

Judicial Council,  
The meeting will begin shortly.  
Judicial Council Judicial Council

>> This is our special public meeting on Friday, September 9th, 2011. Scheduled from 10:30 to 12:50. I want to state at the outset usual announcements and that is that this meeting is public. It's also video cast and can be seen and observed live on the California court's website and the Internet. So all of you are familiar with my statement that we turn off our cell phones, our black berries and speak into the microphone and call each other by name when possible so that it is clear for those listening to our public meetings.

Also I want to point out that as a result of this being a special meeting, we have council members attending by phone. And I want to note that those folks attending by phone are justice Baxter, Judge James Herman, Judge Terri Friedman, retired. And presiding Judge Kevinen right was not able to get out of San Diego due to the power problems, same with commissioner Sue Alexander. I understand both will be attending by phone. Mr. Allen Carlson and incoming member Mark R. Robinson junior attending by phone. Due to the last day of the legislature's current session senate toer Noreen Evans will not be in attendance and incoming member Judge Diablo will be absent.

We also have this morning speakers who will be speaking to the agenda item No. 1 on our agenda. And I'll call those folks forward to speak for up to 5 minutes. Calling first the honorable Edwin M Lee, mayor of San Francisco. Mr. Lee, welcome.

>> Mr. Lee: Thank you.

Good morning. Chief justice, members of the judicial counsel, thank you for this opportunity to speak before you, my name is Edwin Lee, mayor of -- County, San Francisco -- are we all good?

All right. Well, thank you for this opportunity to speak to all of you today as you can consider the approval of 2.5 million dollars agreement to help San Francisco superior court save jobs and access justice for San Franciscoans.

I'm here today to urge you to approve this agreement. By that I reference the agreement that was signed on August 31st by superior court executive Mr. Looun, to help reduce the devastating impact on the

civil justice system of escalating state budget cuts.

I would like to commend the AOC and the court for noeshlt v negotiating in good faith to reach this important agreement which will significantly improve access to justice in our civil courthouse and reduce staff layoffs from 40 percent to 15 percent.

San FranciscoAnn nn as rely on -- to seek peaceful redress of their disputes. I am concerned about the impact on ordinary citizens who turn to the courts each and every day for help whether their marriages and families are in turmoil, they face evictions from their homes or need help to sort out details in the family, estate or care of an elderly relative.

An insurmountable 6.32 million dollars budget deficit this year followed by two more years of deeper cuts has forced presiding Judge fine Stein to shift her court's resources to criminal and juvenile delinquency cases to meet the detriment of the rebust civil justice system in San Francisco. We know that the economic hardships faced by residents in San Francisco in the past three years has increased the reliance on the civil justice system for solutions to recession related problems. No time is a good time to limit access o justice. However, people who are suffering through the prolonged period of economic challenges, and we need our court to be open and accessible to our citizens.

This agreement before you today will go along way toward helping the court in the short term meet its obligation to provide fair and equal access to justice in our city.

During this especially fragile time in our state and national economy I am deeply concerned about the economic impacts related to the court aers initial plan to close 25 courtrooms and lay off 40 percent of its staff by September 30th. I do not want to see loyal public servants with many years of experience walk out of the door, into the clutches of an uncertain economic recovery.

The loss of court jobs and the likelihood that civil attorneys, legal and support staff and other business related to civil litigation in San Francisco would be adversely impacted represents a very real economic hit to not only these individuals but to the city as a whole. In the face of 25 closed civil courtrooms we face an alarming prospect of 14,000 attorneys taking their cases and their valuable business out of the county of San Francisco to other trial courts.

From talented attorneys to experienced bike messengers, business related to civil litigation would be collapsing. And that is a grave concern not only for me, but for our entire business community. Approval of this agreement would lessen that enormity of these impacts while the court works with the AOC to find longer term funding solutions, not only for San Francisco but for other Counties as well. The city and County of San Francisco enjoys an excellent relationship with our neighbor much of government next door. Many of you likely recall when the court's home was beneath the dome of city hall. We have worked together over the years for the betterment of San Francisco residents. We embrace the -- funding to perform its duties in our democracy.

Before trial court funding became a reality of the state level it was the city and County of San Francisco that had to work with the courts to assure its operations were fairly and adequately funded. Now that the trial courts receive their funding from the state, the city for all of its reasons that I've previously mentioned has an interest in seeing adequate funding flow from the state to the San Francisco superior court.

I appreciate your willingness to consider the use of these limited emergency funds to help the court manage a budget crisis that would be catastrophic for San Francisco.

Thank you for your time and consideration. Appreciate your time.

Thank you.

>> CHAIR CANTIL-SAKAUYE: Thank you, Mr. Mayor Lee. Next we have Mr. Christopher Kerny, treasurer, bar association of San Francisco.

>> Mr. Kerny: Good morning, chief justice and member of the council.

And I appreciate the opportunity to be heard this morning. As the current treasurer of the bar association of San Francisco I'm speaking today as a subject of intense interest to our membership and the community at large. To everyone who uses and relies upon San Francisco courts for their access to justice.

I strongly urge the council to ratify and approve the funding agreement that was entered into between the AOC and San Francisco superior court that provides emergency funding that will curtail the closures that would otherwise be devastating to our community, as you heard Mr. -- as our fine mayor Lee explained.

When my colleague Stephanie staff appeared before you on August 26th

shgs we were presenting a funding proposal tied to a rule of court. Though it did not pass, we greatly appreciate the constructive feedback that we received from you in terms of how we could work with you in terms of finding a longer term legislative solution.

At that tame hearing many of you expressed great concern about the announced court closures in San Francisco. And several of you urged San Francisco superior court to formally request emergency funding and to enter into an agreement that would alleviate the near term crisis. Those suggestions and comments were quite timely. In the days that followed, members of our community -- and we have a number of them here today -- were extremely gratified and relieved -- I know I breathed a sigh of relief -- when to learn that an emergency funding deal had been reached between the AOC and the court.

I personally -- and I know the bar association -- commends Ron overHall and the executives of San Francisco superior court for the commitment and efforts that went into negotiating and documenting this agreement. And the bridging of a gap of trust that appeared to exist between the parties along the way.

Given the gravity of our court situation as mayor Lee also explained, the 2.5 million in emergency funding will not eliminate all the previously announced court closures but will permit San Francisco to keep 11 additional courts open including two courts that are very much a point of pride in our legal community, the complex courts that handle complex litigation. In the context of this unprecedented fiscal pain that was flowed from the recent budget cuts, keeping these additional courts open would be a tremendous achievement and one that I think we all must make sure happens. That sense of relief that we all felt at the announcement of the funding deal was tentative in that the council must approve the use of funds to keep these additional courts open. So I stand before you today asking you, indeed urging to you do that. So that we can preserve as much access to justice in San Francisco as possible.

This emergency funding is extraordinarily vital. And it's -- fits within the purposes of emergency funding in that it's due to an impact of unallocated budget reductions.

In urging approval of this emergency funding agreement, we ask that you not impose new or unduly burden some conditions on the acceptance of the funds that could defeat their very purpose.

Prudent financial planning cannot be based on hypothetical funds. And to avoid the drastic court closures and layoffs our court needs to know that the funds are indeed coming. So we urge the council to approve the release of these funds today, without conditions that call into question their receipt. Any concerns that the council may have in terms of the use of much funds by San Francisco are adequately addressed, both by the representations that the court has made in its request for the funding, which shows how the funds will be used in terms of reducing layoffs and court closures and also in the basic terms of the agreement. Both of those are parts of your report, attachments A and F. I know one of the conditions -- the possible conditions that's outlined in the report is the particular concern and that's No. 7 on Page 4 of the report. And I've discussed that with Ronald Overholt, that's the one that suggests that the court would have to return the funds at the end of any fiscal year if the court had funds above the minimum.

And I hope and believe that Mr. Ronald Overholt will clarify what was intended by that was at the end of the a three-year period, the end of the 2014-15 period, if the court is in a position to have excess funds at that point that would be the time perhaps for return of those funds. And that's an important issue in terms of making this arrangement work and being consistent with the understanding that was reached with the court.

As critical as this 2.5 million in emergency funding is, we all recognize -- I know you do -- that it is at best a short-term solution. A longer term solution is also imperative. And I can tell you that the bar association remains committed and would be your partner along with other bar associations, in seeking to restore court funding, with working with you and the judiciary to fight for additional court funding in the legislature. We need to stand side by side in Sacramento and we will do that.

>> You have 30 seconds.

>> Once again, thank you for your time and consideration. We're confident that the drastic court closures previously announced are as unacceptable to you as they are to our legal community. We appreciate what you have done to avert this crisis. We strongly urge you that the time to act is now. To vote today to approve the release of the 2.5 million in emergency funding to San Francisco, as was agreed and

documented in the agreement. Thank you very much.

>> CHAIR CANTIL-SAKAUYE: Thank you Mr. Kerny. Next we'll hear in Mr. Christopher Dolan, board member of attorneys of California.

>> Mr. Dolan: Good morning, madam chief justice and members of the council. I need to make it clear as I speak here today I do not speak on behalf of the consume erp attorneys of California or any other trial lawyers association which I may be a board member. I cannot nor do I make statements that would bind those entities at this time.

I do speak as a trial lawyer, though, who represents a number of litigants who require access to the courts, in order for them to participate in this democracy in a meaningful way. And to have their very serious concerns resolved. I am very pleased to see that our mayor is here today. And very pleased to see that he is here advocating on behalf of the city and County of San Francisco, its citizens and the courts itself. To see the local interest that has been generated by this debate and by these movements towards compromise is indeed something that I think has been vital to see the courts become a more open and democratic process. I also want to say that I am -- I wish to commend as much as somebody who's merely just an individual working in the courts, our presiding Judge and the AOC for moving swiftly to try to engage in discussions that would prevent the untenable eventuality of court closures. To see that be done and to see emergency funds be ready and willing to be used by those who are involved so as to make sure that we don't have a constitutional crisis is commendable. And as somebody who working with the courts we very rarely see anything move at this speed. So I think it is quite admirable that we are here today. I do believe and hope that this body will approve funding that will allow the city and County of San Francisco to keep its courts open. I do hope that this body and our presiding judge will be able to overcome any difficulties in the details that they may have so that there is no impediment to these courts being open and to achieving the goal which I saw set forth in option 1 is to make sure that all matters that come before the court may be adjudicated. And I think that is important.

All matters come before the court be adjudicated. Not just those considered to be of large value. Not just those considered to be of a complex or noncomplex matter.

But all those which are important to each person who comes before the

court to be heard.

In that regard I do hope that an agreement can be reached and adopted and ratified by this body and accepted by our court that allows these courts to remain open.

And again, I wish to commend the ard OC and our presiding judge and thank everyone for the time they put into making sure that my clients won't find those doors closed.

Thank you. Can't cant thank you, Mr. Can't can't thank you, Mr. Dolan.

Next we have three speakers sharing their five minutes, Mr. Jose Rias, Mr. Sim Lavirini, and Miss Priscilla Ogbuna, SCIU. Please step forward.

Welcome.

>> Kk good morning, madam chief justice and members of the council.

I'm here to speak on behalf of SCIU, superior court of San Francisco and as a member of this community.

