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LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS MEETING

OCT 25 1991

Executive Office

October 21, 1991

The Portland Regency Hotel
20 Milk Street
The Ballroom
Portland, Maine

Board Members Present:

George W. Wittgraf, Chairman
Howard H. Dana, Jr.
J. Blakeley Hall
William L. Kirk, Jr.
Jo Betts Love
Thomas D. Rath
Basile J. Uddo
Jeanine E. Wolbeck

Staff Present:

Jack O'Hara, President
Patricia Batie, Secretary
David Richardson, Comptroller and Treasurer
Victor Fortuno, General Counsel
Ken Boehm, Counsel to the Board
Alan Severson, Director of Policy Development
Emilia DiSanto, Director of Monitoring and Compliance

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P R O C E E D I N G S

(9:08 a.m.)

CHAIRMAN WITTGRAF: The Board of Directors of the Legal Services Corporation will be in order once again. Following our recess yesterday afternoon, after the open Board forum, we've returned for the purpose of continuing the consideration of the items on our agenda.

The next four items on our agenda involve matters to be discussed in closed or executive session. A vote has been taken previously among the members of the Board in anticipation of this, for us to proceed to executive session. That preliminary vote notwithstanding, at this time I would ask that we receive a motion in open session to enable us to proceed to closed session.

M O T I O N

MR. RATH: So moved.

MR. UDDO: Second.

CHAIRMAN WITTGRAF: It has been moved by Mr. Rath and seconded by Mr. Uddo. Is there discussion?

(No response.)

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

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(A chorus of ayes.)

CHAIRMAN WITTGRAF: Those opposed, nay?

(No response.)

CHAIRMAN WITTGRAF: The ayes appear to have it. The ayes do have it. The motion is adopted. We will proceed to executive session.

At this time the Chair will ask all but the Board members, the reporter, the inspector general, the president of the Corporation, the general counsel to excuse themselves from these proceedings, and the Corporation Secretary.

(Whereupon, at 9:10 a.m., the meeting went into Executive Session.)

(11:30 a.m.)

1
2 CHAIRMAN WITTGRAF: We are in open session. The
3 contract that's been negotiated tentatively between the Board
4 and Mr. O'Hara, it's my understanding that any questions you
5 had have been resolved. The Chair is prepared at this time to
6 receive a motion for the approval of the contract as drafted.

7 M O T I O N

8 MR. RATH: So moved.

9 MR. DANA: Second.

10 CHAIRMAN WITTGRAF: It's been moved by Mr. Rath and
11 seconded by Mr. Dana.

12 Discussion?

13 (No response.)

14 CHAIRMAN WITTGRAF: Hearing none, those who are in
15 favor of the approval of the contract with our new president,
16 Mr. O'Hara, as drafted will signify by saying aye.

17 (A chorus of ayes.)

18 CHAIRMAN WITTGRAF: Those who are opposed, nay?

19 (No response.)

20 CHAIRMAN WITTGRAF: The ayes appear to have it. The
21 ayes do have. The contract is approved. Mr. O'Hara and I
22 will move to execute it today.

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1 CHAIRMAN WITTGRAF: It's been moved by Mr. Hall. Is
2 there a second?

3 MR. KIRK: Second.

4 CHAIRMAN WITTGRAF: Second by Mr. Kirk.

5 Is there discussion?

6 (No response.)

7 CHAIRMAN WITTGRAF: Hearing none, those who are in
8 favor of those committee assignments as recommended will
9 signify by saying aye.

10 (A chorus of ayes.)

11 CHAIRMAN WITTGRAF: Those who are opposed, nay.

12 (No response.)

13 CHAIRMAN WITTGRAF: The ayes appear to have it. The
14 ayes do have it.

15 At this time the Chair asks Ms. deBettancourt and
16 anybody else she and her colleagues deem appropriate to come
17 forward. Apparently, that will include Mr. Moses and Mr.
18 Boehm, also members of the so-called Competition Committee, to
19 summarize briefly their current report in furtherance of the
20 requests made by the Board at our last meeting on September 15
21 and 16 in Jackson.

