in.

18 MR. SNYDER: Okay. I agree.

19 CHAIRMAN MADDOX: The only change would be  
20 to add the phrase, "and response by Management or  
21 the OIG" --

22 MR. MERRYMAN: I think the language was

1 "any response."

2 MR. GALLAY: Not "and response," that David  
3 had proposed.

4 CHAIRMAN MADDOX: Any. Correct, any, a-n-  
5 y.

6 That will take us, then, to the next  
7 paragraph. Let's see, where are we?

8 MR. SNYDER: (3)?

9 CHAIRMAN MADDOX: Yes, (3) -- "in concert  
10 with the OIG, annually review and confirm the  
11 independence of the External Auditor(s)." Dutch,  
12 your comment would delete this language entirely.  
13 Is that correct?

14 MR. MERRYMAN: Yes, sir. A couple of  
15 things. One, I'm not sure what "in concert" means,  
16 for one thing.

17 The second thing is, as required by,  
18 relying on the work of others, and the Financial  
19 Audit Manual put out by GAO, which is the guidance  
20 that we follow, we have an obligation to look at the  
21 independence of the external auditor. And we do  
22 that each year.

1           So I'm not sure what "in concert" means.  
2 We do that as part of our obligation under CIGIE  
3 guidance, or IG guidance, and our processes are  
4 reviewed every three years through a peer review  
5 process. And then we do have -- right now we do  
6 have a standing agreement with another IG to give a  
7 quality control check, and they do look at our  
8 monitoring of the process.

9           So I'm not sure what "in concert" means.  
10 You know, we get knee-deep into this stuff, and so  
11 it goes back I don't know how the Committee is going  
12 to do this in concert with us. And that's basically  
13 -- we're supposed to --

14           CHAIRMAN MADDOX: Yes. I understand. Is  
15 it your view or the OIG's view, Dutch, that there is  
16 -- that either because of the IG Act or some other  
17 provision, that there is no role for the Board in  
18 reviewing and confirming the independence of the  
19 Corporation's auditors?

20           MR. MERRYMAN: I believe under the IG Act,  
21 since we have responsibility for monitoring and  
22 audit policy for the Corporation, for monitoring

1 audits that are done, that the authority is vested  
2 with the IG.

3 Now, I have no problem providing the Board  
4 information on that process. But I'm not sure how  
5 we would do it in concert.

6 CHAIRMAN MADDUX: What if we said, "in  
7 consultation with the OIG"? Which would suggest  
8 that we would be acting independently of the OIG,  
9 but would be relying to some extent on OIG input?

10 MR. SCHANZ: Well, this is Jeff Schanz.  
11 We're getting back to the discussion we had a little  
12 bit earlier today on how much does the Audit  
13 Committee and the Board -- do they want to actually  
14 do the contracting for the external auditor? And  
15 the answer, if yes, then this would be an  
16 appropriate step for the Audit Committee or the  
17 Board to do.

18 As it is, since that has seemingly been  
19 appropriately delegated to the IG within our  
20 authority, this is something, as Dutch used, the  
21 knee-deep term. We do this regularly, and each CPA  
22 undergoes a peer review also, as do all the federal

1 IGs. And this is one of the things in the guide,  
2 is, how do you conduct your financial statements of  
3 the Corporation or the agency that you're in?

4 MR. MERRYMAN: The term "consultation," I'm  
5 not sure -- what do we send you? How do we consult?  
6 We look at certain in. We talk to the auditors. We  
7 have to make a call at some point in time. So I'm  
8 not sure what we're consulting about.

9 I mean, we're going to be the ones to see  
10 the information there. We're going to have to make  
11 a judgment on that information and raise any issues.  
12 If we have any issues, we'll definitely have to  
13 raise them because we are very concerned about  
14 independence, not only ours but also those who are  
15 going to work for us.

16 So to keep you informed about the review,  
17 to advise you of our review, to do this, I have no  
18 problem with that. But still I'm not sure how I'm  
19 going to consult with you.

20 MR. KORRELL: This is Harry weighing in. A  
21 couple of points.

22 First, Jeff, the idea that we're talking

1 about taking over the contracting function is a  
2 straw man, really. No one here is talking about  
3 taking over the contracting function, and I don't  
4 think it helps to loop back to that too much. We're  
5 not talking about it.

6 But as you said, this is a charter that's  
7 going to govern committees composed of other people,  
8 and hopefully this charter continues in place long  
9 in the future. And there may be other personnel in  
10 the OIG's shop, too. And I don't think that we want  
11 to abdicate our responsibility to ensure that the  
12 external auditor is independent.

13 And things have been going great, and  
14 you've been choosing independent auditors, and  
15 nobody's complaining about that. But I just don't  
16 see what possible problem there could be with the  
17 Audit Committee wanting to be sure, wanting to  
18 satisfy itself, that the external auditors that the  
19 OIG has chosen are in fact independent. And the  
20 only way to do that under the current practice is to  
21 consult.

22 It seems -- I'm sort of mystified as to why



1 this problematic in any way.

2 MR. SCHANZ: Well, as a practical matter,  
3 we would have to provide you with a peer review of  
4 the CPA firm. And I'm not sure --

5 MR. KORRELL: Only if we weren't satisfied  
6 with the general report. I mean, it just seems like  
7 such a simple thing.

8 MR. SCHANZ: Well, as Dutch very clearly  
9 states, we do our due diligence. We wouldn't  
10 contract with somebody that didn't have a --

11 MR. MERRYMAN: If the Board had a concern  
12 about the independence or about our work and  
13 independence, we'd sure want to resolve that  
14 concern, obviously.

15 My concern deals more with making sure we  
16 can get the information -- see what information the  
17 Board really wants in this, and to provide the  
18 appropriate information for the Board to execute its  
19 duties, but also recognizing that we do have  
20 responsibilities under the IG Act also that we have  
21 to exercise independent of Management.

22 So there's no problem, in my mind, keeping

1 in the Board completely informed and responding to  
2 concerns and questions. I just don't know how we're  
3 ever going to get the information to you unless  
4 there's something in the newspaper that pops up that  
5 someone didn't notice, or something like that, where  
6 you come to us and let us know about, where there's  
7 some type of issue other than a statement that we  
8 have looked at it, and we've done the requirements  
9 under the Financial Audit Manual, and it is our  
10 opinion that the independent auditor is maintaining  
11 their independence to be able to do this project.

12 So again, I'm --

13 MR. SCHANZ: We do that as part of the  
14 contracting process. Excuse me.

15 MR. MERRYMAN: Well, we do it as part of  
16 the contracting process, but we also do it as part  
17 of the audit.

18 MR. SCHANZ: Right.

19 MR. MERRYMAN: So it's just a matter of  
20 more of the finding what those communication  
21 methodologies are going to be, what is the  
22 expectation, types of things.

1           So from the standpoint of consulting, I'm  
2 not entirely sure what that means. But as far as  
3 "in concert with," that to me sounds like we're  
4 doing it together at the same time. Consultation is  
5 a better term to me than consulting, but then again,  
6 I'm not sure what -- I mean "in concert," a better  
7 term than "in concert."

8           But again, what is the expectation so that  
9 we can evaluate and put processes in place to meet  
10 those expectations, or to take exception with the  
11 process if we think there's an independence issue  
12 that we need to discuss with you over the process.

13           So consultation, it's sort of like a lot of  
14 the other things in here from the intent, to make  
15 sure the Board and the Committee fulfill their  
16 roles. And when we get down to processes and steps,  
17 that's when we're really going to probably have to  
18 have discussions on whether or not we feel there's  
19 an issue.

20           MR. SNYDER: Vic, Paul Snyder. As a  
21 suggestion, because I think when you go back up to  
22 VII(1), when we talk about we're going to go through

1 and oversee the selection and retention of the  
2 external auditor, a key part of that is confirmation  
3 of the independence of the external auditor.