I'm here to urge you to approve this agreement. In the past we had several services in place in our courthouse which are the family law facilitators office, domestic violence clinic, mediation services and court reporter services. Not only as a family law courtroom clerk but as a member of this community I have saw these services benefit the families and the community and even then it was not enough.

Today, as I stand before you all, these few services are being removed or cut. And by removing or cutting these services, the families with domestic violence will be stuck in a terrible conflict. Women, children, and men will be severely hurt and may end up being a criminal case.

The children with special needs will not get the care they need if their parents are unable to mediate and come up with an agreement. Families will not be able to get services to help out -- to help them fill out documents for any type of case, and therefore particularly in family law, they may end up losing custody of their children if documents are not properly filled out or filed correctly.

Without court reporters, family also not know what is going on with their case, and there will be no official record of the court.

In family law -- sorry -- families will be harmed severely if you do not approve this agreement. In family law we always make the decision in the best interests of the children. And you have the power to do

that.

To approve this agreement.

I am standing here today and looking into tomorrow, and I need to know, we need to know, that you are going to vote to keep these services and there is no other choice because California law states and requires that you make the decision in the best interests of our children.

Thank you, and I know you will vote with your heart and your consciousness and because I know you care about the children and families of California. I thank you for the opportunity.

>> CHAIR CANTIL-SAKAUYE: Thank you.

>> Hello again, chief justice and judicial council. My name is Tim Cavarini. I'm pinch hitting for one of the clerks that was called back to duty in the court. I have nothing really written down to say, I'm just going to tell you how it is. I've only been with the court for five years but I'm the kind of person that doesn't like to be taken advantage of. I've worked with my CEO, CFO, to try to save our courts as much money as possible. With some unscrupulous invoices that came in from our last warehouse vendor, I was able to get \$50,000 back for an oversight on their part. We're working on other ways to bring in money for the courts.

And other folks like me that might not even make the cut -- I probably won't make the cut even if you do the 2.5 -- you're losing a lot of outside the box thinkers. Lot of people that really value and appreciate what it means. I took my oath very seriously when I came to the courts. And I'd like to continue to work for you all.

I don't want to get too hokey, but I've been doing my best to make sure that they didn't pull back the drape and expose what the wizard of Oz actually was, but pretty soon somebody's going to drop a house on somebody and all that's going to be left of you are your ruby slippers. You have to figure out right now are you a good witch or a bad witch.

I really do love my job. I love it. And I'd like to stick around a little longer to work with all of you.

Please, we're only across the street, come by and see papers that stack higher than me. My job as an archivist is to lift all those books all day long and those heavy books you see. I don't know going to take my place. I have clerks that are this high "that are



going to have to do my job.

It's no if, it's when someone's going to get hurt.

With all those papers and all those boxes and serving the public.

I've already seen folks have retired, their desk is full of papers now.

Died. Their desk is full of papers now.

People are not being replaced. We're already at a deficit. And I'm sorry this Band-Aid that we're being offered is probably not going to hold back the tide of the city for the people -- the city of

San Francisco. I'm one of those people.

On the 30th I stop being your clerk. And I start being a very ticked off citizen.

You don't want me there. You want me to help you. You want me to work with you.

I want to work with you so badly.

And there's others like me. Good, young, motivated people who are very low on that list that you're going to lose.

I'm probably going to have to work -- go back to work for the hotel I work with. The same hotel we are holding your big convention later this year.

I'm available for -- as a speaker, if you like.

>> CHAIR CANTIL-SAKAUYE: Thank you, Mr. Lavarini.

We also have received written comments. One by Mr. Arnold Mednic, refer free from superior court of California, count at this of loss and less. And his topic funding alternatives for the trial courts. That submission is posted on the Judicial Council meeting page of the website for us, access.

At this time I believe we're ready to address item No. 1. This is the trial court improvement fund allocation, the emergency funding request for fiscal year 11-12, an action item, requested by the superior court of San Francisco.

And I'll turn it over to justice Miller from E and P.

>> HON. DOUGLAS MILLER: Thank you chief justice. The council's executive planning committee scheduled this meeting today to discuss a request for emergency funding. The court's request indicated that the court plans to close 25 courtrooms and lay off 177 of its staff as of October 3rd. Because the council's next regularly scheduled business meeting was not until October 28th, the committee decided it was

necessary and prudent to have a special meeting in September so that the court's request could be addressed in a timely manner.

On behalf of the executive and planning committee I want to thank all of the judicial council members who rearranged their schedules to participate in this special meeting.

Some are here as we can see in person, and others have made arrangements to appear by telephone.

As we all will agree, this is an important meeting. And as we have heard, it is certainly very important to the city of San Francisco, the superior court of San Francisco, the people they serve, and the lawyers who practice in their courts.

And I appreciate the public comments that we heard today. I think it, again, reaffirms that important nature of what we do here as a judicial council.

The San Francisco superior court is requesting that the Judicial Council allocate 2.5 million from the trial court improvement fund special reserve that is available for urgent needs.

The report to the council that we posted on our public website earlier this week provides an overview and explanation of the allocations that have been made from the urgent needs fund over the past several years. The criteria that have been used in the past to consider requests from the trial courts, and the financial situation of the San Francisco superior court.

What I believe is also important to note is that for me, and I believe as council members, this report is somewhat unique from the ones that we have seen in the past. It's not being presented by an advisory group, it's not being presented by a staff member, it's merely background information and options for us to consider. It's not before us as a recommendation.

Having said that, though, I just want to stress a few points so we keep them in the forefront during our discussions and the decisions that we make today.

As explained in the report, that urgent needs reserve fund is established by statute. The same statute that establishes the trial court improvement fund, government code section 772-09. The statute provides the Judicial Council shall reserve funds for projects by transferring 1 percent of the amount appropriated for -- to the trial court improvement fund. At least one half of this amount shall be set

aside as a reserve that shall not be allocated prior to March 15th of each year unless allocated to a court or court for urgent needs. No statute or case defines urgent needs nor explains under what circumstances or process the council may allocate money to a court from the urgent needs reserve. The statute authorizes the council to delegate to the administrative director of the courts the administration of the fund with appropriate guidelines.

Just a little review.

In 2002 the council approved guidelines for the improvement fund which included a definition of urgent needs and a process for courts to request and for funding to be allocated from the urgent needs reserve. Those guidelines were last revised in 2007. Council members will clearly recall that we had a discussion at our August meeting of this year at which time it was noted that the guidelines that apply to the urgent needs fund were in need of further review and revision. Simply stated, as we all agree, they were outdated in light of the current fiscal conditions affecting the entire court system.

At our August meeting the council directed staff to work with trial court presiding judges and court executive officers and then come back to us at our October meeting with revised guidelines. Both a process for requesting emergency funding and the criteria for considering emergency funding. And that the ultimate decision with regards to the appropriation of those funds would be made by the council and not by the administrative director or staff.

However, in preparing for today's meeting, one of my concerns has been that we do not yet have revised guidelines. And as a judge, I think we would all agree that we had' like some type of a precedent to base our decision upon. The requirement in government code section 77009 for guidelines about administration of the approval fund applies -- at least it seems to apply -- where the council delegates to the administrative director the responsibility to manage the fund.

Where the council acts directly to allocate money from the fund, there doesn't appear to be any requirement that it first adopt criteria or establish a process. The statute simply provides that money in the reserve may be allocated to courts for urgent needs.

Therefore the council has a discretion to decide whether requests for emergency funding from the improvement fund warrants an allocation from the urgent needs reserve. And if so, in what amount?

Again, if we look at the options -- again, just options -- the court could apply the current criteria, the council could take action to rescind the current criteria, the council could act to modify those criteria, or we can decide what those criteria are for the urgent needs for today.

In short, we have the discretion as the judicial council to decide what course of action we should take.

And again, remember that the report is not a recommendation, it is a set of possible options. And I'm sure there will be other discussions today as to what other options we may consider.

We have before us the request from San Francisco, and we have the agreement that we worked out between the court and the AOC. And as we will find as to what should be presented to the court for consideration.

Even though I don't believe the agreement is binding on the council, it reflects the results of many discussions with the court as to what would be proposed to the council. Again, it is one of the options that is before us today. And as you have read in the report, there are many options in that regards.

Lastly, just two other things. What we do today is important, as I've indicated, for the city of San Francisco and the litigants, and it's also important as a potential precedent for other courts. As I walked into the meeting today, I happened to meet two attorneys. And again, they emphasize how important our decision was today for the litigants and the individuals that they serve. And also, also, that we as a judicial branch have an obligation to adjudicate the matters that come before the courts, both criminal, civil, family, juvenile, all of the different matters that come before the court. And to promote equal and ready access to the courts for all of the residents of California.

Lastly, I did want to mention one aspect that was not in the report, was not one of the options. And that is a statement in the agreement between the AOC and the Court with regards to longer term solutions and the need for the Judicial Council to seek ongoing revenue solutions.

I believe we would all agree that the council has always made it a top priority to seek additional funding and necessary funding to keep our courts open and accessible. We have all heard the chief justice many times stress that that is her top priority for the branch. This is historically what the Judicial Council has done. We have provided

the leadership in this particular area in working with the legislature and the individual legislators. We will continue to provide that leadership. We will continue to seek budget solutions with both the legislature and the governor.

Also you will note that one of the agreements' concerns the county-based, county-retained fees with regard to complex cases. We just have to remember our last meeting where this was discussed by PCLC. They discussed it, they dealt with it, and they confirmed that the Judicial Council as one of its continuing priorities is continuing to look at the imposition of un -- of uniform statewide fees. And again, it is a high priority of the Judicial Council to continue to look at ongoing revenues.

With those in mind, I'd like to turn it over to our finance director to give us further explanation with regards to the funding request. Tani Cantil-Sakauye before we do that, let me ask if any council members have any questions from justice mill ear's statement.

>> Not yet.

>> CHAIR CANTIL-SAKAUYE: To justice Miller's comments. But go ahead.

>> I appreciate your pointing out that what's presented here is not necessarily a recommendation, it's just a description of some options we might consider. And I think that that's important for clarification. But I did have a question about the phrase that's used throughout this report, that the Courts have a constitutional obligation to adjudicate all matters that come before the court. And what the genesis of that was. And why that language was -- was chosen. I see it in almost every item here. It didn't seem like it was necessary for us to deal with that subject, now -- in my view, it's quite a complex issue.

And I didn't see the need for it.

I was wondering where -- what the genesis is and why you felt it was necessary to repeat it in all these phrases.

>> HON. DOUGLAS MILLER: I'm certainly open to any others who want to respond in that regard. But one of the concerns was is that with the providing of this money we wanted to make sure that there was a commitment that the Court will still perform its functions, such as civil, criminal, family law, juvenile, probate and all those aspects. It may need some further definition in those regards but it wasn't to

mean anything more than that, provide service to the citizens who come --

>> I understand. But there may come a time when the courts lack funding where we may just have to make decisions on priorities about what can be adjudicated. If our budgets are substantially curtailed, we may not be able to adjudicate every type of case. And I -- I just want to make sure that option is open and -- because I know some courts have brought to us the fact that they might consider eliminating a whole area, such as was represented by -- by judges from -- from San Juaquin, who indicated they might close down small claims. I don't want to eliminate those type of options with some broad language like this.

