

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
FINANCE COMMITTEE

Friday, July 24, 2009

2:58 p.m.

Capitol Plaza Hotel
1717 S.W. Topeka Boulevard
Topeka, Kansas

COMMITTEE MEMBERS PRESENT:

Michael D. McKay, Chairman
Lillian R. BeVier
Thomas A. Fuentes
Laurie Mikva
Sarah Singleton
Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

Herbert S. Garten
Thomas R. Meites

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President
Karen M. Dozier, Executive Assistant to the President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary
David L. Richardson, Treasurer and Comptroller, Office
of Financial and Administrative Services
Karen J. Sarjeant, Vice President for Programs and
Compliance
Charles Jeffress, Chief Administrative Officer
Jeffrey E. Schanz, Inspector General
Ronald "Dutch" Merryman, Assistant Inspector General
for Audit, Office of the Inspector General
David Maddox, Assistant Inspector General for
Management and Evaluation, Office of the Inspector
General
Thomas Hester, Associate Counsel, Office of the
Inspector General
John Constance, Director, Government Relations and
Public Affairs Office
Stephen Barr, Media Relations Director, Government
Relations and Public Affairs Office
Kathleen Connors, Executive Assistant, Government
Relations and Public Affairs Office
Don Saunders, National Legal Aid and Defenders
Association (NLADA)
Linda Perle, Center for Law & Social Policy (CLASP)

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

2 (2:58 p.m.)

3 CHAIRMAN McKAY: I call the Finance Committee
4 meeting to order. The first item on the agenda is
5 approval of the agenda. But I first want to welcome
6 Laurie Mikva to the committee, newly inaugurated. And
7 welcome. We look forward to working with you on this
8 committee and the board in general.

9 MS. MIKVA: Thank you.

10 CHAIRMAN McKAY: First item on the agenda is
11 approval of the agenda. Do I hear a motion?

12 M O T I O N

13 MR. FUENTES: Move.

14 MS. BeVIER: Second.

15 CHAIRMAN McKAY: All those in favor say aye.

16 (A chorus of ayes.)

17 CHAIRMAN McKAY: Opposed?

18 (No response.)

19 CHAIRMAN McKAY: Next item on the agenda is
20 approval of the minutes for our meeting on April 24th
21 of this year.

22 Any comments?

1 M O T I O N

2 MR. FUENTES: Move approval.

3 CHAIRMAN McKAY: Second?

4 MS. SINGLETON: Second.

5 CHAIRMAN McKAY: All those in favor say aye.

6 (A chorus of ayes.)

7 CHAIRMAN McKAY: Opposed?

8 (No response.)

9 CHAIRMAN McKAY: The motion passes.

10 Third item on the agenda is a staff report on
11 repayment of LRAP funds. Mr. Fortuno. Mr. Constance.

12 I see we're already blessed with the presence of Mr.
13 Richardson.

14 MR. FORTUNO: Good afternoon, everyone.

15 CHAIRMAN McKAY: Good afternoon. So you have
16 the floor. If you could give us a staff report. I
17 know you've given us some written materials, but we
18 look forward to hearing from you now in your
19 presentation.

20 MR. FORTUNO: I provided a fairly detailed
21 report of what's happened since our -- since this
22 committee last met.

1 As you may recall, in Portland there was
2 discussion about whether we had legal authority to
3 transfer the funds and -- to move the funds, and
4 whether that was a transfer or a reprogramming.

5 After the meeting, I met with -- spoke with
6 the leading persons on transfers or reprogramming,
7 authorization of transfers and reprogramming in
8 particular. And twice, actually, once after the
9 meeting in Portland where they confirmed our
10 understanding as to what the law was.

11 Thereafter, also met with congressional
12 staff, a member of our appropriation -- Senate
13 appropriation subcommittee -- subcommittee or
14 committee? Subcommittee -- and she disagreed with that
15 entirely. She made very clear that their understanding
16 was -- that their view was that this was a
17 reprogramming.

18 Afterwards, I checked again with the folks at
19 GAO to make sure that they understood what information
20 we were getting from the Hill and could respond to
21 that. They still respectfully disagreed, but
22 understood that in this case we were getting fairly

1 clear direction from at least the staff of our
2 subcommittee on the Senate side.

3 And they also recognize that this is, in
4 effect, a zero sum game. That is, the money that's
5 being moved is actually restoring money that had been
6 moved out to begin with. So I think, as Herb described
7 it at the last meeting, it's reversing an entry.

8 And they recognized that. Seemed to feel
9 that no one would take great exception to it. But they
10 still felt that, technically, it was a transfer. But
11 they recognized the guidance we were getting from our
12 appropriators.

13 And so I come to you as someone between a
14 rock and a hard place, if you will. We have got what
15 may be conflicting views. But it seems to me that
16 having been -- having discussed it with everyone, those
17 that have generated published opinions and the
18 authorities that we don't really rely on, and having
19 discussed it with the representative from the Hill, who
20 made clear what they felt they did and what they felt
21 the law is that governs that money, it seems to me
22 that -- and since we did move that money in the hope

1 that we'd be -- and with the expectation that we'd be
2 able to move it back, it seems that, I think in this
3 instance, we can do that.

4 I would suggest that if we in the future
5 intend to move funds between statutory lines, that is,
6 in appropriation, when we have language, statutory
7 language in an appropriation, that says, and so many
8 dollars of this shall be for this purpose, if we're
9 going to move that from that line to another line, that
10 we might want to just revisit this issue.

11 But for these purposes, I think that I'm
12 comfortable with the board going ahead and moving the
13 funds as a reprogramming back to LRAP.

14 CHAIRMAN McKAY: Thank you.

15 MR. FORTUNO: And again, I've provided a
16 memo, much more detailed. But that's kind of it in a
17 nutshell.

18 CHAIRMAN McKAY: And was that memo given to
19 us under seal, attorney-client privilege?

20 MR. FORTUNO: Yes.

21 CHAIRMAN McKAY: Okay. Questions or comments
22 from the committee? Or John, Mr. Constance?

1 MR. CONSTANCE: May I just add --

2 CHAIRMAN McKAY: Yes.

3 MR. CONSTANCE: Thank you, Mr. Chairman.

4 John Constance, director of government relations and
5 public affairs.

6 The only thing I would add to what Vic has
7 said is that when we met with Erin Cochran, who is the
8 subcommittee counsel, she made it clear that before
9 meeting with us, she had checked her interpretation
10 with her counterpart on the minority side at the
11 subcommittee level as well as the representatives of
12 House of Representatives appropriators, both majority
13 and minority, and had also checked it with the full
14 committee counsel for the Senate Appropriations
15 Committee as to her interpretation, and found that she
16 was comfortable that she was speaking for all of them
17 in terms of her feeling that this in fact was a
18 reprogramming, not a transfer. So that was --

19 MR. FORTUNO: Yes. And that's noted in the
20 memo.

21 CHAIRMAN McKAY: And again, the problem is
22 I'd like to start talking about that memo because I

1 thought it was very well done and very helpful. And it
2 certainly validates your observation, Vic, that we're
3 between a rock and a hard place.

4 And, you know, while I do receive some
5 comfort from that attorney's analysis, the Senate
6 staffer's analysis, there was a case law that I read in
7 the memorandum that also causes me concern in response.

8 And I don't want to violate the confidence here by
9 going -- just to let you know that I've studied it
10 carefully. I'm concerned.

11 But now that I've -- you know, our general
12 counsel has done what he's done, and I applaud him, by
13 the way, for bringing this to our attention to make
14 sure we did everything we could because in spite of
15 what we heard from the Hill, GAO thought otherwise, and
16 still we're not getting a clear message.

17 But I feel comfortable now with the advice
18 that we're getting and that we should proceed,
19 recognizing, though, that this is not an easy call.

20 So any other questions or comments from the
21 committee?

22 MS. SINGLETON: What form of action do we

1 need to take on this?

2 CHAIRMAN McKAY: So do we need to make a
3 motion and a recommendation to the full board?

4 MR. FORTUNO: Well, there's a resolution
5 which, if adopted in its current form, would accomplish
6 any number of things, one of which is authorizing the
7 reprogramming of these funds.

8 CHAIRMAN McKAY: And that's the next item on
9 the agenda, Sarah. And included in that motion would
10 be the resolution to approve the reprogramming of those
11 funds.

12 MS. SINGLETON: Thank you.

13 MR. CONSTANCE: Also, Mr. Chairman, one other
14 thing. If that were to be approved, I just wanted to
15 let the committee know we have a draft to request the
16 reprogramming action that we would immediately act on.

17 So if there's a question operationally what happens
18 after this, then we would be ready to move forward with
19 that.

20 CHAIRMAN McKAY: Great. Thank you.

21 Questions or comments from the committee or
22 any other member of the board?

1 (No response.)

2 CHAIRMAN McKAY: I want to thank everyone for
3 their good work -- Vic, but also you, John, and
4 everyone else in management, and having, I think, what
5 was a spirited exchange. But it also -- the end result
6 is if anyone should challenge this action, I think the
7 record will reflect that we did everything we could to
8 abide by the law and do the right thing, as a year ago
9 we did the right thing, and now we're doing the right
10 thing by putting that money back.

11 MR. CONSTANCE: Thank you.

12 CHAIRMAN McKAY: Thank you.

13 The next item on the agenda is to consider
14 and act on revisions to the consolidated operating
15 budget for fiscal year 2009. Mr. Richardson and Mr.
16 Jeffress.

17 MR. RICHARDSON: Thank you, Mr. Chairman.
18 For the record, I am David Richardson, treasurer of the
19 Corporation.

20 A memorandum was e-mailed to you earlier this
21 week. It is dated July 20th. It is also noted as page
22 41-A. And I've asked to see if everybody has a copy of

1 that. If not, I brought additional copies for you.

2 The memorandum itself lays out two
3 adjustments that we have within the budget. There is
4 an increase in the other operating expenses for our
5 technology unit in the -- because of the need for
6 computer purchases, maintenance of our software. And
7 that is \$20,000 to increase the other operating
8 expenditure budget line.

9 CHAIRMAN McKAY: Help us understand where you
10 are. I lifted my eyes from the memo. Could you just
11 tell us where you are in your memo?

