

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

FINANCE COMMITTEE

OPEN SESSION

Friday, February 4, 2005

10:46 a.m.

The Melrose Hotel
Potomac I and II
2430 Pennsylvania Avenue, NW
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

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

OTHER MEMBERS PRESENT:

Lillian R. BeVier
David Hall
Michael D. McKay (by telephone)
Thomas R. Meites
Maria Luisa Mercado
Ernestine Watlington (by telephone)

OTHERS PRESENT:

Helaine Barnett, President
Bristow Hardin, OPP Staff
Judge Donald Ivers, U.S. Court of Appeals, Vet. Claims
David B. Isbell, Chair, Veterans Consortium
Tom Polgar, Acting Director
David L. Richardson, Treasurer and Comptroller
Richard (Kirt) West, Inspector General

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

2 CHAIRMAN DIETER: My name is Rob Dieter and I
3 am going to -- I am the chairman of the Finance
4 Committee and I am going to call the meeting to order.

5 I do have a couple of just preliminary matters I would
6 like to take care of before we hear from the guests
7 that we have invited. For the record, Florentino Subia
8 and Herb Garten are the other two members of the
9 Committee. Florentino is seated over here and this is
10 Mr. Garten here to my left.

11 APPROVAL OF AGENDA

12 CHAIRMAN DIETER: The first order of business
13 is approval of the agenda and what I am proposing that
14 we move item 9 to item -- make it item 4 on the agenda
15 and proceed in that order.

16 M O T I O N

17 MR. GARTEN: So moved.

18 CHAIRMAN DIETER: Without objection, then, the
19 approval of the agenda is passed.

20 APPROVAL OF THE MINUTES OF THE COMMITTEE'S MEETING
21 OF NOVEMBER 20, 2004

22 CHAIRMAN DIETER: Item 2 is approval of the

1 meeting -- minutes of the meeting of November 20th and
2 I did note just two minor changes on page 6. Tom
3 Fuentes was noted as attending by telephone, but having
4 talked to him after that meeting, I don't know that he
5 was hearing everything that was happening in the
6 telephone transmission. So with that note.

7 And then also on page 8, I think the first
8 motion that is made there says increasing the total
9 budget amount by 363,000 and I believe it is supposed
10 to be 209,000. So with those notations and amendments
11 to the minutes, I ask for a motion to approve the
12 minutes.

13 M O T I O N

14 MR. GARTEN: So moved.

15 CHAIRMAN DIETER: Okay. And without
16 objection, then, the minutes are approved.

17 APPROVAL OF THE MINUTES OF THE EXECUTIVE SESSION
18 OF THE MEETING OF NOVEMBER 20, 2004

19 CHAIRMAN DIETER: And then item 3 is approval
20 of the minutes of the executive session, which appear
21 on page 152 of the Board book. And without objection,
22 I assume that those minutes are approved as well.

1 REPORT ON VETERANS PROGRAM

2 CHAIRMAN DIETER: Okay. It is our privilege
3 to have appear before the Committee David Isbell. Am I
4 pronouncing that correctly? All right. Chairman of
5 the Veterans Consortium Pro Bono Program, Chief Judge
6 Ivers of the U.S. Court of Appeals for Veterans Claims
7 and Bristow Hardin from the LSC OPP staff.

8 And I had asked President Barnett to contact
9 the Court of Appeals for Veterans Claims to appear at
10 one of the meetings because I was curious of what you
11 all did and how we fit with you. And also there was,
12 at some point during the recent campaign, a -- I had
13 read somewhere that someone was concerned that veterans
14 appeals and veterans affairs were being dealt with in a
15 timely and an attentive fashion. And so I was curious
16 how the veterans claims court and our part of the
17 program worked.

18 And also we would like to hear, I guess, if
19 there is anything that we can do to help you, you know,
20 do your job better and more efficiently. So I have
21 indicated that I have allowed about 45 minutes for your
22 comments and so without further ado, I ask that you all

1 proceed in the order you decide you want to proceed.

2 MR. HARDIN: Well, thank you, Mr. Chair. I
3 will begin. My name is Bristow Hardin. As you
4 indicated, I am with the Office of Program Performance.

5 I have been with the Office of Program Performance --

6 CHAIRMAN DIETER: You are going to have to get
7 the microphone closer. Some of these mikes you have
8 to --

9 MR. HARDIN: Okay. I will try to project if
10 not shout.

11 CHAIRMAN DIETER: Okay.

12 MR. HARDIN: As I indicated, my name is
13 Bristow Hardin. I am with the Office of Program
14 Performance where I am a program analyst. I really
15 welcome the opportunity just to talk with you today
16 about this program and it is a privilege to participate
17 on a panel with these two gentlemen. What I will do is
18 briefly review LSC's roles and responsibilities before
19 providing a more in-depth introduction of my fellow
20 panelists.

21 First of all, with respect to LSC's roles and
22 responsibilities, it was congressional legislation

1 enacted in 1992 that charged LSC with establishing and
2 overseeing a grant program that would provide competent
3 legal and other assistance without charge to persons
4 that were unable to afford assistance before the
5 Veterans Board of Appeals.

6 This was prompted in large part, as I am sure
7 the Judge will go into in more detail, by the court's
8 initial experiences. It was enacted -- it was
9 established based on legislation enacted in 1988 when
10 some 80 percent or so of appellants before the court
11 were self-represented. Of course, this undermined the
12 appellant's ability to achieve, in many ways, what they
13 were entitled to and also affected the performance and
14 efficiency of the court.

15 LSC at the beginning played an integral role
16 in the -- through competition processes and its initial
17 oversight, it essentially played the lead role in
18 designing the program. Over several years, however,
19 based on our experiences with the program, we pulled
20 back in our operations and the program itself modified
21 based on how it could best respond to the needs of the
22 appellants as well as through consultations and

1 collaborations with the court.

2 Our current involvement consists of basically
3 four primary roles. Five rather. First, is providing
4 advice regarding the program structure and operations;
5 conducting grant competitions every four years;
6 analyzing and reviewing the grant renewal application,
7 which like LSC's grantees, we review renewals on an
8 annual basis; overseeing and evaluating the program's
9 operations, activity and performances and then
10 participating in the grantees' board meetings to
11 provide counsel when asked for, but also, more
12 importantly, to provide greater insight into the
13 program's operations.

14 We do work closely with the court regarding
15 the program's operations. The court provides its
16 perspectives to us on how the program could be most
17 effective in terms of responding to its needs and
18 meeting the needs of appellants. As you can imagine,
19 this gives us a perspective that we otherwise would
20 lack. And I should emphasize that our respective roles
21 and responsibilities are specified in memoranda of
22 understanding.

1 Finally, I want to emphasize the importance of
2 Jack Lane who is the court's liaison to the program.
3 He is a counsel to the clerk of the court and he has
4 been very important in assisting LSC do its job. I
5 also would like to mention the other program staff,
6 such as OPP management and program administrator from
7 the Office of Legal Affairs, Mark Friedman, has played
8 a key role in making sure our activities meet
9 appropriate legal standards.

