

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
FINANCE COMMITTEE

Friday, April 24, 2009

4:02 p.m.

Embassy Suites Hotel
319 Southwest Pine Street
Portland, Oregon

COMMITTEE MEMBERS PRESENT:

Thomas A. Fuentes, Acting Chairman
Lillian R. BeVier
Sarah Singleton
Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

Jonann C. Chiles (by telephone)
Herbert S. Garten
David Hall
Thomas R. Meites
Bernice Phillips-Jackson (by telephone)

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
Mattie Cohan, Senior Assistant General Counsel, Office
of Legal Affairs
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
Joel Gallay, Special Counsel to the Inspector General,
Office of the Inspector General
David Maddox, Assistant Inspector General for
Management and Evaluation, Office of the Inspector
General
Mathew C. Glover, Associate Counsel, Office of the
Inspector General
John Constance, Director, Government Relations and
Public Affairs Office
Kathleen Connors, Executive Assistant, Government
Relations and Public Affairs Office
Laurie Mikva, Board of Directors Nominee

Don Saunders, National Legal Aid and Defenders
Association (NLADA)
Deborah Perluss, Northwest Justice Project
Elizabeth Arledge, Disability Rights Oregon

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P R O C E E D I N G S

(4:02 p.m.)

CHAIRMAN FUENTES: Ladies and gentlemen, good afternoon. We call to order the April 25th meeting of the finance committee of the Legal Services Corporation. My name is Tom Fuentes, for the record. At the request of our good chairman, Michael McKay, who cannot be with us today, I'm serving as your chairman for the moment.

Recognizing a quorum now present of the committee, I'd like to open the meeting and ask for an approval of the agenda.

Is there a motion?

M O T I O N

MS. SINGLETON: So move.

MR. FUENTES: Is there a second?

MS. BeVIER: Second.

MR. FUENTES: All those in favor signify by aye.

(A chorus of ayes.)

MR. FUENTES: Opposed?

(No response.)

1 MR. FUENTES: Thank you.

2 Approval of the minutes of the committee of
3 the meeting of January 31, 2009. You have it in your
4 package.

5 Is there a motion to approve or correct?

6 MR. GARTEN: Approve.

7 MS. SINGLETON: Second to the motion to
8 approve.

9 MR. FUENTES: Thank you. Herb, with all due
10 respect, I don't think you're a member of this
11 committee now.

12 M O T I O N

13 MS. BeVIER: So moved.

14 MR. GARTEN: You're right. I'm sorry.

15 MR. FUENTES: Not at all.

16 MS. SINGLETON: And then we'd better redo the
17 agenda.

18 MS. BeVIER: We have to start over,
19 Mr. Chairman?

20 MR. FUENTES: Why?

21 MS. BeVIER: Because he moved the agenda.

22 MR. FUENTES: Oh, I thought -- I'm sorry. I

1 did not take your movement. All right. So we'll have
2 that moved by Lillian and seconded by Sarah.

3 All right. It's been moved by Lillian also
4 and seconded by Sarah to approve the minutes of the
5 meeting. All those in favor signify by saying aye.

6 (A chorus of ayes.)

7 MR. FUENTES: Opposed?

8 (No response.)

9 MR. FUENTES: The motion carries.

10 Now we have a report on the distribution of
11 the fiscal year 2009 basic field grants, a presentation
12 by our good treasurer, David Richardson. And I would
13 commend all of our presenters this afternoon, reminding
14 you that you cannot be brief and bad.

15 (Laughter.)

16 MR. RICHARDSON: Thank you, sir. For the
17 record, I am David Richardson. I am the treasurer of
18 the Corporation.

19 This year's Omnibus Appropriations Bill was
20 passed on March 12th that provided a significant
21 increase to our basic field programs. We consulted
22 with our chairman, Mr. Strickland, and also with

1 Mr. McKay, in regards to going ahead and making the
2 additional payments to our grantees prior to this
3 meeting. Since it is formula-driven, both felt that it
4 would be appropriate for us to go ahead and do.

5 Once we got the money in-house, because it
6 does take a little time for us to get the money into
7 the corporate coffers, we did make the payment on
8 April 10th. And the money has now gone based on the
9 new funding for the grantees. They've now received
10 their funding through April at the appropriate levels.

11 And then from May forward, they will get
12 1/12th of the funding, except for the month of
13 November, which most -- all the grantees except
14 four -- three, I should say -- receive 2/12ths funding
15 in January. So we're on schedule there.

16 MR. FUENTES: Thank you, David. Anything
17 further? Any questions or comments?

18 (No response.)

19 MR. FUENTES: Thank you very much.

20 Moving on to item No. 4, consideration and act
21 on the consolidated operating budget for fiscal year
22 2009 and recommended Resolution No. 2009-003 to the

1 full board.

2 We have a presentation by our treasurer,
3 Mr. Richardson.

4 MR. RICHARDSON: With the appropriation this
5 year, we received an additional amount of funding. The
6 original amount that we were operating with was
7 \$350 million under the continuing resolution. We of
8 course received \$390 million.

9 We also received an additional amount of
10 funding for our U.S. Court of Veterans Appeals program.
11 We had \$1.2 million in the original temporary operating
12 budget, and this year we received \$1.7 million for that
13 grant.

14 Basically, this time of year we would normally
15 be doing a budget review and presenting you with
16 different amendments to the budgets and internal
17 budgetary adjustments. Because of this new money,
18 basically we've addressed any particular issues that we
19 had with this new money.

20 On page 86 of your board book, we've got the
21 key changes within this particular budget. We had 85
22 staff members in our temporary operating budget. With

1 this new budget, we can add an additional 15 staff
2 members. You may also recall that we did not have any
3 money for raises in the original temporary operating
4 budget. This budget, we have put 3 percent for an
5 adjustment to our locality and then up to 2 percent
6 based on performance.

7 We have made other adjustments. I don't know
8 that we will be using all the money, but for instance,
9 in the executive office, we have a number of task
10 forces that are ongoing right now that are being
11 handled by telephone. And I increased the travel money
12 there just in case there is a need for an in-person
13 meeting. There may not be, but I felt they needed to
14 put the money there just in case there was a need later
15 in the year.

16 The legal affairs/consulting line, which is
17 the line that we pay for our outside counsel, we
18 increased that from \$250,000 to \$350,000 in this
19 budget. The government affairs budget, we're getting
20 ready to of course redo the Justice Gap study, and
21 there's some printing involved there. And there's an
22 annual report in process. So we've increased the

1 budget for printing from \$20,235 an additional \$15,000.

2 With the new hires that we're contemplating,
3 we also adjusted the human resources operating budget
4 for advertising. And that went from \$20,500 up to
5 \$44,000.

6 There's a small adjustment in the Office of
7 Administrative Services, \$15,000 just to do some
8 hallway painting. And if there's any additional walls
9 that need to be put up or retooling for the new staff,
10 just to provide some additional money to help handle
11 that.

12 Within the Office of Information Technology,
13 we've got here that we've increased the telephone
14 services from \$60,000 to 75. We increased the other
15 operating from 103 to 118.

16 I will pause there for a moment because on
17 Tuesday I sent each of you an e-mail stating that there
18 was an additional \$20,000 that we needed to add to the
19 other operating line. So this line will now go from
20 103/118 up to 138 that's in the attachment, the revised
21 attachment that I gave you.

22 Capital expenditures: We did this within the

1 budget. We had originally increased the spending for
2 new computers, the update of our network systems and
3 our disaster recovery -- we had moved that from 100 to
4 200. That will now go down to 180 to accommodate this
5 additional \$20,000.

6 Within the program performances budget
7 consulting line, it went from \$111,000. We
8 increased -- or restored, because this was higher in
9 the original budget -- \$89,000, which increases it to
10 \$200,000.

11 In addition to that, the travel budget was
12 increased by \$111,000. And even though it's the same
13 figure, it is the correct amount. I looked at it
14 backwards and forwards thinking, oh, it's a mistake,
15 but it's just one of those anomalies that worked out.
16 It's correct at 111. So we increased our travel from
17 175 to \$286,000 in the program performance line.

18 Additionally, consulting budget, we
19 are increasing the temporary operating for the
20 consulting budget and compliance and enforcement from
21 100,000 to 201,000. And then their travel was also
22 increased from 225,000 to 340.

1 In talking with staff, we felt that that was
2 an appropriate amount. But it will take time to hire
3 new staff once we get them in. So even with this
4 budget, we do feel that there will be some money that
5 will be carried over.

6 On page 86 -- I'll go back to a paragraph here
7 talking about the continuing resolution, the grants
8 oversight. If you'll recall, in September we moved
9 \$500,000 from the LRAP into management and grants
10 oversight.

11 When we did that, we stated that if we
12 received funding in management, that we would suggest
13 at that time that the board approve a reprogramming or
14 a transfer, whichever the case may be, to move the
15 money back to the LRAP program.

16 Since we did receive an amount of \$14,500,000
17 for this year, we are recommending that the board
18 approaching Congress with whatever paperwork that needs
19 to be done to move that money back to the LRAP program.

20 So this budget that is before you for
21 management and administration is \$17,700,000. And 1.5
22 of that is basically set aside, 500 to go back to the

1 LRAP, and because we're receiving this money basically
2 mid-year, we can't spend all of it effectively. So
3 we're setting aside one million dollars of this money
4 to help fund the 2010 budget.

5 If we got the request, it was that the board
6 approved \$17.2 million. The million dollars that we're
7 setting aside this year would make the budget 18.2. I
8 have done a projection based on the staffing levels
9 that is before you today, and we would need \$18.8
10 million in next year's budget to maintain the staffing
11 level and the operating level that we currently have.
12 So I feel comfortable that we can do that. And that is
13 the motion that we bring before you today.

14 There is on page 4 information in regards to
15 the inspector general. This is the information that
16 they've supplied. I hope you read that. And our IG,
17 Jeffrey Schanz, is with us. If you have any questions
18 or additional comments, he can certainly address those
19 for us.

20 MR. FUENTES: Thank you very much, David. And
21 Charles Jeffress, our chief administrative officer, do
22 you have some comments?

1 MR. JEFFRESS: The only comment I would have,
2 Mr. Chairman, is on the repayment of the LRAP funds
3 from MGO that David mentioned. Vic Fortuno, the
4 general counsel, and John Constance, our director of
5 government affairs, and I have talked about how best to
6 do that.

7 We agreed we would approach the appropriators
8 and ask them how they would like to receive the request
9 because they also expect it to happen. We have done
10 so, and the senior appropriator has written us back and
11 said LSC is one account in their books. They cannot
12 transfer money out of that account and transfer it back
13 into that account with a straight face.

14 So they say, consider this a reprogramming and
15 send us a notice for reprogramming. So that would be
16 our intent in terms of paying back the LRAP funds, to
17 send them a notice requesting approval for
18 reprogramming that money.

19 MR. FUENTES: What does that mean?

20 MR. JEFFRESS: It was just a question of what
21 we call the payback. And they've said to call it
22 reprogramming. That's the only issue. It was a

1 question of whether it should be called transfer or
2 reprogramming. They say they can't transfer it out of
3 one account and back into the same account, so please
4 call it reprogramming.

5 MR. FUENTES: Vic, could I get your input on
6 this?

7 MS. PHILLIPS-JACKSON: I'm sorry. This is
8 Bernice. I didn't hear what Charles had said.

9 MR. FUENTES: Bernice, thank you. I will have
10 Charles repeat that so that you can hear it. And then
11 I would like to get Vic's insights on this.

12 MR. FORTUNO: Yes. For the record, Victor
13 Fortunato, general counsel of the Corporation.

14 The issue was raised when the initial
15 transaction was proposed last year, which was
16 transferring \$500,000 of LRAP money to the M&A account.
17 There was authority in our appropriations act for
18 2008 -- there was a provision in our appropriations
19 statute that authorized that transfer. My concern was
20 that without similar authorization in the '09 statute,
21 '09 appropriation, fiscal year '09, we would not be
22 able to transfer back.

1 I believe that we lack the legal authority to
2 transfer back. I respect the fact that we've got
3 committee counsel -- I did see an e-mail message a
4 little earlier that indicates that committee counsel
5 sees this as a reprogramming and not a transfer.

6 I think that the Comptroller General of the
7 United States, in the GAO opinions that I have read and
8 the discussions in the GAO Red Book, which is the
9 Principles of Federal Appropriation Law, which is often
10 referred as the bible of appropriations law, and
11 the general authority in the area seems to view it the
12 same way.