12 MR. RICHARDSON: Okay. It's the first
13 indented paragraph.

14 CHAIRMAN McKAY: Okay. Thank you.

15 MR. RICHARDSON: The second adjustment is
16 from program performance, and it had some delays in
17 hiring staff this summer, in particularly in helping
18 with the TIG competition initiative. We have brought
19 in a temporary employee to help there. We've also had
20 some summer interns in this year, and we need to move
21 \$20,000 into the temporary employee pay budget line.

22 Both these funds are available from

1 technology, from the personnel compensation line and
2 also from the program performance personnel
3 compensation budget line. So there is no increase to
4 either of these budgets. The transfers themselves were
5 able to be handled within each office's budget.

6 I spoke with the Inspector General. They
7 have also looked at their office's expenditures, and
8 there is no internal budgetary adjustments needed for
9 their budget at this time.

10 These are the only two adjustments. Usually
11 I report to you any adjustments that are over \$5,000.
12 In this particular review of budget expenditures, these
13 were the only two adjustments that were made.

14 In addition to that, the last paragraph goes
15 into sort of the process that you just spoke about with
16 Mr. Fortuno and Mr. Constance; refers to the memorandum
17 that Mr. Fortuno provided to you; and the
18 recommendation is that you would authorize management
19 to move \$500,000 to the Herbert S. Garten Loan
20 Repayment Assistance Program from management and grants
21 oversight. And following that, we would complete the
22 reprogramming notice that Vic was talking about that

1 would go to Congress.

2 So there is no increases in the budget.

3 Everything is within the current budget that you passed
4 in April.

5 There is one adjustment that we see coming
6 down the line, and that is the money that we have
7 received the last couple of years from the State
8 Justice Institute. I've been told that we should get
9 \$300,000 from them, but it may go as high as \$400,000.

10 But the resolution asks you to approve the
11 amount of increase from the State Justice Institute to
12 be able to increase the budget in the same amount,
13 increasing the technology initiatives budget so that
14 then those funds can be awarded to the selected
15 grantees for court systems that may happen with the
16 state justice grants.

17 The state justice grants goes into helping
18 the courts to be able to help clients to improve access
19 to the courts, and something that we've entered into a
20 partnership the last three years with them. And we are
21 continuing that process. So while the budget does not
22 increase, we've contemplated that it will increase when

1 we do get that money. And we're asking for you to
2 approve that for us.

3 The resolution that we are asking you to
4 approve is on page 40 and 41 of the book.

5 CHAIRMAN McKAY: Does that complete your
6 presentation?

7 MR. RICHARDSON: It is until we get -- until
8 this salary and compensation because that is also
9 included in the resolution.

10 CHAIRMAN McKAY: So we won't address the
11 resolution in final form until we address the salary
12 increase. But I want to -- is there anything else you
13 want to discuss, though?

14 MR. RICHARDSON: There is not.

15 CHAIRMAN McKAY: Mr. Jeffress?

16 MR. JEFFRESS: Nothing from me.

17 CHAIRMAN McKAY: Okay. Then, Charles, could
18 you just briefly run through the resolution itself so
19 we know what we're looking at? I think everyone
20 received a copy ahead of time. But just so we know
21 what we have here.

22 MR. JEFFRESS: Yes. The first "Whereas"

1 describes our current consolidated operating budget.

2 The second notes that, as Mr. Richardson has just
3 presented, the operating budgets for 2009, as adjusted.

4 The third "Whereas" discusses the expected income from
5 the State Justice Institute intended to expand the TIG
6 grants.

7 And the resolution then has three parts: one
8 with respect to the pay increase that is management's
9 recommendation, and again, we want to defer this item,
10 action on this resolution, until you address the pay
11 increase later in the agenda; second, that you approve
12 the transfer of the money from MGO to LRAP -- the
13 reprogramming of money from MGO to LRAP; and third,
14 adopting -- readopting the consolidated operating
15 budget with these adjustments.

16 CHAIRMAN MCKAY: And is the resolution --
17 does the way the resolution is drafted, does that
18 assist management, then, on how to deal with the State
19 Justice Institute funding? It's a "Whereas" clause,
20 but does that last "Resolved" then address that
21 satisfactorily?

22 MR. JEFFRESS: I'll let David speak it.

1 Because he did not know -- we do not know at this point
2 the exact amount, we couldn't put a dollar amount in
3 here. If we wanted to add something, and management
4 has authorized to increase the TIG grants value amount
5 to be received from the State Justice Institute, we
6 could add that to it.

7 CHAIRMAN McKAY: Or we could just simply wait
8 till the money comes in and then adjust the operating
9 budget at that time.

10 MR. JEFFRESS: The difficulty with that is
11 that we'll probably be awarding the grants prior to
12 your next meeting.

13 CHAIRMAN McKAY: So what do you need from us
14 to allow you to do that?

15 MR. JEFFRESS: In adopting this issue,
16 adopting this resolution, performance resolution,
17 that'll be the conclusion of the motion, that
18 management has authorized to increase the TIG grant by
19 whatever amount of funds come in from the State Justice
20 Institute.

21 CHAIRMAN McKAY: So we -- that's not in here
22 now, though.

1 MR. RICHARDSON: It is not, and I can adjust
2 the resolution.

3 CHAIRMAN MCKAY: Okay. Sarah?

4 MS. SINGLETON: I would suggest that the
5 resolution be amended to have that as a "Resolved"
6 clause.

7 CHAIRMAN MCKAY: Right.

8 MR. JEFFRESS: We'll do that before your next
9 agenda item.

10 MS. SINGLETON: Before what?

11 MR. JEFFRESS: The pay increase agenda item.

12 CHAIRMAN MCKAY: So you're going to be able
13 to make the change and bring us hard copies?

14 MR. JEFFRESS: Yes, we will, won't be,
15 Kathleen?

16 CHAIRMAN MCKAY: All right. Great. Well,
17 that's what I was driving at. It seems to me it would
18 be helpful for you to have that, so that would be
19 great.

20 MS. SINGLETON: But it probably should be
21 after our next agenda item. It would make more sense
22 in case of further changes.

1 CHAIRMAN McKAY: Well, I think that's right.

2 And maybe we can just sit tight and make a final
3 decision, and we'll figure out how it will be drafted.

4 Great idea. Thank you.

5 The other question I have about the
6 consolidated operating budget -- and perhaps this is
7 the best time to raise this -- I've read enough
8 materials and I know the audit committee addressed the
9 issue, the technical issue.

10 But it seems to me it has a financial impact
11 as well, and that is this question that was brought to
12 our attention by our outside auditor in our meeting in
13 January, and that is: Perhaps some of the employees we
14 have been paying as independent contractors should,
15 under IRS regulations, be treated as temporary
16 employees? And that has a financial impact.

17 And I guess my question is: Isn't it
18 appropriate for us, for management, to be at least --
19 and I recognize there may be a difference of opinion of
20 what the IRS might do -- but if the IRS says, yes, they
21 should be treated as temporary employees and you should
22 be paying a certain amount of money, that will have an

1 impact on us.

2 And I'm wondering if, at the very least, we
3 should have a contingent liability analyzed, that is,
4 figuring out how much this could cost us, and get this
5 down in our books so we can start planning for it.

6 I'd like to hear from both of you on this.

7 MR. JEFFRESS: Mr. Chairman, I'd agree with
8 your assessment, and we will do that. We have made
9 some preliminary conclusions. We have had some
10 conversations with our outside counsel as to the extent
11 of the tax liability.

12 I'm not at liberty in open session to discuss
13 their response to us. But we can certainly, as you
14 request, produce some numbers based on what everybody
15 is predicting at whatever time you want.

16 CHAIRMAN McKAY: And what do you feel about
17 this, David?

18 MR. RICHARDSON: And I agree. It will either
19 have to be a liability built into our financial
20 statements for the year, or it will have to be a
21 contingent liability noted in the notes.

22 But that's something that we will discuss

1 with counsel and determine how is the best way to
2 handle it, both internally for financial statement
3 purposes and noting the liability that needs to be
4 recognized.

5 CHAIRMAN McKAY: And I recognize this is
6 going to -- this is potentially a big issue. And I
7 really don't want to wait until October on this. And
8 so recognizing that the finance committee is going to
9 be meeting some time in September, I'm hoping that you
10 can finalize your legal analysis on this, that is,
11 trying to figure out how far back this could go,
12 putting a number on it and having it to the finance
13 committee, and copy the rest of the board, well before
14 our September meeting.

15 Mr. Garten?

16 MR. GARTEN: I hate to take issue with so
17 many opinions. But I think we ought to defer acting on
18 this until we have a complete report from counsel as to
19 the liability. There are different degrees of
20 liability, different penalties that might be assessed.

21 And to try to quantify this on a statement,
22 whereas our own independent CPA just footnoted it, and

1 we can continue the footnote without getting into
2 dollars. And by trying to quantify it, you may hamper
3 the resolution of settling this matter.

4 So that would be my advice. But naturally,
5 I'm hearing other opinions here, which I respect. But
6 I say defer it. Wait till we -- you made a reference
7 to the fact that when you get the report from counsel
8 as to where to be, you'll be able to come up with a
9 better judgment on what's involved here.

10 And I think that footnoting it, just like the
11 CPAs did, is the way to handle it. It is a contingent
12 liability, but in an indefinite amount. We don't know
13 what that amount is.

14 CHAIRMAN McKAY: That's a good start. I
15 agree. And certainly I don't want to be incurring on
16 your turf, Mr. Garten, because this is your area, not
17 mine.

18 I want to make sure we are fiscally prudent
19 and that we play by the rules, act consistent with
20 accounting regulations and rules. And that's my
21 motivation. And as someone -- and this is my turf --
22 as someone who negotiates with the government on a

1 regular basis, I certainly don't want to undermine our
2 negotiation position.

3 I'd like to hear from our -- from Mr. Schanz.

4 And if he could share with us some of his thoughts on
5 this particular issue because, frankly, I had a
6 particular feeling about this. I'm certainly swayed by
7 what you had to say. But I do want to make sure we
8 handle this appropriately.

9 So Jeff, if you can share with us your
10 thoughts, I'd appreciate it.

11 MR. SCHANZ: This is Jeff Schanz, the
12 inspector general of the Corporation.

13 It's a sticky issue. I tend to agree with
14 Mr. Garten right now. While we can anticipate what our
15 liability is, we took ownership -- we, the OIG, took
16 ownership of this finding in our contracting letter
17 before it was recently issued. And it's something that
18 needs to be clarified, I think sooner rather than
19 later.

