

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

FINANCE COMMITTEE

OPEN SESSION

Saturday, September 11, 2004

9:00 a.m.

The Best Western Helena
835 Great Northern Boulevard
Helena, Montana

COMMITTEE MEMBERS PRESENT:

Robert J. Dieter, Chairman
Thomas A. Fuentes
Herbert S. Garten
Frank B. Strickland, *ex officio*

BOARD MEMBERS PRESENT:

Maria Luisa Mercado
Florentino A. Subia
David Hall
Helaine M. Barnett
Lillian R. BeVier
Thomas R. Meites
Ernestine Watlington (by telephone)

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary
Patricia Batie, Manager of Board Operations, LSC
Karen Dozier, Executive Assistant to the President
Mattie Condray, Senior Asst General Counsel, LSC
John C. Eidleman, Acting Vice President for Compliance
and Administration
Michael Genz, Director, Office of Program Performance
David Maddox, Assistant Inspector General for Resource
Management
David Richardson, Treasurer and Comptroller
Laurie Tarantowicz, Assistant Inspector General &
Legal Counsel
Anh Tu, Program Counsel
Kirt West, Inspector General
Bernice Phillips, Nominee to LSC Board of Directors
Bruce Iwasaki, Legal Aid of Los Angeles
Don Saunders, National Legal Aid & Defender Association
Linda Perle, Center for Law & Social Policy
Klaus Sitte, Montana Legal Services Association;
and other staff and members of the public

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REMARKS BY BRUCE IWASAKI

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MOTIONS: 35, 38, 41

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

2 MR. DIETER: Excellent. Okay, I call the
3 finance committee meeting back into order. We recessed
4 yesterday evening.

5 At that time, there was a motion before the
6 committee by Mr. Fuentes, I guess, to approve a budget
7 mark of \$337,000, which failed for lack of a second.
8 And at this point, I understand Mr. -- forgive me if I
9 pronounce it wrong -- Iwasaki, is that right?

10 MR. IWASAKI: Yes, my name is Bruce Iwasaki,
11 and --

12 MR. DIETER: Iwasaki, sorry.

13 MR. IWASAKI: I'm a representative of the
14 American Bar Association.

15 MR. DIETER: And if you would like to make
16 your presentation to us, we have the copy of the
17 letter, and yesterday David (sic) Saunders went through
18 your proposal. But why don't you go ahead and make
19 your remarks to us?

20 REMARKS BY BRUCE IWASAKI

21 MR. IWASAKI: Yes, thank you very much for the
22 time. And I apologize for not being here at the

1 appropriate time yesterday, but I am happy to take this
2 opportunity today. I will be brief, because the
3 written statement is already before you.

4 Again, my name is Bruce Iwasaki. I am the
5 representative from the ABA standing committee on legal
6 aid and indigent defendants. I am also the executive
7 director of the Legal Aid Foundation of Los Angeles.

8 I started in legal services in 1976. I have
9 been in legal services, I have also been a lawyer in
10 private practice at a large law firm in Los Angeles,
11 during which time I served on the IOLTA commission of
12 my state. So I have been both a recipient of Legal
13 Services funds and a grantor of Legal Services funds,
14 and I appreciate the challenges of a body like yours.

15 I urge the board, this committee and the
16 board, to be bold and recognize the issues and problems
17 in the low-income community and the equal justice
18 community.

19 The ABA has taken what we believe is a
20 moderate and modest position of restoring funding to
21 the level that it was 10 years ago -- really, 11 years
22 ago -- and we believe that would continue the tradition

1 that this board has already set of seeking modest
2 increases, even more than the OMB has recommended, in
3 recognition of the needs of the field.

4 I would be delighted, the next time the board
5 is in Los Angeles, to take you to one of my offices.
6 You will see that at 8:00, 45 minutes to an hour before
7 we even open the doors, we have lines outside the doors
8 of clients needing services. We try to do everything
9 we can. There is no conceivable way we can meet all of
10 those needs. And I am sure that in your tours and
11 presentations that you have heard here and in other
12 meetings, you have heard much of the same.

13 I strongly urge the full board to adopt as
14 aggressive, though reasonable position as possible,
15 with respect to funding. I am happy to answer any
16 questions.

17 MR. DIETER: Any questions?

18 (No response.)

19 MR. IWASAKI: Well, thank you very much for
20 this opportunity. Again, the ABA position is simply to
21 restore funding to the level it was in 1995, which I
22 can tell you as a career legal services person, still

1 wasn't quite sufficient, but would be a terrific
2 gesture to the field that we're moving in the right
3 direction. Thank you very much.

