

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS MEETING

OPEN SESSION

Friday, October 6, 1995

10:52 a.m.

Legal Services Corporation  
THE BOARD ROOM  
750 First Street, Northeast  
Washington, D.C. 20002

BOARD MEMBERS PRESENT:

Douglas S. Eakeley  
Hulett H. Askew  
LaVeeda Morgan Battle  
John G. Brooks  
John T. Broderick, by telephone  
Edna Fairbanks-Williams  
F. Wm. McCalpin  
Maria L. Mercado  
Nancy H. Rogers  
Thomas F. Smegal, Jr.  
Ernestine P. Watlington

STAFF PRESENT:

Alexander D. Forger, President  
Martha Bergmark, Executive Vice President  
Victor Fortuno, Assistant Secretary and General Counsel  
Edouard Quatrevaux, Inspector General  
David Richardson, Treasurer and Comptroller

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

1  
2 CHAIR EAKELEY: We're just about a whole hour  
3 behind on a one-day Board meeting. Do you all have the  
4 agenda? Is there a motion to approve it?

## M O T I O N

5  
6 MR. BROOKS: So move.

7 CHAIR EAKELEY: Is there a second?

8 MR. ASKEW: Second.

9 CHAIR EAKELEY: Victor Fortuno reminds me that --  
10 can we -- Alex, can we start?

11 MR. FORGER: Yes. Am I on?

12 CHAIR EAKELEY: No. I was trying to be. But we  
13 did not receive a unanimous vote for executive session for  
14 several different reasons. One reason was that there's some  
15 question about whether or not it's appropriate to go into  
16 executive session to discuss issues relating to internal  
17 operational and personnel matters.

18 As I understand it, what was intended by this  
19 agenda item was nothing more than a briefing on certain  
20 internal and operational and personal matters. Is that  
21 right, Alex?

22 MR. FORGER: I'm sorry. I was just reading a memo

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1 that I thought I was getting earlier.

2 CHAIR EAKELEY: Is the intended discussion of  
3 issues relating to internal operational and personnel matters  
4 intended to be anything more than a briefing?

5 MR. FORGER: That is all.

6 CHAIR EAKELEY: So if we change that agenda item to  
7 a briefing on internal operation and personnel matters, I  
8 think that will cure the one question that was raised before,  
9 right, Victor?

10 MR. FORTUNO: That's right.

11 CHAIR EAKELEY: But we also need a vote by the  
12 Board to approve this executive session agenda as modified,  
13 because we did not have a unanimous vote.

14 MS. BATTLE: That's right. For the notational vote  
15 to carry, it must be unanimous. It was not. We failed to  
16 get one vote. So we were one shy. You may now take a vote,  
17 and all you need is a simple majority to --

18 CHAIR EAKELEY: Basically, then, in asking you to  
19 approve the agenda as modified on item 14 to change  
20 "discussion" to "briefing," again, could someone move the  
21 approval of the agenda?

22

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## M O T I O N

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MR. ASKEW: So moved.

MS. BATTLE: Second.

CHAIR EAKELEY: All those in favor?

(Chorus of ayes.)

CHAIR EAKELEY: Opposed?

(No response.)

CHAIR EAKELEY: All right. That does it for you?

MS. BATTLE: It does. Thank you very much.

CHAIR EAKELEY: Do you have the minutes of our June 24 to 25 meeting? Are there any corrections or additions to those minutes?

(No response.)

CHAIR EAKELEY: Hearing none, is there a motion to approve?

## M O T I O N

MR. ASKEW: So moved.

CHAIR EAKELEY: Is there a second?

MR. BROOKS: Second.

CHAIR EAKELEY: John Brooks seconds. All those in favor?

(Chorus of ayes.)

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1 CHAIR EAKELEY: Opposed?

2 (No response.)

3 CHAIR EAKELEY: Approval of minutes of June 25th  
4 executive session. Any corrections or changes to suggest?

5 MR. BROOKS: Mr. Chairman?

6 CHAIR EAKELEY: Yes?

7 MR. BROOKS: I wanted to ask Mr. Forger whether the  
8 use of the word "executor" at the top of page 15 is proper,  
9 where it says, "Mr. Forger explained that he would be acting  
10 as an executor," when you are, in fact, an administrator.

11 MR. FORGER: I think "acting as a fiduciary" might  
12 be a better term. I mean, the technical term would be  
13 "temporary administrator." It's the functions of an  
14 executor, but I would be serving as temporary administrator.

15 CHAIR EAKELEY: Well, I take it --

16 MR. SMEGAL: Do you have to change it in both  
17 places? One says "executor," and the other is  
18 "administrator."

19 CHAIR EAKELEY: So "temporary administrator"?

20 MR. FORGER: Yes. I'm simply when I use the word  
21 "executor" saying it was like an executor. It's just a  
22 technical term where you don't have a will probated.

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1 CHAIR EAKELEY: So the Chair will take as a  
2 friendly suggestion to reopen the minutes that we just  
3 approved to amend those minutes to change "executor" to  
4 "temporary administrator" on page 15 of the Board materials.

5 MR. BROOKS: I think that was up for approval.

6 CHAIR EAKELEY: Fair enough. Fair enough.

7 MS. BATTLE: Excuse me.

8 CHAIR EAKELEY: Yes?

9 MS. BATTLE: Mr. Chairman, I believe that John  
10 Broderick is on the phone. You may want to recognize him.

11 CHAIR EAKELEY: John, are you there?

12 MR. BRODERICK: I am, Doug.

13 CHAIR EAKELEY: Well, welcome, your Honor.

14 MR. BRODERICK: I think you should all be seated.

15 (Laughter.)

16 CHAIR EAKELEY: We're actually on our knees.

17 MR. BROOKS: Congratulations.

18 MR. BRODERICK: Well, thank you very much. It's  
19 just living proof that my governor does make mistakes.

20 (Laughter.)

21 MR. BRODERICK: We're not all perfect.

22 CHAIR EAKELEY: John, we're in the middle of

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1 recovering from the Finance Committee meeting and moving the  
2 minutes of the last Board meetings. And there has been --

3 MR. BRODERICK: I just want to say, I apologize to  
4 everyone that I am not there. My life in the last 10 days  
5 has been a little less than structured. So I apologize.

6 CHAIR EAKELEY: I suspect we may envy you. In any  
7 event, we have one change on the June 25 regular meeting  
8 minutes. Subject to that change, is there a motion to  
9 approve?

10 M O T I O N

11 MS. WATLINGTON: So moved.

12 MR. BROOKS: Second.

13 CHAIR EAKELEY: Ernestine. John Brooks second.

14 All those in favor?

15 (Chorus of ayes.)

16 CHAIR EAKELEY: All those opposed?

17 (No response.)

18 CHAIR EAKELEY: The minutes are approved. Now,  
19 there's also a June 25, 1995, set of draft minutes for our  
20 executive session. Those were distributed separately. Are  
21 there any corrections or additions to be made to those  
22 minutes?

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1 (No response.)

2 CHAIR EAKELEY: Is there a motion to approve them  
3 as circulated?

4 M O T I O N

5 MS. WATLINGTON: So moved.

6 CHAIR EAKELEY: Ernestine Watlington. Is there a  
7 second?

8 MR. ASKEW: Second.

9 CHAIR EAKELEY: All those in favor of approving the  
10 draft minutes of the executive session?

11 (Chorus of ayes.)

12 CHAIR EAKELEY: An overwhelming chorus of ayes.  
13 Are there any nays?

14 (No response.)

15 CHAIR EAKELEY: All right. The minutes are  
16 approved.

17 MR. SMEGAL: I would just like to note for the  
18 record I have abstained from voting on any of these. I  
19 wasn't here. I was out of the country. So I didn't feel it  
20 appropriate to vote one way or another, and I haven't.

21 CHAIR EAKELEY: All right. Now that we're into the  
22 agenda and onto item 4, I would like to take this opportunity

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1 first to welcome John Erlenborn, who is with us today. He  
2 was nominated last week by President Clinton to the Board of  
3 Directors to serve in the seat that is currently and was  
4 being occupied by John Brooks.

5 John, as you all know, has decided that one term is  
6 adequate. And we will thank him at an appropriate moment and  
7 in a more appropriate fashion for his wonderful service,  
8 counsel, advice, and friendship.

9 But today, I would just like to greet and welcome  
10 Mr. Erlenborn, who served in the Congress from 1965 until, I  
11 think, 1984. He's an adjunct professor at Georgetown Law  
12 Center, and although not as long as his career in the  
13 Congress, he served an equally distinguished stint on this  
14 Board of Directors back in 1989-1990.

15 John, welcome. We look forward to working with you  
16 and appreciate your coming in advance of the confirmation to  
17 take a close look at how we really operate. And hopefully,  
18 we can approve upon it from there.

19 Tom?

20 MR. SMEGAL: Yes. I would just like to add I had  
21 the pleasure of serving with Mr. Erlenborn for a brief part  
22 of his time. I was on a previously confirmed Board that he

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1 joined as a recess appointment of President Bush. And until  
2 the remainder of us were recess replaced, I did have an  
3 opportunity to get to know Mr. Erlenborn. And I will assure  
4 you that you will share a great honor in having him on our  
5 Board.

6 CHAIR EAKELEY: As Alex will report shortly, we  
7 have had a substantial reduction in force. And there are a  
8 lot of wonderful people and good friends who are no longer  
9 with the Corporation for whom collectively we owe a great  
10 debt of thanks. In particular, though, this Board has now  
11 lost three very good friends in Pat Badie, our secretary of  
12 the Corporation; Rubie McCollum; and Triphenia Dickens.

13 And I thought it might be appropriate just to note  
14 in the minutes our sense of appreciation for all they have  
15 done to make our lives a little bit easier and our jobs a lot  
16 better. What I would like to do, perhaps -- what I meant to  
17 do and didn't was bring down three thank you cards so that we  
18 could circulate them for signature by the Board. But I would  
19 like to put that in motion and do something as a small token  
20 of enormous appreciation for them.

21 MR. BROOKS: Second that motion.

22 M O T I O N

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1 MR. McCALPIN: I think it would be appropriate that  
2 this Board go on record as recognizing particularly the  
3 service of the secretary of the Corporation and her  
4 assistants, Ruby and Triphenia, that an appropriate  
5 resolution be put on the records and the copies served upon  
6 -- furnished to them memorializing their service, and I so  
7 move.

8 MS. BATTLE: I'll second that motion.

9 CHAIR EAKELEY: Yes. What I had in mind is sending  
10 something along with it, but by private collection. But  
11 maybe -- well, I would like to send a small token beyond the  
12 resolution. But yes. All right. All those in favor of an  
13 appropriately worded resolution of appreciation?

14 (Chorus of ayes.)

15 CHAIR EAKELEY: All those opposed?

16 (No response.)

17 CHAIR EAKELEY: Thank you very much.

18 Fourth and I think lastly from my chairman's  
19 report, I should report that in between our last briefing  
20 session by conference call in August and now, I reached out  
21 in consultation with Nancy Rogers and Alex Forger and Bill  
22 McCalpin to ask Bill to step in and serve as the official

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1 Board liaison with the Office of the Inspector General.

2 Bill graciously consented to undertake the  
3 assignment and has been discharging it ever since, some might  
4 say -- I won't attribute to whom, but some might say Bill had  
5 been liasoning with everybody in the Corporation in OIG  
6 before then. But this is now an official part of his  
7 portfolio on the Board.

8 And, Nancy, I just wanted to thank you for  
9 undertaking the double duties of vice Chair and OIG liaison  
10 in addition to everything else. That's my report.

11 Alex?

12 MR. FORGER: Legislative and activities? Well, a  
13 lot has been transpiring over the last few weeks. You are,  
14 I'm sure, up to speed on what happened a week ago Friday or  
15 last Friday, a week ago today, which was a substitute on the  
16 floor of the Senate of the Domenici bill for the bill that  
17 had come through the Graham subcommittee.

18 The substitute would continue the life of the Legal  
19 Services Corporation as we know it with less money and a lot  
20 of restrictions in substitution of that which was coming  
21 through the Graham committee, which would block grant the  
22 Corporation. There was some concern as to when that would be

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1 on the floor, whether it would be recommitted, the degree of  
2 support we would have.

3 And while it was ultimately approved on a voice  
4 vote, the recorded vote was on a motion to lay it on the  
5 table. And that was defeated 60 to 39. All of the Democrats  
6 supported our position except for Senator Byrd. And we  
7 attracted the support of 16 Republican Senators, which was, I  
8 think, a remarkable achievement.

9 Gail Laster has done a super job in working the  
10 Hill for us and working with the staff and seeking to attract  
11 the support of a pretty diverse group of Republican  
12 supporters. So we are much encouraged by that evidence of  
13 support. I think a Republican Senator from Missouri  
14 supported us. Mr. McCalpin, I'm sure you were not unaware of  
15 that.

16 And it was interesting that we had both Republican  
17 Senators of Maine, Pennsylvania, and -- which was my other  
18 state in which we had two Republican Senators?

19 MR. McCALPIN: Both Senators from New York?

20 MR. FORGER: Oregon, the two Republicans of those  
21 four. We got virtually all the Senators from the Northeast,  
22 with the exception of Mr. Gregg. And then we had Oregon,

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1 Washington, and California. So on both sides of the  
2 continent, we had good support.

3 As you know, that has a proposed allocation of 340  
4 million for Legal Services. It has 13 million for management  
5 and administration. That money is to be allocated in the  
6 Board's discretion; therefore, as between inspector general  
7 and administration. There's no element of division of  
8 responsibilities; therefore, presumably, the monitoring for  
9 compliance remains with the Corporation.

10 It is patterned after the House bill. There was a  
11 notion that it would be useful if that were pretty much as  
12 close to the House bill as appropriate, with our suggestions  
13 of some modifications. There has been put in a separate line  
14 for Native Americans which isn't in the House bill. And  
15 there's also a recognition that certain other populations  
16 should not be on a pure per capita basis, those that  
17 historically had been funded on the different bases and  
18 including specifically Alaska and Hawaii and the Virgin  
19 Islands.

20 The restrictions by and large are the same in both  
21 bills, except there are from the point of view of overall --  
22 we think the Domenici bill probably is more desirable from

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1 our point of view than the House bill in several respects.  
2 The House bill is better on class actions, because class  
3 actions there are restricted only against government, whereas  
4 in the Domenici bill, all class actions are eliminated.

5 A major factor in the -- thank you, Gail. Gail is  
6 passing out a side-by-side which isn't -- you have to do a  
7 lot of reading to see quickly what the differences are.  
8 Major difference from our point of view and from a management  
9 point of view in Domenici is the timing for competition. And  
10 that has a date in here of an expectation of September 1,  
11 which we would go forward with competition, whereas the House  
12 bill has a date of January 1, with less than 90 days hence.

13 The more favorable issues in the Domenici, in  
14 addition to competition, is the -- there's more clarity on  
15 transition; that is to say that a lot of the restrictions are  
16 prospective, whether they be class actions or other kinds of  
17 activities that you're doing. Fee generating is a little  
18 clearer in Domenici in that the House bill says you can't do  
19 any fee generating except in private counsel not available.

20 Domenici goes on and permits us to do Social  
21 Security and other benefits without doing that check which is  
22 our status today. Domenici also would permit programs to use

1 nonLSC money to seek additional nonLSSC funding, whereas that  
2 is not the case under the House bill. Both bills virtually  
3 tie up all outside money. Tribal funds are permitted under  
4 Domenici and certain clients otherwise ineligible  
5 financially. But they're pretty much the same.

6 In addition to the usual what we have had  
7 heretofore, abortion and redistricting, we can't represent  
8 prisoners. There's the restriction on solicitation, the  
9 drug-related housing evictions that we have acted on, welfare  
10 reform that we have already acted on, advocacy training,  
11 administrative rule making, even if you're requested to  
12 respond.

13 Both bills require timekeeping statements and  
14 identification of clients before filing lawsuits, so that we  
15 have a full panoply of restrictions. We will now go to  
16 conference and with respect to the 340 in the Senate bill,  
17 there is in this bill an expectation that some 115 million of  
18 this will be deferred until competition commences. This is  
19 the budgetary matters of appropriations versus outlays.

20 The consequence of all of this is that for most of  
21 our calendar year, we'll be functioning on a budget at a rate  
22 of approximately \$278 million. At the end of the fiscal

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1 year, the additional 115, we understand, will be available to  
2 us in respect of FY '96. But that creates some kind of a  
3 wrinkle for us in terms of going forward and funding  
4 programs. But that may be modified somewhat when we get to  
5 conference.

6 The major issue in conference, I expect, will be  
7 where will the compliance monitoring be done. And we will  
8 have, I think, more discussions in respect of that on the  
9 Hill before the conference occurs. I think the inspector  
10 general is on record in respect to communication with the  
11 Hill that that is not an illogical or unnatural place for the  
12 compliance monitoring to be done, namely, in the Corporation.