20 Now, the Corporation has engaged outside
21 counsel for an independent opinion as to which side of
22 the ledger board this will fall on. In the meantime, I

1 think trying to cost out what the contingent liability
2 may be is -- it's a laudable effort, but it may be
3 wrong. It may be a waste of resources at this time
4 until we get a final declaration and board adoption
5 that this is in fact how these employees should be
6 classified, how these contractors should be classified.

7 Once that determination is made, then I think
8 we can go back -- we, the Corporation, we, the IG, we
9 the independent counsel -- go back and determine how
10 far you're looking backwards, what the statute would
11 require, if there's a safe harbor provision, and
12 several other issues that I think need to be fully
13 explored before we try to quantify the dollar amount.

14 CHAIRMAN McKAY: Okay. What do you
15 recommend, again, Herb? Could you say it one more
16 time?

17 MR. GARTEN: That we have a statement on the
18 financial statement, just like our CPAs had on the
19 year-end, pointing that there is a possibility of a
20 contingent liability with respect to when a final
21 determination is made on this particular issue.

22 MR. FUENTES: Mr. Chairman?

1 CHAIRMAN MCKAY: Mr. Fuentes?

2 MR. FUENTES: I understand that we're going
3 out for an outside counsel on this. Does our general
4 counsel not have an opinion on this?

5 CHAIRMAN MCKAY: I'm sure he does, and it
6 would be good to hear from him. Thank you.

7 MR. FORTUNO: This is Victor Fortunato. I'm
8 general counsel.

9 We had -- that is, the Office of Legal
10 Affairs -- had done some work on this over the years
11 and had a view on it, and that was the view that was
12 confirmed by outside counsel.

13 So I think that we're in agreement with
14 outside counsel as to the question of how these workers
15 were classified in the past. I think the question now
16 is: Is there some potential liability here as to how
17 they were classified in the past, and should we
18 quantify that?

19 And outside counsel, the law firm that was
20 used, provided labor and tax counsel. And certainly
21 they might be in a better position to address the
22 question of how far back -- if there's liability, how

1 far back it goes, the magnitude calculated.

2 There are things to factor in, you know,
3 whether a safe harbor is available to us and whether
4 things could be negotiated. But they might be able to
5 give us a better sense of what the parameters are of
6 any possible contingent liability.

7 I think that what we have addressed and what
8 counsel has addressed, outside counsel has addressed so
9 far, is our view of what is -- what the -- whether we
10 classified these employees over the past however many
11 years properly. And that's been addressed. I don't
12 think there's a question as to that any more. I think
13 we're both -- we both came up with the same conclusion.

14 I think the question now is what's the
15 liability. And that will be determined by what the
16 statute of limitations is and the exact -- you know,
17 whether there are penalties and interest and those
18 kinds of things.

19 But that we would leave to tax counsel at the
20 law firm. We can give them the raw data or, in all
21 likelihood, they will give us the parameters and then
22 we'll apply that to our data and can come up with a

1 number.

2 But I think that the point is should we have
3 a handle on what may be our potential liability before
4 we engage in financial planning and budgeting. I think
5 certainly that's a prudent course, and certainly I
6 think a possible course.

7 MR. FUENTES: Mr. Chairman, we're pretty good
8 as a finance committee for having phone meetings. I'm
9 concerned about this. I'm not pleased as a director
10 how this has evolved and has come to us, and the rate
11 and pace at which we've been informed about this issue.

12 I'd like to be on with it. I'd like to get
13 at it while this board still sits. And I would like to
14 suggest that we give the outside counsel a couple of
15 weeks, we call a meeting of the finance committee, and
16 we get at it.

17 CHAIRMAN MCKAY: We will be meeting in
18 September in D.C. to address the next budget. And I'm
19 wondering if six weeks from now is soon enough to get
20 at it, recognizing people's schedules, vacation
21 schedules and so forth. That is enough time for
22 counsel to look at it and then enough time for our

1 people to look at the numbers.

2 And I do want to be sensitive to what I hear
3 from Herb in particular, and that is we certainly don't
4 want to be undermining our case in terms of getting it
5 resolved.

6 I mean, how do you -- how do you respond to
7 that? My reaction was the same as yours until I heard
8 Herb and Jeff.

9 MR. FUENTES: Six weeks seems a long time.
10 But if you feel that it takes six weeks, I'd go along
11 with six weeks. But I hope it's top of the agenda.

12 CHAIRMAN MCKAY: And what would envision us
13 doing in six weeks?

14 MR. FUENTES: Well, being fully briefed so we
15 can truly chew on it. I don't feel that we're fully
16 informed at the present time.

17 MS. BeVIER: Mr. Chairman?

18 CHAIRMAN MCKAY: Yes?

19 MS. BeVIER: Does being fully briefed imply a
20 closed meeting or an open meeting? I'm only asking
21 this because it seems to me as though the real issue
22 here is a projected number with respect to contingent

1 liability, which involves estimates of a number of
2 different variables.

3 And I agree that the board should be fully
4 briefed. But I don't know whether that is something
5 that ought to be done in order to protect the
6 Corporation's --

7 CHAIRMAN McKAY: Wouldn't the way to solve
8 that would be to have the Baker Botts attorney come in
9 and you come in and meet with us in closed session on
10 this in September?

11 MR. FORTUNO: I think essentially to the
12 extent that we'll be discussing vulnerabilities and,
13 you know, what we're weakest and strongest on, and to
14 whom our liability would be, I think it would be in
15 closed session because we would not want to have on the
16 record in open session discussions that would undermine
17 the Corporation's negotiating position.

18 CHAIRMAN McKAY: Great. Herb? How do you
19 feel about that?

20 MR. GARTEN: That's fine. I also think that
21 it would not hurt if you were part of overseeing what's
22 going on during this period.

1 CHAIRMAN McKAY: It would be my privilege.
2 Yes. That would be great. I feel very comfortable
3 with that because it really blends my concern and Tom's
4 concern. I really join him in that. But now that I've
5 heard these other issues, addressing this forthwith but
6 hearing back from them in a closed session with regard
7 to our vulnerability, I think, would be very good.
8 Yes. And so we'll put that on our agenda in September.

9 MR. JEFFRESS: Mr. Chairman, if I might note,
10 the counsel is in Texas, and we have been having
11 telephone consultations. So probably we can just do
12 this by telephone, if that's acceptable to you.

13 CHAIRMAN McKAY: Well, Go to Meeting, for
14 crying out loud. LegalMeetings. Let's use that. That
15 would certainly be fine with us.

16 Sarah?

17 MS. SINGLETON: I'm certain Baker Botts also
18 has teleconferencing. We could probably set that up
19 between Washington and their Texas office.

20 But I wanted to say I found the memo that we
21 got to be lacking in any kind of meaningful specifics,
22 so it was really hard to evaluate the advice that was

1 being given because, while as I understand it, there
2 are certain principles that govern this decision, it
3 tends to be sort of fact-specific. And I would like to
4 have more details provided.

5 CHAIRMAN MCKAY: With regard to the legal
6 rather than -- not just the financial impact? That is,
7 how did they reach the decision that they reached?

8 MS. SINGLETON: Yes. Yes. I mean, in
9 essence, I think that there may be some people who are
10 temporary employees and some people who aren't
11 temporary employees. And I have no ability to tell how
12 they make that distinction. And I would like to get
13 that information.

14 MR. GARTEN: I think Sarah is right on point.
15 The lawyers are going to want to know a lot of the
16 facts, and they will differ with respect to individual
17 employees or independent contractors.

18 And those distinctions, when you're
19 negotiating with these people, will enter into it, into
20 any final settlement. So the lawyers are going to get
21 into the facts on --

22 MR. FORTUNO: We have legal opinions. The

1 detailed legal opinions that you're talking about, we
2 didn't get a written opinion from outside counsel. We
3 got oral confirmation. But, you know, we've got legal
4 opinions if we want to address the details, that is,
5 who we use, how we use them, how they're overseen, what
6 the various tests are, and how those circumstances
7 measure up with those tests.

8 MS. SINGLETON: Well, if we've been provided
9 those before, I apologize. I just don't recollect
10 reading anything like that.

11 MR. FORTUNO: No. No. Yes. We can make
12 them available. I can fax them to you Monday.

13 CHAIRMAN MCKAY: Well, it clearly needs to be
14 part of our -- fax them Monday, but be part of our
15 package to prepare for our meeting in September.

16 MR. FORTUNO: Sure.

17 MS. BeVIER: I just have a clarification, if
18 that's all right. I'm not sure -- I mean, these are
19 fact-specific. One of the issues that emerged was a
20 question of documentation on each of these
21 classifications.

22 That to me is separate, and it suggests that

1 legal opinions, even that address the specific facts in
2 this very fact-intensive inquiry, are not necessarily
3 going to be helpful with respect to how many people are
4 vulnerable to this challenge and so on and so forth.

5 So, you know, going back to unpack this, I
6 don't know whether we want to do -- I don't know
7 whether Sarah was suggesting a case-by-case unpacking
8 to see what we think the risks are of each
9 determination or what. I think that's -- you know, Tom
10 says six weeks is a long time. It seems to me we're
11 going to need quite a bit of information about this.

12 CHAIRMAN McKAY: Yes. Implicit in this
13 discussion is the following. You know, we as certainly
14 members of the finance committee are concerned about
15 the worst case scenario because that's our job. That's
16 our fiduciary obligation, to protect the Corporation.

17 I don't want my comments, and I'm assuming
18 this applies to everyone else that's here, that our
19 comments assume the worst case because this is, I
20 understand -- even though some analysis has been
21 validated, that it is fact-driven and no final
22 decisions have been made.

1 And so I don't want my comments, certainly --
2 and I hope I speak for everyone that we're not making
3 an assumption that we have -- in all due respect to
4 your office's findings, Jeff, this is not final. And
5 we need to drill a little deeper to make sure.

6 But in any event, we do have our obligations
7 to look at the worst case scenario so that the
8 Corporation's properly prepared. And that's the
9 environment in which we're discussing that.

10 So Sarah and then Charles.

11 MS. SINGLETON: I understand the discussion
12 we just had has been sort of a contingent liability
13 based on past practices. But it also seems to me that
14 this committee should be interested in a going-forward
15 financial implication if it's going to require us to
16 change the budget. We have a fairly high budget for
17 contract services, and I don't know where these people
18 fit. And we just need to know that kind of stuff.

