

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS MEETING

OPEN SESSION

Saturday, November 20, 1999

10:20 a.m.

750 First Street, N.E.  
9th Floor Conference Room  
Washington, D.C. 20002-4250

BOARD MEMBERS PRESENT:

Douglas S. Eakeley, Chair  
Nancy Hardin Rogers  
LaVeeda Morgan Battle  
John N. Erlenborn  
Thomas F. Smegal, Jr.

F. William McCalpin  
Ernestine P. Watlington  
Edna Fairbanks-Williams  
Hulett H. Askew  
Maria Luisa Mercado

STAFF AND PUBLIC PRESENT:

John McKay, President  
Victor Fortuno, VP Lgl Affrs, Gen Counsel, Corp Sectry  
Edouard Quatrevaux, Inspector General  
David Richardson, Treasurer and Comptroller  
Jim Hogan, VP for Administration  
Mauricio Vivero, VP, Govt Relations and Public Affairs  
Doreen Dodson, SCLAID, Missouri  
Sarah Cleveland, Erlenborn Commission  
Alex Aleinikoff, Erlenborn Commission  
Wilhelm Joseph, Exec Dir, Legal Aid Bureau, Inc. of MD

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

1  
2 CHAIR EAKELEY: All right, let me call the  
3 meeting to order, with my apologies for the delay in  
4 the starting time.

5 Welcome, everyone. We have an agenda, I have  
6 a couple of suggested changes to make to it. First, we  
7 are honored to have, in addition to our own, two board  
8 members of the Erlenborn Commission present with us.

9 We'll have two other commissioners present for  
10 that part of the presentation that John Erlenborn will  
11 make for the report and its approval.

12 And the scheduling is tight, so I'd like to  
13 suggest that when 11:00 rolls around, or soon after,  
14 that we get to a break, we will turn the floor over to  
15 our vice chairman to present the Erlenborn  
16 commissioners and report.

17 The second change I'd like to make is that  
18 after we get through the reports, I would like to have  
19 the opportunity to invite the chair of SCLAID, Doreen  
20 Dodson, who has flown all the way out from Missouri to  
21 meet with us, to come and address us.

22 Are there any other changes to the agenda that

1 we need to make or take up? If not, all in favor of  
2 approving the agenda as modified?

3 (Chorus of ayes.)

4 CHAIR EAKELEY: Opposed?

5 (No response.)

6 CHAIR EAKELEY: The ayes have it. You have  
7 the minutes of the September 18, 1999 board meeting.  
8 Are there any corrections or changes to be made to  
9 those?

10 M O T I O N

11 CHAIR EAKELEY: Is there a motion to approve  
12 the minutes of the board meeting?

13 MR. ERLNBORN: So moved.

14 CHAIR EAKELEY: And a second?

15 MS. FAIRBANKS-WILLIAMS: Second.

16 CHAIR EAKELEY: All those in favor?

17 (Chorus of ayes.)

18 CHAIR EAKELEY: Opposed?

19 (No response.)

20 CHAIR EAKELEY: The ayes have it. The minutes  
21 are approved. Likewise, you had circulated to you the  
22 minutes of the executive meeting on September 18.

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1 Again, any changes or corrections?

2 M O T I O N

3 CHAIR EAKELEY: Is there a motion to approve  
4 them?

5 MS. WATLINGTON: So moved.

6 MS. FAIRBANKS-WILLIAMS: Second.

7 CHAIR EAKELEY: All those in favor?

8 (Chorus of ayes.)

9 CHAIR EAKELEY: All those opposed?

10 (No response.)

11 CHAIR EAKELEY: The minutes of the executive  
12 session are approved.

13 Now we're into the reports. I don't have a  
14 lot to report, but I do want to mention a couple of  
15 things.

16 I had the honor to go up to Denver to address  
17 the first state-wide convening of the new Colorado  
18 Legal Services program, and it was just amazing to see  
19 the amount of work that had been done to integrate the  
20 three prior programs. We were at the briefing stage  
21 when we met in Denver about how the newly configured  
22 program would develop, but it was just at the stage of

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1 having been agreed. And the mood was very upbeat,  
2 there was a great deal of, I thought, enthusiasm, and  
3 it was just a very proud moment to be a small part of.

4 I then actually -- I can't remember the  
5 sequence, but I came down here several times in  
6 between. Once to meet with our president, but another  
7 time to go with our president and Mauricio Vivero to  
8 the Hill, where we found Senator Domenici in full  
9 debate in the full Senate Appropriations Committee, who  
10 left the floor to come out and meet with us so that we  
11 could confer upon him our distinguished justice award  
12 that he was unable to -- actually, he had arrived in --  
13 remember we went to the Rayburn Building in July after  
14 the White House event to confer, bestow these awards.  
15 Senator Domenici had already been there and then left,  
16 because we got there late.

17 So he was there, we just weren't there when he  
18 was there. So we went to -- the mountain came to the  
19 prophet, and we had a very warm and again, reassuring  
20 meeting with the chairman and a good exchange, and a  
21 nice opportunity to tell him how much we appreciated  
22 his leadership in our cause.

1           We have coming up the annual meeting, and  
2 there are a lot of important planning efforts going on  
3 for that. We will hopefully have presented to us at  
4 that time a strategic plan for adoption and we will be  
5 taking steps between now and then to familiarize all  
6 board members with the plan and to get input from all  
7 board members.

8           And my intention is to appoint an ad hoc task  
9 force to help facilitate this process and also  
10 establish some criteria for how we address the planning  
11 document at the next board meeting. And I'll be back  
12 in touch with people after I take soundings on  
13 schedules and availabilities to see how that might work  
14 out.

15           We also have -- and I hope everyone has -- I'm  
16 not whether you do, because they came in at different  
17 times to different people -- but another ad hoc  
18 committee that was appointed after our January meeting  
19 in Miami, the Broderick-Smegal-Watlington committee,  
20 came out with a report and series of recommendations to  
21 enhance the quality of board participation at and  
22 between meetings and in the life of the corporation.

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1           And unfortunately, John Broderick had a  
2 command performance that required him to be elsewhere  
3 with his chief justice this weekend, but my intention  
4 would be to follow up with a telephone conference call,  
5 having failed to get together in person, in between now  
6 and the board meeting, and come back at the annual  
7 meeting, probably either with some recommendations or  
8 some implementation of some of the recommendations.

9           We also need to get management's input into  
10 the recommendations and again, if you don't have the  
11 report, please let me know, and we'll get you a copy.

12           But secondly, if you want to chat about it, or  
13 react to it, or give some input into where we go with  
14 it, that would be welcome and I would invite you to do  
15 that.

16           That concludes my report. Now we'll go with  
17 members' reports. And Ernestine, can we start with  
18 you?

19           MS. WATLINGTON: Yes. I'm sorry John just  
20 couldn't make it, because he really was very -- I can't  
21 speak for Thomas, but I know for myself, I really  
22 appreciate the work he did on that report, and as chair

1 of that committee, and that, you know, we hope it's  
2 working. But we, you know, really -- I think he really  
3 did a good job on getting it out and everything, and  
4 you know, scheduling the meetings.

5 And also, Pennsylvania is on with their plan  
6 and they are on line for that one year that they are  
7 doing -- their regional claim for that process is going  
8 well.

9 CHAIR EAKELEY: Good. Thank you. I don't  
10 think anyone wants to see the report gather dust on a  
11 shelf, and I think we -- our intention is to try and  
12 pick it up and move it along to a fruitful discussion  
13 and implementation at the annual meeting. Edna?

14 MS. FAIRBANKS-WILLIAMS: Well, I have to  
15 report I'm still having a beaver problem.

16 (Laughter.)

17 MS. FAIRBANKS-WILLIAMS: I've decided that  
18 Bell Atlantic is digging holes now surrounded by yellow  
19 tents to keep the weather off so the beavers don't know  
20 what they're doing. I've offered to eat every one they  
21 bring me, so -

22 (Laughter.)

1 MS. FAIRBANKS-WILLIAMS: The other thing that  
2 I wanted to report was cur state survey was awarded to  
3 Macro and I immediately found fault with them, because  
4 I thought you would think I should.

5 It was -- they were going to do it completely  
6 by telephone and the low income people in Vermont --  
7 lots of them -- don't have phones. So we reached a  
8 compromise, Justice Johnson and I browbeat them into  
9 doing focus groups and having an 800 number at a local  
10 agency so that they could talk to some low income  
11 people at the Office on Aging and at the OEO. So that  
12 is progressing.

13 CHAIR EAKELEY: LaVeeda?

14 MS. BATTLE: I don't have a report.

15 CHAIR EAKELEY: Tom?

16 MR. SMEGAL: Bucky and I and yourself and  
17 John, of course, attended the NLADA meeting last week,  
18 and participated to some degree. To follow up on what  
19 Ernestine said, John Broderick did a tremendous job,  
20 and we should all take a look at that.

21 I'm distilling from the session we had in  
22 Miami some very significant thoughts in that report.

1 Thank you.

2 CHAIR EAKELEY: Forgive me for not -- I meant  
3 to report on my visit to Long Beach with you and John  
4 last week, at the NLADA -- and Bucky -- at the NLADA  
5 annual convention. And it was, I thought, a really  
6 good session, with a lot of meaningful exchanges and a  
7 good learning experience. John?

8 MR. ERLBORN: Nothing of interest. I'll  
9 yield back.

10 CHAIR EAKELEY: Maria Luisa?

11 MS. MERCADO: I have nothing to report.

12 CHAIR EAKELEY: Bucky?

13 MR. ASKEW: I said yesterday, and I think I  
14 should repeat here, that I did attend the NLADA  
15 convention. Tom and I were in the audience, and our  
16 board chair and our president made presentations there.  
17 Our staff did us a wonderful favor by announcing the  
18 competition decision a week before the NLADA convention  
19 so there was a little bit of activity around that at  
20 the convention.

21 Both our president and our board chair, I  
22 thought, did a wonderful job of setting the right tone

1 in the remarks they made at the opening assembly, and  
2 then at the civil caucus, responding to some of the  
3 concerns that were raised, making a very constructive  
4 and affirmative statement on behalf of the corporation  
5 and our willingness to work with the programs, to work  
6 through these issues.

7 So I had to leave right after that, but I  
8 thought it got the convention off to a good start, from  
9 our point of view.

10 MS. ROGERS: No report.

11 CHAIR EAKELEY: Bill?

12 MR. MCCALPIN: I think -- I hope -- that the  
13 members of the board received my communication of  
14 November 3rd. I'd like to make two quick points in  
15 connection with it.

16 The first has to do with process. It seems  
17 clear to me that the board was not advised, as required  
18 by the communications policy.

19 I got the first information about it when I  
20 read the inspector general's semi-annual report, which  
21 says, "Shortly after the close of the reporting period,  
22 the inspector general and the LSC president submitted a

1 joint legislative proposal."

2 I got this document on the 2nd of November. I  
3 believe the close of the reporting period was September  
4 30. It doesn't seem to me that that is a  
5 contemporaneous communication.

6 But more important, I think, is a matter of  
7 policy. I believe that any legislative proposal which  
8 comes from the corporation to the Congress ought to be  
9 vetted through the corporation, including the board.

10 I think that the Congress is entitled to  
11 believe that when a formal legislative proposal comes  
12 from this corporation to it, it has the approbation,  
13 the approval, of the policy-making body of this  
14 organization. And that clearly didn't happen in this  
15 case.

16 It may be that we need to review the  
17 communications policy or make sure that that doesn't  
18 happen again.

19 The second point I would make has to do with  
20 substance. I had not seen the legislative proposal  
21 when I sent my communication of November 3rd. That  
22 came a day or two later.

1           In my personal judgement, I think that  
2 proposal was unnecessary, at least undesirable. I  
3 think that it denies, trespasses upon, abrogates an  
4 important right of poor clients. Not because they are  
5 accused of any wrongdoing, or even suspected of any  
6 wrongdoing, but rather, in an attempt to find out  
7 whether the provider to them may have done something  
8 wrong.

9           And I suggest that that's inappropriate to  
10 subject poor clients of -- the only clients in the  
11 country -- to that kind of a trespass upon their  
12 rights.

13           I believe that the draft is poorly done,  
14 almost an embarrassment to the corporation in the way  
15 it's done. It's so broad as to be unnecessary. And in  
16 my judgement, it may well not accomplish what the  
17 framers had in mind, because it overlooks, ignores an  
18 important aspect of this whole issue.

19           I believe that the board ought to let the  
20 Congress know that that proposal did not have the  
21 review and the approval of this board.

22           CHAIR EAKELEY: Thank you. I think the one

1 point -- I mean, clearly communications policy is  
2 important, and I'll let John and then the inspector  
3 general address how this came up, but there is an  
4 impression that management participated with the Office  
5 of the Inspector General in formulating and jointly  
6 approving the legislation, and I don't think that  
7 was --

8 MR. MCCALPIN: It says so here.

9 CHAIR EAKELEY: I don't think that was the  
10 case, but I did get -- I mean, I have to plead guilty  
11 of this, too. I got a call from John. Time was of the  
12 essence, John said that this was something that was  
13 going to be presented. I never saw the language until  
14 I got the IG's letter and Mauricio Vivero's report as  
15 well.

16 But I think we need to take another look at  
17 both communications policy and at the legislative  
18 proposal. I seem to recall, but I defer to the expert  
19 on the board on this issue, but if it was an OIG  
20 initiative, there is a requirement to simultaneously  
21 advise, but not pass through, the board.

22 I'm not trying to stand on a technicality

1 here, but my thought was to ask the vice chair, who is  
2 also OIG liaison, to really coordinate with you, maybe,  
3 Bill, and come back to us at the next meeting to  
4 address the issues that you've raised in your report.

5 Yes?

6 MS. BATTLE: I would just like to just follow  
7 up on that and suggest that we can probably, if issues  
8 come up that require -- something of the magnitude of a  
9 legislative proposal, if that kind of thing comes up  
10 and as a board we're given a heads-up, that we could be  
11 available by conference call if necessary to be able to  
12 address it.

13 But it is important for all of us to have it,  
14 to know what it is, and understand it. Because  
15 ultimately, we're fully responsible for anything that  
16 comes out.

17 CHAIR EAKELEY: Yes, I don't think we have a  
18 debate here. The circumstances were extenuating, but  
19 extenuation is not justification.

20 MS. ROGERS: I wonder when we're going to talk  
21 about the merit. It does seem like the board -- since  
22 it's an issue, even though it was not enacted, and I

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1 assume it has not been reintroduced -- it seems to me  
2 that if it's an issue that's likely to be current, that  
3 we ought to talk about it. And so that people -- so  
4 that there is a known position of the board on this  
5 issue.

6 CHAIR EAKELEY: Well, that was behind my  
7 thought to ask John Erlenborn to take this up and not  
8 let it drop and bring it back to the board in a way  
9 that we can act on it, or decide it, or debate it by  
10 the next meeting.

11 I don't think anything is likely to happen  
12 between now and the next meeting. This is a dead  
13 issue, largely, but John McKay, I know, is planning to  
14 address it in his report as well.

15 Maria Luisa?

16 MS. MERCADO: And you know, for some reason,  
17 because we got time crunched or whatever, that it was  
18 difficult to get the whole board together, you might be  
19 able to at least get your ops and regs committee  
20 together that generally would look at that issue; that  
21 would be under their jurisdiction.

22 CHAIR EAKELEY: Let's not debate. I mean, I

1 think this is a provision, I mean, this cuts across  
2 lots of things, and I think every board member has a  
3 legitimate interest in it. But I think that in order  
4 to shape it and fashion it and present it for  
5 meaningful discussion, we need a little bit of  
6 preparatory work and I was hoping that our vice chair  
7 would take that up first.

8 MR. ERLNBORN: Well, I'll be happy to do  
9 that. And as far as the timing, apparently there was  
10 the feeling that something could have been done in this  
11 session of Congress. There were only a few days left  
12 at the time. And I don't think that was justification  
13 for failure to notify us or to vet it through the  
14 board. But at this time, we have a lot of time to work  
15 on it, because the Congress is through for this year,  
16 and early next year they're not likely to take it up.  
17 So it'll be months before this would ever become an  
18 issue in the Congress. So we have plenty of time to do  
19 it.

20 CHAIR EAKELEY: But I'll tell you my own --  
21 this is not to minimize the communications policy  
22 aspect of this, but the access problem is a very real

1 one that impacts, and has a potential to have a few, a  
2 handful of programs really impair the credibility of  
3 all programs and our credibility as well. And it is a  
4 serious, serious issue that does need to be addressed,  
5 and we need to address it.

6 And John will address it in his -- hopefully  
7 John will not -- John is -- yes, let's segue into  
8 John's report now, which will not exclusively devote  
9 itself to this issue, but --

10 MR. MCKAY: I'll be glad to, Mr. Chairman,  
11 thank you. I'll just take that up initially and just  
12 provide some additional background. Most of the  
13 points, I think, have been made, and I agree with most  
14 of the points the board members are making. But just  
15 some additional background.