13 As we explained earlier in the Finance Committee on  
14 the budgeting matters, we do believe that we would need \$8  
15 million in order to carry out our responsibilities, plus some  
16 additional funds if we are to retain our compliance  
17 monitoring function. The inspector general will have, in any  
18 event, the audit responsibility, presumably that which has  
19 been put upon him by the House.

20 We think a \$13 million M&A allocation would be  
21 sufficient to permit the inspector general to take on the  
22 primary responsibility of the audits as well as to permit us

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1 to discharge the compliance function, as well as the new  
2 responsibility of competition.

3 As I said earlier, if we are, indeed, restricted to  
4 the 5 million, that will mean we will have to cut our staff  
5 again in half. We'll cut our staff in half, and I don't know  
6 how realistically we could perform all of the functions that  
7 would be expected of us.

8 On the reauthorization front -- and I guess, Gail,  
9 we may be anticipating the conference next week or the week  
10 after. And once that goes through conference, then, as you  
11 know, it goes to each of the two houses for another vote.  
12 And then Commerce/Justice/State, of which we're a part, goes  
13 to the President.

14 There is always the threat of a veto of that bill  
15 if the President is dissatisfied with the other elements in  
16 that bill, so that even with conference and even with  
17 adoption by both houses, there is still another issue as to  
18 whether we will get through without a veto and if there is  
19 veto whether we would remain unscathed when that was  
20 revisited by both houses.

21 Then there is the authorization process. And that  
22 will go forward in Senator Kassebaum's committee scheduled, I

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1 believe, for next Thursday. Her bill is patterned in large  
2 measure after McCollum-Stenholm. And we have had meetings  
3 with staff. Bill McCalpin has met also as part of that group  
4 in discussing provisions of that bill. It is not free of  
5 restriction, but it is not a block grant. And presumably,  
6 amendments will be offered in her committee when this is on  
7 markup for next Thursday.

8           Whether that finds its way to the full floor of the  
9 Senate, I suspect we cannot now predict. On the House side,  
10 you know the Judiciary Committee adopted what is being  
11 referred to as the "Gekas bill." And that is a block grant.  
12 And that is a bill that lists only those cases that Legal  
13 Services attorneys can handle, a quiet title, probate of  
14 wills. I don't think there's any copyright or trademark in  
15 that, Tom.

16           (Laughter.)

17           MR. SMEGAL: Good.

18           MR. FORGER: But it excludes much of what we do on  
19 a regular basis. And that's the one that sends it to the  
20 Department of Justice, and the GAO monitors and the states  
21 make the grants. And it had in its original introduction and  
22 adoption by the subcommittee a two-year funding. And at the

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1 full committee, an amendment was accepted or adopted that  
2 added four-year funding to this block grant proposal.

3 And our understanding is that this is not likely to  
4 come to the floor of the House because those in the House who  
5 wish to terminate the Legal Services program are disappointed  
6 that this reauthorization bill would give us four years of  
7 life.

8 And at least from all of the bulletins and reports  
9 and from inside Washington news releases, it would appear  
10 that the stated strategy of those more conservative members  
11 -- I think it's the CATs, the conservative action team and  
12 others -- believe that their interests would best be served  
13 by having us go through an appropriation for one year and  
14 target us for FY '97 as a year of termination unrestricted by  
15 a reauthorization bill that would give us a more permanent  
16 life.

17 So from at least such as we divine from those  
18 soundings, it would cause us to believe that the battle lines  
19 will shift to our appropriation process next spring. If that  
20 be so and if, indeed, we are successful in conference and  
21 approval of the White House, we will have the assurance of  
22 continuing on for a year, albeit with a lot less money and

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1 considerable restriction, but at least the ability to carry  
2 on and serve the interests of many of our eligible clients.

3 But we must not be unmindful of the fact that this  
4 was simply one event in the life of Legal Services and next  
5 spring may be a more focused effort to eliminate the program.  
6 And so we in management are particularly mindful of the fact  
7 that we need to carry out our functions in a way that will  
8 reinforce the view of our supporters that we are an efficient  
9 and accountable entity and are discharging our functions  
10 well.

11 I think that is from the point of view of the  
12 legislative history where we are. I expect by our next Board  
13 meeting, we should know what our budget will be and what the  
14 restrictions are and how much time we will have to implement  
15 competition.

16 I think that is probably one of the critical points  
17 for us in order to evidence our commitment to implementing  
18 Congress's will is by having some additional time within  
19 which to give a credible opportunity for people to compete  
20 and for us to do that process in a way that will likely  
21 enhance the success of the competitive system.

22 CHAIR EAKELEY: Do you know who's on the Conference

1 Committee?

2 MR. FORGER: Gail?

3 MS. LASTER: Generally, it should be the members of  
4 the full committee, the subcommittee, all the members of the  
5 subcommittee.

6 MR. FORGER: Mr. Graham has left our committee and  
7 has gone to the Finance Committee.

8 MS. LASTER: I don't think Mr. Graham will be on  
9 the subcommittee. He's taking a place on Finance. And he  
10 announced last Friday at the time of after the vote, the 60-  
11 39 vote, he indicated that given that he would be leaving the  
12 committee, he would not press the matter further, as well as  
13 the fact that with 60 votes, arguably, that is a large enough  
14 majority to prevent a filibuster.

15 We don't know, though, who has been elected in his  
16 place to be Chair and who would replace him on the committee  
17 in terms of a new member.

18 MR. FORGER: But the members of that committee were  
19 superb in their support for us. I think Senator Domenici in  
20 particular was very effective and instrumental in our  
21 continued life, as was Senator Hatfield.

22 MS. LASTER: Senator Stevens.

1 MR. FORGER: Senator Stevens of Alaska. So we had  
2 marvelous support. And it was very encouraging. Senator  
3 Cohen of Maine was another one who was attracted to our cause  
4 and was very articulate.

5 MS. LASTER: And we shouldn't leave out Senator  
6 Kassebaum, who was the second speaker on our behalf and who  
7 in stating her intention and her commitment to  
8 reauthorization really helped our appropriations cause.  
9 Because for those of us who really want not to appropriate  
10 unless there's reauthorization, her stating her firm support  
11 for reauthorization and not in a block grant form was very  
12 important to us, too. So we appreciate that greatly.

13 MR. FORGER: I think, Gail, from a parliamentary,  
14 if that's the right term, point of view on next year, there  
15 is the interplay between the Rules Committee and our not  
16 being authorized and the ability for those on the House floor  
17 to have a greater advantage in achieving their objective,  
18 those who want to terminate the Corporation. Is that part of  
19 the strategy as related to rules?

20 MS. LASTER: Yes. And unfortunately -- and Ida can  
21 correct me if I'm wrong -- it still plays a role now.  
22 Although conference reports cannot be amended, they have to

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1 be voted up or down. A point of order can be lodged against  
2 something that's contained in the conference report that  
3 hasn't been reauthorized.

4 So we would hope that the reports of Congress,  
5 particularly members of the House, lodging a point of order  
6 against appropriation would only pertain to our 1997  
7 appropriations. But, in fact, it can be lodged against the  
8 conference report.

9 MR. FORGER: So we're not home free totally.

10 CHAIR EAKELEY: I could not find earlier when I  
11 looked at the Domenici bill the restriction on outside  
12 funding.

13 MR. FORGER: It's not in this side-by-side.

14 CHAIR EAKELEY: Did they adopt the language of  
15 the --

16 MS. LASTER: Page 12, D-1, "The Corporation shall  
17 not accept any nonfederal funds, and no recipient shall  
18 accept funds from any other source than the Corporation."

19 CHAIR EAKELEY: Right.

20 MS. LASTER: That's the general prohibition. Then  
21 A makes an exception for Indian tribal funds.

22 CHAIR EAKELEY: I've looked for that before and for

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1 some reason didn't see it.

2 MS. LASTER: And B is an exception for  
3 nonrestricted activities.

4 CHAIR EAKELEY: So this really does wipe out about  
5 another third of program funding for those programs who may  
6 not --

7 MR. FORGER: Where is that on the House bill, Gail?

8 MS. LASTER: The House bill has a different setup.  
9 The House bill basically says that any grantee can only do  
10 this with its funding from any source. Rather than having  
11 that exact language, the House bill makes it clear that these  
12 restrictions apply to a grantee, period, no matter what funds  
13 they would want to use for these activities.

14 So it is the same in both bills. If anything, the  
15 Domenici amendment has an exception for nonrestricted  
16 activities if there's an eligibility issue, a financial  
17 eligibility issue and for Indian tribal units.

18 CHAIR EAKELEY: Well, if you just reflect back,  
19 November 8, 1993, was the day we were sworn in. And within  
20 two months, we passed an equal access to justice funding mark  
21 and a requested budget of 848 million.

22 MR. FORGER: Down from 1.1.

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1           CHAIR EAKELEY: Right. A year later to the day,  
2 November 8, 1994, were the Congressional elections. The  
3 first resolution clearing the House Budget Committee -- the  
4 first resolution clearing any committee in the House relating  
5 to our program was the House Budget Committee eliminating us  
6 in two years.

7           We really didn't know where we were for several  
8 months, hoped for the best but feared for the worst, managed  
9 a 13-13 vote in the House Judiciary Committee. But  
10 nevertheless, the vote was to block grant, but over a more  
11 extended period of time than some folks would have preferred  
12 to eliminate us.

13           And here we are in conference committee with  
14 appropriations bills, at least, albeit with restrictions and  
15 allocations and a lot less money, but nevertheless here for  
16 another day. No reauthorization at greater peril, as those  
17 opposed to the program regather, and yet another opportunity  
18 because we're alive for another day to demonstrate the  
19 soundness and effectiveness and wisdom of a federally  
20 sponsored program providing access to justice for poor people  
21 in need.

22           This anticipates a little bit one of our agenda

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1 items, which is future planning and competition. But  
2 reflecting for a moment on the terrain that has been  
3 traversed, it feels like 10 years rather than 10 months. And  
4 there are a lot of people around this table who all  
5 participated in helping get us to where we are today.

6 And there are even more people beyond this table  
7 and beyond this room who participated in, I think, without  
8 trying to address it inappropriately, resulted in a  
9 groundswelling of support for what might otherwise be a dot  
10 within the federal budget. And I just want to thank everyone  
11 for their support and patience and prayers for what comes  
12 next.

13 Are there any questions or other comments on Alex's  
14 first portion of his report?

15 MR. FORGER: I would like -- Doug, we had mentioned  
16 the names of the support we had -- to make that complete. As  
17 I said, all of the Democratic side except for Senator Byrd  
18 has supported us. I think Senator Nunn and Senator Jacobe.  
19 On the Republican side, it was Senators Bond, Chaffe, Cohen,  
20 D'Amato, Domenici, Gorton, Hatfield, Jeffords, Kassebaum,  
21 Lugar, Packwood, Santorum, Snowe, Specter, Stevens, and  
22 Thompson.

1 CHAIR EAKELEY: All right. Alex, do you have other  
2 portions of your report?

3 MR. FORGER: No. I think on the legislative, the  
4 next, I think, is planning.

5 CHAIR EAKELEY: Yes.

6 MR. FORGER: And on the -- Martha, on the  
7 personnel, should we defer that to a latter part? I see  
8 there is an agenda item here for briefing on personnel.

9 CHAIR EAKELEY: In executive session.

10 MS. BERGMARK: I thought maybe we would introduce  
11 Joan and maybe have her cover the general part of it. She  
12 needed to move onto something else.

13 MR. FORGER: Good. Why don't I start off, if I  
14 may, Mr. Chair, with a moment on the -- I suppose it could  
15 tie into planning -- the RIF. We did complete -- and as  
16 David in his appearance told us, we completed phase I of the  
17 RIF of some 29 people who opted to or agreed to be part of  
18 the phase I and have -- most have left.

19 A number are still spending some time with us but  
20 will leave. It has left us with 68 people on staff. We were  
21 targeting a range of about 70. So unless something further  
22 occurs to limit our budget below 8 million, the likelihood is

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1 that we will not go into phase II without a further  
2 reduction.

3 The RIF generally affected us across the board in  
4 all respects. And we think that the personnel here are  
5 capable of functioning and carrying out all of our duties.  
6 Joan Kennedy, who joined us a month or so ago, has been  
7 terribly helpful and instrumental, along with Alice and the  
8 rest of the staff, in working out the terms of the RIF,  
9 dealing with some very personal and delicate issues affecting  
10 the lives of numbers of folks here.

11 And we have done some reassignment of jobs and the  
12 like. I will talk about the corporate secretary after Joan  
13 maybe later on. But, Joan, if you would tell us how this  
14 worked out, where the folks are, how we stood with diversity  
15 and assignment of functions.

16 MS. KENNEDY: Good morning.

17 CHAIR EAKELEY: Good morning.

18 MS. KENNEDY: Thank you, Mr. Forger. Mr. Chairman,  
19 members of the Board, I appreciate having this opportunity to  
20 both be introduced to you this morning and to share with you  
21 a little bit about some of the progress we have made over the  
22 last month and-a-half that I've been here.

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1           As Mr. Forger indicated, we have what we considered  
2 successfully completed phase I of the reduction in force, and  
3 29 people opted to leave under phase I of the reduction in  
4 force, leaving us approximately 68 employees left. And as we  
5 look at the EEO profile of those employees who left, it's  
6 fairly evenly distributed throughout the Corporation. There  
7 were some areas of the Corporation that were impacted greater  
8 than others.

9           I think the only area in the Corporation that did  
10 not have anyone to leave in phase I is the comptroller's  
11 office. But every other office was impacted in phase I of  
12 the reduction in force. When we look at diversity issues  
13 such as age and gender and race and even professional status,  
14 it is fairly representative.

15           As a matter of fact, in phase I, 32 percent of  
16 those leaving were black females; 32 percent of those leaving  
17 were white females; 32 percent of those leaving were white  
18 males; 1 percent black male; 1 percent Asian male, leaving us  
19 a work force of approximately 68 with an EEO profile of 32  
20 percent black female; 16 percent white female; 10 percent  
21 black male; 24 percent white male; 5 percent Hispanic male; 8  
22 percent Asian female; and 5 percent Asian male.

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1           In addition to working with the reduction in force,  
2 we have been looking at some of the other issues that have  
3 spun off our work with the reduction in force. For instance,  
4 on your agenda today, you're going to be talking at greater  
5 length about the corporate secretary functions and how  
6 they're going to be distributed in the Corporation among the  
7 remaining staff.

8           But that is an area that was very, very much  
9 impacted during phase I of the RIF. So were the areas of  
10 human resources and administrative services. The reception  
11 area, you may have noticed, no longer looks like it once  
12 looked. Both of the receptionists opted for phase I of the  
13 reduction in force.

14           And we have been looking at some alternatives for  
15 handling that function, because it is an essential function.  
16 You may have recognized that we now have the automated  
17 attendance working. Some people think it's great. Some  
18 people think it's less than great. We're trying to find a  
19 way to make it work and maintain the existing level of  
20 service.

21           The General Counsel's Office was also impacted, as  
22 was the Office of Information Technology. And we're working

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1 through those areas, and those will be areas that we'll be  
2 looking at very closely in the remaining weeks and months  
3 ahead.

4 Very briefly, other areas of focus that we are  
5 looking at are the repographics and mail area, the supplier  
6 room functions, trying to find ways to reconfigure those  
7 areas to maintain the existing level of service and yet  
8 reduce costs and redistribute our work force so that they can  
9 be used more efficiently.

10 We are also looking at the option of merging the  
11 library and our archives and central files functions to  
12 reduce the space needs to look at a more automated basic  
13 services kind of law library that meets the needs of the  
14 staff. And at the same time, we're evaluating our space  
15 needs, because as Mr. Forger indicated, we're looking at once  
16 we find out exactly what our numbers are going to be like,  
17 trying to reconfigure ourselves into one floor of the  
18 building.

19 And we were talking with the building managers and  
20 their real estate folk about what we can do to reconfigure  
21 our space to meet our needs. And, of course, at the top of  
22 our agenda over the next several months is looking at the

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1 finalizing of our administrative policies and procedures.

2 And that's a very high priority for us.

3 So that's essentially where we are. And I  
4 appreciate the opportunity to be here. And I'm looking  
5 forward to working with you.

6 CHAIR EAKELEY: Thank you very much, and welcome on  
7 board. It's good to have you with us.

8 MS. KENNEDY: Thank you very much.

9 CHAIR EAKELEY: Are there any questions of Ms.  
10 Kennedy?

11 (No response.)

12 CHAIR EAKELEY: All right. Does that conclude your  
13 report, Alex?

14 MR. FORGER: Let me do a couple of personnel  
15 matters in that regard. It's on communications. Both Jim  
16 Lamb and Will Lutz are leaving. And Bob Echols has been a  
17 mainstay for us in communications. He will continue on,  
18 fortunately for us. We do need to shore up the  
19 communications capability.