22 Also, I guess in furtherance of the appropriation of

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1 \$977,000 made to the Corporation by the Congress, presumably
2 to be approved by the President for Board initiatives, again
3 presumably to be used largely in the area of demonstration
4 funding of a competitive nature as suggested by the Conference
5 Committee or the Conference Report language accompanying our
6 appropriation.

7 Ms. deBettancourt, are you prepared to proceed?

8 CONSIDERATION OF SUPPLEMENTAL REPORT ON THE COMPETITION STUDY

9 MS. deBETTANCOURT: Yes. As you mentioned, Congress
10 appropriated \$977,000 for Board initiatives. As Congress
11 frequently does, they granted this money with some ambiguity.
12 The appropriations rider that has been in our appropriations
13 bill for several years was retained. That appropriations bill
14 restricts the Corporation to in-house review and hearings on a
15 competitive bidding system for the award of all grants.

16 However, the Conference Report does make it clear
17 that the -- and that language I gave you a copy of the
18 appropriations bill -- it does say that these funds may be
19 used to conduct comparative demonstration projects, to study
20 under appropriate standards and criteria the use of
21 competition in providing effective, efficient legal services
22 of high quality.

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1 The Conference Report language does make it clear
2 that this money may be used for the sort of project that the
3 Competition Committee and this Board has been discussing in
4 the last few weeks. One thing that is interesting, this B_oard
5 and previous Boards have requested discretionary funds before
6 for competition or other Board initiatives.

7 This is the first time in many years that Congress
8 has given this money, a discretionary fund, to a Board of the
9 Legal Services. So it does indicate a degree of confidence in
10 this Board in the sort of demonstration project that we might
11 put together. So that's a positive step.

12 However, we do have limited funds and some limited
13 authority to use this. So the Competition Committee
14 recommends that we move with some deliberation. We recommend,
15 therefore, that we design and initiate a comparative
16 demonstration project that would test whether two legal
17 services programs competing in the same area will tend to
18 improve their performance based on cost, quality and
19 effectiveness of legal services provided.

20 One of the most important things we can learn,
21 however, from this comparative demonstration project is how to
22 develop and test measures of legal services program

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1 performance, including timekeeping and financial
2 recordkeeping to establish cost, to establish quality,
3 criteria standards, and to learn how to use peer review to
4 assess quality and effectiveness.

5 Our discussions as a committee and before this Board
6 and our discussions with representatives of the field have
7 convinced us that if we use this money to learn that, we have
8 accomplished a great deal.

9 Two options have been recommended by the Board for
10 further study. Those are Option 3 and Option 5 that we
11 discussed at the last Board meeting.

12 CHAIRMAN WITTGRAF: Why don't you go ahead and
13 describe your understanding of those two options, Ms.
14 deBettancourt?

15 MS. deBETTANCOURT: Okay. Both options recommend
16 funding to legal services providers in the same area and
17 measuring their performance at the end of the year. We
18 presume at this point that it will be a year's study. The
19 main difference between the two is that Option 5 recommends
20 funding to legal services providers that are currently funded
21 by the Corporation and to have service areas that are
22 contiguous or overlapping and to compare their performance.

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1 Option 3 would recommend funding of a non-LSC
2 provider, a provider that is not currently funded by the
3 Corporation, to compete in the same area with a
4 currently-funded legal services grantee. So both have the
5 same structure. The main difference is one would provide a
6 competition between two existing grantees. One would provide
7 competition between an existing grantee and an alternate
8 provider, an alternate full service provider.

9 We propose, based on the funding that we have, to
10 choose two sites. It is possible, and I think useful, to fund
11 a site both under Option 3 and 5. Then we can provide some
12 analysis of the comparison under both circumstances. The
13 methods we will use for collecting data will have to be -- we
14 are currently establishing those and they will have to be in
15 place. We will need at least two months to have those in
16 place once the site has been chosen.

17 We will have to approve and develop a timekeeping
18 system and approve a financial recordkeeping system. We have
19 taken Mr. Kirk's advice and have talked to the people in the
20 insurance industry to look at the sort of timekeeping analysis
21 they do to assess the cost and quality of their outside
22 counsel.

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1 Criteria for measuring quality can be refined while
2 the project is underway. We recommend that a working group be
3 established, including members of the Competition Committee,
4 any members of the Board who would like to work with us, and
5 members from other federal agencies, members from the field,
6 and other members, also people in the academic or other
7 environment who have worked on previous demonstration projects
8 and studies that have had a quality assessment component to
9 work with us to refine a set of quality criteria.

