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**LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS MEETING**

**OPEN SESSION**

**August 12, 1991**

**9:15 a.m.**

**The Washington Court Hotel  
Center Ballroom  
525 New Jersey Avenue, N.W.  
Washington, D.C. 20001**

**Board Members Present:**

**George W. Wittgraf, Chairman  
Guy V. Molinari, Vice Chairman  
Howard H. Dana, Jr.  
J. Blakeley Hall  
William Kirk, Jr.  
Jo Betts Love  
Penny Pullen  
Thomas D. Rath  
Basile E. Uddo  
Jeanine E. Wolbeck**

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**Executive Office**

**Staff Present:**

**David Martin, President  
Patricia Batie, Secretary  
Ken Boehm  
Christopher Dawe  
Kathy deBettancourt  
Emelia DiSanto, Director of Monitoring and Compliance  
Victor Fortuno, General Counsel  
David Richardson, Treasurer and Comptroller  
Ellen Smead**

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MOTIONS: 3, 4, 5, 70, 72, 73, 75, 80, 83, 86, 91.

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

1  
2 CHAIRMAN WITTGRAF: This regularly scheduled meeting  
3 of the Board of Directors of the Legal Services Corporation  
4 will be in order. At this time the Chair is prepared to  
5 receive a motion for the approval of the agenda as presented  
6 in the Board book.

7 MS. PULLEN: Mr. Chairman?

8 CHAIRMAN WITTGRAF: Ms. Pullen.

## M O T I O N

9  
10 MS. PULLEN: I think it would be prudent to amend  
11 that agenda to add an item after the closed session of "action  
12 to be taken on matters discussed during the closed session."

13 CHAIRMAN WITTGRAF: Fine, I think that's perhaps  
14 implicit, but we can certainly add that, certainly. Agenda  
15 item 15A would then be, as I understand your motion, "Board  
16 Action, if any, based upon Board Deliberations in Executive  
17 Session." Is that a fair summary?

18 MS. PULLEN: Yes.

19 CHAIRMAN WITTGRAF: Is there a second to that  
20 motion?

21 MS. LOVE: Second.

22 CHAIRMAN WITTGRAF: It has been seconded. Is there

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1 a discussion?

2 Hearing none, those in favor of the motion by Ms.  
3 Pullen, seconded by Ms. Love, will signify by saying aye.

4 (Chorus of ayes)

5 CHAIRMAN WITTGRAF: Opposed, nay.

6 (No response)

7 CHAIRMAN WITTGRAF: The ayes appear to have it, the  
8 ayes do have it. The agenda is amended in that way.

9 Further discussion?

10 (No response)

11 CHAIRMAN WITTGRAF: The Chair then will entertain a  
12 motion for the approval of the agenda as presented and  
13 amended.

14 M O T I O N

15 MR. UDDO: I so move.

16 CHAIRMAN WITTGRAF: Mr. Uddo. Is there a second?

17 MS. WOLBECK: I second.

18 CHAIRMAN WITTGRAF: Ms. Wolbeck. Is there  
19 discussion?

20 Hearing none, those in favor of the adoption or the  
21 approval of the agenda as presented and as amended will  
22 signify by saying aye.

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1 (Chorus of ayes)

2 CHAIRMAN WITTGRAF: Those opposed, nay.

3 (No response)

4 CHAIRMAN WITTGRAF: The ayes appear to have it, the  
5 ayes do have it. The agenda, as amended, is approved.

6 The next item on the agenda, then, is approval of  
7 the minutes of the Board's meeting of July 8, 1991. The Board  
8 has before it the draft minutes, as presented in the Board  
9 book. The Chair is prepared to entertain either discussion or  
10 a motion for approval of the minutes as drafted and presented.

11 M O T I O N

12 MR. DANA: I so move.

13 CHAIRMAN WITTGRAF: The approval of the minutes has  
14 been moved by Mr. Dana. Is there a second?

15 MR. HALL: Second.

16 CHAIRMAN WITTGRAF: And seconded by Mr. Hall. Is  
17 there discussion?

18 Hearing none, those in favor of the approval of the  
19 minutes as drafted and presented in the Board book will  
20 signify by saying aye.

21 (Chorus of ayes)

22 CHAIRMAN WITTGRAF: Those opposed, nay.

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1 (No response)

2 CHAIRMAN WITTGRAF: The ayes appear to have it, the  
3 ayes do have it. The minutes are approved as presented.

4 CHAIRMAN'S REPORT

5 Agenda item 3, Chairman's Report: Just a couple of  
6 things that I'll mention briefly at this time. First,  
7 regarding the nomination and confirmation as suggested in the  
8 memorandums sent out by Mr. Martin recently, nothing is  
9 scheduled in the way of appearances, no specific progress, but  
10 it does behoove any of us who haven't completed our  
11 questionnaires as requested by the Senate Labor and Human  
12 Resources Committee to complete those.

13 I would say to complete them before the Congress  
14 reconvenes on or about September 10, so that if that committee  
15 is of a mind to move forward toward hearings and vote on  
16 confirmation, that at least our not having completed the  
17 requested paperwork won't stand in the way.

18 The only other comment I would make at this time is  
19 that I think most of you should have the so-called Chairman's  
20 Itinerary, a three-page document prepared by Ms. Batie, the  
21 Corporation Secretary. We have a long agenda, as you're well  
22 aware. The itinerary is very helpful in that it suggests the

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1 time that tentatively has been anticipated or allocated for  
2 the different agenda items.

3 We are, of course, during the course of the day,  
4 interviewing the four candidates recommended to the Board by  
5 the Office of Inspector General Oversight Committee. Those  
6 interviews are set, as indicated, for 11:15, 11:45, 2:45, and  
7 3:15 p.m., and those individuals will be coming, of course,  
8 for appointments or interviews, and it's the Chair's concern  
9 that we particularly take up those items of Board business in  
10 a timely manner. And I will look toward our moving through  
11 the agenda in that manner and with that particular concern in  
12 mind.

13 Having mentioned those couple of things, then, I'm  
14 prepared to call on the President, Mr. Martin, for his report  
15 or comments.

16 Mr. Martin.

17 PRESIDENT'S REPORT

18 MR. MARTIN: Thank you, Mr. Chairman. There are some  
19 personnel matters that have occurred in the Corporation that I  
20 want to advise the Board of. If you haven't already heard, I  
21 have appointed Victor Fortuno General Counsel. He was in an  
22 acting capacity. He has done an outstanding job. I think he

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1 deserves the job; he's earned it. And I'm very happy to let  
2 you know, if you didn't already know, that he is now your  
3 General Counsel.

4 Charlie Moses has been working in the Office of  
5 Field Services. We have, pursuant to reorganization, created  
6 deputy jobs in that office. Charlie Moses is now moved up to  
7 be Deputy Director of the Office of Field Services.

8 We have created in the Office of Field Services a  
9 technical services division or office. A Leslie Russell, a  
10 long-time employee of the Corporation, is going to head that  
11 effort. The Technical Services is going to work in a advisory  
12 capacity. It will provide information and services to the  
13 field programs on a as-needed basis and will work very closely  
14 with a monitoring office so that we do provide support where  
15 needed.

16 In addition, we are in the process of consolidating  
17 the files in the Corporation. As you know, when I arrived,  
18 each Office had it's own filing system, it's own files. And  
19 on recommendations from the staff and on my own analysis, we  
20 decided that we needed someone to maintain a master file  
21 system.

22 We have hired Mr. Walter Barbash, who is now working

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1 out of the Office of Field Services and is our archivist. He  
2 has thrown away several tons of old records that we don't need  
3 and that have been around for some 15 or 20 years, and he's  
4 doing an outstanding job in that regard.

5 As regards travel and where I've been, Mr. Chairman,  
6 I have had forums in Lancaster, Pennsylvania, an all-day forum  
7 where I met with not only field program executive directors,  
8 but clients, Board members, Board members bar, leaders, IOLTA,  
9 IOLTA leaders, and it was quite a successful visit. I had  
10 four of my top staff there, and we learned a lot at those  
11 things.

12 And you and I, of course, were in Des Moines, I  
13 guess it was a week ago, that recently, where we visited with  
14 our clinic, the Neal and Bea Smith Clinic, which we fund and  
15 support through scholarships and other means. And we had quite  
16 a rewarding experience.

17 We had a first-hand look at the good that the  
18 clinics do. I think we had some 30 or 34 of our field program  
19 young attorneys there learning how to be litigators. And so  
20 it was quite a nice week for them.

21 We had a forum there, which the Chairman joined me  
22 on, and it was very informative. We had representatives from

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1 as far away as South Dakota and up in Wisconsin and Minnesota  
2 and down in Kansas and the St. Louis area.

3 Mr. Chairman, that's my report of what's been going  
4 on in the Corporation for the last month.

5 CHAIRMAN WITTGRAF: Thank you.

6 If there's no objection, I think before we move to  
7 agenda item 5, we might go to agenda item 6, which I take will  
8 be a much briefer agenda item. If there is no objection, I'll  
9 ask Jim Cardle to come forward to make what remarks he has,  
10 and then I'll ask Mr. Uddo, the Chairman of the Board's  
11 Special Reauthorization Committee to make any comments that he  
12 has.

13 Mr. Cardle, please.

14 PRESENTATION OF JAMES CARDLE

15 MR. CARDLE: Thank you. Since your last Board  
16 meeting there has been activity both in the Senate on  
17 appropriations matters and in the House regarding  
18 authorization matters. And I think I'll address each in that  
19 order.

20 The day after your last Board meeting on September  
21 9, the Senate subcommittee met and included in the  
22 appropriations bill, the Commerce State Justice Appropriations

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1 bill, \$350 million for the Corporation. The Corporation was  
2 not discussed at the hearing, but money was appropriated, and  
3 current law passed last year in Public Law 101-515 was carried  
4 forward to 1992.

5 Subsequently, later that week, on the 11th, the Full  
6 Senate Appropriations Committee met and also included the \$350  
7 million for the Corporation.

8 Subsequently, a couple weeks later, on the 31st,  
9 just before adjournment for the August recess, the full Senate  
10 passed the Commerce State Justice Appropriations bill, it's  
11 number is H.R. 2608, as I'm sure most of you know. And at  
12 this point, the outlook for further activity is generally  
13 looking toward the third week in September is the week, I  
14 believe, of the 16th, where House and Senate conferees will  
15 meet and iron out the small differences in their bill.

16 You'll recall that the original House version of the  
17 bill included funds for the Corporation and that which was  
18 stripped out on the House floor on a point of germaneness.  
19 But the third week, it's looking like we'll have some  
20 activity.

21 The Senate conferees have already been named, that  
22 being the full Commerce State Justice Subcommittee of the

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1 Appropriations Senate Subcommittee. And it's expected that  
2 right before any conference taking place, not prior to that  
3 but just the week before, the House conferees will be named.  
4 And I think we can expect that the full House subcommittee  
5 will be named just as the Senate subcommittee was.

6 So that's the outlook and the activity that's taken  
7 place on 1992 funding for the Corporation.

8 MR. DANA: Mr. Chairman?

9 CHAIRMAN WITTGRAF: Mr. Dana.

10 MR. DANA: Before we move onto the House, could you  
11 tell us about the action on the Senate floor?

12 MR. CARDLE: Sure, there was a motion offered, an  
13 amendment offered by Phil Gramm of Texas, and it would have  
14 been of concern to us. It did not pass; it was tabled and not  
15 brought up. But Senator Gramm sought to, as he explained it,  
16 fully fund the FBI's drug and crime war. And fully funding  
17 would be defined as last year's budget plus an inflationary  
18 increase, which is what the White House and Administration had  
19 asked for.

20 To fully fund the FBI required \$48 million to be  
21 found from somewhere else in the bill. Senator Gramm had  
22 amendments ranging from the extreme of taking it all from the

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1 Legal Services Corporation to taking it from a number of  
2 different agencies, and he chose to offer the one taking all  
3 \$48 million -- a little bit over \$48 million -- from the  
4 Corporation.