20 Jim Lamb has agreed to spend a few days a week with  
21 us during October. But meanwhile, I think we will be looking  
22 for some replacement there probably on a temporary basis to

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1 have somebody in place maybe by November 1. What we seek to  
2 do with that is certainly get a closer tie between government  
3 relations and communications.

4 I think the team has worked well in responding to  
5 requests from the Hill, to responding to inquiries of the  
6 print media and preparing responses and letters to the editor  
7 and dealing with the television folks who have shown an  
8 interest in giving some coverage to the Legal Services  
9 program. Particularly with what's ahead of us, I think it's  
10 terribly important that we have a well-coordinated  
11 communication function.

12 CHAIR EAKELEY: Well, we thank Jim and Will for  
13 their services. In a time of great need, they responded  
14 quite appropriately, and we're going to miss them.

15 Bob, we're delighted you're still with us. I hate  
16 to ask, anything else?

17 MR. FORGER: Well, I could talk about corporate  
18 secretary functions.

19 CHAIR EAKELEY: No. Let's stick -- I want to get  
20 the inspector general's report, and then I want to go into --  
21 Ed, will you forgive us if we just deal with one other  
22 personnel item first, which is the corporate secretary

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1 function? Actually, as you know, Pat Badie served as the  
2 secretary of the Corporation, in addition to really providing  
3 and supervising the support services for the Board, of which  
4 all of us partook.

5 And some consideration has to be given -- not that  
6 the Board needs to be pampered or coddled, but nevertheless,  
7 for the Board to function, we need some support. Likewise in  
8 the communication side of things, Bob and Alex and everyone  
9 else on management, the Board needs to be always a part of  
10 that communications function. Plus, there are legal duties  
11 that are required of a corporate secretary, not only by the  
12 bylaws of the organization, but also by the laws of the state  
13 of incorporation of the corporate entity.

14 So with that in mind, we have asked Alex to give  
15 some thought to how we reconfigure and deal with the large  
16 hole that Pat Badie's departure and her staff's departure has  
17 left in terms of our perspective.

18 MR. FORGER: Well, I've just distributed at least  
19 an initial proposed redistribution of those functions that  
20 Joan and Martha have worked out with the staff. And, as you  
21 see -- and this is on an interim. The decision for the Board  
22 is to give thought to the appointment of someone to function

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1 as corporate secretary or to amend underlying documents if it  
2 were the Board's wish not to do that.

3 But we think that the for the moment on a temporary  
4 basis, we want to make certain that these functions are being  
5 performed that Victor and the Office of General Counsel,  
6 supported by Joanne, are prepared to pick up most of the  
7 documentary regulatory, if you will, aspects of the corporate  
8 secretary's function.

9 And under administrative services, we would do some  
10 of the ancillary activity of travel and lodging and so forth.  
11 And then Barbara Asonte in the executive office would do the  
12 on site activity for the Board. So we sort of spread that  
13 into three categories on a provisional or temporary basis.  
14 And maybe later on in the agenda when you discuss personnel  
15 matters, you might want to address the issue of a corporate  
16 secretary being designated or any other legal activity that  
17 would be required.

18 CHAIR EAKELEY: Well, actually, we have moved that  
19 agenda item up. I guess --

20 MR. FORGER: This is simply reporting as to where  
21 these functions are now being performed.

22 CHAIR EAKELEY: Right, but we modified the agenda

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1 for executive session to meet one of the questions that had  
2 been raised previously about whether we were in compliance  
3 with the -- by changing "compliance" to "briefing" on  
4 personnel matters, so I don't think we can have a  
5 contemplated discussion.

6 I'm just trying to -- my understanding -- is Victor  
7 here? Why don't you come in? We'll take some on the record,  
8 therefore, waived confidentiality attorney-client advice  
9 here. My understanding is that Pat Badie, although on  
10 administrative leave until her employment with the  
11 Corporation ends, remains as corporate secretary for another  
12 month; is that correct?

13 MR. FORTUNO: That's correct, yes.

14 CHAIR EAKELEY: So we have got another month within  
15 which to consider the question of whether to appoint a  
16 replacement for Ms. Badie pursuant to the bylaws or to  
17 delegate corporate secretary functions to others possibly  
18 without appointment. My own inclination is to go about the  
19 business of appointing another individual to serve as  
20 corporate secretary, although not necessarily to handle the  
21 other roles and responsibilities that Pat had.

22 But at least until November 15th, we have a

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1 corporate secretary duly appointed. And, therefore, someone  
2 can perform tasks as proposed by management without the Board  
3 requiring any action. Is that right, Victor?

4 MR. FORTUNO: I think that's correct, yes.

5 CHAIR EAKELEY: I understand that we could appoint  
6 an interim -- Maria Luisa's advising me on the side here.  
7 But let's just open it up. I would propose that rather than  
8 dealing with interim secretaries or modifying or amending the  
9 bylaws, that we stay with the bylaws and have somebody who  
10 has responsibility and title together.

11 John, what were you going to --

12 MR. BROOKS: Well, that was going to be my  
13 suggestion, that in the interim, we appoint an assistant  
14 secretary with such duties as we wish to assign, such as  
15 signing certificates of votes and performing the secretary's  
16 duties that need to be done physically during Pat's leave so  
17 that there's somebody on the premises to function.

18 CHAIR EAKELEY: Bill?

19 MR. McCALPIN: Doug, it seems to me that it would  
20 not be inappropriate to ask Pat to resign her office as  
21 secretary. That doesn't necessarily mean she doesn't  
22 continue as an employee of the Corporation during the period

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1 of her paid leave. That would open up the office. I think  
2 John's suggestion is an appropriate one, to name an  
3 assistant.

4 I haven't had a chance really to read this memo we  
5 have been given today. It doesn't refer to the District of  
6 Columbia not-for-profit corporation code, but I suspect that  
7 code requires us to have a secretary. So I don't think that  
8 we should amend the bylaws to eliminate the office. I think  
9 either we name an assistant with right of secession, or we  
10 suggest to Pat that she resign as secretary but stay on her  
11 paid leave and name a secretary designee.

12 CHAIR EAKELEY: Maria Luisa, then LaVeeda.

13 MS. MERCADO: Part of the problem that we have in  
14 doing that, Bill and John, is that we have problems with  
15 notice as far as notifying the public who are actually going  
16 to appoint a secretary as secretary that because the bylaws  
17 of the statute speak to an interim appointment of a  
18 secretary. Officially, she's here till November the 14th.

19 We can still as a Board authorize the president to  
20 go ahead and have staff carry out the duties of the  
21 secretary, which is what he has proposed to do in this  
22 memorandum, so that the duties and functions are carried out,

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1 but that if we officially are going to appoint a new person  
2 or are going to amend it to have an assistant or some  
3 configuration thereof, we have to publish a notice that we're  
4 going to do that. And we haven't done that.

5 MR. McCALPIN: I would point out, though, that the  
6 bylaws do designate some of the duties of the secretary.

7 CHAIR EAKELEY: LaVeeda? I'm sorry.

8 MS. BATTLE: I guess I was trying to understand the  
9 proposal that John made about an assistant secretary which  
10 would not require any kind of resignation from Pat but in the  
11 interim give us the opportunity to have someone officially in  
12 the position to sign certificates of votes and perform those  
13 functions until we could make a more appropriate decision  
14 regarding a corporate secretary. And to me, that's a  
15 reasonable compromise.

16 What I also wanted to do was to understand the  
17 proposal of distribution of functions made by Mr. Forger, in  
18 that it splits the present duties of the corporate secretary  
19 into three parts and has -- I'm sorry.

20 CHAIR EAKELEY: No. I'm just shaking in  
21 disagreement. There are -- the corporate secretary's  
22 functions are established by law and by the bylaws. And I

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1 think that what Alex has done here is gather them and assign  
2 them to the Office of the General Counsel. But Pat was  
3 actually -- her job description included several different  
4 things, one of which was corporate secretary.

5 MS. BATTLE: Okay. Well, to the extent that we  
6 then would need someone to do the corporate secretary  
7 function, it seems to me appointing someone as an assistant  
8 secretary would handle that.

9 CHAIR EAKELEY: It's -- very frequently,  
10 corporations have their general counsel serve as corporate  
11 secretary, as well, because in practice, counsel reviews the  
12 functions of the corporation for compliance; and, indeed,  
13 that's one of Victor's responsibilities to begin with. So I  
14 suppose we can -- I don't know whether -- I guess we are  
15 authorized under the bylaws to create such other positions as  
16 the Board deems appropriate.

17 MR. MCCALPIN: Including assistant secretary.

18 CHAIR EAKELEY: Including assistant secretary. So  
19 my proposal would be that we consider appointing Victor as  
20 assistant secretary of the Corporation, with the  
21 understanding that he would be the successor to the secretary  
22 at some appropriate moment between now and the time when Pat

1 no longer is with the Corporation.

2 And I don't think we need to deal with resignations  
3 early or not at the time. But at least we have Victor  
4 officially charged with responsibility for performing the  
5 duties of the corporate secretary.

6 John? I'll let you in in a second, Victor.

7 M O T I O N

8 MR. BROOKS: I move that we appoint Victor Fortuno  
9 as assistant secretary of the Corporation.

10 MS. BATTLE: I second it.

11 CHAIR EAKELEY: Before we vote, we let the victim  
12 have his two minutes.

13 (Laughter.)

14 MR. FORTUNO: In an effort to squirm out from  
15 under. No. I think that the position of assistant secretary  
16 does not currently exist. I think you can appoint someone to  
17 a position once you create the position. I think that in  
18 order to create the position, you're talking about a bylaw  
19 amendment. Because the bylaws currently provide for the  
20 officers of the Corporation to be as enumerated in the  
21 bylaws. And I would think --

22 MR. McCALPIN: But it also says that the Board can

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1 appoint such additional officers, including assistant  
2 secretaries, as it deems appropriate.

3 MR. FORTUNO: Mr. McCalpin is most familiar with  
4 the current bylaws, since he was instrument in their  
5 drafting. So I would defer to Mr. McCalpin on that point.

6 CHAIR EAKELEY: So you accept the -- you will serve  
7 if asked?

8 MR. FORTUNO: I would, yes.

9 CHAIR EAKELEY: Alex, is that all right with  
10 management?

11 MR. FORGER: I'm sure so.

12 CHAIR EAKELEY: We're just talking about the  
13 corporate secretary functions now. We're not talking about  
14 Victor making travel arrangements for us and getting the  
15 coffee. All those in favor of the motion appointing Victor  
16 Fortuno as assistant secretary of the Corporation?

17 (Chorus of ayes.)

18 CHAIR EAKELEY: All those opposed?

19 (No response.)

20 CHAIR EAKELEY: The ayes have it. Thank you very  
21 much, Victor.

22 MR. FORTUNO: Thank you.

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1 MR. FORGER: And the increase in compensation,  
2 Victor --

3 CHAIR EAKELEY: Alex, do you want to just briefly  
4 explain what you have in mind for Jean and Barbara? Or it's  
5 fairly self-explanatory. And it certainly makes a lot of  
6 sense to me. They have been really wonderful.

7 MR. FORGER: This is so you know who to call on a  
8 given moment.

9 CHAIR EAKELEY: Right. Are there any questions  
10 about this?

11 MS. MERCADO: So what we're actually saying, just  
12 so that we're clear on the record, is that the official title  
13 of the assistant corporate secretary goes to Victor; but  
14 however, these other individuals in the Office of  
15 Administrative Services and the Executive Office that have  
16 other functions of the secretary that the secretary did as  
17 proposed by Alex will also --

18 MR. FORGER: I'm not sure that the bylaws -- Bill  
19 McCalpin defined in great detail what the duties of a  
20 corporate secretary are. And obviously, we haven't defined  
21 what the duties of an assistant secretary are. And I would  
22 suppose that maybe the president or the Board assigns those

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1 responsibilities.

2 MR. MCCALPIN: My early Alzheimer's does not give  
3 me total recall of each word of the bylaws, but I think we do  
4 to some degree spell out the duties of the secretary in the  
5 bylaws. And then I believe we say that an assistant  
6 secretary may be appointed to assume such of the duties of  
7 the secretary as are appropriate.

8 CHAIR EAKELEY: Well, let me just make it clear for  
9 the record, then, that I would propose that the corporate  
10 secretary or assistant secretary be assigned the  
11 responsibilities that are listed here under "distribution of  
12 functions" for the Office of the General Counsel, namely,  
13 agenda preparation, meetings calendar, corporate records,  
14 preparation of legal documents, transcripts, meeting minutes,  
15 Board books, et cetera, processing Board nominations, Federal  
16 Register notices, and votes solicitation.

17 MR. MCCALPIN: In addition to whatever else may be  
18 specified in the bylaws?

19 CHAIR EAKELEY: That is correct. Bylaws or bylaw.

20 MR. FORGER: Then, would we not also need the  
21 corollary unless it's implicit in the bylaws that the  
22 assistant would assume the functions of the corporate

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1 secretary if that office is vacant?

2 MR. McCALPIN: Well, I think that might take  
3 another vote at a later time to make the assistant the  
4 secretary.

5 MR. FORGER: No, to assume the responsibilities  
6 that were given to the corporate secretary.

7 MR. McCALPIN: I think that was Doug's motion.

8 CHAIR EAKELEY: We're authorizing the assistant --

9 MR. FORGER: No.

10 CHAIR EAKELEY: I'm sorry.

11 MR. FORGER: I thought that you were now giving  
12 those duties -- you're taking them away from the corporate  
13 secretary and giving these duties to --

14 CHAIR EAKELEY: No. I'm sorry, Alex. If that was  
15 the impression, I misspoke. The intention, I think, is to  
16 specify what functions we understand to be included as the  
17 responsibilities of the corporate secretary and confirm that  
18 we have appointed Victor Fortuno as assistant secretary to  
19 perform all or as many of the functions of the secretary as  
20 need be.

21 MR. McCALPIN: John, do you have the bylaws in  
22 front of you?

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1 MR. BROOKS: Well, I have the bylaws here. And my  
2 suggestion is that we assign to the assistant secretary all  
3 the duties of the secretary during the absence of the  
4 secretary.

5 CHAIR EAKELEY: Better. Better. All right. With  
6 those two friendly amendments -- well, is it the sense of the  
7 Board --

8 MS. MERCADO: It has to be during the absence,  
9 because your motion, in fact, made Vic secretary when her  
10 term expires. That's how your motion read originally. So if  
11 we amend it, then it would clarify it.

12 MR. BROOKS: He's still assistant secretary until  
13 we appoint him as secretary.

14 MS. MERCADO: Or somebody else.

15 MR. FORGER: So it's "performing those during the  
16 absence or when the office becomes vacant"?

17 MS. MERCADO: That's correct.

18 CHAIR EAKELEY: Yes.

19 MR. BROOKS: Is that redundant?

20 MR. FORGER: No, I don't think so. I mean, here,  
21 we have a corporate secretary who is not present, versus not  
22 having a corporate secretary. That was what I was seeking to

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1 do.

2 CHAIR EAKELEY: No, that's good. Have we been duly  
3 diligent?

4 (No response.)

5 CHAIR EAKELEY: Then we can move to --

6 MR. BROOKS: Have we voted?

7 CHAIR EAKELEY: Let's restate the motion. The  
8 motion is to appoint Victor Fortuno as assistant secretary to  
9 perform all of the duties and responsibilities of the  
10 secretary during her absence or should the office of the  
11 secretary become vacant.

12 MR. McCALPIN: And in addition, the  
13 responsibilities set forth under Office of General Counsel in  
14 the distribution of functions.

15 CHAIR EAKELEY: Including the functions described  
16 under the Office of General Counsel in the distribution of  
17 functions sheet.

18 MR. BROOKS: Not "and including"? "And"?

19 CHAIR EAKELEY: "And." Take it back. "And." All  
20 right. Is there a second?

21 MS. BATTLE: Second.

22 CHAIR EAKELEY: LaVeeda. All those in favor?

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1 (Chorus of ayes.)

2 CHAIR EAKELEY: Opposed?

3 (No response.)

4 CHAIR EAKELEY: All right. This will be a  
5 challenge to our new assistant secretary to work this into an  
6 appropriate minute and resolution.

7 Next, the report of the inspector general, unless,  
8 Adam, you're standing up here because you have something  
9 special to report.

10 MR. FORGER: He usually has bad news.

11 CHAIR EAKELEY: He wouldn't sit down. I was just  
12 worrying. I know Congress is in. Ed, thanks for bearing  
13 with us.

14 MR. QUATREVAUX: I have a report in addition to all  
15 our usual activities which were reported to you in writing.  
16 We have also been very busy with some large projects, the  
17 audit guide, which you're familiar with. I think all of it,  
18 you're familiar with.

19 A review and comments that we provided on  
20 legislation, pending legislation, which was also provided to  
21 you, I think you're aware of it. The only point, as I say,  
22 we, too, have been very busy, as has management.