10 We recommend at least that a working group -- I know
11 that there is in St. Louis a time set up for quality
12 assessment. We would like to participate in that and see what
13 input we can get at that time. Again, we anticipate a year
14 for the beginning of legal services delivery at the start-up
15 date to the end.

16 At the close of that period, peer review panels will
17 be trained to assess the performance of the project according
18 to the criteria established by the Quality Criteria Committee.
19 Also at the close of the project, interviews with members of t
20 he local bar, the local client community, local judicial
21 officials will be obtained to assess the program's performance
22 in its community, its reputation, how it's working with the

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1 bar, how it's meeting the needs of the clients.

2 At this point we need to move to selecting a site
3 or several sites. The Competition Committee has established
4 some initial site selection criteria: if Option 3, the
5 availability of alternate providers if there are non-LSC legal
6 services programs in the area that might be interested; if
7 Option 5, we have to be concerned with the proximity of legal
8 services programs if there are some programs that have
9 contiguous areas.

10 We need to consider geographic and demographic
11 representativeness but also diversity.

12 CHAIRMAN WITTGRAF: Excuse me just a moment. Am I
13 correct in my assumption -- we've got to find better names for
14 these other than Option 3 and Option 5, which are really
15 meaningless and arbitrary. They happen to have evolved from a
16 memorandum for our last meeting. We'll assume you all will be
17 able to come up with appropriate names. But I'll stick with
18 Option 3 for the moment.

19 Is it fair to assume that Option 3, as you're
20 talking about site selection and geography, is geared toward,
21 to be very candid, an area that we, in particular our staff,
22 feel is being poorly served at this time?

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1 MS. deBETTANCOURT: I hadn't gotten to that yet.
2 I'm working down the list. That's number 6. I was on 3.

3 CHAIRMAN WITTGRAF: Go ahead, please.

4 MS. deBETTANCOURT: I'm working, I think, in order
5 of importance. Four would be potential cooperation with the
6 local bar. We will need the local bar to help us to work with
7 both programs, particularly to select Board members and also
8 potential cooperation by the local programs. We will have to
9 have their cooperation to make this work.

10 Again, the sixth, at least initial site selection
11 criteria, is what you've just mentioned. We will look for
12 areas where the need for legal services is not sufficiently
13 met by current grantees as evidenced by a significant decline
14 in case closures over the last three years, serious
15 deficiencies in delivery as indicated by monitoring reports
16 and other objective criteria that we have in the Corporation,
17 for example, month-to-month funding which would evidence some
18 problems, also failure of the program to win support of the
19 local bar and local attorneys and judicial officials, and
20 also failure of the program to win the support and confidence
21 of the local client community.

22 The Corporation does receive many complaints and

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1 other communications from both Congress, the local
2 communities, clients, all of which would help us assess which
3 programs are not being responsive to their community and where
4 the need might be unmet. We would also hope to find some
5 areas where there is a large poverty population and a large
6 need for legal services.

7 Does that address your question?

8 CHAIRMAN WITTGRAF: Yes. For me, as one Board
9 member, I'm concerned obviously as I look at what we call
10 competitive bidding or competitive funding, pinpointing areas
11 where a job is not being done well now. One or two things in
12 my mind will happen is either the people who exist in that
13 area will get their act together or they will be replaced by
14 someone else.

15 I'd like to think that that will ensure the
16 provision of more and better legal services to the poor in
17 that particular geographic area. It does necessarily begin to
18 involve some finger pointing, but I think that's the reality.
19 I think we have some obligation as a Board with our staff to
20 do that at some point.

21 So, yes, that answered my question very well.

22 MR. HALL: Mr. Chairman?

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1 CHAIRMAN WITTGRAF: Is there more? I think we have
2 lots of questions.

3 MS. deBETTANCOURT: I really just wanted to finish
4 and say we are at the point now where we need to get started.
5 We need to select a site. We have already begun working on
6 the sort of timekeeping systems we need to use. We will be
7 preparing a paper on the quality assessment criteria that have
8 been used in the past and should be used as a basis for the
9 future. At this point we're ready to move forward.