16 First, the scene of this is really important,  
17 and that is the question of having appropriate access  
18 within the law to materials necessary to follow up on  
19 the various CSR audits. That's the context of this  
20 current situation.

21 And to remind board members, we are facing --  
22 management is facing follow-up responsibilities,

1 principally handled by our compliance and enforcement  
2 unit, from the compliance and enforcement unit, initial  
3 visits from the OIG audits, which are referred to us  
4 under A50 for follow-up, from the GAO, which comes  
5 within A50 as a follow-up responsibility to management  
6 staff.

7           And a reminder to all of you that we had  
8 approximately 50 programs, including many of our  
9 largest programs, who were unable to certify the  
10 accuracy of their CSR data to within 5 percent, which  
11 under our follow-up procedure, is being referred to  
12 compliance and enforcement to first ask the programs to  
13 develop follow-up plans and the distinct possibility  
14 that we will have programmatic staff over the next year  
15 visiting some or many of those 50 programs.

16           So the scope of the recipient network that is  
17 affected by this question is large, indeed. And I  
18 think, in the context of the Congress' justified  
19 interest in the question of the accuracy of Legal  
20 Services Corporation data, this has always been an  
21 issue that has been very much at the forefront of  
22 management's consideration in regard to our

1 responsibility.

2 We have had a number of programs who, at the  
3 time of the waning days of the appropriations process,  
4 the numbers increased. I believe it is coincidental,  
5 but the numbers of programs who were, in effect,  
6 denying access to materials necessary to follow up on  
7 the CSR audits increased.

8 Initially, with the Legal Aid Bureau of  
9 Maryland, but followed by programs in Rhode Island,  
10 Mummy Valley, Indiana, western Missouri. These were  
11 very significant issues.

12 We were able to -- and I want to indicate on  
13 the record here before the board -- that we were able  
14 to work out a protocol with the Legal Aid Bureau of  
15 Maryland which satisfied their assertion of  
16 confidentiality, whether it be attorney-client  
17 privilege, or Rule 1.6, we were able to agree to a  
18 protocol which had initially not been something that  
19 either Legal Aid Bureau or management staff thought  
20 could be worked out.

21 Initially, the IG recalled his team from the  
22 Legal Aid Bureau in Maryland, referred the lack of

1 access issue to management under A50, and then that  
2 became an issue for management, to achieve adequate  
3 access to follow up on the IG's initial efforts there.

4 Literally, at the end of the appropriations  
5 stage, we became aware that at least two of the  
6 programs were asserting a broad and -- what I would say  
7 -- a blanket opposition to management staff reviewing  
8 materials necessary to follow up on those audits.

9 The inspector general, who I think will report  
10 to you separately on this, reached the conclusion --  
11 and really, he will give you some additional  
12 information on this -- that he was going to go to the  
13 Hill, go to the Congress, and seek assistance of  
14 legislation. Because in his view, the denial of  
15 access, what he was characterizing as a denial of  
16 access, was impacting his ability to conduct audits.

17 I think it's fair to say that the inspector  
18 general also was concluding that management's  
19 difficulties in obtaining access necessary to follow up  
20 on the audits had reached a critical point in time.

21 Up to that point, I did not -- and speaking  
22 for management staff -- did not believe that pursuing

1 legislation was wise. One, we were not in dialogue  
2 with the Judiciary Committee, we were not in dialogue  
3 with the board on this. We felt we could work these  
4 out with programs, who I think do want, and do  
5 understand the importance of the necessity of  
6 demonstrating to Congress that they are going to be  
7 open and accessible and that they will respond to the  
8 issue regarding the integrity of our data.

9 But it became clear to me as we approached --  
10 we were negotiating in Maryland, and we were reaching a  
11 situation where we now had multiple programs asserting  
12 what we considered to be blanket opposition, resulting  
13 at this point -- again, just days before the end of the  
14 appropriations process -- a blanket opposition to our  
15 efforts, and requiring a recall of management staff  
16 from Rhode Island, that we were at a critical stage.

17 The IG made it clear he was going to seek  
18 legislation. I believe that's his responsibility, his  
19 decision to make, and his obligation to follow up and  
20 inform the board, if that's within his call, and  
21 certainly he's got his own independent obligations, as  
22 I understand it, to report to the Hill.

1 I felt it was important at that point in time  
2 to make a decision, because we were requested by the  
3 inspector general to go along with him on the question  
4 of access to legislation.

5 So two things came into play. First, we had  
6 no legislation to work with at that point. But  
7 secondly, we had a very, very short turnaround time.  
8 And recall that the language that was going to the Hill  
9 is going along with our appropriations language. And  
10 that, I think, is a critical consideration. It  
11 certainly was a critical consideration for me.

12 At that time, I did authorize our staff to  
13 proceed to discussions with the inspector general to  
14 try and reach some agreement on legislation that would  
15 be acceptable to our staff, and I telephoned our board  
16 chair, outlined the situation to him, and got his  
17 concurrence to proceed in that fashion.

18 In fairness to Doug, and I hope in fairness to  
19 us and our staff, we didn't yet have language that had  
20 been agreed upon by the two staffs involved, in the IG  
21 and in our staff.

22 The result? I concur almost completely in

1 Bill's comments. I'm not pleased at all with it. I  
2 felt that as the language was going forward, that the  
3 chances this time of having something adopted were  
4 remote.

5 But I also thought that it was important for  
6 us to go together with the inspector general, to  
7 emphasize to the Congress that we were serious about  
8 following up on the CSR issue, and to send a message to  
9 field programs that a blanket opposition to CSR audit  
10 follow-up was a terrible decision on their part, and  
11 they needed to work with us and with other national  
12 leaders in the legal services community to get the  
13 access that we're entitled to and need to protect this  
14 program and which protects the confidentiality, whether  
15 it be under attorney-client privilege or Rule 1.6, that  
16 the clients are entitled to.

17 So I certainly apologize to the board that we  
18 were unable to secure your involvement in that process.  
19 And all I can tell you is that it was either the  
20 inspector general acting alone on legislation -- and he  
21 will certainly explain his decision-making -- and I  
22 will say in fairness that I did not disagree with his

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1 analysis.

2           At that point, once we got to five programs  
3 and a sense that we were maybe facing more -- I hope  
4 I'm incorrect in that, and I think that the approach  
5 that we're taking of working individually with programs  
6 will be successful. And I hope we will be in a  
7 position to give Congress the assurance that we are  
8 one, protecting the confidentiality and privilege  
9 rights of the clients, but two, we are getting the  
10 information necessary for auditors to answer the  
11 questions which we are now under statutory obligation  
12 to provide.

13           And I just assure you that the procedure and  
14 the process that Bill outlined is not the way any of us  
15 wanted that to occur, but we had to be nimble.

16           My understanding of the communications policy  
17 was not a prohibition on communications with the  
18 Congress. And I recognize that this goes further than  
19 communications. Legislation is clearly the prerogative  
20 and the dominion of the board. And if the board  
21 reflects negatively on our efforts in those closing  
22 days -- literally, I think day-and-a-half -- of what we

1 viewed as a window of opportunity to get injected into  
2 the appropriations process, then so be it.

3 But I want to be on record here before you as  
4 saying that the question of the follow-up on the CSR  
5 data issue is a critically important one, it's a  
6 bipartisan interest in the Congress, it's a  
7 responsibility of the corporation, and we did our very  
8 best to try and make that happen.

9 So if there was a violation of any policy of  
10 the board, you have my apologies, but you don't have my  
11 regret, because I think we did the best job that we  
12 possibly could under the circumstances.

13 And now it's before you for consideration. I  
14 support and --

15 CHAIR EAKELEY: Just don't go on too much  
16 further on this, because there's some better news in  
17 the report, in a different order than you were planning  
18 to present it, too.

19 MR. MCKAY: Thank you very much.

20 (Laughter.)

21 MR. MCKAY: I promise that my address from the  
22 soapbox will end shortly. But I want to say that I

1 support and welcome, and have discussed with the board  
2 chair, the desirability of having direct board  
3 involvement, because we will have a need to respond to  
4 this, to develop it further with the Congress, and it's  
5 clearly the board's issue at this point because now we  
6 have additional time. And I welcome that. And in  
7 fact, I think we all require it. So I will be glad,  
8 certainly, to work with any board designee and make  
9 sure that that occurs.

10 I don't think I need to add any more, do you?

11 CHAIR EAKELEY: No. Why don't you start with  
12 that one?

13 (Laughter.)

14 MR. MCKAY: Let me say we're pleased that  
15 anyone who read deeply enough into the Washington Post  
16 is aware that the Senate last night approved a number  
17 of bills, but the most important one being our  
18 appropriation. And the level is \$305 million, a \$5  
19 million increase.

20 The \$5 million is for demonstration grants,  
21 discretionary grants made by the corporation in the  
22 area of technology. These will be competitive grants,

1 we're just analyzing the language, but it does give the  
2 corporation the discretion within a competitive grant  
3 system to award, I think, meaningful technology grants  
4 to the field. And we will look very much forward to  
5 that.

6 Also, if you read into the Washington Post,  
7 the White House has accepted, and I believe it is part  
8 of the bill, that there will be a .38 percent reduction  
9 across the board.

10 We don't know how much discussion there will  
11 be in the application of that, but the net sum on this  
12 is that we have, in the midst of the political  
13 maelstrom, achieved a slight increase, and I think a  
14 significant one, and a very important direction of the  
15 corporation, which is to enhance technology.

16 And I want to thank our partners, our national  
17 partners, I want to thank our programs, who I think  
18 really are the key to our success. If they serve their  
19 client communities well, as I think most of them are,  
20 that's the reason that the Congress continues to invest  
21 in the Legal Services Corporation. And I think  
22 everyone is due an awful lot of credit. And I want to

1 thank John Erlenborn, again, for his extraordinary  
2 efforts with us as we have moved our budget through  
3 this time.

4 Let me just report quickly on some other items  
5 around the corporation. We have indicated several  
6 times that we have been studying our pay system  
7 internally. We've completed the pay compensation  
8 study, and we are proceeding to implement most of its  
9 recommendations.

10 As a general proposition, the pay study showed  
11 that internally, we had a number of inequities, where  
12 we had people performing duties that were essentially  
13 similar in different departments that needed to be  
14 equalized. I believe that there were, by the end of  
15 the study, three to five changes that needed to be  
16 made. Not a lot, in terms of our employee numbers, but  
17 significant.

18 It also showed that we are roughly comparable,  
19 outside the Legal Services Corporation, to governmental  
20 agencies and others in the non-profit world, with the  
21 exception, when comparing to the government, that there  
22 was not a locality pay indicator -- and we did brief

1 the board on this in Seattle.

2 Given that our appropriation has now gone  
3 through, we will expect to implement a locality pay  
4 adjustment which will be an increase. We're going to  
5 do that over a three-year period of time. The numbers  
6 are, I think, it's less than 3 percent per year. Is  
7 that right, David? About 2.7?

8 MR. RICHARDSON: That's correct.

9 MR. MCKAY: 2.7 percent per year to take us up  
10 to the current locality pay adjustment for Washington,  
11 D.C. federal employees. That was the only major issue  
12 that our consultant identified.

13 The process involved a number of one-on-one  
14 interviews with employees, and a number of overall  
15 reports.

16 The report itself was released to our staff  
17 for their review. Certainly it will be available. In  
18 fact, we can send it to all board members. It's fairly  
19 thick, and I -- but there is a short executive summary.  
20 So we can send them both, or just the executive  
21 summary.

22 CHAIR EAKELEY: I'd spare the trees, unless

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1 someone would like to see the full report.

2 MR. MCKAY: All right, we'll send the  
3 executive summary and the full report, certainly, is  
4 available to you. I think our staff have -- and this  
5 has been a very good thing for our staff, which has  
6 over time, seen different administrations come through,  
7 and there was a general sense that the pay equity  
8 wasn't where it should be. And I won't tell you that  
9 that has been instantly solved, but addressing it out  
10 in the open with our staff members, I think, was very  
11 useful.

12 In the end of the process, Austino Pino, who  
13 was our consultant, presented to the entire staff  
14 without management there, and was available for  
15 questions, and then he stayed for three days and any  
16 employee who wanted to meet with him on a one-on-one  
17 meeting as to how it affected their position was given  
18 that opportunity. I think in excess of 20 of our  
19 employees met with Mr. Pino.

20 The financial impact is relatively minor with  
21 the exception, I think in the long run, of the locality  
22 pay adjustment, which David Richardson discussed, I

1 believe, before finance last meeting in Seattle. But I  
2 think Dave continues to believe that if we continue  
3 with our current appropriation levels, that we will be  
4 able to fully implement locality pay in three years.

5 I believe we probably could have done it in a  
6 shorter period of time, but on David's advice and Jim  
7 Hogan's and Joan Kennedy's that we implemented this  
8 over three years, I think that was the financially  
9 prudent thing to do.

10 But that is major news, in terms of your  
11 staff. And we appreciate your patience and your  
12 support.

13 Our 2001 budget, I want to just indicate we  
14 are working hard on the development of a 2001 budget  
15 focusing first on field resources. We will be  
16 requesting, with the authorization of the board  
17 chairman, \$360 million for Fiscal Year 2001.

18 CHAIR EAKELEY: The board has already  
19 authorized that.

20 MR. MCKAY: Yes, actually you're right, I'm  
21 sorry. In Seattle. \$360 million, and that has been  
22 forwarded into the administration. Now we are

1 responsible for developing the various lines that  
2 support that, and I just want to outline them for you  
3 quickly.

4 We are proposing a \$12.5 million number for  
5 management and administration. This would include the  
6 comparability locality pay issue I just discussed, and  
7 approved by you. It will also include an inflationary  
8 adjustment of approximately 3 percent per year, which  
9 we have not received in some prior appropriations, and  
10 it will include \$1.54 million to strengthen the  
11 corporation's compliance enforcement.

12 We'll give additional detail on that, but this  
13 is the development of our budget.

14 \$15 million will be requested for technology  
15 initiatives. Now, the approval of the budget in this  
16 year for technology may adjust this, but we wanted you  
17 to know what the current thinking is.

18 This \$10.5 million would be allotted for  
19 competitive grants to states and localities, \$4.5  
20 million would be used for demonstration grants to  
21 support access. \$2 million is set aside in the Fiscal  
22 Year 2001 budget for a legal needs assessment, to be

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1 conducted by an outside entity contracted by the  
2 corporation. \$500,000 would be spent on pilot  
3 projects, for collection of information on program  
4 performance. An additional \$500,000 would be directed  
5 to technical assistance grants to field programs in  
6 conjunction with state planning and other initiatives.

7 The remainder of the appropriation, which is  
8 \$329.5 million, would be distributed to the field under  
9 the current appropriations methodology.

10 MR. MCCALPIN: What about the IG?

11 MR. MCKAY: Sorry?

12 MR. MCCALPIN: What about the IG?

13 MR. MCKAY: Well, I didn't include the OIG,  
14 but I think it was within the \$2.1 million, which would  
15 be the current appropriation. I don't think there is  
16 an increase.

17 The management and administration increase is  
18 on the compliance side. But I don't think the IG has  
19 any additional. He's got a small increase. I just saw  
20 this out in the -- basically, a flat budget for the  
21 OIG.

22 Vice presidential search, I had hoped to come

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1 to the board at this meeting with a final candidate.  
2 But I'm not prepared to do that at this time, and I  
3 apologize for that, but my hope is that -- and my  
4 plan -- is to come to you between now and the January  
5 meeting -- and I think can say to you before the  
6 Christmas holidays -- with a recommendation to the  
7 board, and it will be necessary for us to conduct a  
8 telephone conference call meeting, I believe, to get an  
9 appointment made and get your input on that before the  
10 next board meeting.

11 I apologize for that, but I'm pleased with the  
12 direction that we're headed in, and I want to thank the  
13 search committee, who have really done an excellent job  
14 in helping us identify strong candidates with very good  
15 field experience to make this happen.

16 Let's see if I can skip through. I want to  
17 mention the strategic planning briefing that was given  
18 this morning to board members and staff. We are moving  
19 forward on strategic planning, and our hope will be  
20 that the strategic plan will come to the board for  
21 consideration and input by interested individuals at  
22 the annual meeting in Austin.

1           And finally, we are preparing to announce a  
2 new LSC newsletter, which we hope will be welcomed by  
3 the board, by our national partners, by our friends,  
4 and anyone who needs to learn more about your  
5 activities and the activities of your staff.

6           We distributed a draft to you this morning,  
7 and I know Mauricio and his staff are anxiously  
8 awaiting your input.

9           In conjunction with my performance evaluation,  
10 I did submit my most recent travel plans and I was  
11 going to go off into that, but I can see Julie Clark  
12 wincing back there.