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1           CHAIR EAKELEY: Ed, how far along are you in your  
2 planning process in order to implement the shift of  
3 monitoring for compliance function if the House version of  
4 the appropriations bill is adopted by the committee?

5           MR. QUATREVAUX: We I think about 10 days ago  
6 terminated any more planning in that area simply because we  
7 couldn't go any further unless and until it were a reality.  
8 In that regard, one of our principal concerns was how to --  
9 just much in the same way as management has had to deal with  
10 the competition aspect, how to quickly put in place a large  
11 number of contracts or contractors to perform these audits.

12           And in that regard, we held talks with a number of  
13 the federal Offices of Inspector General, who have within  
14 their offices fairly large contract operations,  
15 interestingly, none of them that we spoke to of this  
16 magnitude. For a variety of reasons, many of those were not  
17 receptive to allowing us to piggyback on existing contracts,  
18 which we thought was a very smart way, at least for the first  
19 round, to shorten the procurement cycle.

20           The one Office of Inspector General that we got  
21 into the details with before the Senate action was the  
22 Department of Labor. And while they expressed a desire to

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1 help, there was some question as to what degree they could  
2 help.

3 That is, apparently, there are limits on existing  
4 contracts imposed by OMB. There's a variety of technical  
5 complications. But I think that they could help us to some  
6 degree in that respect, not the whole thing, but to some  
7 degree.

8 We looked internally as to what it would require.  
9 It didn't ever get to a bottom line on that, other than some  
10 general notion it's going to take some contracting  
11 procurement experience and some additional folks. But I  
12 guess that's the best I can tell you. We really shut down --  
13 well, we're waiting to see what occurs.

14 CHAIR EAKELEY: As you and I have discussed, we  
15 need to make sure that as with many other issues that will  
16 depend upon the outcome of the Conference Committee, the  
17 Board has adequate notice and response time within the time  
18 constraints imposed by the Congress to deal as a Board with  
19 many of the thorny issues that I am sure lie on the surface  
20 or under the surface on this.

21 MR. QUATREVAUX: I'm sure there are many we cannot  
22 even contemplate at this point.

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1 CHAIR EAKELEY: So just try and anticipate as much  
2 as possible what the Board is going to need to know in order  
3 to understand and review and approve if this breaks in your  
4 direction.

5 Nancy?

6 MS. ROGERS: And, as you know, this is my role  
7 always. I worry about whether our compliance review is going  
8 on. I'm worried while all this happens that the audits are  
9 being processed and that we're doing our job and checking on  
10 current grantees.

11 MR. QUATREVAUX: Well, I think the approval today  
12 of the audit guide is a step forward and will allow us to  
13 have the auditors begin to check what we might refer to as  
14 compliance with financially-related requirements of the Act  
15 and the regs, which was an area that had not been fully  
16 covered since -- well, in some time.

17 MS. ROGERS: And I appreciate just as before when  
18 we were talking about working on monitoring, that it takes a  
19 lot of time to put into place a new system. But what I want  
20 to emphasize is that while that goes on, we still have a  
21 current duty to process audits from last year to make sure  
22 that all is well. I want to make sure that's going on.

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1 MR. QUATREVAUX: Yes. We have received, I think  
2 all. Perhaps there's one -- I know there's an extension on  
3 the time. We have received almost all the audit reports, and  
4 they have been reviewed. And copies of those reports go to  
5 management, as well. Of course, under the current  
6 arrangement, the auditors only don't check in detail for  
7 compliance with the LSC Act and regulations.

8 Even those who are doing A-133 audits, the  
9 compliance supplements they are using are those covering the  
10 other federal funding sources, the ones requiring the A-133s.  
11 So we don't have any detailed coverage through the audit  
12 instrument at this time.

13 CHAIR EAKELEY: Okay. Any other questions of the  
14 inspector general?

15 (No response.)

16 CHAIR EAKELEY: Thank you very much.

17 MR. QUATREVAUX: Thank you, Mr. Chairman.

18 CHAIR EAKELEY: My intention is to go to 1 o'clock  
19 and then break for lunch and then resume. We have sort of  
20 jumped around a little bit within the middle of the agenda,  
21 but before we get to the minireports, I think we should go  
22 back and pick up where we left off with the inspector

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1 general, namely, planning for the future starting with the  
2 Conference Committee and thereafter.

3 Alex, does that suit your agenda?

4 MR. FORGER: Sure. Yes.

5 CHAIR EAKELEY: I'm sorry. I sort of moved this  
6 around a little bit.

7 MR. FORGER: No, no.

8 CHAIR EAKELEY: But I don't think we have lost too  
9 much track. It's clearly the most important part of the  
10 agenda as far as I'm concerned and I'm sure the rest of the  
11 Board. Can I just ask one question before we launch into  
12 this planning for the future?

13 We have had several discussions over the past  
14 number of months, all of us and also individually focused on  
15 how can we do the very best we can to fulfill our mission  
16 with the few resources available to us. And we talked about  
17 consultants and planning. We had a retreat. We have had a  
18 miniretreat.

19 But I for one have come perhaps late to the  
20 realization that an effectively implemented system of  
21 competition is perhaps the best way to develop a strategy and  
22 a methodology for maximizing effectiveness of limited

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1 resources.

2           And that in turn leads me to conclude -- and in  
3 order to promote a competitive grant-making process that  
4 yields that kind of an outcome, I think we need probably to  
5 have performance criteria that are not merely exhortatory but  
6 actually start measuring what we expect by way of outcomes.  
7 And I know there has been an aversion to bean counting  
8 traditionally.

9           But I do think that some quantitative as well as  
10 qualitative analyses of how well grantees are doing compared  
11 to how well they did in the prior reporting period, as well  
12 as how well they're doing compared to other grantees will  
13 help encourage the kind of competition that generates  
14 pressure to maximize efficiency and effectiveness with  
15 limited resources and also maximizes our discharge of the  
16 responsibility to account for federal funds to the Congress.

17           That's why I go back and why I see competition and  
18 how we implement the competitive grant-making process to be  
19 at the core of planning for the future. Because if we don't  
20 do that well, there isn't going to be a future, in all  
21 likelihood. But if we do do it well, it could have enormous  
22 implications.

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1           And in both bills, we have got a 60-day period from  
2 the date of the bill -- I don't know whether that goes back  
3 to October 1 or not -- but we have got 60 days to implement  
4 regulations on competition. We had directed Ops and Regs to  
5 come back by December 1st with a proposed regulation on  
6 competitive grants.

7           But by my crude arithmetic, 60 days from October 1  
8 is actually -- we're supposed to implement by December 1.  
9 Now, maybe that's the same timetable. But don't answer my  
10 ruminations right now, Alex. Go ahead and --

11           MS. BATTLE: It's out for publication at present,  
12 Doug. And we have gotten comments. And so actually, by the  
13 time we meet in December and the following November -- yes,  
14 we'll meet in November. We should have a final reg.

15           CHAIR EAKELEY: Okay. Well ahead of schedule.  
16 Thank you.

17           MR. FORGER: I think that comment certainly ties  
18 into what I had alluded to earlier as it relates to timing,  
19 because we will be viewed very critically in the months to  
20 come, and just as there has been criticism with respect to  
21 monitoring for compliance, which I think is not justified, my  
22 concern is that when folks look at us in April or May and

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1 look back to see what the consequences were of competition,  
2 they may have some disappointment because it didn't produce  
3 as much competition as its proponents had anticipated it  
4 would.

5 That is why the timing is critical for us. I'm  
6 just overwhelmed by the activity that the staff has completed  
7 in respect of the planning competition process. I mean, the  
8 two are together. We started early on with the realization  
9 that there would be fewer dollars for Legal Services and  
10 likely more restrictions.

11 And, therefore, it was incumbent upon the states we  
12 selected as the right forum to review the delivery of Legal  
13 Services within that jurisdiction and to give serious thought  
14 to how best to integrate all of the resources that were  
15 available for performing Legal Services for poor people,  
16 irrespective of whatever the form that might take.

17 Obviously, we anticipated it would be a continuing  
18 role for the Corporation. Even were that not so, it's still  
19 incumbent upon the states to look to how best to provide  
20 access to its poor population.

21 So you have seen the planning letters that have  
22 gone out detailing what the expectation is and requesting in

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1 substance that each state review its system and make  
2 recommendations to the Corporation as to the role it would  
3 see as the Legal Services component within that state  
4 project, looking to existing programs and other resources  
5 that they have and how that would be reconfigured to enable  
6 the LSC programs to be most effective in that jurisdiction.

7 A time was stated, November, for a response to that  
8 planning effort. Program officers working under John and  
9 Merceria and Martha have been much involved in all of the  
10 state jurisdictions, attending regional meetings, responding  
11 to requests of individual states. And they have a fair  
12 notion of how that process is going. But it is on such an  
13 accelerated schedule that many jurisdictions are not going to  
14 be able to respond definitively on the time frame that we  
15 have.

16 That then will require us here on the best  
17 knowledge we have to go forward and make judgements.  
18 Principal among them is the geographic area in which  
19 competition will occur, which is likely out of necessity to  
20 be the existing areas. But, in the course of the state  
21 planning, they look towards merger consolidation of programs.

22 But then simultaneously with that, going on a

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1 parallel track, the competition, which is directed in large  
2 measure to those not in the system to give them guidance as  
3 to how they may become participants and make proposals.

4 So you all have gone through the regulation on  
5 competition which is now out for public comment. That in  
6 itself having been achieved in such a short period, I think,  
7 is remarkable, followed by the request for proposals, which  
8 is a document that many have participated in producing. And  
9 that is out there for response, again, in November in order  
10 that in the remaining 60 days, the whole process of grant  
11 determination and final contractual agreements can be made.

12 The response to the field will depend in some  
13 measure on how many dollars are there. And they do not know  
14 how many dollars are there. The response in some measure  
15 will depend on what the restrictions are and how restrictive  
16 the activity of the LSC programs may be. So it is not  
17 possible for many of the jurisdictions to have an informed  
18 response to the questions that are being put to them and the  
19 amount of activity in which they would have to go through if  
20 they were seeking to compete.

21 If a new entity wanted to compete in the next three  
22 weeks, they will have to make a definitive proposal. They

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1 don't know how many dollars are involved, and they're not  
2 quite sure what all the restrictions are. And maybe they're  
3 not certain as to who's competing for that geographic area,  
4 have they put a board together or an advisory committee and  
5 have they hired their staff and are they going to be able to  
6 respond in every dimension to enable the decision makers to  
7 make an informed judgement as to the likely success of that  
8 program versus an existing one.

9 We also have in the midst of that -- I suspect  
10 there will be some gaps in the current service. There well  
11 may be existing programs that will decide they're not going  
12 to compete, that they will not seek to participate, at least  
13 as a Legal Services Corporation grantee, for a variety of  
14 reasons, some of which may be fiscal, and some may be on a  
15 restrictive basis.

16 Particularly in those jurisdictions where there has  
17 been a lesser reliance on LSC money, a number may move to a  
18 nonLSC kind of program. And we may find that there are gaps  
19 in the service area, at least from an LSC funded point of  
20 view. And so we need to cope with that, as well. And that  
21 is why I think the Domenici bill recognizes that to be on  
22 this kind of a crash program is not apt to produce the result

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1 that Congress wants and that we surely want and the Board  
2 wants.

3 And thus, we hope to be able to have some dialogue  
4 prior to the conference of the House and the Senate to cause  
5 or ask the House side to recognize that on all of the papers  
6 we have thus generated, there's no question that we're not  
7 seeking to delay, we're going as quickly as we can and as  
8 comprehensively as we can. But in order to give everybody  
9 the opportunity to make this work successfully, we really do  
10 need some more time.

11 If we do get more time, we will probably use the  
12 RFP as a funding vehicle for existing programs and also use  
13 that in the competition, whether it be April, June, or  
14 September, with an update to that.

15 I think for those that are seeking to compete, we  
16 would assure them that additional time would be available  
17 during which we would hope to be able to do what happens in  
18 many grant programs, and that is to give assistance to those  
19 who are thinking of competing, technical assistance, and  
20 making certain that everybody who has a desire to compete has  
21 a full opportunity with our support to make that -- yes,  
22 LaVeeda?

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1 MS. BATTLE: Yes, Mr. Forger. There was something  
2 that you said earlier, and I think you covered it, as well,  
3 in your remarks here that I wasn't really certain of and  
4 didn't understand as to how the Domenici bill might relate to  
5 this whole process of the implementation of competition. And  
6 I think it's Section 10 of the bill speaks to our  
7 appropriation and also provides that \$115 million, the total  
8 amount would not be available until the Corporation commences  
9 implementation of a system of competitive awards.

10 And what I'm not clear about is whether that  
11 "commences implementation" has to do with having a system in  
12 place or what interpretation we should give to that language  
13 as it relates to our funding.

14 MR. FORGER: I think the implementation -- I  
15 believe this is our interpretation -- is that not the actual  
16 making of the grant is of that day, but rather to have in  
17 place a system of competitive bidding that in respect of  
18 grants made thereafter will be under the competitive system.  
19 We have the choice here if we don't have to be operational by  
20 January 1 to make grants to existing programs on a  
21 provisional basis or a shorter term basis.

22 I think yet to be determined -- and I hope it could

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1 be clarified in conference -- as to whether this might not be  
2 in respect of grants made for FY '97; that is to say, January  
3 1, although we have talked informally of conceivably doing  
4 15-month grants on a competitive basis. But I think at the  
5 very least, we interpret that to mean that we do not have to  
6 start making competitive grants before September 1.

7 And I think if we have in place the entire system,  
8 we then could make grants commencing September 1, October,  
9 November, or conceivably defer all those to January.

10 CHAIR EAKELEY: I would like to see us start making  
11 competitive grants as soon as we are responsibly capable of  
12 doing so. I think that -- I don't think you can discern the  
13 intention of the Congress in terms of timing, other than do  
14 it at the most rapid rate feasible. And there's a debate  
15 about that. But it seems to me that we have a responsibility  
16 to establish competitive grant-making within the fiscal year.  
17 And implementation means hopefully doing some of that  
18 granting.

19 I would like to see us as well explore the  
20 possibility of encouraging constructive competition in some  
21 other elements of our program such as private attorney  
22 involvement of one sort or another and perhaps even consider

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1 experimenting with subgrants or -- we don't have the luxury  
2 of getting back to competitive innovative grants, but I think  
3 that the Congressional directive to implement competition has  
4 at its base a sense which I share that generally speaking,  
5 competition enhances performance and outcomes.

6 MS. BATTLE: As I understood part of what you laid  
7 out to us, the whole process of commencing to implement a  
8 system of competitive awards takes into account surveying and  
9 finding out what service areas may or may not be covered.

10 I mean, there are a myriad of issues before you  
11 actually make the grant that are part of that process of  
12 implementation of a competitive system and that we are  
13 already underway both from the standpoint of developing RFP,  
14 putting in place a regulation that will give notice to the  
15 public of how the notice and process and what the criteria  
16 will be and also surveying states and programs to see the  
17 level of interest in participation in the competitive  
18 process.

19 So to some extent, we are beginning that process  
20 already. And I simply wanted to know at what point did we or  
21 had we gotten any information which leads us to believe that  
22 Congress understands that we're in the process of doing what

1 is set out in the Domenici bill, to the extent that it does  
2 not have an effect on the \$150 million.

3 MR. FORGER: Well, certainly, we have sent along --  
4 and Martha, why don't you come up to the table, if you would?  
5 Certainly, we have sent along to the House Subcommittee on  
6 Appropriations all of the documentation that has gone out, so  
7 they are mindful of the fact that we are fully immersed in  
8 seeking to implement this process.

9 We had earlier made a plea for more time, and we  
10 know that Congressman Rogers is anxious for us to implement  
11 this at the earliest possible date. And that's our  
12 objective, too, to get this underway. And it doesn't have to  
13 be all or nothing, but it needs to give attention to the  
14 responsibilities of covering existing areas and existing  
15 programs.

16 And they need to have some certainty as to the  
17 period of time during which they will have that  
18 responsibility, as well as the transition with a new program  
19 to the responsibility of those cases and clients that were  
20 being handled by the -- but Martha has dealt to some great  
21 extent with the Domenici staff in respect of the funding  
22 issues, as well as the competition. And there is a

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1 correlation between funding and the September 1 date that  
2 Domenici has.

3 Martha -- Doug, is that --

4 CHAIR EAKELEY: Nancy, I think, wanted to say  
5 something first.

6 MS. ROGERS: If we have a little bit more leeway as  
7 a result of the conference action, one thing that would seem  
8 desirable is to build in some space between the announcement  
9 of the awards and the beginning of the grant period. And  
10 that seems important for a couple of reasons.