5 And it was not discussed more than 20 minutes,  
6 Senator Rudman making the comments that there was already a  
7 significant enough increase in the FBI's budget and therefore  
8 it was not necessary for any additional funds to be  
9 transferred. And, as I mentioned, his amendment was tabled  
10 and defeated.

11 CHAIRMAN WITTGRAF: Go ahead, Mr. Cardle.

12 MR. CARDLE: To the House Authorization Committee,  
13 the House Judiciary Committee, had begun and gotten a little  
14 work done on the reauthorization bill for the Corporation  
15 prior to your last Board meeting.

16 On July 16th, they again met and passed out a bill,  
17 a five-year reauthorization bill for the Corporation. And the  
18 outlook for action there, Barney Frank, the subcommittee  
19 chairman, has said and promised that the bill will be brought  
20 to the House floor before adjournment this year.

21 And in that regard, we have good news with respect  
22 that it looks like the Congress will be in session through the

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1 month of October and potentially or possibly even into the  
2 month of November.

3 The original target adjournment date was for the  
4 beginning of October, I believe October 4th, and now it's  
5 pretty much accepted by everyone on the Hill that we'll be in  
6 session way beyond that, providing the extra time.

7 Of course, first thing on the agenda, I think, is  
8 going to be the 13 appropriation bills, and from there, a  
9 number of significant bills that have already been addressed  
10 in both the House and the Senate, not having passed  
11 identically in both bodies, will be discussed in conference  
12 and addressed and passed to the President's desk for  
13 signature.

14 But hopefully, as Mr. Frank, has said, we'll have an  
15 authorization bill on the floor of the House before  
16 adjournment in October or November, whenever it may be.

17 And, Mr. Chairman, I think with that, we conclude  
18 the activities of the last month, legislatively.

19 CHAIRMAN WITTGRAF: Did you have anything you wanted  
20 to add, at all, regarding the confirmation process beyond what  
21 I mentioned earlier?

22 MR. CARDLE: I don't think so, no.

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1 CHAIRMAN WITTGRAF: Mr. Uddo?

2 MR. UDDO: I would only add, I think everyone has  
3 received written reports on the specifics of what came out of  
4 the House committee vote. My committee hasn't met since the  
5 last Board meeting and probably would not meet again until  
6 something comes out of the House, off the floor, and we may  
7 want to consider what our comments or reactions would be as it  
8 moved to the Senate.

9 CHAIRMAN WITTGRAF: Questions, either for Mr. Cardle  
10 or Mr. Uddo? Discussion?

11 Mr. Kirk.

12 MR. KIRK: I don't understand what you meant by what  
13 our actions will be. What type of actions would we be --

14 MR. UDDO: Well once a bill comes out of the House,  
15 I think our committee ought to look at it and make whatever  
16 recommendations we feel are appropriate as the bill moves to  
17 the Senate.

18 MR. KIRK: So we just vote on it and then vote on it  
19 again, I mean, turn out more votes from here?

20 MR. UDDO: I don't understand your question.

21 MR. KIRK: I'm not sure I understood; are you  
22 talking about this Board after it comes out of committee?

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1 MR. UDDO: No, I'm talking about the our committee,  
2 the special reauthorization committee always contemplated that  
3 it would make its recommendations, generally, in general  
4 responding to the two versions of the bill that were  
5 introduced in the House and then -- we've done that, the House  
6 committee is active, it's going to go to the floor.

7 There may be some changes on the floor and a bill's  
8 going to come out of the House. And then I think our  
9 committee will look at what comes out of the House and make  
10 recommendations to the Board as to what we think ought to be  
11 communicated to the Senate about how we feel about the bill  
12 that came out of the House.

13 MR. KIRK: So it would be another vote like we had  
14 last time.

15 MR. UDDO: I would imagine.

16 MR. KIRK: Is that the way it's always been done?

17 MR. UDDO: It's never been done before.

18 CHAIRMAN WITTGRAF: There's been no legislation  
19 since 1977, so we don't have much --

20 MR. UDDO: This is first time there's been a  
21 reauthorization effort in 15 years.

22 CHAIRMAN WITTGRAF: Further discussion?

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1 Thank you, Mr. Cardle.

2 MR. CARDLE: Thank you.

3 CHAIRMAN WITTGRAF: At this time then, the Chair is  
4 prepared to return to agenda item number 5, initial  
5 consideration of the report, which I believe is a staff  
6 committee report regarding competition and the alternatives  
7 that exist in that area.

8 Mr. President, who will be presenting that report?

9 MR. MARTIN: Ms. Kathy deBettancourt, who is in the  
10 Office of Policy, is largely responsible, along with the  
11 committee for preparing that report. She is a -- you have all  
12 had it, I think, for approximately a week. Kathy is here to  
13 summarize it and to respond to any questions the members of  
14 the Board might have.

15 CHAIRMAN WITTGRAF: My recollection of the Board's  
16 discussion on this subject from our last Board meeting on July  
17 8 was that Professor Steven Cox would be here today. I have  
18 seen Professor Cox, I see him again -- I couldn't see him  
19 behind other members of the audience for a moment. What are  
20 we anticipating his role to be in this discussion. Should he  
21 come forward at this time?

22 MR. MARTIN: We hadn't really planned what his role

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1 would be. I understood the Board would like to have him  
2 available. He has a draft of what he's been preparing. I  
3 suppose that he could come up and we could do a panel now and  
4 ask Ms. deBettancourt, and then let Professor Cox respond and  
5 defend his thesis.

6 CHAIRMAN WITTGRAF: Is there something that  
7 Professor Cox has in writing?

8 MR. COX: Yes, I've submitted it to the Corporation  
9 staff.

10 CHAIRMAN WITTGRAF: Okay. I don't believe the  
11 members of the Board have it.

12 MS. deBETTANCOURT: If I may say one thing.

13 CHAIRMAN WITTGRAF: Yes, ma'am.

14 MS. deBETTANCOURT: One of the options that we've  
15 mentioned in our paper is of course fleshed out more by  
16 Professor Cox. So I had planned to simply let him give more  
17 information about that, if that's acceptable.

18 CHAIRMAN WITTGRAF: Fine, is there a document that  
19 we should have or not? If it's not ready, fine. There was  
20 reference to it in the materials that we received, and I'm  
21 just trying to establish what the status of the report is. If  
22 it's not ready to be reproduced and circulated, fine. I'm

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1 just trying to figure out --

2 MR. COX: It's a draft of a paper.

3 CHAIRMAN WITTGRAF: Do you think it's appropriate?

4 MR. COX: I sent it to Chris Dawe. As I understand  
5 it, the staff members of the Corporation are reading it now  
6 and will comment on it, give it back to me for redrafting. I  
7 have no objection to anybody and everybody reading it, as long  
8 as they recognize that it's a draft. And the more comments I  
9 receive, the better the final product will be.

10 CHAIRMAN WITTGRAF: Well, if you have no objection  
11 then, Professor, if it's a finished working product, at least  
12 as one Board member, I would be delighted to have a copy of  
13 it, and I trust my colleagues as well would like to have a  
14 copy.

15 MR. MARTIN: We'll make copies available.

16 CHAIRMAN WITTGRAF: With that, Ms. deBettancourt,  
17 please.

18 PRESENTATION OF KATHY deBETTANCOURT

19 MS. deBETTANCOURT: I'm going to summarize, as Mr.  
20 Martin has said, what the Competition Committee has been  
21 working on for the last six months. During that period there  
22 has been a lot of discussion about competition, particularly

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1 during the reauthorization hearings. As a part of that  
2 discussion, several new ideas about competition have come up,  
3 including Professor Cox's idea of constant competition.

4 Originally, when competition language appeared in  
5 the appropriations riders directing the Corporation to begin  
6 the study of competition, the language was interpreted to mean  
7 full competitive bidding. In other words, periodically, the  
8 three years -- we're now talking about five years -- all Legal  
9 Services grants for each geographic area would be offered for  
10 -- solicitation for bids would be offered in each geographic  
11 area for both existing providers and other providers to submit  
12 bids for Legal Services grants.

13 The Corporation had, several years ago, published an  
14 advance Notice of Proposed Rulemaking setting out some of the  
15 procedures that would be used in this competitive bidding  
16 process, including a peer review manual, listing selection  
17 criteria and listing the procedures that would be used in  
18 selecting providers.

19 Now, this competition is what Professor Cox calls  
20 static competition. In other words, it's a competition for  
21 grants. It's done periodically, and when the grantee receives  
22 the grant, it's theirs for that period, subject to, of course,

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1 annual monitoring by the Corporation.

2 Now, this competitive bidding and the procedures,  
3 however they are finalized, will be used and could be used in  
4 any of the other models that we will talk about. In other  
5 words, if you have a dynamic model -- in other words, where  
6 you have existing legal services providers competing with a  
7 private attorney model, adjudicare model, some or all of those  
8 models may be selected through competitive bidding. But that  
9 would depend on the design of the system.

10 Now a second option which has been brought to the  
11 committee's attention that we have been reviewing would be a  
12 partial competitive bidding. In other words, existing  
13 providers who would retain presumptive refunding rights for up  
14 to, say 75 or 80 -- whatever percentage is established -- 75  
15 to 80 percent of their current year grant, the Corporation  
16 would then have the discretion of with that additional funding  
17 to give it to the existing grantee upon their justification of  
18 how they're going to use the money.

19 Or if it's a particularly weak provider, the  
20 Corporation would then have a pool of money which it could  
21 compete in the existing service area to give to, for example,  
22 a bar association or another legal services provider, to

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1 another group that might prove that it could use the funds  
2 better. Most existing grantees would probably receive the  
3 full 100 percent of funding, but for those who would be in  
4 troubled areas, then the Corporation would have some funding  
5 discretion.

6 Now, this would provide competition in two ways. It  
7 would give weak programs an incentive to improve their  
8 performance so that they could obtain full funding. And also  
9 it would provide competition from other providers who would  
10 realize that there would be a pool of money for them to bid  
11 for. This was based on the funding process of United Way  
12 And again, there, most of the existing providers do retain  
13 full funding, however, there is an incentive.

14 A third version of partial competitive bidding would  
15 be for Congress to permit the Corporation to compete in the  
16 increase in appropriations. In other words, every existing  
17 legal service provider would retain presumptive refunding  
18 rights for its current year's grant. However, in the increase  
19 in appropriations the Corporation, they could then solicit  
20 bids from existing programs and even other providers for that  
21 money.

22 The example I've given here is our basic field

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1 funding this year is \$280 million. If we get the full \$350  
2 million, that would give us approximately \$17.5 million in  
3 funding increases that we could compete out. This could be  
4 targeted in several ways.

5 It could be given to very successful programs. It  
6 could be targeted for a specific purpose if the Corporation  
7 wanted to encourage more innovation in, for example, ADR or  
8 particular subject areas -- domestic abuse. There are various  
9 ways that the Corporation could decide to compete this.

10 If I may stop briefly, all of these, of course,  
11 depend upon statutory authorization and/or appropriations  
12 language. For either of the partial competitive bidding  
13 models that I've mentioned, it would require a change in at  
14 least the appropriations rider, because currently all money  
15 that is appropriated by Congress is distributed to a funding  
16 formula to each existing grantee through a per capita poverty  
17 population formula. So the Corporation cannot, at this  
18 moment, simply say we will take any increase you give us and  
19 use it to fund a competitive bidding.

20 Now, these are the constant competition models.  
21 There is, again, dynamic competition. Now, there are at least  
22 two different models that we could talk about here. One would

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1 be an extension of our existing PAI requirement. Currently,  
2 Legal Services programs, our basic field programs, are  
3 required to allocate 12.5 percent of their funds to private  
4 attorney involvement.

5 For most programs, this is pro bono. They have a  
6 pro bono coordinator, they encourage attorneys to set up pro  
7 bono programs. There is also a considerable amount of  
8 judicare and also reduced fee contract. And a private  
9 attorney will agree to handle a certain amount of cases for a  
10 reduced fee.

11 In this model, each existing grantee would be  
12 required to allocate a certain amount, for example, 25 or 30  
13 percent of whatever the Board would set, of their funding for  
14 private attorney models. They would be required to set up at  
15 least two, probably, reduced-fee contract or judicare model or  
16 voucher model, something along those lines.