13 But I do understand that counsel from one of
14 our appropriations committee has indicated a contrary
15 understanding, and I certainly respect that. But I
16 can't say that I've been persuaded otherwise, at least
17 not yet.

18 But I'd certainly welcome an opportunity to
19 discuss it with someone, but at greater length. I
20 think that there are reasons. It's a fairly
21 complicated area. I do think that there are federal
22 agencies who will transfer money, but in fact, it's

1 because they have statutory language that allows them
2 to transfer up to 5 percent of their appropriation from
3 one line to another in their appropriation.

4 But I've seen cases involving the Department
5 of Justice, Health and Human Services, and any number
6 of other agencies where we're talking about one
7 treasury account, one appropriation account. But
8 within that, you have an appropriations statute that
9 says you're appropriated so much money to be spent in
10 this way.

11 And when the Congress gives you specific lines
12 and says, for example, the inspector general gets X
13 amount of dollars and basic field gets X amount of
14 dollars, then we're not at liberty to transfer from the
15 inspector general to M&A or MGO or from basic field to
16 management and grants administration. We have to spend
17 it as instructed unless Congress either moves the money
18 or specifically authorizes us to move the money.

19 I didn't see any express statutory
20 authorization allowing it, so that's why I remain of
21 the view that we are without authority. But I
22 recognize that there's a difference of opinion there.

1 MR. FUENTES: Yes, Sarah?

2 MS. SINGLETON: Mr. Chairman, when we moved
3 the money originally, we did it through a reprogramming
4 letter. Isn't that correct?

5 MR. FUENTES: Yes. The reason -- yes, we did.
6 The reason why is there was a provision in our
7 appropriations act for last year that said that if, as
8 a result of a reduction in funding in a specific
9 line -- and in fact we had received the reduction in
10 funding in our M&A line -- if, because of a reduction
11 in funding in a specific line and that reduction in
12 funding would have resulted in personnel actions like
13 furloughs and layoffs, that in order to avoid the
14 furloughs and layoffs that would have resulted from the
15 reduction in funding, you could transfer the money,
16 provided it was before the end of June. But you could
17 go beyond the end of June if there were exceptional
18 circumstances.

19 So that laid the groundwork. That was a
20 statutory authorization. Now, what happens is --

21 MS. SINGLETON: Okay. Well, hang on. Wait a
22 minute. Wait a minute. You didn't let me finish.

1 When we did that, didn't we tell them if we
2 got the additional money we intended to put it back
3 into LRAP?

4 MR. FORTUNO: I assume that was understood,
5 yes.

6 MS. SINGLETON: Well, I don't think it was
7 understood. I think I was stated in the language.

8 MR. JEFFRESS: It was stated explicitly, yes.

9 MS. SINGLETON: So it seems to me we ought to
10 be a little bit common-sensical about this and look at
11 it as all part of one transaction that was authorized
12 by the original statute, particularly if you've talked
13 to the appropriate people at Congress, who said -- or
14 wherever -- this should be done by reprogramming, and
15 just let them know what we're doing.

16 MS. PHILLIPS-JACKSON: This is Bernice.

17 MR. FUENTES: Bernice, go ahead.

18 MS. PHILLIPS-JACKSON: Was it understood that
19 we could not take out of that line and transfer money
20 to a different line and then transfer it back? Was
21 that understood at first?

22 MR. JEFFRESS: Bernice, this is Charles

1 Jeffress. In the letter which we sent to Congress last
2 year, we explicitly stated that it would be our intent,
3 should the appropriation for management and grants
4 oversight this year be 14.5 million or more -- and it
5 was 16 million -- that it was our intention --

6 MS. PHILLIPS-JACKSON: What I'm saying is was
7 it understood in the first place that we could not take
8 money out of one account, put it into another account,
9 and then transfer it back? Was that understood across
10 the board in the first place?

11 MR. JEFFRESS: I'm not sure what you're
12 asking. It was understood that we could do this with
13 the approval of Congress, which we received last year
14 and which we are now proposing to request again this
15 year.

16 MS. PHILLIPS-JACKSON: Was it anywhere in the
17 rules or regulations that we could not take money from
18 one line and give it to another?

19 MR. JEFFRESS: We could not do that without
20 the approval of Congress. It requires the approval of
21 Congress to do that.

22 MS. PHILLIPS-JACKSON: And then was it

1 understood that we could -- once we got that money, we
2 could not transfer it back?

3 MR. JEFFRESS: No. When we requested the
4 original reprogramming -- and it wasn't a transfer, it
5 was a reprogramming -- when we requested the original
6 reprogramming, we notified that Congress that we would
7 this year request approval to reprogram it back, or to
8 transfer it back, or to somehow pay it back.

9 As Ms. Singleton said, using common-sense
10 terms here may make more sense. We borrowed it. We
11 announced our intent to pay it back. And what we're
12 proposing to do now is pay it back. The only question
13 was what term are we going to use in the payback, and
14 the appropriations counsel has said to use the term
15 reprogramming.

16 MR. FUENTES: Do you have further comment?
17 Vic?

18 MR. FORTUNO: No.

19 MR. FUENTES: Okay. Inspector General, do you
20 have a comment to this point? How do you review it?
21 You're supposed to be one of the fellows that keeps us
22 out of trouble, as is our attorney.

1 MR. SCHANZ: Yes, sir. I would defer at this
2 point. That's something that I would have to turn my
3 legal staff on to research. But since it's monies that
4 involve the Corporation, I have full faith and
5 confidence in the Corporation's general counsel to keep
6 us on the straight and narrow on what we can do and
7 what we can't do as far as the transfer is concerned.

8 I do understand very clearly having the
9 authority to do so in the LSC authorization act. I
10 don't believe the 2010 provides us that authority.
11 That may be something that we would have to
12 specifically request from the Congress, from the
13 appropriators.

14 MR. FUENTES: Ladies and gentlemen, it would
15 appear that there's a difference of opinion. And
16 that's --

17 MR. MEITES: Don't look at us.

18 MR. FORTUNO: I mean, I don't know whether
19 time would allow it. But obviously, the arbiter of
20 such issues is the GAO, the Comptroller General. So in
21 terms of what one option is, that's one option. That's
22 not -- it may not be a practical one because I don't

1 know what the timing would be. But certainly, that's
2 one option.

3 MS. SINGLETON: I just need a point of
4 information. Aren't we talking about the 2009 budget?

5 MR. FUENTES: Yes.

6 MS. SINGLETON: Okay.

7 MR. FORTUNO: What I think -- yes, we are.
8 But I think that the -- that last year's appropriation
9 had language that authorized movement one way. It did
10 not authorize movement in the opposite direction. And
11 in any event, we're talking about '09 money, so we
12 would be looking at the '09 appropriations act to see
13 whether that provides the authority, or at least to my
14 view of it. Again, that's not universally held, so I
15 want to be clear on that.

16 MS. SINGLETON: Is it possible, with the
17 federal government, to do something that's conditional?
18 We conditionally transferred money, assuming that the
19 continuing resolution would be the amount of money we
20 would have. We needed to do that to avoid the layoffs,
21 which was what the appropriation language said.

22 That condition didn't come to pass because we

1 in fact got more money than what we had thought. So we
2 didn't need to move the money. Is that possible, to
3 think of it that way?

4 MR. FORTUNO: It's an interesting approach.
5 I'd have to think about it. My initial reaction is no,
6 that the transfer that occurred in fiscal year '08 out
7 of a fiscal year '08 appropriation in fact did occur,
8 and that our having received money in fiscal year '09
9 out of a different fiscal year appropriation doesn't
10 mean that we're able to take that money and basically
11 just -- you know, well, we didn't really need it, so
12 here, we're going to send it back.

13 I think -- first of all, I do agree that the
14 money should go back to the LRAP program. I think very
15 much that is a desired objective and should be
16 accomplished. My concern is not with the ultimate
17 objective, but with the process by which it's
18 accomplished.

19 And I think that we are well served to act
20 with some assurance. And to the extent that there's
21 any difference of opinion, it may be a good idea to
22 resolve the difference just so that we proceed with

1 some measure of assurance.

2 I think it's valuable that we have committee
3 counsel weighing in on this, and I certainly would
4 accord a great deal of weight to that. My concern is
5 that if it doesn't square with what I see from the
6 Comptroller General and the Government Accountability
7 Office, I am then in a position where, okay, I
8 certainly respect committee counsel's view on this, but
9 it doesn't seem to be the same view that the
10 Comptroller General has advanced.

11 So I think it's important for you to be aware
12 of that and decide what the comfort level you want is
13 and maybe talk about how you achieve that.

14 MR. SCHANZ: In answer --

15 MR. FUENTES: Herb?

16 MR. GARTEN: Yeah. I just have a question.
17 Generally, in accounting when you run into this, they
18 call it reversing an entry. So from what I heard you
19 present, it sounded to me like it was the equivalent of
20 what in accounting would be reversing an entry.

21 MR. FORTUNO: Uh-huh.

22 MR. GARTEN: To me it's a simple answer if

1 that's the case.

2 MR. FUENTES: Lillian?

3 MS. BeVIER: I gather that what Vic is saying
4 is we can't do it the simple way, that because of the
5 way the Comptroller General's -- what, Red Book or Blue
6 Book?

7 MR. FORTUNO: The Red Book.

8 MS. BeVIER: Whatever color.

9 MR. FORTUNO: It's the multi-volume Principles
10 of Federal Appropriation Law that's published by their
11 general counsel.

12 MS. BeVIER: Right. Which you referred to, I
13 take it ironically, as the bible.

14 MR. FORTUNO: The bible of federal
15 appropriations law.

16 MS. BeVIER: Okay. Well, I mean, I --

17 MS. SINGLETON: Or the Communist Party.

18 (Laughter.)

19 MS. BeVIER: Yeah, exactly. Well, I mean, it
20 strikes me that the practicalities go one way and the
21 legality goes the other way. And, you know, I think
22 the difficulties that -- as a board member, it's given

1 the particular environment that we have found ourselves
2 in in the past several years. They've had to do with
3 tripping ourselves up by not being quite as attentive
4 to the technicalities.

5 I think it is a bit silly to have this
6 resolution, and I trust that some way will be found to
7 make an adjustment to the budget in the next three
8 months that has the appropriate legal I's dotted and
9 T's crossed. I do not like this result very much
10 because I think it is nonsensical, but I think I'm
11 persuaded that we'd better try to do it this way.

12 MR. FUENTES: Mr. Inspector General, and then
13 Sarah.

14 MR. SCHANZ: Mr. Chairman, I think we should
15 proceed with an overabundance of caution. Congress has
16 entrusted us with a sizeable increase in funding. The
17 best thing we can do is be faithful stewards of that.
18 And if we have to dot every I and cross every T, my
19 recommendation would be, A, that we do that, but B,
20 also we go back to see on what authority we're talking
21 about the letter that we sent. But I don't think any
22 of us has that with us except maybe Mr. Jeffress.

1 But we should see exactly what authorities we
2 cited and what approvals we obtained for transferring
3 out the \$500,000 from the management and
4 administration -- or from LRAP to fund the management
5 and administration account.

6 I agree with Mr. Garten that is a reversing
7 journal entry, which is done all the time in
8 accounting. But it's done with support and with
9 credibility and with criteria because of the accounting
10 standards.

11 In this case, I think we should, as I
12 mentioned, operate with an overabundance of caution and
13 make sure what we did was the appropriate thing when we
14 already did it -- and I'm sure we did with full faith
15 and effort -- and then make sure that we do the same
16 thing on the way back.

17 If it results in dealing with corporate
18 counsel up on the Hill, then we should -- or
19 congressional counsel, then we should do that. And I
20 think the answer should be in writing so we don't have
21 to face this issue again as to what we did and how it
22 was resolved. Thank you.

1 MR. FUENTES: Thank you. Sarah, and then
2 Charles.

3 MS. SINGLETON: I am concerned that we made a
4 written representation to a congressional committee,
5 when we sent the letter asking whether we could
6 reprogram this money, that if in fact we got the amount
7 of money that had been agreed to by the appropriations
8 committees for this fiscal year, that we would in fact
9 reverse that entry.

10 We represented that to Congress, as I
11 recollect it, and now what we're saying is we're not
12 going to do that because of a technicality. And I
13 think in terms of getting into trouble with Congress,
14 you might get into more trouble with Congress for
15 violating a direct pledge that you made to them last
16 year.