>> HON. DOUGLAS MILLER: And I think that's a good example with San Juaquin, if they do come before us we would be making some of the same types of discussions and contingencies, whatever amount of funds that we provide to them out of this fund, that there are still on our part a need to make sure that they're going to provide the services that this money is being given to them for.

So if it needs some further definition to clarify that, I don't have any problem with that.

>> Or maybe a more general phrase to -- necessary to meet the court's functions and let it go at that. It was just this -- this --

>> HON. DOUGLAS MILLER: I don't have a problem with that.

>> Okay.

>> Chief, this is Marv Baxter in Fresno. I want to bring to the attention of the Judicial Council discussions and action taken by the policy committee at its August 19th meeting where we discussed various proposals to provide additional support to the trial courts. Those in financial distress as a result of the budget reductions. And after a great deal of discussion, the committee directed the office of governmental affairs to continue pursuing avenues to enhance revenue, to pursue those avenues with the legislature, and with the interested parties, to determine if there is a viable way to enhance the judicial branch budget. But in doing so, the committee's guiding principles to the office of governmental affairs were that, number one, the fee increases should be uniform and apply statewide, and not to just select courts, and that, number two, that the fees should be allocated on a statewide basis and not retained in the court in which they were

collected.

Now, justice Ashman Girsch, and judges Herman and Smith, Edith Matai, and Michael Roddy, were among the members participating. And perhaps they along with curt child may wish to comment on that recent action that was taken.

>> CHAIR CANTIL-SAKAUYE: Thank you, justice Baxter.

I don't believe there's any forthcoming comment. I think what you stated is clear about the action of PCLC. Which is a reflection of past practices of judicial council. Period.

>> Mr. Baxter: That's correct.

>> Jim Herman: I just would add that the -- the position of each and every one of the committee members was very strong on these points.

>> CHAIR CANTIL-SAKAUYE: Thank you, Judge Herman.

Just Wesley?

>> Maybe call -- chief to see if -- I was just wondering whether or not the options that were outlined in option 1 have been p sever been applied to a court before when they've gotten emergency funding.

>> Well, there have been these elements applied to other courts, particularly the Placer court, plan County court, that had a request from the presiding judge for emergency funds. And those were -- those were paid back. Those were audited. A number of the provisions that were in here applied to both of those courts.

>> One of those courts at least was a different situation where the CEO was no longer there and came in as an acting CEO. I don't recall another time when we put the executive and planning committee in charge of the court, having a court report to it. I don't recall ever seeing that before. And I'm asking if that's ever happened before.

>> I think the -- on those courts the full council received reports. Because it was council action in terms of providing oversight for those courts.

>> CHAIR CANTIL-SAKAUYE: I think that -- at least to the Placer court, I know Jody Patel was directly involved with that. And I remember those. We can talk about that later. I think that's valid when we talk about the options, certainly. But if -- at this point without comment to justice Miller's report and the comments raised by PCLC, I'd like to turn it over to the panel to begin this. And I'm sure we'll have a pretty robust discussion thereafter. Slot co-?

>>

>> ZLATKO THEODOROVIC: Thank you chief. I will go through it briefly and get to the bottom line number. The court request a 20.4 million dollars need over the next three years, initially proposing a 25 civil courtrooms to be closed and 177 staff laid off. In submitting their request for trial court improvement funding on September 1st, the request of 2 and a half million dollars, which in essence would reduce their proposed closures from 25 to 14, and a number of layoffs from 177 to 75. The court has indicated they've taken a number of measures to reduce costs over the last -- past several years, including hiring freezes, staff furloughs, operational changes, regarding overnight bail, renegotiating contracts. Saving 1.2 million dollars. Other operating expense savings in attempt to manage their fund balance. And with respect to government code section 77209 regarding the emergency fund, as justice Miller indicated, requirement is that one half of 1 percent of the transfer to the trial court fund needs to be set aside for urgent needs. Again, we've -- had no statute that defines the specific allocation, only with respect to urgent needs. We do have the current definition of urgent need that's there before you. And again, there are various criteria that have been used in the past with respect to evaluation of emergency funding requests. I think most notably you will see that at the bottom there layoffs, mandatory furloughs, reduced hours and court closures, the funds are to be provided to avoid those types of things. We believe we've discussed that there's probably not a single court in the state that's not facing one of these four issues.

So this is not unique to San Francisco. And every court is facing similar funding problems.

We know that the allocation is one time only and the courts must exhaust all available reserves not otherwise dedicated to critical needs. We think that's an important factor in looking at their request.

Again, there are issues where we in our prior review would look at what steps have been taken to address the reductions, why aren't the resources available, are there other funding opportunities. And determining what the public service impacts are.

As justice Miller did indicate, we have been directed -- staff has been directed to reestablish, redevelop a new process for evaluating deficiency requests. I think it is important that the times have



changed and we do need to look at new criteria and new process to make sure that it's transparent and available to all the courts that need it.

With respect to the funding, I want to focus your attention on the fiscal year 2011-2012 figures. Our conclusion in terms of looking at their current year issue is that with no action the court will finish with -- would finish with a negative fund balance of a million dollars if no action were taken. At the 177 staff layoffs they would get to almost an 11 million dollars fund balance. With the revised 75 staff layoff and assuming they get the 2.5 million, they would be in a 6 and a half million dollars fund balance. Which is approximately 8 percent of their operations budget.

So I get to the options. First option is to allocate the 2 and a half million dollars as determined as an urgent need by the council. There are a number of contingencies that are again in the report. I won't go through them, as they'll be discussed I'm sure at length after our presentations concludes.

Option 2 is to not provide the Court any additional funds. And direct them to take all necessary means to not end the year in a negative fund condition, including using reserves that they currently have of 4.9 million dollars. Or wait until we complete our work with respect to new criteria and then reevaluate the request in terms of the new criteria that's developed. With that ends my presentation.

>> CHAIR CANTIL-SAKAUYE: Thank you.

Ron?

>> Yes, thank you, chief justice and members of the council. I want to preliminarily indicate my appreciation and gratification to everyone who has been involved in the conversations with the San Francisco Court, to try to find a path forward for the Court and for the civil justice system in San Francisco, given the gravity of the situation and the pending actions that were going to have to be taken, particularly the presiding judge, assistant presiding judge, the court executive Mr. June, the CFO, as well as AOC staff, Chad, Mary Roberts. These were all good faith conversations. Again, with a single goal of trying to find the pathway to find a way forward for the San Francisco Court, to try to avoid the difficulties that the civil justice system was going to be faced with.

You can see on Page 7 are all of the elements that resulted in the

discussions between the Court and -- and the AOC to, again, find an option or other options that would be available to be able to close the 6-plus million dollars gap that the court had identified as the problem in the current year.

I would say as Zlatko mentioned in the beginning of his presentation that the problem was really presented in the letter from Judge fine Stein to the council as a 3-year problem. With the problem getting worse next year and then not quite as bad the following year. And it was -- so it was presented as a three-year problem.

The element of the agreement that describes efforts, ongoing efforts to continue to identify restoration and additional fees and those kinds of things were very important, I think, to the presiding Judge and the Court in terms of being willing to discuss a current year solution rather than a three-year solution. That was a major issue for the -- for the Court to -- to identify.

With regard to the -- the agreement itself, what is before you today is the first bullet of the agreement, which is the allocation of 2 and a half million dollars in urgent needs from the improvement fund reserve.

I do support that. It is what we discussed with the Court in terms of what we would bring to the council as an option or an alternative. Along with -- Court's use of all of their available resources to again, be able to at least reduce the impact of the budget -- the budget problems to the -- to the Court.

I will say again, as justice Miller did, this is not a -- I did not sign a -- sign a binding agreement that bound the council. And I want to make that clear in the discussions that I had with the Court; it was, you know, whatever we can agree to between the Court and the AOC, we will bring to the council for consideration as an option to, again, avoid the drastic reductions that were being -- being discussed.

I'll also say, just in terms of the options, that, again, I support the allocation of the 2 and a half million; the other criteria that are listed there are options for the council that I -- that I think are appropriate for consideration. As you are accountable for the funds that you're about to allocate, if you do; and requiring reporting and some level of plan seems appropriate. It is not a part of the agreement that I signed; it is something for you to decide. And again, I support the recommendation on the emergency fund allocation as we --

as we discussed.

With regard to provision 7 of the options that are presented under option 1, Mr. Concern ni is right, I -- you know, whether there is a requirement for pay-back of some or all of the 2 and a half million dollars after a 3-year period is something for you to consider.

It seems to me that given that this was a -- presented as a 3-year problem, and this 2 and a half million dollars is suggested to offset the problem to try to get through these difficult times, that reviewing that in three years -- or at 14, 15, would make sense rather than doing it annually between now and then. And again, that's a question for you if -- if you want to consider the requirement of paying back all or some of the money at some point in the future or not.

And again, to Judge Wesley's comment about precedent, that was a requirement of the -- Glen and Placer courts. And those emergency funds were paid back.

I'll tell you directly that was not a part of the conversation that I had with the Court. So I know they have some concerns about that provision at all. And you will not see it in the -- in the agreement. It was not discussed. So that's an option for you as a part of your oversight and responsibility and allocating the funds. Whether that's something that you'd like to consider or not.

I'll be happy to answer any questions that anyone has.

>> CHAIR CANTIL-SAKAUYE: I don't see any questions at this time, Ron. But I'd ask at this point, then, Mr. --

>> I had a question. In the case of Placer, were there restricts on the use of the court's fund balances and reserve funds?

>> The Court was being managed by the administrative director of the courts through Jody Patel, so it was directly managed.

>>> So that's how it was handled. Any other situation where there were restrictions of this type?

>> I don't recall in the history other than those two courts. Okay.

>> CHAIR CANTIL-SAKAUYE: Thank you. Any other comments or questions?

If not, I'd ask Mr. Yuen on behalf of San Francisco superior court, who wishes to say a few words.

>> T. MICHAEL YUEN: Good morning, council, I want to thank you for the opportunity to address you today in support of the agreement that was reached by the -- for 2 and a half million dollars in emergency

funding to help with our budget crisis. I want to first express my gratitude to justice Miller and E and P for taking this issue up. And also to Mr. Ronald Overholt, and Mr. Chang for the hard work that they've done in bringing this item before you and getting the report ready.

I must express, however, my extreme dismay over the fact that the properly executed agreement, which was signed on August 30th, tweefrn by incoming director Ronald Overholt and by me the following day on August 21st, 2011, incredulously has not been provided to the council for your consideration. The agreement as was indicated by Mr. OverHolt, was executed after substantial negotiation and in good faith.

>> CHAIR CANTIL-SAKAUYE: We have it.

>> Allow me -- allow me to clarify what my statements are. Thank you for that, though. Let me -- let me carry on and indulge me for a few more seconds.

It was our understanding that the judicial council had given Mr. OverHolt the authority to negotiate on your behalf.

In light of this delegated duty, it is outrageous that this agreement was not presented to you as executed by both parties. Mr. OverHolt expressly told me that the agreement would be provided to the Judicial Council today on September 9th for your consideration and approval. And more than 100 employees at my court who have received layoff notices are eagerly awaiting today's discussions based on an expectation that there would be legitimate consideration of the merits of the signed agreement.