17 This would provide some competition because the  
18 alternate providers would be in a dynamic competition with the  
19 existing provider for clients. Under the dynamic competition  
20 models, the competition is less for grants than for clients.  
21 You compete within the service area.

22 Now, there are, of course, some difficulties with

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1 this. Unless the Corporation decides to increase the PAI  
2 requirement by at least 10 or 15 percent, there may not be  
3 enough money to do this. I know that --

4 CHAIRMAN WITTGRAF: By or to 15 percent?

5 MS. deBETTANCOURT: Well, it's 12.5 percent now.

6 CHAIRMAN WITTGRAF: Yes.

7 MS. deBETTANCOURT: This would require a larger  
8 infusion of funds. The other option would be to ask for  
9 increased appropriations to cover this, and then the programs  
10 would be required to allocate the additional appropriations.  
11 However, it may be that we're not even going to get \$350  
12 million this year. I'm not sure how much of an increase we're  
13 going to get; that's up to Congress, and that's an unknown.

14 CHAIRMAN WITTGRAF: Let me interrupt just one  
15 moment. I think it's fair to say, based upon what the House  
16 has done and has undone on the floor and what the Senate has  
17 done, that any money for Fiscal Year 1992 that might be used  
18 in the competitive funding arena is going to be only in the  
19 neighborhood of a million dollars, and the \$350 or less if  
20 that's it, is going to be locked into the current formula. So  
21 we're really not looking at --

22 MS. deBETTANCOURT: At this year, anyway.

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1           CHAIRMAN WITTGRAF: Right, in FY '92, except perhaps  
2 with a million dollars.

3           MS. deBETTANCOURT: Well, all of this has to happen  
4 after Fiscal Year 1992 because of the current statutory  
5 requirements.

6           CHAIRMAN WITTGRAF: Right.

7           MS. deBETTANCOURT: But even for Fiscal Year 1993, a  
8 very large appropriations increase would have to be requested  
9 from Congress or the current staff attorneys' funding would  
10 have to be reduced in every area. Those are the choices.

11           The fifth option, which is a full dynamic model,  
12 which I think, as Professor Cox has at least described it in  
13 his draft paper, would include both constant competition and a  
14 static competition in that there would be competitive bidding,  
15 is somewhat different from the model that I've just mentioned,  
16 the extended PAI requirement. Because it does require that  
17 each of the models, the private attorney models, the staff  
18 attorney model, compete on equal grounds.

19           In other words, if they accept the same kinds of  
20 cases, at least eventually, and that they are both full-  
21 service programs. Under our current PAI requirement,  
22 attorneys may accept only simple family cases or bankruptcy.

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1 They're not full-service providers.

2           There is an additional question that has to be  
3 answered under the dynamic model -- and perhaps Professor Cox  
4 can address this -- and that is for competition to be  
5 effective, there have to be some sort of monetary incentives.  
6 In any particular area, if programs are competing for clients  
7 and one particular program is very successful and more clients  
8 begin to go to that program for assistance, then at some point  
9 the Corporation has to increase that program's funding and  
10 perhaps reduce the funding of those programs that are not  
11 doing so well.

12           Now, again, the Corporation does not have the  
13 funding discretion now, under current statute, to make those  
14 decisions. So for any of these options, eventually the  
15 Corporation will have to request -- well, depending on the  
16 current authorization bill -- will have to request a change  
17 either in a increase in appropriations or for statutory  
18 changes.

19           CHAIRMAN WITTGRAF: I think there will be perhaps  
20 several questions or comments before we get to Professor Cox;  
21 let me ask one first. Perhaps, as the Board has considered  
22 the matter of competition briefly in a March meeting when we

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1 adopted a resolution that ultimately ended up in the  
2 employment of Professor Cox as an independent contractor, I  
3 guess, and in further discussion in our meeting last month, we  
4 didn't suggest that we, as a Board, have certain objectives in  
5 mind -- what are we trying to do, what are we trying to  
6 accomplish with competitive bidding or through competitive  
7 bidding or competitive funding?

8 Did the committee for which you're the spokesperson,  
9 apparently, have an objective or objectives for competitive  
10 bidding or competitive funding in mind as it made its analysis  
11 of these five alternatives?

12 MS. deBETTANCOURT: I'm not sure I know what you  
13 mean. In selecting one over the other or --

14 CHAIRMAN WITGRAF: No, what are the objectives of  
15 competitive funding, competitive bidding?

16 MS. deBETTANCOURT: Well, certainly there are  
17 objectives. One, the reason Congress began to look at  
18 competition several years ago was that many members of  
19 Congress, even on the House floor, express some surprise that  
20 all grants in the Corporation are guaranteed -- in other  
21 words, if there presumptive refunding -- that the Corporation  
22 has so little discretion even in recognized cases where

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1 there's a weak provider at finding another.

2 Defunding actions have become so expensive and so  
3 time-consuming that the Corporation only relies on that as a  
4 very last measure.

5 CHAIRMAN WITTGRAF: Is it fair to say -- if I can  
6 try to paraphrase or summarize that I think I hear you saying  
7 -- that an objective that you see of competitive funding is  
8 that elimination or substitution for weak projects, inadequate  
9 providers?

10 MS. deBETTANCOURT: Yes, in areas where there is a  
11 recognized problem that the Corporation has very little  
12 discretion, there is a second objection, and that is simply  
13 that Congress has expressed its recognition that competition  
14 improves productivity; in other words, that it does spur  
15 innovation, that it does inspire grantees, perhaps, in the  
16 private world, corporations, to perform a little bit better.

17 So those are the two main objectives that we  
18 understood to be the impetus for speaking of competition in  
19 the realm of Legal Services.

20 CHAIRMAN WITTGRAF: So we're looking at the  
21 elimination of weak projects on the one hand or the  
22 replacement of them or perhaps the improvement of them -- the

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1 improvement or replacement, on the one hand. And then the  
2 enhancement of productivity on the other hand.

3 MS. deBETTANCOURT: Right. And there's always the  
4 prospect that when you have competition, that the weak  
5 projects will strive to improve.

6 MR. COX: If I could interject one sentence or two.

7 CHAIRMAN WITTGRAF: Professor.

8 MR. COX: You can finesse this whole issue of weak  
9 and strong projects improvements on competition simply is  
10 going to give programs a reason for and incentive to be more  
11 responsive to client needs. So really the objective that  
12 you're hoping to accomplish via competition is to get the  
13 seller, in this case the provider of service, to be more  
14 responsive to the buyer or consumer, namely the client.

15 CHAIRMAN WITTGRAF: So a third objective, then, as  
16 you see it, would be simply responsiveness --

17 MR. COX: Well, that encompasses the whole ball of  
18 wax.

19 CHAIRMAN WITTGRAF: Okay, thank you.

20 Mr. Kirk.

21 MR. KIRK: On that point, would efficiency and  
22 saving money be included under the term "responsiveness"?

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1 MR. COX: Yes.

2 MR. KIRK: Okay. You've had some comments on what  
3 you thought the defunding process was like. Would you comment  
4 on that some more as it exists today?

5 MS. deBETTANCOURT: Well, those who have -- perhaps  
6 the General Counsel's Office could speak to that since the  
7 burden falls on them. But even in areas where it's fairly  
8 acknowledged by other programs and by the Corporation that  
9 there are problems, it's a very time-consuming and lengthy and  
10 expensive process, again both for the Corporation and for the  
11 program.

12 One of the few defundings that occurred during my  
13 memory, I know took over three years and cost over half a  
14 million dollars. The biggest problem here is that those who  
15 suffer are the poor.

16 MR. KIRK: Okay. I have just a series of questions.  
17 May I ask?

18 CHAIRMAN WITTGRAF: I'm wondering if it would be  
19 more appropriate, perhaps, to let Professor Cox make what  
20 comments or presentation he wants, and then we can have a  
21 lengthier discussion.

22 MR. KIRK: Okay. I thought you had said that since

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1 you were asking those questions, we would all go through --

2 (Laughter)

3 CHAIRMAN WITTGRAF: Fine, but you said you had a  
4 whole list. I thought mine was a short list, as distinguished  
5 from a whole list. But if you prefer, fine. But I think that  
6 Professor Cox has some additional comments, maybe.

7 MR. KIRK: We'll do it your way, then. You got  
8 yours in.

9 (Laughter)

10 CHAIRMAN WITTGRAF: Thank you.

11 MR. KIRK: But I do want to ask questions when  
12 that's over.

13 CHAIRMAN WITTGRAF: Sure.

14 MR. KIRK: Okay.

15 CHAIRMAN WITTGRAF: Professor Cox.

16 PRESENTATION OF PROFESSOR STEVEN COX

17 MR. COX: Hopefully, maybe even some of my comments  
18 will answer the questions that are as yet unstated.

19 The time I spoke -- I guess at April hearings -- I  
20 introduced this idea of static versus dynamic, one-time versus  
21 constant competition. When you see the draft of the paper  
22 that I've come up with, there's going to be more variables and

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1 more things to think about, so let me try to keep this as  
2 simple as possible because I think as you can already see, the  
3 whole subject of competition is going to be fairly complex  
4 with a number of different dimensions to it and so on.

5 Let me start where Mr. Wittgraf left off, and that  
6 is: Why even think about competition? For an economist, it is  
7 a means to one very desirable end. The economist uses the  
8 word "efficiency." I purposely didn't use that word a few  
9 minutes ago when responding because efficiency for the  
10 noneconomist has a much more narrow definition than it does  
11 for the economist.

12 For the economist, the word "efficiency" really  
13 refers to what I referred to earlier; and that is having  
14 sellers, firms, be highly responsive to buyers' or clients'  
15 interests, wants, needs. That responsiveness comes really in  
16 two major parts.

17 One is the usual reference that noneconomists make  
18 to efficiency; and that is, producing goods or services,  
19 delivering legal services, in the least-cost manner, the most  
20 technically efficient, using the least resources possible to  
21 deliver a service of a certain quality.

22 But really, the more important dimension of

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1 efficiency for economists is to render those kinds of services  
2 that clients want in the first place. The example I use in my  
3 classroom all the time is maybe there is a person who is just  
4 incredibly efficient at producing buggy whips. He can produce  
5 buggy whips by the thousands every day and isn't very good at  
6 tuning an engine, can only tune one engine per day.

7 Yet, in this day and age, we would not want that  
8 person spending their time producing all these buggy whips  
9 because while they're incredibly efficient in one sense,  
10 namely producing a lot of them, it's a lot of stuff we don't  
11 want. We would much rather have that person's time allocated  
12 to the tuning of one car engine.

13 So when I referred earlier to programs becoming more  
14 responsive to client needs and wants as a result of  
15 competition, I see that competition, in essence, accomplishing  
16 two objectives. One is, yes, getting the programs to render  
17 services in as technically efficient a manner as possible,  
18 case productivity if you will.

19 But really, first and foremost, I see that  
20 competition as encouraging, urging, driving if you will,  
21 programs to be allocating resources to the delivery of the  
22 kinds of services that consumers want, that clients want.

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1           Now, this is a major, major point. In the private  
2 market environment there is no question about this. Why?  
3 Because clients, consumers, are paying for a product, and if a  
4 producer is producing the kind of product or service that  
5 consumers don't want, they won't buy it and the firm will quit  
6 producing them. You don't have that kind of situation here.  
7 You don't have poor people paying for their legal services.

8           The money for providers of legal services comes from  
9 the government, not from the clients, themselves. You could  
10 only simulate that kind of private market environment if you  
11 went to, if you will, a legal stamp program, you know, like  
12 food stamps; a whole different ball game than what you're even  
13 talking about here with respect to competition among  
14 providers.

15           The way in which, historically, this has been  
16 handled is that you have, at the local program level, boards.  
17 And as I understand it, there are regulations governing  
18 membership and operation of these boards. And one of the  
19 regulations is that clients must be represented on these  
20 boards.