4           So since we have concerns about "concert,"  
5 et cetera, my suggestion would be, on (1), is at the  
6 end to say, "including confirmation of the  
7 independence of the external auditor." Because it's  
8 part of the process. You know, the Committee has to  
9 get comfortable that the auditor is independent.  
10 And we'd just make it part of (1) and the oversight  
11 process. I mean --

12           CHAIRMAN MADDUX: No. I think that's a  
13 very practical suggestion. The language that we're  
14 arguing over or struggling with certainly dovetails  
15 with the selection and retention of the external  
16 auditor, which by definition needs to be  
17 independent.

18           MR. SNYDER: Right.

19           CHAIRMAN MADDUX: I could accept that  
20 suggestion. Other committee members?

21           MR. HOFFMAN: That's fine. I'd defer to  
22 the two of you, Vic and Paul, on your judgment on

1 that. It's David.

2 CHAIRMAN MADDOX: Harry?

3 MR. KORRELL: It sounded good. I want to  
4 make sure I understand where -- what change you were  
5 making.

6 MR. SNYDER: Yes. Harry, it's in VII,  
7 Authority of the Committee, and then number (1),  
8 where we have, "unless otherwise directed by the  
9 Board, shall oversee the selection and retention of  
10 the External Auditor by the Inspector General of the  
11 Corporation, including confirmation of the  
12 independence of the External Auditor."

13 MR. KORRELL: Sure.

14 CHAIRMAN MADDOX: Yes. That way we don't  
15 have concerts or consultations.

16 MR. SNYDER: Yes. So we just have the  
17 oversight, and I think part of that process is  
18 statements from the external auditor about the  
19 process and procedures they have in place to  
20 determine the independence of both the firm and the  
21 individuals assigned to the audit.

22 So I think there are abilities other than

1 inspections and very detailed analysis, but the  
2 Committee can get the proper comfort.

3 CHAIRMAN MADDOX: Paul, I think that's a  
4 great suggestion. And in the interest of trying to  
5 keep this meeting as reasonably concise as possible,  
6 I'm going to suggest that we then delete paragraph  
7 (3) from Roman numeral VIII. And if there's no  
8 disagreement on the Committee, we'll move on.

9 So that then takes us to paragraph (4).  
10 Let's see. This is where I start to get a little  
11 confused. This is the paragraph that begins,  
12 "review and discuss with the OIG its internal audit  
13 responsibilities." Is everybody on the same page  
14 there?

15 MR. HOFFMAN: Yes.

16 CHAIRMAN MADDOX: Am I on the same page?

17 MR. SCHANZ: Well, in my never-ending  
18 effort to assert my independence, we suggested a  
19 prologue to this by saying, "In a manner consistent  
20 with the IG's authority to perform the work of his  
21 office, review and discuss with the IG its audit  
22 responsibilities and performance."

1           We are not an internal audit unit. We do  
2 internal audit work. Most of our grant work is  
3 deemed external audit work.

4           MR. MERRYMAN: All of our work is external.

5           CHAIRMAN MADDOX: Yes. Jeff, I really  
6 think that, going back to paragraph (4) in the  
7 Limitations section, I really think that covers your  
8 prefatory language that you suggested. Everything  
9 that we do in the charter is without the  
10 circumscription -- I think we're actually going to  
11 eliminate that word -- but without intending to  
12 limit your authority under the Act.

13           And so, plainly, the Act provides for you  
14 to determine how to run your office, I think. So I  
15 don't want to include that. I don't mean to --

16           MR. SCHANZ: That's fine if you think it's  
17 duplicative because, once again, this is your  
18 charter, not mine.

19           CHAIRMAN MADDOX: Right. And I think we  
20 want to leave that out.

21           Is there a more substantive concern that  
22 you all had expressed here?

1           MR. MERRYMAN: Well, in that paragraph  
2 there's a couple of terms we didn't understand, like  
3 "sanctions." What does that mean? What does the  
4 term mean? And I'm not sure what "the effectiveness  
5 of the plan and activities" is because the IG has  
6 sole authority on what to include in the plan,  
7 although we will consult with, obviously, and we  
8 have in the past, always consulted to try to listen  
9 to what the issues were that the Board had to  
10 incorporate it into the plan as needed.

11           So just a little confusion on what do those  
12 terms mean.

13           CHAIRMAN MADDOX: Right. Well, let's --  
14 first of all, I think we -- I'm going to propose  
15 that we eliminate the word "sanctions." I heard  
16 enough confusion and uncertainty about what it  
17 actually means at our last meeting, and I think your  
18 concern here is a good one. It's not at all clear  
19 what it adds to the charter. So I would propose  
20 that we eliminate that.

21           As far as the other concerns, one  
22 suggestion we had, Dutch, is that we eliminate the



1 use of the word "internal" every time it appears in  
2 this paragraph, so that it would say, "The Committee  
3 shall review and discuss with the OIG its audit  
4 responsibilities and performance; its audit plan for  
5 the Corporation, and the risk assessment that drives  
6 its audit plan; and the effectiveness of its audit  
7 plan and activities."

8           That, I think, is a way of cleaning up some  
9 tension in that paragraph and leaving us with a  
10 section that seems to go to the essence of the  
11 relationship between the Audit Committee and the  
12 OIG.

13           Thoughts on that from the committee?

14           MR. SNYDER: I agree.

15           MR. HOFFMAN: I do, too.

16           MR. KORRELL: That's fine.

17           CHAIRMAN MADDOX: Okay. Dutch, unless you  
18 all have any overarching concerns here that you  
19 haven't already articulated, we're going to agree to  
20 that language, assuming Becky got it down, or  
21 whoever's taking it down, and move on.

22           MR. MERRYMAN: The only thing I'd like to

1 point out is just the term "effectiveness of the  
2 audit plan." I'm not sure how that's going to be  
3 done. What's the criteria, or what is the type of  
4 thing? That's why I said not -- the comment said,  
5 "Not sure what this means." It's fine except I just  
6 don't know what it means in the connotation of the  
7 charter.

8 MR. SCHANZ: Well, and plus the GPRA  
9 doesn't apply here. I've been trying to get  
10 performance standards for our payroll since I've  
11 been here, and I've been unsuccessful for four  
12 years. It has to do with measuring performance.

13 And to me, A, number one, and on my soapbox  
14 here for a minute, is performance-based pay. And  
15 that's how you run a copy or a government agency.  
16 And we don't have that here.

17 So I'm not sure, with Dutch, what are our  
18 performance standards. Now, I am reviewed by the  
19 Governance Committee, and I do have some performance  
20 standards for that, but that's for me as individual  
21 performing my duties as an inspector general.

22 That doesn't have to do with our audit work

1 plan or what performance is tied to that because  
2 when you start talking about performance, then you'd  
3 better tie it to some sort of incentive pay. And we  
4 don't have that here.

5           So with Dutch, I'm not sure what that  
6 means. In the federal sector under the GPRA, I know  
7 exactly what it means. But here we don't have that.

8           MR. MERRYMAN: So I just wanted to point  
9 that out. We can move on; I just wanted to point  
10 that out.

11           MR. SNYDER: Vic, Paul Snyder. When I read  
12 this, I read this as understanding -- and again,  
13 this is a discussion with the OIG -- about its audit  
14 plan and the risk assessment, and then coming back,  
15 after you had that discussion on the risk  
16 assessment, here's the audit. How is the audit plan  
17 effective in addressing the risks that are  
18 identified in the risk assessment process? Not that  
19 we're trying to measure from a performance and  
20 compensation standpoint.

21           CHAIRMAN MADDOX: Yes. That's my view as  
22 well, Paul. And I think that the performance and

1 compensation issue goes to a different committee, or  
2 maybe to the full Board. I don't see that as part  
3 of our charter, and I don't read that into the  
4 language that we're proposed here.

5 I appreciate those concerns, Jeff. Am I  
6 missing the bigger picture here somehow, or is that  
7 something ought to be addressed elsewhere?

8 MR. SCHANZ: No. I took the opportunity --  
9 I apologize for that -- but it's all based on  
10 performance and metrics, and we don't have those in  
11 the LSC.