Instead frankly what we have here is a sheer raid. And it is -- it is frankly an embarrassment not only for the council but for the incoming interim director of the AOC. My question to you is this: Does Mr. OverHolt have the authority from the Judicial Council represented to the Court during these good faith discussions?

And if so, why is it that the agreement remains cloaked in darkness in favor of last minute options that are before you in your r report, that have neither been discussed or agreed upon by the court that it it affects. Justice Miller stated that the agreement is before you. And several of you have just indicated to me that it is. And you're right, a version is before you. But to shed light on the legitimate outcomes of the negotiations that took place, allow me to

pass around for each of you a copy of the original signed agreement for your consideration and anticipated approval.

Just a few moments from now.

This copy of the original signed agreement is making its way around the room, once you see it, it should be clear to you now that the attachment F of the report is a doctored version of a fully executed agreement.

It's a doctored version that was never presented to the presiding Judge Kathryn Feinstein or to me. I knew about it, but I never saw it. In fact, the 47-page report that it was attached to was posted publicly and provided to the news media less than 48 hours before today's meeting. The Court, sadly, was not given courtesy of advanced review of this document. Or, frankly, the content of the report. Which includes so-called option 1, in complete contravention to our fully executed deal.

The recommendations to the Judicial Council which were made by Mr. Overholt and members of the executive and planning committee were derived from whole cloth which sadly demonstrated that the Judicial Council negotiated in bad faith through its emissary. This conduct is shameful and it is unbecoming of any representatives from the world's largest court system let alone from the incoming interim director. Unfortunately representations and promises made by the AOC are apparently as meaningless as an official signature from the AOC. And unfortunately for us, the San Francisco superior court, this is a damaging pattern that we have now fallen prey to twice in less than a year and a half.

As you know, 16 months ago my court was poised to issue 122 layoffs, and close around 16 courtrooms to deal with last year's budget cuts. We did not move forward with those layoffs and closures because the AOC feared it would unravel a deal with the legislature. And on the very day that our layoff notices were going to be issued, they were already stuffed in envelopes and ready to go, the AOC pleaded for us to not down size and instead hope that the future improves.

While respectfully, council member tsz, here we are, and we know know that the future has not gotten better, it has not improved, it has only gotten worse. Had we moved forward with our reduction plan 16 months ago none of us would be here today discussing this issue. Because those layoffs would have staved the court 15 million dollars, which

would have solved our 6.2 million dollars deficit.

The original signed agreement provided 2 and a half million dollars in emergency funds to reduce civil courtroom closures from 25 up to 14, and reduce layoffs from 177 employees to 75 employees. However, the AOC, the joint AOC and E and P report recommends so-called option 1, which would impose conditions on the Court that we find totally unacceptable and frankly, insulting. For example, option 1 in -- a level of alarming uncertainty over the amount of emergency funds the Court could receive to mitigate reductions in staff and access to justice in San Francisco.

Option 1 indicates that the JCCA may could designate some, quote, other amount instead of 2 and a half million dollars, a condition which would interfere with our efforts to solve a 6.2 million dollars deficit.

We cannot responsibly plan when we don't know how much money we have to address our shortfall.

Further more, let me make clear that I cannot and I will not subject my employees anymore to a yo-yo effect caused by this prolonged uncertainties as to whether the AOC and Judicial Council will have the will and demonstrate the commitment to help trial courts like us keep our doors open and our staff employed.

While the report focuses solely on the Court's request on the full budget as Mr. Overholt mentioned for 2.5 million dollars in emergency funds and the conditions that it would attach to those funds, the agreement we reached with the AOC also contained other significant provisions, five others that are not mentioned in the report. For example, the Court agreed to accept a \$650,000 from the AAC to partially fund two complex litigation departments scheduled to close on on the 3rd. It's not mentioned at all in the report.

In addition, the agreement included a significant provision that could help not only San Francisco but all trial courts throughout the state seeking funding solutions to overcome persistent budget cuts that are jeopardizing access to justice and the careers of hundreds of dedicated court professionals. The agreement pledged the council to work to advocate for legislation that would allow any -- trial court to generate and retain certain new revenues. This commitment was made not merely to San Francisco but to every trial court throughout the state that may have innovative ideas for bringing revenue into courts

resulting from services of special value to its citizenry and to its attorneys. That significant provision is also entirely ignored in option 1 before you.

Forgive myosin sichl, but it may be my belief that this provision is one of the main reasons why the agreement in its original form never made it across your desk.

We heard earlier that PCLC already rejected this concept. And to some degree I respect the notion that one can walk into a courthou San Diego and pay the same amount as one in Modak. But when courts are about to close under this model, something is wrong. The thought of trial courts achieving financial independence from the AOC is apparently a scenario too radical to consider, let alone support by and theively seeking the passage of such legislation. The time has come and the momentum is building. Within the branch for such critically needed outside the box thinking. With or without the support of the judicial council and the AOC. In fact I hope you recognize that the breach of trust on display here today actually fuelling the seeds of decent and the urgent requests of reforms from the within the branch. Instead of working together as one branch to seek solutions, to state budget cuts that threaten our auto my and duty as to third branch of government in California, the Judicial Council and the AOC steam to prefer thwarting creative and viable solutions at the state and County levels. It appears that the council and the AOC value your unfettered autonomy and control over the actual delivery of broad access to justice for its state's citizenry.

Let me be clear, I will not allow my cart to is you is you come to unnecessary micromanagement of our financial affairs. The 7 conditions outlined in the report before you simply amount to unwelcome, insulting infringement on the local authority of the San Francisco superior court. Frankly speaking, all we do at the court -- and Judge pines, you himmed at this already -- all we do at this court, and for the sake of the branch as a whole, I hope that all that other courts do, is to use their fund toss carry out our constitutional obligations. What else would we do with them?

More importantly, the concepts -- the conditions that are presented to you are in direct conflict with rules 10.603 and 10.610 of the California rules of court, which this very body has ratified.

I have already made clear that any emergency funding received will be

used to keep courtrooms open. In fact that was in the presentation from AOC staff.

I have already committed to improving collections practices and to continue cost-saving measures. You can count on the integrity implicit in my signature. There are some who may try to persuade you that San Francisco is in need of micromanaging because we are a mismanaged court. I definitely take anyone's -- I shall issue with anyone's claim that we are mismanaged. A mismanaged organization does not go from \$280,000 in reserves to having almost 5 million dollars in reserves in 12 months. As we have said for efrl months, the Court needs to maintain these reserves to manage a 3-year cumulative deficit of 20.4 million dollars. But let me also explain the oir reasons why a reserve are necessary. There are an assortment of self proclaimed court budget experts who neither work in the branch Normanage a court but often comment publicly and their public comments imply that reserves need to be spent. Let me say this: They are dismally misinformed about how courts rely on fund balances to manage our expenses. We are not a state executive branch agency. And as such when we make payment, we don't have the backing of the entire state treasury. The reserves, our local court reserves, serve as our treasury. And due to persistent cash flow issues they are used to keep programs and services going. Venders, including venders that include court appointed attorneys, security and janitorial providers, and jurors, are paid from our reserves before we receive either rebem burstment from the AOC or a al occasion from the AOC. People seeking access to justice deserve clean and secure courthouses. People who work in courthouses deserve safe and clean working conditions.

More importantly, litigants who need dependency counsel deserve attorneys who practice at a very high level without concern and worry over whether or not they will be paid.

And we seek to avoid delaying payment to jurors for their service just because there are shortage of funds. What type of jury service would that be?

These impacts are real. And I for one know that because when we made the policy decision a year and a half ago to bring other reserves down to only \$280,000, we were actually forced to delay payments to venders. Including all of the folks that I just mentioned.

In one case -- and this was certainly not right -- but in one case we



delayed a payment, a multi million dollars payment to a vender for over nine months.

It is not a way to do business in good faith. And I am committed to making sure that it does not happen again. And that is why we serves cannot be spebt down to the bone. Two weeks ago in this very room and setting Mr. OverHolt made it known to all of you and to the entire world listening and watching that an offer was made to San Francisco. In fact some of you even expanded on this during your meeting. And it was made very clear to us in the meeting that the ball was in our court.

Well, we reached an agreement with Mr. OverHolt. I signed the agreement as the San Francisco superior court's principal. And I assumed that Mr. OverHolt signed as the council's principal. The bottom line is the San Francisco superior courts needs budgetary relief in the short term and funding assurances in the long term.

Some may say we have become a rogue court. And others may say we are doing more harm to the branch than good. I say if it's a result of me fighting for job the as my court and access to justice in San Francisco, you can call me whatever you'd like. Respectfully, we have bet on the Judicial Council and the AOC before; most recently 16 months ago we bet on the Judicial Council and the AOC. And those bets have failed us. The challenge for the council and the AOC now is to find 300 million dollars -- these are your number, not mine -- 300 million dollars in trial court funding solutions next year.

Unfortunately, and respectfully, it is not a bet I'm willing to make. And I certainly will not make it if it means the Judicial Council and the AOC will be micromanaging my court. I have the very significant concern that the council and the AOC have brought us here today to make an example of our court so as to stifle future decent from courts across the state. However, any judicial entity that does not listen to opposing view points is frankly not judicial at all. This body could easily live up to the conditions of the agreement signed by Mr. OverHolt and myself. In fact, such actions have been done before by the administrative director. The disbursement of the requested 2 and a half million dollars is very, very small in the amount of funds available to you. It is long overdue for the council and the AOC to live up to your commitment to serving the courts.

For the sake of the 485 employees at the San Francisco superior

court, the 14,000 lawyers who are based in San Francisco and practice daily in San Francisco, and more importantly, the 805,000 resident who is reside in San Francisco and deserve a local judicial branch of government and access to justice, I can only hope that you today, the Judicial Council, will do the right thing and withdraw the financing option 1 before you, which was presented less than 48 hours ago. P vp we stand ready to resume immediate good faith communications based on the agreement reached with the Judicial Council's negotiator and I. And I'm happy to answer any questions and thank you for your time.

>> CHAIR CANTIL-SAKAUYE: Justice --

>> Yes. Mr. Yuen, I want to make sure I understand two things.

First of all I take your statement as being a statement of the official San Francisco superior court, is that correct?

>> That's correct.

>> I want to make sure I understand that. If the Judicial Council votes in favor of option 1 and the conditions there, is it the Court's position that you will not accept the money from council?

>> I think that's a fair question. But I would like to turn that into a greater policy question as to whether or not you, the council, believe that that is an amendment to rules of court that you have already passed that specifically state that the authority to manage a local trial court rests with the presiding judge and the court executive officer.

>> I don't think that answers the question I put to you. Will San Francisco superior not take the money if these conditions are imposed?

>> We will have to evaluate and consider it. If that's the action you take today. And we hope that you give us the courtesy of the time to do that, considering that we've only had less than 48 hour toss review these options. And we will get back to you on that.

>> The answer, thern, is maybe.

>> The answer is possibly. I can tell you right now that if they are word for word, the conditions -- the 7 conditions that are listed in option 1, it more resoundingly a likely no, than yes.

>> Very well. Thank you.