17 MR. FUENTES: Maybe I'll respond to that, and
18 then Charles.

19 I think what I'm hearing is that maybe we
20 still want to do it, Sarah, but we want to do it
21 correctly, not that we don't want to do it.

22 Charles?

1 MR. JEFFRESS: Again, Mr. Chairman, I would
2 say again to the committee that Vic, the general
3 counsel, and I discussed this last month. We agreed
4 that what we would do would be to approach the counsel
5 for the appropriations committee to ask their advice on
6 how we should request the movement of the funds back.

7 We now have the recommendation in writing, the
8 direction in writing, from the appropriations counsel
9 that we should seek to reprogram this money back, which
10 is what we did last year, was to reprogram the money.
11 We did not transfer the money, we reprogrammed it.

12 The appropriations counsel says that a
13 transfer is not possible because we only have one
14 account, so please reprogram this money. I think we've
15 done precisely what we said in good faith we would do,
16 and I think we've done what the committee directed us
17 to do, and we certainly did what the general counsel
18 and I agreed we would do.

19 If we were to request the reprogramming of
20 this money from Congress, we would receive
21 congressional approval to do it. Therefore, any
22 question down the road wouldn't be a question of what

1 we did because we would not do anything until we
2 actually have congressional approval.

3 So my recommendation to the board: The
4 resolution before you authorizes management to pursue
5 the transfer of the money back to the LRAP program. I
6 would recommend that the board pass that resolution,
7 which authorizes us to do this.

8 I believe that what we have in writing from
9 the appropriations counsel is the appropriate thing to
10 do. But I also respect that our general
11 counsel -- since we just received this this
12 morning -- our general counsel would like more time to
13 look at that. And I respect that as well.

14 If the board passes the resolution authorizing
15 this money to be transferred back or that we seek the
16 authority to transfer it, and the appropriations
17 general counsel position that reprogramming is the
18 right thing to do should stand up, then management
19 would be in the position to go ahead and fulfill our
20 commitment that we made last year and reprogram that
21 money back once Congress approved it.

22 But again, we would only request their

1 approval, and we would take no action on reprogramming
2 the money unless Congress approved. And I think at
3 that point any question someone may have down the road
4 about whether we did the proper thing would be answered
5 by, this is what Congress asked us to do, and this is
6 what we did, and they approved it.

7 MS. BeVIER: In that case, I do not understand
8 what the problem is here. I don't understand what
9 we're asked to vote on because --

10 MS. PHILLIPS-JACKSON: Right. Because I
11 was --

12 MS. BeVIER: -- it seems like we're being
13 asked to vote on authorizing the reprogramming, and now
14 you're telling me that we're voting on asking Congress
15 for authorization to reprogram.

16 If that's what we're asking Congress for, of
17 course I have no problem with that. And I don't think
18 Vic does. Am I wrong about that?

19 MR. JEFFRESS: Well, that's what the
20 resolution says, is you are giving management the
21 authority to seek approval.

22 MS. SINGLETON: Mr. Chairman?

1 MR. FUENTES: Sarah.

2 MS. SINGLETON: As I understood the issue,
3 Mr. Chairman, I thought what Vic was saying is because
4 there's no statutory language that would permit the
5 reprogramming, we didn't have the authority to ask to
6 reprogram the money this fiscal year.

7 MR. FORTUNO: No. I think one of the things
8 that's a little confusing is that when there is
9 statutory authority to transfer money, normally -- for
10 example, in the case last year when there was a
11 provision in our appropriations act that said that if
12 these conditions are met, there's a reduction in
13 your -- that line -- as a result of that reduction in
14 appropriation, you will have to lay off or furlough
15 folks. In order to avoid that, you can transfer money.

16 It then says, in order to do this, you use the
17 procedures provided for reprogramming. It's not a
18 reprogramming. It's a transfer. But they have you use
19 the reprogramming procedures, which are essentially
20 notify the appropriate committees of Congress and if
21 there's no objection, then -- technically, it's a
22 notice requirement. It's not a permission requirement.

1 But you'd be foolish to proceed if you were told no and
2 proceeded anyhow, so you wouldn't want to do that.

3 But the fact that we use the reprogramming
4 procedures doesn't mean that it was a reprogramming. I
5 believe that it was a transfer, but I don't think that
6 others necessarily believe that. I think that
7 folks -- others may believe that we use the
8 reprogramming procedures because it was a
9 reprogramming.

10 What I'm saying is that if it was a transfer,
11 the way to accomplish that was still through the
12 reprogramming procedures, just because that's what the
13 statute said. If you're going to transfer under these
14 circumstances, you may transfer. How you do it is you
15 provide the reprogramming notice that you would
16 under -- and it references another section that speaks
17 of reprogramming.

18 MS. SINGLETON: So if we use the reprogramming
19 procedures now by writing to the appropriate committee
20 and saying we want to -- we want to move this money,
21 and they say, okay, go ahead, what have we done wrong?

22 MR. FORTUNO: I think that it's purely

1 technical. But what we've done wrong is that
2 technically we don't have the authority, the statutory
3 authority, to do what we request permission to do.

4 It may be that if we get -- if everyone says
5 it's okay, go ahead and do it, that it's of no
6 practical significance. But I think the issue remains,
7 notwithstanding no objection or even a letter saying we
8 approved it, that's not -- technically that's not an
9 act of Congress.

10 And what I'm saying is that when we get an
11 appropriation that says so much is for management and
12 administration, and so much is for the IG, and so much
13 is for basic field, we can -- within each of those
14 lines, we can move money around. And if we move it
15 around, we have to give notice of the reprogramming.
16 That's a reprogramming.

17 If we move from M&A, within M&A if we move
18 from OPP to OCE, that's within the M&A statutory line.
19 So that's permissible. You have to give reprogramming
20 notice.

21 However, in order to move from M&A to the IG
22 or from basic field to M&A, that's different because

1 that's not within the statutory line. That's from one
2 line to another. That's considered a transfer. And in
3 order to do that, you have to have specific statutory
4 authority.

5 MS. SINGLETON: So what you're saying, Vic, is
6 we can't do it because we don't have the statute.

7 MR. FORTUNO: That's right. We don't have the
8 statutory authority to do it.

9 MR. FUENTES: So what you're saying is we
10 can't move this money back to LRAP.

11 MR. FORTUNO: That's right. Unless we get
12 specific statutory authority. I don't think that we --

13 MS. SINGLETON: And we can't do that within
14 this fiscal year because there's no way --

15 MR. FORTUNO: We can if we're given statutory
16 authority. I don't expect that it's going to happen.

17 MS. SINGLETON: Well, there is no way that
18 Congress is going to do anything that quickly, to pass
19 a whole law and get it signed by the President.

20 MR. FORTUNO: That's right. Yeah. It may
21 mean, as a practical matter, that if we were to abide
22 by my understanding of the law, that it would in effect

1 have to wait until next fiscal year, some time after
2 October 1, to get the statutory authority to go ahead
3 and move the money.

4 MS. SINGLETON: And would we get to keep the
5 money if we didn't spend it?

6 MR. FORTUNO: I would think that we would hold
7 the money. I would not think that we would want to
8 spend the money because that money really is --

9 MS. SINGLETON: No. I --

10 MR. FORTUNO: -- should go back to LRAP.

11 MS. SINGLETON: I understand that.

12 MR. FORTUNO: So we would hold it, but we
13 wouldn't spend it.

14 MS. SINGLETON: We can hold -- we can have it
15 as a carryover?

16 MR. FORTUNO: Oh, yeah. We can hold it. But
17 that's why I'm saying it's a -- you know, there's the
18 legal issue, strictly legal issue. And then there's,
19 you know, the broader practical significance of -- if
20 we get the relevant committees to send us something
21 that says, we don't have a problem with what you are
22 characterizing as a reprogramming, there is the cover

1 of the relevant committees, the appropriating
2 committees, have given us a letter saying that they
3 don't have a problem with our doing what we seek to do.

4 I'm just saying that that may give us the
5 necessary political cover. But I think that the legal
6 issue remains.

7 MR. JEFFRESS: Mr. Constance might like to --

8 MR. FUENTES: John, you have something to add?

9 MR. CONSTANCE: What this discussion might not
10 need is another voice. But since I have been the one
11 communicating with the appropriators and worked in this
12 area in my previous life for 25 years, let me just make
13 a couple of comments.

14 From a very practical standpoint, I think the
15 initial discussions that we had had with Vic about
16 going to the counsel, the appropriations committee, and
17 asking them how they would prefer that we move this
18 money back, was a good -- was a good plan.

19 We have followed through on that. I have sent
20 them an explanation, which I would be more than happy
21 to provide to you. And the counsel has written back to
22 say that they do not see this as a transfer, the reason

1 being LSC is only one account in the appropriations
2 bill, and to move money with an account for another
3 purpose than originally appropriated is not a transfer
4 but is a reprogramming.

5 That has been my experience. In my previous
6 job with the National Archives, we had multiple account
7 lines in our appropriation. Each one of those account
8 lines, from the White House all the way through the
9 congressional process, was given a different
10 appropriations number.

11 If you moved things between one -- from one of
12 those numbers to another in your account -- we had a
13 grant line. We had an electronic records archive line.
14 We had -- each one of which had a separate line and a
15 separate account number. If you moved them from one of
16 those to the other, it required an act of Congress.
17 You had to have specific language to do that.

18 If you moved it, you know, just within each
19 one of those numbers, then it required reprogramming.
20 The signatures of four members of Congress -- the
21 chairman and the ranking member of your House
22 appropriations committee and your Senate appropriations

1 committee.

2 MS. SINGLETON: Go back to the one that needs
3 the act of Congress. What would this --

4 MR. CONSTANCE: A transfer. A transfer. If
5 you go from one line to the other -- at the National
6 Archives, we had a programs account. It had a number.
7 We had an electronic record.

8 MS. SINGLETON: Okay. Right. So is the LRAP
9 one line and M&A one line?

10 MR. CONSTANCE: It is a line, but it is not a
11 separate number.

12 MS. SINGLETON: Oh, okay. Got it.

13 MR. CONSTANCE: From the White House all the
14 way through the process, we have one appropriation and
15 one appropriation number. And we have allocations or
16 sub-accounts under those appropriations. And the very
17 practical issue is if you're requesting a transfer, you
18 are requesting it from one number to another number.

19 In point of fact, we only have one, and that's
20 why the counsel, the senior counsel -- and there are
21 four of them, and I went to the most senior one and
22 only one of the four who happens to be an attorney. I

1 went to them and asked them how they preferred we
2 handle it. And they are saying, handle it exactly the
3 way you handled the last transfer.

4 With all due respect, they never cited last
5 year -- when we asked them, they never cited the
6 specific provision in the 2008 appropriations bill that
7 Vic is referring to. They cited the practical issue of
8 one account number as being the reason that that was
9 the way to do it. So that for purposes of further
10 confusing the issue, possibly.

11 M O T I O N

12 MS. SINGLETON: Could I make a motion? I
13 would like to propose, first of all, a slight change to
14 the resolution.

15 MR. JEFFRESS: What page are you on?

16 MS. SINGLETON: I'm on page 93. The
17 resolution starts on 92. But on the part on page 93, I
18 would like to add to this -- to the part that reads,
19 "After approval," I would like to add the words, "After
20 relevant committee approval is received."

21 And with that change, I would move the
22 adoption of Resolution 2009-003.

1 I'm going to also suggest that the -- because
2 somebody is whispering in my ear -- to remove the word
3 "transfer" from that same paragraph, "to pursue
4 authority to move \$500,000 in MGO funds to LRAP."

5 MR. JEFFRESS: Would you like to state it
6 as --

7 MS. SINGLETON: I've been trying to avoid
8 those words.

9 CHAIRMAN FUENTES: It has been moved, but I
10 don't hear a second. We'll say that dies for lack of a
11 second.

12 MR. STRICKLAND: I'll second it. I'm an ex
13 officio member of the committee. I'll second it.

14 CHAIRMAN FUENTES: Lillian?

15 MS. BeVIER: I'm sorry to ask this question
16 and to sort of suggest what a formalist I am and how
17 impractical. But I appreciate the advice and the
18 practicalities once again, and I appreciate all the
19 budget lines and so forth.