19 CHAIRMAN MCKAY: That's a great point.

20 MS. SINGLETON: I mean, that's going to be
21 impacted for future budgets.

22 CHAIRMAN MCKAY: Yes. And that's been

1 discussed as part of the IG's work. But certainly we
2 need to be addressing it as well. And I agree with
3 you.

4 CHAIRMAN McKAY: Charles?

5 MR. JEFFRESS: I just want to tell the
6 chairman, in response to the OIG's contract hours you
7 just mentioned, we have committed to resolving this
8 issue by October 1.

9 Assuming your next meeting is towards the end
10 of September, we think certainly we will be far enough
11 along to both lay out for you what the outside counsel
12 has been with respect to past practice as well as what
13 we expect to be doing going forward.

14 So I believe we will be able to give you a
15 full report at your next meeting about where we are.

16 MS. SINGLETON: By next meeting, you mean the
17 September meeting?

18 MR. JEFFRESS: The September meeting.

19 CHAIRMAN McKAY: Thank you. Any other
20 questions or comments?

21 (No response.)

22 CHAIRMAN McKAY: Thank you very much. With

1 the committee's approval, we will defer action on the
2 motion until we complete the discussion of item 6, the
3 pay increase.

4 Again with the committee's approval, we will
5 go on to item 5 of the agenda, presentation on
6 financial reports for the first -- it says six months
7 of fiscal year 2009, and that should have said nine
8 months. And so that's the presentation we're going to
9 be receiving.

10 So unless I hear a screaming objection, I'll
11 make an oral amendment to the agenda.

12 (No response.)

13 CHAIRMAN MCKAY: Hearing none, Mr. Richardson
14 and Mr. Jeffress.

15 MR. RICHARDSON: Okay. Going back to a prior
16 meeting where I presented the budget report based on
17 the budget report based on the adjustments that you had
18 just approved and then didn't approve, where Sarah told
19 me I should not have expected to have in some cases, I
20 have done the same thing.

21 MS. SINGLETON: I'm sorry.

22 MR. RICHARDSON: This material does show at

1 this time, referring to page 42A and going through H, I
2 am presenting the materials as if, for instance, the
3 \$20,000 adjustments that I've just presented to you for
4 the information technology and program performance had
5 been approved. And I've also considered it as if the
6 LRAP transfer of funds has been approved.

7 MS. SINGLETON: What about salary?

8 MR. RICHARDSON: Salary I've not touched.
9 We've just anticipated at this point that any money
10 that is not awarded as far as salary adjustments will
11 just be increasing the carryover.

12 With that said, I will refer to 42A, the
13 first -- the No. 1 under that, and talk about the basic
14 field programs. We have awarded all of the money
15 within the basic field programs this year, the
16 \$366,800,000, all of it with the exception of these
17 three grantees that two of them are on interim
18 funding -- that is, the Legal Aid of Wyoming, which is
19 doing business as the interim legal services provider;
20 they are on month-to-month funding at this point.

21 There's \$479,000 remaining there for the
22 month-to-month funding, and when they select the

1 provider, and I understand the last two weeks they've
2 been working very diligently trying to get that done,
3 this is the money that will go to the funding for that
4 particular selection.

5 In addition to that, the Native Hawaiian
6 Legal Services. We have money set aside to pay for a
7 financial audit for them when it is completed. So when
8 I say -- it's actually only the one program that's
9 currently on interim funding, and that would be the
10 Wyoming program. Hawaii, money is sitting there to pay
11 for the audit.

12 And then the American Samoa money, we have
13 money for 2007, '08, and '09 that we're holding aside
14 at this point. And that totals \$895,000.

15 Those three items will add up to the amount
16 of carryover or the remaining funds that we're showing
17 in the basic field component at this time.

18 The U.S. Court of Veterans' Appeals funds,
19 we've made the grant for the year. We have spent \$1900
20 for administrative costs. So the remaining money that
21 is there, the 1959, I should say, we've spent \$2,439 in
22 addition to the \$1.7 million grant. So it's \$1959 is

1 left for the administrative costs.

2 Within the grants from other funds available,
3 we have provided three awards this year. The remaining
4 679,000 we've done in future emergency or a special
5 grant that would be given.

6 Within the technology initiative, as I said,
7 we have had a temporary employee helping with the
8 competition process this year. It is in full swing. I
9 understand that there may be some selections already
10 going on as far as the awards.

11 They have not yet been finalized. They'll be
12 presented to the president. I think some may have
13 already been submitted, but in any event, they will be
14 finalized before the end of the year so that this
15 \$3.174 million will be, for the most part, spent for
16 the technology grants.

17 It seems like there's always a few thousand
18 dollars, or last year's 200,000 and that remained,
19 lapsed over to the next. But we try to get most all of
20 the money awarded.

21 And also, the management and grants oversight
22 budget, the next section, referring to page 42B, begins

1 with the second section of Attachment A. We have money
2 in the NGO funds. We've spent 9.8 million. There is
3 \$3 million left on the budget.

4 On the loan repayment assistance program,
5 this year we forgave \$279,000 of prior year loans. And
6 we currently have receivables loans that we have given
7 this year of \$570,000. So when you look at the \$1.12
8 million as far as remaining funds, I'll note that that
9 does include the \$500,000 that we were talking about
10 with the transfer.

11 And then the inspector general -- I should go
12 back and state here, we are actually spending a little
13 bit less in management and grants administration than
14 we were in prior years, to the point of \$660,000 under
15 what we spent the prior year. And we do have
16 encumbrances. We have contracts that we've let, for
17 our program performance, consultants, and OCE
18 consultants, and then some contracting of maintenance
19 of equipment and so forth, in the amount of \$90,000.

20 In the inspector general, with three, six has
21 been spent. They are \$1.4 million under budget.
22 Expenditures are actually \$112,000 more than in the

1 prior year, and they had \$40,000 in monies that --
2 encumbrances; I lost my train of thought as I was
3 turning the page there.

4 The budget line with the adjustments, we just
5 ask you to approve everything. All the budgets will
6 be -- all the costs centers are certainly within their
7 budget or under-budget. And the budget categories, all
8 of them are under also. And the same goes for the
9 inspector general also.

10 At each meeting, I report to you the
11 president's discretionary fund. And of course, we had
12 \$6,500,000 at the end of the year. We have interest to
13 date with the bonus interest rate that we got of \$321;
14 the last month, we got \$7. So that's about what you're
15 going to see as an increase from now until that money
16 is spent.

17 We heard this morning from our grantee the
18 amount of money that they are earning on their
19 interest. We are getting about the same thing, about
20 .02 to .04 of 1 percent interest amount. That's very
21 minimal.

22 And that is my report. Be glad to answer any

1 questions that you may have.

2 CHAIRMAN McKAY: Questions or comments? Mr.
3 Jeffress, do you have any other comments?

4 MR. JEFFRESS: No, sir.

5 CHAIRMAN McKAY: Thank you. I'll move on to
6 item 6 of the agenda, the 2009 pay increase issue,
7 which is a continuation of the discussion that took
8 place at our last meeting.

9 Mr. Schanz, if you could join us, please.
10 You all, I guess -- our president sent us a memo, and
11 so did our IG. So who's going to start for management?
12 David?

13 MR. RICHARDSON: I will.

14 CHAIRMAN McKAY: Thank you.

15 MR. RICHARDSON: At the last meeting we had a
16 discussion in regards to increases. We have laid out
17 in the memorandum that is before you our position in
18 regards to the raises. We have provided you a chart
19 with this information on page 43, 44, and 45 of your
20 board book.

21 Our current locality pay is 13.1 percent.
22 Those is in the Washington area currently are at 23.1

1 percent. We are basically 10 percentage points under
2 what the feds pay with the locality.

3 Even the rest of the United States, when they
4 provide the locality, every region, major region, gets
5 locality pay, and everyone in the United States then
6 gets 13.86 on top of the pay rate. So we're even under
7 that particular rate at this point.

8 Our employees the last few years, as we look
9 at the federal increases, have received less than what
10 those of the federal employees get. And what we
11 normally try to do is look at what the GS scale is
12 given, look what the executive schedules are given, and
13 then base our raises or recommended raises based on
14 that.

15 In the last few years, 2005 our locality was
16 10 percent. It went to 11.6 in 2006. And in 2007, it
17 went to 13.1, and there's not been an adjustment since
18 2007.

19 As far as the increases, like I said, we try
20 to match pretty close to what the federal government
21 does. But in the last couple years we've actually
22 taken a few percentage points off of what the federal

1 government gives. So each year we're a little bit --
2 falling a little bit further behind at what the federal
3 government does pay for their raises.

4 I think the memo lays out the majority of
5 that information also. There is a -- the very last
6 paragraph goes into what it would pay, what the
7 additional increase would mean for the budget. It is
8 totally within the budget.

9 Basically, 1 percent of it is 70,000 as far
10 as locality. If you add the increase to pay and then
11 pay the locality on top of that, it would be \$80,000.
12 It would be an additional 10. And that's basically
13 what the memo's laying out here, that it's 320. But
14 that is actually if you were giving that amount of
15 money as far as a raise and then the locality
16 adjustment on top of that. It would have a little
17 additional effect.

18 So basically, what this would cost you for
19 this fiscal year is \$210,000 in salaries and then plus
20 the retirement and Social Security that will be paid on
21 that. And that's for the management side.

22 And then the IG side is the 95,000 there.

1 And it actually would be a little less than that
2 because, again, that's looking at a full year, and you
3 would be paying 75 percent of that in this fiscal year.

4 CHAIRMAN MCKAY: Thank you. Mr. Jeffress?

5 MR. JEFFRESS: I would just add a comment
6 similar to what I said at the last meeting, that the
7 employees of the Corporation, I think, have been
8 working very hard under very close scrutiny the last
9 two years, under scrutiny by members of Congress,
10 scrutiny by the Government Accountability Office.

11 They have put forth a tremendous amount of
12 effort to improve the way we do business, to revise our
13 procedures. We continue to have work to do, and don't
14 presume that we're doing everything perfectly at the
15 moment. But in fact, they have done a terrific service
16 for the organization.