>> CHAIR CANTIL-SAKAUYE: Thank you.

>> Chief, if I could -- just -- just to point out, if you haven't noticed already, the agreement that Mr. Yuen passed out, which was the

original agreement and the agreement that's in your packet that has the technical changes of striking administrative office of the courts and inserting more appropriately from a technical perspective trial court improvement fund, since that's where these emergency funds are from, and then striking the 650,000 and inserting 645960 from the administration -- the administrative receive is I of modernization fund, those are the technical adjustments that were made. And I had called Mr. Yuen and left a message that I would like to make these changes with his agreement. And the word I got back was he had no issue with that.

So those were the only changes. So any characterization that this was not the original agreement or it's not in terms of the technical changes that were there, but that's all.

>> CHAIR CANTIL-SAKAUYE: And I'm looking at attachment F in our packet, that is the same document passed out by Mr. Yuen with some cross-outs that you have just mentioned. Is that it?

>> Yes. That's it.

>> If I can add, chief, there's also additional language that has been inserted at the top. And response to Mr. Overholt and respectfully -- the representation he makes is absolutely correct. I did get a phone call on Wednesday morning and I did call Mr. Overholt's secretary back and stated to her that I was fine with those technical changes. I did not know about the sentence going at the top of this.

>> CHAIR CANTIL-SAKAUYE: Are you referring to the sentence that says AOC and courts agree that AOC will present the following to the Judicial Council for its consideration?

>> That is correct. Can't that's the one that you did not know about?

>> That's the one I didn't know about. But further more I think Mr. Overholt was doing the right thing in having lines for initials. And I think you will see my initials are missing because unfortunately I was never presented this particular document until I saw it in the posting to the meeting agenda.

>> CHAIR CANTIL-SAKAUYE: Thank you. Judge Kaufman?

>> I have a lot of questions. I want to make it very -- simple question first and I can come back later. I've read your press release. That's your press release, isn't it?

>> That's correct.

>> Second one, the agreement, which was struck after negotiations that began late last week and continued over the weekend must be approved by the Judicial Council at special meeting on September 9th, tweefrn.

So when you made this agreement, you knew that the Judicial Council had to approve it, is that correct?

>> That's correct. And I'm not disputing that Judge Kaufman.

>> You just said before that you bargained in good faith and you thought you had an agreement. But you knew this agreement had to be approved by the Judicial Council, did it not?

>> You're absolutely correct. What I'm saying, Judge Kaufman, if you'll allow me is that the options before you are not ratification of the agreement but rather ratification of one point of the agreement.

>> CHAIR CANTIL-SAKAUYE: Judge Rosenberg and then justice Miller.

>> Yeah. As you know, I'm the incoming chair of the trial court presiding judges advisory committee.

I think what Mr. Yuen is concerned about -- correct me if I'm wrong -- are the 7 requirements that are included. It's not so much 9 technical word here, word there, in the agreement, but the seven requirements that are listed as part of option 1.

Let me say a couple of things. First of all, I do support San Francisco's ability to obtain the funds that were negotiated between the AOC and San Francisco. And frankly, I recommend that the council approve the agreement without the necessity of the requirements that are laid out on pages 2 through 4. I think the agreement says what the money will be used for. And that should be sufficient without the other requirements which apparently -- apparently were not discussed between San Francisco and the AOC.

I would only raise a word of caution and realism: There are only 9.8 million dollars in the urgent needs reserve, and I expect that that amount will be about the same next year and then the year after. So we're not talking about a lot of money.

There are 58 trial courts. And I suspect that many of them are in the position or will be soon in the position of layoffs, mandatory furloughs, reduced hours and court closures. And if the economic situation in Sacramento and California continues, I suspect 50 or more of the trial courts will be in that position by next year.

So I just raise that bit of reality.

>> CHAIR CANTIL-SAKAUYE: Justice Miller?

>> HON. DOUGLAS MILLER: Well, I guess I'm just somewhat confused. Because I thought when you handed out this document that it was going to indicate something significantly untoward had occurred. And I thought that's what you were trying to say. And now it sounds like in some regards you're not.

I tried to stress as much as I could that these were not recommendations. Staff didn't prepare it. It -- they were not recommendations. They were just discussion points so that we could have the opportunity to consider all of the aspects of this agreement. As -- as the judge just indicated, this is a significant percent of this particular fund. We have to manage the entire fund. We already have other courts coming to us that are asking for money.

And we don't even have the criteria yet. I felt like by setting this meeting now rather than telling you come back in October at the end of on the, that we were in essence doing you a favor. And quite frankly, I don't appreciate the lecture that we received. Because I think we're here and have been here trying to help you. Trying to provide a way to make sure that you keep your courts open. There are many, many discussions that all of us have had on the different options available to us since we decided to put this meeting on at such quick notice. And to be accused of in essence trying to go back on the deal, it had nothing to do with that. We wanted to make sure you got the money. We wanted to make sure you kept your courts open. We wanted to make sure that there's money for everyone else in the state to do the same thing. And to make it sound like you have, that somehow we're committing a crime or we're doing something that is evil, I find offensive.

I mean, we're only here to help. That's all we're here for. And again, all of us have been talking for days and days about this to try to come up with a way to make sure that there's money for you and all of the other courts.

And I don't blame you for not wanting to be micromanaged. I don't want to be micromanaged either. But they were options, they were discussion points. They were things that we wanted to make sure that we considered so that when we send this message out to all the other courts, they know what the ground rules were.

I didn't particularly want to set this meeting this early, because I

felt like we needed criteria. We're judges. We need to make fair decisions, we need to make decisions based on precedents. And we don't need that. But there was an urgent need. You asked for it to be done this quickly. And we accommodated you. And I think you should have come here and said let's figure something out, let's try to work this out. But in essence you have thrown it on us and made us defensive. So I want to work this out. I almost feel like we shouldn't have any more discussion about some of the things that you said.

Let's figure it out. Because we want to keep your courts open.

I stood out in the hallway with two attorneys that I respect -- they just want to go to work and take their clients to your courts.

All we want to do is make sure that there's family law, juvenile, all those people. You had this one clerk talk about family law. I

understand that. I was in the trial court for 11 years. I saw what goes on there. It is so important for those people. Because most of them don't have attorneys.

We just want to make sure they have a place to go.

So I apologize. I got exercised.

But you got exercised too. And I think that's what we're here for.

And I think we need to put behind us all of the -- all of the comments that have been made by others about these concerns and the branch that we're not trying to do that. And people want to tear the Judicial Council down. We're here to help. Please, please let us do that without all of the ah moan any that you talked about.

The council wants to do this.

They want to figure it out but they've got to do it in a way that's protective of the entire branch. So I'm sorry.

>> No, and I appreciate that Justice Miller. Frankly speaking that's music to my ears. And unfortunately I did not hear that until just now.

Perhaps if I had heard that earlier, that these options and perhaps if I had received an advance copy of this before it was publicized publicly, perhaps something could have been worked out. I think it's unfortunate that that dialogue did not occur.

>> And I think that's a lesson that we need to take. Council really been trying in the past few months -- you've heard it, we have public meetings, we have public comment. We're talking about

incredible changes to how we're going to govern ourselves. And to do it in a better way.

I take that as a lesson. That he we should have been more communicative and we should have talked more. And that's a legitimate concern I have and it's a legitimate concern you have. And maybe we should have just picked up 9 phone.

>> And --

>> We did it on -- -- we've been working every day for hours trying to get this all together. I apologize if the report didn't say clearly was options. I thought it did. And that's why in my opening remarks I wasn't going to talk in the opening, but I wanted to make clear, these were options. Nobody recommended this. Staff didn't tell us what to put in there.

And if we left something out about the 650, I apologize. I think we just thought that was assumed that you would keep the complex courts open and we'd provide that.

>> And I appreciate that. I do, as I stated earlier, I do thank you for the work that you have done. I understand that this was done, you know, very quickly. And that you had to jump through a lot of hoops to get this meeting set. And not only this meeting, but that your prior E and P meetings as well.

And I really appreciate that. Because our layoffs happen on October 3rd. So I appreciate you doing that here.

I think we share a common goal. And the common goal is not only making sure that the attorneys in San Francisco are employed, but I would hope that your common goal that you share with me is to make sure that as many of the 177 employees that have received pink slips at the San Francisco superior court remain employed as well.

>> I appreciate your clerk's coming here. To me that's pretty carry to come before the judicial council in this particular setting and speak. But I appreciate that they come. Because that's the real world aspect. It's the people that work at the courts down at the first level and the -- that are coming. I would just like to put all that other stuff behind us and just work together to come up with something that we can all agree on.

>> CHAIR CANTIL-SAKAUYE: Judge Su?

>> No one wants to micromanage the San Francisco superior court. As the former judge -- presiding judge of San Diego I wouldn't want

anybody managing my court. But at the same time I think the city has the obligation if it's going to allocate this money to know what it's going to be used for. For example, if this 2 and a half million dollars roughly is allocated to the San Francisco court, are juvenile courts going to remain open, are family courts going to remain open? Are civil courts going to remain open? I understand with the budget difficulties service may be diminished. But I think our concern is that there's a place for these people to go and we'll limp along until the budget changes.

>> So I think what's going on here is there's a communication issue. And this is perhaps why I was under the impression that you had not seen the agreement. I thought we had made it pretty clear in the agreement and that I signed that 11 courtrooms will remain open.

>> But what are they going to do?

I mean, I understand 11 courtrooms are going to remain open from that agreement. But what are they going to do?

Are you still going to have a juvenile calendar, a small claims calendar?

Can you tell us what it is that this 2 and a half million dollars is going to be used for?

>> We're going to have is -- specifically the 11 courtrooms that will remain open are civil courtrooms. Let me clarify, though, I don't want there to be any impression that we were eliminating juvenile, family or small claims calendars. We absolutely were not. Were we down-sizing and consolidating some?

Absolutely. But the calendars existed. We did not outright eliminate juvenile dependency, delinquency, small claims. We understand our constitutional obligations and we're keeping those courtrooms open. And it was always our intent even with down-sizing to keep those type of courtrooms open.

>> Let me see if I understand what your plan was. Your plan was to grow your fund balance, absent any further allocation, your plan was to grow your fund balance and close your civil courtrooms.

>> No. And I think that's where the -- the communications hurdle is at the highest: I don't know why it is that there is an impression that the San Francisco superior court is trying to grow our fund balance. What we're doing is looking at a budget solution in a way that is not conventional for government, I know. But it's a way that



ensures long term sustainability of the San Francisco superior court. And that is we want to make sure that what we have by the end of year 3 covers all of our deficits for years 1, 2, and 3. If you look on the report, actually, you can see Mr. Zlatko Theodorovic and Mr. Chang did an excellent job illustrating that with the three year plans that they inserted in here. Granted that this information came from the San Francisco superior court and our planning, but Mr. Zlatko Theodorovic and Mr. Chang clearly get it, they understand it and they will sterilized it well in the various tables of the report.

>> But I thought that if you closed your civil courtrooms at the end of this fiscal year, you are -- your fund balance would grow to how much?

How many -- 11.85 million dollars?

>> Let me tell you why we're doing that. I'm not going to pass this out. I know you're familiar with this. This is the document that Steven Nash -- these are insure numbers. Trial court funding reduction analysis. Four fiscal years.