4 MS. MERCADO: And just a quick comment, Mr.
5 Iwasaki. I am not sure whether you have this figure or
6 not, but is it fair to say that in actual dollars the
7 amount we had in 1995 was the same as the amount that
8 we had in 1981 and 1982? In actual dollars?

9 MR. IWASAKI: I haven't done that math. I'm
10 not sure if it was actual or not, but --

11 MS. MERCADO: Is it for inflation? No?

12 MR. IWASAKI: I don't think it quite matched
13 that, even. But it was definitely a step in the right
14 direction in 1995.

15 As you know, from 1980 or so, we have lost
16 really, in real terms, half the funding.

17 MR. DIETER: Herb?

18 MR. GARTEN: Good morning.

19 MR. IWASAKI: Mr. Garten, how do you do?

20 MR. GARTEN: It might be worthwhile, since
21 we're going to be discussing the possibility of
22 additional funds for technology and loan assistance

1 program --

2 MR. IWASAKI: Yes.

3 MR. GARTEN: -- as to what the position of the
4 SCLAID is with respect to those two.

5 MR. IWASAKI: Well, I don't know that we have
6 developed positions on the subparts of the
7 corporation's budget. We certainly support promoting
8 technology. That has been, I can tell you from first
9 hand, something that has increased access to justice
10 for many, many people.

11 It has created a situation of a lot of
12 innovation and a lot of collaboration with other
13 community groups. SCLAID is not -- does not propose to
14 micromanage the corporation with respect to the various
15 line items. But we are very supportive of innovation
16 on behalf of the corporation.

17 MR. GARTEN: The chair has referred to that in
18 the letter that we have before us. Thank you.

19 MR. IWASAKI: Thank you.

20 MR. DIETER: I guess I will take this
21 opportunity just to speak my own mind about -- you
22 know, these benchmarks that are proposed at various

1 times, in terms of 1995 or 1990, or whatever. And
2 then, you know, racheting it up on an inflation rate
3 from its previous levels.

4 MR. IWASAKI: Yes.

5 MR. DIETER: Because it is hard for me to, you
6 know, personally understand, you know, what we deliver
7 at this point with the resources we have, with the
8 advantages of technology and the changes that that has
9 brought into the law practice, in terms of, you know,
10 staff attorneys being able, really, to generate a lot
11 of their own court documents and that sort of thing
12 which, you know, before word processing you had to have
13 staff.

14 I know in our own clinical program we have
15 been able to eliminate, you know, full staff positions
16 because there just isn't enough typing to keep someone
17 busy. But the thing that's missing, I think, from
18 those presentations, to me, is that the ABA, you know,
19 I guess has a study that -- well, it does have a study
20 -- and I don't know how long they have done it, but the
21 one I have is from April of 2003 that shows the
22 resources, you know, by state from various sources.

1 And it shows that Legal Services at that time
2 was, you know, contributing \$298 million, which was 32
3 percent of the total expenditure, you know, by states.

4 And the non-LSC sources were, you know, \$600 million,
5 which means that we were spending \$900 million, you
6 know, in this effort.

7 And that doesn't include, you know, the
8 outsourcing, so to speak, of initiatives and cases that
9 are handled by groups that have been set up to handle,
10 you know, legal issues that we're precluded from
11 handling by the congressional restrictions.

12 So that, you know, personally I just find it,
13 you know, it would be more helpful if I knew exactly
14 what we should go forward from at this level in order
15 to accomplish, you know, certain goals, as opposed to
16 being told in 1995 we spent X and, you know, plus
17 inflation, you know, we need Y.

18 MR. IWASAKI: I understand that.

19 MR. DIETER: Because it's such a superficial
20 -- I don't mean to be offensive, but that's the reality
21 of my reaction to that. So can you tell me why I'm
22 wrong, or --

1 MR. IWASAKI: Oh, I don't think there is a
2 right or wrong on that, particularly. When SCLAID
3 considered this, we looked at a number of possible
4 scenarios, and I don't think I'm talking out of school
5 when I said, "Well, look, if we were truly principled,
6 if we looked at 1980 and we took inflation, and we went
7 further," well, I can't remember the number, but it was
8 north of \$2 billion.

9 And I am urging the corporation to be bold,
10 but I am not urging the corporation to take a shotgun
11 to its foot. So I am -- SCLAID recognized that, and
12 tried to come up with, as I say, a modest and moderate
13 approach that could be tied to a historic level that
14 Congress had supported before, recognizing the needs
15 and effect of inflation, and tie it to a principal
16 figure.