10 CHAIRMAN WITTGRAF: Then I would like to think that
11 we as a Board encourage you in that regard. We now have the
12 financial wherewithal available. So we want to move as
13 expeditiously but as credibly as possible too.

14 Let me ask a couple of questions and then we'll go
15 around. I think there are quite a few questions and comments
16 on this subject. One question I have, or one concern I have,
17 is there's a projected schedule or timetable which covers some
18 30 months and a substantial amount of lead time, actually
19 about a year's lead time, and the demonstration period of 12
20 months and then some follow-up time.

21 I'm not sure if this puts me on the liberal flank or
22 the right-wing flank, but I would like to be able to move as

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1 quickly as possible. I, for one, perhaps not being enough
2 experienced in the ways of federal processes, find the
3 start-up time to be awfully long.

4 That takes me to my second question of concern, and
5 that is whether or not you think it's appropriate to stay with
6 the present January to December conventional grant period or
7 perhaps to hit a grant period that's different, keeping in
8 mind especially the fiscal year that the Congress uses.

9 So that if we were to begin committing funds in
10 fiscal year 1992, we would, based upon some preliminary or
11 partial year commitments, ask for a greater amount of money
12 for fiscal year 1993, either for those two demonstration
13 projects we're talking about, an Option 3 and Option 5
14 project, and perhaps more of those types of projects in the
15 future.

16 MS. deBETTANCOURT: Let me say something initially,
17 and I know Charlie Moses would like to address it because
18 Office of Field Service will actually do the overseeing of
19 these grants. Many of the items listed on the timetable can
20 be done in an overlapping fashion. We need to establish
21 criteria and timekeeping up front, but that can be done during
22 this initial period.

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1 It will take several months. Refinement of those
2 standards, we've been persuaded by the field, can continue
3 during this period. This is a learning project for us. We're
4 trying to test and develop performance assessment standards.
5 So this is a very comfortable schedule. I think we can move
6 more quickly.

7 There is one consideration, and that is the entire
8 Office of Field Service and much of the rest of the
9 Corporation will spend the next at least month and a half to
10 two months processing grants for 325 grantees and another
11 number of subgrants.

12 I know OFS works overtime. They also borrow people
13 from our office, from all over the Corporation. That's the
14 Corporation's first priority. So it would seem important to
15 stagger the start of this project until some time after
16 January.

17 However, the full \$977,000, however much of it we
18 allot to actual delivery, can be granted, not only committed
19 but granted out to the programs, the sites that we choose. So
20 it will be committed and it will be even delivered within this
21 fiscal year.

22 However, this Board is considering its request for

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1 next year, for fiscal year 1993. As a part of that process,
2 the Board should also consider asking for additional funding
3 for future demonstration projects based on what we're
4 learning.

5 CHAIRMAN WITTGRAF: Right. We will need your
6 guidance in that. Of course, our ability to get such funding
7 is going to depend on how credibly and successfully and
8 expeditiously we're going forward. The memorandum you've
9 presented does make the point which I think is a critically
10 important point about not wanting to interrupt the annual
11 application and grant processing. I don't think any of us
12 wants that to happen.

13 One of the things you probably need to keep in mind
14 together with the president is whether or not some of that
15 \$977,000 or perhaps other flexible money in the management and
16 administration line item will need to be used for the
17 employment of additional personnel, be it on a contractual
18 basis or even on a full-time permanent employee basis.

19 But I don't know that the Board is necessarily
20 assuming that all \$977,000 has to go to the field. But I
21 think we're assuming for the moment that the \$977,000 will all
22 be involved with the demonstration effort.

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1 Mr. Boehm?

2 MR. BOEHM: Mr. Chairman, on that point, one of the
3 topics that has come up is the fact that we have \$300,000
4 that's been in the budget for awhile for timekeeping related
5 projects. Because that's an aspect of this, those are
6 additional funds we could draw on that aren't otherwise
7 committed at this point.