13           And I'm not going to talk about where I've  
14 been, other than to say it was my privilege to be  
15 invited to help bless the new Legal Services building  
16 in Hawaii, to be welcomed by Victor Jimanyani and his  
17 board, and to learn more about some of the terrific  
18 work that's being done in the Legal Aid Society of  
19 Hawaii, and to indicate our happiness that the issues  
20 regarding the lawsuit over the past are certainly in  
21 the past and that we, as an organization, support and  
22 appreciate the work of the Legal Aid Society of Hawaii.

1 Mr. Chairman, that's my report.

2 CHAIR EAKELEY: Thank you, John. Any  
3 questions of the president?

4 (No response.)

5 CHAIR EAKELEY: Hearing none, and with the  
6 inspector general's consent, I'd like to move the  
7 agenda item and take up item number 12: Receive,  
8 consider, and act on the report of the Erlenborn  
9 Commission.

10 And to do that properly, I would like to turn  
11 the gavel over to Professor Erlenborn.

12 MR. ERLBORN: Thank you, Mr. Chairman. And  
13 I would ask the two commission members who are here, if  
14 you would please come up and take your seat at the  
15 witness table.

16 Mr. Chairman, and members of the board, you  
17 are all aware that early this year the commission was  
18 appointed to look at the question of the meaning of the  
19 words, "present in the United States" as a condition  
20 for LSC grantees' lawyers providing services for  
21 aliens.

22 The commission is composed of five members,

1 all law professors at one time or another, most  
2 active -- one, I think Gil Casellas, was an adjunct  
3 professor but is no longer.

4 Those members besides myself are Professor  
5 Alexander, or Alex Aleirikoff, who is here today, Gil  
6 Casellas, Professor Sarah Cleveland, who is here today,  
7 Professor Nancy Rogers, who is here today -- we have a  
8 quorum, I think.

9 (Laughter.)

10 MR. ERLNBORN: And then Professor Enid  
11 Trucios-Haynes, who was the designated reporter, or as  
12 I said last night at our reception, rapporteur, the  
13 French have the word for it, and significantly Romano,  
14 or Ron, Mazzoli, who is a former member of Congress and  
15 was very deeply involved in the immigration amendments  
16 in the last decade, back in the '80s.

17 The commission solicited written comments from  
18 the public, and held two public hearings, one in North  
19 Carolina, one in California.

20 Appropriation grantees permitted to represent  
21 several classes of aliens, including lawful permit  
22 aliens, refugees, persons granted asylum, temporary

1 agricultural workers admitted under the H-2A program.  
2 With the sole exception of the H-2A workers, LSC  
3 grantees may provide representation for aliens on the  
4 same subjects as is provided to citizens.

5           The report refers to these classes as  
6 unrestricted categories. The representation of H-2A  
7 workers, however, is limited to matters which arise  
8 under the provisions of the workers' specific  
9 employment contract in areas of wages, housing,  
10 transportation, and the like.

11           The presence requirement that was the subject  
12 of our inquiry was added to the law because of eligible  
13 aliens who have left the United States at some time, at  
14 some point, during representation. This practice has  
15 been followed without objection from the corporation  
16 when conducting audits of LSC grantees, or from  
17 agricultural employers and growers associations  
18 involved in legal disputes.

19           A recent complaint to the corporation about  
20 the activities of a sub-grantee relating to alien  
21 representation raised the issue presented to the  
22 commission.

1           With a rich background of information from the  
2 public hearings and the submitted statements, the  
3 commission went about the task of applying the  
4 principles of law governing statutory analysis.

5           The commission considered the presence  
6 requirement, in light of its plain and ordinary  
7 meaning, its context in the statutory scheme, and the  
8 purpose and design of the statute as a whole.

9           It's clear that the statute requires an alien  
10 to be physically present in the United States at some  
11 point. This conclusion does not end the inquiry,  
12 however, because the relevant question is not whether  
13 an alien must be physically present in the United  
14 States, but when the alien must be present in order to  
15 be entitled to LSC representation.

16           This was a very important concept, and one  
17 that didn't seem to come very quickly, and it's one  
18 that I think we have to bear in mind, because the  
19 question we're addressing is not if there's a physical  
20 presence necessary, but when? That is really the  
21 question which is not addressed by the language of the  
22 statute at all.

1 I've been reading from the executive summary  
2 of the report. I'm not going to read all of it. It  
3 will be available to the public as soon as the board  
4 adopts the report, if you do, and I trust you will.

5 But I commend this. It's less than four  
6 pages, slightly less than four pages. In my law  
7 practice, I always impressed on the associates when we  
8 were writing briefs that that meant that they weren't  
9 supposed to be long. And I think that also applies to  
10 an executive summary.

11 It has to be short enough for the attention  
12 span of the average Congressman, because a lot of them  
13 are going to have to be reading this. And I'm not  
14 denigrating the Congressmen, by the way; they have an  
15 awful lot on their plate, and they don't have an awful  
16 lot of time to read such things.

17 But I think the executive summary really makes  
18 the case and explains the reasons why we reached the  
19 conclusions that we did.

20 Finally, let me tell you what those  
21 conclusions are. For an alien in one of the  
22 unrestricted categories, representation would be

1 authorized so long as the eligible alien is present  
2 sufficient to maintain residence or lawful immigration  
3 status.

4 For H-2A workers, representation is authorized  
5 if the workers have been admitted and have been present  
6 in the United States pursuant to an H-2A contract. And  
7 the representation arises under their H-2A contract.

8 For both categories, the LSC grantees may not  
9 represent aliens who have not at any time been  
10 physically present in the United States.

11 The report, and I think the summary, both make  
12 a compelling case for dispelling the ambiguity which  
13 exists, and also implementing the apparent intention of  
14 Congress. And based upon that, we made these  
15 recommendations.

16 And I would ask Sarah, if you'd like to make  
17 some comments, Professor Sarah Cleveland.

18 MS. CLEVELAND: Sure. Thank you. I apologize  
19 I wasn't able to be here last night, I had an afternoon  
20 class yesterday in Texas and flights aren't such that I  
21 could get here in time.

22 It was a great honor to be a member of the

1 commission. I enjoyed working with the commission  
2 members. I thought the LSC staff did a Herculean job  
3 of organizing and coordinating effort.

4           And I don't think that anyone that  
5 participated in the process could leave it without  
6 being deeply moved, both by the vulnerability of the  
7 client population that we're talking about, which was  
8 impressed upon us over, and over, and over again from a  
9 number of different groups, and by the tremendous  
10 energy and effort that was brought to the commission by  
11 LSC grantees in the field, private attorneys, other  
12 community and religious groups, and government  
13 agencies. They really did the job of going out and  
14 building this actual record and taking effort  
15 seriously.

16           And I think they did an extraordinary job of  
17 giving us the information that we needed, both on paper  
18 and through oral testimony, to analyze the problem.

19           I thought it was a difficult problem. The  
20 commission, I think, achieved consensus through a very  
21 organized process, and I think we are very pleased with  
22 the report and stand confidently behind its

1 recommendations.

2 CHAIR EAKELEY: Thank you. And Alex?

3 MR. ALEINIKOFF: Just a couple of brief  
4 points. We started the process by looking at the  
5 meaning of the word "present" in the context of the H-  
6 2A workers, temporary agricultural workers.

7 There are about 35,000 H-2A workers who come  
8 to the United States every year, which is only a very  
9 small portion of the overall migrant worker population  
10 in this country. This is the only group, who we call  
11 non-immigrant alien, that is, without green cards, that  
12 LSC grantees are allowed to represent.

13 It was an exception to the general rule that  
14 you had to have a green card and it was written into  
15 the statute in 1986 as a crucial part of a legislation  
16 creating the temporary worker program, H-2A program.

17 And the debate that went on in Congress was,  
18 "We're going to invite these folks in, but we know from  
19 the Viceroy program that people's rights are regularly  
20 violated. So they must have some access to legal  
21 counsel in order to protect their rights."

22 So the provision of legal counsel to H-2A

1 workers -- as I say, it's an extraordinary phenomenon  
2 within the aliens -- is a crucial part of the  
3 compromise that brought the program into existence and  
4 that weighed heavily in our analysis.

5 But secondly, beyond that, the presence  
6 requirement applies not just to these 35,000 workers,  
7 but to the millions of aliens who have green cards in  
8 the United States. That's what the statute applies the  
9 presence requirement over all the categories of aliens  
10 who can be represented.

11 And it became obvious to us, as we started off  
12 with the problem of these highly vulnerable  
13 agricultural workers, that any interpretation we  
14 adopted would, in fact, have influence far beyond the  
15 small group to all green card holders as well.

16 So our inquiry expanded as we went through,  
17 and took testing on the impact of various  
18 interpretations of the law on the immigrant population  
19 as a whole, and what seemed to be most consistent with  
20 congressional intent.

21 Thirdly, the commission began the process with  
22 no preconceived notion as to the result it wanted to

1 reach. And I think this is made most clear in the fact  
2 that the original Federal Register notice that was  
3 published identified three possible interpretations of  
4 the statute and asked for comments on each of the  
5 three.

6 In the end, the commission accepted none of  
7 the three interpretations we began with.

8 The more we thought about the problem, the  
9 more complex it became, the more we struggled with the  
10 issue, we ended up with an interpretation, as I say,  
11 that was none of the original three off the top of our  
12 heads that we came up with and asked for comments on.  
13 And that, I think, is a deliberative process and very  
14 important to the process, overall, and shows really the  
15 distance and deliberation of the commission and the  
16 process.

17 MR. ERLENBORN: I have one other pleasant  
18 duty, and that is to give Sarah her award. Some of the  
19 other members of the commission were here last night at  
20 the reception and received theirs.

21 It says, "In recognition of and with sincere  
22 gratitude for outstanding pro bono service as a member

1 of the Erlenborn Commission." To Sarah Cleveland.

2 (Applause.)

3 MR. ERLENBORN: As I said last night, and I  
4 will repeat today, because I want everyone to  
5 understand, this was a pro bono effort, as the award  
6 says. No one received per diems. Of course, their  
7 expenses for travel and food and lodging were covered,  
8 but contrary to some of the detractors of the Legal  
9 Services Corporation, we did not schedule hearings to  
10 get per diem allowances to make ourselves more wealthy.  
11 Nothing like that at all. And I just think that ought  
12 to be said.

13 I thank you, Sarah and Alex, and I'd be happy  
14 to answer any questions, and maybe Sarah and Alex could  
15 help, if the board members have any questions.

16 (No response.)

17 CHAIR EAKELEY: Hearing no questions, would  
18 you like to convert your report into a motion for its  
19 approval?

20 MR. ERLENBORN: Yes.

21 M O T I O N

22 MR. ERLENBORN: I would move that the board

1 accept and approve the Erlenborn Commission report.

2 CHAIR EAKELEY: Is there a second?

3 MR. SMEGAL: Second.

4 MS. ROGERS: Second.

5 CHAIR EAKELEY: Is there any discussion?

6 (No response.)

7 CHAIR EAKELEY: All those in favor?

8 (Chorus of ayes.)

9 CHAIR EAKELEY: All those opposed?

10 (No response.)

11 CHAIR EAKELEY: The ayes have it. The report  
12 is approved.

13 And let me just commend our vice chair and the  
14 chairman of the commission, but also thank Nancy Rogers  
15 and Professors Aleinikoff and Cleveland for their  
16 service, truly in the public interest, and truly  
17 providing something that I think will have a lasting  
18 impact on a very important segment of our population  
19 and our community.

20 And we also thank you for coming today and I  
21 mean this was an extra effort and a wonderful outcome,  
22 but to make this extra effort on top of that extra

1 effort is wonderfully exemplary.

2 And we thank you, and hope our paths will  
3 cross again in the future.

4 MS. CLEVELAND: I hope so. Thank you.

5 CHAIR EAKELEY: This brings us back to our  
6 agenda, and the report of our inspector general,  
7 Edouard Quatrevaux. And while Ed is coming to the  
8 table, I just wanted to recognize and greet Wilhelm  
9 Joseph, who is the executive director of the Legal Aid  
10 Bureau of Maryland.

11 I hope you didn't have too long to spend  
12 downstairs with security, Wilhelm.

13 MR. JOSEPH: I didn't.

14 CHAIR EAKELEY: Either got lost in the  
15 elevators, or somehow this isn't supposed to be open to  
16 the public, or I'm just not sure what the security  
17 mentality is down there, but I apologize for the  
18 inconvenience. Ed, good morning.

19 MR. QUATREVAUX: Good morning, Mr. Chairman,  
20 members of the board. Let me first report that since  
21 your last meeting we've issued two reports which you  
22 have been provided copies of.

1           One is our audit report, the volunteer  
2 auditors of Boston, and which we are pleased to report  
3 our audit determined that their statistical reporting  
4 was materially accurate.

5           The second was an assessment of compliance  
6 with restrictions and the compliance oversight system  
7 as of September 30, 1999. And as mentioned earlier, I  
8 plan to make this an annual report to the Congress on  
9 the statement assessments.

10           I would like to introduce to you C. Eric  
11 Kirkland, Ph.D., who has joined us as the assistant IG  
12 for evaluation. Eric has -- Eric, please sit down.

13           (Laughter.)

14           MR. QUATREVAUX: Eric has over 20 years'  
15 experience in research and development and evaluation,  
16 and his work has included nationwide program  
17 evaluation, various areas of information technology,  
18 design, and education.

19           He holds a number of patents, he is the author  
20 of numerous publications. His most recent report  
21 covers his performance and results at a study at the  
22 National Science Foundation.

1 He's a former director of education and  
2 communications research at Cosmos Corporation, a former  
3 VP for research and planning for the National  
4 Captioning Institute, and the national services manager  
5 for the Oracle Corporation.

6 He holds a doctorate in research methodology  
7 from the University of Virginia, and a master's in  
8 business administration from the Wharton School of the  
9 University of Pennsylvania.

10 And I just want to add to that that Eric's  
11 expertise is already proving valuable to us, as we look  
12 forward to planning our future.

13 CHAIR EAKELEY: Welcome on board.

14 MR. QUATREVAUX: I mention the next item only  
15 because Don Saunders made me aware of a press article  
16 in which it was said that -- by Senator Bunning -- that  
17 I have agreed to investigate, at his request, whether  
18 certain suits by some of our grantees represent a  
19 pattern of harassment against farm owners. That is not  
20 accurate. We have agreed to meet and discuss his  
21 request. So I just wanted to clarify that.

22 Let me speak briefly to excess in the

1 statutory language. I don't think this is a good forum  
2 to try to get into the substance of the matter, I think  
3 there needs to be some exchanges of written material,  
4 some discussion.

5 I do want to say I believe we complied, the  
6 OIG complied, with the spirit, if not the letter, of  
7 communications policy in that we dispatched the  
8 recommendation, the proposal to the Hill, late on a  
9 Monday afternoon and mailed it to the board the next  
10 morning. We did, however, that same morning fax that  
11 material to the chairman and vice chairman of the  
12 board.

13 I also agree with John's description of the  
14 circumstances surrounding the submission of the  
15 proposal.

16 I do want you to understand that when we go  
17 out to do our work, we don't ask for a great deal. So  
18 you should not have an image in your head of auditor's  
19 rooms full of case files. It is nothing like that.  
20 Our inquiries are limited to that which we absolutely  
21 need, and certainly did not include any materials that  
22 were subject to the attorney-client privilege.

1           In fact, the provision accepting the  
2 materials, the attorney-client privilege, that is in  
3 our current appropriation which began in 1996, that  
4 language was added at our suggestion in the process.  
5 So we thought legally that we would not need access to  
6 materials which are properly privileged.

7           The last thing I want to say, without being  
8 melodramatic, it's my opinion that this issue is a  
9 grave one, and one that potentially could implicate the  
10 survival of the program. That's my view. And that's  
11 all I have to say.

12           CHAIR EAKELEY: Any questions of the inspector  
13 general? All right, I thank you. We will see you back  
14 again at the -- well, we'll continue to see you, but we  
15 will talk to you again at the executive session.

16           (A brief recess was taken.)

17           CHAIR EAKELEY: I'd like to welcome and call  
18 to the table the chair of the standing committee on  
19 legal aid and indigent defendants, Doreen Dodson.

20           MS. DODSON: Thank you, Doug.

21           CHAIR EAKELEY: Welcome back, Doreen.

22           MS. DODSON: Thank you very much. I know that

1 John Pickering, who is from D.C. and a wonderful member  
2 of our committee, who has filled in for me on a couple  
3 of occasions very graciously, but he's been busy the  
4 last two weekends and so this time I'm here from  
5 Missouri instead of digging John out.

6 CHAIR EAKELEY: We're always happy to have  
7 you, and we appreciate, we know that it's an extra  
8 effort, by far, to get out here. But it is nice to  
9 have you with us.