20 You know, it is unfortunately true in terms of
21 practical things that two committee -- the ranking
22 member and whatever, the majority member of a

1 committee -- are not Congress. And so if
2 there's -- maybe they didn't cite it last year, the
3 statute. But they don't -- you know, that's not the
4 relevant point to me, and in the legal discussion.

5 So my problem here is what this bible says
6 about reprogramming. And I take it that the bible
7 says, well, you can't. And that's what I'm
8 understanding Vic to say. The bible doesn't say about
9 account numbers.

10 MS. SINGLETON: Does the bible -- oh, it
11 doesn't?

12 MS. BeVIER: Well, it doesn't talk about
13 account -- so I'm just left getting very
14 conflicting -- just sort of what the legalities are
15 here. And I'm really -- I'll probably abstain from any
16 motion that is offered.

17 CHAIRMAN FUENTES: Thank you, Lillian.
18 Charles?

19 MR. JEFFRESS: Mr. Chairman, just one point.
20 I heard the same thing you did in terms of Vic saying
21 what the bible said. We also have the senior counsel
22 of the Appropriations Committee saying it's something

1 different.

2 Vic recognized in his opening remarks that
3 there were a difference of interpretations here. I
4 think that may be an issue, and that's why I suggested,
5 while you all might want to give management the
6 authority to pursue it, let's give our general counsel
7 time to review it.

8 But essentially, we have a difference on
9 opinion, one from the person who deals with this
10 on -- every single day, who works appropriations law
11 and has been working appropriations law; and then
12 another opinion from someone in our general counsel's
13 office for whom this is a matter of first impression.

14 MS. BeVIER: But I take it that GAO doesn't
15 investigate the Appropriations Committee and their
16 advice to agencies.

17 MR. CONSTANCE: John Constance again. They
18 are the investigatory arm of Congress. You know, they
19 are directed by Congress to do investigations.

20 MS. BeVIER: But not of Congress.

21 MR. CONSTANCE: No. That's correct.

22 CHAIRMAN FUENTES: Thank you. Well, I would

1 comment that I would seek -- in order to support a
2 motion at this time, I would seek some comfort from our
3 general counsel and from our inspector general. If our
4 general counsel and inspector general are not
5 comfortable with our actions, I'm not comfortable with
6 them.

7 But if they can tell me a path to get to what
8 we're all trying to accomplish, I would be more
9 inclined toward that. And I understand where you're
10 going, Sarah, and I want to be aboard. But I'm not
11 going to jeopardize the committee here doing something
12 incorrect in the absence of our chairman, who used to
13 be a United States Attorney. He's going to call me and
14 ask me why we did that.

15 (Laughter.)

16 MS. SINGLETON: Mr. Chair? Mr. Chair, for the
17 record, I think my motion should have read that this
18 committee recommend to the board that they adopt the
19 resolution.

20 CHAIRMAN FUENTES: Presumed. Thank you.
21 Well, so I turn, then, back to our general counsel and
22 the inspector general to ask: Do you see a path that

1 we can seek a solution?

2 MR. FORTUNO: Yes. I mean, I, speaking for
3 myself, don't -- I in fact would welcome an
4 opportunity, you know, if I was persuaded or we got
5 the -- if the Government Accountability Office, which
6 is charged with essentially resolving these kinds of
7 issues, were to say this is a reprogramming, not a
8 transfer, then I would be perfectly satisfied and in
9 fact welcome it because it would allow for transferring
10 the funds without having to wait until October 1 or
11 whenever the appropriation for next year was in fact
12 signed.

13 So I think that maybe it's just, as they would
14 say in the old days, belts and braces, you know,
15 suspenders and belts, so to speak. And I think highly
16 of the word we got from committee counsel.

17 But I would think we'd be safer if we were to
18 present it squarely to the Comptroller General and have
19 them issue a -- it could be as short as they would like
20 it to be. But just if they were to say yes, this is a
21 reprogramming, not a transfer, as far as I'm concerned,
22 that resolves it, it's the end of it, and it never

1 becomes an issue again.

2 I just -- I'm a little reluctant to proceed
3 when we have that available to us without at least
4 exploring that option. But that's -- maybe I'm just
5 being overly cautious, and maybe I'm mistaken in my
6 reading of the GAO guidance. But I think that's
7 probably the more prudent course. I don't know what
8 the IG would think. Jeff?

9 MR. SCHANZ: Well, what the IG thinks is that
10 the board approved the transfer initially last year,
11 for exigent circumstances, but that was done. So I
12 would need the legal underpinnings of why we made that
13 decision at the time.

14 And if that was constitutional to do so, and
15 the general counsel is indicating that that was
16 available to us in the appropriations law for '08, if
17 we do not have that in '09 I'm a little bit more
18 hesitant to recommend to the committee that this
19 resolution be approved by the board until we get
20 further clarification, which in this case there's been
21 about eight different opinions around the table.

22 I would like to see what the committee counsel

1 has provided in writing to the Corporation to initially
2 approve the transfer of half a million dollars in last
3 year's budget to save us from layoffs and furloughs.
4 And that may very well be, but I'd like to see some
5 things in writing.

6 And Mr. Chairman, as you know, that's
7 generally how an inspector general works, is I need to
8 see some factual --

9 CHAIRMAN FUENTES: We gave you --

10 MR. SCHANZ: And then -- I'm sorry -- we would
11 have the opportunity then to set the predicate for the
12 decision that was made to transfer it initially, and
13 then provide it to GAO as general counsel recommends.

14 CHAIRMAN FUENTES: I wonder if we were to give
15 you a month and have a phone meeting to try to resolve
16 this. Do you think we could do it in a month's time,
17 and would that be soon enough for moving the budget
18 along?

19 MR. JEFFRESS: Mr. Chairman, Charles Jeffress.
20 We would need approval for the rest of the budget
21 before then. We need the approval for the rest of the
22 budget this weekend. The issue of the \$500,000 can be

1 left separate.

2 MS. SINGLETON: Can we do that just by taking
3 out the second paragraph or subparagraph on page --

4 MR. JEFFRESS: The "Be it further resolved,"
5 or revise that to what you want. I would be cautious
6 in advising the committee in terms of seeking GAO's
7 opinion. GAO is an arm of Congress. They respond only
8 to Congress. I do not believe that they have authority
9 to respond to requests for opinions from anyone else.

10 So I'm saying this in my experience, and I'm
11 not going to say absolutely they would not respond.
12 But by statute, they are responsive only to Congress,
13 not to anybody else who wants to ask their opinion.

14 MS. SINGLETON: Mr. Chairman?

15 CHAIRMAN FUENTES: Yes, Sarah?

16 MS. SINGLETON: One question for David. In
17 terms of the LRAP program and the money it has for this
18 year, does it have all the money it needs?

19 MR. RICHARDSON: For this year it does have
20 enough money to meet its obligations.

21 MS. SINGLETON: But did we withhold grants or
22 something? I mean --

1 MR. RICHARDSON: We did not. We got
2 additional funding this year. We have the carryover
3 from last year, which we've now forgiven loans against
4 that carryover. But we still have enough money, with
5 the amount of loans that have currently been given, to
6 satisfy the full loans that are out there.

7 MS. SINGLETON: So why do we need this
8 \$500,000 for LRAP? I'm confused. I'm sorry.

9 MR. JEFFRESS: Because we promised to pay it
10 back.

11 MS. SINGLETON: What do we plan to do with it?

12 MR. JEFFRESS: Presumably, to make additional
13 loans.

14 MS. BeVIER: Given that, maybe the way to
15 resolve this is to say, well, if we're worried about
16 \$500,000 more for LRAP, let's make sure we have that
17 additional amount budgeted for 2010. And then we don't
18 pay it back this year.

19 We pay it -- we don't -- you see what I'm
20 saying? That we not resolve it now, but we make sure
21 that we fund LRAP at that increased amount for another
22 year. And that way we can not try to get an opinion

1 from somebody who's not going to give us one.

2 CHAIRMAN FUENTES: Charles?

3 MR. JEFFRESS: Mr. Chairman, just again, a
4 reminder: We promised Congress if we got more than
5 14.5, we would pay this back. I think you put the
6 Corporation in a very awkward position if we do not pay
7 it back.

8 MS. SINGLETON: That was my point.

9 CHAIRMAN FUENTES: Thank you very much.

10 Well, Sarah, before I come to your motion --

11 MR. STRICKLAND: Mr. Chairman, I would
12 consider withdrawing a second if the committee would
13 prefer not to vote on this item today.

14 CHAIRMAN FUENTES: Thank you very much. I
15 accept the withdrawal. The motion then --

16 MS. SINGLETON: I have a substitute motion.

17 CHAIRMAN FUENTES: Okay. I'll tell you what.
18 Before I entertain that, because we got involved in
19 this one point, I don't know that we had all the
20 questions answered on page 87, 86 and 87, where these
21 adjustments were outlined.

22 I'd like to know, on item No. 2, page 87, top,

1 a locality adjustment in the amount of 3 percent and a
2 salary increase up to 2 percent based on an employee's
3 performance, this suggests a pay increase in the public
4 sector in this time of depression -- recession, excuse
5 me -- and I'm not comfortable with pay increases in the
6 public sector when people in my community are losing
7 their jobs and taking pay cuts.

8 I'd like to know how much that amounts to in
9 real dollars.

10 MS. SINGLETON: And I'm sorry, where were you
11 reading those figures?

12 CHAIRMAN FUENTES: Page 87, item 2.

13 MS. SINGLETON: Thank you.

14 CHAIRMAN FUENTES: The question is: What is
15 the hard dollars impact of item No. 2, to begin with?

16 MR. RICHARDSON: I don't have the exact figure
17 with me, figured. I can do that this evening. But we
18 have been using 1 percent equals about \$80,000 in
19 raises.

20 CHAIRMAN FUENTES: Am I the only member of
21 this body that's concerned about giving pay raises in
22 the year 2009?

1 MR. STRICKLAND: I would share that concern,
2 Mr. Chairman.

3 MS. BeVIER: I think I would, too,
4 reluctantly. But of course, the concern is a product
5 of -- yes. I would share it.

6 CHAIRMAN FUENTES: Charles?

7 MR. JEFFRESS: Mr. Chairman, the pay increase
8 before you is something that management struggled with
9 in terms of what to propose. In discussing the matter
10 with the inspector general, since the inspector
11 general's staff is affected as well, we discussed
12 several options.

13 The option that is recommended to you here
14 comes with the endorsement of the inspector general and
15 management. Two issues are involved in approaching the
16 issue of the pay raise. One is we are proposing to
17 hire 15 additional people this year. Our labor market
18 in which we compete and in which people have to spend
19 money to live is the Washington area labor market.

20 So to the extent that we look at what are the
21 appropriate levels of pay for this labor market, we
22 look to our labor market information and we look

1 primarily to the federal government, which pretty much
2 sets the standard for the labor market in the
3 Washington area.

4 The board some years ago authorized LSC to
5 embark upon a locality pay program, which allows us to
6 compete with the federal government in terms of hiring.
7 At the moment, the federal government is paying
8 10 percent more than LSC on locality pay alone. It
9 puts us at a significant competitive disadvantage in
10 terms of recruiting new people. And as I say, we are
11 seeking to hire 15 people this year.

12 The proposal before you would increase
13 locality pay by 3 percent. It still leaves us
14 significantly below what the federal locality pay is.
15 Bu it does make some progress and helps us compete
16 somewhat on that point. This is after there was no
17 increase in locality pay last year; even though the
18 federal government raised theirs, we did not raise
19 ours. That's part of the reason why we've fallen
20 behind by 10 percent on locality pay alone.

21 So the proposal to increase locality pay by
22 3 percent is not to be the same as the federal

1 government, not even to get close to them, but to
2 remain somewhat competitive and to narrow the gap
3 between our pay plan and that of our biggest competitor
4 in the Washington area.

5 The other piece of the pay proposal is for the
6 performance pay. The employee handbook of LSC states
7 that our pay policy will be to pay for good performance
8 by employees. And here the initial was particularly
9 eloquent in terms of saying it was important to stick
10 with the pledge we have made to employees in terms of
11 pay for performance.

12 So what the proposal before you is is for
13 people who are performing fully successful in their
14 job. They will receive a 1 percent pay increase in
15 addition to the locality pay. For people who are
16 performing at the next higher level, the superior
17 level, they will receive 1.5 percent in addition to the
18 locality pay. And for people who are at the top of the
19 scale, the outstanding performers, they would receive a
20 2 percent increase in addition to the locality pay.