12 MR. SNYDER: You don't? Okay. Well --

13 CHAIRMAN MADDOX: I'll get Dean Minow right  
14 on that.

15 (Laughter.)

16 MR. MERRYMAN: I fully agree with you, Vic.

17 CHAIRMAN MADDOX: Yes. So let's move on to  
18 the next paragraph, which has -- let's see. I don't  
19 see any change to that in my notes. But Dutch, you  
20 did have a comment.

21 MR. MERRYMAN: Just one, is that rather  
22 than audits performed, the audit reports, the

1 reports issued. The only reason we're making the  
2 distinction is usually we give the grantees an  
3 opportunity to respond before providing detailed  
4 information to Management.

5 Part of the reason for that is that if they  
6 do come up with additional information or some stuff  
7 they didn't have before, we can make changes to the  
8 report based on the information we get in the  
9 comments. And we wouldn't want to get out something  
10 premature.

11 So it's just a change, rather than relative  
12 audits performed, just to relative to audit reports  
13 issued to make sure that we are providing it at the  
14 appropriate -- information at the specified time.  
15 That was the only thing.

16 CHAIRMAN MADDUX: Yes. Is there a  
17 limitation? I mean, do you view yourself as  
18 precluded by law or by your Act from communicating  
19 with the Board or with its Committee about an  
20 ongoing audit?

21 MR. MERRYMAN: I don't have a problem  
22 talking to the Board or the Committee about an

1 ongoing audit in general terms. However, part of  
2 Government Auditing Standards require that we give  
3 Management officials an opportunity to respond.

4           And I think it would be premature to get  
5 too much information out specifically until such  
6 time as we have Management comments back so that,  
7 again, in case there are some additional documents  
8 or they have a point that we believe is valid and we  
9 need to modify the draft from where it was at. So I  
10 didn't want to get out too far ahead.

11           GAO is very similar in this regard, I  
12 believe, in that if information gets out about the  
13 audit specially or the draft that is provided, that  
14 they immediately go out to issue the report and just  
15 say, we're done. We're not going to wait any more.  
16 We're just going to issue the report to get it out  
17 to everybody, to be fair to everybody.

18           So while we do talk about audits in closed  
19 session to some degree, we try not to give too much  
20 information unless it's very unusual circumstances.

21           MR. SCHANZ: Well, I will add, since two of  
22 the individuals on the phone were with the Fiscal

1 Oversight Task Force, there are occasions where I  
2 will, using my independent judgment, talk to the  
3 President of the Corporation on an issue that is  
4 developing.

5           And Dutch is absolutely right. The GAO  
6 standards, otherwise known as Government Auditing  
7 Standards, i.e. the Yellow Book, require that we  
8 seek the views of responsible officials before we  
9 issue a report. So I agree wholeheartedly with  
10 audit reports issued by the IG.

11           That makes sure that we're compliant with  
12 the GAO standards, but then in the interest of  
13 economy and efficiency, I have no hesitancy to talk  
14 to the President of the Corporation, who actually is  
15 funding the grantee, for information.

16           I can give you two examples, but I won't on  
17 the record, that I've done this with Jim. And as  
18 the funding source, then he can take that  
19 recommendation to the Board. And I can distinctly  
20 remember John Levi, in one of the board meetings,  
21 say, "Why haven't we done anything on this?"

22           And that was one of the issues that I went

1 up to Jim as soon as I had concrete evidence,  
2 documented evidence, from the audit team that had  
3 returned from the field. And I took that directly  
4 up to Jim.

5 MR. MERRYMAN: So it just gets to be a  
6 timing issue type of thing.

7 CHAIRMAN MADDOX: Any thoughts on the  
8 committee?

9 MR. SNYDER: You know, Vic -- Paul Snyder  
10 again -- the thing that troubles me, again, when we  
11 change from being performed to issued, is it's  
12 purely timing.

13 Because I think as the Audit Committee, as  
14 we look at financial statements or look at the other  
15 issues, I'm always used to an auditing standard is  
16 that we inform and keep the Audit Committee informed  
17 as to the status of the audits.

18 Internal audit would do that as well, so  
19 that if there is a material weakness or there is a  
20 material issue to the financial statements, that it  
21 surface quickly. And when we change the word to say  
22 we're not going to do this until it's issued, that



1 gives me heartburn without some other thing that  
2 says, "Items that could be material to the control  
3 system or financial statements are disclosed  
4 promptly."

5 I just don't like the way it just goes to  
6 say, not till the reports are issued are there going  
7 to be communications.

8 MR. MERRYMAN: I'm sorry. I was only  
9 talking about grantee audits, audits of our  
10 grantees.

11 MR. SNYDER: But Dutch, if we have a  
12 grantee where there might be a significant weakness  
13 from either our process where we viewed how we gave  
14 grants or something that's going to be a significant  
15 embarrassment to the Corporation, would that not  
16 come to the Audit Committee?

17 CHAIRMAN MADDOX: Yes. It should. Jeff, I  
18 don't remember the specific steps you alluded to  
19 with the Board. But it seems like the Audit  
20 Committee, one of its principal functions ought to  
21 be to at least have the capacity to be informed  
22 about an ongoing audit.

1           MR. SCHANZ: I do that during the  
2 confidential section of the board meeting, where  
3 we're not -- I don't want the information to be  
4 public because then I would be violating my own  
5 standards, per the Yellow Book, that the auditee has  
6 an opportunity -- and Paul, I think you're focusing  
7 a little bit more on the annual financial statement.  
8 And yes, Management and the Audit Committee gets  
9 briefings on that during the board meetings.

10           There is no hesitancy on behalf of the  
11 Office of the Inspector General to run a red flag up  
12 to either the audit committee or the President of  
13 the Corporation, as necessary. I think we're  
14 talking about apples and oranges here a little bit.  
15 Some of the issues I talked about were on specific  
16 grantees that I advised Jim as soon as I had  
17 documented evidence that there was a problem.

18           In the IG, in the annual report by the CPA,  
19 we've had the auditor present at most board  
20 meetings, as to a point in time when there's been an  
21 issue or there's been a finding or there's been  
22 something that has been untowards.

1           I will use the example of there was a huge  
2 backlog on TIG grants at one point in time that the  
3 external auditors found. And that issue was  
4 addressed immediately by the President and by the  
5 Corporation. Okay. How do we get this resolved?  
6 How do we get this off the books? What are we going  
7 to do?

8           Those are ongoing conversations that we  
9 have. With the Audit Committee, that's fine. We  
10 can include that. Usually I go right to the  
11 President of the Corporation because then he can  
12 decide whether it's material or not.

13           CHAIRMAN MADDOX: Okay. Well --

14           MR. HOFFMAN: This is David. Can I jump  
15 in, Vic? Two things.

16           CHAIRMAN MADDOX: Sure. I was just going  
17 to say that if you're discussing it on an ongoing  
18 basis with Management, you can surely discuss it  
19 with the Audit Committee. But go ahead, David.

20           MR. HOFFMAN: I vote to leave the language  
21 the way it is for the reasons expressed by Paul and  
22 others, and I know that that's the way it is in the

1 existing charter.

2           Just as a matter of scheduling, Vic, I have  
3 another meeting that's scheduled at 4:00 Central,  
4 which is about 35 minutes from now. We've been  
5 going about two hours, close to, already.

6           CHAIRMAN MADDUX: Yes. I know. I know.

7           MR. HOFFMAN: I know there's some  
8 significant material yet to go. But if there's a  
9 way to move it along, I can try to be a little bit  
10 late to that meeting, but my presence is required at  
11 it so I won't be able to be too late. So I will  
12 have to get off in about 40, 45 minutes.

13           CHAIRMAN MADDUX: All right. Well, I'll  
14 try to go as quickly as I can.

15           MR. SNYDER: I'm sorry, Vic. I need -- if  
16 I can just -- two minutes, and I won't prolong this.  
17 But I do think, getting back to Jeff's comment, and  
18 I had this little bit of discussion with Mattie,  
19 that the Audit Committee -- and I think, as we went  
20 through the Task Force, there ought to be a central  
21 point that looks at all of the organization's  
22 internal control structure, monitoring, et cetera.