10 Finally, I should note that President Barnett
11 has played a role that differed in the past from prior
12 presidents in that she has taken a more active interest
13 in the program. When she first came onboard, she went
14 to one of the initial meetings of the executive board
15 and provided a very important substantive input into
16 the Committee's operations, which in my recollection,
17 had never happened from any type of presidential
18 contribution.

19 I will now turn to introducing our panelists.
20 I can only touch upon some of their very notable
21 achievements. Judge Ivers was appointed to the court
22 in 1990. He assumed the chief judge position in --

1 last fall. His other public service has included, from
2 1985 to 1990, he was general counsel of the Veterans
3 Administration. In the eighties, his public service
4 included counselor to the Secretary of Transportation
5 and chief counsel of Federal Highway Administration.

6 He also was chief counsel for the RNC, the
7 Republican National Committee, active in the Reagan
8 transition team and prior to that, was in private
9 practice in Washington where he specialized in civil
10 litigation. He was active duty in the U.S. Army from
11 '63 to '68. Among his tours, was in Vietnam. He has a
12 law degree from American University and graduate legal
13 studies at Georgetown University of Law School.

14 David Isbell has been chair of the Executive
15 Board of the Veterans Consortiums Pro Bono Program
16 since 1993. He is senior counsel in the firm of
17 Covington and Burling here in D.C. and his entire
18 career has been with the firm except when he was
19 assistant staff director for the U.S. Commission of
20 Civil Rights.

21 He has been long active in bar associations.
22 His service at the ABA has included acting as chair of

1 the Standing Committee on Ethics and Professional
2 Responsibility from I believe that was 1981 to '84, was
3 it? Okay. And also he was president of the District
4 of Columbia Bar. He currently is an adjunct professor
5 at both Georgetown University Law School and University
6 of Virginia Law School.

7 He served on numerous boards and public
8 service organizations, too many for me to mention, as
9 are the numerous awards, which he has received, but
10 some of them include ones you would be familiar with,
11 would be The National Legal Aide and Defender
12 Association, the Court itself and Paralyzed Veterans of
13 America who is one of the members of the consortium.
14 He is a graduate of Yale Law School and prior to the
15 time that he went to undergraduate school and law
16 school, he served in the U.S. Army and also worked for
17 the Marshall Plan in Europe.

18 With that, I would introduce our speakers. I
19 am not sure who would prefer to go first. I will leave
20 it to these gentlemen.

21 JUDGE IVERS: I will go first. Again, my name
22 is Donald Ivers. I am the chief judge of the United

1 States Court of Appeals for Veterans Claims and I want
2 to thank this committee for the invitation to appear
3 here on more than one level. First, to give me an
4 opportunity on behalf of the court to express our
5 appreciation to the Legal Services Corporation and this
6 committee for their work in advancing this program and
7 keeping it going. Mr. Hardin and his people have been
8 extremely helpful in working with Dave Isbell and his
9 folks.

10 On a second level, it has given me an
11 opportunity to take a little trip back down by memory
12 lane. I had not been involved in this directly for a
13 while, only as a beneficiary of the wonderful efforts
14 of the consortium in providing trained, pro bono
15 counsel for the court.

16 So with that, the court, as Mr. Hardin
17 indicated, was created in 1988, pursuant to the
18 Veterans Judicial Review Act, to provide judicial
19 review of veterans claims. Up until that time, there
20 was no judicial review of veterans claims and this
21 court represents the first time that judicial review of
22 veterans claims, as a broad category, was provided.

1 Prior to that it was specifically precluded by statute.

2 The VA was the sole arbiter except in issues --
3 constitutional issues and direct regulatory challenges.

4 This court was created without an antecedent.

5 It is one of four Article 1 courts in the judicial
6 system, the only one that was created without an
7 antecedent. It is totally independent of both the VA
8 and submits its budget and its reports directly to
9 Congress.

10 We are empowered to affirm, vacate, reverse or
11 remand, as appropriate, any case that comes before us,
12 which comes from a final decision of the Board of
13 Veterans Appeals, which is the final administrative
14 body. We operate in those cases or we rule in those
15 cases and consider those cases similarly to the conduct
16 of Article 3 courts under the Administrative Procedure
17 Act.

18 In one of the first cases that came before the
19 court of any magnitude was a pro se veteran and the
20 court was immediately faced with what do we do now.
21 This is -- the court represents the first time in the
22 system that a veteran is thrust into an adversarial

1 situation.

2 Below, the Veterans Administration's role is
3 to assist the veteran. If you talk to veterans, you
4 will find differences of opinions as to how well that
5 works, but their role and their directive is to help
6 the veteran, provide that veteran assistance in
7 preparing his or her claim and achieving the level of
8 compensation that is appropriate. Obviously, veterans
9 disagree because we are here.

10 The problem of pro se veterans was substantial
11 in that most of the cases -- when this court was
12 created, there was no veterans bar and there were very
13 few attorneys who were familiar with veterans law and
14 none, of course, who had represented veterans before
15 this court. So we were starting from scratch.

16 We cast about for various ways to encourage
17 members of the bar to represent veterans before us to
18 the point that we were in the process of putting
19 together lists of people that we knew with law firms
20 who were veterans to try and encourage them to come
21 before us and represent veterans. In fact, that was
22 how the first veterans became represented.

1 In that casting about, it became apparent that
2 again because this was -- this court was new, it had no
3 antecedent and its oversight is provided by the
4 Veterans Affairs committees and the veterans -- VA HUD
5 Appropriations Subcommittee. They had no experience in
6 administering a court either.

7 So at that time, we were blessed with more
8 than adequate funding and it became apparent that we
9 had some money that could be devoted to trying to
10 establish a means by which veterans could get
11 representation before the court. Through the efforts
12 of the congressional staffs, the Legal Services
13 Corporation, the veterans groups and the court, we were
14 able to arrive at the Veterans Pro Bono Consortium
15 idea.

16 At that time, Congress appropriated money to
17 us to administer this program to the court. It became
18 apparent, after a couple of years, that that was --
19 created both an appearance of conflict and an actual
20 potential conflict as money became tighter in having
21 one side of the litigation before us being funded by
22 the court and competing for court dollars.

1 Again, after much discussion and cooperative
2 effort, the Legal Services Corporation was brought into
3 the picture and has performed admirably since that time
4 in administering the grants. The court now -- Congress
5 simply fenced off a portion of funds, which is set
6 aside for the funding of this program. It goes forward
7 in our budget, but as a separate document that we
8 simply pass forward. The consortium and the LSC staff
9 prepare their budget and prepare their presentation to
10 the Appropriations Committee.