21 Again, this is less than the pay which federal
22 employees received beginning in January this year.

1 Because of our budget crisis, we gave no increase in
2 January of this year. At the time, the federal
3 government increased our locality pay. They provided
4 performance pay increases for their employees.

5 So I understand and respect the position that
6 we are all in in terms of looking at the pain and the
7 layoffs and the employment issue in the rest of the
8 country. This represents a catch-up to what was -- to
9 our competitors in the Washington market in January.

10 And Mr. Chairman, again, the inspector general
11 was particularly eloquent on the appropriateness of
12 this manner of pay increase. And I would request that
13 he might chime in on this as well.

14 MR. SCHANZ: Yes. This is Jeffrey Schanz, the
15 Inspector General.

16 This was a case of first impression for me,
17 having come from the federal sector where this is
18 generally not an issue. This was my first time with
19 the decision on whether to try to improve morale and
20 reward performance, which is something that, as
21 Mr. Charles has mentioned, was one of the cornerstones
22 of my presentation of the need for at least some sort

1 of bump-up in salary, given the competitive market.

2 During the IG's report, which is tomorrow, I
3 will talk about the Council of Inspector Generals for
4 Integrity and Efficiency, and the competitive nature of
5 the hiring, because of all the Recovery Act monies that
6 are out there.

7 I'm taking a very conservative approach and
8 using some of the additional '09 funds and what we have
9 requested for '10 in slowly building the inspector
10 general's office. But in order to do that, I'll be
11 hiring three people between now and the end of the year
12 to take us up to a ceiling of 26.

13 But in order to do that, I do want to reward
14 our superior performers. I inherited an office that
15 was suffering from some inertia. There are some people
16 who have gotten on board, and I want to be able to
17 provide them with a nominal -- and we're talking about
18 1 or 2 percent -- a nominal increase just to reward
19 performance and good behavior and hard work.

20 My concern was -- initially with the first
21 proposal was it was weighted too heavily on the
22 locality pay and not weighted heavily enough on the

1 performance pay. So essentially, in our negotiations,
2 the IG's negotiations with management, we decided to
3 adhere to the employee handbook, which provides for
4 this. And we wanted to be true to the process, which
5 rewards performance.

6 And that's how we came to the decision of a
7 3 percent locality, for the reasons Mr. Jeffress talks
8 about, is we're way behind the federal sector. And as
9 I mentioned, something that he doesn't know is the
10 Council of Inspector Generals is recommending, and some
11 of the legislation on the Hill also is recommending,
12 that the IGs, A, get paid more, B, be more independent,
13 and C, there's just an overall competition with the
14 Recovery Act board, which is comprised of inspector
15 generals.

16 So I think it's nominal. I do agree with
17 management's position on this, and they accepted all my
18 concerns when we started first discussing it.

19 CHAIRMAN FUENTES: Thank you. Sarah?

20 MS. SINGLETON: Charles, could you remind me
21 who gets locality pay?

22 MR. JEFFRESS: Locality pay is for everyone in

1 the Corporation.

2 MS. SINGLETON: Oh, it is?

3 MR. JEFFRESS: Including the people here
4 sitting in front of you, yes.

5 MR. SCHANZ: And we did want to -- that's
6 something that the IG did bring up, is I will be a
7 direct benefactor of any decisions that this board
8 makes. And I wanted to disclose that up front because
9 I'm at the top end of the pay scale.

10 So any decisions that are made on locality pay
11 and performance pay directly affect me as well as the
12 president of the Corporation. So the board needs to be
13 aware of that.

14 CHAIRMAN FUENTES: Thank you. I'd like to
15 offer the comment that I think the inspector general
16 and management both are very respectful and concerned
17 for the well-being and good cheer and esprit de corps
18 of our employees. And we certainly don't want to
19 adversely affect that.

20 But this national condition today I would
21 think would raise eyebrows in the Congress -- and we
22 have a lot of problem with our relationship with the

1 Congress of the United States -- for us to be advancing
2 pay raises in the public sector when the conditions are
3 as they are in both -- the private sector all across
4 this land.

5 I would not be comfortable with supporting a
6 pay raise for our people in this budget.

7 MS. BeVIER: Mr. Chairman, are you talking
8 about both locality pay and the pay raise itself?

9 CHAIRMAN FUENTES: I am. I think we are in a
10 national fiscal and economic crisis than is different
11 than any other time in the history of our memory, and
12 requires a very different approach, especially because
13 we are a poverty agency.

14 Well, I would entertain a motion, then, to
15 refer this budget back to management and ask them to
16 take into consideration what they have heard here, and
17 come back to us in a month with a budget reflective of
18 improvement. Is there a motion?

19 MS. SINGLETON: May I ask one question before
20 we do that? Did you say that the federal government
21 did give its employees a raise that was comparable to
22 what you're asking for in No. 2?

1 MR. JEFFRESS: Yes. As of January 1, 2009,
2 federal employees received a pay increase that included
3 both locality pay increase, and they have a different
4 pay plan, but a combination of across-the-board and
5 performance pay increases.

6 MS. SINGLETON: And it was the equivalent of a
7 5 percent pay raise? Is that what you're saying?

8 MR. JEFFRESS: Their locality pay went from
9 20.89 to 23.1. It went up 2.1, 2.2 percent. Their
10 annual step increases vary between 2 and 3 percent,
11 depending on where the people are in the schedule. On
12 top of that, they have merit and bonuses.

13 So yes, theirs increased the equivalent to
14 this. Moreover, last year we had no increase in
15 locality pay when once again they had a 2-1/2 percent
16 increase in locality pay.

17 MS. SINGLETON: And did Congress give its
18 employees a raise, or are they covered by the same
19 raise you just mentioned?

20 MR. JEFFRESS: Congress has a different pay
21 scale, and I'm not sure I know the answer to that
22 question.

1 CHAIRMAN FUENTES: Further comment?

2 MS. BeVIER: Mr. Chairman, I share your
3 concern. But I'm sensitive as well to Mr. Jeffress'
4 point that what the Corporation is doing is competing
5 in a market that is rather odd, a labor market that is
6 quite odd.

7 Our competitors are the federal government,
8 and we do know how much money the federal government is
9 paying for a variety of things. And it's not a
10 question of being profligate, but it is a question of
11 making sure that the money that Congress has approved
12 for us can be administered wisely and with capable
13 people.

14 So I would just like to suggest that at least
15 a locality pay adjustment would be appropriate in this
16 context. I haven't yet -- I can't come to rest with
17 respect to the other. I'm very -- I share your
18 concern, and I think it is an appropriate concern, and
19 I think we ought to be sensitive to what's going on in
20 the rest of the country and in the private sector.

21 And there are a lot of people that are in fact
22 losing their jobs. So that would seem to me to have a

1 different kind of impact on the labor market that
2 you're talking about. There might be more people
3 available to do this work. But I'm sort of looking for
4 a compromise with respect to -- but I agree with you
5 that I think that -- your suggestion that we go back
6 and ask management to reconsider.

7 CHAIRMAN FUENTES: Well, I would comment to
8 that that in this moment in time, when the national
9 scene is so affected by this rescission, we're also at
10 a special moment in time in Washington.

11 MS. BeVIER: Yes.

12 CHAIRMAN FUENTES: I sit on five boards in
13 Washington, D.C., and come in and out of that city for
14 these board meetings. And I noticed that in the last
15 90 days, we've had a change of administration, which
16 has put lots and lots of people out on the street
17 looking for jobs. So I'm not of the belief that
18 recruitment is as tough today in Washington, D.C. as
19 one might suggest.

20 MS. BeVIER: Maybe that's right.

21 CHAIRMAN FUENTES: At the barbershop type
22 pole.

1 MS. BeVIER: You don't mean that literally,
2 Tom.

3 CHAIRMAN FUENTES: You mean I don't go to the
4 barbershop? Well stated.

5 (Laughter.)

6 CHAIRMAN FUENTES: Well, I entertain a motion
7 to refer this budget back to management to bring us
8 back a better product in a month. Is there -- will
9 anyone move that? Sarah?

10 MS. SINGLETON: No. I don't move that. I
11 have another question because I want to be sure I
12 understand the impact of it.

13 This budget impacts all the field offices,
14 too, doesn't it, or not? Are we just talking about the
15 Washington office?

16 MR. JEFFRESS: Grantees make their own
17 decisions about --

18 MS. SINGLETON: No, no. I understand that.
19 But in here, we have the new money for basic field,
20 don't we?

21 MR. RICHARDSON: I did report earlier that
22 we've gone ahead and paid that money.

1 MS. SINGLETON: I know. But are you going to
2 keep paying it if we don't give you a resolution to do
3 so? I thought you did it thinking that this would go
4 through.

5 MR. RICHARDSON: We've not thought that far.
6 But I do have an alternative suggestion, if I could.

7 CHAIRMAN FUENTES: Mr. Treasurer, please do.
8 This is your game.

9 MR. RICHARDSON: If I could ask that you would
10 entertain this resolution, and approve it absent the
11 increases, and let us come back to you with increases
12 at a later date. That way we can move forward with the
13 new hires that we need to do. We can move forward with
14 the additional granting of money. And we can pursue
15 the -- what we just talked about with LRAP, moving that
16 money back, because we need authority to do that from
17 the board.

18 So if we can move forward with the resolution,
19 approve it with the exception of making an exemption of
20 raises, then we come back to you at a later time.

21 CHAIRMAN FUENTES: Sounds like wise counsel.
22 Would you like to move that, Lillian?

1 MS. BeVIER: Yes. I will move that. But I'm
2 uncertain whether we have reached a consensus about
3 the --

4 CHAIRMAN FUENTES: The LRAP issue?

5 M O T I O N

6 MS. BeVIER: -- the last page, the resolution
7 on page 93. I would move for the moment that we do as
8 David suggests, that we vote to recommend to the board
9 the approval of the budget, with the exception of the
10 raises, and we take that under advisement, or that
11 management does; and that we exclude the resolution
12 with respect to the LRAP transfer, so that the "Be it
13 further" resolved aspect of the -- or should we just do
14 this in two motions?

15 CHAIRMAN FUENTES: Well, Sarah is our word
16 crafter that I always turn to.

17 MS. BeVIER: Right.

18 CHAIRMAN FUENTES: What would you like to do,
19 Sarah?

20 M O T I O N

21 MS. SINGLETON: It would seem to me what we
22 should do is to approve the resolution as it is on

1 page 92, with the exception of the increase that would
2 relate to LSC staff raises, and without the provision
3 relating to LRAP.

4 And then we should have a separate motion
5 which directs management to look at the staff raises
6 again and report back to us at our next meeting about
7 those raises, and directs them to look into ways to
8 repay the LRAP program as we promised we would do when
9 we moved the money the first time.

10 MS. BeVIER: I second.

11 CHAIRMAN FUENTES: I like that. Vic, would
12 you be comfortable with that structure of those two
13 motions?

14 MR. FORTUNO: I'm comfortable with the
15 structure. I wonder what we are going to do in order
16 to explore -- I assume that that means we would
17 possibly seek resolution by the Comptroller General.

18 MS. SINGLETON: Well, you said you wanted to
19 look at what the chief staff counsel or the --

20 MR. FORTUNO: Oh, I've seen it. I mean, it's
21 two sentences that --

22 MS. SINGLETON: Well, maybe you want to talk

1 to him, and maybe he would convince you.

2 MR. FORTUNO: Oh, I'd be happy to.

3 MS. SINGLETON: You know, and maybe we -- I
4 don't know if Charles is right about GAO. Maybe we
5 would ask them for some kind of opinion. Or maybe we
6 would get a friend in Congress to ask them for an
7 opinion. I just want you to explore what we can to do
8 to try to make it right. If we come back and we're
9 still at the same loggerhead position, present it to us
10 again and we may have to take an up or down vote on it.

11 MS. BeVIER: Right.

12 MR. FORTUNO: That makes sense.

13 CHAIRMAN FUENTES: Herb?

14 MR. GARTEN: Or obtain an outside opinion from
15 counsel.

16 MR. FORTUNO: That might be quicker than going
17 to the Comptroller General. We have gone to the
18 Comptroller General before. I mean, there have been
19 issues about frequent flyer miles, and we've gotten
20 opinions from them.

21 So, you know, I don't see that being a
22 problem. I think that the issue might be getting any

1 arm of any branch of government to act as quickly as we
2 might prefer. But while that might be the preferred
3 approach, it may be that simply getting an independent
4 opinion would be sufficient. You know, I'd be
5 satisfied with that as well.