1           And while we have the annual financial  
2 statement audit of the Corporation, I think the  
3 Audit Committee has to be aware of what are the  
4 results of the grantee audits? What are the results  
5 of Management's effectiveness audits that they do  
6 internally? Are there issues that are coming up as  
7 we look at the overall risk management process at  
8 LSC?

9           And I think those other ones right now on  
10 the grantee where it comes up, where it's done  
11 internally, I think Mattie said it goes to the  
12 integrity committee or another committee.

13           And maybe this goes to a future meeting,  
14 but I think one of the issues we talked about at the  
15 Task Force is, don't split and compartmentalize  
16 these different activities. Bring them into one  
17 point where people can make an overall assessment of  
18 the effectiveness of the structure.

19           So maybe that's for another meeting. But I  
20 just worry that we split this up too much.

21           CHAIRMAN MADDOX: Well, I think that may be  
22 for another meeting, Paul. I appreciate those

1 concerns. I'm going to move, then, that we leave  
2 paragraph (5) as is, noting all the comments  
3 received thus far.

4 We're going to move to item number (6). I  
5 don't know of any substantive change --

6 MR. SCHANZ: Vic, if I could, please, I  
7 still have a problem, as Joel articulated, with the  
8 term "all," "all significant matters." I mean, who  
9 determines significant matters? It would be the  
10 IG's office. But I don't know what "all" adds to  
11 "significant."

12 CHAIRMAN MADDUX: Well, I don't know that  
13 it adds or detracts anything. I don't think it adds  
14 any ambiguity, though, Jeff, so I appreciate your  
15 concern and I'm going to leave that language as is.

16 I want to move to item number (6). I'm not  
17 aware of any substantive concern. I want to propose  
18 that we eliminate the "and/or" because I just can't  
19 stand having it in a document.

20 And I would propose that we use the word  
21 "and." So it would read, "Review and discuss with  
22 Management and the Board." And if there's any

1 objection to that, let me know. Otherwise, we can  
2 move on.

3 In item number (7), I'm trying to see if  
4 you have a comment, Dutch.

5 MR. MERRYMAN: Yes. It's just to change  
6 "audit" essentially to "reviews."

7 CHAIRMAN MADDOX: Yes.

8 MR. MERRYMAN: "The IG is given the  
9 authority and responsibility for audits within LSC."  
10 Just to clarify terminology.

11 CHAIRMAN MADDOX: What if we use the  
12 language, Dutch, "audit or review" rather than  
13 "internal audit"? So, "Review and discuss with  
14 Management any internal audit or review activities,  
15 including" --

16 MR. MERRYMAN: Again, the concern is -- I'm  
17 sorry. The concern is -- the way I'm reading this  
18 is that Management is going to be conducting audits?

19 CHAIRMAN MADDOX: It could.

20 MR. MERRYMAN: I don't think so. They can  
21 conduct reviews and they can do assessments and they  
22 can look at themselves, obviously. But when you use

1 the term "audit," there is specific language, I  
2 believe, within the IG Act that the IG is  
3 responsible for monitoring all audits of the  
4 Corporation. So I'm just trying to clarify the  
5 term.

6 MR. SNYDER: Well, but Dutch -- Dutch, I  
7 would go back, I think, to the Task Force meeting.  
8 We talked about -- and I think, Jeff, you agreed --  
9 that if the company would establish an internal  
10 audit function to audit the grantees, the IG could  
11 look at that and determine to the extent that it may  
12 want to modify its review of grantees. But I don't  
13 think there's anything that precluded the LSC from  
14 establishing an internal audit function.

15 MR. MERRYMAN: I think there is. And I  
16 have to defer to attorneys to take a look at that.  
17 We don't have any problem with -- Management  
18 obviously has a responsibility and an obligation to  
19 look at various components, as with OCE or OPP, to  
20 help assure themselves that things are being done,  
21 as well as conduct their own reviews of their  
22 internal controls.



1           But if we're talking about establishing  
2 within LSC an internal audit function in its  
3 traditional -- what I call traditional -- like IIA  
4 type of auditors, and conducting those types of  
5 audits, I have some concern that it may not be in  
6 full compliance or allowed under the IG Act unless  
7 we actually were providing the oversight of that  
8 function.

9           MR. SNYDER: No. That's not my  
10 understanding --

11           MR. MERRYMAN: But as far as Management  
12 analysis and --

13           MR. SNYDER: -- from the discussion on the  
14 Task Force.

15           MR. MERRYMAN: I'm sorry?

16           MR. SNYDER: That's not my understanding  
17 from the discussion on the Task Force. And I think  
18 Jeff gave a specific example, as I remember. I  
19 think it was Treasury, of some 450 people that moved  
20 over. And then they decided to go ahead to IG, and  
21 then they reestablished the internal audit function  
22 within Management.

1 I don't have my notes here. I think it was  
2 either Treasury or the Justice Department.

3 MR. SCHANZ: Well, not being a party to  
4 those --

5 MR. SNYDER: So I don't think there's  
6 anything to preclude Management from having an  
7 internal audit function. It's part of Management's  
8 assessment of internal controls, and I think the  
9 assessment the IG had was that you are not a  
10 substitute for Management. So I find those things  
11 very inconsistent.

12 MR. SCHANZ: Well, I'm not a substitute for  
13 management. I --

14 CHAIRMAN MADDOX: Well, let me ask Vic --  
15 excuse me. Vic Fortuno, is there any limitation or  
16 any prohibition on Management undertaking some  
17 internal audit function of its own or charging the  
18 OIG with undertaking a particular audit function  
19 internally?

20 MR. FORTUNO: I think the IG Act does  
21 charge the IG with providing policy, conducting  
22 audits, and coordination of audits. So it's pretty

1 expansive, but I don't know that it necessarily  
2 means that's exclusive and that there isn't any  
3 instance where, if the IG is not auditing a specific  
4 function, Management could not itself conduct or  
5 provide for the conduct of an audit.

6           To give you an example, if we were -- say  
7 it's LRAP, our Loan Repayment Assistance Program.  
8 And for whatever reason, the IG was busy with other  
9 matters, didn't have an opportunity to audit that.  
10 I wouldn't want to be in a position where if we had  
11 concerns about it, Management could not provide for  
12 an audit of that program for its own purposes, to  
13 determine whether the necessary internal controls  
14 were in place.

15           Management might not do it itself, might  
16 contract with an auditing firm. But I don't think  
17 we can interfere with an audit being conducted by  
18 the IG, so if the IG wanted to audit that, we  
19 couldn't interfere with it.

20           But if the IG was not auditing a specific  
21 program or function and Management had reason to  
22 believe that it was important to conduct an audit,

1 its own audit, of that program or function, I don't  
2 know that it's precluded from doing that.

3 CHAIRMAN MADDUX: Yes. Okay.

4 MR. GALLAY: The general line is that those  
5 kinds of audits which were either preexisting before  
6 the IG Act but, more importantly, sort of part and  
7 parcel of an ongoing operation are those things that  
8 can properly be done by an agency.

9 But the tension there is that one of the  
10 fundamental principles and driving forces for the  
11 establishment of the IG Act was to consolidate under  
12 one independent umbrella all the investigative and  
13 all the audit functions of the agency. The "all" is  
14 sort of in quotes. That was the basic idea.

15 There are some exceptions. There are some  
16 carveouts. But as I say, the line tends to follow  
17 those things that are regarded as part and parcel of  
18 the programmatic or the operational function.

19 So it shouldn't be thought of as a slam  
20 dunk that, oh, yes, certainly the agency can go  
21 ahead and do audits. It's also not the case that  
22 it's an absolute bar against an agency instituting

1 something.