This is what we plan on. And what we do is we look at the bottom line of cuts for the next three years. And we take close to 3 and a half percent of that because that's what we are of the overall state's allocation. And that's how we get our deficit. That deficit is what we use our fund balance to address. So if we are to wreck Leslie spend down our fund balances, not only do we not have the cash on hand to be able to make payments to vendors and employees, we don't have any solutions for the future. And we constantly every year are yo-yoing our staff on a layoff or no layoff model.

>> But it's your choice to grow -- it would be your choice to grow your fund balance from 4 million dollars to 11 million dollars, is that correct?

>> Judge -- respectfully I will not be agreeing to anything that says we're growing our fund balance. Are we using our fund balance to get through the numbers articulated by your staff? Absolutely. It is what we're doing.

>> It increases to 11 million dollars, am I correct?

>> It increases to 11 million dollars at the end of this fiscal year. At the end of the third fiscal year it does not.

>> CHAIR CANTIL-SAKAUYE: Judge Wesley.

>> I for one congratulate San Francisco on having a three year plan.

I think we all should have a 3-year plan. And we are doing the same thing in Los Angeles. Let there be no doubt that we're trying to use our fund balance as bridge financing to get to our third year. If you look at the plan in our materials, they end up with no fund balance practically 1.88 million dollars in 13-14, with 192 staff layoff.

That's if they can get that far.

So I congratulate you on having a plan.

Let me just say this: I think that Judge Rosenberg raised a good point. That is that this emergency funding is very small. There's not a lot of money there. The truth is that this judicial council, places San Francisco and other courts like San Francisco in the place they are today. The legislature gave this council the authority when we were cut the extra 150 million dollars to fill that entire amount from any source.

I raised it at the council. They could have found 82 million dollars that were still left on the table. That money still exists in construction funds and CCMS. If that money had been distributed, courts wouldn't have to come begging to the Judicial Council to keep their courts open. The chief deputy director signed an agreement with the CEO and presiding judge of San Francisco. In that agreement I believe he had the authority of the chief justice. Or he wouldn't have been negotiating.

That agreement did not require Judicial Council oversight and contained none of the conditions contained in the options which are options as -- as justice Miller said. Therefore I move to approve the original agreement the way it was offered. With no conditions added. To honor the offer made and accepted in good faith by the San Francisco presiding judge and the CEO. On behalf of the chief justice and the chief deputy director. And that the money be delivered no later than -- that's my motion.

>> CHAIR CANTIL-SAKAUYE: Let's be clear. Before the Judicial Council meeting, after many meetings between San Francisco and the AOC, I mentioned to the AOC to Ron and Bill that since we hadn't heard of a concrete solution that they should put together based on all of their meetings some kind of solution here. And that was done. This is not a negotiation, this is a solution, a way we can meet of the minds to find a way to get through this year. Three-year plan is ideal. No doubt. Realistic?

Not. In this fiscal environment. And every day that I go to the legislature. And Curt goes to the legislature and Bill and Ron go to the legislature.

So the offer or the solution was to find something we can do for this year.

And it was a -- based on accumulation of a meetings that had been occurring between the AOC and San Francisco that for some reasons was reported in the paper because the AOC appeared to be doing nothing. That was the report in the paper. AOC was responding to nothing and doing nothing. When in fact that was inaccurate. So before the judicial council meeting something was put together. During the Thursday of the business meeting there was discussions and meetings back and forth. But no arrangement or agreement. But all times it was understood -- because of this situation that we're in that this would be something that had to be approved by judicial council. Because the AOC, unlike the fiction out there does not run council. AOC does not define council. AOC doesn't make the decision and then council ratifies. This is a prime example of that truism in effect. And that is that the AOC -- because that is their job to try to help and talk with the Courts -- because we certainly couldn't do it in any expeditious fashion as a branch or as a council -- Ron did that. To make those negotiations and to talk that through. And there were many discussions. Resulting in this. Was this what everyone envisioned? I doubt it. Was it supposed to be an ex-crueltied agreement? No. Could it have been?

I hardly see how it could have been with Judicial Council having to approve this. And the basis for that approval is in my view, this improvement money belongs to all 58 courts. And all courts have done the best they can under the harshest of circumstances to operationalize cuts. But because of the state economy, because of the cuts and the lack of restoration, everyone is struggling. And this money belongs to all

>> each court heard the same message.

that message was clear.

I am a bit distressed that we are in the position.

I am at a loss of how San Francisco has come to this position.

I am wondering what they are doing when they came up with their plan to lay off 122 people. Our courts have been working on cuts since 2008. It was made clear, we need to address the

cuts as permanent cuts. I along with the other P.J.'s in the state made tough decisions over the last three and a half years.

many of us had to lay off to keep our budgets. Did we want to do that? Absolutely not. My court is down 25%. Last I saw, San Francisco was 100% of the staff levels. I would have loved to sit back and do nothing, waiting and expecting to get a bailout in the end. I along with others did not do that. It would have been irresponsible to do so. The demand that I have been listening to from San Francisco and the press releases and T.V. time, it's been costic and at times nasty. People have been working very hard to try to come up with a solution, and the rhetoric I have been hearing on the TV and news has not been helpful. To lay blame on the A.O.C. because at one point last year when San Francisco came up with the plan in 2010, I guess, they were asked to forestall the layouts for a while so they could negotiate on behalf of the branch. Until that was completed and to lay blame is lame and doesn't belong. People have been working tirelessly, meeting with the legislators, P.J.'s group has, chief justice George does it, the current chief justice does it. Frankly, to say that we need this commitment, it's insulting. It's absolutely insulting. People have been working hard to get these funds restored. If I had half of the air time that San Francisco used to lay blame on others, just to be publicizing to the public the needs of the branch as posed to their own court, we might be in a different place right now. I challenge the leadership to help the cause, join in the funds for all of the court, not just their own. This is a bailout plain and simple. For a board that thought the cuts would magically disappear, it's hard to swallow. It's hard to deal with the cuts by the legislature. The citizens deserve better. I don't want to punish them for their court's minute managed decisions. The court doesn't meet the criteria under the definition of urgent need that we have right now. This council must look to the effect of this court and what it's done to its citizens to be able to provide justice to those citizens. We have to look to the bigger picture as uncomfortable as it is to me and distressed as I am to be put in this position. I think we have to be very careful in making sure. I would love for my court to line up. Two and a half million dollars would have prevented layoffs I would have had as a judge. I am distressed by the presentation today as to -- you know, demanding these funds when really the situation here, nobody should be demanding anything.

>> Justice Miller and judge Kaufman and Kim Turner.

>> I want to see if I can make an amendment to your motion. State it to see if you accept it.

>> I don't know what the parliamentary rules are.

>> They can make an amendment, if not, you can make the amendment.

>> Okay, so I would like to propose that an amendment to your motion be that we approve the first five bullet points of the agreement. I don't know if the 650,000 needs to be included because if you keep your courts open, you get it.

>> Is that what was agreed to?

>> 650 was the original amount. 645 was the actual amount that the court's been receiving for

that. I would say, I'm not arguing against that money, but that's part of the mod fund allocation, not part of an urgent need allocation, just so you know what you are doing.

>> Can I ask the question?

>> Didn't we already approve the allocation at our July meeting?

>> Yes.

>> So it doesn't need to be part of this approval.

>> It's in there. I don't have a problem keeping it in. This is in there because the court was going to refuse the money if they were going to close their complex court. Can I clarify that Mr. Overhalt and I had this discussion when we were talking about this. I made it clear to him, I don't know why you are including this in there when every year you offer it and we have not done that yet, so I understand where you are and that's fine. If he wants to put the statement in here, it should be in the report as well.

>> To avoid confusion, my motion or amendment would be to add the first five bullet points. I think --

>> A little change on the one --

>> I'm going to get to that.

>> If you look at the option number one on page number two, I think there needs to be some statement -- maybe we can work on the particular language that we are providing the money to the court. They are going to keep the courts open to provide the services. I think you have committed to that. I think it's important that you have the authority under 3C to have the discretion to spend down the fund balance below what's required. If you have significant needs, I think we should provide that to you. That was one of the options. I think option five is important that there be some type of report back at the end of the year with regard to the use of that money. I think that's important for the recordkeeping of that. With regard to the last bullet point on the agreement, I would like to change it from administrative office of the courts to judicial council including but not limited to budget restorations, review of statewide fees, period. That's all it would be. It wouldn't include the additional amount because we have already dealt with that.

>> I don't consider that a friendly amendment. I would like my motion to stand as it was. That changes my motion. My motion was no conditions at all.

>> Can I make a substitute motion or how does that work?

>> You may.

>> I would like to make a substitute motion for the items I indicated. Sure, I can repeat them. If you look at the agreement, it's the first five bullet points with the amount --

>> Which agreement is it? Is it attachment f?

>> It would be the first five bullet points to attachment F and judicial council advocates for revenue solutions including but not limited to statewide fees and that we'll all work together in that regard. I don't know that it needs to be part of it, but I think we should include it because

it's in the agreement. Then, to find my notes, you would add the language in option one which states the purpose of the 2.5 million allocation. You would adopt 3C which gives them discretion --

>> Wait, wait. It wouldn't be that exact language.

>> We can talk about language.

>> 3C, they have the authority to spend down their fund balance. Number five, that they provide a report at June 30, 2012.

>> That's my motion.

>> The first option?

>> Option number one?

>> Yes, how does it differ? I'm trying to understand what you are trying to add to that. We have an agreement that they are going to utilize the money to keep the courts open to provide all of the services that the court provides, small claims, juvenile, probate. And they have committed to that. We had a second.

>> We had a second from judge waters. I realize there are two competing motions. I would like to hear from judge Kaufman.

>> Two things. One directed at justice Miller. Your motion says we give San Francisco \$2.5 million. I don't have a problem with that. I think we should do that, however, it's with no strings attached. What concerns me, I was on the A & E committee. We saw may 2010 in San Francisco. That was very disturbing. This was a court in distress. Mr. Ewing, to your credit, you have done a great job putting the court back on its feet, but still, this court had problems. It's been six months or less that you have been able to correct these things. I'm concerned about that. I'm concerned about giving you more money based on the last six years of your history. I would give San Francisco \$2.5 million, but there has to be a repayment plan. This is not about San Francisco, but the funds and precedence courts waiting to see what we do. If we give them \$2.5 million, you will see other requests asking for money. There has to be a loan when appropriate, a loan payment. I'm not concerned about what that is, whether we have a three year delay and they pay it over ten years, I don't care, but it can't be a gift. It has to be a loan. Without that proviso, I have a problem.

>> Kim Turner?

>> Thank you. I have learned from my colleagues there are five and possibly more other courts that may be this year in a similar position to the one San Francisco is in now. We know San Joaquin is waiting in the wings. There are other courts possibly that will have similar problems. I am deeply concerned about what we'll say to the courts if we deplete the \$9.8 million if we complete one or two high-profile requests this early in the year. I think the county has the duty to allow other courts to submit requests. We have to look at the criteria and satisfy ourselves that we have updated and modernized the criteria. As we have acknowledged, the criteria today is insufficient for the California courts. It was developed ten years ago. Every court I know

of would meet the criteria today and would line up for deficiency funding. I believe the council would be acting prematurely. 2.5 million today would mean 25% of the available funding would be gone. Furthermore, certainly the employees in San Francisco, the lawyers, the litigants, the public in San Francisco will be very disadvantaged by reductions in San Francisco, but all of the courts have been disadvantaged.