11 I cannot, from the court's perspective, say
12 enough good things about the -- what this program has
13 meant to the court. We still have a lot of veterans
14 who come into the -- enter the court, file their notice
15 of appeal and are pro se at that time. But we have
16 gone from 60 to 70 percent unrepresented veterans to,
17 by the time they leave the court, by the time they get
18 an opinion from the court, the percentage of pro se
19 veterans is below 30 percent. Much of that
20 representation is provided by attorneys who come out of
21 the Veterans Pro Bono Consortium program.

22 In my opinion, it represents the gold standard

1 of pro bono programs. They offer excellent training,
2 they offer mentoring. It is, in many cases, the first
3 time that a veteran has had an opportunity to discuss
4 his or her case with an attorney and get a response
5 other than being handed a contingent fee agreement.

6 And there no attorneys -- well, there are very
7 few attorneys who represent veterans at the VA level.
8 The reason for that being that there is -- they cannot
9 get a fee for representing veterans at the VA level
10 until -- or at the VA or in a VA matter until that
11 veteran has a final Board of Veterans Appeals decision,
12 which can be appealed to us or, if the attorney and the
13 veteran agree, can be taken back down and appealed
14 below -- not appealed, but there is no finality at the
15 VA level.

16 So if they have new evidence or they can put
17 together another approach to the case, they can bring
18 that case back up through the system, but there is zero
19 fees authorized. And prior to the creation of the
20 Court, the fee was \$10. So needless, to say, not too
21 many attorneys got involved in representing veterans
22 before the VA.

1 We now have an extremely large number, in my
2 opinion, of attorneys from firms, private practitioners
3 from all areas of the country who have been through the
4 Veterans Consortium Program who are versed in veterans
5 law and have taken one or more cases before the court
6 and we are extremely grateful for that.

7 As a result of that or in coordination with
8 that, and I think partially as a result, we now have a
9 bar that is becoming more active, but it is in the
10 early stages of this development, and a couple of other
11 organizations who are made up of attorneys who
12 represent veterans before the court.

13 The Bar, of course, represents -- or has got
14 attorneys from across the spectrum, from the VA
15 attorneys who appear before us to those who represent
16 the veterans. That Bar is in the process still of
17 organizing, but is becoming more organized and becoming
18 more proactive in pursuing various aspects.

19 One of the things that the court is doing and
20 one of the things that the Bar is doing is reaching out
21 to law schools to attempt to develop an interest at the
22 law school level and including veterans law in their

1 program in one way or another either as part of the
2 administrative law program or as a freestanding
3 program. We hope to advance that even more in the
4 future.

5 Again, that gives you a historical
6 perspective, to a limited degree, of the program as it
7 relates to the court and how it is funded. And again,
8 I cannot say enough good things about the program or
9 the benefit of the program to the court. With that,
10 unless there are questions, I will turn it over to
11 Mr. Isbell who can give you the inside information on
12 how the program actually operates from their
13 perspective.

14 CHAIRMAN DIETER: Questions? Why don't we
15 save our questions, I guess, until the end of the
16 presentation.

17 MR. ISBELL: I would like to add a footnote to
18 what Judge Ivers said about there not being a Bar
19 conversant with veterans law prior to the 1988 Act.
20 Not only was there no judicial appeal, but there was a
21 criminal statute and part of Chapter 18 of the United
22 States Code, which provided a penalty for anyone

1 accepting more than \$10 to assist a veteran in pursuit
2 of the veterans claims. You can imagine that did not
3 have the effect of encouraging the development of a
4 veterans bar. That was eliminated along with the
5 prohibition on the judicial review.

6 The Consortium gets its name from the fact
7 that it is, in fact, a consortium of poor
8 organizations. All veterans service organizations, the
9 American Legions, Disabled American Veterans, Paralyzed
10 Veterans of America and what amounts to a public
11 interest law firm dealing with veterans rights, the
12 National Veterans Legal Services program.

13 These four constituent entities got together
14 formalized a program and submitted a program in
15 response to a request for proposals issued by the Legal
16 Services Corporation in 1992. We were one of the
17 organizations that got a grant that year. Since then,
18 the other two organizations have fallen by the wayside
19 and we have continued to be the sole recipient of the
20 grant, although we have to reapply every four years.

21 The Consortium was originally set up in a very
22 loose organizational way not with -- on a board, but

1 with an advisory committee. The reason for its being
2 an advisory committee is that we had four organizations
3 that were somewhat distrustful of each other and
4 somewhat competitive also and they were anxious to each
5 keep the veto on anything that would be done in their
6 joint name.

7 The advisory committee had five members, one
8 from each of the constituent organizations, and then
9 the fifth was to be a member of the private bar.
10 Happily, two of the people involved in organizing the
11 program knew me from a previous connection and asked if
12 I would be interested in being the fifth member and I
13 said yes.

14 We had our first meeting and they elected a
15 chair and of course, I hadn't foreseen this, but since
16 I was the only who didn't have a constituency, I got
17 elected chair and I have had the great, good fortune of
18 being chair ever since, although it will not be much
19 longer that I will be retired from that wonderful
20 position.

21 In due course, I had -- I persuaded the board
22 to change the name from advisory committee to executive

1 board. As Judge Ivers has said, it is really a gold,
2 what was it, a gold plated --

3 JUDGE IVERS: Gold standard.

4 MR. ISBELL: But I think of it as a Cadillac
5 of a program. We evaluate cases before placing them.
6 Well, we train lawyers, a day long training course,
7 which is truly excellent, and then we evaluate cases
8 that are pro se and when we find one with a meagerly
9 viable issue, not necessarily a winning issue, we place
10 it with one of our trained lawyers.

11 We give them a memo that was prepared in the
12 course of screening the case that tells them what the
13 issues are, gives them guidance as to how to get into
14 it and we provide a mentor and we monitor the cases so
15 as to make sure that no one misses a key deadline. We
16 have recruited and trained more than 2,000 lawyers and
17 we have placed more than 2,000 -- we have placed
18 lawyers to provide free representation with more than
19 2,000 cases.

20 There is -- I should mention the amount of our
21 funding has gradually risen as the years go by, as
22 everything else has risen. The amount of our current

1 funding is a million one hundred thousand dollars. Our
2 annual reports always point out the leverage factor
3 involved in those federal funds. The leverage factor
4 of roughly three to one. That is to say the value of
5 what we provide in relation to the cost. The main
6 value being the value of free legal services provided
7 by our volunteer lawyers.

8 A factor in the growth of the private -- well,
9 the main factor has certainly been the training we have
10 made available, but another factor has been the
11 availability of reimbursement under the Equal Access to
12 Justice Act and a very high percentage of the cases
13 handled by both our volunteer lawyers and the now
14 fairly substantial fee bar result in EAJA awards.

15 The Veterans Administration is only second
16 among governmental agencies in terms of the amounts of
17 the EAJA awards that its mistaken decisions generate.
18 The other agency being the Social Security Agency. In
19 recent years, despite an increase in the Court's
20 caseload and the corresponding increase in the number
21 of pro se appellants, the program has found its
22 caseload declining.