2 MR. FORTUNO: Does that help any, Vic?

3 MR. GALLAY: It doesn't get you entirely  
4 home, but it's sort of --

5 MR. SNYDER: I would just leave it the way  
6 it is and say "any." We're not saying all, but  
7 there may not be any.

8 CHAIRMAN MADDOX: Yes. I think I still  
9 want to propose language that would read, "Review  
10 and discuss with Management any internal audit or  
11 review activities, including any audit or review  
12 plan, its audit or review reports" -- so I would  
13 delete "summary" -- "and the performance of those  
14 portions of Management that perform audits or  
15 reviews."

16 So basically, add "or review" after every  
17 time we see the word "audit," change "its" to "any,"  
18 and delete "summary." And I think that that then  
19 gives the Committee the authority to discuss with  
20 Management the review activities, which the OIG  
21 doesn't have any disagreement with, and any internal  
22 audits that might be commissioned pursuant to

1 Management's authority, whatever authority that has.

2 In the interest of moving forward and  
3 getting to the end of the meeting, is there any  
4 other comment?

5 MR. SNYDER: No.

6 CHAIRMAN MADDOX: Any other comment from  
7 committee members?

8 MR. SNYDER: No.

9 MR. KORRELL: No.

10 CHAIRMAN MADDOX: Okay. Then let's go with  
11 that language.

12 Let me then -- that takes us to Section B.  
13 I want to just try to note for the record here those  
14 sections that I don't know of any change to through  
15 the rest of the document. That would be Section --  
16 let's see, this is Roman numeral VIII-B, Financial  
17 Reporting. There's no change to paragraph (1), (2),  
18 or (3).

19 So that takes us to Section C in Roman  
20 numeral VIII, Risk Management.

21 MR. GALLAY: Vic, just for information  
22 purposes, back up in that paragraph (2). It just

1 raises a question for your consideration. Did you  
2 want to include GAO in that paragraph (2), "internal  
3 controls matters identified and brought to the  
4 Committee's attention by Management, the OIG, or  
5 External Auditor"?

6 CHAIRMAN MADDOX: You know, I don't have a  
7 real position on that. My sense is that Management  
8 will bring anything GAO is concerned about to our  
9 attention. Committee members, any thoughts on that?

10 MR. HOFFMAN: Where were you -- I missed  
11 where you were proposing the possible additional  
12 language.

13 CHAIRMAN MADDOX: Paragraph 2 under Section  
14 B, "Review all matters identified and brought to the  
15 Committee's attention by Management, the OIG, the  
16 GAO, or the External Auditor"?

17 MR. HOFFMAN: In general, I think that if  
18 GAO is bringing potential problems to the attention  
19 of LSC that relate to financial reporting, that  
20 absolutely, that would be near the top of the list  
21 of the things we want to be looking at.

22 I think it's a given that we would be

1 looking at that. But on the other hand, I don't see  
2 a down side with adding them in. I think the point  
3 is, we would look at anything that any significant  
4 governmental entity brought to our attention that  
5 met the standard, whether it was a congressional  
6 committee, or GAO, or others.

7 But it might be a good suggestion, and I  
8 don't see a problem with adding GAO on it. It's a  
9 good point. Paul, what do you think?

10 MR. SNYDER: I don't think it would be a  
11 problem to do it. The only thing I would just say  
12 is, "Review all regulatory and internal control  
13 matters identified by Management, the OIG, External  
14 Auditor, or GAO," since GAO probably wouldn't bring  
15 them to our attention. Maybe they would be  
16 reported, as you say, Vic, to Management. But I  
17 think we just identified by those various groups,  
18 and we review them.

19 CHAIRMAN MADDOX: Yes. I think that's  
20 right. I mean, we can --

21 MR. SNYDER: But I think -- what?

22 CHAIRMAN MADDOX: We can add the GAO just



1 because, I think, it's a source where you might have  
2 suggestions. I tend to agree that they're not going  
3 to come directly to the committee.

4 MR. SNYDER: Could we just say, the issues  
5 identified? That would be good.

6 CHAIRMAN MADDOX: Yes.

7 MR. SNYDER: No, I agree.

8 CHAIRMAN MADDOX: Okay. Thank you for that  
9 suggestion.

10 So that takes us to Risk Management. The  
11 first paragraph, paragraph number (1) under Roman  
12 VIII-C, Dutch, you guys have a concern about, "The  
13 OIG does not have internal control functions." And  
14 so you've proposed deleting language that tends to  
15 include the OIG in the scope of that paragraph. Is  
16 that basically it?

17 MR. MERRYMAN: My concern was that while we  
18 do look at internal controls, we cannot perform  
19 Management's function in this area. In looking at  
20 internal controls and impairments to independence by  
21 taking on non-audit services, the internal controls  
22 or taking over part of the internal control and

1 being responsible for monitoring the internal  
2 controls on a recurring basis, for those types of  
3 activities, there is no compensating controls.

4 We would not be considered independent, and  
5 would have a conflict with doing any audits in the  
6 areas that those controls covered. So that was my  
7 biggest concern.

8 If you look at some of the documentation  
9 out there about audit reports, and just like IPAs do  
10 not take responsibility for the internal control  
11 structures, Management's, we can provide  
12 information that Management can use in looking at  
13 their responsibilities and establishing monitoring  
14 and tracking their controls.

15 So that was the general gist of the  
16 comment.

17 MR. SCHANZ: To put it in a colloquial  
18 term, we can't -- we, the OIG or any IG -- cannot  
19 audit their own work.

20 CHAIRMAN MADDUX: Right.

21 MR. MERRYMAN: It's called management  
22 participation in the new Yellow Book, and

1 essentially means we've got to guard against  
2 establishing policy. We can comment on policy, but  
3 establishing it, these are all things -- internal  
4 controls, these are all things that are Management's  
5 responsibility.

6 And in order to maintain our independence  
7 and ability to audit them, we have to be very, very  
8 careful in what activities we take on.

9 CHAIRMAN MADDOX: Okay. In the interests  
10 of trying to get our meeting concluded and get this  
11 language resolved, I guess I want to suggest that  
12 any Committee members who have thoughts on this jump  
13 in here.

14 Dave, you'd suggested some other language  
15 that you might use.

16 MR. HOFFMAN: Yes.

17 CHAIRMAN MADDOX: Can you fill us in on  
18 that real quick?

19 MR. HOFFMAN: Yes. And I take, Dutch, the  
20 point to heart about the use of the words internal  
21 controls and OIG is not management and cannot be  
22 serving the management function, which I think all

1 of us on the Committee understand and agree with.

2           It strikes me as a bit of a semantics  
3 problems, which I tried to address with some edits  
4 to this paragraph. I think some of the changes that  
5 you suggest later in the paragraph go beyond the  
6 semantics issue and really take out the IG entirely  
7 from this paragraph.

8           So what I suggested, and I'll read it --  
9 it's not that lengthy, but I thought it was a good  
10 suggestion to split apart Management and OIG in this  
11 paragraph. And I'm looking at the -- I'm going to  
12 make one change, Vic, to the language that I had  
13 suggested earlier.

14           So I would say that it should say, "(1)  
15 Review LSC's system of controls that are designed to  
16 minimize the risk of fraud, theft, corruption, or  
17 misuse of funds, including by receiving information:

18           "(a) From Management about whether  
19 internals performed by Management and are operating  
20 properly;

21           "(b) From OIG about whether its  
22 investigations function, audit function, and

1 compliance function are operating properly; and

2           "(c) From Management and OIG about whether  
3 there is proper coordination and communicate between  
4 them regarding their respective operations designed  
5 to minimize the risk of fraud, theft, corruption, or  
6 misuse of funds."

7           So as you'll see, obviously it's clear that  
8 both the IG and Management are involved in functions  
9 and operations that are designed to minimize the  
10 risk of fraud, theft, corruption, and misuse of  
11 funds. If we don't describe the IG's operations  
12 using the word "internal controls," that satisfies  
13 the comment that's been made. And then I think  
14 splitting them up into different subparagraphs is  
15 consistent with the idea they're separate entities  
16 with different structures.