10 MS. DODSON: Well, I appreciate your time very  
11 much. The reason that I am here today, has to do with  
12 the litigation -- or proposed legislation, excuse me,  
13 not litigation -- that was a legislation that was sent  
14 by the inspector general, Ed Quatrevaux, to the Hill.

15 We found out about this probably a little over  
16 a week ago, some time after the board received it, and  
17 a committee meeting was held last week in Long Beach,  
18 California in conjunction with the National Legal Aid  
19 Defender Association.

20 So we sent it out to committee members and we  
21 considered it there, both in the executive session and  
22 the public session.

1           The committee has asked me to convey to the  
2 LSC board and management our really very serious  
3 concerns over this proposed legislation. It does go --  
4 what it clearly says is that there would be a waiver of  
5 attorney-client privilege, and a waiver of attorney  
6 work product, although then it does attempt somehow to  
7 say that's not really a waiver.

8           The ABA's concern, because this has been an  
9 issue before the ABA, for many years, almost since the  
10 beginning of the corporation in conjunction with the  
11 corporation.

12           We're also very concerned because this  
13 privilege, which is really broader than attorney-client  
14 privilege, I mean ethics professors would tell you that  
15 attorney-client privilege is really a testimonial  
16 privilege. Attorney work products, under some  
17 circumstances, can be disclosed. But there is the  
18 broader ethical responsibility of confidentiality.

19           And it's what, you know, Ernestine, or Edna,  
20 or Bucky, or you, or I to go to our lawyer and tell him  
21 or her everything they need to know, no matter how  
22 embarrassing or humiliating, or anything else, in order

1 that they can fairly represent us, without you-know, I  
2 don't think it's overblown to say that there is a real  
3 sanctity of that privilege.

4 And it goes to the fundamental core of what a  
5 lawyer is, which is why the ABA has always been so  
6 concerned. I looked at some old materials and lo and  
7 behold, back in 1976, there is a letter to the ABA  
8 board of governors that resulted in a resolution, and  
9 that letter was written by F. William McCalpin, as  
10 chair of SCLAID, the position that I currently hold.  
11 That's been some considerable time ago.

12 The issue has come up in various guises,  
13 whether it was the IRS requesting LSC information, or  
14 whether it was proposals under the Older Americans Act,  
15 it's come up in a variety of ways. But the basic issue  
16 has been the same.

17 In 1983 the issue came up again through the  
18 Older Americans Act revisions. And again, there were  
19 comments sent to the ABA board of governors by F.  
20 William McCalpin.

21 In all those instances, I think it -- and I  
22 want to stress this point -- SCLAID and the ABA are

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1 very much aware of the need of Congress to monitor  
2 taxpayers' money. It's not saying that we, you know,  
3 would say that's an irrelevant question. It absolutely  
4 isn't, and you know that. We have certainly talked to  
5 the Hill on many occasions.

6           What we also know though, that this principle  
7 has been embodied in -- as we put in the letter to  
8 you -- modeled rule of professional conduct 1.6, there  
9 are numerous formal and informal ethics opinions of the  
10 ADA, going back to 1976, and coming forward, really  
11 until this year.

12           This year there's an opinion of the ABA that  
13 has nothing to do with Legal Services Corporation, but  
14 it does have to do with the same principle. It  
15 involves private lawyers, and when their records can be  
16 subpoenaed.

17           And the ethics opinion of the ABA says that  
18 it's the obligation of the lawyer to resist turning  
19 over the files without specific authorization by the  
20 client, until they are threatened with contempt of  
21 court. And that in the event they're threatened with  
22 contempt, then they have the obligation to tell the

1 client that they probably should think about getting  
2 another lawyer to bring an injunction to stop the  
3 revealing of that material.

4 And that, as I said, had nothing to do with  
5 Legal Services Corporation, this was a different  
6 opinion.

7 So this is not a principle where we're not  
8 here because this is something we think just LSC does.  
9 Obviously, this comes up in all kinds of contexts. And  
10 as I said, it goes to really, the very essence of being  
11 a lawyer and the attorney-client relationship.

12 We don't think that without that, any client  
13 would come in and talk to anybody fully and frankly.  
14 They just won't do it. We know that -- and we put this  
15 in the letter to, and we did send a copy to Mr.  
16 Quatrevaux, but in 1993, in Mr. Quatrevaux's report, he  
17 said, "The question of LSC access to various recipient  
18 documents has given rise to a number of troublesome and  
19 frequently disputed issues.

20 "One of the most persistent of these is the  
21 question of LSC access to client names and other case-  
22 related information which is not protected by the

1 attorney-client privilege."

2           And then he said, "LSC has no need for client  
3 confidences or information protected by that  
4 privilege." And indeed, I think that he absolutely  
5 agrees with that position. I think that, contrary to  
6 what he thinks, is that there are situations where he  
7 may believe they are overriding issues of importance,  
8 and we believe that a compromise can be worked out.

9           This year, as you know, the GAO was asked and  
10 looked at various programs' files, and initially there  
11 was resistance. And what happened there was a sort of  
12 a double-blind protocol was worked out through the  
13 Center for Law and Social Policy and Alan Houseman  
14 and -- I'm really not sure if LSC management or staff  
15 was involved. I did not think so, since it was a GAO -  
16 - but at any rate, a protocol was established which  
17 absolutely satisfied GAO.

18           It seems to us that there's no reason why we  
19 can't work out a reasonable protocol that safeguards  
20 client confidences at the same time it provides the  
21 appropriate information.

22           I don't think -- we really don't believe that

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1 five programs is a huge number of programs. The  
2 information that we have been provided by LSC does not  
3 match the information about turning over those records  
4 that have been given to us by third parties.

5 I'm not sure at this point what is correct,  
6 but for people of good will -- and I know that all of  
7 us, whether it's LSC management, or the LSC compliance  
8 unit, or the inspector general and the board -- all of  
9 us want to provide as much legal services to clients  
10 and the best quality that we possibly can.

11 I know and believe and trust that no one in  
12 this room is interested in restricting people from  
13 getting legal aid. We just have to make sure that we  
14 don't inadvertently do that, and we don't undermine  
15 fundamental privileges.

16 Finally, we are -- would welcome the  
17 opportunity to work with you all, with the management,  
18 with the LSC compliance unit, with the IG, and whoever  
19 else, with CLASP, who has been very helpful, to work  
20 out acceptable protocols. Many of the executive  
21 directors have said they don't really have protocols,  
22 and they would welcome those.

1           And I think that we can do this, and we can do  
2 it in a spirit of good will. I don't agree that this  
3 is an issue that is dead right now. It's come to our  
4 attention, and I believe the source is credible, that  
5 the inspector general has already been scheduling  
6 meetings with House staffers, concerning his proposed  
7 legislation for next year. That would give me real  
8 concern, and I hope that the information is incorrect.

9           But if it is correct, that means that there is  
10 current activity and it's not something that you can  
11 just put off for a couple of months. It may well be  
12 something that is going on behind the scenes between  
13 now and your next board meeting.

14           So I would -- I appreciate the fact very much  
15 that the issue is now before the board, and hope that  
16 under -- as I understand it from listening to Doug and  
17 Mr. Erlenborn's direction -- that we can work together  
18 and work out an acceptable protocol so that we do not  
19 breach client confidentiality. Thank you.

20           CHAIR EAKELEY: Doreen, thank you, and I would  
21 welcome SCLAID's involvement and participation in  
22 trying to get this to advance.

1           What happens if you have a program who rejects  
2 the protocols that have been worked out, and who  
3 refuses access to non-privileged, non-confidential  
4 information under claimant privilege?

5           MS. DODSON: I can't really answer that in a  
6 vacuum, Doug, because although I know that there were  
7 four programs -- five, now four --

8           CHAIR EAKELEY: This is purely hypothetical.

9           MS. DODSON: -- whatever.

10          CHAIR EAKELEY: Purely hypothetical, but in  
11 that situation, it could be -- well, it doesn't take  
12 more than one type of situation like that to create a  
13 potential powder keg situation.

14          I'm not saying that because of a potential, of  
15 one hypothetical, we sacrifice client confidences or  
16 attorney-client privilege, but --

17          MS. DODSON: But that's what I think we'd --  
18 this legislation does.

19          CHAIR EAKELEY: I'm not defending the  
20 language, but the issue of access is one that is --  
21 access to non-privileged, non-confidential information  
22 necessary for the inspector and the corporation to do

1 their job of accounting to the Congress is a very  
2 important one.

3 MS. DODSON: Yes.

4 CHAIR EAKELEY: And there has been this  
5 historic tension. And finding the way to make the  
6 appropriate balance without -- I mean, we sacrifice the  
7 programs to the extent that we are unable to maintain  
8 our credibility also, or at least put at risk our  
9 ability to secure continued funding.

10 So finding the right solution that deals with  
11 the hypothetical situation that may be more real than  
12 hypothetical, is something that we need to work on, and  
13 we need to work on promptly and intensively, and  
14 together.

15 MS. DODSON: Doug, I think, you know, you are  
16 absolutely right. And we don't quibble at all with the  
17 right to monitor the files. That's critical for us to  
18 be able to continue funding.

19 My difficulty with the situation that you pose  
20 is I don't believe that has ever occurred yet --

21 CHAIR EAKELEY: Okay, well we --

22 MS. DODSON: -- despite the folks on the list.

1 And the reason I don't is this. It has been brought to  
2 our attention at SCLAID that the -- actually the LSC  
3 compliance office wants broader access than even the IG  
4 does. And of all people, I think that that would be  
5 inappropriate. I mean, we have been told that, and it  
6 may not be wrong.

7 But for instance, asking for 100 random files,  
8 total files, and sit in a room and look through the  
9 entire file with the names and all the information, is  
10 not an acceptable solution.

11 The other reason I don't really accept it is  
12 that we've been monitoring files for a long time. The  
13 IG has monitored many. And most of the programs with  
14 no problem at all. The GAO thought they ran into a  
15 problem. That was worked out.

16 Without getting into any of the specifics that  
17 I may know about some of the programs, it's very  
18 difficult for me to accept the fact that there is no  
19 protocol, even a double-blind one.

20 Certainly information that is non-privileged  
21 and not confidential should be turned over. But I  
22 think the question is what different people may

1 consider non-privileged and non-confidential. There  
2 are legislative and statutory exceptions. Those are  
3 already in the LSC act. There is no questioning those.

4 There are other items, and some of that may be  
5 CSR categories, you know, I'm not the ethicist, and I'm  
6 not as good as Alan at describing this, but I do think  
7 that there is a way to work it out.

8 And if there is a need, ever, for one program,  
9 then whatever is done ought to be directed to that  
10 program and not punish the entire class because one kid  
11 threw spitballs.

12 CHAIR BAKELEY: Bill, then Maria Luisa, then  
13 LaVeeda.

14 MR. MCCALPIN: Doreen came to the point that I  
15 want to make, but I think that the protocols that she's  
16 talking about that are necessary need to address the  
17 question in response to your question of what is non-  
18 privileged and what is non-confidential?

19 I think that's the real root of the issue, but  
20 I agree also with what Doreen says, that if a program  
21 denies access to non-privileged, non-confidential  
22 material, then sanctions are warranted.

1 CHAIR EAKELEY: Maria Luisa and then LaVeeda?

2 MS. MERCADO: I wonder if part of the  
3 problem -- and I think we discussed this in a different  
4 forum -- but part of the problem that we have with  
5 this issue is that I think the majority, if not all of  
6 the auditors that go out for the OIG are not attorneys  
7 and don't have that legal ethics. I mean, that's true.

8 We said this yesterday at the provisions  
9 committee when we asked about whether, if they're  
10 reviewing, if they're looking at whether or not the  
11 compliance aspect of it is present, whether if you have  
12 someone that's in a CPA mode auditing the finances part  
13 of it, or the legal aspect part of it that is being  
14 evaluated, and so that maybe -- and of course this may  
15 mean that there may have to be more funding for the OIG  
16 to get legal people to do some of their monitoring and  
17 compliance as well, along with the compliance of the  
18 executive office or the MNA line. Because I think  
19 that's part of the problem.

20 CHAIR EAKELEY: I think it's unfair to the OIG  
21 and unfair to management to say that there is a  
22 problem. There is an issue here that we need to

1 pursue, but I -- we need to pursue it. I think we're  
2 into an area of fact-finding or verification and we  
3 ought to come back and talk about it, because I know I  
4 don't think the IG does compliance audits. That's the  
5 management's responsibility. They do do audits and  
6 they need auditors to do audits.

7 MS. ROGERS: What I would like to know is  
8 what, in the meantime --

9 CHAIR EAKELEY: Go ahead. I'm sorry. I  
10 interrupted Maria Luisa, but you go ahead and then  
11 we'll go to LaVeeda.

12 MS. ROGERS: What I'd like to know is what  
13 will be represented as the management position in the  
14 interim, before John comes back with his report?

15 CHAIR EAKELEY: Say that again?

16 MS. ROGERS: What will be represented as the  
17 management position on whether there ought to be an  
18 abrogation of the privilege, from this day forward?

19 MS. BATTLE: Well, if I might --

20 CHAIR EAKELEY: Yes?

21 MS. BATTLE: I really think that the key point  
22 now is that the province of legislative initiatives is

1 the board. And right now, if there is some  
2 consideration by Congress, for any reason, of a  
3 legislative initiative, that the board needs to take a  
4 look at what it is it needs to make a decision, and it  
5 may be based on what Doreen has said to us, that we  
6 need to put that on the front burner rather than the  
7 back burner, if it's being considered.

8 And my suggestion was going to be that  
9 possibly provisions and ops and regs jointly could look  
10 at it, because it does have some implications from both  
11 standpoints of view, and come back and make it clear.

12 And the other thing is that in the interim, I  
13 think it needs to be clear that the board -- that  
14 whatever is under consideration has not been adopted by  
15 the board.

16 CHAIR EAKELEY: Well, nobody's made that  
17 suggestion.

18 MS. BATTLE: Yes, but I --

19 CHAIR EAKELEY: But to answer your question, I  
20 think that yes.

21 MS. BATTLE: If I could finish --

22 CHAIR EAKELEY: Yes, sorry.

1 MS. BATTLE: But I do think that it is  
2 important that we move this to the front burner and  
3 that the board take its action on what it views as the  
4 appropriate way to address this issue of assuring that  
5 sufficient information is made available, both to  
6 auditors and compliance, and a clear definition of what  
7 the attorney-client privilege is and how it ought to be  
8 addressed.

9 CHAIR EAKELEY: Yes, I'll let John respond to  
10 Nancy's question, then we'll get to Edna.

11 MR. MCKAY: Let me just say that I agree  
12 completely with what LaVeeda just said, with respect to  
13 ongoing legislation, and there's no question about that  
14 however the board sets the protocol for that, I  
15 certainly agree with.

16 In the meantime, I need to correct the record,  
17 because what you said, Doreer, is incorrect with regard  
18 to compliance and enforcement efforts to achieve files,  
19 because there is an implication there -- and if I took  
20 it incorrectly I apologize -- but there's no effort by  
21 compliance and enforcement to violate the attorney-  
22 client privilege by seeking information which would

1 violate it. And I think that that is unfair to assume  
2 that that is what the inspector general is doing, or  
3 anybody else in this process.

4 Our intention in management will be to  
5 continue to work directly with programs to arrive at  
6 protocols that will allow us to achieve the follow-  
7 through on audits that are necessary.

8 Wilhelm Joseph is here and certainly could  
9 testify to the fact that such a protocol has been  
10 reached in the interim by management through its  
11 compliance and enforcement group and under Danilo  
12 Cardona's leadership.

13 And so that has occurred and it is our  
14 intention to work with programs who have, in our  
15 judgement, incorrectly asserted either attorney-client  
16 privilege or 1.6, or other reason to prevent our  
17 compliance and enforcement staff from reviewing  
18 documents that are clearly outside of the privilege or  
19 1.6. And we will continue to do that. That is our  
20 responsibility.

21 CHAIR EAKELEY: Nancy's question about where  
22 were you on the legislation, in the interim, while the

1 board takes this up and looks at the issues that are  
2 underlying the legislation.

3 MR. MCKAY: Well, we will take no action with  
4 regard to the management side, with regard to any  
5 legislation. The legislative window is closed on the  
6 appropriations, and we will not assert it or push it,  
7 and we hear the board's position here, with which I  
8 concur.

9 And just let me reiterate, the only reason it  
10 moved forward in the meantime was my judgement, in  
11 consultation with the board chairman, that we had a  
12 very, very narrow window to respond.

13 MS. ROGERS: Would it be fair to say that this  
14 is no longer management's position, to support the  
15 legislation that we saw?

16 MR. MCKAY: There is no legislation pending,  
17 and we will not --

18 MS. ROGERS: But if someone is working with  
19 staff and so forth, it's no longer accurate to say that  
20 management would support a draft like the one that was  
21 introduced before.