1 We anticipate that there will be a change in
2 that when a dam that is behind which the water is now
3 building up finally bursts; that is, there is an ever
4 increasing backlog of cases at the Veterans
5 Administration. One of these days those will come in a
6 flood to the court and the amount of our caseload will
7 increase, but we are getting a smaller proportion of
8 the pro se appellants as clients and the reason for
9 that is that the pay bar, the fee bar, is getting in
10 there before we do.

11 One reason for that is that when we were first
12 established, we adopted a rule that said that we could
13 not let pro se appellants know of our availability,
14 that is the availability of free representation, that
15 we could offer until 30 days after they had filed a
16 notice of appeal. That is to say they had to remain
17 pro se 30 days after the filing of the notice of appeal
18 before we could let them know of the program.

19 The reason for this was to allow for -- to
20 allow the fee bar an opportunity to take cases. When I
21 say fee bar, I mean they can take a fee, they can take
22 a fee outright, if the veteran is willing to pay that,

1 but ordinarily what they do is they take a contingent
2 fee of 20 percent of the recovery.

3 As I say, our caseload is declining largely
4 because of our competition with the fee bar and they
5 are getting there before we do. We are, however,
6 planning to take some measures to increase our
7 competitiveness. For one thing, we have dropped the 30
8 day waiting period and we are looking into other ways
9 of making the possibility of the program's free
10 assistance known sooner and more widely than it is.

11 I might point out that not all of the cases
12 that we would take are appealing to the fee bar. That
13 is, not all of them promise a substantial recovery,
14 though many do, so there will remain an indispensable
15 core of cases for which something other than the fee
16 bar is necessary.

17 An additional consideration in this regard is
18 that there is a good argument to be made that someone
19 who is entitled to a federal benefit should not have to
20 pay a portion of that benefit in order to get the
21 benefit. And so we feel justified in competing in a
22 fairly forthright manner with the fee bar.

1 Something else that we are doing, given the
2 fact that we have got this large core of lawyers who
3 are interested in doing things to help veterans, is we
4 are considering enlarging the scope of our activities.
5 So far we provide representation only before the U.S.
6 Court of Appeals for Veterans Claims. Appeals from
7 that court go to the federal circuit. We encourage our
8 lawyers to follow their cases to the federal court --
9 federal circuit, but we don't require it. We are
10 thinking of broadening our jurisdiction in that
11 respect.

12 Something else we have done is started looking
13 around for other opportunities for our volunteer
14 lawyers to help veterans. One thing that we have sort
15 of fallen upon is the United States Court of Federal
16 Claims deals with claims of veterans and also of
17 incumbent servicemen. When they have to deal with a
18 claim of entitlement to money, the Court of Federal
19 Claims does not have a volunteer bar. They don't have
20 a ready pool of volunteer lawyers to turn to when they
21 have a pro se plaintiff and they have many pro se
22 plaintiffs.

1 So we notified our core of available lawyers
2 about the opportunity of providing pro bono
3 representation to plaintiffs before the federal bar and
4 so far some two dozen of our volunteers have
5 volunteered to take cases before that court.

6 One other change we -- after 12 years of
7 operation as an unincorporated association, indeed not
8 really a legal entity, we have incorporated. And the
9 other change is, as I have indicated in June, I am
10 going to step down as chair and we are in the process
11 of searching for a suitably something successor.

12 CHAIRMAN DIETER: Well, thank you very much.
13 I have a couple of questions I would like to ask, I
14 guess, to begin. Do you have any idea when this, you
15 know, backlog of cases is going to start, you know,
16 appearing before the --

17 MR. ISBELL: What?

18 A PARTICIPANT: When is the dam going to
19 break.

20 CHAIRMAN DIETER: Yes, when is the dam going
21 to break I guess.

22 MR. ISBELL: Well, we have been anticipating

1 that it would break for the last several years and as a
2 result, we have planned for an increase in caseload and
3 asked for an increase in funding and Congress has been
4 very generous. They have always given us exactly what
5 we ask for and then the flood didn't occur.

6 And so on several occasions, including the
7 mission we have just made for fiscal 2006, we have
8 reduced our -- the amount of our request. For example,
9 we found ourselves with a carryover of some \$190,000
10 from last year as of the change of the year. Because
11 of that, we reduced what we intended to ask the amount,
12 that we are budgeting for, by a hundred thousand
13 dollars.

14 CHAIRMAN DIETER: And the other question is,
15 geographically, where are the attorneys? Are they
16 mostly in the D.C. area or are they all over or how do
17 you get pro bono --

18 MR. ISBELL: Well, I think we have trained one
19 or more lawyers in every state, but the trainings are
20 not conducted in every state. Most of the trainings
21 are conducted here in Washington. We have, from time
22 to time -- at least once a year, we do a training

1 somewhere else generally under the sponsorship of a law
2 firm to handle the logistics of the program.

3 CHAIRMAN DIETER: And who are the mentors?
4 You mentioned you assigned --

5 MR. ISBELL: The mentors are staff people in
6 one or more of the constituent agencies.

7 CHAIRMAN DIETER: So they sort of assist
8 the --

9 MR. ISBELL: They are all experts in veterans
10 law.

11 CHAIRMAN DIETER: Okay. And I guess the last
12 comment would -- you know, we publish a publication
13 called Equal Justice Magazine and I, at some time maybe
14 would be --

15 MR. ISBELL: We don't have a magazine, but we
16 do publish annual reports and I brought some copies. I
17 wasn't expecting this large of an audience and I didn't
18 bring enough copies, but I have got five copies, and I
19 can provide more, of two documents. One is a document
20 that we published two years ago. It is a summary of 10
21 years of experience. It is the annual report for 2002,
22 but it covers our whole history. And then I have also

1 got a copy of last year's annual report.

2 CHAIRMAN DIETER: My point was that at some
3 point, maybe if you were interested, that it might be
4 beneficial for your program for us to do some sort of
5 article or feature in our magazine about what it is
6 that you all do. That might be a way to communicate to
7 a broader audience the possibility of veterans getting
8 involved helping other veterans.

9 MR. ISBELL: There was an article not long ago
10 in Equal Justice about the program.

11 CHAIRMAN DIETER: Okay.

12 MR. HARDIN: That was -- again, that was the
13 subject of the President's message under President
14 Erlenborn, the inside page of the -- at the beginning
15 is the subject of the --

16 A PARTICIPANT: Run a feature story.

17 CHAIRMAN DIETER: Yes, a feature story might
18 get the message out a little stronger.

19 MR. HARDIN: Yes, we considered that, but it
20 was turned into that president's address.

21 MR. GARTEN: Judge Ivers, just to get a
22 background on your court, are these trials de novo?

1 JUDGE IVERS: No. These are strictly
2 appellant hearings and based on issues of law that
3 arise out of the administrative process. There is no
4 new evidence taken and there is no -- we are precluded
5 from making factual determinations other than those
6 necessary to apply the law.