21           And the hope is that through that client membership  
22 on the board, client needs will be thereby revealed. The

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1 board will, in turn then, direct the program to render the  
2 kinds of services that it, the board, has determined through  
3 the client representatives that the clients need.

4 Now, I hope you followed what I just said because  
5 that's quite different from the clients, in a sense, telling  
6 the board themselves or better yet, telling the providers what  
7 they need. It's very indirect, very indirect.

8 And one hope of competition -- to just summarize  
9 now my first major point -- one hope through competition is  
10 that you get programs more responsive, to use the economist  
11 word, more efficient, in not only the types of services  
12 rendered but the way in which they're rendered.

13 In a sense, I'm sorry for having taken so long but  
14 that is such a major point. And, as Mr. Wittgraf focused on  
15 it through his question of why even talk about competition, we  
16 need to have some kind of objective in mind. And for the  
17 economist, that objective is called efficiency. If you don't  
18 want to use that word because it has a more narrow meaning for  
19 most people, then a very good substitute for it is program or  
20 provider responsiveness to clients.

21 Second major point, let me move on to it. When  
22 spoke before -- I'm going to, in a sense, contradict myself

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1 today from what I said before. But when I say "in a sense," I  
2 think I'm perfectly consistent. So let me show you or  
3 elaborate a bit so that the consistency is obvious.

4 When I spoke before --

5 CHAIRMAN WITTGRAF: You're contradicting yourself as  
6 you spoke April 19th?

7 MR. COX: That's right, April 19th.

8 CHAIRMAN WITTGRAF: I just want to focus on the  
9 points of contradiction.

10 MR. COX: Yes, April 19th versus August.

11 I contrasted competitive bidding or static  
12 competition with multiple provider delivery, or what I call  
13 dynamic competition. I did that at that time because I  
14 thought it was very important that you see that competitive  
15 bidding, alone, was not going to accomplish what I thought  
16 many people had in mind with competition.

17 In my paper, I now focus on what I call a  
18 competitive delivery system: What could we do to make the  
19 whole system more competitive and thereby more responsive to  
20 client needs?

21 In so focusing on the whole system, I talk in terms  
22 of three parts, talk in terms of three subsystems, if you

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1 will. One of which is competitive bidding for the money, the  
2 grants. Another is multiple providers of service in each  
3 service area. And the third is a performance review system  
4 whereby the providers are, if you will, constantly under the  
5 microscope.

6 So the competitive bid system, the multiple provider  
7 system, and the performance review system, those are really  
8 three -- and not separate -- but three parts that when you put  
9 them together, I believe, makes the system whole, makes the  
10 system competitive; if you will, three parts to the puzzle.

11 When you start seeing it that way, as I have since  
12 starting to work on this discussion paper, you begin to see  
13 that this whole idea of competition, indeed, is very complex;  
14 and second, calls for real, genuine change. And change is  
15 always uncomfortable. People are afraid of change because  
16 they're afraid of the unknown. They are much more comfortable  
17 with the present, the certain.

18 So I think it's very important that we who are  
19 discussing the whole topic have a real appreciation for that  
20 discomfort factor, if you will, and constantly remind  
21 ourselves that this is something that is not going to be  
22 accomplished either easily or quickly. There's going to be a

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1 long time process involved here. And that it's probably going  
2 to have to done in steps -- steps, themselves, which take  
3 time.

4 I'm easily talking about a decade. Now that may  
5 seem like a really long time, but the current system has been  
6 in operation for 25 years. So from one perspective, if it  
7 took 25 years to change the whole system, it probably wouldn't  
8 be too long a period of time. But I think we can accomplish  
9 it in much less time than that.

10 So three parts -- I would actually start with the  
11 third part because I think it's the most easily and the most  
12 quickly implemented part. Quite frankly, I don't understand  
13 why it isn't in place now. Now, some of you may say, well,  
14 we have monitoring of these programs.

15 And yes, I think you do have monitoring of programs,  
16 but it's more of what I would call a legalistic monitoring,  
17 making sure that they are abiding by all the rules and  
18 regulations, than what I would call performance review -- in  
19 other words, what are they doing with the money? -- if you  
20 will, accountability; that's what I'm talking about with  
21 respect to performance review.

22 The two critical ingredients, as far as I'm

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1 concerned, to performance review are: one, a new case  
2 reporting system -- and you'll see in the paper an example  
3 that I took from the San Antonio voucher study where, I  
4 believe, closed case statistics, according to the existing  
5 case reporting system, tells you nothing really, because you  
6 don't even know, through those statistics, to what extent each  
7 case was carried.

8           And what we found in the voucher project in San  
9 Antonio is that many staff models were being closed in what we  
10 called "one-quarter cases," namely, after the initial client  
11 interview -- many cases being closed at that point. I won't  
12 go into all the reasons and so on.

13           So a new case reporting system and a part of that  
14 new case reporting system would be what I call a case  
15 fractionalization system. So that you would know not only how  
16 many cases were closed, but to what extent each case was  
17 carried at closure.

18           And the other is quality review. I think the  
19 single, most important finding dimension of the San Antonio  
20 voucher study was the peer review system that was developed  
21 and used in the findings that were found; they're shocking. I  
22 urge you if you have not looked at the San Antonio voucher

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1 study report to do so. And if you have a short period of  
2 time, turn to the peer review findings.

3 In my judgement, in view of those findings, to  
4 continue to say that programs are providing excellent or even  
5 adequate service is just simply not supported by those  
6 findings. Now, one study, one service, one point in time, but  
7 it seems to me, in view of those findings, the Corporation  
8 would want much more evidence -- much more evidence -- on the  
9 quality of the way in which the cases are being handled.

10 So, performance review: that can be done without new  
11 regulations and so on and so forth and can be done simply by  
12 acknowledging that maybe one job of the Corporation is not  
13 just what I would call "legalistic monitoring," but is  
14 performance monitoring, performance review.

15 You want me to hurry up?

16 (Laughter)

17 CHAIRMAN WITTGRAF: I think the unfortunate reality  
18 this morning, Professor, is that we do have some questions and  
19 some comments that we want to get to. We're looking at a  
20 total time, yet, of no more than 15 or 20 minutes yet.

21 MR. COX: I appreciate the --

22 CHAIRMAN WITTGRAF: Yes, you heard my comments

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1 earlier, thank you.

2 MR. COX: Okay. The second one, namely a multiple  
3 provider delivery system, also can be implemented really  
4 pretty quickly. Now, what it would require is an extension of  
5 PAI, which -- I'm not a lawyer at all. I don't know whether  
6 you have the authority to do that or not.

7 But I would just simply like to remind you, because  
8 while Kathy, I think, stated it accurately, I would like to  
9 give a slightly different emphasis: I don't think you need  
10 more funding, you could simply extend the PAI from 12.5 to,  
11 say 25 percent, doubling it with the other 12.5 percent having  
12 to go to compensated private attorney models as opposed to pro  
13 bono.

14 And many people might say, "Oh, wait a minute,  
15 we're already really strapped for funds and so on; we can't do  
16 that." But remember those 12.5 percent funds are still going  
17 to go to service because they're going to go to other  
18 attorneys.

19 It's true that the services won't be rendered by  
20 staff attorneys, they will be rendered by private attorneys.  
21 But I think, frankly, you would be surprised at how many  
22 clients will be served by that additional 12.5 percent -- in

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1 any case, I'll just let that comment go there -- so that  
2 really can be implemented quite quickly.

3 And I believe those two things, together, that  
4 performance review and multiple provider model, will go a long  
5 way -- a long way -- to achieving not only what in this memo  
6 is being phrased as "dynamic competition," but go a long way  
7 to a competitive system. But it won't go all the way. It  
8 will go a long way, but not all the way.

9 The third part of the puzzle is needed for  
10 completion; and that is, some competitive bidding, because  
11 competition only comes from multiple providers constantly  
12 under the microscope, but, if you will, the private market  
13 counterpart of bankruptcy -- the fear that if consumers don't  
14 buy our products, don't come to us, we will go bankrupt.

15 That's really the what the competitive bidding  
16 system accomplishes; that the providers are not only  
17 constantly being reviewed, performance-wise, against other  
18 providers, but that through the competitive bidding system,  
19 they live, if you will, with the fear -- or if you don't want  
20 to phrase it that way, they live under the constant incentive  
21 -- to perform well to continue providing services -- if you  
22 want to phrase it positively. Or if you want to phrase it

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1 negatively, if they perform badly, that they then subsequently  
2 will not win competitive bids and will "go bankrupt" or will  
3 not be funded.

4 So, in sum, I think it's really good to constantly  
5 focus on the end objective of competition. But secondly, I  
6 would urge you to constantly keep in mind that the end  
7 objective really requires a new system. And the new system is  
8 going to have to come in parts, and parts that are going to  
9 have to be implemented over some period of time.

10 And so it seems to me the wisest way to approach it  
11 is through doing that which you can now and proceeding in a  
12 step-wise, if you will, methodical manner to the ultimate end  
13 objective of a competitive system with more responsive  
14 providers of legal services.

15 Thanks. Sorry for --

16 CHAIRMAN WITTGRAF: No, thank you, Professor.

17 We do have, as I've indicated 15 to 20 minutes yet.  
18 It think a number of people have questions as well as  
19 comments, and we'll move right to those.

20 Mr. Kirk.

21 MR. UDDO: Could I get a point of clarification, Mr.  
22 Chairman?

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1 CHAIRMAN WITTGRAF: Mr. Uddo.

2 MR. UDDO: Since we just got this paper today, I  
3 assume that there will be another opportunity in the future to  
4 explore this with Professor Cox because --

5 CHAIRMAN WITTGRAF: Perhaps it would be helpful if  
6 either Mr. Martin or Mr. Cox could describe for me and, I  
7 think, for all the members of the Board what relationship we  
8 have with Mr. Cox at the moment, particularly in terms of  
9 time.

10 MR. MARTIN: Let me correct something you said, Mr.  
11 Chairman; and that is, Mr. Cox is a temporary employee of the  
12 Corporation, pursuant to the appropriation's language that I  
13 could not conduct studies outside of the Corporation staff.  
14 He serves in a temporary employment contract capacity.

15 He is available to us, I think, through August; is  
16 that right, Steve?

17 MR. COX: Well, and later, August 15th, on a full-  
18 time basis. But on part-time basis --

19 MR. MARTIN: But is consulting with us and certainly  
20 we can make him available for future appearances before the  
21 Board. We got this draft late last week; is that right,  
22 Steve? I never saw it until just now. So I think that you're

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1 ready to accept comments from our staff and our committee and  
2 then maybe perhaps revise it and then maybe a final appearance  
3 with the finished product.

4 CHAIRMAN WITTGRAF: That's helpful. Let me, with  
5 Mr. Kirk's indulgence, make a statement in terms of where I  
6 anticipate we're going here as it pertains to our staff  
7 committee, as well as our temporary employee cum consultant  
8 independent contractor.

9 It would appear under the present wording of the  
10 appropriation bill as it has come through the Senate, as Mr.  
11 Cardle indicated and we discussed already, there will be some  
12 \$981,000 -- give or take, there may be some across-the-board  
13 cut to get back within the guidelines for this particular  
14 appropriations subcommittee of the Congress -- and we might  
15 have a little bit of extra money, depending upon the guidance  
16 of Mr. Richardson and others, our Treasurer and Comptroller,  
17 and his staff and others on the staff, but let's say give or  
18 take a million dollars for Fiscal Year 1992.

19 I think we're going to need some suggestions from  
20 the committee. Probably at our next regular Board meeting,  
21 which is now scheduled September 16 -- a month from now -- as  
22 to how best to utilize that million dollars. And I think that

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1 will be a charge to the staff committee between now and then  
2 with whatever assistance is possible from Professor Cox.

3 I think it's also possible that in either the  
4 conference committee language in the appropriation bill or,  
5 perhaps and, the conference committee report, we'll have some  
6 limitations on what we do with that million dollars as well,  
7 that will be in addition to whatever guidance we get from the  
8 committee of our staff. But I think that's where we're headed  
9 is: how best to utilize a million dollars in Fiscal Year 1992  
10 with some of these objectives in mind.