8 CHAIRMAN WITTGRAF: Fine, wonderful.

9 MS. DEBETTANCOURT: So we have \$1.3 million that we
10 will be using.

11 CHAIRMAN WITTGRAF: Mr. Dana?

12 MR. DANA: Mr. Chairman, first of all, I would like
13 to compliment the staff on many of the memos that have been
14 provided us dealing with some of -- the word arcane was used
15 on occasion -- parameters within which we are working. I
16 think those should be ever with us and we shouldn't forget
17 that we have some fairly tight constraints in order to do this
18 correctly.

19 Another point that you made which I think everybody
20 in the field should listen to is that the staff and this Board
21 views this experience as a learning project and that the idea
22 of competition has been in all kinds of areas. It's been

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1 bandied about. This Congress has given us an opportunity to
2 learn, to test whether or not competition works in this
3 environment.

4 A third point that I think is important to underline
5 is that you are talking about competition between full service
6 McCollum Boards providers. So we are not talking about, if
7 you will, a many delivery system study where we're competing
8 different types of legal services against each other. We're
9 talking about competition of comparables, at least
10 conceptually.

11 I also think that the memos we've been provided talk
12 in terms of advisory panels involving members of the field to
13 assist staff and this Board to come up with something that
14 makes sense from everybody's point of view and which will
15 validate in advance the likelihood that if we do discover that
16 if it's good or bad, that everybody will tend to agree with
17 it.

18 Having said all that, I think we are operating in a
19 political environment. I want to proceed, as you have
20 indicated, so that everybody is comfortable as we proceed down
21 each step. But I think that in some respects it's like
22 watching paint dry. It takes a long time and there are

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1 politicians on this Board and in Congress who want to get us
2 moving. A 30-month process to conduct a demonstration
3 project is comfortable, but it may be too long politically.

4 I want to throw out an idea which I call Option 6.
5 It is this. Before I tell you what it is, let me tell you why
6 I think that it may --

7 CHAIRMAN WITTGRAF: Mr. Dana, excuse me just a
8 moment. Before you discuss Option 6 and we take notes, with
9 apologies to you and our friends who have joined us just
10 recently as we've gone back into open session, I do think we
11 need to take about a 10-minute recess for those of us who need
12 to check out yet before we continue our deliberations. So we
13 will stand in recess for about 10 minutes and then we'll come
14 back to Option 6.

15 MR. DANA: Great.

16 (A brief recess was taken.)

17 CHAIRMAN WITTGRAF: Mr. Dana, you have the floor.

18 MR. DANA: Mr. Chairman, let me read my proposed
19 Option 6 which I think probably, based upon preliminary
20 reactions, definitely needs work. But I would like to set it
21 out.

22 CHAIRMAN WITTGRAF: Persevere, please.

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1 MR. DANA: The concept is that the Corporation would
2 select pairs of comparable programs. My example is Maine and
3 Iowa.

4 CHAIRMAN WITTGRAF: I was kind of hoping for Iowa
5 and New Hampshire. I think we have more in common, perhaps.
6 We pick corn and they pick presidents; is that it, Mr. Rath?

7 MR. DANA: After establishing a protocol for
8 measuring efficiency, effectiveness and quality such that
9 after doing that you would offer an incentive award to that
10 program that improved the most on this common scale during the
11 option period.

12 The award would have to be sufficiently large and
13 the award would be divided in an appropriate way among the
14 staff of the winning program.

15 MR. KIRK: Among the staff? What do you mean?

16 MR. DANA: Among the employees of the program.

17 CHAIRMAN WITTGRAF: So-called merit pay, if I'm
18 understanding this correctly.

19 MR. DANA: Correct. If I may speak to it
20 briefly --

21 CHAIRMAN WITTGRAF: Is it fair to say you're laying
22 this on the table as a supplement rather than a substitute?

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1 MR. DANA: Correct. Well, let me speak positively
2 to this program. Option 6 or the competition with an award is
3 the carrot approach. If we did this, it would determine
4 whether or not quality and efficiency and effectiveness can be
5 improved by offering economic incentives.

6 It does not have a consequence. It does not have a
7 stick component such that neither program would go out of
8 existence at the end of the test period, a component that is
9 perhaps not present in Options 3 and 5. Implicit, it seems
10 to me, in those options is a stick. The stick is some form of
11 defunding.