17 A pay increase, I believe, is appropriate
18 reward for that performance. At the last meeting,
19 members expressed some reluctance to proceed with
20 performance pay, so management is very committed to
21 performance pay as a policy within our employee
22 handbook, and it continues to be of value to the firm

1 and something we think to be appropriate.

2 Nevertheless, with reluctance to proceed
3 there, we're recommending at this point that this year
4 we at least go forward to do a partial catch-up on
5 locality pay with that provided to government employees
6 throughout the country. This is not a Washington-based
7 issue. Government employees throughout the country
8 receive locality pay based on the, you know, compatible
9 private sector salaries in the areas where they work.

10 We believe it's very important that we show
11 the appreciation for the employees, that we provide
12 some increase to recognize their service, as well as
13 for us to remain competitive as a corporation in the
14 Washington area as we go forward to hire new employees.

15 CHAIRMAN MCKAY: Jeff?

16 MR. SCHANZ: Thank you. This is Jeffrey
17 Schanz, the IG.

18 I took the opportunity at the last board
19 meeting to provide the board of directors with another
20 impassioned appeal for performance-based pay. My memo
21 is dated July 9th. It's found on page 46 of the board
22 book.

1 I agree with the need for any sort of
2 recognition, and I support the 4 percent locality pay
3 that management has offered to all employees. My
4 concern with that is, very simply, that's 4 percent for
5 everybody. It doesn't recognize your top performers.
6 It doesn't give you performance-based recognition, as
7 is provided for in the employee handbook which this
8 board approved.

9 I think those of us who have been around in a
10 management position for quite some time would like to
11 recognize your top performers instead of a flat rate
12 increase. That said, if the board does not agree with
13 performance-based pay at least partially, my
14 counter-proposal would be a 2 percent locality and a 2
15 percent performance-based pay.

16 As I tried to present, I tried to personalize
17 the request because you'll see in my last paragraph I
18 provided a personal note. And I'll quote from page 48,
19 "On a personal note, the OIG has made tremendous
20 strides in the areas of production and professionalism
21 in the year-plus since my appointment, and I need to be
22 able to properly reward those outstanding performers

1 that are responsible for achieving my twin goals for
2 the OIG." End quote.

3 That's not me. That's my staff. That's my
4 staff, who I'm whipping and trying to become more
5 professional and more productive. And I would like to
6 be able to have the opportunity to recognize the top
7 performers, which would actually cost less than just
8 the 4 percent locality pay because I don't have a staff
9 full of top performers. So I would -- the 2 percent --
10 1 percent would be for fully successful, 1.5 would be
11 for superior, and then the other percent would be for
12 the top performance, which would be outstanding.

13 That's how I managed for 30-plus years, and
14 that's my recommendation to the board. Thank you.

15 CHAIRMAN McKAY: Sarah?

16 MS. SINGLETON: I have a question, not in
17 terms of the impact on people who are already in the
18 positions but in terms of trying to fill their
19 positions. And I assume that part of the locality pay
20 rationale is to allow government or quasi-government
21 entities to be able to be competitive in the hiring
22 arena.

1 What happens to an open position now if we go
2 with locality pay as opposed to if we go with
3 performance-based pay increase? Just make up a
4 position, an entry level attorney position, that's at
5 60,000. I have no idea what they're at; I just made
6 that up. All right?

7 If we go with an increase in locality pay,
8 does that go up to 60,000 plus 4 percent or not?

9 MR. JEFFRESS: The 4 percent locality pay
10 would effectively raise the top of the band and the
11 bottom of the band, would raise the pay band within
12 which we can make salary offers.

13 For any given position, whatever it's funded
14 at is what it's funded at. And depending on the
15 person's qualifications coming in, they might be -- we
16 might borrow against another or take money from another
17 position that is funded higher that is not being filled
18 at this point, or we might fund at a lower level,
19 somewhere at a lower level, and put that money back
20 into the personnel compensation to be used for a
21 different position at a different time.

22 So if the money is not in --

1 MS. SINGLETON: So what you're telling me is
2 it won't have any effect.

3 MR. JEFFRESS: The effect it has is it
4 increases the range within which we can make salary
5 offers. Any given position, it depends on the
6 qualifications of that person.

7 MS. SINGLETON: Within the range.

8 MR. JEFFRESS: Right.

9 MS. SINGLETON: And then similarly, what
10 happens if we went with a performance pay? What would
11 happen to that open position? Would the salary change
12 at all?

13 MR. JEFFRESS: Performance pay does not
14 increase the range. The locality pay would increase
15 the range, but the performance pay does not necessarily
16 increase the range.

17 CHAIRMAN MCKAY: Other questions and comments
18 from the committee?

19 MR. FUENTES: Mr. Chairman?

20 CHAIRMAN MCKAY: Mr. Fuentes?

21 MR. FUENTES: I know we're not at the
22 resolution. When we come to the resolution, I'm going

1 to ask you as colleagues to divide the question because
2 I made it clear at our last meeting that I would not
3 support a pay increase.

4 I think what we have here is a pay increase
5 being brought to us under the guise of locality pay
6 that is actually an attempt at a performance increase.

7 I think that there are other benefits to employment
8 with this Corporation, as there are other benefits to
9 anything related to government that is special and
10 above what other people working in America receive. I
11 think the privilege, and I do mean the word privilege,
12 to work in the nation's capital is very special.

13 The cost of living in all cities and
14 communities across America is less than it was a year
15 ago because of this economic recession that we're in.
16 I think that we have to recognize that we go back to
17 our communities, and we have to look our neighbors in
18 the eye.

19 So I'm not going to support this, and I will
20 ask at the appropriate time that the resolution, the
21 question, be divided.

22 MS. BeVIER: Mr. Chairman?

1 CHAIRMAN McKAY: Lillian?

2 MS. BeVIER: I was very skeptical about the
3 pay increase as well. I had indicated that perhaps I
4 might be more inclined to vote for a locality pay
5 increase.

6 But I agree with Mr. Fuentes that this is not
7 what I had in mind. And my problem is not quite
8 similar to his, but what troubles me is that the
9 relevant comparison that you are making is to the
10 federal government employees and their pay scale.

11 To my mind, the relevant comparison might be
12 more inclusive from a state. Our state employees have
13 been frozen, no matter how good a job they do. Indeed,
14 the state budget has been cut by 15 percent. A lot of
15 people in the private sector have lost their jobs.

16 So the idea that somehow if you work for the
17 federal government you're going to get bumped up to
18 account for troubled times and increased costs and so
19 forth is troublesome to me.

20 I do not mean to disparage in any way the
21 work that our staff does. I think they do a wonderful
22 job. I'm very sorry to be in a position to have to

1 say, I can't do it right now. I would like to, but I
2 just don't think the comparison is the right one
3 between other federal employees and -- and even the
4 private sector. I'm just not sure that that statistic
5 still works. Even if you did it federal government and
6 state governments, you'd have a very different
7 comparison.

8 MR. RICHARDSON: If I can refer you to the
9 memo on 43, we talk about what the federal government
10 does and the increases that they give. But the
11 locality adjustment is based on the disparity between
12 what the private sector is paying and then what that of
13 the federal government.

14 So if you would look at -- if you were
15 looking at the private sector in the Washington, D.C.
16 area, they are higher than the federal -- what the
17 compatible federal employee would be paid. This is a
18 way of increasing that employee in the Washington area
19 up to a more level playing field with what the actual
20 private sector is paying their employees. And that is
21 the same thing nationwide.

22 So that is in the second paragraph, and it

1 basically says, these percentages may seem large; the
2 pay disparity between private -- or public and private
3 sector is of such magnitude that since 1994, the
4 federal government has been unable to meet its mandate
5 objective of eliminating the pay cap.

6 CHAIRMAN McKAY: Any other questions or
7 comments from the committee?

8 (No response.)

9 CHAIRMAN McKAY: I'm troubled with the
10 comparison. And I don't think it is inappropriate to
11 compare LSC locality pay with the rest of the federal
12 government. That's the Washington, D.C. area. And I'm
13 troubled with the disparity. And I'm seeing that the
14 federal government has increased it by nearly 5
15 percent. We're 10 percent right now.

16 And the flip side to the concern that's
17 expressed here is that of good management. And I'm
18 concerned about recruitment and retention if we
19 continue with this pattern. I'm not saying I want to
20 vote to support this, but it concerns me. And I'm
21 concerned about losing good people that we have in
22 front of us and back at the headquarters.

1 So that's what I'm wrestling with. I'm
2 certainly well aware what's going on in the economy.
3 I'm well aware what's going on in Washington state.
4 The same thing is happening in Washington that's
5 happening in Virginia.

6 But I am concerned about -- I'm wondering to
7 a certain extent if that's apples and oranges. We're
8 talking about D.C. and what's keeping some of these
9 good people from walking down the street to going to
10 another agency. And this is not an argument against.
11 It's a question. And that concerns me as I wrestle
12 with this.

13 MS. BeVIER: Right. I understand that. And
14 to a certain extent, my concern with that question is
15 just I'm trying to put my finger in the dike. I
16 understand that the federal government is the employer
17 of --

18 MR. FUENTES: Choice.

19 MS. BeVIER: -- where a lot of people are
20 going to federal government employment because they are
21 still hiring, they're giving raises and so forth.

22 So in part, I'm a little bit saying that is a

1 troublesome fact to me. But I agree with you that it's
2 a risk with respect to management and with respect to
3 having talented and capable people.

4 I think, however, that this is -- it's a very
5 difficult question. My guess is that -- but it's only
6 a guess -- that everybody has to pull a little bit
7 extra. Everybody. And that includes people who work
8 at Legal Services Corporation.

9 CHAIRMAN MCKAY: Thank you. Sarah?

10 MS. SINGLETON: Mr. Chairman, I am reminded
11 of when we were trying to hire an IG. And the people
12 who sat on the committee will remember that some of the
13 resumes we got that we thought looked very good, when
14 we would tell them what our anticipated salary is, they
15 would say they were no longer interested. And that was
16 more than one person.

17 And so I do think this is something that when
18 we are hiring, at least at the upper levels of our
19 organization, that the fact that we are not compatible
20 to the federal government does hurt our ability to
21 hire. And these were people who were coming from the
22 federal government, that's true.

1 But to me, that is the relevant comparison
2 that from a practical standpoint we have to look at.
3 And since this is within the budget that has already
4 been approved by us and approved by Congress, it's not
5 like we're making the federal deficit any worse, you
6 know.