11 Mr. Kirk.

12 Mr. Uddo, is that --

13 MR. UDDO: Assuming that that means that at some  
14 future meeting Professor Cox will be able to come back and  
15 answer questions about the paper that we were presented with  
16 just a few minutes ago.

17 CHAIRMAN WITTGRAF: Perhaps not as a temporary  
18 employee, but somebody here summoned at our request with some  
19 kind of appropriate financial arrangement.

20 Mr. Kirk.

21 MR. KIRK: Thank you. Mr. Cox and Ms.  
22 deBettancourt, first a request. And the request is that when

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1 you come back I would like to have one set of terms--  
2 constant, dynamic, static, competitive, and now we've got a  
3 new performance review. I mean, I really don't care what they  
4 are, but I think those of us on the Board have had a lot of  
5 difficulty really following the various terms.

6 CHAIRMAN WITTGRAF: That's what's called dynamic  
7 study of competition.

8 (Laughter)

9 MS. deBETTANCOURT: We can provide a glossary for  
10 you.

11 MR. KIRK: Just consistency, I think, is really what  
12 I want.

13 Professor Cox, since you last spoke, let me address  
14 a couple things to you. You kept talking about responsiveness  
15 and I wasn't sure whether getting the most bang for the buck  
16 was part of that responsiveness or not.

17 MR. COX: Part of it, not the whole thing, but part  
18 of it.

19 MR. KIRK: Because you gave the buggy whip example  
20 but there you have a seller and a buyer. Here we've got a  
21 seller, a buyer which are the taxpayers, and then the users  
22 who are the people that need the services. And I want to make

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1 sure that your program has a part in it that involves getting  
2 the most bang for the buck, getting the most out of it, as  
3 opposed to just having a bunch of satisfied people out there  
4 getting all the legal services they want.

5 MR. COX: I see, okay. Now, that's a very good  
6 distinction: provider, taxpayer, and user, the client. You're  
7 quite right that when I was using the word "responsiveness" I  
8 was referring to the provider's responsiveness to the user, or  
9 client's needs. I did not bring in the taxpayer

10 And if you want to talk in terms of the provider as  
11 being responsive to the taxpayer, one that's actually in a  
12 sense funding these programs, then in my judgement you've got  
13 a whole different set of questions and issues that really  
14 aren't being addressed, I don't think, by a thing called  
15 "competition."

16 MR. KIRK: Well, I think -- I may be wrong, but my  
17 guess is that Congress is concerned about the taxpayers making  
18 sure they're getting their dollar's worth. And one of the  
19 things that brought this up when Ms. deBettancourt mentioned  
20 that we have these two programs and if one started getting  
21 more people coming to it, then we would have to shift more  
22 money over to them.

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1           And one of my concerns is the person that does it  
2 most efficiently, and again without depriving the user, ought  
3 to be where the money goes, not just -- you know, if we have a  
4 bunch of people say, "Well, I'm getting more service over  
5 here," and yet it may be less efficient -- I didn't hear a  
6 performance review of "what are we getting for our money?" or  
7 "are a sufficient number of poor people being attended to for  
8 the money that we're spending?" And if that's not being  
9 addressed, I would like to see it addressed, if possible.

10           MR. COX: Well, it is part of what I include under  
11 performance review, what I call the case fractionalization  
12 system. Because under your current system, all you know is  
13 the number of cases that are being handled; that's all you  
14 know. Whereas, if you've got a case fractionalization system,  
15 you not only know the number of cases that are being handled  
16 but the extent to which each case is being handled.

17           Let me just use the San Antonio study as an example.  
18 We did divorces, and the cases were closed at quarter  
19 increments. One-quarter meant initial client interview.  
20 One-half, I think, was the filing of the initial pleading, the  
21 divorce petition. Three-quarters is any work beyond the  
22 petition. One is closure via judicial resolution, the divorce

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1 is granted.

2 Now, there was really a distinct difference between  
3 the three models, not so much with respect to how many cases  
4 were closed -- each of them closed about 200 cases in the  
5 study -- but the difference was the number of cases that were  
6 closed at judicial resolution. And then the other difference  
7 was of those that were closed at some fraction, the number  
8 that were closed at one quarter.

9 Well, let's not get too involved in the numbers, the  
10 point I'm simply trying to make is that the additional  
11 information that you would get under a case fractionalization  
12 system, over and above your existing case reporting system,  
13 you get all the same information -- you would know how many  
14 cases were handled -- but you would also have an indication of  
15 how much legal time and effort went into each case.

16 Two hundred cases closed at judicial resolution is  
17 quite different from even 400 cases closed at one-quarter. Or  
18 400 cases closed at one-quarter, you know that 400 poor people  
19 have walked in the door and had an initial interview, nothing  
20 more.

21 MR. KIRK: I understand what you're saying but --

22 MS. deBETTANCOURT: The initial selection criteria

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1 that the Corporation put together a couple of years ago and  
2 sent out for comment did include consideration of both whether  
3 it's an economical delivery, efficient, and quality. Those  
4 are the three criteria that would be taken into consideration.  
5 So the economy of the model would always be reviewed as a  
6 matter of course.

7 MR. KIRK: But what I want to tell you is that I  
8 didn't hear that in the presentations. And I want to tell you  
9 that the other thing under your dynamic or constant  
10 competition, there was no talk about taking the more efficient  
11 one and rewarding that one with more. I mean, it was almost  
12 like, "Here's the funding and we're going to have these two  
13 out there," but it seems to me unless there is a penalty of  
14 sorts to the less efficient or less responsive one, then  
15 that's an important part. And you may have just left that  
16 out, but the only time you mentioned any shift taking place  
17 was when all the folks left one program and went to another.

18 MS. deBETTANCOURT: I think I mentioned it in the  
19 paper, maybe I didn't emphasize that enough. But there would  
20 be a shift in funds from the less effective provider to the  
21 more effective provider.

22 That's why I'm saying for any dynamic model, we

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1 can't implement it under current authority because we cannot  
2 take money away.

3 MR. KIRK: Now I'm on my third word here, which is  
4 "responsive, efficient, and effective," and I'm also having  
5 difficulty there. So I guess I will need the glossary  
6 because, you know, I want the responsiveness in there because  
7 I think that's absolutely crucial. But to ignore the dollars,  
8 the efficiency, the making sure that we're reaching the  
9 maximum number of people, then that is important.

10 And one last point: Change is difficult, but I think  
11 we need to be bold and looking for change and not afraid to do  
12 it. And I think, Professor Cox, your point about maybe a  
13 lawyer is not going to be paid in this particular program, but  
14 another lawyer is going to be paid over here. And so when you  
15 look at the big picture instead of, "Gee, I don't want Sam to  
16 lose his job," I agree with you that there really will not be  
17 a loss but an overall gain, probably.

18 Thank you.

19 CHAIRMAN WITTGRAF: Further comments?

20 Mr. Rath.

21 MR. RATH: Yes, Professor Cox, I agree with Mr.  
22 Kirk. I think a use of a consistent set of definitions would

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1 be desirable.

2           You said that -- one aspect of what you said,  
3 competition is a means to an end and the end is efficiency or  
4 responsiveness -- and what you defined as responsiveness was  
5 having sellers being highly responsive to buyers needs,  
6 correct? In your model, who makes the determination as to  
7 what the clients need?

8           MR. COX: I'm glad you actually gave me an  
9 opportunity to answer that question because it has to do with,  
10 I think, the very end comment that Mr. Kirk mentioned.

11           Because the current system is a staff program or  
12 staff model, it's quite natural that when you and everybody  
13 thinks about funding, you think in terms of a lump-sum amount  
14 of dollars going to a provider at some point in time -- a  
15 million dollars to the program or a million and a half  
16 dollars. And only subsequently do you then find out how many  
17 clients were served with those dollars via your case closure  
18 statistics.

19           Under a compensated private attorney model, which so  
20 far has always been used as simply a supplementary model, and  
21 add on, if you will, to the current staff model, under a  
22 compensated private attorney model the funding doesn't come

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1 first and the client served second. The clients served comes  
2 first and the funding comes second. Only when the case is  
3 closed and the paperwork is sent in does the private attorney  
4 get compensated.

5 So the real issue that both you and Mr. Kirk really  
6 are getting at is the way in which programs are funded.  
7 Because they're funded under a lump sum, you worry ex post  
8 about how many clients are being served.

9 If programs were funded on a per-client or a  
10 per-case basis, then what you're talking about is rewards or  
11 incentives or punishments would all be taken care of. The  
12 providers who serve 100 clients will be paid for 100 clients.  
13 The provider that's serving 50 clients will be paid for 50  
14 clients.

15 MR. RATH: Well, just so I'm clear, Professor, let  
16 me state that I don't think the grant comes first. I think  
17 the need comes first. I think that's what we tend to miss.

18 Now, I have a real hard time accepting that you can  
19 have full competition in personal services, because it is not  
20 as clear as the buggy whip versus the engine. It is much  
21 more, unfortunately, subjective than that.

22 Am I correct that if I don't accept or if I have

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1 problems within your model, the equation that competition  
2 equals responsiveness in the way you have defined  
3 "responsiveness," then the whole theory has to be re-  
4 formulated and re-tested. Isn't that the cornerstone of where  
5 you start?

6 MR. COX: I didn't understand the question. Could  
7 you rephrase it?

8 MR. RATH: If I have a problem with your beginning  
9 assumption --

10 MR. COX: And that is?

11 MR. RATH: That competition equals responsiveness.

12 MR. COX: Not equals, it is a means to  
13 accomplishment.

14 MR. RATH: All right, if I have a problem with that,  
15 then don't I have a problem with the entire paper?

16 MR. COX: You bet.

17 MR. RATH: All right. I have a problem with it.

18 Next, the issue of providing financial incentives to  
19 get people into the game to get additional providers out  
20 there: I need to know more about this -- and I'm not  
21 directing this to you but more generically the people who are  
22 working on it.

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1 I need to know, as one Board member who is new to  
2 the Board, that there are going to be alternative sources of  
3 the services to provide for the need that are going to come  
4 forward and serve the full range of concerns and not just  
5 those services upon which a profit can be made. And I am very  
6 troubled by that.

7 Where I have a problem -- and it's hard to be  
8 against the word "competition," and I'm not, I'm a private  
9 provider who is in competition on a daily basis -- there's a  
10 lot of cutthroat people out there, and as good as I am,  
11 sometimes they go to other people -- but I have a problem with  
12 this. And I have a problem in that I start with the need and  
13 I don't see a lot of alternatives out there in a state like  
14 mine. And that's why I'm very pleased to be a part of a group  
15 that's got a lot more people on here who have a lot different  
16 experiences.

17 But I want to find out a way beyond -- I want to  
18 find a model that allows me to test this issue that in  
19 providing for competition for services upon which some kind of  
20 reasonable economic return can be made, we are not somehow  
21 weakening the underpinnings of the basic premise here, which  
22 is that we're providing services where there is not an

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1 economic return. And I don't see that in this material so  
2 far.

3 MS. deBETTANCOURT: I was going to mention that I  
4 think there is -- and I recall a sentence in Professor Cox's  
5 paper -- but I think that there is a general recognition among  
6 most of us who have worked with competition that in every area  
7 there is not going to be a full competition. In rural states  
8 there might not be several different programs who would bid.  
9 On the other hand, in rural areas there might be more private  
10 attorneys who would -- in isolated areas, who would bid on a  
11 particular segment of the cases and might relieve the one  
12 staff attorney of some of that circuit work.

13 So there is some recognition that in whatever system  
14 we put in place, there's going to have to be some kind of  
15 diversity that one system is not going to be the answer in  
16 every area. Does that help?

17 CHAIRMAN WITTGRAF: We have approximately five  
18 minutes.

19 Mr. Dana.

20 MR. DANA: Mr. Chairman, I won't take the whole five  
21 minutes, but I can't ask questions except rhetorical questions  
22 that I need help on. First of all, Kathy, in your reports,

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1 and unfortunately in too many reports that I've been receiving  
2 lately, they aren't dated and I don't know who wrote them.  
3 And I've got a problem with that.