12 I think it is worth exploring those options, but,
13 frankly, there are many, many problems associated with, on the
14 one hand, creating a brand new entity to compete with an
15 existing entity, which is, I take it, Option 3 or 5. I'm not
16 sure which. It's not clear to me who would sign up for that
17 brand new entity if they knew that it was possibly a one-year
18 job and at the end of the one year they would have to look
19 elsewhere.

20 I don't think they are insurmountable, but I think
21 that the staff's suggestion of a rather long planning process
22 and a test period that extends over several years is, frankly,

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1 very realistic. If we want to learn about whether economic
2 incentives improve performance, we might be able to do that in
3 a pure fashion a lot sooner.

4 MR. RATH: Can I inquire?

5 CHAIRMAN WITTGRAF: Mr. Rath?

6 MR. RATH: I want to inquire of the Chair and also
7 of the staff where do you envision getting at the close of
8 this presentation today because I'm not certain?

9 CHAIRMAN WITTGRAF: Ms. deBettancourt?

10 MS. deBETTANCOURT: I'm sorry.

11 MR. RATH: Do you expect a vote from the Board? Do
12 you expect some direction as to how to proceed? Are you going
13 to sort of go on in the fashion that you've been going on?

14 MS. deBETTANCOURT: Yes.

15 MR. RATH: There is out here swimming around
16 somewhat equally and structured a committee which I think I
17 chair which I suspect might like to work with you at some
18 point in time. Before you get too far out, I'd like that
19 interaction to begin. I guess I want to envision as to where
20 you want to get to today besides lunch.

21 MS. deBETTANCOURT: We are at the point where we
22 have to begin designing the elements. We initially worked on

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1 understand that the Congress has told us to study it and we
2 are now trying to do in good faith a reasonable study of it.

3 I also have some reservations about going forward
4 until Mr. Fortuno gets back to us with some readings as to
5 what exactly our mandate is in this area. So I think there
6 are a series of pieces of this that need to be put together.
7 I'm also not counseling delay.

8 I'm counseling that we do those things internally
9 which we have to do before we go out into the provider
10 community and say this is what we intend to go forward with.
11 So I guess with that, Mr. Chairman, my sense is that we make
12 haste to somewhat deliberately here.

13 CHAIRMAN WITTGRAF: Mr. Kirk?

14 MR. KIRK: It was my hope that by motion we could
15 refer this to the Ops and Regs Committee which you chair. I
16 was in strong support of that with the commitment that even
17 though you have reservations, that you're willing to make a
18 commitment to see it through. Upon that, I recommended that
19 Mr. Dana join that committee because I felt like without a
20 joint effort and a close connection to the field, this can't
21 work.

22 So my thought was that after the presentation here

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1 today that Howard's Option 6 just be included as one of the
2 things that is considered perhaps without even necessary for a
3 vote here. We plan on meeting with some frequency probably
4 by telephone, conference call once a week or something, to
5 ferret out and shepherd it through.

6 CHAIRMAN WITTGRAF: Let me just make one sort of
7 administrative comment, Mr. Kirk. Even those meetings by
8 conference call and telephone do require notice. They are
9 public meetings. While I certainly don't discourage you from
10 them, they do take on certain formalities just as a physical
11 meeting in Washington or elsewhere. I think you and Mr. Rath
12 and Mr. Shumway and Mr. Dana will need to work that out.

13 Let me go back to Ms. deBettancourt and then go
14 around the table again. Some people haven't had a chance to
15 say anything yet. We appreciate the progress that's being
16 made. I'm the anxious politician to which Mr. Dana referred,
17 I guess, or one of them.

18 I'm hopeful as you and I discussed during the recess
19 that we would be shooting for something like a March 1, 1992,
20 start-up date for some one or two or three demonstration
21 projects. That's important, particularly if we look to
22 funding for fiscal year 1993.

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1 Ask us if you want us to give you at this point some
2 more specific guidance than what we have. Before we go around
3 the table, why don't you, Mr. Moses, Mr. Boehm, anybody else,
4 tell us what else you're looking for this noon, if anything.

5 Mr. Boehm?

6 MR. BOEHM: Just speaking for myself, I think this
7 is the appropriate time that the committee take jurisdiction,
8 if you will, over the issue because there are decisions that
9 just cannot be made on a staff level. They are best made in
10 consultation with the committee of the Board.