17 And that's the number that was presented. We
18 recognize that we might not be able to get there all in
19 one gulp, that it might take a couple of years to get
20 there, and that's presented, as well.

21 If we went back and did a thorough survey and
22 looked at all the various needs, well, that would take

1 more than I am prepared to address here. But there
2 needs to be numbers of the number of advocates
3 necessary for every 10,000 or 20,000 low-income people.

4 If we did things like that, we could have an
5 interesting discussion.

6 It might not be in the realm of political
7 reality, but it would certainly set a target to go for,
8 and I think the ABA, the field, NLADA and other groups
9 would be interested in that kind of conversation. But
10 we are in the midst of a situation where we have to be
11 realistic, as well.

12 I am -- I suppose that's a different
13 conversation, though.

14 MR. DIETER: Right. Tom?

15 MR. MEITES: I actually am intrigued by what
16 you said, that rather than approaching the LSC portion
17 in isolation, if I understood what you said, it would
18 be helpful to us if we had analysis of what 100 percent
19 funding of legal aid needs in the United States are,
20 whatever dollar that is, and put in what the non-LSC
21 contribution to that is right now, put in what our
22 contribution is to that right now, and there is a

1 shortfall. And how much of that shortfall
2 realistically could non-LSC sources make up, and
3 whatever is left is what we would have to make up in
4 order to fully fund legal aid in the United States.

5 So, rather than taking just our little piece
6 of the puzzle and building up, if I understand you, you
7 take the whole -- what 100 percent funding would be,
8 and you take the various components, see how much the
9 rest of the universe can provide, and that would be
10 what it would take from our side to fully fund it.

11 MR. DIETER: Yes. Just -- I mean, that's what
12 I am trying to -- that I have looked at, and I don't
13 have, you know, a real working familiarity with all the
14 numbers.

15 But I do know the landscape has changed since
16 those dates, and so that is -- personally, I don't find
17 it persuasive to just keep throwing that in my face.
18 But -- and it leaves me sort of adrift, really, in
19 terms of what is -- realistically, you know, we should
20 be trying to do.

21 Because there is a lot of non-LSC money that
22 is, you know, meeting the need as well. And I don't

1 discount that there is a need out there, don't get me
2 wrong on that. But sometimes I get the feeling that
3 people are, I guess, criticizing the corporation
4 because we're not doing what we did in 1980, when maybe
5 there was -- you know, I don't know what else was being
6 provided except for us at that particular point.

7 That sort of thing is more like what you're
8 talking about, especially with the congressional
9 restrictions. There has been the growth of a lot of
10 other ways that legal services are being delivered to
11 groups.

12 You know, I know seniors, there are a lot of
13 senior programs that can get money for services, and
14 the Violence Against Women Act is another source, you
15 know, we're a source. It's something that we're just a
16 part of.

17 The other thing I guess is the -- you know,
18 the map that shows, you know, the percentage of funding
19 that comes to programs in various states from us, you
20 know, varies considerably. And on this chart that per
21 capita dollars spent by a particular state range from
22 \$1.98 to \$50.

1 And I -- you know, one of the things I would
2 like to see, personally, is what we can do to make
3 this, you know, map that represents that we're not
4 providing, you know, 90 percent of funding in a
5 particular state, that the state is trying to do what
6 it can do.

7 And you know, we got a little presentation
8 yesterday from Montana that they are looking at it, and
9 that the lay of the land up here is probably
10 realistically -- that there aren't a lot of fundraising
11 sources, but they are being creative in other ways.
12 And they have got a heck of a -- it sounds like -- a
13 heck of a pro bono program through the courts, which
14 they are able to do, which is very impressive.

15 So, that's just sort of, I guess, my two cents
16 on this, but --

17 MS. MERCADO: Right. But the reality is that
18 even looking at where we're at today, the Montana Legal
19 Services presentation that talked about the creative
20 and innovative ways that they are using pro bono
21 attorneys, that they're using fees from the court, and
22 even in conjunction with the VAWA grants, you know, the

1 grants that they have, and in conjunction with the
2 Legal Services funding -- and I asked them
3 specifically, "When you look at all your funding that
4 you have from all sources, including the pro bono
5 sources, what percentage of the legal needs are you
6 meeting of poor people in your state?"

7 And they said, "Five percent of the legal
8 need." And I think the chief judge at the luncheon
9 said something about we turn away two of the five
10 people that come here. And I asked again for them to
11 clarify that, and they clarified that at the hearing
12 yesterday at provisions committee, that you know, that
13 two of the five people they turn away are people that
14 actually show up at the office.