11 One is that if there is a shift in terms of some  
12 programs not being refunded, it permits those programs to  
13 have some time to convey their responsibilities or plan for  
14 those responsibilities to be shifted. I also think it would  
15 be difficult to start practicing law the day that you learn  
16 you have the award.

17 MS. BERGMARK: Since you last met as committees,  
18 almost everyone was here for the consideration of the  
19 competition regulation, and I think that gave you a pretty  
20 good feel for the complexity of the issues that are imbedded  
21 within all of the things that you considered. And then the  
22 month or so subsequent to that, the development of the RFP,

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1 which you now have treated in even greater detail some of  
2 those questions.

3           And what the folks who are working on this are now  
4 doing is trying to play out what various timelines might mean  
5 for us. We have made the point to Congressman Rogers' staff  
6 and kept them posted, sent them the draft regulation,  
7 welcomed their comments, sent them the RFP, have kept them  
8 posted all along the way to indicate that we're certainly  
9 pushing forward as quickly and as conscientiously as we can  
10 on where they want us to go, which is sooner rather than  
11 later on implementation of competition, but at the same time  
12 making them aware of the really practical difficulties of  
13 sending out an RFP that only carries a 30-day turnaround  
14 right now in order for us to act on it in November and  
15 December. So to have a real competition, we actually need  
16 considerably more time subsequent to the RFP.

17           Similarly, on the Senate side, we have been working  
18 with Senator Domenici's staff as we pushed for an amendment  
19 that would give us more time. The September 1 date was  
20 related in part to the issue of how much money was available  
21 within their bill to allocate to Legal Services. Senator  
22 Domenici wanted to go with the \$340 million appropriation

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1 figure and did.

2 But the amount of money that was available within  
3 the function for outlay for Legal Services is actually  
4 considerably less than 340 million, which is why Alex was  
5 alluding to the fact that for the first eight months of the  
6 year, even under the Domenici bill, we would be functioning  
7 with an amount of money that would be comparable to a \$278  
8 million annualized appropriation.

9 So the implementation of competition date that was  
10 picked was an effort to get that system underway within the  
11 fiscal year; that is, September 1, a month before the fiscal  
12 year, but nevertheless within it.

13 So our -- there is, I think, some question of legal  
14 interpretation of precisely how to do that and what money  
15 would need to go out when. But Senator Domenici's staff was  
16 really somewhat flexible on that point, recognizing that we  
17 were going to need some time to do a real competitive process  
18 but to do, Nancy, as you say, to give some time between  
19 announcement of award and actually taking over in order to  
20 deal with some of these competition issues.

21 So we have -- under the Domenici bill, I think we  
22 would have, obviously, considerably more flexibility to

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1 address some of these questions in a conscientious way.

2 CHAIR EAKELEY: I was very impressed with the RFP  
3 materials. I was interested to see that the ABA performance  
4 criteria were included. I would be curious to learn your  
5 response to my notion that perhaps it's time to consider some  
6 quantitative as well as qualitative measures of performance.

7 MS. BERGMARK: Well, I don't think the performance  
8 measures actually preclude or --

9 CHAIR EAKELEY: They don't.

10 MS. BERGMARK: The notion of quantitative measures.  
11 I think that's one of the things we have wrestled with. And  
12 in preparing the RFP issues about what sort of information we  
13 need in order to be able to say, "Yeah, this is what we're  
14 buying with federal dollars for what we get." So there is  
15 considerable material in the RFP that goes to an ability to  
16 show both quantitatively as well as qualitatively what's  
17 being done with that money.

18 CHAIR EAKELEY: I would like to encourage that, if  
19 I could, without speaking out of turn for the rest of the  
20 Board. But I think that having just -- no, I won't say it.  
21 I would like to encourage it. I think that we're kidding  
22 ourselves if we refuse or fail to count. And similarly, I

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1 think we're not doing our clients the service they deserve if  
2 we fail to do client satisfaction inquiries of one sort or  
3 another, as well, as part of the performance assessing  
4 function.

5 MS. BERGMARK: I would like to make sure that you  
6 know that both Merceria Ludgood and John Tull are here. I  
7 would like to thank them and their staff, who have done an  
8 enormous amount of work, both amount and quality, quantity  
9 and quality of work over the last few weeks to do in very  
10 short order what could reasonably have taken a lot longer.

11 CHAIR EAKELEY: Well, they have our thanks. And  
12 you do, also, Martha. Don't leave yet. I've got a couple  
13 more questions, and I know there will be other questions.

14 MS. BERGMARK: If you've got some detailed  
15 questions on the RFP and on the sort of competition process,  
16 they're here to help answer those questions.

17 CHAIR EAKELEY: I've got two more general ones, and  
18 then I'll shut up for a minute. In fact, I'm told that we  
19 have got to shut up so that they can fix the audio system.  
20 But let's continue for a little while, if we could, and then  
21 we'll break for lunch a little earlier than advertised and  
22 then come back.

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1           Looking at the RFP materials again and what  
2 proposed new recipients have to describe is a different way  
3 of looking at our regulations. And I know that we have done  
4 an enormous amount of work in the last two years to  
5 streamline and reduce and systematize and rationalize.

6           And yet from the perspective afforded the RFP of a  
7 bidder on our federal grants, I wonder whether we are as  
8 regulation late as we should be or whether the regulations  
9 themselves create a law of unintended consequences and make  
10 us more user unfriendly for the potential new entrants into  
11 the business.

12           MS. BERGMARK: Well, that's a tough one.  
13 Certainly, as we looked at the regulation a month ago, one of  
14 the key lenses through which we tried to look at it was, "Is  
15 this something that someone could really do? Could somebody  
16 really come in and apply for this?" And certainly, the RFP  
17 packet is a daunting one in that respect.

18           So on the one hand, we tried to draft the  
19 regulation in a way and we actually tried to prepare the RFP  
20 in a way that made it possible for people to think, "Yes, we  
21 could put something together and do this," on the other hand,  
22 putting anyone who might wish to apply on notice that this

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1 is, indeed, a serious business, both in terms of the  
2 regulations that apply to us and in terms of the  
3 responsibility for delivering service to clients.

4           These are all questions that I think the  
5 Corporation has a legitimate need to have some satisfaction  
6 that folks who say they want to come in and do services in  
7 this way can do it. But that was a balance that we tried to  
8 strike.

9           An earlier draft of the RFP packet -- I kept  
10 measuring them. I would get my ruler out when it would come  
11 in. And it was approaching about three-quarters of an inch.  
12 And the one that you actually got, if it didn't have those  
13 cardboard covers and things, it would be under a half inch.  
14 It might be right about a half inch. And a lot of it is --  
15 and it's in three separate parts, so you can note that some  
16 of it's background material and reference material and so  
17 forth, as opposed to what has to be filled out.

18           But that was certainly one of the criteria that was  
19 used to test this RFP. And the other thing we're doing,  
20 Doug, is in terms of the state planning process. There's an  
21 effort to get information out and to engage folks at the  
22 state level in what's involved with this process so that

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1 IOLTA providers and pro bono operations and others are  
2 involved at the state level in planning for delivery of Legal  
3 Services.

4 So it is sort of a conflict. You know, somebody  
5 can't easily come in and say, "Oh, sure. I'll apply to do  
6 this next year without some considerable effort involved."

7 CHAIR EAKELEY: I noted also that the Domenici bill  
8 requires us within 30 days to promulgate a suggested list of  
9 priorities for local boards.

10 MS. BERGMARK: Actually, both bills do.

11 CHAIR EAKELEY: Okay. Where are we on that, and to  
12 what extent does it relate to competitive grants or  
13 performance criteria?

14 MS. BERGMARK: We have not to date begun to draw up  
15 anything in that regard that would be really responsive. As  
16 you know, we have in our files our case service reports and  
17 so forth, and we use our tables and our pie charts to show  
18 what programs do around the country in terms of case  
19 priorities.

20 But, Alex, Doug is asking about the provision in  
21 both bills that require us within 30 days to do a suggested  
22 list.

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1           We're happy that this language says "a suggested  
2 list." It certainly has been the long-term philosophy of the  
3 Corporation not to be about the business of setting  
4 substantive priorities at the national level or asking for  
5 money from Congress on that basis because we have believed  
6 that local decisions about that were appropriate.

7           And both these bills do continue to allow that but  
8 do put the Corporation in the role of needing to suggest or  
9 make the list. But we haven't really gotten to that question  
10 at all.

11           CHAIR EAKELEY: We're going to need to and I think  
12 the Board is probably going to want to take a look over  
13 management's shoulder as part of that process. And it's of  
14 all of the elements of these two bills the one with the  
15 shortest time period, 30 days turnaround time from the date  
16 of enactment.

17           MS. BERGMARK: I do want to reassure you that date  
18 of enactment is date of enactment and not October 1.

19           CHAIR EAKELEY: Okay. Maria Luisa?

20           MS. MERCADO: Well, it seems like that provision,  
21 though, doesn't deal with the fact that if we're in the  
22 process of doing competitive bidding, then a new entity that

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1 comes on board, are they also held to the same standard to  
2 have that 30-day turnaround period to get priority settings  
3 through their local boards, if they have even made a board of  
4 directors, if they have even had any contact with the client  
5 community to set up any kind of priorities?

6 MS. BERGMARK: I think the 30-day provision is  
7 simply on the LSC Board to suggest a list. Now, what weight  
8 that has in terms of whether that's another criterion that  
9 you would use to base your selection process on is not really  
10 addressed by the bill.

11 CHAIR EAKELEY: Alex?

12 MR. FORGER: I think there, Martha, one of the  
13 concerns expressed by the community in respect of the bill  
14 that was coming out of the Graham committee, as well as the  
15 Senate Appropriations Committee, was a listing of permitted  
16 case types, 10 or 12 or 13, presumably of uniform application  
17 throughout the country. And as many of us have said, that  
18 which is appropriate for Laguna, New Mexico, is not necessary  
19 appropriate for New York City.

20 And I was just wondering here, setting a list of  
21 priorities, I suppose it could be, "These are among the kinds  
22 of cases that we hope you will give attention to." And I

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1 guess our case reporting has 75 or 100 kinds of cases.  
2 Whether one, we would try to list them in some of order of  
3 priority, which I think would be ill-advised, and simply to  
4 repeat the full list in the case reporting of 75 kinds of  
5 cases would not be doing any more than is already evident to  
6 the world.

7           So I suppose it could be a policy issue of the  
8 Board to determine the kinds of areas that they think are  
9 ones that should not be overlooked, subject to the attention  
10 given to that in different geographic areas. For example, in  
11 New York City, San Francisco, there is a great need for  
12 servicing AIDS patients, which may not be the same in Sioux  
13 City, Iowa.

14           But yet we know from our general cases, family is  
15 the major issue. Yet there are a lot of people who say we're  
16 anti-family because we do things like divorces. Issues like  
17 domestic violence are emerging as a major understated number  
18 of cases. And I would think that one would focus on those  
19 kinds of issues. But yet you've got migrants, you've got  
20 Native Americans, and a lot of different issues.

21           So it seems to me if we're doing it on a universal  
22 basis, you would have to give a list among which we think

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1 attention should be given if appropriate in your community.

2 CHAIR EAKELEY: LaVeeda?

3 MS. BATTLE: I agree with what you're saying, Alex.  
4 And also, I wondered whether we had a listing that at least  
5 tells us from a population standpoint how many cases -- where  
6 are our high population areas, what do we spend most of our  
7 time and money doing so that we're sure to understand out in  
8 the community where the dollars are going, that obviously,  
9 there is a priority for those kinds of cases and that we can  
10 look at it from that standpoint or view.

11 But certainly, there are areas that are important  
12 where you don't have high population, such as the example  
13 that you raised that I think should be on the list, as well.  
14 And I would oppose us attempting to prioritize the list  
15 itself. My understanding of at least the way the language  
16 reads in the bill is "a suggested list of priorities." And I  
17 don't think that we have the obligation therein to then  
18 within that list prioritize.

19 CHAIR EAKELEY: I agree with that. I do think,  
20 though, we have got to do our best to discern and implement  
21 the Congressional intent behind this requirement. And part  
22 of the reason for the requirement, I think, is that the

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1 anecdotes that have been used for the past several decades to  
2 assail us are anecdotes that -- when they are factual, and  
3 many are not -- but are anecdotes of cases where it's not  
4 possible that the anecdote could have been among the  
5 priorities of the local board.

6 This just couldn't be something that the board of  
7 the local program anticipated or intended to be a priority.  
8 And yet here we are, Legal Services funded grantee, doing X  
9 or representing Y.

10 And I think the Congressional intent is to  
11 encourage us to beef up our policing of the priority setting  
12 and observing process, not so that we substitute this  
13 Corporation's priorities for a local board's priorities, but  
14 just that we encourage local boards to be as diligent as  
15 possible in setting and then effectuating local priorities.

16 And I think if we do that or we make a good faith  
17 effort to do that and get the message out that we will be  
18 looking at that not only priority setting but at  
19 implementing, I think that we will be doing a fair amount  
20 more to enhance our relationship with the Congress going  
21 forward.

22 MR. FORGER: I think, Doug, the effort clearly is

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1 to make certain that the programs don't veer away from what  
2 is the desired Congressional intent of the routine cases.  
3 But I suspect there will still be those kinds of cases. The  
4 one from Ernestine's state that comes up frequently is that  
5 we represent rapists in seeking to get custody of children.

6 And it may well be a fact that it is a court  
7 request in a termination of parental rights case that  
8 somebody be represented. And I just don't think in our  
9 setting priorities -- I think that probably was the intent,  
10 to make certain that the program stuck to the routine, day-  
11 to-day issues.

12 But I don't think it was the intent to say and in a  
13 given circumstance, particularly where there's a court  
14 designation, that you can refuse to do those.

15 CHAIR EAKELEY: No.

16 MR. FORGER: I'm not debating. I was just --

17 CHAIR EAKELEY: I think we all know cases where we  
18 could say to ourselves, "Why on earth are you taking limited  
19 resources away from needy people and applying it to this  
20 agenda item?" That's the sort of additional screen that I  
21 think we need to help ourselves move forward and meet the  
22 sometimes legitimate criticisms of our critics.

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1 MR. FORGER: But I think in our setting a list  
2 here, is it going to address that issue?

3 CHAIR EAKELEY: Maybe not, but I think that --  
4 well, I think we should be making as good faith and effective  
5 an effort as we can in addressing priority setting and  
6 implementing as we move forward.

7 Maria Luisa?

8 MS. MERCADO: In looking at the history of all  
9 those cases that supposedly may or may not have been within  
10 the priority of the local program, we have to recognize that  
11 at least up until this new budget year, these programs have  
12 had funding from other sources that required that that be a  
13 priority with that funding to help that particular population  
14 of poor people with a particular problem that may not be  
15 indicative of a national agenda or national issues.

16 So given the restrictions that we have in the  
17 future, are we going to be bound by those restrictions as to  
18 the priorities that we can or cannot have? I mean, if one of  
19 our priorities is not one of the itemized substantive areas  
20 of issues that we're supposed to be helping clients with,  
21 then are we as a Board out of step with Congress for dealing  
22 with those issues that we think is a priority within a

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1 poverty community but the Congress doesn't think is a  
2 priority under the new proposed legislation?

3 CHAIR EAKELEY: Well, we don't have a choice. We  
4 have got to promulgate a list of suggested priorities.

5 MS. MERCADO: But is it within that language, or is  
6 it within priorities of poor people, period?

7 CHAIR EAKELEY: It's a suggested list of priorities  
8 for local boards to consider in addressing the priorities of  
9 the local populations whom they serve. And maybe it's only  
10 in my state, but when we used to go review local programs,  
11 sometimes -- I'm sure this is distant past, long corrected --  
12 but sometimes, local programs would have their boards go  
13 through an annual priority setting process.

14 And then, it just gets shelved and the priorities  
15 really don't mean much in terms of the daily operations of  
16 the programs. That doesn't fulfill the intention of the  
17 Congress, either.

18 MS. MERCADO: Well, sometimes, you have clients  
19 coming in with problems that the board with the few inputs of  
20 the client members of the community set as priorities, and  
21 then you still have to have the client come into your door  
22 and say -- you know, everybody said housing was a problem,

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1 but if you don't have anybody that comes in dealing with  
2 housing, then it's not going to show up, even though it was  
3 one of your priorities, but you didn't have a live client  
4 come in saying, "I have a specific problem with housing."

5 I mean, sometimes priorities are set within a board  
6 setting, client input, community input, and staff input, the  
7 priorities are set. But if the clients don't walk into the  
8 door with that problem or that issue, then that may not show  
9 up in the data and the statistics at the end of the year.  
10 That doesn't mean that the problem is not there.

11 Maybe it means that there has to be more education,  
12 people have to know that we provide those services. But  
13 again, with all the constant cutting that you have, you  
14 haven't had that kind of access to communities to let them  
15 know, "We're here to represent you in all these different  
16 issues." But that's the other side of the picture, too.