7 MR. GARTEN: Do you publish your findings?

8 JUDGE IVERS: Yes, we do. We have the United
9 States Court of Appeals West Reporter. All of our
10 precedential decisions are published in there. We
11 publish our non-precedential decisions by --
12 electronically and by mail and they are available on
13 the website.

14 MR. GARTEN: And I understand now a little
15 better than I did before.

16 Mr. Isbell, do you have any standards as to
17 what cases you will take? If someone is independently
18 well to do, will you tell them to get fee counsel as
19 you described?

20 MR. ISBELL: We have financial eligibility
21 requirements. The main one, and the one on which we
22 rely for a great majority of the cases that we take, is

1 if the court has waived a fee for the filing of the
2 notice of appeal, we take that as sufficient invitation
3 that the appellant does not have substantial resources.

4 It has happened a couple of times in our
5 experience that someone who did have very substantial
6 resources, I recall somewhere in the million dollar
7 range, had asked for a waiver of the filing fee and
8 had -- and so we had offered representation. When we
9 found out that we had so prosperous a person, we
10 managed to put him in the hands of a member of the fee
11 bar.

12 The other two -- there are two other criteria.
13 One is that the amount of the claim, of the potential
14 recovery on a claim, be \$3,000 or less and the other is
15 that the appellant's family income be no greater than
16 twice the official poverty level, all right, but as I
17 have indicated, we seldom have applied those because we
18 have the waiver of the fee.

19 MR. GARTEN: Thank you.

20 CHAIRMAN DIETER: And Judge Ivers, how many
21 judges are on the Court?

22 JUDGE IVERS: The Court is authorized seven

1 judges. At present, we are blessed with nine. I
2 became chief judge in September. In December, we
3 acquired four new judges. We were down to five at that
4 point. We have had very little time in the life of the
5 Court when we have had a full compliment of judges.
6 The reason there are nine is that legislation was
7 passed two or three years ago in an effort to address
8 the fact that all of us came on the court at the same
9 time and would all be leaving in more or less the same
10 time. So there was an attempt to establish staggered
11 terms.

12 Because of the delay in judicial
13 confirmations, even though this was -- our judges are
14 confirmed by a different committee, they got tied up in
15 that. We didn't get them until the dam burst, so to
16 speak. And so we have got nine judges right now, but
17 that will last only until August when myself and one of
18 the other original judges on the Court retire. Then it
19 will go back to the seven judges, which is what is
20 authorized.

21 CHAIRMAN DIETER: Any other questions? David.

22 MR. HALL: How large is the staff for the

1 Consortium, those who are actually doing the work?

2 MR. ISBELL: We have a total of I think it is
3 nine in number. Yes. Nine full-time equivalents. Of
4 those, the actual full-time are seven and the others --
5 part-time are various other people. The other people
6 being staff members of one or another of the
7 constituent organizations.

8 MR. HALL: And are the majority of these
9 people lawyers? I mean, are they legally trained or
10 are they --

11 MR. ISBELL: No. The people who screen cases,
12 and they account for the largest portion of that seven,
13 are not lawyers. They are veteran specialists.

14 MR. HALL: Okay.

15 MR. ISBELL: The Court allows non-lawyer
16 veteran specialists -- I am not sure that is quite the
17 right term -- to appear before the Court.

18 MR. HALL: I see.

19 MR. ISBELL: Practice before the Court. They
20 are highly expert. A good deal of the assistance
21 provided to veterans in dealing with the VA process is
22 provided by non lawyers of that kind, employees of one

1 or another of the veteran service organizations.

2 JUDGE IVERS: The veteran service
3 organizations have historically provided representation
4 to veterans at the VA level and as a result of that,
5 have developed a large cadre of very accomplished
6 people. The ones that practice before the court are --
7 we refer to them as non attorney practitioners and they
8 are certified by their particular organizations as
9 being expert in the field and our experience is that
10 they are very much experts in the field. So they are
11 excellent case reviewers and screeners and also
12 excellent sources for lawyers coming into the system.

13 CHAIRMAN DIETER: Maria?

14 MS. MERCADO: This sort of dovetails in this
15 question. The budget that you get, the \$1.1 million
16 for the veterans service, goes to these seven to nine
17 people staff and -- I guess processing the papers?

18 MR. ISBELL: I didn't get that.

19 MR. HARDIN: What is the budget used for?

20 MR. ISBELL: Oh. Well --

21 MS. MERCADO: I mean, you have got these 2,000
22 attorneys that have been trained to carry 2,000 cases

1 and I am wondering where the actual money that is
2 funded every year, what is actually the expenses for
3 that?

4 MR. ISBELL: The largest single component of
5 the million one is personnel costs. We also have
6 rental costs, insurance cost of operating an office
7 property, acquisition.

8 MS. MERCADO: So it is basically like just a
9 separate little firm --

10 MR. ISBELL: I am --

11 MS. MERCADO: It is like a separate little
12 firm that is responsible for all its overhead expenses,
13 personnel, for carrying out the mission of representing
14 the clients with the exception of the majority of the
15 legal work, the actual legal representation is being
16 done by a lot of these pro bono attorneys, correct?

17 MR. ISBELL: Could you repeat that for me.

18 MS. MERCADO: I am sorry. Is my mike not --

19 MR. ISBELL: I apologize, but I am hard of
20 hearing and I find -- unfortunately, I find women's
21 voices harder to understand than men's voices. I would
22 rather hear the women actually.

1 MR. HARDIN: If I can, as it is a -- the
2 screening work is done by the veterans service
3 specialist who, as Mr. Isbell indicated, are mostly
4 employees of the veterans service organizations and
5 they are well experienced and then are detailed to the
6 program. So to do the screening, to do the case
7 screening to ensure that the cases that are given to
8 the pro bono attorneys are actually valid cases.

9 MS. MERCADO: Right.

10 MR. HARDIN: And then the legal -- the
11 other -- the legal work is conducted by the pro bono
12 attorneys that are around the country.

13 MS. MERCADO: I understand what they are
14 doing. What I am asking is, financially and budgetary
15 wise, what does that money cover? I mean, I have now
16 heard him say overhead, rent, expenses and so forth.
17 Does it also cover those nine people that although they
18 might work for one of the other veteran groups --

19 MR. HARDIN: Yes.

20 MS. MERCADO: -- part of their time is
21 allocated to this grant.

22 MR. HARDIN: Yes. Yes.

1 MS. MERCADO: Okay. That is what I --

2 MR. HARDIN: Also what we did not mention is
3 that there is also a component of the program that
4 provides direct representation for cases that are too
5 difficult, that need a critical, timely action that
6 involve very difficult and important issues, that that
7 is handled by attorneys under contract of one of the
8 programs. Okay. So that is another budgetary cost
9 that is involved. Those cases are limited to
10 historically 20 a year.