6 And I'm comfortable with the structure, in
7 light of the discussion we just had, the structure of
8 the resolution.

9 CHAIRMAN FUENTES: Thank you very much.

10 Madam President, do you wish to add anything
11 at this point to any of this?

12 MS. BARNETT: I appreciate the comments by
13 members of the board that recognize that in managing an
14 organization, whether it's the management side of the
15 house or the inspector general side of the house --

16 MS. SINGLETON: I think you need to get closer
17 to the mike. Sorry.

18 MS. BARNETT: -- that we both felt that there
19 was a need and it would be appropriate, in light of the
20 comparison with federal employees, to give our
21 employees some raise in the coming year.

22 And whether or not the board approves locality

1 pay without performance or some combination or -- which
2 I hope will not occur -- that there will be nothing in
3 this coming year for our employees, we will go back and
4 we will work again with the inspector general, because
5 this is one policy for the entire Corporation, both the
6 management side and the Office of the Inspector
7 General, to make recommendations to have our treasurer/
8 controller give you the exact dollars, which he did not
9 have with him today, and present it back to this
10 committee for a recommendation to the full board.

11 CHAIRMAN FUENTES: Thank you very much, Madam
12 President.

13 I do want to mention for the record, and
14 Charles can confirm, too, that we did have, with
15 David -- we did have a pre-briefing with Chairman McKay
16 on this topic. And in that, we had some dialogue about
17 the issue of pay raises.

18 So I bring this to you or perhaps I'm more
19 vocal in my particular concerns about this because
20 Mike, too, had some serious thoughts about it. We
21 didn't resolve anything, but we said, let's take a look
22 further. And I think it's worthy of taking a look

1 further.

2 So, then, we have a resolution -- or do we?
3 We have a motion to approve, based on Sarah's
4 adjustments/amendments.

5 MS. SINGLETON: Well, it --

6 MS. BeVIER: We have two or three motions.

7 CHAIRMAN FUENTES: Yes. But we're going
8 to -- yes.

9 MS. SINGLETON: Let me state it for the
10 record, if you want, Mr. Chairman.

11 CHAIRMAN FUENTES: Yes.

12 M O T I O N

13 MS. SINGLETON: I move that we recommend that
14 the board adopt the resolution as it is stated on
15 page 92, with the exception of the amount that would be
16 reflected for salary increases in Adjustment No. 2 on
17 page 87.

18 CHAIRMAN FUENTES: Thank you. And again,
19 that's in the context of making recommendation to the
20 board --

21 MS. SINGLETON: Yes. I believe that's what I
22 said.

1 CHAIRMAN FUENTES: -- yes, to so adopt. So
2 perhaps between now and the board meeting, this
3 language could be cleaned up to reflect that.

4 MS. SINGLETON: And then procedurally,
5 shouldn't we get a second to that and act on it? And
6 then I can make the other motions. Or do you want --

7 CHAIRMAN FUENTES: Well, I was taking that as
8 Lillian's motion, your second with the cleanup language
9 if Lillian agrees to the cleanup language.

10 MS. BeVIER: I do. Actually, I think I might
11 have checked out a minute because that enclose the
12 language on page 93?

13 MS. SINGLETON: Yes, it does.

14 MS. BeVIER: All right. So that's -- oh, she
15 made it better than I did. So she could be the mover.
16 It doesn't matter. I accept her --

17 CHAIRMAN FUENTES: Amendments.

18 MS. BeVIER: -- amendments.

19 CHAIRMAN FUENTES: Friendly amendments.

20 MS. SINGLETON: I'll be glad to be the second
21 for you, Lillian.

22 CHAIRMAN FUENTES: Thank you very much. We

1 have a resolution, moved -- no, we have a motion, a
2 recommendation of a resolution -- a resolution requires
3 a roll call vote, but a motion does not. And since
4 we're only recommending, we can accomplish this with a
5 simple vote and not roll call.

6 All those in favor -- or further discussion?

7 (No response.)

8 CHAIRMAN FUENTES: All those in favor of the
9 motion as presented?

10 (A chorus of ayes.)

11 CHAIRMAN FUENTES: Opposed?

12 (No response.)

13 CHAIRMAN FUENTES: The motion carries. Thank
14 you.

15 Now, secondly, we have another motion. And
16 Sarah?

17 M O T I O N

18 MS. SINGLETON: I believe procedurally I could
19 probably do both things in one motion. I move that we
20 request management to look further into the issue of
21 salary increase for LSC staff, and to report back to us
22 at our next meeting on what both management and the IG

1 believe we should do in light of the board comments
2 concerning that item; and also that we ask management
3 to look into the ways that we can effect a movement of
4 the \$500,000 from MGO to LRAP in a way that is
5 consistent with law.

6 CHAIRMAN FUENTES: Might you accept a friendly
7 amendment, or that that be in concurrence or in working
8 relationship with the general counsel and the inspector
9 general, so that we get their input on that?

10 MS. SINGLETON: Well, I guess. I think that
11 the general counsel is part of management, so hopefully
12 he is automatically included. If you want to say it
13 should be -- that management should consult with the
14 IG, that's fine. I personally don't believe this is an
15 IG item, so I don't want to say the IG has to approve
16 what is recommended.

17 CHAIRMAN FUENTES: We can look for their
18 comment. We can look for the IG comment and the
19 general counsel comment when the matter is brought to
20 us. Very good.

21 Is there a second?

22 MS. BeVIER: Yes. I second.

1 CHAIRMAN FUENTES: All right. Discussion
2 further?

3 (No response.)

4 CHAIRMAN FUENTES: All those in favor signify
5 by saying aye.

6 (A chorus of ayes.)

7 CHAIRMAN FUENTES: Opposed?

8 (No response.)

9 CHAIRMAN FUENTES: Carried.
10 Anything further on item No. 4 from our
11 presenters or from board members?

12 (No response.)

13 CHAIRMAN FUENTES: We can move on to item
14 No. 5, the presentation of the LSC financial reports
15 for the first six months of fiscal year 2009. And the
16 report from our treasurer, and comment from our chief
17 administrative officer.

18 MS. SINGLETON: I'm sorry. Which number are
19 we on?

20 CHAIRMAN FUENTES: No. 5. We've moved to 5.

21 MS. SINGLETON: Thank you.

22 MR. RICHARDSON: I must state that from

1 the -- my report here includes all the funds that we've
2 just talked about in the prior area. So the salaries
3 and all the money is in this particular --

4 MS. SINGLETON: As if we had approved that
5 resolution when we didn't do it.

6 MR. RICHARDSON: That's correct.

7 MS. SINGLETON: David, you should know better
8 than to count on us.

9 MR. RICHARDSON: But I'll work with you on the
10 resolution about that.

11 With the additional money that we received
12 with our budget, we are well within budget. On page
13 94-A, which is the e-mail that I sent each of
14 you -- and if you do not have copies of that, I do have
15 additional copies -- I lay out that the basic field
16 programs that we have currently, we have \$6.866
17 million -- and this is at the bottom of page
18 94-A -- set aside to fund a couple programs that are on
19 month-to-month funding or short-term funding.

20 California Rural Legal Assistance was funded
21 for six months, so we have \$3.974 million set aside for
22 the remaining six months for that funding area.

1 Nevada Legal Services received two months
2 original. They have not received two additional
3 months. They've been funded through April. So there's
4 \$1.447 million set aside for that program.,

5 The Wyoming program, which you've received
6 some reports about, we have an interim provider that is
7 receiving funding at this point. They are
8 month-to-month funding. And of the \$6.8 million,
9 there's \$536,000 that's for that service area.

10 Under an agreement with Native Hawaiian, which
11 is no longer a program for us, they were funded until
12 December 31st of last year. We withhold \$13,700 to pay
13 for a final audit. And pending submission of that, and
14 then it will be paid to either the audit firm or to
15 Native Hawaiian.

16 We also have money continued -- set aside for
17 American Samoa. The reserve so far is \$895,000. That
18 includes \$342,000 for this year. And then we have
19 \$552,000 for 2007 and 2008.

20 I talked about the additional funding that
21 we've gotten for the U.S. Court of Veterans Appeals,
22 and that increase from \$1.2 million to 1.7. We've made

1 that award. We have \$82 in taxi fares going back and
2 forth to their board meeting and so forth.

3 And at the end of the year, a little side note
4 here is we do charge -- this is a reimbursable grant.
5 So the person who's heading up that particular grant
6 will get part of his salary reimbursed from this. Last
7 year it was about \$4,000, along with part of the Social
8 Security and retirement that will offset this. And
9 that money will go back into program performance.
10 There's also a small amount that goes to legal affairs
11 as they review contracts and so forth with that.

12 The grants from other funds, I reported at the
13 last meeting that we had \$135,000 in awards. Yes?

14 MS. BARNETT: David, I just want to make sure
15 you're aware that I approved a grant to Lone Star of
16 \$120,000 before we left for this meeting.

17 MR. RICHARDSON: I did not know. I have a
18 note here that there had been a request. I knew the
19 amount, but I did not include it in the report because
20 sometimes that is reduced. So we now have an
21 additional grant of \$120,000 that will be going out at
22 either the end of April, next week, or the first of

1 May. So we'll get that into the next reporting for
2 you.

3 MS. BARNETT: Thank you.

4 MR. RICHARDSON: Additionally, I had reported
5 that we had technology grants. We had three grants
6 that was left over from last year that was funded in
7 October and November. Since that time, we've got two
8 grants that have been terminated that totaled \$60,000,
9 so that money is going back into the technology
10 initiative program.

11 MS. SINGLETON: David, you have a question.

12 MS. BeVIER: I just want to know what
13 "terminated" means. Is it a question of that they have
14 run their course, or that they have been cut off for
15 some reason?

16 MR. RICHARDSON: They did -- it's my
17 understanding that they did a portion of the work that
18 was in the original contract. And they have decided
19 that they could not complete the project with the
20 amount of money that was being allotted, so they have
21 withdrawn from the LRAP grant.

22 What we ended up doing was the administrator

1 of that particular contract then did an evaluation to
2 make sure that we got value for the money that we had
3 already paid them. And his determination was that we
4 did receive value, and terminating the last payments of
5 that grant was appropriate. And we did get value for
6 the amount of money that was paid.

7 MR. JEFFRESS: And the termination was by
8 mutual consent.

9 MS. BeVIER: Right. That's an important piece
10 of information for me. Thank you.

11 MR. RICHARDSON: The second part of this
12 report -- again, it starts on 94-B at the bottom -- it
13 talks about the LRAP program, MGO, management grants
14 and administration, and inspector general.

15 The first section of the report we report on
16 an annual basis because we give our grants on an annual
17 basis. The second section of the report, we do it pro
18 rata based on the number of months in the year. So
19 there's 50 percent of the budget being shown.

20 Again, with the large influx of money we
21 received this year, currently we have money under
22 budget of \$2.4 million. The more important figure to

1 look at is when we compare spending from this time last
2 year to this time -- from March last year to March this
3 year, management is spending \$308,000 less in 2009 than
4 we did in 2008. I expect spending to pick up here very
5 quickly, especially when we start hiring people to come
6 into the office.

7 Additionally, we do have some contracts that
8 are outstanding of \$58,000, and that's an encumbrance
9 that is being talked about.

10 You asked about the LRAP. This year we have
11 forgiven loans of \$279,400. We have loans receivable
12 at this point of \$343,300. Just the money that we have
13 currently, we have \$800,000 to help fund next year's
14 grants.

15 MS. SINGLETON: But does that include the
16 money that was in the resolution that just got taken
17 out?

18 MR. RICHARDSON: It does not.

19 MS. SINGLETON: Okay. Thank you.

20 MR. RICHARDSON: Within the OIG's budget, he
21 of course received a substantial amount of money. His
22 budget for the office is a million dollars under

1 budget. And the spending from 2008 to 2009, he's
2 actually spent \$114,000 more in 2009 than he did in
3 2008, and that is a result of staffing increases in the
4 office. And then there is outstanding contracts at
5 this point of \$6,000.

6 One last thing that I'll report to you is
7 the -- and I told you I would do this at each
8 meeting -- is the president's discretionary fund. We
9 had remaining \$16,141 at the end of the year, and we
10 got our special interest-bearing account that is paying
11 4 percent, which will go away this month. But the six
12 months here, we've earned \$293 on that account.