17 MS. WATLINGTON: Priorities is very good, and it's  
18 also who's involved in setting those. And as you say, there  
19 are times when -- the state, back in the days when you had to  
20 have your priorities -- there was a process by which you went  
21 about them is about as important as how they're implemented.  
22 And it's usually when they're client-driven that they're more

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1 effective, because they're serving what the needs are, not  
2 just what comes in the door and what you think that is in the  
3 community that the needs are.

4 So it would be very difficult, as you were saying,  
5 to do. But I think we should stick with the fact that  
6 priorities must be set. But I don't think you can be that  
7 specific in saying how they should be set in what areas. I  
8 liked the idea of what you said, serving the poor people's  
9 needs and that the community is addressing it. But the  
10 process and the inclusion of who's included in that is just  
11 as important as setting priorities.

12 MS. BERGMARK: What we will do for you by your next  
13 meeting is to draw something up as a suggested course of  
14 proceeding on this, because I think this provision will be in  
15 the bill. It's identical language on both the House and the  
16 Senate side in slightly different places. But it's likely to  
17 be in the bill. So we will propose something to you for  
18 consideration in November.

19 CHAIR EAKELEY: I'm getting nasty looks from a  
20 member of the audience who is trying to remind me that  
21 there's somebody waiting to correct some problem with this  
22 sound system before we go too much longer. Are we at an

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1 appropriate moment to break for lunch? Could we do that and  
2 then resume?

3 MS. BATTLE: That's good.

4 MS. BERGMARK: And there are sandwiches back in the  
5 conference room for the Board members.

6 CHAIR EAKELEY: And soon to be, I hope.

7 MS. BERGMARK: Right now, they're back there.

8 CHAIR EAKELEY: I'm talking about inviting John  
9 Erlenborn back there.

10 MS. BERGMARK: Yes, indeed.

11 (Whereupon, a luncheon recess was taken.)  
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## A F T E R N O O N   S E S S I O N

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(2:04 p.m.)

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CHAIR EAKELEY: We were on agenda item 6 when we broke for lunch. And Alex, I'm wondering, did we conclude the discussion? Did anyone have any other questions or comments on the agenda item, or should we move on to the Finance Committee commencing with the report?

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MS. MERCADO: Mr. Chairman, I think that on item number 6, there's a lot of discussion that we need to do. Part of the problem is that because everything is still in flux in Congress, it's kind of hard to make any realistic or concrete discussions about what that plan ought to look like. And that doesn't mean that we're not looking at that.

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But until we have some better figures and language as to what restrictions we're going to be doing or not doing, to some extent, the discussion is somewhat premature. So maybe at the next meeting that we do have, the Board can go into more detail if it has some final language from Congress on appropriations and restrictions.

21

22

MR. FORGER: I would think, Maria Luisa, that when things clarify for us, presumably in the next month or so,

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1 that we well could devote a couple of days to the planning  
2 process, because it's going to be vastly different, we know.  
3 It isn't all within our control. The field is going to be  
4 reacting to this, and a lot will be reconfigured quite apart  
5 from what we do or how we think about it.

6 I think we'll need to give attention to special  
7 populations and how best to handle those, as well as the  
8 competition process, how that's going to be handled, whether  
9 we want to give more guidance in terms of defining the  
10 geographic areas, whether we go for larger programs and what  
11 we're going to do with things like private attorney  
12 involvement as it relates to the reconfigured program.

13 So I think there are just going to be a myriad  
14 number of issues for us to address. And I suppose -- Bill  
15 McCalpin, with all of these restrictions, what lend  
16 themselves to regulation, for example? If we have 10 new  
17 restrictions, do they automatically become candidates for  
18 regulation?

19 MR. McCALPIN: We have already addressed two,  
20 timekeeping and evictions. I don't remember --

21 MR. FORGER: Welfare reform.

22 MS. BATTLE: I would think that you almost have to

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1 see the shake-out to see whether we need to give further  
2 definition to any of the restrictions that come out of the  
3 bill.

4 CHAIR EAKELEY: I would like to ask the Ops and  
5 Regs Committee and management to look at the other side of  
6 that particular coin, also, and see whether or not we have  
7 too many regulations and whether or not since there is a law  
8 restricting or prohibiting, we can deal with it through a  
9 grant restriction and unencumber the grant application and  
10 awarding process by further streamlining our regulations.

11 MR. FORGER: What is the touchstone for regulation?

12 MS. BATTLE: The need to further interpret a  
13 statutory provision, it seems to me. And to the extent that  
14 the statutory provision itself is clear, I'm not certain that  
15 we need -- or unless there is some existing reg that is  
16 inconsistent with a provision of a statute, we may need to  
17 for that reason amend the existing regulations.

18 CHAIR EAKELEY: Suzanne, do you want to come to the  
19 table, too?

20 MR. McCALPIN: In that respect, we looked just  
21 before the break at 1620. And in view of the priority  
22 setting provision in the appropriation bill, we may need to

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1 review 1620 to see whether it meets all the requirements of  
2 that bill.

3 MR. FORGER: And I think, for example, is there not  
4 a new restriction on "incarcerated," but I think it speaks of  
5 "litigation"? You can't litigate "in behalf of." The query,  
6 does one need any further definition as to what is part of a  
7 litigation process versus what is other kinds of  
8 representation that might be permitted?

9 MR. McCALPIN: It seems to me where there is a flat  
10 statutory prohibition, it doesn't need to be explained in the  
11 regulation.

12 CHAIR EAKELEY: That would be my grab. Was anyone  
13 else struck by how we looked to the outside world in the  
14 grant application process, how we looked in terms of our  
15 regulatory superstructure? And this is not a criticism of  
16 all the good work that has been done to improve our  
17 regulations in the last two years. It's just still, with all  
18 that improvement, it still looked to me as if we risked  
19 appearing, at least, to be hidebound to the outside world.

20 Suzanne?

21 MR. ASKEW: We used to brag, though, that we only  
22 had 30 regulations. And I imagine if you apply for a grant

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1 from HUD, you get a book of regulations.

2 MS. BATTLE: I was just about to say, I think that  
3 all things are relative.

4 MS. GLASCO: I would agree with LaVeeda that if we  
5 have an existing regulation that becomes inconsistent with  
6 new law, that would either need to be delineated as a reg and  
7 we would have to act on that or revise it to conform with the  
8 law, whether it's through a grant assurance or whatever. But  
9 whenever there's a new substantive restriction on our  
10 grantees, I think it at least requires some notice. Probably  
11 108(e) would apply somehow to that.

12 CHAIR EAKELEY: We will count on your office for  
13 management alerting us as events break about what our  
14 responsibilities are in terms of cleanup of the regulations,  
15 as well as, obviously, alerting grantees to changes in the  
16 legal conditions under which they're operating.

17 MS. GLASCO: Okay.

18 CHAIR EAKELEY: All right. Does that conclude our  
19 discussion for the moment of planning for the future or  
20 attempting to deal with it?

21 (No response.)

22 CHAIR EAKELEY: All right. Why don't we move on to

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1 item 9, consider and act on Finance Committee report?

2 MS. MERCADO: Mr. Chairman, I think that with the  
3 exception of Ms. Battle, everyone was here --

4 CHAIR EAKELEY: I'm sorry to interrupt, but did we  
5 leave Judge Broderick off the resumed meeting?

6 MS. WATLINGTON: I think we forgot him there for a  
7 while.

8 CHAIR EAKELEY: Well, the light went off.

9 MS. MERCADO: Is he on?

10 MR. RICHARDSON: No, he's not. They're trying to  
11 contact him to see if he's available.

12 CHAIR EAKELEY: Take his robes off.

13 MS. WATLINGTON: He was appointed judge?

14 CHAIR EAKELEY: The Supreme Court of New Hampshire.

15 MR. BROOKS: He was only confirmed the day before  
16 yesterday, so I doubt if he has got his robes on yet.

17 MR. McCALPIN: I thought the vacancy didn't exist  
18 until the 1st of November.

19 MR. ASKEW: He doesn't assume the bench until the  
20 1st of November.

21 MR. FORGER: It's like being an assistant  
22 secretary.

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1 (Laughter.)

2 MR. McCALPIN: The account I read said that the  
3 incumbent was resigning effective November 1st.

4 MR. FORGER: You're right. That's what I read.

5 CHAIR EAKELEY: While we're dialing him up, why  
6 don't you go ahead with your report?

7 MS. MERCADO: As I was saying, with the exception  
8 of I think the first part of the meeting, Ms. Battle wasn't  
9 here and Mr. Broderick wasn't here at the meeting, so that --  
10 and I'm saying that as a -- I know Mr. Chairman's always  
11 trying to move us along -- just to indicate, Mr. Chairman,  
12 that pretty much everyone was privy to the discussions and  
13 questions that arose in different items that we have to cover  
14 under item 9 of the agenda.

15 However, that does not preclude anyone from asking  
16 any questions or discussing it further on the issues. What I  
17 would like to submit to the Board for their approval is the  
18 revisions to the FY '95 consolidated operating budget that  
19 were submitted. And all of you should have had a document  
20 that says "consideration and review of budget and expenses  
21 for period ending August 31, '95."

22 And basically, the revisions just include the

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1 changes that were made regarding -- let me make sure I don't  
2 misstate this.

3 CHAIR EAKELEY: Pages 30 and 31?

4 MS. MERCADO: Yes, 30 and 31 are the pages that we  
5 reviewed. And again, this only deals with the revision on  
6 the M&A line. It doesn't deal with the revision to the full  
7 budget.

8 CHAIR EAKELEY: I misled you, because item 9A is  
9 the 1995 consolidated, and this is the '96, isn't it?

10 MS. MERCADO: No, this is '95. No, it's '96.

11 CHAIR EAKELEY: I misled you. I'm sorry.

12 M O T I O N

13 MS. MERCADO: Disregard that number. It's page 26.  
14 Page 26 is the resolution, Mr. Chairman, that I would like to  
15 move for adoption of the Board as far as the --

16 CHAIR EAKELEY: Agenda item 9A?

17 MS. MERCADO: Yes. As far as the budgetary  
18 adjustments that deal with the M&A line for FY '95, I would  
19 request that the Board approve those for adoption.

20 CHAIR EAKELEY: Everyone on the same page? Any  
21 questions?

22 MS. MERCADO: Page 26.

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1 CHAIR EAKELEY: Recommended at the Finance  
2 Committee meeting this morning. The motion has been made to  
3 adopt the resolution. Is there a second?

4 MS. FAIRBANKS-WILLIAMS: Second.

5 CHAIR EAKELEY: All those in favor?

6 (Chorus of ayes.)

7 CHAIR EAKELEY: All those opposed?

8 (No response.)

9 CHAIR EAKELEY: The ayes have it. The resolution  
10 is adopted. Thank you very much. Item 9A. Item 9B,  
11 consider and act on proposed fiscal year 1996 consolidated  
12 operating budget, pages 30 and 31 this time.

13 MS. MERCADO: Right, and the resolution for that is  
14 on page 29. And that was moved and approved by the  
15 committee. And again, that deals with the temporary  
16 operating budget, since we only have temporary allocation at  
17 this point. And it only deals with the M&A line. It doesn't  
18 deal with all the different categories of client services,  
19 again, because we're in flux as to what kind of services  
20 we're supposed to provide and how much money is going to be  
21 allocated.

22 CHAIR EAKELEY: But it authorizes the Corporation

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1 to continue under the continuing resolution at this level  
2 until discontinued?

3 M O T I O N

4 MS. MERCADO: That is correct. And I would at this  
5 time move this resolution under the continued resolution for  
6 the M&A line, the temporary budget for FY '96.

7 CHAIR EAKELEY: Is there a second to that?

8 MR. ASKEW: Second.

9 CHAIR EAKELEY: Discussion?

10 MR. BROOKS: I missed this discussion this morning,  
11 I'm sorry to say. And I wonder if you could explain to me  
12 what the relationship is between the funds authorized in the  
13 continuing resolution and the funds that we have been using  
14 for 1995.

15 CHAIR EAKELEY: The continuing resolution funding  
16 is 95 percent of the average appropriation appropriated by  
17 the House and the Senate. That is slightly more than the  
18 budget submitted by the Corporation to the Congress that  
19 contains these numbers as a build-up. But basically, this is  
20 what we estimated we would need, and that is within the level  
21 of the continuing budget resolution.

22 MR. BROOKS: Thank you.

1 CHAIR EAKELEY: Did I get that -- is that close  
2 enough, David?

3 MR. RICHARDSON: Yes.

4 CHAIR EAKELEY: Any other discussions or questions?

5 MS. MERCADO: And just for Mr. Brooks'  
6 consideration, pages 30 and 31 detail those more in  
7 particular. The first attachment on page 30 deals with the  
8 M&A line that excludes the budget for the inspector general,  
9 and page 31 deals with the budget summary that includes the  
10 Office of Inspector General.

11 CHAIR EAKELEY: And, John, that IG number,  
12 1,279,000, is an increase from last year that reflects the  
13 additional responsibilities that the IG has undertaken with  
14 respect to the audit guide and overseeing of the field  
15 audits. This assumes monitoring for compliance remains with  
16 the Corporation.

17 Any further discussion or questions?

18 (No response.)

19 CHAIR EAKELEY: It has been moved and seconded.  
20 All those in favor of adopting the resolution dealing with FY  
21 '96 temporary operating budget, say, "Aye."

22 (Chorus of ayes.)

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1 CHAIR EAKELEY: All those opposed?

2 (No response.)

3 CHAIR EAKELEY: The ayes have it. Item 9C,  
4 consider and act on proposed fiscal year 1997 budget mark.

5 MS. MERCADO: And you should have a copy of a  
6 resolution that we passed around. The original one had just  
7 a -- the second one was corrected.

8 Basically, Mr. Chairman, based on the -- again,  
9 even though we know we have different numbers fluctuating out  
10 there, based on the fact that the Administration had proposed  
11 for FY '96 a budget request of 440 million, and there being  
12 the sense from the Hill and from OMB that there was a 10  
13 percent reduction that more than likely would be recommended,  
14 that we were requesting a budget mark for Finance Committee  
15 to approve the budget mark of 396 million for fiscal year  
16 '97, which would be a 10 percent reduction.

17 M O T I O N

18 MS. MERCADO: And we would at this time move that  
19 the Board approve budget mark for FY '97 of 396 million.

20 MS. WATLINGTON: Second.

21 CHAIR EAKELEY: Any discussion or questions on  
22 this?

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1 (No response.)

2 CHAIR EAKELEY: Just on the wording of the  
3 resolution, the second whereas clause, "Whereas, the Board of  
4 Directors has determined that the Legal Services Corporation  
5 is a program in vital need of additional funding to maintain  
6 the legal services needed by people in poverty," I think just  
7 -- "would have determined that the Legal Services program" --

8 MR. FORGER: Not the program, but the Legal  
9 Services Corporation?

10 CHAIR EAKELEY: "The program funded by the Legal  
11 Services Corporation serves a vital need in assuring access  
12 to justice to poor people and is grossly" -- I don't know  
13 whether you want to say "and is significantly underfunded."  
14 Is there any inclination to change the wording a little bit  
15 like that?

16 MS. MERCADO: I know that in the discussion that we  
17 had in the Finance Committee, Mr. Chairman, we did discuss  
18 the fact that by no means in asking for the 396 million does  
19 that mean that we as a Board and as a community believe that  
20 that is all that is needed to provide civil legal services to  
21 poor people but that, in fact, based on the reality that is  
22 on the Hill, the numbers that are being passed around by the

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1 different -- by the House and Senate and OMB, that that is a  
2 figure that is in line with what that reality seems to look  
3 like but that by no means does it mean that that's minimum  
4 access, because that's not even minimum access.

5 CHAIR EAKELEY: I was just trying to tinker with  
6 the wording of the second whereas clause. And maybe that's  
7 not needed. Are people willing to live with the wording of  
8 the resolution? Or do you want to just take a couple of  
9 minutes to just consider a friendly amendment to the second  
10 paragraph?

11 MR. McCALPIN: I just think we ought to let the  
12 Chair amend it suitably. It's the therefore clause that's  
13 really important. And I think we ought to vote on it subject  
14 to any modification of the whereas clause that you may deem  
15 appropriate.

16 MS. MERCADO: I have no problems with that, Mr.  
17 Chairman. I think that you pretty much have the intent of  
18 what the Finance Committee and probably the Board feel with  
19 that.

20 CHAIR EAKELEY: All right. Subject to putting the  
21 words to meet the sentiment of the Board, the proposal is to  
22 authorize the 1997 budget mark of 396 million. That is the

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1 number we intend to request of the President and are advising  
2 OMB that we will be so requesting. That's the purpose of the  
3 mark and our adoption of it at this time. All those in  
4 favor?

5 (Chorus of ayes.)

6 CHAIR EAKELEY: Opposed?

7 (No response.)