17           That's what I would propose.

18           CHAIRMAN MADDUX: Yes. So Dutch and Jeff,  
19 that then eliminates any reference to the OIG  
20 performing internal control functions, or any  
21 suggestion. And I guess that it does that function,  
22 which seems to be your principal concern.

1           I also happen to think that the language,  
2 David you suggested is a lot clearer. There's a lot  
3 to be said for structuring it the way you have. So  
4 again, that language would basically address  
5 Management and OIG separately, and then to the  
6 extent that they're addressed together, it would  
7 simply be to ensure that there is proper  
8 coordination or communication, all of which seems  
9 perfectly appropriate for the Committee.

10           Thoughts on that from other committee  
11 members?

12           MR. SNYDER: I thought the suggestion was a  
13 very good suggestion, so I would be supportive of  
14 that wording change.

15           CHAIRMAN MADDOX: Harry, do you have any  
16 thoughts on that?

17           MR. KORRELL: I think that's great.

18           CHAIRMAN MADDOX: Jeff or Dutch or anyone  
19 in your office, comments?

20           MR. SCHANZ: Well, my question will be, do  
21 we have another bite at the apple, since a lot of  
22 this is just being talked about and I haven't seen

1 it. And in paragraph (1), I think there's a  
2 fundamental misunderstanding on the fourth line down  
3 under (a), "Internal controls performed by  
4 management."

5 Internal controls, the implementation of  
6 those internal controls is what internal controls  
7 are about. That includes tone at the top. It's not  
8 performed. The internal controls should be  
9 established by management and monitored. And that  
10 would, I think --

11 CHAIRMAN MADDOX: Well, that's -- no, I  
12 think you're right, Jeff. And that language would  
13 no longer be part of the charter. The language that  
14 David has proposed would say, "Review LSC's system  
15 of internal controls that are designed to minimize  
16 the risk of fraud, theft, corruption, or misuse of  
17 funds."

18 So it would say that there is a system, and  
19 the Committee is charged with reviewing it. And  
20 that review would include receiving information from  
21 Management about whether its internal controls are  
22 operating properly from OIG, about whether its

1 investigation function, audit function, and  
2 compliance functions operate properly, and then  
3 whether there is proper coordination and  
4 communication.

5           So I think that language works. I think it  
6 addresses the conceptual concern about what internal  
7 controls are. And no, there isn't another bite at  
8 the apple. Without putting too fine a point on it,  
9 I feel like we have to get this charter put to bed.

10           And I thank the committee members that put  
11 a lot of work into it. And I take it this new  
12 language does a much better job, frankly, of  
13 addressing the issue than the previous language. I  
14 think it addresses the concern that your office  
15 raised in the comments it made.

16           So only because David has to leave and  
17 because we're going on two and a half hours now, I  
18 want to ask if there's any other Committee thought  
19 on that language. If not, we're going to use this  
20 language --

21           MR. MERRYMAN: Vic, may I say something on  
22 that paragraph.



1           CHAIRMAN MADDOX:    Sure.

2           MR. MERRYMAN:    I have not visualized it  
3 yet, seen it, so I really -- I tried to follow what  
4 David was saying and looking at the paragraph.  But  
5 there may be some questions.

6           Without seeing it and having a chance to  
7 reflect on it, I just want to let you know I may  
8 raise a question with you a little bit later and the  
9 Committee just a little bit later, just based on  
10 when I see it in writing and have a chance to look  
11 at it.

12           But I just want to put that on the record.  
13 That's all.

14           CHAIRMAN MADDOX:    I appreciate that.

15           MR. KORRELL:    This is Harry.  I do want to  
16 make sure that our staff support was able to get all  
17 that down.  I believe that's something that just was  
18 proposed for the first time over the phone.  I  
19 tracked it and it sounded good.  But I just want to  
20 make sure that we do have the track down.

21           MR. HOFFMAN:    Sure.  You want me to read it  
22 again?  And I think Vic Maddox has the language, so

1 it can be easily emailed.

2 MR. KORRELL: That's all right, then.

3 Don't worry about it. I just wanted to make sure  
4 that we had some good record of it. Okay. Thank  
5 you.

6 CHAIRMAN MADDOX: Yes. I have seen the  
7 language, and I was going to -- Dutch, I'm going to  
8 send you the language just so you'll have it. I  
9 don't expect you to necessarily review it right now,  
10 but I want you to have it.

11 MR. MERRYMAN: Okay, sir. I appreciate it.

12 CHAIRMAN MADDOX: So let's see if I can  
13 find your email.

14 MR. MERRYMAN: rm@oig.lsc.gov.

15 CHAIRMAN MADDOX: Okay. I'll get to that  
16 in a second.

17 Let's move on. So in paragraph (2) under  
18 Risk Management, "Ensure that its review of the  
19 OIG's function occurs in a manner that does not  
20 compromise the OIG's independence." Your comment,  
21 Dutch and others in your office, is that that  
22 language should be eliminated entirely. Correct?

1 MR. MERRYMAN: That's correct.

2 CHAIRMAN MADDUX: Yes. Do members of the  
3 Committee have comments or thoughts on this?

4 MR. MERRYMAN: Are you talking about the  
5 one that says, "Ensure"? Is it about investigations  
6 we're talking about, just to make sure?

7 CHAIRMAN MADDUX: Correct. It's the  
8 language that is paragraph (2) on the clean copy  
9 draft that we're working from. "Ensure that its  
10 review of the OIG's investigations function occurs  
11 in a manner that does not compromise the OIG's  
12 independence or the confidentiality of its  
13 investigations."

14 MR. SCHANZ: Well, this is an Audit  
15 Committee charter, and we're talking about  
16 investigative function. We talked about that before  
17 with Access to Records and 6(e) information from  
18 grand juries. I do have whistleblowers in this  
19 building that should not be compromised. We have a  
20 hotline that goes out to every grantee; some of that  
21 information we pledge confidentiality to. And I  
22 just don't see it's appropriate to introduce

1 investigations at this point in the audit committee  
2 charter.

3 MR. HOFFMAN: Jeff, this is David. You  
4 know, investigations function is going to be in the  
5 charter. It's in paragraph C(1). And the thinking  
6 on paragraph C(2) was that this would absolutely be  
7 -- whether you guys think this is good for the IG's  
8 office or not, it's important for us to make sure  
9 that we're not conducting our affairs in a way that  
10 impinges on your independence or, just as you said,  
11 does anything to get in the way of the  
12 confidentiality of your investigations.

13 You know, I think we do have a disagreement  
14 about our having a role in conducting general  
15 supervision and having some oversight regarding the  
16 investigations function because it is, I believe,  
17 our view that ensuring that the Corporation's funds  
18 are properly protected means in a very, very general  
19 way ensuring that the IG's investigations function  
20 is functioning properly.

21 That can easily be done without doing  
22 anything to get close to compromising the

1 confidentiality of investigations or sources or  
2 anything like that. It can be done in a very level.  
3 And that's what paragraph (1) accomplishes, I think.

4 Paragraph (2) attempts to give an extra  
5 level of protection, I think, to the point that you  
6 and I have both been making, which is that you've  
7 got to make sure that it doesn't get in the way of  
8 independence and confidentiality.

9 Now, if you think that it should not be in  
10 there, I'm surprised by that and I'd be happy to  
11 sort of defer to your judgment and take it out. But  
12 the reason that I thought it was important to be in  
13 there was precisely because it is a written record  
14 in the charter of our commitment to protecting and  
15 being on the lookout for your office's independence  
16 and the confidentiality of the investigations.

17 But again, if you prefer it out, it's fine  
18 with me that it goes out. But that was the  
19 thinking.

20 MR. SCHANZ: Well, as a practical matter,  
21 we do provide as much information on investigations,  
22 open investigations, that we do at the closed

1 session of the Board. We report at every board  
2 meeting in a closed session.

3 Now, in order to accomplish this, then,  
4 every Audit Committee will have to have a closed  
5 session. Every time I brief the Audit Committee,  
6 we'll have to have that in closed session.