15 And of the population of the poor in Montana,
16 they are only able to represent five percent of the
17 poor in Montana, even given all those various sources
18 funding or pro bono that is given by them.

19 And we need to -- if we're going to do an
20 assessment like that -- and I know that the ABA -- and
21 Helaine has been, you know, in the forefront of working
22 this and looking at a legal needs assessment that

1 incorporates those aspects that you're talking about,
2 Rob, which is looking at the resources that we have
3 from IOLTA and other funds, looking at any other kinds
4 of grants, and still what percentage of the poor are we
5 representing in this country?

6 To say that we are representing between 5 and
7 20 percent of the poor and equal access to justice
8 given all the combinations of our grants and pro bono
9 and legal services funding, it's still not saying that
10 we are being truly advocates of the poor in providing
11 equal access to justice. We can't say that when we
12 only represent 20 percent of the people, because nobody
13 else given any of the other resources are providing
14 that.

15 And I mean, I don't -- I guess we can continue
16 doing some more statistics, but the reality is that you
17 can go to any office anywhere in the 50 states, in the
18 territories, and sit there all day and look at the
19 people that come in and the people that don't get
20 service, and they get referred out, and hopefully
21 somebody out there might be able to help them, or they
22 might go pro se, and they might have some percentage.

1 And we still would not even meet half the
2 need. So the question is not whether or not we are
3 giving them enough funding. We know we're not. We
4 know we're not even providing 50 percent of the need,
5 even given all the resources together.

6 And if our obligation is, as a board, to try
7 and figure out how we can convince Congress that we
8 have a vested interest in providing justice to the poor
9 in this country, that that's part of our mission of
10 what we do, that's why we're here.

11 MR. MEITES: Yes, I was actually coming -- I
12 don't disagree with Maria Luisa at all, but I picked up
13 something Helaine has said. We want to have a
14 rationale for what we're asking Congress. We don't
15 just want to go and say dollars for dollars.

16 And I agree with Frank, that the rationale
17 we're hearing from our constituents is not going to be
18 persuasive enough, because it hasn't worked. We know
19 it's not going to get us the dollars we need. So the
20 suggestion I came up with -- it follows on what Frank
21 said -- that the landscape has changed since 1995,
22 because there has been a tremendous amount of new money

1 that's come in, in part because of what happened.

2 And what I had suggested is another way of
3 approaching Congress, you know. To fully fund our
4 defense needs would take \$X billion, and we have these
5 sources now, and we need those sources. To fully fund
6 our senior medical needs and -- they did that, in order
7 to decide whether to vote for the Medicaid and Medicare
8 changes. It's going to cost \$X dollars. How much is
9 going to come from the private sector, how much is
10 going to come from private insurance, how much is going
11 to come from the federal government?

12 The approach I suggested is really the same
13 kind of rationale. The federal government is not going
14 to provide 100 percent. It doesn't have to provide 100
15 percent, because there are other sources. But you
16 can't determine how much is needed on our side of the
17 table unless you do -- you get an overall figure, plug
18 in all other sources, and federal government's role in
19 this day and age is to make up the shortfall.

20 And that kind of analysis -- and it could be
21 done by the ABA or anyone -- I think would be a start
22 for a convincing rationale. Not to say we're ever

1 going to get 100 percent funding of legal aid needs,
2 but at least it gives a baseline that we could work
3 from. That's what my suggestion is, just to cover the
4 better rationale to go to Congress with.

5 MR. DIETER: Go ahead.

6 MR. IWASAKI: I will defer to board members
7 first.

8 MS. BEVIER: Well, I'm not on the committee.
9 Is it okay if I --

10 MR. DIETER: Yes.

11 MS. BEVIER: Okay. I like Tom's suggestion
12 very much, in part because it would give me some
13 guidance. I mean, I frankly -- I mean, I understand
14 that we are fiduciaries with a mission to deliver legal
15 aid to the poor, and to use our resources to that end.

16 I also think that we have duties as citizens,
17 in general, to not necessarily say that the only thing
18 that matters in this world is the legal needs of the
19 poor. Of course it matters a lot, it's what we are
20 here for.

21 But our job is to try to put that in some
22 context. And I just feel at sea with these numbers. I

1 mean, I just don't have -- it's -- I bet if we got \$2
2 billion we would not feel like we had sufficient funds
3 to meet all the needs of the poor, because it -- there
4 is never enough.

5 But I wonder if we have time to do -- do we
6 have to set this budget mark now, or do we have -- do
7 we have to do it now?

8 MR. DIETER: My understanding is we set this
9 mark and then we present OMB in October, and then they
10 tell us what their number is. At that point we make a
11 decision to accept their number and go to Congress with
12 that, or we decide whether we're going to go to
13 Congress with our own number.