>> A criteria to drive the decision making, it would be premature to take such action today. I believe San Francisco has nearly \$5 million in a fund balance. I would respect that the council ask San Francisco to continue to draw down its fund balance while we do the analysis. While we come back and bring to the council an updated guideline of what the requests will be so we can evaluate all requests from all courts in similar positions. I understand there is a lot of sensitivity about this, but San Francisco has money right now that continues to forestall money decisions that don't need to be made today while we do preparatory work to act as a responsible council in this regard.

>> Myriam had her hand up first.

>> I think we are where we are, and my aim is that as we sit here today to look forward not backward. We have to act responsibly, with the full interest of all of the courts and citizens served throughout the state in mind. It's clear to me that with those interests in mind, it would be untenable to not try to do something to assist San Francisco. I am not hearing disagreement between what justice Miller is saying, judge Wesley is saying, what others have said. I would prefer not to recriminate at this point. This has been a problem in the meeting to hear the degree of recrimination. I think there is a lot happening of late to work forward not backward, to work on behalf of an entire state who needs the services that the court provides. I feel moral obligation given the fact that basic terms of an agreement were reached. I recognize that those were to come to the council, but there is a lot to be learned by the process here that I hope won't repeat itself given the lessons we learned. With all of that in mind, I would like to ask you a question. Justice Miller has proposed modifications. I recognize the process was imperfect. You should have seen the memo. I would have preferred for you to see it, respond in writing. I think any good appellate judge prefers to see the issues meet and have a full discussion. Given where we are in an effort to try to move forward and try to do so responsibly, I am only hearing a few modifications. He's looking to remove a clause from the last bullet. I understand that's a clause you would prefer there. I understand the PCLC position. I would rather not have to decide today, do we agree with you or PCLC. I don't want to have the background noise. He's asking to have that removed, asking for an annual report and as I understand it, a slight modification to the second to last bullet. Those seem modest to me, consistent to what you have said. I would like to ask you, are you comfortable with that? I realize you are being put in a position of being asked to speak on behalf of court leadership. Do you presume your court leadership would be comfortable with that?

>> It's something I will have to discuss with judge Feinstein as preside be judge. She apologizes

for not being here today. She's sick, basically. We can have the discussion and get back to the council.

>> Given how modest the changes are, what in it do you think potentially might trouble your presiding judge? I hear small differences. Again, I understand she's not here and you have to speak for her. I would like to have a bit of an understanding if there is anything in it. She saw the options before you walking in today and must have guided you in the troubling options. I found it troubling as well because you had the incentive to send down your reserves. That's a sort of use or lose incentive. I know you came in with what in the options troubled her. Given what you heard from justice Miller, is there anything in it --

>> I'm happy to hear that someone on the council understands that condition seven is a disincentive to trial court management, which is something I have been saying for the last 40 hours or so. I can tell you this, this is probably the most clear saying that my presiding judge has said to me about the conditions and option one before you is that if all conditions under option one were lifted, and the bullets of the agreement itself was inserted, she would have no issue. I don't know if there is room for movement, but it's something I can talk to her further about.

>> Edith?

>> I have been troubled by the entire process because of the fact that each of the courts of our state are facing terrible problems over the next three years, not just San Francisco, and I think that it's our responsibility to evaluate the real situation in those courts and make responsible decisions as to where the limited funds are best spent on a basis other than which of the courts is making the loudest noise and which of the courts is threatening to close the most doors. Without taking a really good look at what needs to be happening as far as court closiers or not. I was troubled because starting out of curiosity and fascination, I spent time doing math on the table on page nine of the report that we got. If you look on that table at the top of the page, and you look at compensation per filled position, the fifth line down, between fiscal year 2010-2011 and 2011-2012 on the amount of budgeted position, it goes up significantly. If you multiply it by the number of positions proposed, that's a \$4 million increase. If you look at the budgeted compensation per filled position, comparison between '07-'08 and '11 '12, that's a \$14 million increase. There are reasons there are higher budgeted amounts per filled position in San Francisco as opposed to many other places in the state, there are breathtaking differences here when you look at the statewide average compensation per filled position at \$97,659 I am now looking at 11-12 fiscal year, \$137,000.469 in San Francisco, again taking the differential and multiplying it out, it's \$19 million. There may be a lot of explanations for all of this that I don't know that are completely legitimate and completely understandable. I obviously wasn't involved in how this all came up and was created, but as a member of a body asked to make an emergency allocation because of the crisis in a court that has to close its doors, I would like to know what efforts have been made to address that discrepancy and those areas and whether there is an explanation that I don't know -- obviously, if you didn't have those differentials, the



numbers we would be talking about would not be the numbers we are now talking about. I want to point out to the fact that over the past four years, we have reduced our positions. I implemented a policy that we eliminate vacancies and don't keep them as occupied positions. It's gone. You better make a good justification to me if you want it back. Just for clarification, in response to the statements about us being mismanaged, if it's a result of seeing the audit, let me ask you what in the audit leads you to think we are mismanaged. As an institution, the court may have done things we should not have done previously, and I don't have regrets. I take full responsibility for that. I have been on the job for about a year. Judge Kaufman, thank you for making sure that is known. As stated in June, I am correcting the problems. Mismanaged? No. Vacancies, yes. We are doing things. The letter sent to you laid out in bold precipitate the things we have done. I want to state that in response to miss Turner, our point on your \$5 million reserves, the only thing I can say, money on paper is not the same as in cash. 300,000 to \$400,000 is restricted, special funds. Almost half of the remaining balance is receivables, not cash yet, which leaves us with slightly over \$2 million. Guess how much we need to make payroll to staff? \$2 million. That's a revolving fund that if we bring down to zero, I have no money to pay my staff. My staff deserves better. I want to articulate a couple of things. You are right that the cost of budgeted position has gone up at my court. Most of the increase is in filled position for benefits. A budget is always two sides of the picture, right? The expenditure side and revenue side. This is obviously the expenditure side. On the revenue side, you have to know and staff will know this, there has been passed through funding to cover the cost of benefits and frankly, these are uncontrollable costs to us. This is mostly our retirement. Our retirement costs went up 18% from last year to this year. One thing perhaps not mismanaged before pension tax was the sexy thing to do, San Francisco already did it. The employee pays all of it and most public entities right now, the employer picks up the first 6 to 8%. We don't pick up any percent. The entire employee contribution is funded by them. Still our retirement costs have escalated. I want to say also, your question as a benefit of technology that we have now, judge Feinstein has e-mailed. She's listening in on her sick bed, is okay with the changes proposed.

>> Judge pine?

>> I don't know if you have been listening to the last council meetings or not, but I have been a supporter of San Francisco eels needs here and I have been in your corner, yet I was troubled by your opening remarks. I think it's clear that this was not all a charade. I think it's also clear that the agreement presented to us by Mr. Overall was not outrageous, not fraud and represented the final agreement of the parties. I am troubled by your comment when you say there is integrity in your signature when the implication is that there wasn't in Mr. overhaul's. I want to say those comments were out of line and upset me the way you presented things. I have calmed down because I support the effort and there are many reasons we could say no, this is premature, forced on us, lots of things to blame San Francisco for in the way they have

handled things. Some of the public remarks have not been productive or constructive, but in the end, I think we have a responsibility to the legal community in San Francisco to support the courts. I urge the councilmembers to support this motion. In my view, it doesn't constitute a precedence for other matters that come before us. We'll address criteria as needed and we'll have a better process. We are faced with the decision now. I don't think we can just walk out of here as I said before hand, and allow the courts in San Francisco to close.

>> Judge Johnson?

>> I must apologize to you because I thought I was clear when I talked to you. When I hear you are confused as to where the council is coming from, maybe I wasn't clear. I am a superior court judge in the county of San Francisco, so I am also impacted. What I would like to say to all of you, we have to move forward. We have to stop the finger pointing. We are not just San Francisco court. We are not just a court that gets the media. We are one court. I remember something that the chief said back in Sacramento, we are in a new normal. One of our branches is in trouble. I wish we had the opportunity to study it. We probably, if we could, would have different options and maybe they would be considered but they are options for the plan and situation we are in. We don't have the option to wait and we have to deal with it on a case by case basis. I appreciate everyone in the room. They have taken timeout of their schedules. San Francisco, it's not that we were trying to play a game. Even the judge is poking me saying, calm down. We are all right. We are looking beyond the personalities. The 2.5, it's a fund that has been agreed to. I am not a voting member. If I had been a voting member, I would have to reaccuse myself, but I strongly ask that you support this.

>> One of the things I found disturbing in this process is that San Francisco superior court wants to treat this as a negotiation. It's not. They want to treat it as a settlement. It's not. You are coming for badly needed money. If you get the money, we have the responsibility to ensure it's spent the way it's intended to be spent. I came here this morning reluctantly agreeing that we need to because of the needs of the citizens of San Francisco, we need to give to allocate this money. But we have obligations to the citizens in the entire state. This is a difficult decision for me, but I will add to the extent I support the \$2.5 million allocation, I will but only with oversight. The only way I'll vote in favor is to have all seven of the items. It would be irresponsible to allocate the money and say, report back to us what you did with it. We have two motions on the floor. I'm not going to add to those. I assume there will be time, but we have to get to these items. In my view, there has to be this type of oversight in fairness to all of the courts in the state and to set a precedence. If we are going to spend the moneys as other courts come before us, we have to make sure they are wisely spent.

>> Jim penrod?

>> Defer to someone else.

>> Senator Wesley?

>> In order to avoid confusion, I would accept the friendly amendment. It's too confusing

otherwise. Since it's acceptable to judge finestein --

>> It's acceptable to me.

>> We have morphed back to one motion.

>> Yes.

>> I understand the bullet reads, the judicial council and office of the court commits to advocate for revenue solutions. I believe the second is judge waters and I'll indicate judge pines. You have to difficulty with the amendment as well, right?

>> There was one in the second to last bullet. I think it would be helpful to try to define it so it's clear to everyone. As I understand it, the final element would say something to the effect of superior county court of San Francisco, we use necessary resources to keep open 11 courtrooms previously marked for closier, reduce staff layoff and to continue to provide all services as family, juvenile, civil and criminal that the court has previously been providing.

>> If you look at option one, sorry to jump in, but if you take out the word "constitutional" the funding must be used to keep open a sufficient number of courtrooms and provide services to meet the superior court's obligation to adjudicate matters civil and criminal before the court.

>> Take out the word "constitutional."

>>> That's a separate motion.

>> Myriam, I am deleting your more specific amendment. Let me ask judge ewe?

>> I wasn't sure what justice Miller meant --

>> I'm taking out one word "constitutional."

>> And the rest is there?

>> Bullet point one.

>> Not number two, but you are includes three?

>> 3C and five. I'll repeat it again. The first five bullet points, the language in the last bullet point, judicial council, AOLC and San Francisco advocates for and not limited to amounts. The bullet point one, we take out the word constitutional, all of 3C and 5.