11 MS. MERCADO: Okay. So and I assume that the
12 professionals that you are talking about that have
13 veterans experience are somewhat like the Social
14 Security advocates that appear in the Social Security
15 Administrative hearings, a lot of them are not
16 attorneys. I mean, they are what is called paralegals
17 basically. That is trained or is very knowledgeable
18 about the issues, but it is not a lawyer necessarily.
19 And I am assuming that is similar in the veterans --
20 these veterans advocates?

21 JUDGE IVERS: There is some similarity.
22 Again, this is appellant work --

1 MS. MERCADO: Right.

2 JUDGE IVERS: -- as opposed to the environment
3 at the Social Security Administration. They are
4 similar, yes.

5 MS. MERCADO: Okay.

6 MR. HARDIN: I hope I am not repeating the
7 same point, but through the Consortium, the
8 representation is conducted by the -- either the pro
9 bono attorneys or the direct representation staff, all
10 of whom are attorneys. No representation is conducted
11 by the pro bono -- I mean, by the non attorney staff of
12 the Consortium.

13 JUDGE IVERS: That is correct. Most of the --
14 most, if not all, of the non attorney practitioners
15 that appear before the Court are affiliated with one or
16 another of the veterans service organizations. Not
17 with this program.

18 MS. MERCADO: Okay.

19 MR. HARDIN: And just one thing about the
20 budget. First of all, I gave to Karen a brief
21 one-pager that describes some of the operations of the
22 program and LSC's role in it. Secondly, the budget

1 itself, as the Judge perhaps made clear, is -- the
2 funding is not LSC funding. It doesn't come through
3 the Legal Service Act. So it is not subject to the
4 provisions of the Act, nor the regulations.

5 And our administrative costs, what LSC gets to
6 cover its administrative costs, are based essentially
7 on a -- on the time engaged in -- directly engaged in
8 veterans administration -- in -- I am sorry, in
9 activities directly pursuant to the administration of
10 the program.

11 Also, the Judge mentioned earlier about the --
12 how the program is funding. LSC does not provide --
13 has heretofore, certainly in the last 10 years at
14 least, has not provided, played a role in securing
15 funding for the program. The memorandum of
16 understanding with the Court does say that we will
17 provide any information upon request of Congress, but
18 those requests -- we would be glad to do so, but those
19 requests have never been made to us. That work has
20 been conducted by the board of the program.

21 And unless I -- I perhaps failed to mention
22 earlier, but we -- LSC staff think that this is an

1 exemplary program. We can't say enough of its quality
2 and its impact of benefits.

3 MS. MERCADO: No. I know there is a whole
4 issue of whether or not they are subject to LSC Act and
5 regulations because we have all these ongoing
6 discussions about funds that are no LSC funds for our
7 grantees that are representing clients and then here
8 you have major budgetary items that represent clients,
9 but it does go through our budgetary problems, but yet
10 they are not subject to meet the LSC regulations.

11 And so just someone looking at it without
12 knowing the history or the congressional behind it, can
13 see that there is an inconsistency in not allowing our
14 grantees to do their cases without the LSC regulations
15 for non-LSC funding versus someone who does get LSC
16 funding, but is not considered LSC funded.

17 MR. HARDIN: Understood. Correct. Yes.

18 MS. MERCADO: Okay.

19 MR. HARDIN: I can understand the confusion.
20 Yes.

21 MS. MERCADO: But I still think it is a great
22 program. I am just trying to figure out the financing

1 of it.

2 CHAIRMAN DIETER: Okay. We certainly
3 appreciate your taking the time to come over and tell
4 us about the program. We understand it is mostly a
5 pass-through funding obligation, but I was curious as
6 to what it was and wanted to hear about it. So I -- it
7 is good to hear that it is an exemplary program and I
8 assume that we are learning -- one of the things that
9 we are trying to do, I think, in LSC is to see what we
10 can do to increase pro bono participation, you know, in
11 taking pro bono cases with a fee bar.

12 And so it sounds like you are very successful
13 at doing that and so maybe we can learn some things
14 from the things that you have done there. So thank you
15 very much for appearing and I guess we can adjourn for
16 five minutes and reconvene at a quarter of 12:00 and
17 take up the rest of the agenda.

18 MR. HARDIN: Thank you very much.

19 MR. ISBELL: Thank you.

20 JUDGE IVERS: Thank you. Thank you for the
21 opportunity.

22 CHAIRMAN DIETER: Okay.

1 (A brief recess was taken.)

2 CHAIRMAN DIETER: Okay. At this time, I am
3 going to reconvene the Finance Committee to deal with
4 the rest of the agenda items. We have what is numbered
5 as item 4 to take up, which is the presentation of the
6 Inspector General on the Fiscal Year 2004 Financial
7 Audit. And Kirt West is here so Kirt, go ahead and
8 make your presentation.

9 PRESENTATION BY INSPECTOR GENERAL OF THE
10 FISCAL YEAR 2004 FINANCIAL AUDIT

11 MR. WEST: Good morning, Mr. Chairman. This
12 will be very brief because the financial audit, while
13 the field work has been done, has not been completed in
14 going through the process. We will be outbriefing
15 management about the results of the audit, I believe it
16 is in mid February, and then shortly after that, we
17 will be issuing the actual audit report.

18 The reason for not having it done by this
19 meeting is the same reason as last year is because, at
20 least for 2004, the Friends of Legal Services will
21 still be considered a component. We had to wait for
22 the audit work being done of Friends. I think that may

1 change in the future and that we hopefully will be able
2 to get the financial statement audit next year to the
3 first meeting of the year. So that concludes that.

4 I would like to ask that item 7 under
5 Discussion of the 2006 Budget Request, be moved to
6 follow after my closed session briefing on the IG
7 budget.

8 CHAIRMAN DIETER: I think that would be --
9 that is appropriate. We will take that up in an open
10 session after we have concluded the closed session on
11 item 13.

12 PRESENTATION OF LSC'S FINANCIAL REPORTS FOR THE
13 TWO MONTHS ENDING NOVEMBER 30, 2004

14 CHAIRMAN DIETER: So item 5 is Presentation of
15 the Financial Reports for the Two Months ending
16 November 30th. Those are at page 11 through 17. I
17 have looked at those and unless there is -- people have
18 questions, I would just ask David -- I think they are
19 straightforward.

20 The only thing that I know is on page 12 was I
21 think a grammatical error, but I am not sure, which was
22 there is an over and an under that I -- where is it.

1 Page 12. And other than that, it seemed
2 straightforward. David, do you have any -- the last,
3 very last line has 35,000 under 2004 expenditures. And
4 I think that is --

5 MR. RICHARDSON: When you compare the expenses
6 for the Inspector General's office, it was 314,000 in
7 fiscal year 2005 for the first two months. Last year
8 it was 349,000.

9 CHAIRMAN DIETER: Oh, okay.

10 MR. RICHARDSON: So there is \$35,000 less
11 spending in 2005.

12 CHAIRMAN DIETER: Okay. All right. Are there
13 any other questions by a board member of David with
14 regard to item 5, the two month period ending
15 November 30th?