14 MS. BEVIER: Oh, okay.

15 MR. DIETER: I mean, does that sound correct,
16 David?

17 MR. RICHARDSON: Yes, that is correct.

18 MR. DIETER: Okay. Herb?

19 MR. GARTEN: There is a chart the chairman
20 obtained from the American Bar Association, project to
21 expand resources for legal services, data on legal
22 services resources. Are you familiar with it?

1 MR. IWASAKI: I have seen at least prior
2 versions of it.

3 MR. GARTEN: It reflects the grand total of
4 expense, state by state, and total states, of what is
5 being spent. And it reflects that LSC's share is about
6 \$300 million as of that particular time, or 33 percent
7 of the total. And other sources, non-LSC sources,
8 about 67 percent. That's my recollection, as -- I have
9 seen this chart before, but not recently.

10 So, this information is available. And where
11 does this money come from, other than LSC? Filing fee
12 surcharges, IOLTA surcharges, profit contributions, in
13 Maryland the sheet funds. A whole variety of sources.

14 But getting them all together, we still -- study after
15 study has shown that no state is exceeding 20 percent
16 of the legal needs of the public. There is a big gap.

17 And with the primary source of funds in most
18 states -- Maryland, from year to year, it varies
19 between IOLTA and other funds and LSC funds, because of
20 the population base. But there is a big gap. It's
21 there.

22 And whether we base it on an increase over

1 what happened in past years with inflation or not, we
2 still know we need money. And we -- I presume that the
3 budget mark was set, taking into consideration the
4 political reality. And all I wanted to do was stress
5 to Congress and to the public, who are very interested
6 in technology, very interested in this loan repayment
7 program, that we had put some extra funds in that over
8 and above what the staff has projected to.

9 So, I don't see -- this chart can be
10 duplicated, and is available, and I am sure it is --
11 although it is dated April 18, 2003, it's substantially
12 correct as of this date. Every source of funds coming
13 in, including LSC, and the total grant source.

14 In Maryland, we have a lot of extra sources.
15 We're getting \$3.6 million from Legal Services and
16 \$17.4 million from other sources. And that's -- state
17 legislated programs are a big part of it -- I don't see
18 it on here -- children in need of services, it's all on
19 there, and some states are putting more into it, and
20 I'm sure Massachusetts is probably at the same level as
21 Maryland.

22 So, I don't think there is a need for further

1 studies. We know where the money is, where it's going,
2 and what part we are playing in it. And LSC, based
3 upon this, is putting in about 33 percent of the total
4 spent on legal services for the poor in the country.

5 MR. DIETER: Yes, I guess I --

6 MS. MERCADO: I think David has had his hand
7 up for a long time.

8 MR. HALL: Go ahead.

9 MR. DIETER: Well, when I first came on board,
10 and people were using this 20 percent, "We're meeting
11 only 20 percent need," I got a copy of the ABA study,
12 which I understood was the source of that figure. And
13 again, I -- you know, I work in a legal aid clinic. I
14 know that the level of need is there.

15 But it's met in a number of different ways, as
16 well, and we have gotten better at referrals and
17 helping people, and pro se, and all that stuff. You
18 know, I don't discount that there is a need there.

19 But when you read that statement, I mean, the
20 definition of what they define as a legal need and how
21 it's met, and their estimated -- it's pretty mushy to
22 me.

1 I don't, you know, take issue with the fact
2 that we can do more, we can do it better. It's just
3 that when -- personally, when someone says, "We're only
4 meeting 20 percent, so therefore, in theory, we need to
5 spend, you know, \$2 billion based on this study," or
6 anecdotal evidence of 5 percent, or whatever it is,
7 personally that's, you know, unrealistic and not
8 persuasive.

9 And that's just, I guess, that's something I
10 have been thinking about for a long time, and I don't
11 know how you do a scientific study of legal need. If
12 you read the study, a lot of the complaints about legal
13 need have to do with policing in the neighborhood. You
14 know, we're not going to get involved in that.

15 So, I am -- you know, what we were -- my
16 particular focus is on direct services to clients, you
17 know, with an attorney helping them with immediate
18 legal problems, to the extent that we can do that. And
19 I just feel a little like Lillian in terms of what do
20 these numbers mean.

21 Do we -- you know, is the existing -- can we
22 squeeze more efficiencies out of that, or should it be

1 \$400 million, or whatever? I just am kind of at a
2 loss, except for the benchmark of working off some
3 number and then attaching an inflation figure and
4 saying that that's our rationale for going forward.