11 It's unwieldy, I think, for the full Board to
12 consider it at the earlier stage. Of course, later on they'll
13 want to be fully advised. But I think we're at the juncture
14 where a committee is the appropriate way to proceed. That's
15 been the consensus of the staff. Then we'll have a lot to do
16 in conjunction with that.

17 CHAIRMAN WITTGRAF: Mr. Moses? Ms. deBettancourt?

18 MR. MOSES: I would just reiterate what Ken said.
19 We have a staff committee that's been working on this. When
20 we were preparing for this meeting, that's what we decided we
21 would like to get, the guidance from the Board.

22 CHAIRMAN WITTGRAF: Ms. deBettancourt?

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1 MS. deBETTANCOURT: We have initially discussed
2 sites and there are lots of considerations that would go into
3 those. Again, we discussed the preference that we perhaps do
4 one Option 3 and one Option 5 site. That would probably give
5 us the most information. We have a new option that we need to
6 go back and consider whether we have enough money for that or
7 should that replace another.

8 CHAIRMAN WITTGRAF: About Option 6, if I understood
9 the proposal described by Mr. Dana, this would be a relatively
10 low-cost proposal, depending on the level of incentive or
11 carrot, as you said, perhaps the least expensive of the three
12 options we're discussing. Is that a fair assessment?

13 MR. DANA: Yes, at least I think so. I think it's
14 also the least, since it is a carrot approach as opposed to a
15 stick, it is the least threatening and something that we could
16 do relatively promptly.

17 CHAIRMAN WITTGRAF: Ms. deBettancourt?

18 MS. deBETTANCOURT: Well, we need to flesh that out
19 and see the problems. I've already been advised of some of
20 the problems, the legal issues that would have to be
21 considered.

22 CHAIRMAN WITTGRAF: Certainly.

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1 MS. deBETTANCOURT: Site selection will depend on
2 the option that we're looking at. So I think it would be
3 appropriate to --

4 CHAIRMAN WITTGRAF: To meet with the committee of
5 the Board as soon as possible.

6 MS. deBETTANCOURT: Right.

7 CHAIRMAN WITTGRAF: All right. Mr. Hall?

8 MR. HALL: Thank you, Mr. Chairman. My question had
9 to do with the site selection and your statement that you felt
10 the best site would be one where we're currently being served
11 in a poor manner and, in connection with that, the question of
12 what are we trying to demonstrate by these projects?

13 If we're trying to demonstrate that competition will
14 be better than the attorney-staff model we have now, it seems
15 like that won't be demonstrated if you pit that against an
16 attorney-staff model that's working poorly. A new
17 attorney-staff program in there would improve that. Surely,
18 competition will improve it. It seems like you'd get a more
19 valid study if you did this in an area where we're being
20 served effectively to know that will be improved.

21 MS. deBETTANCOURT: At this point we're not talking
22 about comparing two different kinds of delivery systems.

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1 We're talking about comparing two staff models. So that
2 wouldn't be the consideration. What we're trying to test
3 here is if you have competition in the same community by two
4 different programs, will they improve?

5 In other words, if you have a program that's not
6 performing up to its potential and another program moves in,
7 will it improve over a year in response to that competition
8 and in response to competition for money.

9 MR. HALL: And if it does, how about those areas
10 where the staff model is working very well? How would you
11 know whether or not competition would improve those areas or
12 would that be your next step?

13 MS. deBETTANCOURT: Well, that would be the next
14 step. We only have enough money to do a limited study at this
15 point. I think we could do it most usefully in an area where
16 the need isn't currently being met. Then we could be doing
17 two things. We could be studying competition and see whether
18 there is an improvement in performance in an area where we
19 know there is some deficiency. We'd be providing more money
20 to the community. Third, again, I think the most important
21 thing we're trying to learn is how do you access performance?

22 MR. HALL: I mean, I think competition is bound to

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1 improve in that area where the program is poor. The question
2 to me would be whether or not it would improve in an area
3 where the performance is outstanding. But that's really the
4 only thing I had.

5 MS. deBETTANCOURT: Initially, we suggested doing
6 that. Initially, I argued that you really need to compare
7 two in an area where the programs are working very well. We'd
8 like to be able to do that. I'm just not sure we have enough
9 money.