13 That will go down substantially -- actually,
14 this account received more interest than our money in
15 our checking account the month of March. And that had
16 \$4 million as an average balance.

17 (Laughter.)

18 MS. SINGLETON: You should have moved all of
19 it.

20 MR. RICHARDSON: Couldn't write checks on it.

21 MR. SCHANZ: Would that be a transfer or a
22 reprogramming?

1 (Laughter.)

2 MR. RICHARDSON: What I have before you, you
3 can see on 94-E each of the budget lines are certainly
4 under budget. You'll see the encumbrances broken down
5 by office.

6 On 94-F, you'll see the budget categories, and
7 all the budget categories are certainly under budget
8 also, and the budget category encumbrances, the
9 contracts to date. And then we have the spending on
10 94-G.

11 On the last page, 94-H, you'll see the
12 breakdown of the inspector general's budget. And
13 again, each line is under budget. I realize that is a
14 very quick report, but since we are so late into the
15 evening, I thought I would condense it somewhat.

16 If you have any questions?

17 CHAIRMAN FUENTES: Thank you very much.
18 Charles?

19 MR. JEFFRESS: In keeping with your admonition
20 at the outset of the meeting, Mr. Chairman, I have no
21 further comments.

22 CHAIRMAN FUENTES: You're very kind. Very

1 kind.

2 Questions or comments from members of the
3 committee?

4 MS. SINGLETON: I just -- I'm trying to figure
5 out, if I want to look at the board expenses --

6 MR. RICHARDSON: Yes, ma'am?

7 MS. SINGLETON: -- and I want to know
8 whether -- how much they're under budget or over
9 budget --

10 MR. RICHARDSON: Page 94-E. You have an
11 annual budget for the board of 245, but halfway through
12 the year, \$127,000. Prior to this meeting, we had
13 spent \$68,000. So we're \$58,000 under budget for the
14 board.

15 MS. SINGLETON: So that wouldn't be enough to
16 cover employee raises, would it?

17 (Laughter.)

18 MS. SINGLETON: Okay. Thanks.

19 CHAIRMAN FUENTES: Further? Moving on to item
20 No. 6, consider and act on revisions to the fiscal year
21 2010 budget request, and a presentation by the
22 inspector general. Please.

1 MR. SCHANZ: Thank you, Mr. Chairman. We were
2 as surprised as I think the Corporation was when we got
3 our 2009 appropriation from the omnibus. What was
4 happening in 2009, our budget, the IG's budget, was
5 increased to \$4.2 million.

6 In keeping with budgetary policy and just my
7 experience in the area, in 2010 we wanted to then
8 increase our budget to a stagnant \$4.2 million that we
9 had gotten in 2009. So we communicated with the
10 chairman of the board, Mr. Strickland, and the chairman
11 of the finance committee, Mr. Fuentes and Mr. McKay,
12 and told them that we were going to request a
13 supplemental, based on the advice of the director of
14 government relations and public affairs, that we could
15 submit a supplemental to equal our 2009 request in
16 2010.

17 So with the notification of the appropriate
18 board members, we went ahead and sent a letter and
19 talked to the staffers of the four committees that are
20 responsible for the LSC corporate budget. And included
21 in that, of course, is the IG budget.

22 So the 2010 budget request on the Hill for the

1 IG is \$4.2 million. Both the president of the
2 Corporation and the vice president during their
3 testimony alluded to the increase of the 2010 budget
4 for the overall Corporation. I was a little bit
5 disappointed to see that the IG line item wasn't
6 included there, so I followed up with staffers to make
7 sure that we understood that the IG's budget request
8 for 2010 is in fact \$4.2 million, which was the same
9 amount that they have appropriated to us in 2009.

10 I have strategic planning goals that I could
11 discuss with you at length on how I intend to use those
12 funds, but I'm not sure that's appropriate at this
13 point in time.

14 CHAIRMAN FUENTES: Thank you very much.

15 Are there questions or comments? Sarah?

16 MS. SINGLETON: I have two questions.

17 When you say you got permission from
18 appropriate board members, who is that?

19 MR. SCHANZ: I talked to the president, Frank
20 Strickland, and I talked to Mr. McKay. And I verified
21 those conversations by e-mail.

22 MS. SINGLETON: And why do you think that's

1 the -- those are the appropriate board members?

2 MR. SCHANZ: The chair of the finance
3 committee. I just wanted to notify them that I had
4 received a bump-up of \$1.2 million in 2009.

5 MS. SINGLETON: No. I understand that part.
6 But if you -- I guess I'm asking sort of a procedural
7 question. It seems as though the entire board votes on
8 what budget to submit to Congress. And I'm asking,
9 procedurally, why is it appropriate for you to change
10 that number when you talked to only two members of the
11 board?

12 MR. SCHANZ: Actually, Congress had changed
13 the number.

14 MS. SINGLETON: Well, they changed the number
15 for one year. But our budget request is approved by
16 the whole board. We turned in a budget request for
17 2010, and I want to know why it's appropriate to change
18 a part of that based on permission from two members of
19 the board.

20 MR. SCHANZ: Well, I sent it to the entire
21 board. And I was operating on the advice of the
22 director of government relations and public affairs

1 that it would be appropriate to submit a supplemental
2 to Congress. On March 25th, I sent the entire board
3 what I had sent to Congress.

4 MS. SINGLETON: I understand that. But that
5 was after you'd sent it to Congress. I just -- I do
6 not quite understand why you didn't need a full board
7 to vote on whether or not it was appropriate for you to
8 turn in that supplemental.

9 MR. SCHANZ: I was operating -- I'm very
10 cautious in my words here -- but I was operating on the
11 advice from the director of government relations and
12 public affairs that when the Corporation's entire
13 budget went forth to the Hill, it did not include what
14 was given as the increase for the inspector general in
15 2009.

16 Operating on the advice from Mr. Constance, I
17 was told that I could submit a supplemental to
18 Congress, and they were expecting it. When I -- I'm
19 getting to your question. I apologize for trying to
20 set the ground work.

21 That was the reality. I would have preferred
22 to have my \$4.2 million budget included in the

1 Corporation's request, and I was quite dismayed, when I
2 saw the budget, that it wasn't in there. Therefore, I
3 went to another approach, and the secondary approach
4 was to contact, first off, the director of government
5 relations in saying, okay, well, I didn't see our
6 increase in the corporate budget.

7 When that didn't occur, then I contacted the
8 finance committee and the chairman of the board and
9 discussed it with the Hill staffers as to how the
10 appropriate approach should be to increasing a request
11 so that the corporate budget reflected an entire
12 picture, including what was requested by the IG.

13 I didn't get that initially, so I went back
14 and submitted that. I don't have an answer for you. I
15 submitted it to the Hill on the advice of the corporate
16 government relations guy. And if that was
17 inappropriate, then I will take the mea culpa for not
18 advising the entire board.

19 But I thought that that had been addressed,
20 and I see that my esteemed counsel, Mr. Constance, is
21 here to help me out because I wasn't sure what the
22 process would be to submit a supplemental.

1 MR. CONSTANCE: John Constance, for the
2 record, director of government relations and public
3 affairs. My only advice had to do with how to inform
4 the committee of the action, not how to effect the
5 approval by the board.

6 In terms of how one normally provides that
7 kind of supplemental information, it does in fact go to
8 the four corners of the committee. I advised Jeff how
9 to formulate that. But in terms of how to gain the
10 approval of this board for increasing the request for
11 2010, I provided no counsel in that regard.

12 MS. SINGLETON: Well, I believe I made my
13 point. I just think that this is not something that I
14 was aware was delegated to either the chairman of the
15 whole board or the chairman of the finance committee.
16 And I think the whole board ought to be involved. I
17 don't think it's really your fault, either, but --

18 MR. SCHANZ: Well, I'm not looking for fault
19 here. I'm looking for a practical solution. And if
20 the entire board should have been notified, well, then,
21 I should have notified the entire board.

22 MS. SINGLETON: Well, I could be wrong. ut it

1 does seem to me that the full board does act on our
2 budget request to Congress. And if we're going to
3 change that, it seems to me the full board ought to act
4 on it. And we can do it via telephone call, if
5 necessary. But that wasn't done.

6 MR. SCHANZ: No. No, it was not.

7 CHAIRMAN FUENTES: Sarah, thank you for that
8 input. I guess what we're looking for here
9 is -- taking all that into consideration, I guess we're
10 looking for a recommendation to the full board related
11 to this change.

12 Are you or Lillian interested in making a
13 motion to effect this change at this time so that there
14 can be full board action? Everybody has this, don't
15 you? This is what we're --

16 MS. BeVIER: What page is that? I don't --

17 CHAIRMAN FUENTES: Well, I've got this --

18 MS. BeVIER: I don't have it.

19 CHAIRMAN FUENTES: Helaine just gave this to
20 me when we sat down here. Maybe -- has everybody
21 received a copy of this, Helaine, do you know?

22 MR. JEFFRESS: David said he handed it out.

1 MR. RICHARDSON: I put it at each of you's
2 chairs.

3 CHAIRMAN FUENTES: Oh, okay. It was just your
4 copy that you lent to me. I just stole --

5 MS. SINGLETON: From Bank of America?

6 (Laughter.)

7 CHAIRMAN FUENTES: -- your copy. All right.
8 Do we all have it? Entitled, "Resolution: Supplement
9 Budget Request for Fiscal Year 2010," Resolution
10 2009-004.

11 M O T I O N

12 MS. BeVIER: I move that we --

13 CHAIRMAN FUENTES: Recommend.

14 MS. BeVIER: -- recommend this resolution, the
15 supplemental budget request resolution, to the full
16 board.

17 CHAIRMAN FUENTES: Is there a second?

18 MS. BeVIER: Oh, it says "Supplement Budget
19 Request." It should probably read "Supplemental Budget
20 Request." And also, down in the text, the third
21 "Whereas" --

22 CHAIRMAN FUENTES: The third "Whereas" is

1 "supplemental." Okay.

2 MS. SINGLETON: This might be technical.
3 Maybe it is "supplement."

4 MS. BeVIER: It doesn't sound right.

5 MS. SINGLETON: It doesn't sound right, but
6 that doesn't mean it's not technical.

7 MS. BeVIER: Hey, that's right. This is
8 the --

9 MS. SINGLETON: This is government.

10 MS. BeVIER: I guess we should look in the
11 bible and find out.

12 CHAIRMAN FUENTES: Is that in the Old
13 Testament or the New Testament section so that Herb and
14 I can render an opinion?

15 (Laughter.)

16 MS. BeVIER: Well, apparently my motion is
17 going to die for lack of a second.

18 CHAIRMAN FUENTES: Is there not a second to
19 the motion by the distinguished member from the state
20 of Virginia?

21 MR. STRICKLAND: I'll second the motion.

22 CHAIRMAN FUENTES: Thank you. It's been moved

1 and seconded that the recommendation from the finance
2 committee goes to the full body for the adoption of
3 Resolution 2009-004.

4 And before I call for the vote, I'm going to
5 declare that I'm going to cast a "No" vote on this
6 resolution, not because I have any objection to the
7 increase for the inspector general. But I voted
8 originally against this level of funding, and I still
9 feel strongly as I did then.

10 So we'll call for vote now.

11 MS. SINGLETON: Well, I have one question.

12 MS. BeVIER: Wait a second. Yes.

13 CHAIRMAN FUENTES: Yes?

14 MS. BeVIER: Sarah had two questions, and she
15 only asked one of them.

16 CHAIRMAN FUENTES: Excuse me.

17 MS. SINGLETON: Well, I don't even remember
18 what the old second one was. But I think I asked it in
19 our discussion.

20 But my question now is: When we originally
21 sent the 2010 budget request to the Hill, there was an
22 amount in there for the inspector general. What was

1 it?

2 MR. SCHANZ: \$3.5 million.

3 MS. SINGLETON: All right. Thank you.

4 CHAIRMAN FUENTES: Sarah, are you satisfied
5 that all your questions have been asked?

6 MS. SINGLETON: Yes. Yes, I am.

7 CHAIRMAN FUENTES: Thank you so much. Further
8 comments or questions from other members?

9 (No response.)

10 CHAIRMAN FUENTES: Hearing none, all those in
11 favor signify by saying aye.

12 (No response.)