22 CHAIR EAKELEY: Can I answer that one? I

1 think that John was saying, or let me paraphrase John.  
2 I think that this issue is now before the board. And  
3 therefore the board and management have to work  
4 together to develop it in a way that is timely.

5 MS. ROGERS: So the answer is it's no longer a  
6 position of the corporation that such legislation  
7 should come forward?

8 CHAIR EAKELEY: I mean, I wouldn't say that,  
9 but I think --

10 MS. ROGERS: I'd like to know the interim  
11 position.

12 CHAIR EAKELEY: I don't think the board can  
13 adopt an interim position without taking stock, and I  
14 don't hear that it's necessary for us to do that in the  
15 interim.

16 MR. MCKAY: Well, let me --

17 MR. ERLENBORN: Mr. Chairman?

18 CHAIR EAKELEY: Yes?

19 MR. ERLENBORN: Might I differ on that? We  
20 have a legislative proposal that's been sent up to the  
21 Hill. It continues to bear the imprimatur of the  
22 corporation, as well as the inspector general. And it

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1 will continue until something is done to change that  
2 situation.

3 Now frankly, and I really didn't want to get  
4 involved in this, but frankly, when I read this  
5 language, I was embarrassed that it would go to the  
6 Congress with the imprimatur of the corporation.

7 The language is so loosely drawn -- I haven't  
8 read it just recently, but as I recall, it said  
9 something like this. Any investigator or auditor who  
10 receives federal funds -- here it is. Now, where is  
11 this? It's not limited to the Legal Services  
12 Corporation. Let's see. "If a federal department or  
13 agency in any" -- let's see.

14 Okay, "Any auditor or monitor receiving  
15 federal funds from the corporation or the recipient in  
16 any federal department or agency and any and all  
17 records, reports, documents, and papers, and other  
18 information available to the recipient, including but  
19 not limited to information that is subject to the  
20 attorney-client privilege, or attorney work product."

21 I think that is just so broad that I would be  
22 embarrassed that we would say that this is something we

1 would like to have written into the law.

2           And then I don't quite understand the  
3 implication of the reservation. It says, "Information  
4 provided pursuant to this section subject to the  
5 attorney-client privilege or protections accorded the  
6 attorney work product shall not be disclosed to any  
7 person or entity." Well, why would they want it if  
8 they can't use the information? You know, why should  
9 they be allowed to get the information but then it says  
10 that they can't use it?

11           I just don't think that we should leave  
12 ourselves in the position of having endorsed this. I  
13 now it's before the board, it's incumbent on the board  
14 to take action.

15           I think we should accept the offer of Doreen  
16 on behalf of the SCLAID and the ABA to work with the  
17 inspector general, with the management of the  
18 corporation, the representatives of the board, to work  
19 on a protocol and then some enforcement mechanism.

20           And I think that may be very difficult. If  
21 someone is adamant that they think they have privileged  
22 material, they're not going to turn it over, and we

1 honestly believe that it is not privileged, you have to  
2 have a forum in which to resolve that.

3           You know, so maybe you're talking about  
4 subpoena power, or something like that. But this has  
5 to be thought through and if there is to be  
6 legislation, it ought to go up on the Hill in a form  
7 that we, as the board, approve and that we can be proud  
8 of, which I was not.

9           CHAIR EAKELEY: Edna, then Bucky. Bill, did  
10 you want to get back in, or --

11           MR. MCCALPIN: Yes.

12           CHAIR EAKELEY: You mind queuing up for it?

13           MR. MCCALPIN: I don't mind.

14           CHAIR EAKELEY: Edna?

15           MS. FAIRBANKS-WILLIAMS: Well, I guess I have  
16 to go back like Bill did a number of years ago, when I  
17 first came on to Legal Services and when we were first  
18 monitored.

19           All we did was blank out the name of the  
20 person. They were allowed to know whether they were a  
21 housewife or a farm worker, they were allowed to know  
22 whether they worked in the factory or were black, or

1 Indian, or white, or yellow, or whatever. All we did  
2 was black-out the name and they were allowed to look at  
3 anything else. What happened to that?

4 CHAIR EAKELEY: I don't know the answer.

5 MS. FAIRBANKS-WILLIAMS: That's what we did in  
6 legal aid in Vermont. We just blacked out the name,  
7 and they were allowed to look at the records.

8 MR. MCCALPIN: That is not acceptable to --

9 MS. MERCADO: It's not acceptable under  
10 attorney-client privilege.

11 MR. MCCALPIN: It's not acceptable, no.

12 MS. FAIRBANKS-WILLIAMS: It's not acceptable  
13 now.

14 MR. MCCALPIN: Certainly not.

15 CHAIR EAKELEY: Bucky?

16 MR. ASKEW: Doreen doesn't need my defense,  
17 but let me say, John, I don't think she said what you  
18 heard her say. I think she said that we're hearing  
19 things from fewer programs about what's being done.  
20 We're hearing things from staff about what's being  
21 done, and they don't connect.

22 MS. DODSON: Right.

1 MR. ASKEW: So we ought to be in a fact-  
2 finding mode. We ought to be finding out what the  
3 reality is, rather than what is being said on either  
4 side. We're not accepting that what fewer programs say  
5 is going on is actually what's happening, but we need  
6 to find out exactly what is happening so that we can  
7 then decide if that --

8 MR. MCKAY: I was responding to the comment  
9 that Doreen made with regard to the scope of the  
10 information requested by compliance and --

11 MR. ASKEW: That's what I'm responding to.

12 MS. DODSON: That's --

13 MR. MCKAY: Well, I don't think it's as broad  
14 as she indicated.

15 MR. ASKEW: Well, we don't know. I mean --

16 MS. DODSON: All I said was we didn't know.

17 CHAIR EAKELEY: I want to get back to our  
18 agenda at some point. We were on reports. We had some  
19 action items on the agenda also, so --

20 MR. MCCALPIN: John, your staff sent to me  
21 yesterday that they were demanding that the file be  
22 handed to them, physically put in their possession, and

1 let them look at it, and I regard that as too broad and  
2 violative of the legal norms.

3 MR. MCKAY: Well, I think that's the point  
4 Doreen was making. And that --

5 MR. MCCALPIN: Yes, and your staff said that  
6 to me yesterday.

7 MR. MCKAY: Well, I think Bill, that you could  
8 use some additional information --

9 CHAIR EAKELEY: But I think that Bucky's point  
10 is well taken, and I think that that's incorporated  
11 within the sense that this is a complicated issue,  
12 fraught with consequences on both sides, that needs to  
13 find a careful recalibration, obviously, because it  
14 isn't working in all circumstances. And we need to  
15 address it in a way that makes it work without  
16 sacrificing the values on either side of the balance.  
17 LaVeeda, and then Nancy, and then --

18 MS. BATTLE: I'd like to move that the  
19 board --

20 CHAIR EAKELEY: Can we do this, Victor?

21 MS. BATTLE: I mean, we got something the  
22 public has brought to us. I --

1           CHAIR EAKELEY: Yes, I don't know whether we  
2 can -- are we -- what can we -- I mean, what I'm  
3 looking for, is if we have to schedule a telephone  
4 conference call on notice to deal with it, to set this  
5 up for next week, or --

6           MR. FORTUNO: The subject matter of a meeting  
7 can be amended here and now, but only if two conditions  
8 are satisfied, which is there has to be a recorded vote  
9 -- the corporation business requires it -- and that no  
10 earlier notice was possible.

11           If the board feels that it can take a vote and  
12 satisfy -- that those two conditions are satisfied, it  
13 could then take it out, but not otherwise.

14           MS. BATTLE: I understand that this issue has  
15 come to us by public comment and that we were not aware  
16 of the nature of the full public comment until today.  
17 I would like to have a recorded vote taken on this  
18 particular issue. If I'll just get it on the floor, we  
19 can consider it.

20           CHAIR EAKELEY: Yes, let's make a motion.

21                                   M O T I O N

22           MS. BATTLE: I'd like to move that the board

1 first express its position that it does not support the  
2 present legislative position that has been articulated  
3 in the letter that was sent to Congress as its  
4 position, but that it is willing to undertake fact-  
5 finding consideration of the particular issue that is  
6 addressed in that legislative proposal, and that the  
7 board will take appropriate action upon completion of  
8 its investigation.

9 MR. MCCALPIN: I second.

10 MR. FORTUNO: I think, Mr. Chair, two votes  
11 would be required. One is a procedural one, which  
12 would be that corporation business retires it, and that  
13 no earlier notice was possible. And if that then  
14 passes, then moving on to the substantive votes. But I  
15 think that the preliminary vote is a procedural one.

16 MS. BATTLE: I move the procedural vote on the  
17 issue that this came to us today, we did not have an  
18 opportunity for notice, but it is necessary for the  
19 board to act on this while we are here today.

20 MR. MCCALPIN: I'd second it.

21 CHAIR EAKELEY: Explain to me why it is that  
22 we had to take this up today, and why we couldn't have

1 done this on notice?

2 MS. BATTLE: Because I understand from at  
3 least part of the --

4 CHAIR EAKELEY: I mean, we had a letter from  
5 Bill two weeks ago -- three weeks ago.

6 MS. BATTLE: Well, because we're hearing that  
7 this particular --

8 CHAIR EAKELEY: This is a railroad going on,  
9 and there's no reason to do it today rather than next  
10 week. I'm here. And I don't understand why there's a  
11 compulsion to repudiate management's position on the  
12 record on something as sensitive as this, when the IG  
13 has already told us that there was a serious enough  
14 problem for him to have to go the Hill immediately.

15 I mean, I think there are issues within  
16 issues, and that we can -- and you articulated it  
17 perfectly in the sense that we need to do fact-finding,  
18 but I mean, it's just a gratuitous slap at management  
19 to push this to a vote. That's just my -- and I don't  
20 understand procedurally how we can do it in accordance  
21 with the act, because it's not simply something that's  
22 been here today. We had written notice of it.

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1 MS. BATTLE: We didn't have written notice in  
2 my view, Mr. Chair, in the nature of our responsibility  
3 for legislative -- of consideration of any legislation  
4 before it is taken to the Hill.

5 And it seems to me, based on at least one  
6 representation that was made today, that there are  
7 continuing dialogues around this, and we have not had  
8 an opportunity to review it, we have not had an  
9 opportunity to sanction it.

10 I think that that's the reason for the  
11 expediency in us at least expressing that it has not  
12 gotten that approval as of yet, and that we are willing  
13 to do our fact-finding, and make our own determination.

14 CHAIR EAKELEY: This is an IG proposal. The  
15 Congress is in recess until December 2nd.

16 MR. MCCALPIN: No, it's an IG and management  
17 proposal.

18 CHAIR EAKELEY: Not the language.

19 MS. BATTLE: Well, the statement on the letter  
20 that went up said, "Management and IG" --

21 MR. MCCALPIN: Management had sent a memo to  
22 the Hill saying it's management's proposal.

1 MS. MERCADO: And Mr. Erlenborn specifically  
2 pointed out the problem with that.

3 MS. ROGERS: I don't think this is at all a  
4 slap at management, but it is, from this point forward,  
5 being represented as our view. We are the management  
6 of LSC. And it isn't my view. You know, it is a new  
7 issue, I want to hear more facts, but I have taught  
8 evidence and I've taught privilege. It's an area of  
9 expertise for me. So even though I've had a short time  
10 to read it, I do understand, I know how you can work  
11 out of it.

12 Protocols, I know that it's often  
13 misunderstood and over read, and that we can work  
14 through things and probably come to a better  
15 understanding, but what I was seeking was a statement  
16 that management will not represent that it is any more  
17 supportive, that the corporation --

18 In fact, I'd like to see us repudiate the  
19 support that was given to it prior, because from this  
20 point forward, it's my support.

21 I recognize management acted quickly, and were  
22 acting in our benefit, and I appreciate that they did

1 that and made the choices that could be made quickly,  
2 and I'm not at all angry about that. But this is three  
3 weeks later, it still is out there that the Legal  
4 Services Corporation supported that, and it's now me.  
5 And it's all of us. And I'd like to see the position  
6 reversed.

7 MS. MERCADO: So would I.

8 CHAIR EAKELEY: John, you want to respond?

9 MR. MCKAY: Sure. I'd be glad to. I think  
10 that is a correct statement of my view, and I think  
11 it's a correct statement of the inspector general's  
12 view, that the current legislation is not acceptable.  
13 We need guidance from the board as to how to move  
14 forward on this, and I'm welcoming that.

15 What I can't say, Nancy, is I cannot say that  
16 I would repudiate the process and the decision that I  
17 made to support it on the window that we had. So that  
18 part I can't agree with you on, but I certainly agree  
19 that the current legislation -- and John's right.

20 It went up there with management and the IG  
21 endorsing it, and that is not the current state of the  
22 corporation's policy, and that should be corrected.

1 But there is an important distinction, which is I  
2 certainly urge you not to pass a resolution that would  
3 look like you were repudiating my conduct at the time  
4 that this went up to the Hill. And I think that's very  
5 important and you really need to know that.

6 CHAIR EAKELEY: Or our support for the IG on  
7 complaints.

8 MS. MERCADO: The motion doesn't say that.

9 MR. MCKAY: Well, I'm telling you, as your  
10 president, how this is sounding, and I'm urging  
11 caution, please.

12 MS. ROGERS: I would take that to heart, and  
13 say I was very supportive of our president, and we  
14 understand the good work that he did. What I want to  
15 make clear is what our position is from this point  
16 forward, in case it's still going to be quoted that we  
17 are supportive of that.

18 CHAIR EAKELEY: Tom has a suggestion. I have  
19 another one, also which would be rather than a formal  
20 board resolution, can we adopt a sense of the board,  
21 that the board does not support the legislation  
22 currently pending, and intends to move post haste to --

1 MR. MCKAY: What's the difference?

2 CHAIR EAKELEY: Or, and then there's Tom's  
3 other suggestion.

4 MR. SMEGAL: It's Robert's Rules, and it  
5 provides for any entity to reconsider an action taken,  
6 without repudiating it, but reconsider it. And that's  
7 certainly clear in Robert's Rules of Order. We could  
8 have a motion before us to reconsider a prior act of  
9 this board, which occurred through our authorized  
10 entity, the president in this particular case.

11 MR. MCCALPIN: But there is no prior act of  
12 this board to reconsider.

13 MR. SMEGAL: Sure.

14 CHAIR EAKELEY: No, the chair --

15 MR. SMEGAL: In our absence, the chair has met  
16 with management, and decided to do something. And we  
17 are going to reconsider.

18 MR. MCCALPIN: Well, that's not an act of the  
19 board.

20 CHAIR EAKELEY: Well, how do you feel about, I  
21 mean, some expression that the board does not support  
22 the legislation, and intends to --

1 MS. BATTLE: That's what I said to start with.  
2 I never made a statement about whether management and  
3 the IG had a legitimate issue that they're taking to  
4 get addressed. It was simply that the legislation  
5 itself --

6 CHAIR EAKELEY: Does not have the support of  
7 the board?

8 MS. BATTLE: Does not have the support of the  
9 board, that the board wants to undertake fact-finding  
10 to look into the issue, and to tender appropriate  
11 legislation to address it.

12 CHAIR EAKELEY: Can we convert that? Would  
13 you be comfortable converting that into a sense of the  
14 board that's reflected in the minutes?

15 MR. MCCALPIN: What's the difference?

16 CHAIR EAKELEY: It deals with my modest  
17 procedural problem of an action taken. I mean, a sense  
18 of the board --

19 MS. MERCADO: Consensus.

20 CHAIR EAKELEY: -- expressed in the minutes  
21 that says that the board does not support this  
22 legislation is not action taken by the board, but --

1 MS. MERCADO: But is you're asking for a  
2 consensus, consensus is still action.

3 MR. MCCALPIN: I think you still have to have  
4 the preliminary --

5 MR. SMEGAL: Oh, sure.

6 CHAIR EAKELEY: Yes, I'll give that, but I  
7 just --

8 MR. SMEGAL: It's got to be unanimous, too.

9 MR. ERLENBORN: But a sense of the board  
10 resolution does not carry quite the weight, I guess, as  
11 if we went and officially reversed what was done by the  
12 administration.

13 But I think the sense of the board resolution  
14 will effectuate what we all want, and that is to go on  
15 the record. I think it should be supported.

16 MS. MERCADO: It's a consensus of the board.

17 MR. ERLENBORN: Let me say one other thing, if  
18 I might. I would hope that neither the IG -- and of  
19 course, this is up to him -- nor our administration  
20 would ever follow this kind of legislative endeavor.  
21 Putting something on an appropriation bill that has  
22 already gone through conference, and amending the

1 conference report, never considering this in committee,  
2 never considering it on the floor of the House or the  
3 Senate.