4 Some of the handouts that I've received I've seen  
5 before in other context, particularly the summary of Legal  
6 Services Corporation's preliminary actions towards  
7 implementing competition; that looked real familiar, but I  
8 don't know when I read it. It wasn't dated the last time and  
9 it hasn't been dated now. And it would be nice to have  
10 something dated and know who wrote it. If it comes to us, you  
11 know, sort of through someone, I would like to know who has  
12 really done the work.

13 On your paper entitled Legal Issues, the undated one  
14 that goes two lines onto the second page, you make the point  
15 that you made again today that denial of refunding is very  
16 expensive. It would be very helpful, I think, for a report  
17 from someone substantiating that. This town moves on  
18 anecdotes, it would be nice to have the facts with which to  
19 support that assumption.

20 MS. deBETTANCOURT: We do have that --

21 MR. DANA: I'm sure it's there, but I would like to  
22 know that.

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1 MS. deBETTANCOURT: I should add this -- I didn't  
2 realize the Legal Issues -- this is from the General Counsel's  
3 Office, so --

4 MR. DANA: I know, but you don't know what form--  
5 this is not being critical of you -- when we get it we  
6 sometimes don't know who the --

7 Both of you have, when you talk about dynamic or  
8 constant competition, your writings and your words talk about  
9 competition between delivery models, which adds a political  
10 overtone to what you're saying, that you really don't address.  
11 You just assume that competition requires private attorneys  
12 competing against staff attorneys, or pro bono competing  
13 against staff attorneys.

14 It does seem to me that you would remove this clear,  
15 sort of, red flag to the field if you talked in terms of  
16 competition between staff attorneys models. There's nothing  
17 -- and I think I understand the concept of choice and the  
18 economic theories -- you could have two staff attorney  
19 programs going head-to-head with financial consequences in  
20 terms of budgets flowing from those which appear to be more  
21 responsive. But you never do, you're always competing  
22 judicare programs or staff attorney models or contract models

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1 with that -- just an observation.

2 I --

3 MS. deBETTANCOURT: Could we answer that?

4 MR. DANA: No, because I really --

5 (Laughter)

6 MR. DANA: I'm sorry. I've only got about one more  
7 minute.

8 CHAIRMAN WITTGRAF: This is really the first  
9 installment of what will be a long, I'm sure, and continuing  
10 dialogue, Ms. deBettancourt, so don't feel frustrated. We'll  
11 have another go at it on September 16th.

12 MR. DANA: That would be wonderful.

13 Professor, it will be fun to compare your  
14 presentation and your paper today with what you said to us two  
15 months ago. It was as -- we have, in our business, something  
16 called a confirmation conversion. If I read -- what your  
17 saying is you like competition, sort of the conventional  
18 competition, which is constant competition where choices are  
19 being made and results flow from that.

20 You have also adopted what you previously  
21 characterized as moving from one monopoly to the next. And,  
22 for the Corporation's benefit, you have embraced monitoring

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1 and performance review so that you have -- it would be nice to  
2 hear sometime who got to you between the last time and this.

3 Secondly, it would be very helpful to you, I think,  
4 to learn from the Corporation the full panoply of how programs  
5 choose what they do; it's called priority setting. It is not  
6 only the presence on local boards of clients. There are  
7 regulations dealing with the issue. There are serious efforts  
8 to try and find out what the community feels is important.

9 And the reason we don't serve the first person to  
10 walk in the door is because we don't have enough money to  
11 serve the person who gets there at 9:30. And so when we can  
12 only serve 20 percent of the people, we are not serving only  
13 the fleet of foot.

14 And what my problem with your economic theory is, is  
15 that at 9:30 we've got to shut the door because everybody  
16 understands that you've got to get there at 9:00 because we  
17 serve the first 10 people in the door and those happen to be  
18 the people who really want a divorce and not the people who  
19 are just thinking about it or who maybe aren't being fed or  
20 are hungry or don't know what the problem is.

21 And I understand that this paper is called a  
22 discussion paper, but I look, fleetingly, for the difference

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1 between fact and opinion. And I like fact and I also like  
2 opinion, but I think it's very important to distinguish  
3 between the two.

4 And there are only 10 footnotes and only a couple of  
5 them -- one refers to something by John Kenneth Galbraith and  
6 the other refers to the San Antonio study. And I just feel  
7 that if this is an idea of what's in your head, it would be  
8 nice to know what the factual predicate for your theories are.

9 CHAIRMAN WITTGRAF: Thank you, Mr. Dana.

10 MR. DANA: Thank you.

11 CHAIRMAN WITTGRAF: That will conclude --

12 MS. PULLEN: Mr. Chairman?

13 CHAIRMAN WITTGRAF: Ms. Pullen, you've heard the  
14 chairs admonition, please, in light of that --

15 MS. PULLEN: Thank you, Mr. Chairman. In light of  
16 your admonition and your making sure the questions were  
17 rhetorical, I would like to interject that I do not read the  
18 Competition Committee's status report at all in the same  
19 manner that Mr. Dana has, apparently.

20 I believe that there is substantial reference to  
21 competition between staff attorney programs contemplated in  
22 the discussions of the Competition Committee. And since Ms.

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1 deBettancourt was not allowed to say that, I'm going to say  
2 it. I think that's what she would have said because that's  
3 what I see as fact anyway.

4 I would also like to mention in terms of Professor  
5 Cox's fractionalization proposal that I do think that we have  
6 to be concerned in any evaluation based on numbers that the  
7 reasons for things be fully understood and for any program to  
8 have a number of cases -- you used the example divorces where  
9 the end of the case was after the initial interview. There  
10 could be a reason for that, that would be a very supportable  
11 reason, such as an orientation of a program toward counseling  
12 family preservation rather than always going for litigation.

13 And although I think mere recitation of cases closed  
14 is not a very full presentation of what's really going on, I  
15 think there also has to be some recognition given to the fact  
16 that if you simply base it on the numbers of cases taken all  
17 the way through judicial determination, that what you would be  
18 doing is producing a tremendous incentive for litigation,  
19 which is not, in my judgement, what we ought to be doing.

20 CHAIRMAN WITTGRAF: Thank you, Ms. Pullen.

21 MS. PULLEN: Thank you, Mr. Chairman.

22 CHAIRMAN WITTGRAF: At this time, we will conclude

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1 our discussion on this agenda item with the admonition from  
2 the Chair that we will be back to this subject on September  
3 16. As I've indicated already, I think we're looking  
4 particularly for the staff committees -- and you are, for  
5 better or worse, going to have the good fortune of being the  
6 designated spokesperson, apparently, Ms. deBettancourt. And I  
7 hope that you're able to stay with that. I think it will be  
8 easier for us in terms of our glossary of terms if nothing  
9 else.

10 But we will be looking particularly at thoughts and  
11 suggestions for the utilization of the million dollars, as I  
12 indicated. And Mr. Cardle or anybody else's guidance, you may  
13 be looking at whatever conference committee wording or report  
14 language there is that may have some bearing on that, too.

15 I have one other concern. We've talked a lot, or  
16 Professor Cox talked a lot about the San Antonio study. Am I  
17 not correct in my recollection that many other -- some 11  
18 cities, projects received funding for private sector  
19 utilization of funds, and no references have been made to that  
20 today.

21 Perhaps it is in the draft; I haven't looked at the  
22 draft at all. But if we're going to hear more about San

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1 Antonio, I trust we'll hear more about that money spent in  
2 those other cities in '85 and '86; is that right? Okay.

3 At this time, we will take a personal convenience  
4 break. We will reconvene promptly at 11:00 a.m.

5 (A brief recess was taken.)

6 CHAIRMAN WITTGRAF: We're moving to consideration of  
7 agenda item 7. Is the Inspector General present?

8 Mr. Wilkinson doesn't seem to be here at the moment.  
9 He had some suggestions he was wishing to share with us as to  
10 what might be appropriate in memoranda of understanding in the  
11 future regarding both budgetary matters as they pertain to the  
12 relationship of the Office of Inspector General and the  
13 Corporation, and personnel matters as they pertain to the  
14 relationship between our Office of Inspector General and the  
15 Corporation. Perhaps he'll have an opportunity to share some  
16 of those remarks with us yet today.

17 We will then, in just a few minutes, move to begin  
18 to interview the candidates for the Office of Inspector  
19 General. I'm hoping Mr. Martin might come back in a moment.  
20 He had some thoughts I think he wanted to share with us about  
21 that position, just as he did with our committee on July 9th  
22 before we begin our interviews. We'll wait just a moment for

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1 him to come back before we begin.

2 MR. MARTIN: Two of your Board members are there  
3 talking. I haven't seen Mr. Wilkinson.

4 CHAIRMAN WITTGRAF: That's fine, we'll go ahead  
5 without him, Mr. Martin. I had suggested that you might, as  
6 you did with our Office of Inspector General Oversight  
7 Committee on July 9, share your thoughts with us before we  
8 begin the final interview process as to the role of the  
9 Inspector General relative to the Legal Services Corporation  
10 and what, from your perspective, we might keep in mind as we  
11 interview the four candidates today.

12 Mr. President.

13 MR. MARTIN: Thank you, Mr. Chairman. Well, as you  
14 know, Mr. Chairman, I served on the President's Council on  
15 Integrity and Efficiency, which is composed of the Inspector  
16 Generals and my office when I was in the Administration. And  
17 I got a feel for what Inspector Generals should be about and  
18 how they can best serve their agencies.

19 The Inspector General performs a valuable oversight  
20 or check system for a government agency and in this case for  
21 the Corporation. We are, as everyone who knows the Legal  
22 Services Corporation, a dispenser of grants exceeding \$300

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1 million. The best performance and the best thing that an  
2 Inspector General can do is to look at how we do our job and  
3 make recommendations as to whether or not it can be done  
4 better, should you eliminate a whole function, should you add  
5 a function, are there things you're doing that you shouldn't  
6 be doing.

7 In our case, we're rather small in terms of  
8 government agencies so that role and that function, in terms  
9 of an internal audit for Corporation's headquarters would be  
10 limited. What would be more important, I think, for the  
11 Corporation's purposes is a program to audit and examine how  
12 the monies are spent, how they're dispensed; and that is to  
13 look at the independent audits that are done by the individual  
14 grantees.

15 In my opinion, you should be looking for an  
16 Inspector General who has some audit experience, who has some  
17 management experience, and who understands in a broader sense  
18 the big picture of the mission of the Corporation and the  
19 organization. So I would look for experience, not necessarily  
20 Inspector General experience but experience in accountancy, in  
21 auditing, and in management.

22 The investigative function certainly can be

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1 performed and you need some experience in that arena, but  
2 there are on board already a staff of three trained  
3 investigators, and I think that the future Inspector General  
4 should look to beefing up the audit function and the internal  
5 control function for the Corporation.

6 CHAIRMAN WITTGRAF: Would you want to comment just a  
7 little bit more, and I'm hoping that perhaps Mr. Wilkinson  
8 will yet be able to share his thoughts with us as well, about  
9 the working relationship between that office and the  
10 Corporation and its staff and both the opportunities and the  
11 potential pitfalls.

12 MR. MARTIN: Well, ever since last year -- I guess  
13 it was last August or perhaps June -- the Inspector General  
14 has reported to the Board of Directors as his head rather than  
15 to the Corporation President. So, all Inspector Generals  
16 operate independently, regardless of who they report to. And  
17 that has certainly been -- the incumbent Inspector General, he  
18 has operated totally independently.

19 We have been quite supportive of him in his initial  
20 attempts of getting the office off the ground. But the  
21 relationship, I would think, would be one of teamwork and  
22 harmony so that an Inspector General would advise on a regular

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1 basis the Corporation President and his head of matters that  
2 are important and that will improve the organization and the  
3 efficiency of the operation.