7 MR. HOFFMAN: Well, it's possible we may  
8 have to. But I also think that -- remember, let's  
9 not over-interpret what we're talking about here by  
10 saying that we are going to receive information  
11 about whether your ingns function is operating  
12 properly.

13 I can easily imagine a situation where that  
14 does not include information about individual  
15 investigations. You might feel that that's required  
16 in order to explain to us how your investigations  
17 function is operating properly, but it's not  
18 necessarily true that that would be required.

19 So I can easily -- and again, having done  
20 this myself for four years, I can imagine a  
21 situation where a closed session is required. I can  
22 easily imagine where it's not. I think we'll have

1 to sort of see how that goes.

2 But if you think the only way to describe  
3 to us how your investigations function is operating  
4 properly is to tell us about confidential things and  
5 go into closed session, that's fine. And if you  
6 think you could do without that, that's fine, too.

7 MR. SCHANZ: Okay. Point taken.

8 MR. MERRYMAN: But the resolution, on  
9 balance, is just leave it in, leave it the way it  
10 is.

11 MR. SCHANZ: Yes.

12 MR. GALLAY: Paragraph (2).

13 MR. HOFFMAN: Paragraph -- yes.

14 CHAIRMAN MADDOX: Well, that was helpful.  
15 So there won't be any change to paragraph (2) in the  
16 draft. I think the same is true of paragraph (3).  
17 I'm not aware of any comment from the OIG on it or  
18 any concern about it.

19 That takes us to paragraph (4), which  
20 begins, "Review any concerns expressed regarding any  
21 impediments to the independence of the OIG." And  
22 Dutch, you have suggested a change there which would

1 be to delete -- wait a minute.

2 MR. MERRYMAN: For IG shops --

3 CHAIRMAN MADDOX: You would delete  
4 everything after -- I'm sorry. You would delete  
5 everything after the "OIG," the first reference to  
6 OIG. Is that correct?

7 MR. MERRYMAN: Correct. "In order to help  
8 ensure the OIG maintains independence, as provided  
9 by law." We're really responsible for making sure  
10 we maintain our independence. We may need  
11 assistance at times to bring issues to the Board.  
12 But we're really -- I'm obligated to make sure that  
13 our work is independent, complies with independence,  
14 and to raise issues when it does not.

15 CHAIRMAN MADDOX: Yes. I understand. I  
16 think the Committee agrees with you on that. So  
17 we'll delete everything after the first OIG. So the  
18 sentence will read, "Review any concerns expressed  
19 regarding any impediments to the independence of the  
20 OIG," period, or semicolon. And then everything  
21 after that in that paragraph is deleted, which is  
22 consistent with your suggestion.



1 MR. MERRYMAN: Thank you.

2 CHAIRMAN MADDOX: So that takes us then to  
3 the next paragraph, which is (5) in the working  
4 draft. "Confirm that there is a proper confidential  
5 mechanism in place," et cetera, "for making  
6 complaints anonymously."

7 Dutch, your concern, your suggested change,  
8 was to add the words "the Committee." Is that  
9 correct? So that you would say, "Confirm that the  
10 Committee has a proper confidential mechanism"?

11 MR. MERRYMAN: Well, what I was getting to  
12 is that the Committee does talk about having people  
13 coming to them. I was just trying to make a  
14 distinction between the Committee's system and the  
15 OIG's hotline.

16 CHAIRMAN MADDOX: Right.

17 MR. HOFFMAN: Vic, do you want me to jump  
18 in on this one?

19 CHAIRMAN MADDOX: I do because I think you  
20 and I may have some confusion among ourselves. Why  
21 don't you explain your position, David.

22 MR. HOFFMAN: Yes. And I really want to

1 start with maybe a combination of a question for the  
2 IG's office and what the thought process was.

3 I think that one thing that the Audit  
4 Committee needs to make sure is that if there is a  
5 whistleblower or something who has some information  
6 about problems internally with LSC management or  
7 with a grantee, that they have a good outlet with  
8 integrity where they can go, anonymously or by  
9 identifying their name, and report that  
10 confidentially to a good place that's going to be in  
11 a position to do something about it.

12 That may well be, and maybe likely will be,  
13 the IG's office from time to time. And if Joe Blow,  
14 who's an LSC employee or a citizen or a grantee  
15 employee or someone, has that good opportunity  
16 available to them and the avenue that they choose is  
17 the IG hotline, I think all that's incumbent upon us  
18 is to feel satisfied that that avenue is strong and  
19 available.

20 We certainly don't want to know that Joe  
21 Blow reported or who Joe Blow is or necessarily what  
22 Joe Blow said unless you come back to us and say,

1 "We have found a problem and here's the result." We  
2 just need to know that that structure, that process,  
3 exists and is strong.

4           Even if it did exist, even if there was a  
5 strong IG hotline that was operating properly, it  
6 may be that there should be a second avenue. It may  
7 be that Management or the Board or the Committee  
8 should also have an avenue.

9           But I don't think that's required. I think  
10 that the thing that the audit committee needs to  
11 make sure is that there's somewhere for a true  
12 whistleblower to go that it can be confidential and  
13 that it is going to be handled properly. That's it.

14           So that was the purpose here. And I think,  
15 Dutch, your change puts an onus for the creation of  
16 a second mechanism. And again, whether there should  
17 be a second mechanism or not I think is I probably  
18 open to debate. I just to we got to make sure the  
19 charter shows that we're meeting at least the  
20 minimum standard, that there's at least one  
21 somewhere that's working properly.

22           So let me get your reaction to that because

1 it's -- and I really -- and I'm not sure it's  
2 healthy. If we knew that your hotline was really  
3 fantastic, I'm not sure it's healthy to have a  
4 second one because it might be competing with you,  
5 it might be duplicative, and so on.

6           Anyway, what are your thoughts and  
7 reaction?

8           MR. MERRYMAN: I don't disagree. My  
9 thought at the time I was putting this together was  
10 the system put up to file complaints with the  
11 Committee that was in place in the personnel manual.

12           And I thought that's what this was getting  
13 to. I was just trying to clarify that that was this  
14 was getting to. But if you want it in the broader  
15 sense --

16           MR. GALLAY: Yes. That's a good point, and  
17 it leaves the option open both ways.

18           MR. MERRYMAN: So that's fine.

19           MR. SCHANZ: And if it's a personnel  
20 matter, individuals have the avenue of going to EEOC  
21 and other government agencies.

22           MR. HOFFMAN: Yes. What this does is it

1 doesn't lock anybody into anything. It means that  
2 we'll have to get some understanding of, in a very,  
3 very general process type of way, how the hotline  
4 works.

5           And then I think the Committee will have to  
6 consider, hey, does there need to be some sort of  
7 alternative reporting mechanism other than the IG  
8 hotline? Maybe there should be, maybe there  
9 shouldn't be. I think that's a future discussion.

10           MR. MERRYMAN: I believe there's one  
11 already established.

12           MR. GALLAY: Right. You don't want to  
13 build into -- his point is you don't want to build  
14 at the start the necessity over having one.

15           MR. HOFFMAN: That's right.

16           MR. GALLAY: And it was somewhat  
17 problematic, the discussion about creating it to  
18 begin with.

19           MR. MERRYMAN: That's fine. That's fine.  
20 I just thought it was an oversight that was  
21 referring to the system that was put into place in  
22 the personnel manual to bring things to the Audit

1 Committee.

2 MR. HOFFMAN: Yes. Because frankly, we're  
3 never going to have the resources that you have to  
4 actually do something about a complaint. And from  
5 my experience, I may start with a bias of saying, if  
6 I've got a real whistleblower who's got a complaint,  
7 I think I'd want them to go to the IG's office  
8 because you're going to have the resources to do  
9 something about it.

10 I grant that there may be some  
11 circumstances where you need a second outlet, and it  
12 may be that we're the second outlet. But that was  
13 what was behind the thinking on that.