4 Now I know that when you're in a hurry it  
5 seems like a very handy way of doing it, but this is  
6 not a good legislative practice, to put things in at  
7 the last minute, in legislation, when there are maybe  
8 just hours or days left in a session and hardly anyone  
9 in the Congress would even know that it had been done.  
10 And I don't like to see this corporation follow that  
11 kind of practice.

12 CHAIR EAKELEY: Okay. Now procedurally, if  
13 we're back on the motion that LaVeeda made to do what?  
14 What was --

15 MS. BATTLE: The first one was just for us to  
16 consider this as an emergency measure, and I've already  
17 articulated that I wish somebody could read it back  
18 from the record, because I don't remember --

19 CHAIR EAKELEY: If I can restate it, it's to  
20 vote whether to consider and adopt with a friendly  
21 amendment a resolution of the board that the board does  
22 not support the legislation that --

1 MR. MCCALPIN: No, that's not the motion. The  
2 motion was to put it on the agenda.

3 CHAIR EAKELEY: No, but we're voting whether  
4 to vote for it.

5 MR. FORTUNO: I think that the procedural vote  
6 would be whether the agenda should be amended --

7 MS. BATTLE: That's right.

8 MR. FORTUNO: -- to include an item which  
9 corporation business requires be taken up at this  
10 meeting, and of which no earlier notice could have been  
11 given.

12 M O T I O N

13 CHAIR EAKELEY: There was a motion, and then  
14 there was a second from Mr. McCalpin. All those in  
15 favor?

16 (Chorus of ayes.)

17 CHAIR EAKELEY: All those opposed?

18 (No response.)

19 CHAIR EAKELEY: All right. It had to be  
20 unanimous, right? Okay, now restatement of the issue  
21 to be presented. Would you, would the board consider a  
22 resolution that it is the sense of the board that the

1 board does not support the legislation submitted by the  
2 inspector general, and intends to investigate the  
3 issues involved and take appropriate action at the next  
4 meeting or interim meeting?

5 MR. MCCALPIN: I think it's wrong to put all  
6 the onus on the inspector general.

7 MS. MERCADO: I think so, too, because it's  
8 going up as both.

9 MR. MCCALPIN: It's a joint effort of the  
10 management --

11 CHAIR EAKELEY: Well, whatever way you want to  
12 describe the legislation.

13 MS. MERCADO: Just the legislation that went  
14 up to the Hill, without putting it on anybody.

15 CHAIR EAKELEY: Do we have a name for the  
16 legislation?

17 MS. MERCADO: What's it called?

18 MR. MCKAY: Oh, I could come up with one now.

19 (Laughter.)

20 MR. FORTUNO: You may be able to refer to it  
21 by date, "Proposed legislation submitted to the  
22 Congress on --"

1 CHAIR EAKELEY: John suggests that when --  
2 we're about ready for a break anyway, but if you want  
3 to take a break, we could tinker with the language so  
4 that we get something that works. Okay, 10 minute  
5 recess.

6 (A brief recess was taken.)

7 CHAIR EAKELEY: All right, please, I know  
8 semblances are what they are, but could we come back to  
9 a semblance of order?

10 Okay, LaVeeda, could you --  
11 those?

12 MS. BATTLE: I'd like to reinvent --

13 MR. ERLENBORN: Might I offer a motion to put  
14 this on the agenda?

15 MS. BATTLE: We already did that. It is now  
16 on the agenda.

17 M O T I O N

18 MS. BATTLE: And following our discussion, I'd  
19 like to move that the board reaffirm its support for  
20 access to records that are necessary for the work of  
21 both the inspector general and our compliance division,  
22 as well as for our accountability to -- the corporation

1 -- to Congress, but that the board does not support the  
2 current legislative proposal addressing this issue of  
3 access to records. and that it will explore this issue  
4 and take further action as it deems appropriate.

5 CHAIR EAKELEY: Second?

6 MR. ERLNBORN: Second.

7 MR. MCCALPIN: Wait a minute. Do we support  
8 access to data irrespective of whether that data may be  
9 protected by an attorney-client privilege --

10 MS. BATTLE: No.

11 MR. MCCALPIN: -- or rule of confidentiality.

12 CHAIR EAKELEY: I don't think we do, but I  
13 don't think you need --

14 MS. BATTLE: That's why I said as necessary to  
15 perform the responsibilities of the inspector general's  
16 office and compliance. However, this particular  
17 proposal we do not support.

18 MR. ERLNBORN: We will support whatever it is  
19 we support, and I don't think we have to prejudge that.

20 CHAIR EAKELEY: All those in favor?

21 (Chorus of ayes.)

22 CHAIR EAKELEY: All those opposed?

1 (No response.)

2 CHAIR EAKELEY: Yes, yes, we'll get it --  
3 Bucky, go. I'm sorry.

4 MR. ASKEW: I was going to ask if the motion  
5 anticipated that we are authorizing our management to  
6 continue interacting with the inspector general around  
7 these issues in the interim. I mean, we're not  
8 foreclosing our management's --

9 CHAIR EAKELEY: That's a management  
10 prerogative. I mean, we have to --

11 MS. BATTLE: Can I clarify my motion? It is  
12 only to deal with this legislative proposal. It is not  
13 to deal with the ongoing relationship between our  
14 management and the inspector general.

15 CHAIR EAKELEY: And access and compliance.

16 MR. MCKAY: I would just take that, if I might  
17 LaVeeda, just kind of take that one step further, and  
18 say that given the resolution, that we would expect to  
19 engage in any dialogue around this issue with board  
20 participation, to the extent it involves additional  
21 policy in the form of legislation.

22 So however that occurs through board

1 participation, we would welcome --

2 CHAIR EAKELEY: Well, we're going to clearly  
3 follow up. Doreen, thank you very much. We look  
4 forward to --

5 MS. BATTLE: Did we take a vote?

6 CHAIR EAKELEY: Yes, yes.

7 MS. BATTLE: Oh, we did? Okay.

8 CHAIR EAKELEY: We look forward to further  
9 protocol. Thank you. We should move on with the  
10 agenda.

11 MS. DODSON: Thank you very much. I  
12 appreciate the opportunity, and appreciate Mr.  
13 Erlenborn's invitation to work with you.

14 MS. BATTLE: I'm sorry. Just for the record,  
15 could you record the vote? We took the vote, but  
16 nobody ever said whether we voted for or against.

17 CHAIR EAKELEY: Okay. Let the record reflect  
18 that every director present and in attending voted in  
19 the affirmative.

20 MR. ERLENBORN: It's supposed to be unanimous,  
21 isn't it?

22 CHAIR EAKELEY: That's called unanimous.

1 MS. DODSON: Thank you.

2 CHAIR EAKELEY: LaVeeda, the report of the  
3 board's operations and regulations committee?

4 MS. BATTLE: Okay, the operations and  
5 regulations committee of the board met on yesterday,  
6 and we considered it -- took action on several items.

7 We had a 10-item agenda. We considered 9 of  
8 those items. We considered, first of all, 45 CFR 1628  
9 of the recipient fund balance as a final rule. In it,  
10 there were two issues that we had to address.

11 One was the issue of whether to continue the  
12 10 percent carryover without corporation approval with  
13 a 25 percent opportunity for programs to request a  
14 waiver of the 10 percent cap.

15 And the second issue was a certain  
16 extraordinary circumstance that we had factual  
17 information to show that they've happened in the past,  
18 and how we would have rested with regard to prospective  
19 regulation.

20 We've, in doing so, considered the proposals  
21 that came before us from both our management and from  
22 CLASP very carefully, and actually the board came up

1 with its own proposal, ultimately, and you should have  
2 a copy of it before you.

3 In the proposal that we ultimately entered, we  
4 entered language that would allow for a waiver of the  
5 25 percent cap in only three specific circumstances.  
6 One is when there were insurance proceeds received,  
7 secondly, if there were proceeds received as a result  
8 of the sale of real estate, and thirdly, proceeds  
9 received as a result of a lawsuit in which the  
10 recipient was a party.

11 And the final rule is before you. It has the  
12 language in it that addresses both the standard cap  
13 that we have of the 25 percent, waiver cap, and a 10  
14 percent cap for consideration of the fund balance.

15 CHAIR EAKELEY: And you can bring that into a  
16 motion?

17 M O T I O N

18 MS. BATTLE: Yes, I'd like to so move that  
19 this become the final rule 45 CFR 1628 on the issue of  
20 recipient fund balance.

21 MR. MCCALPIN: Second.

22 CHAIR EAKELEY: Any further discussion? All

1 those in favor?

2 (Chorus of ayes.)

3 CHAIR EAKELEY: All those opposed?

4 (No response.)

5 CHAIR EAKELEY: The ayes have it. The motion  
6 carries.

7 MS. BATTLE: The second issue that we  
8 considered that was regulatory had to do with 45 CFR  
9 1635, the issue of timekeeping for part-time attorneys  
10 that work both for our recipients, or sub-recipients,  
11 and as well for entities that are involved in  
12 restricted activities.

13 We decided that we would use a methodology of  
14 quarterly certifications to be received from those  
15 persons who fall into that category, rather than trying  
16 to get into extensive timekeeping actual records on a  
17 day-to-day business.

18 And we made a determination that as long as  
19 those quarterly certifications are in conformity with  
20 the rule, then that information would be available to  
21 anyone going into an audit to determine whether or not  
22 any attorney who is employed on a part-time basis is

1 engaged in doing work that is restricted, while on the  
2 clock for any of our programs.

3 A copy of that should also be before you on  
4 timekeeping.

5 M O T I O N

6 MS. BATTLE: And I would so move its adoption  
7 now as a final -- it's not out for comments, we've  
8 gotten the comments -- this is the final.

9 CHAIR EAKELEY: That's a motion?

10 MS. BATTLE: Yes.

11 MR. ERLNBORN: Second.

12 MS. WATLINGTON: Second.

13 CHAIR EAKELEY: Any discussion? All those in  
14 favor?

15 (Chorus of ayes.)

16 CHAIR EAKELEY: Opposed?

17 (No response.)

18 CHAIR EAKELEY: The ayes have it. The motion  
19 carries.

20 MS. BATTLE: The third item that we discussed  
21 has to do with a property manual, acquisition  
22 procedures and property standards. This is our first

1 cut glance at that, so we don't have anything specific  
2 to present to the board. This is not action item for  
3 the board, but we did review the property manual, and  
4 we made several revisions to it yesterday.

5 It will be going out for public comment and  
6 after we've had an opportunity to review the public  
7 comments and render a final determination, we will  
8 bring it back to the board for its adoption.

9 The other item that we considered on yesterday  
10 has to do with a regulation that we had previously  
11 approved once the Freedom of Information Act had been  
12 amended to allow for electronic transmission of FOIA  
13 information.

14 One of the requirements of that regulation is  
15 that we also have the responsibility of having an FOIA  
16 handbook on the web. And we have, as part of the  
17 package that we had before the committee, a very well  
18 done manual, and it looks very user-friendly.

19 That was done by a law student who has been  
20 working with us. We reviewed it, it contains the  
21 regulatory information that we promulgated earlier  
22 under the FOIA regulation, and any other directive

1 information to assist a person in understanding how to  
2 access our FOIA information on the web.

3 M O T I O N

4 MS. BATTLE: So we move its approval now by  
5 the board, so that it could be put on the web and made  
6 available to the public for purposes of at least  
7 another alternative way to make FOIA requests.

8 MR. ERLENBORN: Second.

9 CHAIR EAKELEY: Any discussion?

10 (No response.)

11 CHAIR EAKELEY: I just wanted to say that this  
12 is nice, this is --

13 (Laughter.)

14 CHAIR EAKELEY: All those in favor?

15 (Chorus of ayes.)

16 CHAIR EAKELEY: Opposed?

17 (No response.)

18 CHAIR EAKELEY: The ayes have it.

19 MS. BATTLE: Okay, and the third, the final  
20 issue that we considered on yesterday has to do with a  
21 proposed program of cash awards to corporation  
22 employees in recognition of their outstanding

1 performance.

2 M O T I O N

3 MS. BATTLE: We had a very lively discussion  
4 about this one yesterday, and made the determination  
5 that we would move to recommend to the board that it  
6 adopt an award program that excludes two of the things  
7 that were in the proposal that we received. That would  
8 be the LSC image award and the personal achievement  
9 award.

10 And also, we recommend that it exclude as  
11 recipients of the awards the officers of the  
12 corporation, the president, and the inspector general.

13 The final caveat that we have is that in  
14 looking through the proposal, the selection committee  
15 did not have, actually, a set out for how the IG would  
16 organize its selection committee.

17 And before it's actually published in the  
18 manual, we were hoping that the inspector general could  
19 provide us with how the selection committee would work  
20 on his side.

21 With those caveats, the proposal as presented  
22 and amended is moved for adoption -- why don't you make

1 it for adoption by board?

2 CHAIR EAKELEY: Is there a second?

3 MR. ERLENBORN: Second.

4 CHAIR EAKELEY: Ed, you want to come up and  
5 provide a word of explanation?

6 MR. QUATREVAUX: Well, two points. I just  
7 want to tell you it's unnecessary to deal with that, in  
8 as much as four years ago I renounced any cash awards  
9 because of the appearance of conflict of interest.

10 Secondly, as to how it's going to work in the  
11 OIG, we're a small organization. We're not going to  
12 form a committee. I'm a committee of one, so --

13 MS. BATTLE: Well, that's fine. Just as long  
14 as it's articulated in there.

15 CHAIR EAKELEY: Tom, did you have a question?

16 MR. SMEGAL: Yes, I did. Just a technical  
17 question. If I understood the motion, it's that the  
18 bonuses don't apply to the president, the IG, and  
19 officers of the corporation.

20 These bonuses are for the -- what year? The  
21 year 1999, or Fiscal Year 1999?

22 MR. MCKAY: Yes.

1 MR. SMEGAL: So actually -- does it exclude to  
2 the extent that those who were in offices subsequent to  
3 that time, or are they eligible?

4 MR. MCKAY: It would be for Fiscal Year 2000,  
5 I think. It would be --

6 MS. MERCADO: It's not going to be  
7 retroactive. It will be --

8 MR. SMEGAL: But their bonus is based on the  
9 funds we had available for the Fiscal Year 1999, right?

10 MR. MCKAY: No, it would be Fiscal Year 2000.  
11 That's --

12 MR. SMEGAL: Oh, we're not doing it for --

13 MR. MCKAY: We'll move forward. I don't think  
14 that the procedure rules out recognizing  
15 accomplishments during calendar year or Fiscal Year  
16 1999, but the funds now come out of Fiscal Year 2000.

17 MR. ERLBORN: I understood Joan Kennedy to  
18 tell us that money was set aside in 1999 -- in the  
19 current budget.

20 MR. MCKAY: Which would be Fiscal Year 2000.  
21 I just --

22 MR. ERLBORN: But it would be based upon

1 activities of the employees in the prior fiscal year,  
2 that is 1999.

3 MR. MCKAY: That is possible, depending on  
4 what --

5 MR. ERLNBORN: Because early next year is  
6 when she was --

7 MR. MCKAY: -- respective -- the schedule  
8 based on past activities.

9 MR. ERLNBORN: Next month's -- well, okay.

10 MR. MCKAY: Yes. If the funds were to come  
11 out of Fiscal Year 2000, if the board approves, and the  
12 nominations committee recommends someone, yes, I think  
13 that they could be recognized for accomplishments in  
14 1999 or earlier, frankly.

15 MS. BATTLE: Let me just make clear that there  
16 was an award, a cash award program, already existing  
17 within the corporation, and that program, it seemed to  
18 me, would apply to the time frame up until we make this  
19 determination prospectively, as to how this is all to  
20 work.

21 So if you're talking about activities that  
22 took place while the previous cash award program was in

1 place, then I would think that you could make awards  
2 consistent with that. If you're talking about  
3 activities from this day forward, then the new program  
4 is what's in place for that.

5 MR. SMEGAL: Well, I guess my question has two  
6 parts, and I wasn't very clear on that. I was more  
7 concerned about those who were not officers during the  
8 operative time period who, if I understand correctly,  
9 would be ineligible if they were then officers.

10 And I am suggesting to you, are those who were  
11 not officers in the eligible time period eligible for  
12 these bonuses, and I --

13 MR. MCKAY: Well, I think the board -- I'm  
14 sorry, Tom.

15 MR. SMEGAL: It seems to me that's  
16 appropriate. I mean, I would amend this motion, if  
17 necessary, to have that happen.

18 MR. MCKAY: I wasn't at ops and regs for this  
19 discussion --

20 MR. SMEGAL: I wasn't either.

21 MR. MCKAY: -- and I apologize for that, but I  
22 -- I believe I was over in provisions -- and I don't

1 understand, and I think it was --

2 MR. ERLNBORN: Well, I offered the motion,  
3 and it was my understanding of my motion that it was to  
4 disqualify for an award anyone who was an officer at  
5 the time the award was made.