5 I think we also need to recognize that, you
6 know, the legal profession is a self-regulated
7 monopoly. And we, as a profession, have the primary
8 responsibility, professionally, to provide access to
9 justice and representation of people. And that
10 sometimes gets lost in the discussion, because
11 everybody is -- you know, turns to the federal
12 government or the state government, or whatever, to
13 fund, you know, what is a self-regulated monopoly.

14 And if we don't step up to the plate in some
15 way -- because we're not hurting; we have 250 lawyers
16 per person in the country, so it's a little bit like
17 the famine problem, you can produce a lot of food, but
18 it's not --

19 MS. BEVIER: Excuse me, 250 lawyers per
20 person?

21 MR. DIETER: I mean one lawyer for -- we're
22 not quite there yet.

1 (Laughter.)

2 MR. IWASAKI: It only seems like that in some
3 cities.

4 MR. DIETER: It's one lawyer per 250 people.
5 And it's a little bit like the -- you know, we produce
6 plenty of food, but there are starving people. So
7 what's wrong with the distribution system?

8 So, anyway, I guess we probably should wrap
9 this up shortly, because we will have a fuller
10 discussion --

11 MR. GARTEN: I have to come to the defense of
12 the profession. There is no profession that equals
13 public service that lawyers give to the public, and
14 especially through legal services, state by state. No
15 question about it.

16 You don't see it among any other profession or
17 any other businessman. And it's impossible to expect
18 lawyers to fill the gap entirely, put the whole burden
19 on them. It has to be put on the public, as well.

20 And I can see it throughout my entire career.

21 I don't see the medical profession doing what we're
22 doing, the dental profession, the businessmen. Lawyers

1 are putting themselves out -- and you saw it here in
2 Montana -- and to expect more out of them -- they have
3 to earn a living, too -- is unreasonable.

4 So, I would suggest to you that trying to
5 shift the burden upon the legal profession is totally
6 inappropriate.

7 MR. DIETER: I wasn't shifting the burden, I
8 was just pointing out that we do have a special
9 responsibility.

10 MR. GARTEN: Which we're meeting, which we're
11 meeting.

12 MR. DIETER: Okay.

13 MR. HALL: Well, since I knew we would discuss
14 this in the full board, I will try to be brief. But I
15 think the real point to be made here is that this board
16 is charged for trying to be responsible for making sure
17 that poor people receive equal access to justice in
18 this society.

19 Every constituency that we have ever had come
20 before us, people in the field represented by NLADA,
21 the American Bar Association that has done studies on
22 legal need, various states have done the legal needs

1 studies, and every state we have visited, what we get
2 over and over again is compelling evidence of how great
3 the need is.

4 So, I agree with Tom that we could do a very
5 sophisticated study about the overall need and LSC's
6 portion and other portions, but I am willing to bet
7 that once that study is done, it will show great need,
8 and it would show that the federal government has a
9 significant role to play.

10 I don't think any of the requests that have
11 come forward -- including the administration's or from
12 other bodies -- have been unreasonable. They are not
13 saying that because there is a 20 percent need, then we
14 need \$2 billion. I think that's mischaracterizing
15 what's going on.

16 People are asking for what I would -- using
17 their words -- aggressive and reasonable request, or
18 modest and moderate positions for need that is
19 tremendous.

20 So, using your numbers, if there is 1 lawyer
21 for every 250 people, why in the State of Montana,
22 based on the report we got yesterday, there is 1 legal

1 service lawyer for 13,000 people? It means that for
2 those individuals who can pay and can afford legal
3 services, they find lawyers and lawyers find them. But
4 for those individuals who can't, they end up not being
5 served.

6 And so, the fundamental question is do we
7 believe that poor people are entitled to the same type
8 of justice that everyone else is. And unless we feel
9 that there is a second class level of justice for poor
10 people, then we have to understand that there is a
11 great need, and the type of budget requests that have
12 been put before us are modest in regards to the depth
13 of that particular need.

14 MR. IWASAKI: If I could --

15 MR. DIETER: Yes, go ahead.

16 MR. IWASAKI: In some ways, we're talking
17 about two different levels of magnitude. The
18 discussion of need, I think many in the community would
19 be happy to have that conversation to point out the
20 disparities of equal justice in this country. Then we
21 would be talking about billions of dollars in that
22 differential, in that inequality.

1 But I am not here to talk about that. I am
2 here to discuss what is before the committee now. That
3 discussion we should have, and I want to say I think we
4 should be careful not to be in a situation where LSC is
5 the residual of that amount. LSC should take the
6 leadership in that, and be the national leaders in
7 setting the standard for equal justice.