14 So anyway, let me -- Vic, does that clarify  
15 it, or do you have comments or thoughts and  
16 reaction?

17 MR. MERRYMAN: Absolutely. I agree. I  
18 agree. I agree, David.

19 CHAIRMAN MADDOX: Yes. One final thought  
20 is I have this vague impression that somehow one of  
21 the GAO reports from either the 2007 or 2009 era  
22 somehow suggested that the Audit Committee needed to

1 have such a mechanism. I could be misremembering  
2 that.

3 But with the clarification that we just  
4 had, are we talking now about leaving the language  
5 as is in the working draft?

6 MR. MERRYMAN: Yes, leave the language as  
7 is in the working draft.

8 CHAIRMAN MADDOX: Yes. That seems to be  
9 where we are.

10 Okay. Committee members all in agreement  
11 on that?

12 MR. SNYDER: Yes.

13 MR. KORRELL: Yes.

14 MR. HOFFMAN: Yes.

15 CHAIRMAN MADDOX: Very good. That takes us  
16 then, to the next paragraph, "Review LSC's efforts  
17 by Management and/or the OIG, including training and  
18 education efforts, to help ensure that the LSC  
19 employees and grantees act ethically and safeguard  
20 LSC funds."

21 MR. SCHANZ: Well, we know right away,  
22 Victor, that we have to take out "and/or."

1           CHAIRMAN MADDOX: Yes. Exactly. You  
2 anticipated me. Your comment on that, Jeff, I  
3 think, was you would delete "Management and/or the  
4 OIG" so that it would read, "Review LSC's efforts,  
5 including training and education efforts, to help  
6 ensure that the LSC employees and grantees act  
7 ethically and safeguard LSC funds."

8           And I take it that was, in light of your  
9 ongoing concern because you're not allowed to do the  
10 agency activities or you can't basically do  
11 Management's work for us.

12           MR. SCHANZ: Right. We can't cross the  
13 line into management policy. But I think it's a  
14 good effort, and just to take a moment, but we're  
15 working very well together, the IG and LSC, on  
16 sharing training opportunities, going to training of  
17 common interest; and in this case, I think LSC  
18 efforts would incorporate this building.

19           CHAIRMAN MADDOX: Yes. I agree with that.  
20 I think the language you propose is good. I think  
21 it actually adds clarity and it doesn't  
22 unnecessarily constrain what the Committee should or



1 shouldn't do. So unless the Committee has a  
2 different thought, I would agree to accept that  
3 change and we would delete the words "by Management  
4 and/or the OIG" in the first line of that paragraph.

5 MR. HOFFMAN: It's David. I agree with the  
6 change. Just for benefit of Jeff and everyone else  
7 in the office there, when I read the word LSC, I  
8 read it to include Management and the IG.

9 I don't think there's any obligation on the  
10 IG's part to conduct any training whatsoever. You  
11 and I have both seen in the past, in different ways,  
12 IGs conduct training of management employees to try  
13 to help them behave ethically. That's often a good  
14 thing. But that's really up to you.

15 And if at some point you, in conjunction  
16 with Management, decide to be part of that training  
17 of LSC employees, my sense is that would be great  
18 and that we should hear about that, probably what  
19 would be a success story. But there's no obligation  
20 on your part, and if there's none, then there's  
21 none.

22 So that was what I was thinking. And

1 again, this will go toward conversations in the  
2 future. But I think the change is a good one.

3 CHAIRMAN MADDOX: Okay. That takes us,  
4 then, the last section, D, Other Duties and  
5 Responsibilities. I'm not aware of any changes to  
6 paragraphs (1), (2), or (3).

7 Unless anybody else is, that takes us to  
8 Roman IX, Limitations. I'm not of any changes in  
9 paragraphs (1), (2), or (3). In paragraph (4), the  
10 Inspector General's office has suggested a change.  
11 Let's see.

12 MR. SCHANZ: Wordsmithing.

13 CHAIRMAN MADDOX: You're saying that -- go  
14 ahead, Dutch.

15 MR. SCHANZ: It was just wordsmithing,  
16 "impinging" on --

17 CHAIRMAN MADDOX: What is your suggestion?

18 MR. SCHANZ: Impinging the authority. But  
19 we had something on --

20 MR. MERRYMAN: No, no, no. We had  
21 something on (3). We had something on (3), just --  
22 and I think we've already had the discussion on

1 this, about -- when we start talking about internal  
2 audit. But it was -- our comment applied to  
3 paragraph (3).

4 CHAIRMAN MADDOX: I see that, Dutch. So  
5 you would delete the reference to the OIG in the  
6 last sentence of paragraph (3).

7 MR. MERRYMAN: Again, as the discussion we  
8 had earlier where we were talking about OIG's  
9 responsibilities for audits, which Vic gave some  
10 input on, so it's the same discussion. I don't know  
11 that we necessarily have to have it again. I think  
12 the language was left the same the last time, when  
13 we talked about the -- you left audits and reviews  
14 in there.

15 MR. GALLAY: And you were not proposing to  
16 put OIG there, were you?

17 MR. MERRYMAN: No. I was just making a  
18 comment. So since it's already been discussed, I  
19 don't think we need to re-discuss it. And we'll  
20 just --

21 CHAIRMAN MADDOX: So there's no change in  
22 the language.

1 MR. MERRYMAN: No change in the language.

2 CHAIRMAN MADDOX: In paragraph (4), I want  
3 to suggest that instead of "circumscribing" or  
4 "impinging," that we use the word "limiting," so  
5 that it would read, "Nothing contained in this  
6 charter shall be construed as limit the authority  
7 of the Inspector General," et cetera. I just think  
8 that's clearer than either "circumscribing" or  
9 "impinging."

10 Any objection to that, Jeff or Dutch?

11 MR. MERRYMAN: No. None.

12 MR. SCHANZ: No. That seems fine.

13 CHAIRMAN MADDOX: Okay. Then I think we've  
14 completed our work. I wanted to see if we can agree  
15 on maybe this procedure because I know David needs  
16 to go, if he's still with us. Everybody else is  
17 probably behind schedule.

18 And even though I said there was no second  
19 bite at the apple, I think what I'm wondering is, is  
20 it possible -- this is to the committee staff, or to  
21 the LSC staff -- is it possible for us to have the  
22 changes that we've agreed on written up and then

1 forwarded to everybody so that at our meeting in Ann  
2 Arbor, as the first item of business, we adopt these  
3 changes and pass a resolution approving them for the  
4 Board? Does that make sense?

5 MR. FORTUNO: Absolutely. This is Vic,  
6 Fortuno, that is.

7 CHAIRMAN MADDOX: Okay. Unless there's  
8 some concern by the committee members that we need  
9 to take a vote today, I think substantively we've  
10 done what we need to do. We'll have the language in  
11 front of us. We'll have any typos and housekeeping  
12 issues. And we can take a vote on it in Ann Arbor,  
13 and it'll be as effective as if we do it today.

14 MR. KORRELL: Vic, this is Harry. I think  
15 that's right, as long as we don't have another long  
16 item on the agenda. There is some chance we'll get  
17 into extended discussions here again, and obviously  
18 -- well, I'm sure you're keeping an eye on our  
19 agenda in Ann Arbor. That's all I'm suggesting.

20 CHAIRMAN MADDOX: I will almost guarantee  
21 you that we won't have a long discussion in Ann  
22 Arbor.

1           So I'm going to propose that, and that way  
2 we can clean up any concerns with the language and  
3 the like. I want to thank everyone for their  
4 attendance and for their input today.

5           I guess that takes us to the next item on  
6 our agenda, any public comment. Is there any public  
7 comment?

8           (No response.)

9           CHAIRMAN MADDOX: If not, is there a motion  
10 to adjourn?

11                           M O T I O N

12           MR. SNYDER: So moved.

13           MR. KORRELL: Second.

14           CHAIRMAN MADDOX: All in favor?

15           (A chorus of ayes.)

16           CHAIRMAN MADDOX: The motion carries.

17 Thank you all very much. The meeting is adjourned.

18           (Whereupon, at 5:10 p.m., the Committee was  
19 adjourned.)

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