4 We have invited the incumbent or a representative to  
5 come to our regular Tuesday morning staff meeting and either  
6 Mr. Wilkinson or Dan Royder, his Deputy, have been at our  
7 staff meetings. We involve them in the budgeting process. We  
8 involve them in the staffing process and in the issues. I  
9 think it's important for the Inspector General to understand  
10 the ongoing issues and problems that we face, and we have done  
11 that. So while we are independent, he is independent, we have  
12 worked together and have established a harmonious relationship  
13 in terms of that function.

14 CHAIRMAN WITTGRAF: Does anybody have any questions  
15 for Mr. Martin before we move toward our interviews?

16 (No response)

17 CHAIRMAN WITTGRAF: If not, at this time, the Chair  
18 is prepared to accept a motion that we proceed, pursuant to  
19 notice that we've been given, to an executive session of the  
20 Board at this time.

21 M O T I O N

22 MR. MOLINARI: So moved.

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1 MR. RATH: Second.

2 CHAIRMAN WITTGRAF: It's been moved by Mr. Molinari.  
3 It's been seconded by Mr. Rath. Is there discussion?

4 (No response)

5 CHAIRMAN WITTGRAF: Hearing none, those who are in  
6 favor will signify by saying aye.

7 (Chorus of ayes)

8 CHAIRMAN WITTGRAF: Those who are opposed, nay.

9 (No response)

10 CHAIRMAN WITTGRAF: The ayes appear to have it, the  
11 ayes do have it. We will proceed to Executive Session. It's  
12 the Chair's expectation that we will be in Executive Session  
13 until approximately 4:00 p.m.

14 (Whereupon, at 11:12 a.m., the Board adjourned to  
15 Executive Session.)

16 \* \* \*

17 (5:12 p.m.)

18 CHAIRMAN WITTGRAF: We will be in order again in  
19 regular session, open, public, of the Board of Directors of  
20 the Legal Services Corporation. We have had an opportunity  
21 over the course of the day to interview four outstanding  
22 candidates for the position of Inspector General of the

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1 Corporation.

2 After lengthy discussions, I think we're prepared to  
3 act, based on our interviews and those discussions.

4 Mr. Dana.

5 M O T I O N

6 MR. DANA: Mr. Chairman, subject to the Corporation  
7 entering into a satisfactory arrangement, I would move that we  
8 offer the Inspector Generalship of the Legal Services  
9 Corporation, commencing September 6, 1991, to Edouard  
10 Quatrevaux.

11 MR. KIRK: I would second the motion.

12 CHAIRMAN WITTGRAF: You've heard the motion made by  
13 Mr. Dana. There's a second by Mr. Kirk. Is there discussion?

14 MR. MOLINARI: Yes, Mr. Chairman.

15 CHAIRMAN WITTGRAF: Mr. Molinari.

16 MR. MOLINARI: For the benefit of those who weren't  
17 able to sit in the room, I must say that we were treated with  
18 four superb candidates, and I've been through selection  
19 processes before, but I've not been through one where we had  
20 four candidates that were almost equal in skills and in the  
21 reception by the Board.

22 It was a very, very difficult decision, very

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1 interesting how -- we wish we could share with you what  
2 transpired in the Executive Session. Suffice it to say that  
3 the Board was very, very impressed by all four, and it was a  
4 very difficult decision. So those who weren't selected  
5 certainly were highly regarded by all members of the Board.

6 CHAIRMAN WITTGRAF: Further discussion?

7 (No response.)

8 CHAIRMAN WITTGRAF: Hearing none, those who are in  
9 favor of the motion made by Mr. Dana, seconded by Mr. Kirk,  
10 will signify by saying aye.

11 (Chorus of ayes.)

12 CHAIRMAN WITTGRAF: Those who are opposed, nay.

13 (No response.)

14 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
15 ayes do have it. The motion is adopted.

16 Mr. Molinari.

17 M O T I O N

18 MR. MOLINARI: Mr. Chairman, our good friend,  
19 Mr. Guinot, is headed off to a warm country down in Costa Rica  
20 shortly, and I have a motion, which I will read. It's rather  
21 brief. I move that between meetings of the Board, the  
22 Chairman is authorized to establish ad hoc committees of the

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1 Board, the composition of which is subject to confirmation at  
2 the next regularly scheduled meeting.

3 CHAIRMAN WITTGRAF: Could you expand that,  
4 Mr. Molinari, to include replacement of Board members on  
5 standing committees as necessary?

6 MR. MOLINARI: Yes, sir. I would be glad to make  
7 that amendment, because that certainly is encompassed by what  
8 I want to achieve.

9 CHAIRMAN WITTGRAF: Is there a second?

10 MR. UDDO: Second.

11 CHAIRMAN WITTGRAF: Is there discussion?

12 (No response.)

13 CHAIRMAN WITTGRAF: Hearing none, those who are in  
14 favor the motion will signify by saying aye.

15 (Chorus of ayes.)

16 CHAIRMAN WITTGRAF: Those who are opposed, nay.

17 (Chorus of no.)

18 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
19 ayes to have it. The motion is adopted.

20 Item No. 16 on the original agenda --

21 MS. PULLEN: Mr. Chairman?

22 CHAIRMAN WITTGRAF: Ms. Pullen.

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## M O T I O N

1  
2 MS. PULLEN: Before we move on from what I think we  
3 named 15-A, or something like that, action on items discussed  
4 in Executive Session, there was a report to us in Executive  
5 Session that related to the fact that the Corporation has  
6 prevailed in a very major lawsuit on the question of the  
7 Corporation's ability to enforce a regulation which prohibits  
8 grantees from engaging in litigation or other activities  
9 involving redistricting.

10 That decision probably has been widely reported  
11 among the grantees. However, contemplating that there may be  
12 some grantees who do not pick up the daily log bulletin or the  
13 Washington Post and make them their daily reading, but might  
14 instead be making the briefs of clients their daily reading, I  
15 believe that it is incumbent upon us to take note of that  
16 reinstatement of our regulation, if you will, and I move that  
17 the president be directed to take whatever steps are necessary  
18 to implement enforcement of that regulation and to notify the  
19 programs of that status of the regulation, that it is now  
20 clear to be enforced and will be enforced.

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

22 CHAIRMAN WITTGRAF: Thank you, Ms. Pullen. Thank

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1 you Mr. Uddo. Ms. Pullen, I wonder if you and, in turn, Mr.  
2 Uddo would wish to expand your motion to include both the  
3 decision you've described and the earlier decision from the  
4 Ninth Circuit regarding the legal right of the Legal Services  
5 Corporation to have access to matter contained in personnel  
6 files.

7 I guess it seems to me that if we're going to make  
8 an effort to communicate the one significant legal decision,  
9 court decision, that probably the other one is equally  
10 important.

11 MS. PULLEN: That's a very good idea, Mr. Chairman,  
12 and I would certainly agree to amend the motion to direct the  
13 president to take steps to enforce both those regulations and  
14 to notify the grantees that they will be enforced.

15 CHAIRMAN WITTGRAF: Further discussion? Mr. Dana.

16 MR. DANA: I think we must enforce all of our  
17 regulations, and now that we've been -- and I support Ms.  
18 Pullen's original motion. The Ninth Circuit decision is not a  
19 regulation in the sense, and it's troubling, frankly, for me,  
20 because it indicates that the Corporation can be unreasonable  
21 in its request for documents and still get them.

22 So I would have to vote against a combined motion,

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1 but I enthusiastically support the first one, because I think,  
2 regarding of how we feel about our regulations, we should  
3 enforce them if they are regulations.

4 CHAIRMAN WITTGRAF: If I could respond, seeing as it  
5 was my suggestion, Mr. Dana, it seems to me, I'm reluctant to  
6 have to take exception to what you've just said, it seems to  
7 me that the Ninth Circuit decision probably has a great deal  
8 more to do with the day-to-day activities of all of the  
9 grantees of the Corporation than the D.C. Circuit decision,  
10 which probably affects very few of the grantees.

11 While I might even share some of your concerns about  
12 the significance of that decision, I think it's more broadly  
13 applicable at this point in time, the Ninth Circuit decision  
14 is, than is the D.C. Circuit, and it just seemed to me if  
15 we're going to communicate about the one, it only made sense  
16 to communicate about the other.

17 Mr. Uddo.

18 MR. UDDO: I think I understand Howard's problem.  
19 The Ninth Circuit decision doesn't deal with a regulation, and  
20 the motion said to inform the field that we're going to  
21 enforce the regulations, and maybe all we need is the  
22 clarification that it's informing them of the decision

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1 concerning the redistricting regulation and the intent to  
2 enforce it and informing them of the Ninth Circuit decision  
3 and its applicability under the circumstances outlined in the  
4 decision. I mean, that's informing them of what the Ninth  
5 Circuit said.

6 CHAIRMAN WITTGRAF: Fine. If our function is to  
7 communicate decisions of respected and revered circuits, I  
8 think that's fine.

9 MR. UDDO: I think with respect to the  
10 redistricting, as I understand the motion, and you don't have  
11 to accept my gloss on it, I think that is both informing them  
12 of the decision, which I'm sure most of them know about, and  
13 of the Corporation's intent to enforce the regulation.

14 With respect to the Ninth Circuit, since it's not a  
15 regulation, just a monitoring tool, I guess, if you will, to  
16 make sure that they're aware of the Ninth Circuit decision if  
17 it becomes relevant to any monitoring visit that they might be  
18 involved in, would that more accurately reflect --

19 CHAIRMAN WITTGRAF: Fine. I'd feel for comfortable  
20 supporting that.

21 MR. UDDO: Do you accept that?

22 MS. PULLEN: Sure. That's fine with me.

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1 CHAIRMAN WITTGRAF: Further discussion?

2 (No response.)

3 CHAIRMAN WITTGRAF: Hearing none, those who are in  
4 favor of the motion --

5 MR. DANA: Mr. Chairman?

6 CHAIRMAN WITTGRAF: You're not going to ask for the  
7 motion to be restated I hope, Mr. Dana.

8 MR. DANA: Apparently not, no.

9 (Laughter.)

10 CHAIRMAN WITTGRAF: Good, thank you. That's why we  
11 have such an able Corporation Secretary is to help us through  
12 these knotty problems.

13 MR. DANA: I was going to not say anything more.

14 (Laughter.)

15 MS. PULLEN: Mr. Chairman and Mr. Uddo's remarks,  
16 contained within those remarks was a very succinct  
17 construction of the motion, and I'm sure that Ms. Batie will  
18 be able to extract that and present it in the form of a  
19 motion, which is what I move.

20 CHAIRMAN WITTGRAF: I have every confidence that she  
21 will be able to do that. Those who are in favor the motion as  
22 described most recently by Mr. Uddo will signify by saying

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1 aye.

2 (Chorus of ayes.)

3 CHAIRMAN WITTGRAF: Those who are opposed, nay.

4 (No response.)

5 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
6 ayes do have it. The motion is adopted.

7 At this time, the Chair is prepared to move to  
8 consideration of Agenda Item 16, consideration of the report  
9 by the staff on the status of pending regulations and  
10 consideration --

11 MR. UDDO: You're operating from a different agenda,  
12 aren't you?

13 CHAIRMAN WITTGRAF: I'm operating from the one in  
14 the Board book, Mr. Uddo, which is probably different from the  
15 so-called Chairman's Itinerary, to which you may be referring.

16 M O T I O N

17 MR. DANA: Mr. Chairman, I have a motion to make on  
18 this subject.

19 CHAIRMAN WITTGRAF: And unless there is objection,  
20 the Chair will ask that Agenda Item be placed on the agenda  
21 for our Board meeting on September 16.

22 Mr. Dana.

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1 MR. DANA: Let me try this suggestion as an  
2 alternative to tabling it. I would move that the draft  
3 resolutions which were distributed at the last meeting with  
4 respect to the regulations, together with Mr. Fortuno's very  
5 able memorandum to the Board, dated August 1, be collectively  
6 referred to the Regulations and Operations Committee.