16 CONSIDER AND ACT ON THE PRESIDENT'S AND INSPECTOR
17 GENERAL'S RECOMMENDATIONS FOR THE FISCAL YEAR
18 2005 CONSOLIDATED OPERATING BUDGET

19 CHAIRMAN DIETER: If not, then we will move on
20 to item 6, which is Consider and Act on the President's
21 and Inspector General's Recommendations for Fiscal Year
22 2005 Consolidated Operating Budget. That is pages 19

1 through 25 of the Board book and there is a resolution
2 on page 22 that I assume we will be asked to recommend
3 to present to the full board for consideration. So go
4 ahead, David.

5 MR. RICHARDSON: In September, the Board
6 passed a temporary operating budget. At that point, we
7 were operating with what we anticipated that we would
8 be receiving for the 2004 appropriations and the
9 projected carryover.

10 Since that time, of course, we do have the
11 appropriation. We have since learned that the
12 appropriation was subject to two recisions. So on the
13 bottom of page 19, you see the analysis of the
14 temporary operating budget anticipated appropriation
15 and then what the appropriation has included in the
16 COB.

17 Basically, there was the two recisions total
18 board meeting \$478,000 and we had to adjust the budget
19 to accommodate that reduced amount of money. In
20 addition to that, we had projected carryover to begin
21 the year of \$1,250,000 for management and
22 administration. That figure came in at \$1.54 million.

1 So we have been able to increase the management and
2 administration lines.

3 Additionally, we had money for -- projected
4 for the inspector general's \$1,154,000. Of that, of
5 course, there was an approval to move a million dollars
6 to start the pilot loan repayment assistance program.
7 That has been completed also.

8 The first thing that I did was take -- on page
9 20, those two pages -- to just sort of give you the
10 background as to how it came about, the budget and the
11 differences that we have, I also -- because we have
12 seen -- as many of you are aware, the Fed has just
13 increased the interest rate for the sixth time in the
14 last year.

15 I had originally projected \$60,000 in interest
16 and other income. I have increased that to \$90,000.
17 So that also impacts the budget. We think that we will
18 get substantially more money than we did last year.
19 This time last year we were receiving .3 of 1 percent
20 for interest and this year we are 1.2 percent thus far.
21 And that will probably go up with their next
22 statement. So I feel comfortable that we will receive

1 at least that amount.

2 The budget that is before you, I have taken
3 and provided to you the temporary operating budget that
4 was -- you, of course, adopted in September with the 5
5 meetings, the 92 staff, 4 management, 17 for the
6 inspector general and the different breakdowns that
7 were attributed there in that memo. And what I have
8 done is I have earmarked or highlighted the changes to
9 that temporary operating budget to get to the
10 consolidated operating budget that we have today.

11 There is a number of things that had to be
12 added. For instance, the 30th anniversary budget for
13 the celebration was \$70,000. The adjustment, because
14 of the decision at the last meeting regarding the
15 occupancy costs, we had to increase management and
16 administration \$209,000 for the occupancy.

17 You also made the decision to increase the
18 directors and officers' liability insurance. That has
19 been done. That will cost approximately \$70,000. Then
20 we have a couple of temporary employees that we have
21 also included and made adjustments.

22 Now you might ask how can you find some of

1 that money to be able to do that. The difference
2 between the anticipated consolidated operating -- or
3 the TOB and then the COB for management is only
4 \$13,300. As I have just described, we have had a
5 number of changes that had to be made. So the way that
6 I was able to do that is I looked at first at the
7 hiring for the positions that were in the temporary
8 operating budget. Some of those were to begin
9 October 1st, some were to begin November 15th, others
10 were January 1st. You see the little schedule on
11 page 20.

12 The way that I was able to get some money to
13 help support these other initiatives is to delay the
14 hiring of those positions so when that money became
15 free, I was then able to apply it to the other needs
16 that we had. You see there is a special assistant to
17 the President that was originally forecasted would be
18 hired November 15th. It is now projected at April 1st.

19 The executive assistant FOIA administrator and
20 the legal affairs budget was October 1st, now we are
21 looking at March 1st and so forth. And I won't read
22 all of them there, but that is how we got the majority

1 of the money that was needed. There was \$280,000 in
2 benefits, salary and benefits that were attributed to
3 those positions.

4 Again, the increase in the deductible created
5 a change within the legal affairs budget. We are
6 hoping -- in the last budget, there was a \$250,000
7 litigation budget. We have reduced that to 210 just to
8 try to make some additional money available to support
9 these other efforts.

10 I will say that and say this that we watch
11 that line closely. There may be a need during the
12 year -- because this is a reactionary budget that
13 may -- we may have to find some money to increase this
14 again. So we will be monitoring this and watching it
15 very closely.

16 Also, within the Office of Information
17 Technology, the original budget, even before the
18 temporary operating budget, was \$407,500 for new
19 initiatives and things going on in the computer
20 industry.

21 We have reduced that to 300,000 and we have
22 reduced it an additional \$100,000 basically to a budget

1 of -- we have reduced it another \$100,000 so that we
2 can get some additional money here to help assist with
3 the operation of the new initiatives that were thinking
4 about being undertaken, but will need to be delayed or
5 again, if we decide that we are going to go ahead and
6 move ahead with some of those, then we will have to
7 look at what other additional initiatives can be
8 delayed or paired back to make the money available.

9 Within the Office of Inspector General, the
10 temporary operating budget and the COB, there was a
11 difference of \$12,600. The Inspector General and his
12 staff have gone in and reallocated their money and I
13 must say even at this point, and I have had a few
14 conversations with the OIG staff -- Mr. West has only
15 been in the office since September. As he develops his
16 operating plan, you are going to hear about changes.
17 We do it quarterly, but I would expect in his
18 particular office, there will be maybe more changes as
19 he becomes more familiar with what needs to be done and
20 how he is going to allocate the staff to get that done.

21 So basically what I have come up with is a
22 budget that is \$338,413,583 and that is what -- the

1 resolution before you that is before you on page 22.
2 In trying to address your needs, Mr. Dieter, I have put
3 in the resolution itself, the amount of the
4 appropriation, the carryover to the U.S. Court of
5 Veterans Appeals and then the projected other funds
6 available.

7 I hope that is providing more information for
8 the public and for your review as we go through. It is
9 broken up, as the documents are shown, on page 23,
10 which shows that there is a \$320,217,000 for the
11 delivery of legal assistance. There is a management
12 administration budget of \$14,456,000, almost 57,000.

13 The inspector general is two million seven
14 hundred and basically forty thousand dollars for the
15 total and then the one million dollar pilot loan
16 repayment assistance program is included also. I know
17 that is a very quick summary. I have tried to
18 highlight the changes. I would be glad to answer any
19 questions that you have.

20 CHAIRMAN DIETER: One thing on page 24, I
21 guess a suggestion that I would like to see if you can
22 incorporate is along -- you know, under each of those

1 columns what the '04 numbers were just so we could
2 compare, you know, what is happening.