13 MS. BeVIER: Do you have to vote for it if you
14 made the motion?

15 CHAIRMAN FUENTES: No. No. You do not. But
16 we start to lose a quorum.

17 Is there a -- all right. Is there an
18 alternative? The motion fails. Is there an
19 alternative motion?

20 MS. SINGLETON: Personally, Mr. Chairman, I
21 think that the inspector general's budget should be at
22 the \$3.5 million, which I wanted to reduce at the time

1 we were acting on it and they said I couldn't do that.
2 I thought that was enough then, and I still do.

3 CHAIRMAN FUENTES: Well, then, I happen to be
4 supportive of the increase for the inspector general.
5 I wonder if we can rewrite this resolution, and we
6 shall not address the overall budget but we shall
7 address the increase to the inspector general's amount?
8 And that I can support.

9 Is there a motion to that effect?

10 MS. BeVIER: Mr. Chairman, would you give me
11 your rationale for supporting the one and not the
12 other?

13 CHAIRMAN FUENTES: I believe that the Office
14 of the Inspector General is a department of our overall
15 operations that has been historically under-utilized,
16 has a far greater role in the success of this
17 corporation, and I am an enthusiastic supporter of that
18 office and that function which I believe has been very
19 under-utilized through our entire tenure as a board.

20 Hearing no motion -- is there a motion?

21 (No response.)

22 CHAIRMAN FUENTES: Hearing none, the

1 resolution recommendation brought to the body fails.

2 Moving on to item No. 7 --

3 MR. SCHANZ: Mr. Chairman, if I may for the
4 record, please. The Inspector General Act and the
5 Inspector General Reform Act of 2008 both provide the
6 inspector general's office government-wide, including
7 the LSC, with independent budget authority.

8 If I am dissatisfied with the decision of the
9 board, I have the authority to go directly to Congress,
10 where I've been pledged full support of the
11 \$4.2 million request.

12 MS. SINGLETON: If that is in fact the case,
13 the inspector general can do that. But he doesn't go
14 with the backing of a board resolution.

15 CHAIRMAN FUENTES: Any further comment from
16 members of the committee?

17 MR. SCHANZ: Well, there is -- we haven't seen
18 the transcripts yet. But there is testimony on the
19 Hill on April 1st from the president of the Corporation
20 and the vice chair of the board that the IG, or the
21 entire LSC budget including the \$4.2 million from the
22 IG, has been presented to the Appropriations Committee,

1 at which point Congressman Wolf recognized the
2 independence of the inspector general's budget
3 authority.

4 CHAIRMAN FUENTES: I think we've seen that in
5 some context --

6 MR. SCHANZ: We've seen the testimony.

7 CHAIRMAN FUENTES: -- over e-mail somewhere.

8 MR. SCHANZ: Yeah. We've seen the testimony.
9 We haven't actually seen the transcripts yet, unless
10 the Corporation has obtained those. I have not seen
11 the transcripts. But the total amount that was asked
12 for in that appropriation hearing on April 1st was
13 \$485,800,000.

14 And included in that is the listing of the
15 numbers that you see. That totals that amount. And
16 that was presented in the aggregate to the
17 Appropriations Committee on the Hill.

18 MS. BeVIER: Excuse me. Is that correct,
19 Helaine? I have to confess that if that's the correct
20 number, then I'm -- I don't recall presenting a number.
21 I don't recall that -- you know, what my testimony was
22 about was simply -- was mostly board governance and

1 what the board had done with respect to the GAO report.

2 CHAIRMAN FUENTES: Mr. Constance?

3 MR. CONSTANCE: Once again, thank you. Thank
4 you, Mr. Chairman. The testimony on April 1st was in
5 fact \$485.8 million as the overall request. At that
6 point, the inspector general had discussed the matter
7 with the chairman of the board.

8 The chairman of the finance committee had
9 requested of me the appropriate procedure to notify the
10 Hill of an amended request. I provided that
11 information. And when we went up to testify, those
12 letters had already gone to the four corners of the
13 Appropriations Committee approximately a week prior to
14 our testimony.

15 They had been notified by the inspector
16 general of his request and the amended request of the
17 Corporation. So that was the basis upon which we went
18 up and testified.

19 Do you wish to provide a clarification of
20 that, Helaine?

21 MS. BARNETT: My recollection is that the
22 budget request I stated was 485.8. We never discussed

1 what the difference was between the first one or the
2 request by the Office of the Inspector General.

3 MR. CONSTANCE: Right.

4 MS. BARNETT: There was no discussion at all
5 at the hearing --

6 MR. CONSTANCE: But in point -- right.

7 MS. BARNETT: -- as to any discussion of the
8 makeup of that budget request.

9 MR. CONSTANCE: There was no discussion.
10 However, the committee had before them the written
11 request of the Corporation that said 485.1. And we
12 testified to the additional 700,000 in aggregate as
13 part of that request, based on the information that
14 Jeff has provided today.

15 M O T I O N

16 MS. BeVIER: Mr. Chairman, I'm going to just
17 reconsider my failure to move the request for the
18 Office of the Inspector General. Having represented to
19 Congress simply by my presence there, I think it's only
20 appropriate. And that's the number that we asked for.

21 And since this is already included, I will
22 move the addition to the -- I will move the

1 supplemental request for the additional \$700,000 for
2 the Inspector General for 2010.

3 CHAIRMAN FUENTES: I take that as a motion to
4 recommend to the full board --

5 MS. BeVIER: Yes?

6 CHAIRMAN FUENTES: -- the increase as request
7 by the inspector general.

8 MS. BeVIER: By the inspector general. And I
9 apologize for my -- I apologize for not having been
10 alert to the -- to sort of what I was doing. I
11 apologize for that.

12 MS. SINGLETON: Why wouldn't it be a motion to
13 recommend the resolution?

14 CHAIRMAN FUENTES: Because the good vice
15 chairman was being kind to me, I believe, requesting
16 that we divide this issue so that I could vote on the
17 increase but not change my vote on the budget as a
18 whole, which I appreciate that courtesy.

19 MS. SINGLETON: All right. I understand.
20 Okay. I appreciate --

21 CHAIRMAN FUENTES: Thank you so much. So we
22 have a motion to recommend to the full body a

1 resolution to increase the amount of the budget for the
2 Office of the Inspector General in fiscal year 2010
3 budget, and to direct general counsel between now and
4 tomorrow's meeting to craft a proper resolution to
5 reflect that? How would that be?

6 MS. BeVIER: That's fine with me. That's my
7 motion.

8 CHAIRMAN FUENTES: Okay. Is there a second to
9 that?

10 MR. STRICKLAND: Second.

11 CHAIRMAN FUENTES: Second. Further
12 discussion?

13 MS. SINGLETON: Just a question.

14 CHAIRMAN FUENTES: Sure, Sarah.

15 MS. SINGLETON: Do we need the rest of this?
16 I know you don't want to vote for it, Mr. Chairman.

17 CHAIRMAN FUENTES: Right.

18 MS. SINGLETON: But do we need a resolution
19 regarding the rest of this --

20 CHAIRMAN FUENTES: Have the numbers changed in
21 any of the rest of it?

22 MS. BARNETT: No.

1 MR. CONSTANCE: No, they have not.

2 CHAIRMAN FUENTES: No. All right. Thank you
3 so much.

4 All those in favor signify by saying aye.

5 (A chorus of ayes.)

6 CHAIRMAN FUENTES: Opposed?

7 MS. SINGLETON: Would you please show me as
8 abstaining? I'm abstaining out of deference for what
9 was represented to Congress by members of the board.
10 But I still think we should have had a full discussion
11 by the board of whether or not the inspector general's
12 increase was one we wanted to support.

13 CHAIRMAN FUENTES: I understand.

14 MS. SINGLETON: Which is not to prejudge what
15 the outcome would have been. But that's what I think
16 should have happened.

17 CHAIRMAN FUENTES: Kindly said. In that case,
18 the record should indicate a vote of yes, 3, no, zero,
19 and one abstention.

20 (Whereupon, the meeting of the finance
21 committee continued in evening session.)

22

1 underway. The appropriations subcommittees have begun
2 to hold hearings, despite the fact that the
3 administration has not provided a detailed budget
4 request for 2010.

5 At this point, it would appear that the
6 president's detailed budget request will go to the Hill
7 in early May. While the administration has not
8 released specific funding levels for agencies, OMB has
9 informed us that President Obama intends to request
10 \$435 million for LSC, a \$45 million increase from 2009.

11 On April 1st, Board Vice Chairman Lillian
12 BeVier and LSC President Helaine Barnett appeared
13 before the House Appropriations Subcommittee on
14 Commerce, Justice, Science, and Related Agencies to
15 present the case for LSC's FY 2010 budget request.

16 The subcommittee is led by Chairman Alan
17 Mollohan and Ranking Member Frank Wolf. Other members
18 in attendance included Mr. Culberson of Texas,
19 Mr. Schiff of California, Mr. Honda of California,
20 Mr. Fattah of Pennsylvania, and Mr. Serrano of New
21 York.

22 Vice Chairman BeVier focused her testimony on

1 LSC board's efforts over the last two years in
2 improving governance practices and oversight of the
3 Corporation's financial and compliance responsibility.
4 She briefly outlined the actions taken to date, and
5 assured the subcommittee that a central mission of the
6 Corporation was the proper and effective stewardship of
7 funds entrusted to the Corporation in the delivery of
8 civil legal services to the nation's poor.

9 President Barnett testified on the impact of
10 the deepening recession in increasing the number of
11 clients in need of legal assistance while
12 simultaneously wreaking havoc on many of the program's
13 major funding sources. She stressed the critical need
14 for increased funding to provide crucial legal
15 assistance to the millions of low income Americans
16 forced to confront serious civil legal problems without
17 the help of an attorney.

18 She explained the important role of private
19 attorney involvement in closing the justice gap, and
20 the commitment of the board to close the gap in the
21 next four years.

22 My staff and I are currently making the rounds

1 on the Senate side, explaining our 2010 appropriations
2 request. We're expecting to have that rotation
3 completed by the end of May.

4 I'd be happy to answer any questions that you
5 or the committee might have, Mr. Chairman.

6 CHAIRMAN FUENTES: Thank you very much,
7 Mr. Constance.

8 Are there questions or comments to that
9 presentation?

10 (No response.)

11 CHAIRMAN FUENTES: Hearing none, thank you
12 very much.

13 MR. CONSTANCE: Thank you.

14 CHAIRMAN FUENTES: We look now to public
15 comment. Is there any? Sir?

16 MR. SAUNDERS: And indeed, Mr. Chairman, thank
17 you. I will be very, very brief. I'm Don Saunders
18 from the National Legal Aid and Defenders Association.
19 I just want to make two points for the record.

20 One, having vigorously opposed the
21 reprogramming earlier with the American Bar, we're very
22 pleased to hear that you are looking to reestablish

1 that account in whatever form or fashion that takes
2 place. We're very happy that that action is going to
3 take place.

4 And just for the record, I will take the same
5 approach as the Attorney General that Congress
6 generally looks at one number. We feel that the
7 increases in oversight have been significant. This
8 board has taken tremendous steps to address whatever
9 shortcomings were there.

10 And I would just like to suggest to the board
11 that the increase for the inspector general for FY 2010
12 is not something that we would support. And we'd just
13 like to go on the record with that, as the inspector
14 general did.

15 I will not get into the arguments. Every
16 dollar to the field right now is absolutely critical.
17 It is a very difficult time, and my experience shows
18 that that number will come out ultimately in the basic
19 field. And the board should at least look with careful
20 scrutiny at how those resources will be expended.

21 Thank you.

22 CHAIRMAN FUENTES: Appreciate your comments.

1 Are there questions of our guest?

2 (No response.)

3 CHAIRMAN FUENTES: Hearing none, consider and
4 act on any other business. Members of the committee?

5 (No response.)

6 CHAIRMAN FUENTES: Hearing none, thank you
7 very much. Is there a motion to adjourn?

8 M O T I O N

9 MS. SINGLETON: So move.

10 CHAIRMAN FUENTES: Is there a second? Is
11 there a second?

12 MS. SINGLETON: Please. Please. Frank?
13 Lillian? Second it.

14 CHAIRMAN FUENTES: Is there a second?

15 MS. BeVIER: Oh, second it.

16 (Laughter.)

17 CHAIRMAN FUENTES: All those in favor?

18 (A chorus of ayes.)

19 CHAIRMAN FUENTES: Adjourned. Thank you.

20 (Whereupon, at 6:06 p.m., the meeting of the
21 finance committee was adjourned.)

22 * * * * *