7 I honestly think that that's the appropriate place  
8 to do the work, rather than here at the board level.

9 MR. UDDO: I'll second.

10 CHAIRMAN WITTGRAF: You've heard the motion by Mr.  
11 Dana. It's been seconded by Mr. Uddo. Is there discussion?

12 MR. KIRK: Who is on that committee?

13 CHAIRMAN WITTGRAF: The committee at this time is  
14 chaired by Mr. Guinot. Members of it are Mr. Rath and Mr.  
15 Kirk. Mr. Kirk is getting an ever greater workload, and some  
16 of us feel there's a certain appropriateness to that, a  
17 certain symmetry. Discussion?

18 MR. UDDO: That shouldn't affect your vote, Bud.

19 (Laughter.)

20 MR. KIRK: I'm not sure, but -- you're going to  
21 appoint somebody else in the meantime?

22 CHAIRMAN WITTGRAF: I guess a good point at this

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1 time, and it was made in passing by Mr. Molinari, but let me  
2 make it again is, to the best of my knowledge, to the best  
3 knowledge of Mr. Martin, we have not received nor been  
4 notified of receipt by the President of the United States by  
5 Ambassador Designate Guinot, resignation from this board.

6 So as we convene today on August 12, we're not in a  
7 position, be it for purposes of the Operations and Regulations  
8 Committee or the Office of Inspector General Oversight  
9 Committee, to add new members to or provide leaders for those  
10 committees.

11 MR. KIRK: Okay. Thank you.

12 CHAIRMAN WITTGRAF: Further discussion?

13 (No response.)

14 CHAIRMAN WITTGRAF: Hearing none, those who are in  
15 favor of the motion made by Mr. Dana and seconded by Mr. Uddo  
16 will signify by saying aye.

17 (Chorus of ayes.)

18 CHAIRMAN WITTGRAF: Those who are opposed, nay.

19 MR. KIRK: Nay.

20 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
21 ayes do have it. The motion is adopted. I think for purposes  
22 of today's agenda, Items 17 and 18 are addressed well or at

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1 least adequately for the time being by the information  
2 contained on pages 53, 54, and 55 of the Board book.  
3 Discussion?

4 Ms. Pullen.

5 M O T I O N

6 MS. PULLEN: Mr. Chairman, I would like to bring to  
7 your attention the coinciding of the proposed November board  
8 meeting with a national holiday known as Veteran's Day, and as  
9 one director, I believe that it would be improper for us to  
10 have an official meeting of this board on an official national  
11 holiday, and particularly on Veteran's Day.

12 CHAIRMAN WITTGRAF: You're presenting that as a  
13 legal concern or a --

14 MS. PULLEN: No. I am presenting it as a policy  
15 concern.

16 CHAIRMAN WITTGRAF: Mr. Martin.

17 MR. MARTIN: Mr. Chairman, we work that day and take  
18 the tradition that the Corporation takes, the day after  
19 Thanksgiving as a holiday and work that day. So staff will be  
20 here and supporting you, if you so wish to meet.

21 CHAIRMAN WITTGRAF: Mr. Dana.

22 MR. DANA: Since it is also my wife's birthday, I

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1 would be more than happy to second this motion. If what I  
2 understand you to be saying is that you are expressing  
3 displeasure at --

4 MS. PULLEN: I am objecting to this Board meeting on  
5 Monday, November 11, which is Veteran's Day.

6 MR. DANA: For that reason and one other, I join  
7 you.

8 CHAIRMAN WITTGRAF: In objecting?

9 MR. DANA: Correct.

10 MS. PULLEN: Mr. Chairman, I think that we can  
11 discuss at some future date whether it's necessary to have a  
12 November meeting, but I would like to get this issue clarified  
13 right now. So I would move to cancel the meeting, which has  
14 been tentatively scheduled for November 11, subject to future  
15 discussion as to whether it shall be replaced.

16 CHAIRMAN WITTGRAF: Before I ask for a second, let  
17 me ask if you have a preference, Ms. Pullen, as to another  
18 date in November so that we can allow people to point toward a  
19 date should we meet in November.

20 MS. PULLEN: Mr. Chairman.

21 CHAIRMAN WITTGRAF: Ms. Pullen.

22 MS. PULLEN: As long as you're asking me my

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1 preference, I think you are aware of my long-standing  
2 preference that this Board not meet every single month to take  
3 up every interesting little item that we can possibly find to  
4 discuss, and I would personally believe that it is not  
5 necessary to have a meeting to replace that meeting, but that  
6 is not part of my motion.

7 I described to you my motion as including that it is  
8 subject to future discussion with respect to whether this  
9 meeting date should be replaced, but that for purposes of this  
10 motion, that meeting would be canceled for that date.

11 CHAIRMAN WITTGRAF: Is there a second?

12 MR. DANA: There is.

13 CHAIRMAN WITTGRAF: Is there discussion?

14 MR. UDDO: Mr. Chairman.

15 CHAIRMAN WITTGRAF: Mr. Uddo.

16 MR. UDDO: I'd support the motion to cancel it on  
17 that date, but I think the purpose of picking these dates in  
18 advance is to try to find some that can be protected, and we  
19 can get everyone there if we need one. So while I'd support  
20 the motion to cancel it on the 11th, I'd like to pick an  
21 alternate date now.

22 CHAIRMAN WITTGRAF: Further discussion.

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1 (No response.)

2 CHAIRMAN WITTGRAF: Those who are in favor of the  
3 motion to cancel the tentatively scheduled meeting of the  
4 Board on Monday, November 11, 1991, will signify by saying  
5 aye.

6 (Chorus of ayes.)

7 CHAIRMAN WITTGRAF: Those who are opposed, nay.

8 (No response.)

9 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
10 ayes do have it.

11 Mr. Uddo.

12 M O T I O N

13 MR. UDDO: I'm going to move that we pick an  
14 alternate date now, for purposes of protecting some date, in  
15 the event we need a meeting.

16 MR. HALL: I'll second his motion.

17 MR. UDDO: Why don't we just do it.

18 CHAIRMAN WITTGRAF: The 18th, is that what you want?

19 MR. UDDO: Well, no. I mean, the 10th is a Sunday.

20 CHAIRMAN WITTGRAF: No. I said the 18th.

21 MR. UDDO: Oh, the 18th? That's all right with me.

22 MR. DANA: The 18th is a month from the prior

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1 meeting.

2 CHAIRMAN WITTGRAF: Do I take your motion to be that  
3 we plan tentatively to meet on Monday, November 18, 1991?

4 MR. UDDO: Yes, that's my motion.

5 CHAIRMAN WITTGRAF: Is that what you seconded,  
6 Mr. Hall?

7 MR. HALL: Yes, sir.

8 CHAIRMAN WITTGRAF: Is there discussion?

9 (No response.)

10 CHAIRMAN WITTGRAF: Those who are in favor the  
11 motion will signify by saying aye.

12 (Chorus of ayes.)

13 CHAIRMAN WITTGRAF: Those who are opposed, nay.

14 MS. PULLEN: No.

15 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
16 ayes do have it. The motion is adopted.

17 MS. PULLEN: Mr. Chairman.

18 CHAIRMAN WITTGRAF: Ms. Pullen.

19 MS. PULLEN: I'm assuming that the existence of a  
20 proposed schedule of dates does not represent on this day,  
21 August 12, a commitment on the part of every member of the  
22 Board to be available on every one of those dates.

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1 I, personally, for example, do not yet know the  
2 legislative schedule for November but can well anticipate,  
3 from past experience, that November 18th would be a day that  
4 my other public duties would conflict, and so regardless of  
5 how I voted on the motion, the motion has carried.

6 I do not want to have it -- I would like to clarify  
7 from my own point of view that while we all attempt very hard  
8 to make meetings and do a pretty good job at having unanimous  
9 attendance, better than any other board I've sat on,  
10 scheduling these dates far in advance may be an advantage in  
11 some senses, but in other senses, at least for someone like  
12 me, who has another public duty, can cause a problem, because  
13 I can't tell you right now whether I can make that date.

14 CHAIRMAN WITTGRAF: Mr. Dana.

15 MR. DANA: I take it you're not going to move that  
16 we move it back to the 11th?

17 MS. PULLEN: No. I know I can't make that date,  
18 because that date is Veteran's Day. I'm not suggesting, Mr.  
19 Chairman, that any of these dates should be contingent on my  
20 being able to make them, but I know how hard you work to get  
21 unanimous attendance, and I think that is admirable and  
22 certainly a goal that is worthy to be continued, and I just

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1 wanted to put on the record that scheduling them far in  
2 advance sometimes can be detrimental in situations like mine.

3 CHAIRMAN WITTGRAF: With that thought in mind, and  
4 realizing that other people have conflicts which arise as  
5 well, I could ask that anybody who sees that he or she has a  
6 conflict would let me know at once. I think generally the  
7 consensus has been that it was even more important to try to  
8 project dates when we would meet so people could plan their  
9 schedules with that in mind.

10 If we run into something that is a serious conflict  
11 for someone, hopefully, they'll tell me.

12 CHAIRMAN WITTGRAF: Mr. Kirk.

13 MR. KIRK: I have just one comment on that. I think  
14 Ms. Pullen and I have been strong advocates, at least in  
15 ability, to tie in by telephone on those occasions when we  
16 can't be here, and I probably will have a most difficult  
17 schedule this fall making these, and I would once again  
18 request that the Corporation look into getting a phone  
19 consultant and finding a piece of equipment that had some  
20 portability and was good.

21 My law firm has 20-man conferences every two or  
22 three weeks, and they operate very, very well by telephone

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1 with a first-class system. Even if it was \$1,500, with the  
2 money you save on me coming up here and my expenses and  
3 everything, it would be paid for in no time. So I would hope  
4 we do that.

5 CHAIRMAN WITTGRAF: Mr. Martin.

6 MR. MARTIN: I have instructed Mr. Richardson to  
7 look into that, and we are right now doing that. So thank  
8 you.

9 CHAIRMAN WITTGRAF: At this time, the Chair is  
10 prepared to receive a motion that we close a portion of our  
11 next Board meeting scheduled for Monday, September 16, 1991,  
12 in Jackson, Mississippi --

13 MR. KIRK: I so move.

14 CHAIRMAN WITTGRAF: Just a minute. -- as authorized  
15 by the relevant provisions of the federal government and its  
16 Sunshine Act and the Corporation's regulation implementing the  
17 Sunshine Act, we should now agree to close a portion of that  
18 meeting on that date at that location for the purposes of  
19 discussing both internal personnel matters and pending  
20 litigation involving the Corporation.

21 It's necessary, as we give notice, for us to include  
22 or plan to have an Executive Session as a part of the notice.

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1 If we can act in that regard at this time, then it will not be  
2 necessary for us to be polled in the meantime, but rather,  
3 based upon this action, our Secretary, Ms. Batie, will be able  
4 to give notice accordingly. Is there such a motion?

## M O T I O N

5  
6 MR. KIRK: I so move.

7 CHAIRMAN WITTGRAF: Is there a second?

8 MR. UDDO: Second.

9 CHAIRMAN WITTGRAF: It's been moved by Mr. Kirk,  
10 seconded by Mr. Uddo. Is there discussion?

11 (No response.)

12 CHAIRMAN WITTGRAF: Those who are in favor the  
13 motion will signify by saying aye.

14 (Chorus of ayes.)

15 CHAIRMAN WITTGRAF: Those who are opposed, nay.

16 (No response.)

17 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
18 ayes do have it. Further business.

## M O T I O N

19  
20 MR. DANA: Would a motion to adjourn be in order?

21 CHAIRMAN WITTGRAF: Yes. It's always in order.

22 MR. DANA: I so move.

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1                   CHAIRMAN WITTGRAF: Is there a second?

2                   MR. UDDO: Second.

3                   CHAIRMAN WITTGRAF: It's been moved by Mr. Dana,  
4 seconded by Mr. Uddo that we adjourn. Those who are in favor  
5 will signify by saying aye.

6                   (Chorus of ayes.)

7                   CHAIRMAN WITTGRAF: Those opposed, nay.

8                   (No response.)

9                   CHAIRMAN WITTGRAF: The ayes appear to have it. The  
10 ayes do have it. We stand adjourned. Thank you.

11                   (Whereupon, at 5:40 p.m., the meeting of the Board  
12 of Directors was concluded.)

13

\* \* \* \* \*

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