8 CHAIR EAKELEY: The ayes have it.

9 MR. BROOKS: Mr. Chairman, before we leave the  
10 finance item on the agenda, I would like to have clarified a  
11 statement that was made this morning. I think you, Alex,  
12 referred to the Domenici amendment in relation to the  
13 receiving of \$115 million until the competition regulation  
14 had taken effect.

15 And as I read the bill, it looked to me as if what  
16 the intention was was to fund at the \$340 million annual  
17 level throughout the year. But there was -- if the  
18 competition hadn't materialized, the last 115 million would  
19 be withheld, as with a rescission, so that the annual funding  
20 would be scheduled at the full \$340 million level, with a  
21 cutoff amount of 278, whatever it is, subject to the  
22 competitive bidding procedure being in place.

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1           What I thought I heard you say was that it would be  
2 allocated as if it were a 278 million annual budget. And  
3 then when the competition was in effect, the 115 would kick  
4 in, and from there on, the rest of the year, it would be at  
5 the full 340 level?

6           MR. FORGER: I think, John, this is really not a  
7 programmatic issue but more of a fiscal issue. And I don't  
8 profess to know all of the mysteries of that. But there is a  
9 distinction between what is appropriated and the outlays,  
10 what was actually expended during the course of the fiscal  
11 year. And Martha has been dealing with Domenici on this and  
12 may give us further detail.

13           But the notion was that -- come on, Martha -- that  
14 we would be limited in the amount of what could be outlaid or  
15 spent.

16           MR. BROOKS: Cash flow?

17           MR. FORGER: Cash flow. And that's why the 278  
18 seemed like the actual cash flow governor.

19           CHAIR EAKELEY: We can't commit to grants for the  
20 first --

21           MR. FORGER: Why don't you give us the mysteries of  
22 this Byzantine process, Martha?

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1 MS. BERGMARK: Under the House bill, we have an  
2 appropriation of \$278 million, of which we're permitted to  
3 spend during the fiscal year about 235 to \$40 million. And  
4 that's fine, because we have a period of two grant months  
5 that fall after the end of our fiscal year. So the fact that  
6 we don't spend all of our 278 million or whatever our  
7 appropriation figure is in the fiscal year works okay for us,  
8 because our programs are on annualized calendar year grants.

9 And that's what the House bill does. It takes that  
10 278 million, and it gives us an outlay of what we will be  
11 projected to expend during the fiscal year that does what we  
12 do right now.

13 MR. FORGER: But, Martha, would you back up just a  
14 minute? For October, which is the first month of the new  
15 fiscal year, and November, which is the second month, we have  
16 already appropriated and allocated to our programs, because  
17 they're on a calendar year basis.

18 MS. BERGMARK: Correct.

19 MR. FORGER: So our October money is put aside for  
20 them out of --

21 MS. BERGMARK: '95 money. That's right.

22 MR. FORGER: And November has been put aside.

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1 MS. BERGMARK: Correct.

2 MR. FORGER: When we started off on January 1, '95,  
3 we gave them, in effect, two months. So you could look at it  
4 as borrowing December's. So what we still have left to  
5 expend is October and November.

6 MS. BERGMARK: That's correct.

7 MR. FORGER: And when we talk about a fiscal year  
8 monies required, it's really January on, right?

9 MS. BERGMARK: That's right.

10 MR. FORGER: So it's a nine-month period out of  
11 which '97 money would be spent.

12 MS. BERGMARK: And each year, the Congressional  
13 Budget Office understands that we do it that way, and they  
14 figure -- they determine what's called an "outlay" for us.  
15 We have an appropriation level, and then we have an outlay  
16 level. And the House bill did it for us in the coming year  
17 in exactly the way they always have, no change in that.

18 However, on the Senate side, even though we have a  
19 figure in there of \$340 million, we only have an outlay  
20 amount of \$210 million, which is considerably less than what  
21 we normally need to get by on for the first nine months of  
22 the year. In fact, it's an amount that is more or less

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1 equivalent to the outlay amount we would have authority for  
2 under the House bill.

3           And even though it's a difference between 210 and  
4 235 or so, that difference is the December check that we  
5 normally send to programs up front. We normally send at the  
6 beginning of each grant year two checks, two monthly checks.  
7 And the reason for that is that it gives programs some amount  
8 of cash flow to make up front insurance payments to make one-  
9 time sorts of payments that they may have. And that has been  
10 traditionally the case for many years at the Corporation,  
11 that that's how it has been done.

12           If we got the Domenici amendment as our final  
13 appropriation, we would have a problem with that, in that we  
14 would not be able to send the December grant check out at the  
15 beginning of the year. We would simply have to make a  
16 monthly check. Because we only have outlay authority of 210  
17 million, as opposed to 235.

18           So even though it's a higher number there, programs  
19 will need to function as though we were at the House  
20 appropriation level even if we get the higher amount of money  
21 for the first eight months of the year.

22           MS. BATTLE: The point that I still don't

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1 understand about this is, based on the language in the  
2 Domenici bill, as of September or October, is there in  
3 addition to the outlays already established an additional 115  
4 to be made available to us?

5 MS. BERGMARK: No, 115 is part of the \$340 million.

6 CHAIR EAKELEY: But that wasn't included in what  
7 you just described as the outlays for the first eight months  
8 of the year.

9 MS. BATTLE: Right. I'm just asking about the  
10 outlay.

11 MS. BERGMARK: But the September -- the way that  
12 this works out -- you know, Budget 202 -- is that we are  
13 permitted to spend one-fourth of that \$115 million, which is  
14 what would be one month out of the four that remained between  
15 September 1 and December 31. We can spend one-fourth of the  
16 \$115 million, and we can spend all of what remains up to \$210  
17 million in the preceding eight months.

18 CHAIR EAKELEY: Do we have to spend that 220 over  
19 12 months, or does that --

20 MS. BERGMARK: Over eight.

21 CHAIR EAKELEY: Or over eight months?

22 MS. BERGMARK: Over nine.

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1 MR. FORGER: And that translates, Doug, while I use  
2 the figure 278, if you take 210 and divide that by 9, you get  
3 to 23 per month. If you multiply that by 12, you get to 278,  
4 more or less. So it's funding, although September gets a  
5 little bump, Martha.

6 MS. BERGMARK: Right.

7 MR. FORGER: For the quarter of the 115.

8 MS. BERGMARK: Basically, under the Rogers bill, we  
9 could send out about \$22 million a month the entire year, and  
10 that will go out as grant money. Under the Domenici bill,  
11 we'll have about 21 million, not quite the 22 for the first  
12 eight months of the year, and we'll have about 29 million per  
13 month for the remaining four months of the year. And that's  
14 all less than the 31 or 32 million that we're right now  
15 sending out as grant checks.

16 CHAIR EAKELEY: And we all understand that how you  
17 deal with the grants and the competition and the duration is  
18 all still being developed.

19 MS. BERGMARK: Right. And I think the likelihood  
20 is that the Domenici construct, this notion of having the  
21 dates and the different amounts of money is not likely to be  
22 our end result. Our end result is likely to be -- because

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1 there is more outlay authority on the House side than on the  
2 Senate in our function, it's likely to come out that whatever  
3 dollar figure they arrive at as our appropriation for 1996,  
4 we will be calculated at the same outlay rate we always have  
5 been.

6 MR. FORGER: Do you want to close the loop, Martha,  
7 on competition, how this relates to anything?

8 MS. BERGMARK: "Close the loop on competition"?

9 MR. FORGER: The bill says 115 when you commence  
10 competition. You may want to get into that dialogue.

11 MS. BERGMARK: How they used competition as a way  
12 -- the way the Domenici staff worked this out was to say,  
13 "Well, you're needing to put competition into effect. That  
14 is a rationale for why you might have a different amount of  
15 money available late in the year rather than early in the  
16 year."

17 And so the date that was picked for the  
18 commencement of competition was one that would occur within  
19 the fiscal year. So it's going to happen within the fiscal  
20 year. And some extra money will be available to implement  
21 it.

22 CHAIR EAKELEY: John, do you have a follow-up

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1 question or two?

2 MR. BROOKS: Well, I think it's becoming slightly  
3 clear now, because what I was reading from page -- well,  
4 it's Section 10, I guess, of the Domenici bill which  
5 appropriates the 340 million, provided that 115 shall not be  
6 available until the date on which the Corporation commences  
7 implementation.

8 In other words, it's a wholly different criterion  
9 here from a cash flow based on the months in the fiscal year  
10 and outside the fiscal year. So what gave rise to the  
11 question was whether the monthly cash flow was based on the  
12 340, but the cash flow during the period before the  
13 implementation of the competition, whether that was to be  
14 based on an annualized 225 or on the whole 340.

15 What I thought I heard this morning was that it was  
16 based on the 215, 225 until the implementation of the  
17 competition. Then, it kicked up to a greater rate.

18 MR. FORGER: Until September. And I think that's  
19 another way of saying September is when those funds will be  
20 available, John.

21 MR. BROOKS: All right. As long as this cash flow  
22 is substantially on the 340 basis.

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1 MR. FORGER: For the full 12 months.

2 MR. BROOKS: For the full 12 months.

3 MR. FORGER: But not on a --

4 CHAIR EAKELEY: Not for the first eight months.

5 MS. BERGMARK: Not for the first eight months.

6 MR. BROOKS: Well, it's still on the 340 basis for  
7 the first eight months, as it is for the final.

8 CHAIR EAKELEY: That's not what Martha said.

9 MR. BROOKS: 340 divided by 12.

10 MS. BERGMARK: We don't have access to that early  
11 in the year.

12 MR. BROOKS: No, you don't have access to it, but  
13 that's the calculation of the monthly outlay.

14 CHAIR EAKELEY: No. I thought I heard her say 225  
15 divided by 8.

16 MS. BERGMARK: First, you take away our management  
17 administration, but then you divide by eight months, and we  
18 only have the outlay authority early in the year for that  
19 lesser amount. And that's why it's 21 million.

20 CHAIR EAKELEY: And that's 21 a month.

21 MR. BROOKS: I think I'm hearing it come out right,  
22 but I don't understand the rationale.

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1 CHAIR EAKELEY: Budget.

2 MS. MERCADO: I think one of the questions that we  
3 had also originally was whether if this language commences,  
4 for example, if we actually implement it, the competition on  
5 January 1 -- whether, in effect, on January 1, you will have  
6 access to that \$115 million. And I think you said earlier  
7 that no, you don't.

8 MS. BERGMARK: Again, there are two forms of  
9 appropriation. And what we wanted to achieve and what we did  
10 achieve in the Domenici amendment, we do have technically  
11 budget authority for the entire \$340 million. This 115  
12 million that's held off for competition is not what they call  
13 an advance appropriation or forward funding.

14 We wanted to avoid having them treat any portion of  
15 our money as something we really legally had -- you know, we  
16 weren't going to get a letter of credit for until some future  
17 date. And that's not what we have. We wanted to avoid that,  
18 because that's what they consider a budget gimmick and just  
19 there was some exchange about that actually in the Senate  
20 debate about whether this was a budget gimmick to try to get  
21 us up. And it's not that.

22 We actually do have budget authority for the full

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1 \$340 million. But the way that money is scored by the  
2 Congressional Budget Office is for a lesser outlay amount.  
3 And we are sort of operating in good faith to abide by -- to  
4 stay within the outlay that we have been given authority for.  
5 And I'm sorry this is sort of dense, but it is sort of dense.

6 CHAIR EAKELEY: No. That was the hand you were  
7 dealt, I think. All right.

8 MR. BROOKS: It's almost coincidence that this  
9 commencement of implementation condition is in there, because  
10 that's the way it would work anyway.

11 MS. BERGMARK: Well, I wouldn't want to say that.

12 MR. BROOKS: All right.

13 CHAIR EAKELEY: He didn't mean it, either.

14 MS. BERGMARK: No.

15 CHAIR EAKELEY: Agenda item 9D. I don't even want  
16 to -- consider and act on proposed --

17 MS. MERCADO: Mr. Chairman, we reviewed the audit  
18 guide. There were a couple of changes that were made to the  
19 audit guide. On page 19, we just changed from 90 days to 150  
20 days and in the timing of which an audit could be completed.  
21 The language -- I don't know if we have any language we want  
22 to work on.

1 MS. ROGERS: We want to modify some language.

2 CHAIR EAKELEY: I think maybe the fair way to do it  
3 is that the Finance Committee approved the audit guide as  
4 proposed by the inspector general, with the modifications  
5 made in the course of the meeting to correct some of the  
6 typographical errors. But the committee did not accept  
7 management's proposed edition of a cautionary sentence that  
8 would accompany the audit guide.

9 So really, what we're doing is being asked to  
10 approve the audit guide as proposed by the inspector general  
11 and reviewed by the committee.

12 MS. MERCADO: With the changes that were approved.

13 CHAIR EAKELEY: Yes.

14 MR. McCALPIN: Was that a motion?

15 CHAIR EAKELEY: I think that was a motion.

16 MR. McCALPIN: Second.

17 MS. MERCADO: Just to further -- I think there were  
18 the two that came in a little bit later. The Finance  
19 Committee -- because everybody was here, as I mentioned  
20 earlier, Mr. Chairman.

21 So without having to go into great detail -- but on  
22 page 5, in the language that deals with the waivers for the

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1 various categories, that is the area for category 1 and 2  
2 which would be an automatic waiver and 3 in which there would  
3 be a discretionary waiver that the IG and staff just put the  
4 appropriate language to indicate that is, in fact, the case  
5 for those categories, since it was not very clear. And then  
6 the rest of the document is presented with the changes and  
7 everything. M O T I O N

8 MS. MERCADO: So I would move to adopt the document  
9 at this time.

10 CHAIR EAKELEY: Is there a second to that?

11 MS. BATTLE: I'll second it.

12 CHAIR EAKELEY: Is there any discussion, further  
13 questions?

14 (No response.)

15 CHAIR EAKELEY: All those in favor?

16 (Chorus of ayes.)

17 CHAIR EAKELEY: Opposed?

18 (No response.)

19 CHAIR EAKELEY: The ayes have it. Thank you very  
20 much.

21 MS. MERCADO: Did you have something, Bill?

22 MR. McCALPIN: Yes. May I suggest that this motion

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1 be adopted without prejudice to certain clarification changes  
2 that might be made in this, no substantive changes, but some  
3 clarifications that I have discussed with the Office of the  
4 Inspector General? And I can assure you they are not  
5 substantive, but they eliminate a couple of ambiguities, I  
6 think, and make no change in substance. And I don't think  
7 that -- they were not specifically discussed this morning, to  
8 my recollection.

9 But I think that I have just spoken with the  
10 inspector general, and he said that he just thinks they're  
11 clarification, they're not substantive. Somewhat similar to  
12 the sort of thing we do with regulations when we pass them  
13 subject to the authority of the Chair to make the  
14 clarifications.

15 MS. MERCADO: I guess I would prefer to have what  
16 those clarifications are, because the committee hasn't even  
17 considered them. I mean, it's one thing --

18 CHAIR EAKELEY: But if they're not substantive and  
19 if we have somebody just confirming that for us, I would  
20 suspect that any document of any length gets a quality review  
21 before it's being issued. So if that's the nature of the  
22 clarification that we're talking about, then I think we could

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1 probably authorize Bill to confirm it, approve it, or, in his  
2 judgement, bring it back to the committee if it involves a  
3 substantive issue of policy.

4 MR. McCALPIN: I'll be glad to do it any way you  
5 like. I regret -- actually, this was not given to me till  
6 after the Finance Committee had met this morning. But I did,  
7 as I think was revealed, call and discuss these with the  
8 inspector general after we got the --

9 CHAIR EAKELEY: Let's do it this way. The audit  
10 guide needs to get out. But it needs to get out in a way  
11 that meets with the approval of the Board. And we spent a  
12 lot of time on it already today and in prior committee  
13 meetings and the like. My proposal would be to authorize  
14 Maria Luisa and Bill to review with the inspector general  
15 proposed clarifications and subject to their approval, issue  
16 the guide. How would that be?

17 M O T I O N

18 MR. BROOKS: Moved.

19 MS. WATLINGTON: Second.

20 CHAIR EAKELEY: All those in favor?

21 (Chorus of ayes.)

22 CHAIR EAKELEY: Thank you. Any other Finance

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1 Committee matters to report?

2 MS. MERCADO: Did we actually move the whole audit  
3 guide in?

4 CHAIR EAKELEY: Yes. We actually voted on it  
5 first.

6 MR. FORGER: You looked the other way for a minute  
7 there, Maria Luisa.

8 MS. MERCADO: We don't have anything else from the  
9 Finance Committee.

10 CHAIR EAKELEY: Thank you very much.

11 LaVeeda, Ops and Regs?

12 MS. BATTLE: Yes. I guess we would start by saying  
13 that on June 25th when this Board met, we at that time  
14 decided in response to strong Congressional interest and  
15 consideration in four particular areas to adopt resolutions  
16 in the area of competition, timekeeping, representation in  
17 drug-related evictions, and class actions. And those  
18 resolutions specifically directed the Ops and Regs Committee  
19 to undertake the development of regulations consistent with  
20 those resolutions as promptly as we could.