7 I mean, I agree with the people who say it's
8 troubling because of the times that we're in. But I
9 also think it's troubling if we don't recognize the
10 impact it has on the ability of the organization to go
11 forward.

12 CHAIRMAN MCKAY: That's a very good point.
13 For the record, in spite of the difficulty that you
14 highlighted about the IG, we did get the best candidate
15 nevertheless. But still, some of the less --

16 MR. SCHANZ: At a bargain basement price.

17 (Laughter.)

18 CHAIRMAN MCKAY: We were startled that the
19 more inferior candidates withdrew.

20 MS. SINGLETON: You mean they choked?

21 MR. FUENTES: Mr. Chairman --

22 CHAIRMAN MCKAY: But if I could complete my

1 thought, that was an attempt at levity, but there was a
2 serious effort here. I did have that in mind, and I am
3 concerned about that, and I do agree with you.

4 Mr. Chairman?

5 MR. STRICKLAND: I wanted to ask for a point
6 of clarification. Is there -- thinking about level V
7 of the executive schedule, is it a stated dollar
8 amount?

9 MR. JEFFRESS: Yes, it is.

10 MR. STRICKLAND: And I take it from this
11 discussion that, somehow, locality pay -- in other
12 words, I don't think the way that the statute is worded
13 on the level V, it doesn't address locality pay. Isn't
14 that right?

15 MR. JEFFRESS: That's right.

16 MR. STRICKLAND: So I take it from that,
17 then, that locality pay is in addition to that upper
18 level --

19 MR. JEFFRESS: That's correct.

20 MR. STRICKLAND: -- of level V. So we're
21 past that hurdle. Is that correct?

22 MS. SINGLETON: Isn't that why you did a

1 footnote?

2 MR. JEFFRESS: The wording in the
3 appropriations bill last year authorized it.

4 MR. STRICKLAND: That's right.

5 MR. JEFFRESS: And we anticipate similar
6 wording in the appropriation bill this year.

7 MR. STRICKLAND: Okay. So that's how we're
8 doing that, is the continuation of that language in
9 appropriations?

10 MR. JEFFRESS: Yes.

11 MR. STRICKLAND: Okay. Thank you.

12 MS. BeVIER: Could I just ask a further
13 question?

14 CHAIRMAN McKAY: Absolutely.

15 MS. BeVIER: My understanding is that our
16 president's salary is set and we can't pay anyone more
17 than that, even locality pay. Right? So that the
18 president -- I mean, we could pay a new president less
19 than we presently pay the president.

20 But from the president -- and the president
21 then sets the salaries of the upper level. So I'm not
22 sure who we're talking about when we talk about upper

1 level employees.

2 MR. STRICKLAND: Well, I think let's ask Mr.
3 Jeffress to outline that for us. I'm not the best
4 person to answer that one.

5 MR. JEFFRESS: The president's level of the
6 Corporation can be no higher than level V of the
7 executive schedule. And the current contract sets that
8 pay at level V. The appropriations language authorized
9 locality pay for the Corporation for all employees,
10 including the president. So the locality pay is --

11 MS. BeVIER: Excuse me, Mr. Jeffress. That's
12 not my question.

13 MR. JEFFRESS: Okay.

14 MS. BeVIER: My question is whether anybody
15 in the Corporation is permitted to be paid more than
16 the president.

17 MR. JEFFRESS: Not only that -- no one in the
18 Corporation is permitted to be paid more than the
19 president; the handbook that the board approved put a
20 maximum for other officers of the Corporation at 97
21 percent of the president's salary, and a maximum for
22 the office director of the Corporation at 92 percent of

1 the president's salary.

2 So the president's salary does set limits for
3 the other senior people at the Corporation.

4 MS. BeVIER: I see. So --

5 MS. SINGLETON: But it's plus locality pay.

6 MS. BeVIER: I understand that.

7 MR. FUENTES: Mr. Chairman, I'd like to
8 respond to Sarah's comment.

9 Sarah, you may have a valid concern about
10 what we pay an individual like at our hiring of the
11 inspector general. But that's another point in time.
12 There's a place to resolve that.

13 The increase of locality pay is separate and
14 apart from that. It's just as wrong for us to pass a
15 locality pay as a ruse for attempting to give a
16 performance pay at this time.

17 Let's fix at what level or what amount we
18 hire people at. That's a point in time. But to give a
19 universal locality pay is not the vehicle to
20 appropriately resolve that or fix that.

21 And to address your point, Mr. Chairman, with
22 all due respect, I find it difficult to be fixing this

1 against the federal government. Why are we in the
2 problems of America today? Because the government has
3 been spending for too long too much. So I don't see
4 any reason to move toward their error.

5 CHAIRMAN MCKAY: Any other questions or
6 comments?

7 MS. MIKVA: I have a question. To read this,
8 that there was no increase in locality pay in 2008. Is
9 that right?

10 MR. JEFFRESS: That's correct.

11 MS. MIKVA: And this was -- in the past,
12 there has been on an annual basis?

13 MR. JEFFRESS: In the past, on an annual
14 basis, there has been some increase in locality pay.
15 As the federal government has increased locality pay,
16 we have increased as well -- not at the same rate, but
17 we have increased somewhat.

18 In 2008, there was a question raised as to
19 whether the LSC locality pay program was appropriate or
20 not. So we made no -- took no action in 2008 until we
21 got congressional approval. At the time we got
22 congressional approval, it was effectively end of the

1 year, October 1, and there's been no increase since.

2 So there's been no increase in locality pay
3 since January 2007.

4 CHAIRMAN McKAY: Any other questions or
5 comments?

6 (No response.)

7 CHAIRMAN McKAY: I've got to say for the -- I
8 really have mixed emotions about this as well. And if
9 I were in Congress or if I were in the executive
10 branch, I'd be with you 100 percent on this.

11 But I'm not particularly anxious to try to
12 make a point at the expense of the employees and at the
13 expense of the Corporation. My fear is recruitment and
14 retention. My fear is that if we continue at this
15 pace -- and I invite your attention to page 45 -- and
16 correct me if I'm wrong, that if you look at the new
17 locality pay rate, you go down to the bottom to the
18 Washington, Baltimore, and Northern Virginia, 23.10
19 percent.

20 We're at 13.1 percent right now. Is that
21 correct?

22 MR. JEFFRESS: Correct.

1 CHAIRMAN MCKAY: And the federal government
2 had increased -- had an increase of 4.78 percent. And
3 the proposal here for LSC is 4 percent. If we were to
4 accept that recommendation, the increase is less than
5 the federal government, and we'd still be significantly
6 behind the federal government. But we wouldn't be
7 continuing to lose ground. Is that correct?

8 MR. JEFFRESS: We would have lost less than a
9 percent.

10 CHAIRMAN MCKAY: Right. Okay. You know,
11 while I certainly embrace Mr. Fuentes' comment about
12 the philosophy and what's going on with the federal
13 government, I just don't want to be making the point at
14 the expense of the employees and at the expense of the
15 Corporation; that is, the potential of not being able
16 to recruit key candidates, and also the potential of
17 losing good people. And so I'm inclined to support the
18 proposal.

19 MR. FUENTES: Mr. Chairman, for the record, I
20 don't think we've seen a difficulty in obtaining
21 candidates. Why? Because it's a job in Washington.
22 There's medical insurance. There's dental insurance.

1 There's life insurance. There's vision insurance.
2 There's legal insurance. There's paid holidays, paid
3 vacation, et cetera, et cetera, et cetera, take your
4 choice of those. Much better than the rest of America
5 is earning.

6 CHAIRMAN McKAY: And I hear what you're
7 saying. And I think Sarah made a good point, that we
8 saw in practice the impact when we were going through
9 the IG process. Again, I want to emphasize, we're very
10 happy with who we have. But we saw it happen when we
11 were looking for an IG, and I have that in my mind when
12 I stake out this position, as painful as it is. So --

13 MS. BeVIER: I'm sorry. I just need one more
14 clarification, Mr. Chairman, and that has to do with
15 the IG's salary, the top of which, I believe, is set
16 because of the -- level V is the president and the IG.

17 We cannot -- it has nothing to do with the salary
18 levels.

19 Now, maybe what we're -- this is -- so in
20 other words, the reason we had a hard time recruiting
21 the IG was in part because we set our president --
22 because Congress requires us to set our president's

1 salary at a certain place and we can't go higher than
2 that.

3 So I don't -- I mean, I understand Sarah's
4 point. I sympathize with it. But I do think that
5 what's happening here is a pay increase, and that's
6 what we're doing. It's not locality pay.

7 And it was brought to us as locality pay and
8 not a pay increase, because why? Because the board
9 said -- some members of the board said, well, we're not
10 going along with the pay increase. So we get a larger
11 request for a larger locality pay. And that part is,
12 to be honest, troubling to me.

13 So I don't know whose fault it is that the
14 federal government pays more and that we're in this
15 issue. But I think that it's a very hard question.

16 CHAIRMAN MCKAY: Indeed, just a factual
17 issue, just so I understand: If we do not approve
18 this, and you compare the current locality pay for the
19 federal government and our current locality pay, that
20 is 23 percent versus 13 percent, then if we're looking
21 for a new president or a new IG, the issue will be a 10
22 percent disparity, as I understand it. Isn't that

1 correct? So even though it's a set amount, we're still
2 talking about a 10 percent issue.

3 MS. BeVIER: Well, and now I'm sort of
4 interested in whether the salary that we were offering
5 to the IG had locality pay.

6 MS. SINGLETON: We had a footnote. As I
7 recollect, because we were in the throes of trying to
8 get the authorization from Congress, we had a footnote
9 that said we have traditionally paid locality pay. We
10 are seeking authorization to continue to pay locality
11 pay. And here is our salary with and without locality
12 pay.

13 But some of those folks, even when we told
14 them what it was with locality pay, they thought that
15 was too little. And, you know, I can't say that had we
16 said we won't have locality pay, we would have had the
17 same number of applicants. I don't know.

18 But it seems to me that we -- our comparison
19 to other federal government agencies or to federal
20 government agencies does hurt us. And as it gets
21 farther behind, which it will if we don't do anything
22 about the locality pay issue, we're going to be hurt

1 even more in a comparison.

2 MR. STRICKLAND: One more comment about the
3 IG search. As those of us who were on the committee
4 and also the full board will recall, the primary target
5 marketplace for persons who are interested in applying
6 for the position of inspector general is essentially
7 Washington, D.C.