10 CHAIRMAN WITTGRAF: Let me make one other comment,
11 Mr. Hall, in response to your concern. I think there are a
12 number of projects across the country. One example that comes
13 to mind just from my own familiarity is East River Legal
14 Services out of Sioux Falls, South Dakota, where there's a
15 substantial judicare component, a major judicare component. I
16 think that there are others across the country.

17 It may be that as a selection is done, a so-called
18 site selection, that either now or in the future they may want
19 to be looking at existing projects to study where there is
20 something other than just the staff-attorney model involved to
21 get at what I think is your point, are there other ways to
22 deliver services?

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1 While the staff-attorney model is perhaps the best
2 model, other ways, particularly in other parts of the country,
3 perhaps particularly in more rural parts of the country, where
4 other than the staff-attorney model seems to be particularly
5 appropriate.

6 MR. UDDO: Would you consider a motion, Mr.
7 Chairman?

8 CHAIRMAN WITTGRAF: Not yet. Mr. Uddo, you haven't
9 had an opportunity to comment at all.

10 M O T I O N

11 MR. UDDO: I was going to move that we follow what
12 Mr. Kirk said and refer it to the Ops and Regs Committee with
13 a more detailed study that obviously we need and not spend a
14 good deal of time now asking questions that I think the
15 committee aren't up for.

16 CHAIRMAN WITTGRAF: I'll accept that motion. I just
17 wanted to make sure that anybody who had any thoughts that
18 they wanted to share with Ms. deBettancourt, Mr. Moses, Mr.
19 Boehm or others on the staff would do so at this time.

20 Is there a second to Mr. Uddo's motion?

21 MR. KIRK: I'll second that motion.

22 CHAIRMAN WITTGRAF: It was seconded by Mr. K_ir_k.

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1 Ms. Pullen, are you with us at the moment?

2 MS. PULLEN: Yes, I am.

3 CHAIRMAN WITTGRAF: Would you like to comment?

4 MS. PULLEN: I support the motion, but I would like
5 to suggest that the suggestion by Mr. Dana which has now been
6 characterized as Option 6, has really nothing to do with
7 competition but is more in the nature of merit pay which is an
8 entirely separate issue.

9 Obviously, the committee can consider it if they so
10 desire, but I think they should be conscious of what
11 constitutes competition and what does not in their exploration
12 of these options.

13 CHAIRMAN WITTGRAF: Further comments or discussion
14 on the motion?

15 (No response.)

16 CHAIRMAN WITTGRAF: Hearing none, those who are in
17 favor of the motion which is to refer the materials presented
18 to us and further direction for our staff to the Operations
19 and Regulations Committee, will signify by saying aye.

20 (A chorus of ayes.)

21 CHAIRMAN WITTGRAF: Those who are opposed, nay.

22 (No response.)

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1 CHAIRMAN WITTGRAF: The ayes appear to have it. The
2 ayes do have it.

3 We have a 12th agenda item. We do have some printed
4 materials. Actually, the Chair would be happy to have
5 unanimous consent to retain further consideration of agenda
6 item 12 until our next Board meeting on November 18th. Is
7 there objection?

8 (No response.)

9 CHAIRMAN WITTGRAF: Hearing none, we will do so.

10 Is there further business to come before the Board
11 at this time?

12 (No response.)

13 CHAIRMAN WITTGRAF: Before asking for a motion to
14 adjourn, then, the Chair will note that the Board and the
15 staff have lunch being served in the Chappie's Restaurant or
16 Chappie's Room or whatever it is where breakfast was this
17 morning now until approximately 1:15.

18 Nan Heald, the executive director of Pinetree Legal
19 Assistance, is expecting to receive us at approximately 1:30
20 at her offices.

21 The Chair, then, is prepared to receive a motion to
22 adjourn.

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M O T I O N

1
2 MR. UDDO: So moved.

3 MR. DANA: Second.

4 CHAIRMAN WITTGRAF: It's been made by Mr. Uddo,
5 seconded by Mr. Dana. Those who are in favor of the motion
6 will signify by saying aye.

7 (A 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 are adjourned.

12 (Whereupon, at 12:40 p.m., the meeting was
13 adjourned.)

14 * * * * *

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