3 MR. RICHARDSON: Sure.

4 CHAIRMAN DIETER: It would make it a little
5 easier to see where money is going and where money is
6 not going. And then I guess the only -- on the
7 carryover, you know, it shows here \$6 million, but in
8 reality, 3.6 of that is delivery of legal services. It
9 is, you know, an accounting adjustment. So I want to
10 be sure that it doesn't -- you know, that doesn't
11 distort really what we have in terms of carryover that
12 would be discretionary spending.

13 So if Helaine is comfortable with the way that
14 it is drafted so that nobody misinterprets that, but I
15 was mostly -- was interested in just the management
16 administration carryover so we don't get into a
17 situation where we are spending more than we are likely
18 to be able to get in the next year and create problems
19 because that number stood out.

20 MS. MERCADO: I am sorry, Rob, where are you
21 looking?

22 CHAIRMAN DIETER: Well, if you look at page 23

1 and the resolution on page 22 says fiscal year
2 carryover totaling 6.344878, there in the first
3 "Whereas," the breakdown of that number is on page 23,
4 which is, you know, the delivery of legal assistance is
5 3.6 million of that, which is really not what I think
6 of as a carryover.

7 MS. MERCADO: Well, a million of it is loan
8 repayment.

9 MR. RICHARDSON: Well, this document does go
10 as an addendum to the resolution. I mean, it is
11 attached for further --

12 CHAIRMAN DIETER: Yes, we could -- maybe we
13 could break that carryover down into components so
14 that -- because when I looked at it, I thought where
15 would we get a \$6 million carryover. Do you know what
16 I am saying, David?

17 MR. RICHARDSON: Sure. I can easily put in
18 here a carryover of -- for the delivery of legal
19 assistance and an amount.

20 CHAIRMAN DIETER: Yes.

21 MR. RICHARDSON: And separate out even
22 management administration and the inspector general.

1 CHAIRMAN DIETER: Yes, because 200,000 of it
2 is the inspector general, which we don't, you know,
3 have any control over, and then a million of it is for
4 this loan assistance. So I just want to be sure that,
5 you know, nobody is drawing the wrong conclusion. Do
6 you agree, Helaine?

7 MS. BARNETT: I absolutely agree and would
8 recommend that the language be changed and then if you
9 propose to adopt it, adopt it as --

10 CHAIRMAN DIETER: Okay. All right. Then I
11 guess we should make a motion to the Committee to
12 adopt -- or not to adopt, but to send forward to the
13 full Board at the Board meeting the resolution that
14 appears on page 22 of the Board book with the
15 understanding that the fiscal year carryover totals
16 will be explained in more detailed as we outlined here.

17 MR. GARTEN: With the attachment.

18 CHAIRMAN DIETER: With the attachment.

19 M O T I O N

20 MR. GARTEN: I so move.

21 CHAIRMAN DIETER: So moved? Okay. without
22 objection, then, that -- we will make that

1 recommendation to the Board. So that is item 6.

2 REVIEW AND ACT ON A RESOLUTION TO AMEND THE
3 LSC FLEXIBLE BENEFITS PLAN

4 CHAIRMAN DIETER: Then item 8, Review and Act
5 on a Resolution to Amend the LSC Flexible Benefits Plan
6 that appears on page 35 and 36. David, are you going
7 to make that -- I don't know that there is any need for
8 discussion. The only thing that I wondered is what --
9 it is going up to \$4,000 a year. What is it now? Do
10 you know what the level is now?

11 MR. RICHARDSON: The current level is 3,000.

12 CHAIRMAN DIETER: 3,000? Okay. This doesn't
13 impact us fiscally in any way I don't think. So --

14 MR. RICHARDSON: It does not.

15 CHAIRMAN DIETER: So my recommendation is that
16 we present to the full Board the resolution that
17 appears on page 35 and 36 of the Board book for
18 adoption by the Board.

19 M O T I O N

20 MR. GARTEN: So moved.

21 CHAIRMAN DIETER: And without objection, then,
22 that motion passes.

1 CHAIRMAN DIETER: At this time, then, I think
2 we need to adjourn to closed session and then at the
3 conclusion of the closed session, we will go back into
4 open session and take up item 7, which is the
5 discussion of the fiscal year 2006 budget request that
6 is on page 34. Okay. So at this time, I guess the
7 members of the public can step outside.

8 (Whereupon, at 12:10 p.m., the meeting was
9 adjourned to closed session.)

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1 CHAIRMAN DIETER: We are reconvening the open
2 session to take up item 6 -- or item 7, which had been
3 moved on the agenda to the last item.

4 DISCUSSION OF FY 2006 BUDGET REQUEST

5 CHAIRMAN DIETER: And the item regards the
6 resolution at page 34 of the Board book, the Fiscal
7 Year 2006 budget request. The -- I am sorry, it is
8 page -- yes, page 34 of the Finance Committee. We have
9 had a briefing by the attorney general --

10 MR. WEST: I enjoy the promotion.

11 CHAIRMAN DIETER: By the Inspector General
12 regarding his request that the budget mark be increased
13 to reflect the additional budget requested by his
14 office of \$700,000, which would increase the overall
15 mark figure to 363,809,000.

16 M O T I O N

17 CHAIRMAN DIETER: It is my -- I will propose a
18 motion to the Committee that we present to the full
19 board, for its consideration, the resolution that is on
20 page 34 with a revised figure, budget mark in the
21 amount of 363,809,000 and that we delete the following
22 language that starts immediately after that figure,

1 which includes an increase of 209,000 for the payment
2 of occupancy costs allocated to the Office of Inspector
3 General for fiscal year 2006. So at this time I ask
4 for a vote of the Committee members. All in favor of
5 the motion as proposed, say aye.

6 (Chorus of ayes.)

7 CHAIRMAN DIETER: Opposed?

8 (No response.)

9 CHAIRMAN DIETER: There being no opposition,
10 then the motion -- or the resolution, as amended, will
11 be presented to the Board's full meeting.

12 PUBLIC COMMENT

13 CHAIRMAN DIETER: And is there any public
14 comment by anyone in the audience? Bill?

15 MR. WHITEHURST: I just want to raise the
16 question -- I am not asking for a debate on it, but I
17 do raise the question of why this was taking place in
18 executive session. I worry that we might be violating
19 the Sunshine laws and I raise that issue for future
20 reference if nothing else.

21 CHAIRMAN DIETER: Okay. That is noted. I
22 think -- you know, Vic Fortuno was present and I assume

1 that we are complying with the Sunshine regulations.
2 It is our intention to do so, but thank you for the
3 observation.

4 I am looking to see for the second page of the
5 agenda, which is page 6, just to see -- I don't think
6 there are any other items. There being no other
7 business before the Committee, then, I declare the
8 meeting of the Finance Committee adjourned.

9 (Whereupon, at 1:21 p.m., the meeting of the
10 Finance Committee was adjourned.)

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