8 MS. SINGLETON: Because it's in the inspector
9 general world.

10 MR. STRICKLAND: It's in the inspector
11 general world. And I'm not criticizing that world, but
12 it's a narrow focus. So when you focus on that
13 particular group of people who are already working for
14 the federal government in an inspector general function
15 of some sort, not necessarily "the" inspector general,
16 but nevertheless at a senior level, and they're
17 already -- at a senior level but not an actual IG
18 position, they're being paid more in a lesser position
19 in terms of how it sounds -- in other words, to be an
20 inspector general has some sort of ring to it. Isn't
21 that right, Mr. Schanz?

22 MR. SCHANZ: Mr. Chairman, you have correctly

1 identified my position exactly.

2 (Laughter.)

3 MR. SCHANZ: The telling factor in coming to
4 LSC is to be an inspector general, to improve the
5 Corporation, and not work for an inspector general.

6 MR. STRICKLAND: Right.

7 MR. SCHANZ: That's exactly a fair
8 representation.

9 MR. STRICKLAND: I just wanted to make that
10 comment. And I think we did run into that wall. And
11 when some of our other high-quality applicants
12 recognized that problem, they simply said, take my name
13 out of the hunt, and did it rather quickly.

14 Anyway, it's just an observation.

15 MR. MEITES: Mike?

16 CHAIRMAN McKAY: Yes, Tom?

17 MR. MEITES: I've been an interested
18 observer. And I'm not going to speak till we get to
19 the board meeting. But it would help me if there was a
20 resolution proposed, debated, because there's been a
21 number of ideas proposed and --

22 CHAIRMAN McKAY: Well, I was waiting till

1 everyone on the committee had a chance to speak. And
2 we haven't really heard from Frank or from Laurie on
3 this before we got to a motion. But --

4 MR. MEITES: Just it would help me. I'm not
5 going to say anything at this stage, but --

6 CHAIRMAN McKAY: Yes.

7 MS. SINGLETON: Well, I agree with Mr.
8 Fuentes that if we're going to be voting on the
9 resolution, we should separate out the question.

10 M O T I O N

11 MS. SINGLETON: And so just to speed things
12 along, first I would like to move that we adopt the
13 resolution, amended resolution No. 2905 without
14 reference -- page 40 and 41 -- without the first "Now,
15 therefore, be it resolved" clause, but with an
16 additional "be it resolved" clause that says:

17 "Be it further resolved that the board hereby
18 authorizes management to increase the consolidated
19 operating budget technical initiatives budget line by
20 the amount received from State Justice Institute."

21 MS. MIKVA: I second.

22 MR. MEITES: What does that mean?

1 MS. SINGLETON: What it means is -- all
2 right. There is a different written "be it further
3 resolved" clause. Let me explain what it means.

4 We needed to put something in there so that
5 they could act on the State Justice Institute money
6 when it came in, before we met again. So we needed to
7 put a further resolution in there.

8 What I'm trying to do now is take out the
9 resolution that references the 4 percent locality pay,
10 which is the first "resolved" clause, and to add
11 another resolution that deals with the State Justice
12 Institute.

13 Here is what was proposed by management: "Be
14 it further resolved that the board authorizes
15 management to accept additional funding from the State
16 Justice Institute for the purposes of making additional
17 TIG grant awards and to award additional TIG grants
18 with that funding."

19 MS. BeVIER: You seconded?

20 MS. MIKVA: I did.

21 MS. SINGLETON: Actually, I like my language
22 better than management's, but --

1 CHAIRMAN McKAY: Well, then let's hear your
2 language again.

3 MS. SINGLETON: I want to read mine.

4 "Be it further resolved that the board hereby
5 authorizes management to increase the consolidated
6 operating budget technical initiatives budget line by
7 the amount received from State Justice Institute."

8 CHAIRMAN McKAY: Do I hear a second?

9 MS. MIKVA: I second.

10 CHAIRMAN McKAY: That motion is seconded.
11 Discussion?

12 MS. BeVIER: I just have a question. So you
13 want to take out the "Now, therefore, be it resolved"?

14 MS. SINGLETON: Right. I'm separating the
15 question.

16 MS. BeVIER: So let's put a "therefore" in
17 the first -- you have to add a "Now, therefore" if
18 we're talking that out. We don't have any further
19 resolved, so we have to have, "Now, therefore, be it
20 resolved."

21 MS. SINGLETON: What's your point, Herb?

22 MR. FUENTES: Oh, I'm sorry. You're not a

1 member. He's being very gentlemanly. He's being very
2 gentlemanly.

3 MS. SINGLETON: Well, he can make a point if
4 he wants to.

5 MR. FUENTES: I'm sure he can. But Mr.
6 Chairman, Herb points out that the management draft
7 speaks to "additional" TIG funds. And perhaps your
8 language --

9 MS. SINGLETON: I said to increase the
10 operating budget technical initiatives budget line by
11 the amount received from --

12 MR. GARTEN: It's the additional amount
13 received. He's already got the 300 in it, haven't you?

14 MR. RICHARDSON: I do not.

15 MR. GARTEN: You do not?

16 MR. RICHARDSON: No.

17 MR. GARTEN: Okay. I'm sorry. I stand
18 corrected. I'm sorry.

19 MS. SINGLETON: With such cleanup language to
20 the "resolved" clauses as are necessary, depending on
21 what is ultimately adopted.

22 CHAIRMAN MCKAY: And you want to delete the

1 locality pay provision?

2 MS. SINGLETON: For right now.

3 CHAIRMAN McKAY: For right now. Okay.

4 MS. SINGLETON: And then we'll vote on that
5 separately, is the idea.

6 CHAIRMAN McKAY: Okay. All right.

7 Discussion on the outstanding motion?

8 (No response.)

9 CHAIRMAN McKAY: All those in favor say aye.

10 (A chorus of ayes.)

11 CHAIRMAN McKAY: Opposed?

12 (No response.)

13 CHAIRMAN McKAY: Now do you envision that we
14 go --

15 MS. SINGLETON: Yes. I have a second motion.

16 CHAIRMAN McKAY: All right.

17 M O T I O N

18 MS. SINGLETON: I would like to -- or I move
19 that we recommend to the board that they adopt
20 Resolution 2009-005A, which would insert into the prior
21 resolution that we recommended the following resolved
22 clause:

1 "Be it resolved that the board approves an
2 adjustment to increase employees' locality pay in the
3 amount of 4 percent."

4 CHAIRMAN McKAY: Do I hear a second?

5 MS. MIKVA: Second.

6 CHAIRMAN McKAY: Discussion? Additional
7 discussion? Helaine?

8 MS. BARNETT: May I be heard?

9 CHAIRMAN McKAY: Madam President.

10 MS. BARNETT: I have not said anything up
11 until this point, but I would like the record to
12 reflect that the views that have been expressed that
13 failure to approve an increase for staff negatively
14 impacts our ability regarding recruitment and retention
15 I believe to be accurate, as I do believe to be
16 accurate it is a risk to keeping talented people; as I
17 believe it is accurate to say that I believe our staff
18 has worked under incredible scrutiny to improve and
19 enhance the way we perform our job during the course of
20 this past year; and to concur that the money is already
21 in the budget. We are not increasing any budget.
22 We're not increasing any deficit.

1 And so I would just like to make sure that I
2 am on record in terms of speaking for what I think is
3 the value and need to be able to offer our staff a pay
4 increase for this year.

5 CHAIRMAN MCKAY: Thank you. Additional
6 comments?

7 (No response.)

8 MR. STRICKLAND: I will just note for the
9 record that I intend to vote for and support this
10 resolution.

11 CHAIRMAN MCKAY: Any other questions or
12 comments?

13 (No response.)

14 CHAIRMAN MCKAY: Okay. All those in favor of
15 the motion say aye.

16 MS. SINGLETON: Aye.

17 MS. MIKVA: Aye.

18 CHAIRMAN MCKAY: Aye. Opposed?

19 MR. FUENTES: Nay.

20 MS. BeVIER: No.

21 CHAIRMAN MCKAY: So the motion did pass.

22 Thank you very much for that spirited and helpful

1 discussion. And Vic, are we okay, then, on the
2 resolution? So we essentially have a full resolution
3 that we've approved to recommend to the full board?
4 Yes.

5 Next item on the agenda is No. 7, report on
6 fiscal year 2010 appropriations process. Mr.
7 Constance.

8 MR. CONSTANCE: Thank you, Mr. Chairman. For
9 the record, I'm John Constance, director of government
10 relations and public affairs.

11 Actions by the Congress on our fiscal year
12 2010 budget request since the last meeting of this
13 committee have been as follows:

14 On June 4th, House Subcommittee on Commerce,
15 Justice, Science, and Related Agencies approved a \$50
16 million increase in the 2010 LSC budget, which would
17 take us from our current level of \$390 million to \$440
18 million.

19 On June 9th, the full House Appropriations
20 Committee approved that recommendation, and reported
21 out the CJS bill to the floor. The committee also
22 announced a breakdown of that \$440 million as follows:

1 \$414.4 million for basic field grants; \$3.4 million
2 for technology grants for TIG; \$1 million for the
3 Herbert S. Garten Loan Repayment Assistance Program.

4 That would total \$418.8 million that would be
5 going out to the field, which represents over 95
6 percent of the \$440 million. In addition, they
7 approved \$17 million for management and grants
8 oversight, and \$4.2 million for the Office of the
9 Inspector General.

10 On June 18th, the House passed the CJS bill,
11 including the \$440 million for LSC. The bill would
12 also lift the restriction on the ability of LSC-funded
13 programs to collect attorney's fees.

14 On the Senate side, on June 25th, the Senate
15 Appropriations Committee approved and reported to the
16 full Senate their CJS bill, which would increase our
17 2010 appropriation to \$400 million, a \$10 million
18 increase.

19 Their bill breaks down as follows: \$374.6
20 million for basic field; \$3.4 million for TIG grants;
21 \$1 million for the loan repayment assistance program;
22 \$17 million for management and grants oversight; and \$4

1 million for the Office of the Inspector General.

2 The Senate bill would also lift the
3 restrictions on the use of non-federal funds except in
4 litigation involving abortion and cases involving
5 prisoners.