>> 3C should also take out constitutional.

>> That's fine.

>> Judge sole and then judge Smith.

>> I am concerned that this is done without repayment. I don't have a problem pushing back repayment of this whether it's five year, ten years, 15 years. Otherwise, I know what will happen. All the other courts will be in line, and we have limited funds.

>> Judge Kaufman?

>> As I said before, we are setting a precedence. We have no criteria. If we don't make it as a loan for these types of situations with a liberal repayment schedule, not about San Francisco, in October you will get requests for the remaining money. If we don't set precedences, we'll have a major problem. I'm not sure it will be accepted but I think we need a schedule.

>> Judge Smith and judge pines?

>> I have one question. We are talking about various changes to the agreement. Is this something if question vote on it today I want to be clear on that. I had concern about the criteria. I would want to know as a council that we are making our decision and it's an accept or reject situation. If San Francisco doesn't feel they can accept conditions we have agreed are reasonable, in particular the point that it should be a rigorous criteria going forward, then I would only want to vote in favor of it if San Francisco will accept it. It's one of the situations where we'll be flying blind. We need accountability. It's not micromanagement, it's accountability. It's not about San Francisco. It's about the future, frankly.

>> Keeping in mind to the motion made, there is a consideration of options for loan repayment, liberal repayment schedule and that this is an accept or reject proposition in terms of, not a negotiation but this issue shouldn't be coming back to council. I agree with a large measure of what was said today. I think we have an obligation to stay above the fray. If I were to vote for justice Miller's motion, it sounds like basically there is one report we would get from San Francisco. That is August 1st, 2012. I want to get money to San Francisco. Without ability oversight to the couple, I feel we have the obligation to the 57 other courts in the state.

>>

>> If I can add to help drive home the solution -- first of all, in response to accountability, I get that. As a public manager, I can appreciate the need for accountability. Every year they make scores of hundreds of millions of dollars and there is no accountability to that. That's moot. That's my way of saying, accountability to two and a half million dollars is piddly to the accountability of millions being made in allocations. I think it would be fine and judge Feinstein would back me up on this, or she will send you an e-mail, it would be fine to have a repayment plan or issue. The issue isn't here that we are here for a money grab. The issue is that we need funds to keep paying vendors and employees. After a certain number of years we can repay that, that's fine. It's the same issue I had. There is a lack to have time to do something appropriate.

>> We are adding to the motion by judge Jackson, second by judge Kaufman, five year repayment plan.

>> It seems to me there was an oversight, request for a report in six years rather than a year?

>> Is that fine? I'll add that too. Judge Jackson and judge waters will second it.

>> No interest. Recall the question?

>> Yes. Are we all clear on the amendment? I'll try to restate it for you. If everyone is clear, and I think we are, I'm going to call for the vote.

>> Matter passes you unanimously.

>> The character attacks were inaccurate and. The budget needs for last year to keep the powder dry to get the governor to restore funding. Ultimately, \$25 million was removed from the senate for the final deal. The council reallocated one-time money. All of

>> All of those obligations fully met

in terms of the commitment. And it would have been nice to have had the support from the Court for you to stand up and say that he failed to live up to commitments, once again, and those remarks I think are just a bit of a let-down appointment. You set the time frames for decision making. You complained about the limited time for decision making. You set the forum. And the council has acted appropriately, in my view, in terms of providing the support with the low level of discourse that advanced the beginning -- at the beginning of this meeting. I just think is inexcusable in terms of the attacks on two individuals who have done nothing but try to make this system work for the benefit of your court and the entire branch.

>> Here here.

>> Yeah, just very briefly. I'm one of the newest members of the council. I have to commend everybody for the hard work. We have all been putting in over the last couple of months. And it was pretty onerous to me to hear the attacks not only on the individuals but on the council as a whole. Saying this whole thing is a sheer raid, we're trying to make an example of many of the San Francisco courts, saying they're still charging that nothing has changed with the council.

Could not be more inaccurate from what I'm honored to be a part of this body. Is.

>> As the only senior member of this council who has worked hard with the bar association --

>> Hey, hey.

>> 12 voting members.

>> I meant the only voting member who's worked hard with the bar association, the community and judges to try to achieve a solution here, I agree with Bill's comments wholeheartedly.

>> We stand in recess for ten minutes to take up a second matter.

(Break)

..... (council in short recess)

>> CHAIR CANTIL-SAKAUYE: Will all take a seat and get started on the second half of our meeting?

>> There's more in.

>> CHAIR CANTIL-SAKAUYE: I'm glad I caught you before you left. Yes. We have another matter.

As soon as I get another council members, I'll get the approval of

the minutes.

We have enough people -- back on record.

I wonder if we have enough folk to approve the minutes. It looks like we might.

>> Need 11 votes.

>> CHAIR CANTIL-SAKAUYE: I knew you'd remind me, Judge Rosenberg.

>> Might have some people on the phone.

>> Chief Joel -- I'm on the line.

>> Jim Herman on the line.

>> Move approval.

>> Second.

>> Judge right is on.

>> CHAIR CANTIL-SAKAUYE: Move approval. All in favor of approving the minutes from our -- is it our July meeting?

July 22nd, all in favor?

(A Chorus of Ayes.)

>> CHAIR CANTIL-SAKAUYE: Any opposed?

Matter passes. Before we get to the CCMS, I wanted to because it's fresh in my mind to ask Justice Hull to give us a quick date on our AV search.

>> It will be quick. We had a meeting earlier this morning. We have been working with staff, Mr. 2010 Tais, Miss Roberts and we will be issuing a press release on Monday announcing a request for proposal had been sent out and the process is going forward. I will note that it is going forward under the new contracting manual that the council adopted at its last meeting. So we are moving forward as rapidly as we can with that. And I think all of us are satisfied with the progress.

And before I lose the floor, could I say that we have an RUPR O meeting after this meeting adjourns. Could I ask those of you who are members to get your lunch and then we'll go directly into the meeting so we can get as much done today as we possibly can.

>> Okay.

>> Quota?

(Laughter)

>> CHAIR CANTIL-SAKAUYE: Item 2, the judicial branch administration -- this is a new item regarding CCMS. I would ask respectfully that -- Justice Brenier, the chair, and Judge Herman, the

chair of the internal committee to keep the presentation to 15 minutes.

>> HON. TERENCE BRUINIERS: Certainly will, ch

>> HON. JAMES HERMAN: Chief, I had about an hour introductory for justice -- but I think given one that I'm here by telephone, and justice Terence Bruiniers is present, and two, just in the interest of time I would defer to justice Bruiniers fo make the presentation. Cant can't thank you Judge Herman.

>> HON. TERENCE BRUINIERS: First of all, I recognize you all had a draining morning. So certainly we will keep this brief. I also want to emphasize that we're here today just to present to the council the independent reports so that we can in turn get these to the VSA and the legislature this afternoon and we will publicly post them this afternoon. I realize that you have only received these this morning.

So I know you haven't had a chance to look through them yet.

The -- our intention is not -- and we certainly are not here t for any action by the council this morning on these reports. We realize it will take time for you to digest them, that you will have questions once you have had a chance to look at them. Our intention is to come back here in October as part of our general presentation on status of CCMS that we will have with us at the time representatives from the two entities that did these reports from K 3, which did the software evaluation and ISD, which did the -- evaluation. They will be here to answer any questions. At that time we intend to present a -- at least some strategic alternatives on moving forward.

The -- I think the key message in the reports here is the -- are the conclusions that K 3 has reached. First of all that CCMS has a solid foundation, that it is scaleable to meet the needs of the branch; that the testing we've conducted so far has been well planned and comprehensive, and that it will perform as designed once it is deployed into a production environment. I think those are the critical take aways from this report.

Again, while I'm happy to answer any questions here this morning or to address the methodology that's been used in the reports, we can address those questions in October if members of the council will prefer.

>> CHAIR CANTIL-SAKAUYE: That's good news, justice Bruiniers in terms of the report. Any questions that we can't take up in October?

>> This integrated system diagnostic report, you said that was an independent report? Brun these are both independent reports. The vendors we selected in consultation with the bur reof state audit and the state technology agency. The statement of work under the government code requirements and under this council's direction was divided into two parts at the suggestion and recommendation of the bureau of state audits and the CTA. And like I said, these focussed on two different areas.

Integrated systems diagnostics, ISD, focused on Deloitte's process , and benchmarked those against software engineering institute's standards. K3 -- again, these are both independent analyses. K3 focused on the software on CCMS on the system itself. These -- while these are two separate reports, they are however, complementary. K3 took the ISD report into consideration and arriving at its conclusions and making its recommendations.

>> Mark -- justice Brus, ordered these independent studies, and everybody meeting the -- and -- felt the lack of -- developed the scope. And I was, frankly, amazed that the -- on the Falkner report, after they went into the complexity of the software, how positive that is, that's a real tribute, Mark, to your team, the oversight of the committee going through the past year in this process.

Thank you.

>> HON. TERENCE BRUINIERS: Thank you. As well as all the work that took place earlier. But that's a very extraordinary report, I think.

>> CHAIR CANTIL-SAKAUYE: Judge Rosenberg?

>> Thank you for this. bottom line is the system works.

Had one suggestion for the future meetings, October meeting and future meetings. When you get into something and start using the terminology and language -- and you're very familiar and knowledgeable in this area -- but for the rest of us mortals, you might want to not use terms like architecture, foundation, scaleable, production environment.

Try to use terms that the man and the woman on the street, and even judges can understand.

(Chuckling)

>> HON. TERENCE BRUINIERS: I will definitely try to do that. I was trying to incorporate the findings that were made directly by K3 with



as little editing as possible. But certainly we'll attempt to get past the terminology when we're here in October.

>> Had I submitted the report, it would have said, the system, she works.

(Laughter)

>> Actually, actually, it does. It says, quote, in summary, based on the results of our combined assessments, we expect that CCMS will perform as designed once it is deployed into the production environment.

(Applause)

>> Very good.

>> System works.

>> Which by the way is very good news. And it's what the -- both the bureau of state audits and the legislature and the government code required of us in order to move forward with a successful product.

>> In other words being we got what we paid for.

>> Here we are.

>> We hope.

>> CHAIR CANTIL-SAKAUYE: We did. Thank you very much, justice Terence Bruiniers, and James Herman. We appreciate it.

>> Staff has put in many overtime hours in terms of working the last couple of months on completion of the development phase simultaneously with working with both of these independent reviewers.

>> CHAIR CANTIL-SAKAUYE: Thank you.

>> Thank you very much.

>> CHAIR CANTIL-SAKAUYE: Thank you.

We -- yes?

>> Could I -- I think this is Bill's last meeting. And I think I speak for everybody when I say thank you.

(Applause)

>> Thank you. As you already know, how much I appreciate the opportunity to hold this position. As today, no different. Every time we have had a council meeting. I'm very, very proud to work for all of you and all of your predecessors. So thank you for giving me the opportunity. Thank you.

>> CHAIR CANTIL-SAKAUYE: Thank you, Bill. You know we arranged it special that there would be an additional council meeting.

(Laughter)

>> CHAIR CANTIL-SAKAUYE: We are adjourned.