6 MR. MCKAY: Yes, and I think that's how I  
7 would read the resolution.

8 MS. WATLINGTON: Another clarification would  
9 be we go from the 5 to the 10 in the restated --

10 MS. BATTLE: We just state that the amounts as  
11 disclosed, because there were some gradations of  
12 differences, and there is also a provision within the  
13 proposal for group awards. And so for that reason, the  
14 amounts stay the same, the exclusions were the only  
15 differences in what we were presented.

16 CHAIR EAKELEY: My understanding, second hand,  
17 of the decision by the committee to exclude officers  
18 had nothing to do with, or should not be construed in  
19 any way, as meaning that we hold them in anything less  
20 than the highest esteem and appreciation for all their  
21 work.

22 MR. ERLNBORN: I second the motion.

1 MS. BATTLE: Absolutely, absolutely. That was  
2 clear, and I really should have used that as a  
3 predicate to the changes to this program. We feel that  
4 our staff has done an outstanding job, and that they  
5 are to be commended for it, and in making this  
6 determination, it was simply the decision-makers come  
7 out of that group, the top managers and the president,  
8 and in order for the program to work, to award for  
9 what's being done by the rest of the staff, that was  
10 the judgement of the committee.

11 CHAIR EAKELEY: Any further questions?  
12 Discussion? Hearing none, all those in favor of the  
13 motion?

14 (Chorus of ayes.)

15 CHAIR EAKELEY: Opposed?

16 (No response.)

17 CHAIR EAKELEY: The ayes have it. The motion  
18 carries.

19 MS. BATTLE: Okay. That's my report.

20 CHAIR EAKELEY: Thank you. A lot of work.  
21 Thank your committee. Next we have another Erlenborn  
22 report. This time, the board's annual -- I'm sorry,

1 Bucky, what happened to Bucky?

2 MR. ERLNBORN: He'll be back.

3 CHAIR EAKELEY: Okay, why don't we skip to the  
4 report of the board's annual performance reviews  
5 committee?

6 MR. ERLNBORN: Well, I can report that  
7 yesterday we had private interviews with the president  
8 and the inspector general. All of the board members  
9 have recently received forms to fill out and  
10 information as to their feelings about the performance  
11 of those two officers, and those forms, I think, we  
12 asked to be completed and sent in to our staff by the  
13 20th. That's the day.

14 Let me say that I am amending that, and please  
15 get them in some time next week. And we will then  
16 complete the process.

17 CHAIR EAKELEY: Please get them in next week,  
18 and don't just check the boxes, but provide an  
19 explanation, if you can, because that will help the  
20 committee in the process of formulating the reviews.

21 We have next to consider an act on the board  
22 of directors' semi-annual report to the Congress. Many

1 of us did not get that until today, and I'm just  
2 wondering what the board's preference would be. My  
3 inclination now would be to try and schedule a very  
4 brief telephone conference call before the end of the  
5 month --

6 MS. BATTLE: That would be fine.

7 CHAIR EAKELEY: -- and deal with it that way,  
8 as we have in the past.

9 MR. MCCALPIN: I offered some suggestions for a  
10 few minor changes to Sue McAndrew yesterday. I don't  
11 know whether the board has them or not.

12 CHAIR EAKELEY: Sue, come on up.

13 MS. MCANDREW: The versions that you have do  
14 not include those changes, but before you leave today,  
15 I could get you versions --

16 CHAIR EAKELEY: That would be great, or we can  
17 just circulate them. I'm thinking that we'll try  
18 and -- this coming week is Thanksgiving week. I'm  
19 thinking  
20 we should try and do something, really, the following  
21 week, which would make it the week of the 29th. You'd  
22 have to do it the 29th, but would that be too short a

1       turnaround to get it done? Or how about the Friday  
2       after Thanksgiving, Friday the 26th?

3               MS. MCANDREW: The corporation is closed.

4               CHAIR EAKELEY: Closed, right. Maybe charge  
5       Elizabeth, or we'll get back in touch.

6               MS. BATTLE: What date are we talking about?  
7       The 30th?

8               CHAIR EAKELEY: I think we'll have to canvas  
9       the board, and we'll get some of the staff to do that  
10       and find out the least mutually inconvenient time as  
11       possible to do that.

12               Okay, so that's where we are on that item.  
13       Why don't we move right into closed session, and then  
14       come back? We need to pick up Bucky's report on  
15       provisions when he re-emerges. But in the meantime,  
16       why don't we just proceed through?

17               MR. ERLENBORN: You want a motion?

18               CHAIR EAKELEY: Yes, thank you John. I need a  
19       motion to call go into closed session for the purpose  
20       of reaching the agenda items.

21                               M O T I O N

22               MR. ERLENBORN: I move that the board now go

1 into closed session to serve the notice and statute of  
2 rules, and for the purpose of having an interview with  
3 the inspector general.

4 MS. FAIRBANKS-WILLIAMS: Second.

5 CHAIR EAKELEY: All those in favor?

6 (Chorus of ayes.)

7 CHAIR EAKELEY: Opposed?

8 (No response.)

9 CHAIR EAKELEY: The ayes have it. Maybe 10 or  
10 15 minutes, public.

11 (Whereupon, at 12:44 p.m., the meeting was  
12 adjourned to closed session.)

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1 CHAIR EAKELEY: While the public is being  
2 brought in, Victor, you stay there, please.

3 MR. FORTUNO: I was just going to -- oh,  
4 okay -- shut the door.

5 CHAIR EAKELEY: Susan just circulated a draft  
6 of the resolution that LaVeeda offered, but as Victor  
7 pointed out, it is not complete. It doesn't reflect  
8 the motion that was offered that we voted on, and my  
9 proposal was simply to ask Victor and Sue to go back  
10 and get the transcript, and faithfully record the  
11 motion as we voted on it.

12 MS. BATTLE: Yes. That's fine.

13 MS. MERCADO: Yes. So in other words, you're  
14 going to have a long discussion on this.

15 CHAIR EAKELEY: Have another two hours.

16 MS. MERCADO: You know why? It's because  
17 he --

18 CHAIR EAKELEY: And then he just wants to get  
19 his point in again that he wasn't able to get in the  
20 first time around, because we were too exhausted by the  
21 process.

22 MR. MCCALPIN: Who does, me?

1 CHAIR EAKELEY: Bill.

2 MR. MCCALPIN: Oh, Bill. I just want to  
3 change the last three words.

4 CHAIR EAKELEY: Yes, "by the OIG." That's  
5 correct. That was not the resolution we passed.

6 MR. FORTUNO: We'll just take the transcripts  
7 and conform it.

8 MR. SMEGAL: Delete that?

9 MR. MCCALPIN: Yes, I would say, "from the  
10 corporation."

11 CHAIR EAKELEY: Okay, yes.

12 MR. SMEGAL: What is that saying?

13 CHAIR EAKELEY: Well, Victor's got it.

14 Item 16, consider an act on the resolution  
15 authorizing the president to enter into employment  
16 agreements with officers of the corporation.

17 MR. SMEGAL: We need a motion.

18 CHAIR EAKELEY: We need, I think, maybe an  
19 into by John. Or I can do it. You want me to --

20 MR. MCKAY: Why don't you --

21 MR. SMEGAL: Will we be needing a motion?

22 CHAIR EAKELEY: Yes, we will need a motion.

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## M O T I O N

1 MR. SMEGAL: I'll move.

2 MS. FAIRBANKS-WILLIAMS: I'll second it.

3 MR. MCKAY: I think, actually, the board  
4 members were provided with contracts.  
5

6 CHAIR EAKELEY: Given out yesterday, yes.

7 MR. MCKAY: Okay, thank you. The purpose of  
8 the resolution, with regard to employment contracts, or  
9 a proposal by me to amend the personnel manual to allow  
10 me to enter into employment contracts with officers of  
11 the corporation, and again, as I had previously briefed  
12 the board, the purpose is to have, during anticipated  
13 periods of transition, employees of the corporation  
14 reporting to managers other than the president who are  
15 under contract.

16 Two main issues were considered here. One,  
17 that the contracts themselves not be entered into for a  
18 period which was deemed to be the likely tenure of this  
19 board. And I think the sense was that the board would  
20 not be in a position of mandating to a future board on  
21 election of a new President of the United States and  
22 appointment of the board, who the management staff

1 would be, but that during what was considered to be  
2 important transitions, including the election of a new  
3 president, and the expiration of my term, depending on  
4 when that would occur, that it would be beneficial to  
5 the stability of the organization to have the officers  
6 under contract.

7 And you were given a draft contract of it. I  
8 don't think the purpose is to approve the contracts  
9 here, but to give you something to look at, in terms of  
10 what I had in mind.

11 I think the terms of the contract would be --  
12 I think the draft that you saw had them mid-year 2001  
13 and --

14 MR. MCCALPIN: Two.

15 MR. MCKAY: -- I'm sorry, 2002 -- but that the  
16 objective would be to go to January 1, 2002. Is that  
17 right?

18 CHAIR EAKELEY: Yes.

19 MR. MCKAY: Yes.

20 CHAIR EAKELEY: The thinking being that that's  
21 probably the earliest that a next board could even come  
22 close to having a new president and that board would

1 want a continuity of management through that process.

2 MR. MCKAY: Essentially you're getting my --  
3 and the other concept would be that if there were a new  
4 -- either a new president or a new board prior to that  
5 time, since the actual buy-out provision is on a  
6 declining rate, that it would not be burdensome to the  
7 corporation to buy it out.

8 And the judgement that I was offering was that  
9 in keeping -- that we wanted to keep stability in  
10 management, and not look at wholesale staff changes  
11 based on perceptions by employees that there might be  
12 significant change. And therefore, the presentation.

13 I think you have dedicated officers and  
14 leaders in the corporation. There is no indication to  
15 me that people are planning to jump ship, but I think  
16 this is a reasonable signal to the rest of the  
17 employees that they can look forward to stability as  
18 this board completes its duties.

19 CHAIR EAKELEY: One other thing we've  
20 discussed in the past, and that is the desirability of  
21 being able to offer an employment contract to the new  
22 vice president of operations, who will be coming new

1 into this setting.

2 And if that is desirable, indeed necessary to  
3 attract someone, then it's kind of unfair to the other  
4 officers not to have a similarly worded contract at the  
5 same level of the organization. LaVeeda?

6 MS. BATTLE: I have just, you know, my view is  
7 when we first became a board, we had one employee who  
8 was under contract, and that employee's contract lapsed  
9 and then we went into a situation where all of our  
10 employees are essentially at will.

11 And I worry about the wisdom of having  
12 contracts, because at the end of those terms, the  
13 question becomes then what do you do? Does the next  
14 board, then, continue contracts, or are those employees  
15 continued at will, and I was opposed to either not  
16 renewing the contract as it was initially, and I don't  
17 know that I want to put the next board in that  
18 situation with all of these officers. So I'm not for  
19 having contracts.

20 CHAIR EAKELEY: There are competing  
21 considerations all the way around, I suppose. I come  
22 down ultimately to realization and appreciation of the

1 fact that we have a quite extraordinary management  
2 team, who I hope would stay, regardless. But it's as  
3 important for the people working for them to know that  
4 their direct reports up are assured of continuity,  
5 notwithstanding changes that they perceive to be likely  
6 to happen at the board level than not.

7 And that was really the recommendation of  
8 management and the thrust of it. And to the extent to  
9 which it further tells this management team we really  
10 appreciate what you're doing and hope to see you  
11 remain, I think that's a very positive message too.

12 And I don't think we're tying the hands of the  
13 next board by doing it this way, and Victor advised us  
14 in the past that at other transitional moments in the  
15 life of the corporation, contracts have been adopted to  
16 ease through those transitional periods. Not to extend  
17 contracts beyond the expected life of the board,  
18 though. Bucky?

19 MR. ASKEW: LaVeeda, if I heard you correctly,  
20 I think your question may be answered by paragraph  
21 three, which said, "Should the person continue his or  
22 her employment beyond June to be on an employment at

1 will basis?"

2           So I think your question is addressed by  
3 saying they will automatically shift to employment at  
4 will on that date. It may not deal with your bigger  
5 concern, but I think that is specified in here, what  
6 happens.

7           MS. BATTLE: That's helpful.

8           MS. MERCADO: Would that need to be changed to  
9 January 1?

10           CHAIR EAKELEY: Yes, we'll we're not adopting,  
11 we're not approving the contracts, that's going to be  
12 up to the president. But we are -- but I think the  
13 proposal is -- I mean, first off, the concept is  
14 contract terms no longer than the likely tenure of  
15 board and successor board coming.

16           We want to be able to have a successor board  
17 come in with stable, experienced management, and then  
18 have that board decide first, on a new president, and  
19 be able to do that while you still have the stability  
20 of management, and then decide for themselves where to  
21 go from there.

22           So the idea is resolution authorizing

1 employment agreements for no longer than that term, but  
2 we estimate a good cutoff would be January 1, 2002, and  
3 that would meet the sense of the authorization.

4 MR. SMEGAL: Assuming for some reason  
5 unbeknownst to us, that one of your officers prefers to  
6 remain at will, is there an obligation to sign this?

7 MR. MCKAY: Oh, no.

8 MR. SMEGAL: Okay.

9 MR. MCKAY: Absolutely not.

10 MS. WATLINGTON: Clarification. The motion  
11 and second made, we're doing discussion, we just didn't  
12 vote?

13 CHAIR EAKELEY: Yes. Correct, we're in the  
14 middle of discussion. Any other discussion?

15 MS. MERCADO: And maybe Bill may know the  
16 answer to this better, because I didn't look, are we  
17 authorized, as a board, to do these employment  
18 contracts of all the officers other than the president?

19 MR. MCCALPIN: Authorizing the president to  
20 make the contracts for the other officers.

21 CHAIR EAKELEY: That is correct.

22 MR. MCCALPIN: In the name of the corporation.

1 CHAIR EAKELEY: The corporation, right. And  
2 that's what --

3 MS. MERCADO: So we're doing indirectly, but  
4 we're not allowed to do directly?

5 MR. MCKAY: No, we're amending.

6 MR. MCCALPIN: Why are we not allowed to do --

7 MS. MERCADO: Well, I'm asking you.

8 CHAIR EAKELEY: It's in the personnel policy  
9 manual.

10 MS. MERCADO: That the board can set contracts  
11 with officers of the corporation?

12 MR. MCCALPIN: The only area in which the  
13 concept of a contract flies in the face of the norms is  
14 the at will provision and the personnel policy. And we  
15 are, in effect --

16 CHAIR EAKELEY: Making an exception to it.

17 MR. MCCALPIN: -- making an exception to that,  
18 for these contracts. We can do that. We can modify  
19 the personnel policy any time we want.

20 MR. SMEGAL: I move the question.

21 CHAIR EAKELEY: Question's moved. Is there a  
22 second to moving the question?

1 MR. ASKEW: Second.

2 CHAIR EAKELEY: All those in favor of moving  
3 the question, that is, cutting off debate?

4 (Chorus of ayes.)

5 CHAIR EAKELEY: Opposed?

6 (No response.)

7 CHAIR EAKELEY: The question has been moved  
8 and all those in favor of adopting the resolution  
9 authorizing the president to enter into an employment  
10 agreements with corporation officers say aye.

11 (Chorus of ayes.)

12 CHAIR EAKELEY: Opposed?

13 (Chorus of noes.)

14 CHAIR EAKELEY: Two nays, LaVeeda and Maria  
15 Luisa. The ayes have it. And the resolution passes.

16 Next, we have consider and act on other  
17 business. And one item that is before us is the  
18 schedule for the June 2000 board meeting in  
19 Minneapolis.

20 There's a memo that it's basically we got a  
21 conflict that creates a problem. Tom?

22 MR. SMEGAL: I would suggest that there's

1 another alternative to this. I, for one, cannot make  
2 the alternative date -- as I'm not able to make the  
3 proposed alternative date for April 14 that you  
4 rescheduled after the September meeting.

5 And I would propose that I blocked off this  
6 weekend, and I would propose that we meet, rather than  
7 Friday and Saturday June 23, 24, that we just move it  
8 to Sunday, Monday, the 25th, 26th, which is the same  
9 weekend, in the context of my thinking.

10 MR. ASKEW: I have a conflict with the 23rd,  
11 24th, so I wasn't going to be able to come to that one  
12 anyway. But I could come to a Sunday/Monday meeting if  
13 you made it whatever that is, 25th/26th.

14 MR. SMEGAL: Is the problem the local programs  
15 couldn't --

16 CHAIR EAKELEY: The problem is the state bar  
17 in Minnesota is meeting in Duluth, and all the local  
18 programs are going to be there. They're very active in  
19 the state bar. They came to me at the NLADA meeting  
20 and I discussed this with the executive director of the  
21 Minneapolis program.