8 The reason is -- and you pointed out -- there
9 are different sources of funding available. Most of
10 those sources of funding are very restricted, and
11 limited in time, and narrow. We do -- we have a dozen
12 lawyers doing domestic violence work for clients in our
13 area, because we get various sources of funding from
14 the Department of Justice and local communities.
15 That's great work to do, but that's year to year, and
16 restricted in certain areas.

17 And so, while they counts as a dollar going to
18 legal services, it's nothing like the sort of funding
19 that the Legal Services Corporation can provide.

20 What I am urging here, in addition to a
21 broader conversation, which I think would be great to
22 have, which would reveal that we're not talking about

1 differentials of \$100 million or so, but much larger
2 numbers, that the board adopt a position that is
3 principled, that is tied to what Congress has done
4 before, but still only makes the slightest dent in the
5 overall need.

6 Because we're not talking about fine tuning.
7 There may be some confusion about numbers, and it gets
8 a little confusing for some. But we are nothing close
9 to the big picture. We're not -- this is -- we're not
10 talking about a fine tuning of how much it should be.
11 We're not close, even with the numbers the ABA is
12 proposing.

13 MR. DIETER: Don, did you want to say
14 something?

15 MR. SAUNDERS: If I could, Mr. Chairman, just
16 very briefly, to supplement, since this discussion
17 didn't come up yesterday.

18 Bruce said it exactly right. We are not
19 saying that what we brought to you as a rationale
20 addresses the questions and the appropriate concerns of
21 this board. We did adopt this as a very conservative
22 approach to come to you for this year.

1 We begin to realize that those figures are 11
2 years old, and it's incumbent upon us to have these
3 discussions. There are a number of legal needs
4 studies, including the one you heard about being
5 conducted in Montana, in addition to the ABA study,
6 which is certainly dated, and does leave some questions
7 open.

8 All of those continue to indicate that a huge
9 unmet need exists. We are very closely working with
10 the ABA. I hear what you're saying, and certainly it
11 is a healthy discussion that I can ensure you that the
12 NLADA will take upon before we come before you again
13 next year. We will certainly listen to what you're
14 saying and try to get into the more detailed
15 discussion.

16 We don't have a coherent national delivery
17 system in this country. That's one of the problems.
18 You are the bedrock. You are the foundation upon which
19 all this other money is being raised. Without LSC
20 funding, you would not have nearly the pro bono
21 commitment you have in many states, merely the capacity
22 to raise some of these other funds.

1 So, it's appropriate, and certainly -- in
2 fact, we were struggling, as we discussed coming before
3 you, to come up with a better rationale, other than,
4 you know, the 25 percent cut. I can assure you that
5 when we have that discussion, you will see we can
6 document a federal need, a federal component that would
7 be way beyond what we're asking you to do -- or
8 certainly beyond what management is asking the board to
9 do.

10 And I just wanted to not leave the ABA alone
11 in that rationale, because we have had many long and
12 difficult discussions about how to make our case, and I
13 can assure you that before we come back to you we will
14 take to heart what you're saying.

15 MR. DIETER: Tom?

16 MR. FUENTES: Mr. Chairman, I appreciate all
17 this dialogue. And I think before us is a concrete
18 task, and that task is to put forward a number as this
19 finance committee's responsibility and agenda states,
20 we have before us a proposal, recommendation, which is
21 the best effort of management to give us a concrete
22 number.

1 MR. GARTEN: I don't know where you come up
2 with the figures, looking at this chart.

3 MR. FUENTES: Just --

4 MR. DIETER: I think the management
5 recommendation is for \$361.9 million.

6 (Simultaneous conversation.)

7 MR. FUENTES: All right, then. What was your
8 final number there?

9 MR. DIETER: The recommendation for the
10 benchmark for 2006 is --

11 MR. FUENTES: Okay. Then say \$359 million.

12 MR. GARTEN: Okay. And can I -- where do you
13 get \$359 million?

14 MR. FUENTES: Taking \$2 million off of \$361
15 million.

16 MR. GARTEN: And what is the \$2 million?

17 MR. FUENTES: The \$2 million is the
18 understanding of current operating under budget of
19 \$1,250,000, and \$1 million of the loan repayment
20 program.

21 MR. DIETER: Is there a second of -- on the
22 motion?

1 (No response.)