21 We based on those resolutions met here in  
22 Washington on September 8th and 9th and reviewed proposals

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1 that have been developed jointly by the staff and the  
2 stakeholders in the community on three of the four issues.

3 And at that time, one of the reasons we did not  
4 undertake to really address the proposal that we had received  
5 on class actions was because by then, there were conflicting  
6 positions in Congressional bills being considered, and we  
7 thought we wanted to defer actually undertaking the  
8 development of a reg at that point because of the possibility  
9 that it might not be of any use to us down the road.

10 But we did spend a considerable amount of time in a  
11 joint meeting along with the Provisions Committee in three  
12 areas. We dealt with the restrictions on representation in  
13 certain drug-related eviction proceedings and developed a  
14 regulation, 1633, that should have been provided to you prior  
15 to this meeting by Victor Fortuno, as he sent out the actual  
16 copy of the publication of proposed regs that went into the  
17 Federal Register.

18 We considered the drafts that were presented to us  
19 by the staff and the stakeholders and essentially, in the  
20 area of drug-related eviction proceedings, came up with a  
21 proposed reg that prohibits the use of LSC funds in an  
22 eviction case where the client or potential client has been

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1 or later is formally charged in formal prosecuting  
2 proceedings and where the eviction proceeding itself is based  
3 on threats of health and safety to others resulting from the  
4 illegal drug activity which would be the subject of the  
5 prosecution proceeding.

6 And that reg, I guess -- does everyone have a copy  
7 of what Vic sent out? And if you don't, we can get it to  
8 you. That's in sum and substance what we have on 1633. That  
9 went out for publication in the Federal Register on September  
10 21st. We are in the process of getting comments. And I  
11 understand that at this point, from Suzanne, we have only  
12 gotten one comment in; is that correct?

13 MS. GLASCO: That is correct.

14 MS. BATTLE: On this particular reg. And we  
15 haven't heard anything as of yet, but there still is time  
16 left out on receiving comments on the regulations that went  
17 out.

18 The second reg that we undertook to develop from  
19 scratch was in the area of competitive bidding for grants and  
20 contracts. And the reg that we put together was our attempt  
21 to provide at least a regulatory framework for the  
22 implementation of the competition provisions that at that

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1 time were in the House bill 1806, McCollum-Stenholm bill of  
2 1995, and also in, I guess, the Domenici bill, 2076.

3 Our hope was to accomplish this by doing a couple  
4 of things; number one, basically, clarifying how competition  
5 will fit with our regs as it relates to denial of funding.  
6 That was one issue that came up, whether or not if we  
7 implemented competition, how that would affect existing  
8 grantees and whether or not the denial of funding in our  
9 present regs would, therefore, give them some rights. And we  
10 wanted to clarify that issue.

11 Secondly, we also wanted to establish a procedure  
12 for assuring that we met the statutory provisions respecting  
13 notice in terms of how we would put the competition out for  
14 bid, notice going to local jurisdictions, how it would do  
15 that, make sure that people in the service area were aware of  
16 the fact that we were implementing competition, and how we  
17 would go about distributing to RFPs.

18 We also in the reg addressed the whole question of  
19 how to address when one has completed an RFP and if there are  
20 questions about the whole process the option available to the  
21 Corporation for mediation of disputes, though, making it real  
22 clear that you don't have a property interest on the front

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1 end when you make an application for federal funding under an  
2 RFP situation such as we're developing.

3 The fourth issue that we undertook to address in  
4 our reg has to do with the establishment of a review panel  
5 that would be separate from the Corporation staff established  
6 to make a recommendation that would go first to the staff and  
7 then with staff input and review onto the president of the  
8 Corporation, with the president of the Corporation being the  
9 final party to determine the award of grants.

10 The staff in the process that we undertook to put  
11 together would have an opportunity to either agree or  
12 disagree with the panel recommendation, and if there is  
13 disagreement, to state the reasons for it. But ultimately,  
14 the president would make a final decision, notwithstanding  
15 the recommendations made either by the staff or the review  
16 panel but, of course, taking all of that into account in  
17 making the final decision.

18 We also set out broad selective criteria. And,  
19 quite frankly, I haven't had a chance to carefully review  
20 what we have got in Domenici. I believe from the cursory  
21 review that I've given that the criteria that we put together  
22 is quite consistent with the provisions in Domenici and in

1 the Stenholm bill.

2 I think as we have an opportunity to review  
3 comments that may come in on these issues, we at the same  
4 time should be able to give a final brush to a review of the  
5 statutory provisions, as well as the comments, and make sure  
6 that the criteria that we establish is in keeping with what  
7 we have been given as Congressional guidance on what the  
8 criteria ought to be.

9 We used as one of the hallmarks of this whole  
10 process trying to use a broad brush, since this is the first  
11 foray into the whole process of putting together a  
12 competitive bid process. And so the regulation has enough  
13 specificity to give guidance, it seems to me, to people who  
14 want to be involved in the process but not so much  
15 specificity at this point as to restrict our ability to make  
16 decisions as need be.

17 And also, we tried to put provisions in sensitive  
18 to the timing issue that we have discussed in part today, so  
19 that to the extent that we are given some direction once the  
20 final appropriations process has been complete as to when  
21 this has to be implemented, the reg is drafted in such a way  
22 that it's mindful of that, and time frames that we may

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1 establish may be waived in order to meet whatever our  
2 obligations are.

3 So we got through the process. We drafted a broad  
4 brush kind of reg on the competitive process. And we hope  
5 that as we go through the process of reviewing the final  
6 comments that come in from others, we can have available to  
7 us in November all of that input to be able to come up with  
8 the final reg on competition for the Board to adopt.

9 The final reg that we considered has to do with  
10 timekeeping. And it is 1635. And essentially, in again a  
11 broadly drafted way, what we attempted to do was to develop a  
12 reg which says, "From now on, you will keep your time on  
13 everything that you do on every case, matter, or activity  
14 that you undertake, whether or not you undertake it for  
15 purposes of conducting business on LSC funds or nonLSC  
16 funds."

17 And what I'm not clear about -- and I see that Bill  
18 has now left -- is whether Section 1009(d) has any impact on  
19 some of the language that we do have in a timekeeping reg at  
20 present, because we do have a provision in Section 1635 about  
21 administrative provisions, which says that these records have  
22 to be maintained, of course, in a manner that is consistent

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1 with attorney-client privilege and all applicable rules of  
2 professional responsibility.

3 My view is that that still stands, unless we find  
4 that the Domenici bill says something that's different in  
5 that regard. That's where we are. We did not, as I said  
6 earlier, take up class actions, because we don't know at this  
7 point what's going to happen with that. But we have done the  
8 work we needed to do. All three of the regs having published  
9 as proposed rules, and we're on track to be able to have a  
10 final rule as we sit out in our regulations.

11 CHAIR EAKELEY: Well, thank you and your committee  
12 and the Provisions Committee and staff and the community for  
13 all of the input and hard work that has gone into these  
14 regulations. There is drug eviction language -- I didn't  
15 look at the side-by-side -- but virtually identical in both  
16 Domenici and the House bill. Does that affect the proposed  
17 regulation on eviction proceedings at all?

18 MS. BATTLE: My view is that it does not. I looked  
19 at it this morning before coming in. The language that we  
20 have is pretty consistent with what is in the Domenici bill.

21 MR. BROOKS: I think there may be one problem, in  
22 that the Domenici bill I think still uses the word "charge."

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1 And our proposed regulation has backed away from that very  
2 deliberately into requiring prosecution.

3 So that it's not just anybody's charge, affidavit,  
4 whatever it may be, individual saying, "This is a drug dealer  
5 who's causing trouble." We say in the regs that it has to be  
6 -- the restriction has to be based on the actual commencement  
7 of prosecution.

8 CHAIR EAKELEY: But that refinement will have to  
9 yield if the law is otherwise, wouldn't it?

10 MR. BROOKS: We will certainly have to think very  
11 hard about that one.

12 CHAIR EAKELEY: I certainly would not want us to be  
13 appearing to attempt to narrow or curb a Congressionally  
14 expressed intention on what federal funds cannot be used for.  
15 And so we ought to just be careful about that.

16 MS. BATTLE: We will have an opportunity. That was  
17 my statement at the onset. Certainly, we will have an  
18 opportunity to review this in light of what comes through the  
19 process to ensure that our language is consistent with what  
20 Congress has directed us to do with regard to the reg on this  
21 issue, as well as all others.

22 I also understand that it may be that the Domenici

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1 bill provides that even if you're not using LSC funds, that  
2 this restriction applies. And I think that the language that  
3 we have crafted at the time pertained only to the use of LSC  
4 funds. So that may be another issue that we'll have to look  
5 at. For certain, we'll keep all of those things in mind as  
6 we do our final review in November.

7 And I also wanted to say thank you to Suzanne and  
8 to Linda and to everyone who participated in bringing that  
9 information to us in the form that they did. When you begin  
10 to draft a reg from scratch as opposed to amend an existing  
11 reg, you've got quite a bit of work to do.

12 And our staff and the people in the community  
13 really rose to the task and presented us with a professional  
14 product that gave us an opportunity to get our work done in a  
15 timely manner. And I thank you for it.

16 MR. FORGER: Suzanne, as I recall, having  
17 originally blasted the House bill, the House bill didn't have  
18 language consistent with its report that -- I think omitted  
19 from the House bill was the notion that there was a charge by  
20 prosecuting authority. In other words, I think the House  
21 bill -- what they thought they did, they didn't really do  
22 literally in the language. But I don't have it before me.

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1 But that's the gist.

2 MS. GLASCO: We have got to look at that. Laurie  
3 is actually the person who actually worked on this rule, so  
4 she's probably more familiar with that. We will certainly  
5 check it for that.

6 MR. FORGER: I think they just left something out  
7 in the House bill.

8 CHAIR EAKELEY: Maria Luisa?

9 MS. MERCADO: Yes, Mr. Chairman. Just in response  
10 to Mr. Forger -- and again, Suzanne might be able to answer  
11 this and Laurie -- but the term "charged" is a term of art as  
12 far as criminal proceedings are concerned, and that you've  
13 got an actual law enforcement entity, including the district  
14 attorney or county attorney in that particular jurisdiction  
15 that has brought an information before a magistrate to charge  
16 someone with a crime.

17 So it is a term of art. It's not just something  
18 that some other tenant in that neighborhood or somebody else  
19 can say, "Well, this person is involved in drug -- charged in  
20 a broad sense." It's really charged, I think, in the legal  
21 sense.

22 And I haven't looked at the legislative language

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1 when this bill was being brought up, but at least in the  
2 criminal setting, I think anyone -- and maybe we need to put  
3 that definition in the regulation about "charged," what  
4 "charged" means.

5 MS. BATTLE: What we were attempting to do, the  
6 term "charged" can be as broad as, I think, John suggested or  
7 as -- we were attempting to give some specificity to an  
8 interpretation to "charged" so that everyone across the  
9 country could look to what "charged" means. And if "formally  
10 charged" means a formal prosecuting proceedings, then that at  
11 least gives a clear indication.

12 We certainly want to carry out Congressional  
13 intent. And we'll look for further refinement of the intent  
14 in how we construct it. But I think that what we were doing  
15 at the time that we came up with the language that we used  
16 was really, truly trying to give an interpretation that was  
17 definitive of the term "charged."

18 CHAIR EAKELEY: All right. Bucky, Provisions  
19 Committee report?

20 MR. ASKEW: The Provisions Committee met in joint  
21 session with the Operations and Regulations Committee  
22 September 8th and 9th. And we will probably meet with them

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1 when they meet again to consider the completion of the work  
2 on the competition regulation. So there is no report beyond  
3 what Ms. Battle has already given.

4 CHAIR EAKELEY: Okay. Thank you.

5 That brings us to public comment. Is there any?

6 (No response.)

7 CHAIR EAKELEY: Hearing none, I would like to go  
8 into executive session but revise the order of the agenda so  
9 that we can deal with the general counsel's report on  
10 litigation first, if that's all right.

11 Bill, I think you were out of the room when we went  
12 through before, but before we approved the agenda, we changed  
13 the item 14 from discussion of issues relating to internal  
14 operational and personnel matters to briefing on issues.

15 Do we have a motion to go into executive session?

16 M O T I O N

17 MS. BATTLE: So moved.

18 MS. FAIRBANKS-WILLIAMS: Second.

19 CHAIR EAKELEY: All those in favor?

20 (Chorus of ayes.)

21 CHAIR EAKELEY: The ayes have it.

22 Bill?

1 MR. McCALPIN: Mr. Chairman, my vote goes to item  
2 16 only.

3 CHAIR EAKELEY: You're voting for executive session  
4 for 16 only?

5 MR. McCALPIN: Yes.

6 CHAIR EAKELEY: Okay.

7 MR. McCALPIN: I wish to be understood as not  
8 voting in favor of an executive session for items 13, 14, and  
9 15.

10 CHAIR EAKELEY: Okay.

11 MS. ROGERS: Why not?

12 MS. ROGERS: Because I don't believe they are  
13 appropriate for a closed session under the Sunshine Act.

14 MS. ROGERS: That worries me, Mr. Chair.

15 MR. McCALPIN: Pardon?

16 MS. ROGERS: There may be something I don't know  
17 that's in progress.

18 CHAIR EAKELEY: I think the main point is the  
19 transcript will be made of the executive session. And if  
20 counsel is incorrect in his advice to us with respect to the  
21 appropriateness of dealing with briefings in executive  
22 session, then the transcript becomes available.

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1           MR. FORTUNO: I would be happy to give you  
2 something in writing. Mr. McCalpin and I have discussed it  
3 on occasion briefly. The briefing isn't covered by Sunshine  
4 because it doesn't come within the definition of a meeting,  
5 which is where a quorum of the Board disposes of Corporation  
6 business and essentially acts.

7           And if what takes place is a presentation is made  
8 to the Board without the Board interacting in such a fashion  
9 as to direct the business of the Corporation, to direct what  
10 be done, then it's as though it was a written document  
11 provided to you. And so briefings are used by agencies on  
12 those occasions where it's simply that information being  
13 communicated to the Board without the Board being asked to  
14 provide direction.

15           And so we have discussed that, and I think we may  
16 disagree -- I'm not sure on the legality of it. I think  
17 there's also the practical aspect.

18           CHAIR EAKELEY: But we're going to do better in  
19 receiving briefings without converting them into direction  
20 sessions?

21           MR. FORTUNO: And that's the practical aspect of  
22 it, is making sure that we stay on this side of the line.

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1 CHAIR EAKELEY: Okay. Do you want to start with  
2 Wilkinson, so that our counsel can be excused? Yes?

3 (Whereupon, the meeting was adjourned to executive  
4 session.)

5 (4:45 p.m.)

6 CHAIR EAKELEY: We're back on in open session. I  
7 should disclose that while we were in between featured  
8 speakers in executive session, we took the opportunity to  
9 compare notes about schedules. And we decided that given the  
10 indeterminate nature of the scheduling of the conference  
11 committee action and Senate and House action on conference  
12 committee bills, that we would schedule our next Board  
13 meeting for Friday and Saturday, December 1st and 2nd and  
14 that if there were committee business needing to be attended  
15 to in the interim, that Saturday, November 18th, would be  
16 reserved principally --

17 MS. MERCADO: 17th and 18th.

18 CHAIR EAKELEY: 17th and 18th, a Friday and a  
19 Saturday, principally for the Ops and Regs Committee to  
20 consider the regulations on competition and drug eviction and  
21 timekeeping.

22 And, I guess, Bucky, was that to be a joint meeting

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1 with Provisions?

2 MR. ASKEW: Yes. Provisions would probably also  
3 meet separately at some point.

4 MR. BROOKS: Also reserving the 2nd and 3rd in case  
5 things aren't resolved?

6 CHAIR EAKELEY: That's right. If there's a need to  
7 meet or confer by phone, we had set aside the 3rd and the  
8 4th, a Friday and a Saturday. So we'll try and stay  
9 relatively flexible and, therefore, on call.

10 Now, is there any new business?

11 (No response.)

12 CHAIR EAKELEY: Hearing none, is there a motion to  
13 adjourn?

14 MS. FAIRBANKS-WILLIAMS: So moved.

15 MR. McCALPIN: Second.

16 CHAIR EAKELEY: All those in favor?

17 (Chorus of ayes.)

18 CHAIR EAKELEY: All those opposed?

19 (No response.)

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1                   CHAIR EAKELEY: We are adjourned. Have a safe trip  
2 home, everyone. Thanks for all your help.

3                   (Whereupon, at 4:47 p.m., the meeting of the Board  
4 of Directors was adjourned.)

5

\* \* \* \* \*

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