6 As to the Senate action, it had been hoped
7 that the full Senate would vote prior to their August
8 recess, which begins on August 7th. It looks at this
9 point to still be a possibility, though not a likely
10 one.

11 Even though the vote has been held up on
12 health insurance, we are not terribly optimistic at
13 this point that they are going to vote on our bill on
14 the Senate floor prior to the recess. They may very
15 well still do that. One complicating factor is
16 Chairman Mikulski broke her ankle and is in the
17 hospital, has had surgery. So her return to the Senate
18 floor is unknown at this point as to timing.

19 I will also say that given the differences
20 between the two bills, obviously a conference committee
21 for reconciliation would be required between the two
22 bills. And we are certainly hopeful that that will

1 come before the end of the fiscal year, although being
2 realistic about the schedules up there, we'll just have
3 to wait and see.

4 If there are any questions, I'd be happy to
5 answer them.

6 CHAIRMAN McKAY: Tom?

7 MR. MEITES: This falls under the "no one
8 wants to know what we think even though we know more
9 than anybody else."

10 MR. CONSTANCE: I want to know what you
11 think.

12 MR. MEITES: Well, no, you don't, because Vic
13 says I can't tell you what I think.

14 (Laughter.)

15 MR. FUENTES: Just clean up the language.

16 MR. MEITES: I think this board has
17 considerable knowledge and expertise on which of the
18 restrictions we believe, of the three you mentioned,
19 are more onerous and which are the less onerous.

20 As I understand Vic's chastisement of me
21 several years ago, I can't tell anybody. I can't
22 personally call my congressman. I probably can't even

1 tell you and ask you to call your congressman.

2 Is there any way that we, either individually
3 or as a board, can express our views on the
4 restrictions?

5 MR. CONSTANCE: I would invite our general
6 counsel to come forward.

7 MR. FORTUNO: The short answer is yes. In
8 fact, prior boards had formal reauthorization
9 committees of the board that would hear testimony from
10 interested parties and formulate recommendations to
11 make to the board for board consideration so that the
12 board could communicate those to Congress.

13 I don't think it's at all unreasonable to
14 look to the agency itself for some of this information.

15 I think you're right. You know, much of the expertise
16 lies here. So a long-winded way of saying yes, you
17 can.

18 CHAIRMAN MCKAY: Let me ask --

19 MS. SINGLETON: Well, wait a minute. What he
20 said was we couldn't tell our individual congressmen
21 what we thought of the restrictions. I find that hard
22 to believe that that's constitutional.

1 MR. FORTUNO: No. You can.

2 MS. SINGLETON: Well, that's what he said.

3 CHAIRMAN MCKAY: No, I --

4 MS. SINGLETON: And he said you told him
5 that.

6 MR. FORTUNO: No, no. What you can't do --
7 and, you know, I'd have to look at it as a board
8 member -- look at it in terms of what it means to you
9 as a board member. But certainly if you caught us, we
10 can't engage in grassroots lobbying. We can't ask
11 others to contact their elected officials.

12 So what you want to be careful of is making
13 statements to others intended to cause them to reach
14 out to their elected officials. But in terms of you
15 expressing your own opinion to an official yourself,
16 you can do that all day and all night.

17 MS. BeVIER: So long as you're not saying
18 that you represent this issue for the board.

19 MR. FORTUNO: Oh, sure.

20 MS. BeVIER: I mean, so long as it's clear
21 that you are speaking as an individual --

22 MR. MEITES: Well, I have a follow-up

1 question for John. But what I understood Vic said,
2 it's okay if I mumble. But if I'm persuasive and
3 persuade someone else to call their congressman, I've
4 violated his proscription.

5 But let me ask you this, John: Do you think
6 it would help the Congress to hear our views on the
7 three restrictions -- not on the other restrictions,
8 but just on the three you mentioned? Or would they
9 just they're busy and thank you very much?

10 MR. CONSTANCE: Well, I mean, again, back to
11 Lillian's point, and that is that as to your
12 individual --

13 MR. MEITES: No. I'm talking about as a
14 board, for us to devote the time to --

15 MR. CONSTANCE: Well, if you can reach a
16 consensus, yes. I'm sure they would like to hear from
17 you.

18 MS. SINGLETON: Well, good luck.

19 MS. MIKVA: On reaching a consensus?

20 MR. MEITES: Well, no. I'm just talking
21 about the three that were mentioned. I know there are
22 some that we're not going to reach a consensus on. But

1 I, for example, I hope -- Vic, just turn off the
2 microphone -- I think the attorney's fees, there's a
3 good argument why the prohibition handcuffs our
4 grantees' attorneys. And they're negotiating in a wide
5 variety of statutes where the threat of attorney's fees
6 is an effective leverage available to the private bar.

7 Now, there may be other arguments for and
8 against. But I think there are two prongs. First, we
9 don't have the mechanism. Our board has never done it
10 so we don't have a mechanism. And maybe our successors
11 should think about it. And second, there's some time
12 issues. By the time we have our October meeting, this
13 all may be over.

14 MR. CONSTANCE: It may very well be over.

15 CHAIRMAN McKAY: Thank you.

16 MR. CONSTANCE: At least on the
17 appropriations front. Just keep in mind that the
18 reauthorization -- I don't think anyone is expecting
19 any movement on the Senate reauthorization bill until
20 next year. So, you know, to the extent that this is at
21 the current time being handled through appropriations
22 language, yes. There is a timing issue.

1 CHAIRMAN McKAY: Thank you. Any other
2 questions or comments on this?

3 (No response.)

4 CHAIRMAN McKAY: John, thanks again for all
5 your good work.

6 MR. CONSTANCE: Thank you.

7 CHAIRMAN McKAY: The next item on the agenda
8 is consider and act on the temporary operating budget
9 for fiscal year 2010, and a resolution that's in our
10 board book. Mr. Richardson and Mr. Jeffress.

11 MR. RICHARDSON: Thank you. Page 49 and 50 I
12 will be referring to. Since this is the last full
13 board meeting before the beginning of next fiscal year,
14 which is October 1, we come to you each year basically
15 stating that we'd like to continue operations as status
16 quo.

17 So we're asking that you approve a temporary
18 operating authority that is based on the 2009
19 appropriation. We've added to it the carryover that we
20 expect and anticipate. We have also added to it the
21 U.S. Court of Veterans' Appeals funds. And that
22 budget, as it turns out, is \$399 million.

1 It does, as I say, just continue operations
2 at the current staffing level, at the continued
3 operating levels, and that we will come back to you in
4 October with a temporary operating budget that will
5 then be reflective of what we've been discussing today,
6 the prospect of change with consulting or temporary
7 employee; the staffing at the current levels; and
8 present that budget to you with, hopefully, an
9 appropriation that would be higher, and also with
10 better carryover figures at that point.

11 CHAIRMAN MCKAY: Questions or comments?

12 MS. SINGLETON: This is something we didn't
13 do last year. Right?

14 MR. JEFFRESS: No. We have taken Member
15 Singleton's advice and proposed a temporary operating
16 budget at the same rate as has been previous years.

17 MR. MEITES: Called the Singleton Temporary
18 Operating Budget.

19 (Laughter.)

20 MS. SINGLETON: Singleton Stingy Budget.

21 CHAIRMAN MCKAY: Other -- Sarah?

22 MS. SINGLETON: Do you need a motion from us?

1 CHAIRMAN McKAY: Yes, please.

2 M O T I O N

3 MS. SINGLETON: I move that we approve -- I
4 move that we recommend to the board that they approve
5 Resolution 2009-006.

6 CHAIRMAN McKAY: Do I hear a second?

7 MS. BeVIER: Second.

8 CHAIRMAN McKAY: Discussion?

9 (No response.)

10 CHAIRMAN McKAY: All those in favor say aye.

11 MS. SINGLETON: Aye.

12 CHAIRMAN McKAY: Opposed?

13 (No response.)

14 CHAIRMAN McKAY: The motion passes.

15 MS. SINGLETON: I'm the only one who voted.

16 CHAIRMAN McKAY: Yes. The vote was one to
17 zero, for the record.

18 MS. BeVIER: Everybody else abstained.

19 CHAIRMAN McKAY: The next item on the agenda
20 is No. 9, consider and act on a date for the September
21 2009 Finance Committee meeting to consider the 2011
22 budget request.

1 The staff has asked that we consider having
2 this meeting the week of September 21st, which is
3 certainly fine by me. My only request is that it be on
4 a Friday or a Monday for those of us who have to travel
5 from the provinces. We won't lose that much time out
6 of home and family -- home and office.

7 So I guess I'm proposing September 21,
8 Monday. There's a certain level of urgency. The
9 sooner we get to this other issue -- because we will be
10 addressing the independent contractor versus temporary
11 employee issue, financial implication as well, at this
12 meeting.

13 I propose September 21, Monday. Are there
14 any other proposals or comments?

15 MS. SINGLETON: I have a standing meeting in
16 federal court on Mondays that -- I'm trying to see what
17 Friday would look like. No. Monday's better.

18 CHAIRMAN McKAY: So Monday's better for you?

19 MS. SINGLETON: I'll just blow off the
20 federal court. Yes. Monday, is better.

21 CHAIRMAN McKAY: Well, we certainly don't
22 want to impose on you, but I guess --

1 MS. SINGLETON: No. Monday's better.

2 CHAIRMAN McKAY: All right. Is that all
3 right with everyone else? Is that still all right with
4 management? Management? Okay. Great. Then September
5 21st it is. And I think we'll have a starting time of
6 10:00 or 11:00 to accommodate those people who can fly
7 in from a short distance.

8 The next item on the -- I assume that doesn't
9 need a vote, but that silence means consent, I think,
10 at this point.

11 The next item is public comment. Is there
12 any public comment?

13 (No response.)

14 CHAIRMAN McKAY: Is there any other business?

15 (No response.)

16 CHAIRMAN McKAY: Do I hear a motion to
17 adjourn?

18 M O T I O N

19 MR. FUENTES: So moved.

20 CHAIRMAN McKAY: Second?

21 MS. BeVIER: Second.

22 CHAIRMAN McKAY: All those in favor say aye.

1 (A chorus of ayes.)

2 CHAIRMAN McKAY: Opposed?

3 (No response.)

4 CHAIRMAN McKAY: That motion passes one to
5 nothing. Thank you very much.

6 (Whereupon, at 4:30 p.m., the committee was
7 adjourned.) * * * * *

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