22 They want to be at our meeting, and they have

1 an obligation to be at the state bar meeting in Duluth  
2 at the same time.

3 MR. SMEGAL: But Monday would be okay?

4 CHAIR EAKELEY: Monday's fine. Their meeting  
5 ends on Saturday.

6 MR. SMEGAL: You do not want to go to Duluth  
7 if you --

8 CHAIR EAKELEY: Now, now. Is Sunday and  
9 Monday all right with everyone? And John indicates he  
10 thinks we can do this from --

11 MR. MCKAY: Well, I just want to say for the  
12 board's consideration that the board meetings, the away  
13 board meetings, it's very difficult to get attendance  
14 on Sunday/Monday by interested individuals.

15 In this case, obviously, we won't get bar  
16 officials, because they'll be in Duluth.

17 MR. SMEGAL: No, they'll be back.

18 MR. MCKAY: I mean in the current schedule, so  
19 that weighs in favor of the Sunday/Monday schedule,  
20 although you should be aware, very difficult to get  
21 other officials on that kinds of a schedule. So it's  
22 just something for you to weight.

1 CHAIR EAKELEY: On the other hand, we pick up  
2 Bucky and as long as we have, I mean, access to  
3 programs --

4 MS. FAIRBANKS-WILLIAMS: And you'd make me  
5 happier.

6 MS. BATTLE: Are you happier with  
7 Sunday/Monday?

8 MS. FAIRBANKS-WILLIAMS: Yes.

9 CHAIR EAKELEY: Well, in that case, why is  
10 there ever even a question of what we should do?

11 MR. SMEGAL: And I started off saying, in  
12 other words, we should --

13 MS. FAIRBANKS-WILLIAMS: It would have been  
14 very tight scheduling for me, because I had to --

15 CHAIR EAKELEY: So, yes.

16 MR. MCKAY: So that's up to you, now.

17 MS. MERCADO: We'll schedule in some worship  
18 time?

19 CHAIR EAKELEY: Yes, definitely. We'll have  
20 some work in some worship time and do the  
21 Sunday/Monday, and indeed again, as we've been going  
22 out of town, we've been adding another half day if and

1 when we can to spend some time with meaningful site  
2 visits.

3 MS. MERCADO: Well, I would rather do that on  
4 a Saturday than on a Tuesday.

5 MR. SMEGAL: They're not going to be there.  
6 They're in Duluth.

7 MS. MERCADO: Ch, the local programs are going  
8 to be in Duluth?

9 MR. MCKAY: You're just going to have a  
10 problem doing site visits, and other outside people.  
11 But it sounds like we need to do it to accommodate  
12 schedules.

13 CHAIR EAKELEY: Let's work on it. Let's work  
14 on it. Okay, 24/25 --

15 MR. MCKAY: Well, no. We need to set it, not  
16 work on it.

17 CHAIR EAKELEY: We're going to meet the  
18 Sunday/Monday, 24th/25th.

19 MR. MCKAY: Right. Okay.

20 MS. FAIRBANKS-WILLIAMS: So we're going to fly  
21 on Saturday.

22 MS. MERCADO: So the site visits would be

1 when, on a Tuesday?

2 CHAIR EAKELEY: I don't know. I think we need  
3 to see who is available and when.

4 MS. PERLE: Sunday is the 25th.

5 MR. MCKAY: Sunday/Monday is the 25th and the  
6 26th.

7 CHAIR EAKELEY: Right. Sunday is the 25th.  
8 Oh, I'm sorry, the 25th/26th? That's June 25/26.

9 MR. MCKAY: The year 2000.

10 MR. ERLBORN: Did you have a Y2K problem?

11 CHAIR EAKELEY: With my pen. Any other  
12 business before the board before we open up for public  
13 comment?

14 MR. ASKEW: I prepared a one-hour provisions  
15 committee report, and I noticed you're not recognizing  
16 me.

17 CHAIR EAKELEY: You were recognized by your  
18 absence. No, that's right.

19 MR. ASKEW: You don't want to hear from me.

20 CHAIR EAKELEY: We do, we do. We go back to  
21 item number nine on the agenda.

22 MR. ASKEW: Actually, I would prefer to make a

1 very short provisions committee report, if that's  
2 acceptable to everybody. Unfortunately -- and this is  
3 serious -- unfortunately, we were meeting at the same  
4 time as the operations and regulations committee, so we  
5 only had one non-committee member there, and that was  
6 Maria. And the others of you were in the other  
7 meeting, and I think you missed a very informative and  
8 interesting meeting of the provisions committee.

9 And we covered a number of items, and there  
10 were a number of handouts. And I don't have copies  
11 here of all those handouts, so I'm going to ask  
12 Elizabeth to do a mailing to you Monday with the  
13 handouts on the five issues that we heard about, so  
14 that you can read for yourself what we were told about.

15 CHAIR EAKELEY: Victor will make sure that  
16 Elizabeth does that.

17 MS. MERCADO: Except for me.

18 MR. ASKEW: Yes, the committee members and  
19 Maria don't need those mailings, but the other board  
20 members do.

21 CHAIR EAKELEY: Okay.

22 MR. ASKEW: If you could take care of that?

1 CHAIR EAKELEY: Materials distributed at the  
2 provisions committee.

3 MR. ASKEW: We heard from Ted Faris at some  
4 length about a program information survey that he gave  
5 us a handout on that explains exactly what they're  
6 doing, and I would encourage you to read it, because  
7 this is part of the whole CSR issue, but it goes way  
8 beyond that, and that there's an effort by the staff to  
9 gather data.

10 They've done a survey this summer, they've  
11 collected a good bit of information, and they're  
12 working toward a future where we can have a better  
13 program information system than we have now, collect a  
14 lot of data from programs, and hopefully move away in  
15 the future from having to do emergency sort of surveys,  
16 emergency requests for information, have all the data  
17 that you need here, so that we can respond to requests  
18 from Congress or emergency issues as they come up.

19 Secondly, we heard from Bob Gross on state  
20 planning. And there is an update that will be sent to  
21 you on where everything is with state planning. Most  
22 of our discussion was around the technical assistance

1 grants and I think the total -- John, you can correct  
2 me -- is around \$370,000 that we spent this year.

3           There was an original \$229,000 that we ended  
4 up supplementing with money from the MNA budget that  
5 had to be put out in the form of contracts, because we  
6 couldn't do grants with that money. But it had gone  
7 for some very interesting, and I think very productive  
8 uses to many, many states around the country to  
9 facilitate state planning and some other things that  
10 programs are engaged in.

11           We heard from Mike Genz an update on  
12 competition, and of course that was the thing that we  
13 heard a good bit about at the NLADA convention. And we  
14 had a discussion about the process of how the decisions  
15 are made in the competition process, how the decisions  
16 are made to give less than a three-year, two-year, or  
17 one-year grant, everything that leads up to that, and  
18 then we had some discussion about the grantees that  
19 received less than a one-year grant.

20           We had a discussion led by our president about  
21 the resolution adopted at the NLADA convention, and the  
22 staff's response to that resolution, which I would

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1 characterize as a constructive response and an  
2 agreement to work with NLADA and others to move those  
3 issues forward that they expressed concerns about.

4 I stated the opinion to Mike that I think  
5 frequently the field programs, and even the people here  
6 in Washington we deal with all the time, frequently see  
7 the results of what we do, and don't always know how we  
8 got there. More communication about the process as we  
9 move through it, more of an understanding to all of  
10 them about how these decisions get made would be very  
11 helpful so we won't have sometimes a reaction based on  
12 not having full information about these things.

13 And just like we changed some of the state  
14 planning procedures this year in response to  
15 constructive suggestions made last year, we will look  
16 at changing some of the competition processes, based on  
17 constructive suggestions we received from NLADA and  
18 others about this year's decisions.

19 We heard from Glenn Rodden, who's our new  
20 technology person, a very enthusiastic presentation  
21 about all the various things that are happening here  
22 within the corporation on technology in conjunction

1 with outside groups, as well as working the field  
2 programs.

3           And I told him at the end of that we'd like to  
4 hear from him again at a future meeting in 2000,  
5 because there was so much in there, by then we were an  
6 hour over time. We didn't adjourn until 1:30 or so  
7 when we were supposed to adjourn at 12:30. Time was so  
8 short we really couldn't have much of an interchange  
9 with him about it. But it was quite exciting to hear,  
10 and there is also a written report on that that will be  
11 coming to you.

12           Lastly -- we moved them up on the agenda --  
13 was a report from the Project for the Future of Equal  
14 Justice, which is a joint effort by NLADA and the  
15 Center for Law and Social Policy that's funded by the  
16 Sorrels Foundation, the Open Society Institute, and the  
17 Ford Foundation, to work on two issues: One,  
18 technology, and Glenn is involved with them in a lot of  
19 these efforts, and there's a lot going on there, and  
20 you'll be getting materials on that as well. And  
21 secondly -- if I can find my notes here -- what they  
22 describe as a public awareness campaign.

1           And we heard presentations on this at the  
2 opening assembly at the NLADA convention, and they have  
3 retained a group that is doing some surveys about  
4 public acceptance of legal services on the one hand,  
5 and public perceptions about poverty on the other, and  
6 coming up with some data that will be helpful as  
7 programs and states move to improve their fund-raising  
8 efforts.

9           And they're doing some focus groups, as I told  
10 LaVeeda, they're doing one in Birmingham in December  
11 that she might want to sit in, and they're going to do  
12 10 focus groups around the country in the next few  
13 months to gather data through that to inform this  
14 process.

15           And they're working on developing materials  
16 that will assist programs in doing better public  
17 awareness campaigns on their own behalf, but also to  
18 assist them in fund-raising.

19           And it was quite interesting, and they have a  
20 lot going on, and they didn't tell us how much money  
21 they've gotten from these two foundations, but it must  
22 be a good bit, because they're doing an awful lot.

1           And our staff is involved in various ways on  
2 committees with them in working with them on some of  
3 these things, but it's quite interesting. And I  
4 encourage you to read the material you get from them,  
5 and it's something we may want to keep in touch with  
6 and hear more about as we move into the future.

7           CHAIR EAKELEY: Thank you, Bucky. I have a  
8 question. The Watlington-Smegal-Broderick committee  
9 report questioned whether or not we should be holding  
10 committee -- or, suggested that we should be holding  
11 committee meetings simultaneously, freeing up more time  
12 for site visits and also reducing dead time.

13           We had changed things about a year ago to try  
14 to schedule provisions committee at a time when all  
15 board members could attend. Well, there's just too  
16 much on the calendar for ops and regs this time, but  
17 the thought was that most board members wanted to learn  
18 about what the corporation was doing with respect to  
19 the provision for the delivery of legal services.

20           And I just wanted to get a sense from the  
21 board before we have our conference call as a follow-up  
22 to the committee report, to see whether or not -- I

1 mean, I think we've been doing better on the site  
2 visits. Denver and Seattle were very meaningful, and  
3 we need more time to do that, but I didn't know what  
4 the sense of the board was, in terms of the scheduling  
5 issue that was presented by the committee.

6 MS. BATTLE: I think it's always helpful if we  
7 do get a chance to attend. I know that it will  
8 elongate the weekend, depending on how much you've got  
9 on the agenda to do that, but also we would have  
10 enjoyed having an opportunity to sit in this weekend on  
11 what happened in provisions.

12 MS. MERCADO: And I do think while on the one  
13 hand, it might make the day of committee meetings a  
14 little bit longer, on the other hand, the board  
15 meeting, it's shorter, because the full board,  
16 hopefully, will have participated in the provisions  
17 committee or ops and regs. I know I'm usually one of  
18 the ad hoc ops and regs persons, just because I'd  
19 rather deal with it as it's being worked on, rather  
20 than later, after it's already been produced.

21 So my preference is to have the committees at  
22 different times. Although finance is fairly short most

1 of the time and we can do that in conjunction with  
2 something else.

3 CHAIR EAKELEY: Ernestine?

4 MS. WATLINGTON: I think it's just a matter of  
5 scheduling there and I do like to sit in on the program  
6 thing, because that's where you really hear what's  
7 going on, and ours is, you know, dealing with, like  
8 LaVeeda said, there was no way we could have combined  
9 it.

10 But there was an overall suggestion, looking  
11 at the whole way of things, that our committee looked  
12 at the, you know, when trying to schedule.

13 Now, this has nothing to do with that, but as  
14 you get new people into -- as I said about training, I  
15 think some of the new ones need to go back and consider  
16 the older ones instead, because Edna had to call me.

17 MS. FAIRBANKS-WILLIAMS: In the morning, yes.

18 MS. WATLINGTON: Because I had called Larry to  
19 find out what hotel we were staying at. I mean, that  
20 kind of information is very helpful to us.

21 And the whole overall thing of scheduling a  
22 meeting, I think they need to look more at, you know,

1 of getting information out. And though I don't, you  
2 know, have access to secretaries who do the scheduling,  
3 or whatever, I have to do all that on my own.

4 So even as far as the whole thing sort of  
5 meetings and everything, I think it really needs to be  
6 looked at overall.

7 CHAIR EAKELEY: Okay, we'll pick that up again  
8 in our conference call in a week or two.

9 MR. ASKEW: May I say we're going to talk  
10 about the Broderick report later, but I personally  
11 thought one recommendation in there was very  
12 constructive, which is I, as a committee chair, should  
13 circulate my agenda in advance to my committee members  
14 to get their feedback and reaction, which I mailed it  
15 Monday. All right, and I apologize.

16 But one thing we are going to try and do as a  
17 committee is maybe think of a whole year's worth of  
18 committee meetings, and do a schedule for the year, so  
19 that we can anticipate some issues and have a schedule  
20 and then if emergency things come up, add them to the  
21 agenda.

22 So we're going to be thinking about what our

1 committee should do during the entire year of 2000. If  
2 those of you have some suggestions about field issues,  
3 or topics that you would like to see on our agenda,  
4 you're quite welcome to suggest them to us in the  
5 meantime, and we'll try by the January meeting maybe,  
6 to have an idea of what the whole year will look like.

7 MS. WATLINGTON: Bucky, I think all of the  
8 ideas were constructive. And once you get something --  
9 and I know people that, you want the other board  
10 members, you know, to come up with their ideas to  
11 increase it, but that's where you want to look at a  
12 subject like that, to see how can we do what we do  
13 better.

14 CHAIR EAKELEY: If there are no other  
15 questions of the provisions committee chair, then we  
16 are on public comment, and I invited the public -- I  
17 would invite public comment, and Wilhelm, welcome.

18 MR. JOSEPH: Good morning. Thank you. I did  
19 not come prepared to say anything, but I should make a  
20 few comments.

21 One, I'd like to say I thank the board for  
22 being engaged in a beautiful exercise in democracy this

1 morning.

2           Number two, I want to say that while the OIG  
3 and LSC management, I guess, I wanted to say that John  
4 McKay, who I talk to very frequently these days, that I  
5 want to continue to be accessible to the field, even  
6 when we don't agree on points, keep that access going.  
7 I find John very open and we appreciate that. It gives  
8 us opportunities to resolve many things.

9           The last point, I understand that he has told  
10 the board that while the letters to Congress include  
11 some inaccurate information with regard to the legal  
12 aid view. I think the letter says that we are denied  
13 LSC office of compliance and enforcement access, and I  
14 understand he said it's not accurate.

15           I also want to further clarify that, that this  
16 question of access with the Legal Aid Bureau was worked  
17 out before that letter was sent. And I am on record,  
18 my board's records, by saying it was worked out.

19           So now I have a conflicting situation. I have  
20 a letter from the corporation which carries all the  
21 weight with my board, saying that we denied access to  
22 LSC. And I have told my board we have not done so.

1 You know, so I just want to make sure --

2 CHAIR EAKELEY: That needs to be clarified,  
3 because John reported to us that in fact, you worked  
4 out a protocol that we expect to be a model for other  
5 programs.

6 MR. JOSEPH: But I'm stressing this protocol  
7 was worked out before that letter was sent to Congress.  
8 So the appropriate actions need to be taken to --

9 CHAIR EAKELEY: Yes.

10 MR. JOSEPH: Okay?

11 CHAIR EAKELEY: Yes.

12 MR. JOSEPH: Thank you very much.

13 CHAIR EAKELEY: Any other public comment or  
14 private comment?

15 M O T I O N

16 CHAIR EAKELEY: Then is there a motion to  
17 adjourn?

18 MR. ERLNBORN: So moved.

19 CHAIR EAKELEY: Second?

20 MS. WATLINGTON: Second.

21 CHAIR EAKELEY: All those in favor?

22 (Chorus of ayes.)

1                   CHAIR EAKELEY: The ayes have it. Have a  
2 happy Thanksgiving, everyone. And merry -- well, we'll  
3 hopefully be on the phone before Christmas.

4                   (Whereupon, at 1:31 p.m., the meeting was adjourned.)

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