2 MR. DIETER: I'm not sure, procedure-wise --

3 MS. MERCADO: It fails, for lack of a second.

4 MR. DIETER: It fails, for lack of a second at
5 this point.

6 MS. MERCADO: So then another motion will
7 be --

8 MR. DIETER: One -- just one second. The \$1
9 million loan assistance repayment program, I agree in
10 principle with you, Tom. But I think Helaine can
11 clarify how that is to be designated, and the intent of
12 that, in terms of whether this is a line item going
13 forward or a continuation of funding of the pilot
14 program.

15 And I don't know if that -- if her discussion
16 of that would help clarify that, because I also raised
17 that question yesterday, in terms of how does something
18 go from a pilot program to a line item without testing
19 the pilot, but -- Helaine, could you --

20 MS. BARNETT: Thank you. Management
21 absolutely agrees with the chair, that you don't go
22 from a one-year pilot to a permanent program. And the

1 request for the additional \$1 million going forward is
2 to continue the pilot so that we come up with
3 information that we are then in a position to go to
4 Congress and say there are results that we can
5 demonstrate as a result of the pilot project that shows
6 programs can recruit and retain qualified staff.

7 So that it is -- was not meant to be a line
8 item for loan repayment, it was to be a line item to
9 continue the pilot in order that we get sufficient
10 period of time to demonstrate actual results to
11 Congress, and then be able to make the case, assuming
12 that we are correct that we can demonstrate those
13 results that this should be a permanent line item.

14 M O T I O N

15 MR. DIETER: Well, I guess I agree with Tom,
16 that it's time for us to move forward to present this
17 to the board. And so I'm going to make a motion that
18 we follow the recommendation of management and set a
19 budget mark of \$361,900,000, and that that be our
20 recommendation for the board.

21 And if that motion fails, then we -- as an
22 alternate motion, then, we just present this

1 information to the full board for its action without a
2 recommendation.

3 MR. GARTEN: May I make an amendment? I would
4 move that we increase the funding for technology to a
5 figure of \$5 million from the \$4 million, thereby
6 increasing the total amount of the budget mark by an
7 additional \$1 million, to a figure of \$365,900,000.

8 (Simultaneous conversation.)

9 MR. DIETER: Is there a second for that
10 motion?

11 (No response.)

12 MR. DIETER: Okay. Well, that -- it appears
13 that that motion failed, so I'm going to call a vote on
14 my motion. Or is there a second to my motion, I guess?

15 MR. FUENTES: Second.

16 MR. DIETER: Okay. Everyone in favor of the
17 motion vote aye.

18 (Chorus of ayes.)

19 MR. DIETER: Okay. And it passes unanimously.

20 MR. GARTEN: No, no.

21 MR. DIETER: I'm sorry, I thought --

22 MR. GARTEN: Yes. No, I didn't vote.

1 MR. DIETER: Oh, I thought I heard -- I'm
2 sorry.

3 MR. GARTEN: No. I vote against it.

4 MR. DIETER: Okay. The vote is two to one in
5 favor. We will present that recommendation to the
6 board at the meeting this afternoon.

7 MR. IWASAKI: Thank you, Mr. Chairman.

8 MR. DIETER: I appreciate it, and I also want
9 to say that some of the comments that I made are things
10 that have been on my mind, and maybe it's not
11 appropriate to bring it up at this particular point,
12 but I felt that this was an opportunity to raise some
13 of those issues. So, thank you.

14 MR. IWASAKI: Thank you.

15 MS. MERCADO: It would be helpful to get a
16 copy, as a board, of the ABA study that shows all the
17 funding for all of us, so that we all actually have the
18 numbers in front of us.

19 MR. DIETER: Okay. Then moving on on the
20 agenda, item six, is there any public comment?

21 (No response.)

22 MR. DIETER: Being none then, is there any

1 other business before the committee?

2 M O T I O N

3 MR. FUENTES: Mr. Chairman, in receiving the
4 notes of this meeting, I am impressed, as a member of
5 the finance committee, by the conclusion of activity by
6 our recently serving temporary inspector general.

7 And I would like to recommend at this time
8 that the finance committee recommend to the board in
9 general an appropriate resolution of commendation, and
10 to instruct the president to draft such a resolution to
11 recognize the service, in particular the financial
12 management, of our former acting inspector general, Len
13 Koczur, and to have that be part of your report to the
14 general body.

15 MR. GARTEN: Second.

16 MR. DIETER: Second? All in favor, aye.

17 (Chorus of ayes.)

18 M O T I O N

19 MR. DIETER: And we will bring that forward
20 this afternoon. And then I guess we have concluded our
21 items on our agenda, so I move to adjourn the meeting
22 of the finance committee.

1 MR. FUENTES: So moved.

2 (Whereupon, at 9:45 a.m., the committee
3 meeting was concluded.)

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