

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS MEETING

RETURN TO CORPORATION
SECRETARY ARCHIVES FILE

September 15, 1991

The Ramada Renaissance Hotel
1001 County Line Road
The Ballroom
Jackson, Mississippi 39211

Board Members Present:

George W. Wittgraf, Chairman
Howard H. Dana, Jr.
William L. Kirk, Jr.
Jo Betts Love
Norman Shumway
Basile J. Uddo
Jeanine E. Wolbeck

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SEP 20 1991

1:30 pm
Executive Office

Staff Present:

David H. Martin, President
Patricia Batie, Secretary
David Richardson, Comptroller and Treasurer
Victor Fortunato, Deputy General Counsel
Alan Severson, Director of Policy Development
Kathy de Bettencourt, Office of Policy and Development
Emilia DiSanto, Director of Monitoring and Compliance
Ellen Smead, Director of Office of Field Services
Charles Moses, Deputy Director of Office of Field Services

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P R O C E E D I N G S

(1:30 p.m.)

1
2
3 CHAIRMAN WITTGRAF: Ladies and gentlemen, if I may
4 have your attention please, this regularly scheduled meeting
5 of the Board of Directors of the Legal Services Corporation
6 will be in order.

7 We are an 11-member Board, as our guests may know.
8 We have five Board members with us at the moment. A sixth
9 one, a crucial one for making a quorum, will be with us
10 momentarily. But out of fairness to those of you who have
11 been here for awhile already, we will go ahead and proceed. I
12 hope that no one will question the presence or an absence of a
13 quorum at this time.

14 It's a pleasure for me and to the other members of
15 the Board and the members of our Corporation staff to have the
16 opportunity to be in Jackson, Mississippi, this weekend, this
17 Sunday and Monday. Most of us have been on the Board of
18 Directors of the Legal Services Corporation for approximately
19 18 months now, since early 1990.

20 We've only had the opportunity, really, to be in the
21 field as a Board together with our staff one time previously.
22 That was last September, which was a year ago, in Denver,

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1 Colorado. This is our first trip into the field in 1991,
2 although we do hope to get to Portland, Maine, yet next month.

3 While it's a little more difficult travel-wise for
4 some of us to get to Jackson and to Washington, and it would
5 be even more difficult to get to Cherokee, Iowa, where I'm
6 from, which none of you have even heard of. That's why it's
7 taking a little longer for some of our Board members to get
8 here.

9 There will be a couple more of our Board members to
10 join us later in the afternoon. It appears that one or two of
11 our Board members may not be able to join us at all,
12 regrettably.

13 We sincerely appreciate the opportunity to be here
14 and the hospitality that's been shown to us and to the staff.
15 We're here, certainly in no small part, out of respect for our
16 fellow Board member, Jo Betts Love, from Aberdeen,
17 Mississippi. How far is Aberdeen?

18 MS. LOVE: 177 miles.

19 CHAIRMAN WITTGRAF: 177 miles, two or three hours
20 depending upon how heavy your foot is; also, Harrison McIver,
21 who publishes that yellow tabloid in Washington but who has
22 performed the Lord's work in Jackson, Mississippi, I

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1 understand. We were glad to have the opportunity to let
2 Harrison get back here as well.

3 It's my understanding that we have the honor of the
4 presence of the President of the Mississippi State Bar
5 Association today, Mr. Alex Alston, from Jackson, Mississippi.
6 We'd be delighted to have him visit with us for a few minutes.

7 Mr. Alston?

8 MR. ALSTON: Thank you, Chairman Wittgraf. On
9 behalf of the Mississippi Bar Association, welcome to Jackson,
10 Mississippi, and welcome home, Ms. Love.

11 MS. LOVE: Thank you, honey.

12 MR. ALSTON: We welcome all of you here. We're
13 delighted that you've chosen Jackson, Mississippi, as the site
14 of your meeting, for this very important meeting. We're
15 grateful that you're here. If there's anything the Bar
16 Association can do, Mr. Chairman or members of the Board, to
17 make your stay more pleasant, please let us know.

18 We're proud of what we're doing in Mississippi as
19 far as legal services is concerned. You've chosen a state
20 that is vigorous and pursued effectively a delivery system.
21 We're anchored by seven LSC-funded field offices here in
22 Mississippi.

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1 We're proud of the way we're working this system,
2 but we have an immense challenge based on the 1980 Census
3 figures that the client-eligible population Mississippi is
4 770,000, so lots of poor people. That's 30 percent of our
5 population.

6 We have approximately one LSC staff member, or less
7 than that, per 10,000 population of the poor. I hate to say
8 this, but we may be the poorest state in the union save
9 perhaps one state. We have a great challenge here. Thank
10 goodness for the Legal Services Corporation. Thank goodness
11 for this Board to be here to help us.

12 Not only do we have so many poor people, but we are
13 also under the circumstances that this is a very rural state.
14 Our population is spread out over a very large area.
15 Transportation is a problem. That exacerbates an otherwise
16 very, very serious problem.

17 We have lots of hungry people in this state. The
18 nutritional problems, the educational problems, the housing
19 problems are great. Our challenges are almost formidable to
20 take care of. As I'm sitting here as president of the Bar and
21 you're sitting here on this great Board, we are after one
22 thing: to provide legal services to those people that can't

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1 afford legal services. That's what we're about.

2 We've made great strides in this state. I've been
3 practicing law here for about 28 years. We've made great
4 strides in trying to help the poor people of this state. I
5 can remember a Bar president some 20 years ago stand up and
6 say that everybody in the State of Mississippi, regardless of
7 their condition in life, regardless of their color of skin,
8 are entitled to representation just like the richest person in
9 the state would be.

10 He was called a peko communist the next day in the
11 newspaper. We made great strides in this state since that
12 time. The Legal Services Corporation has been the heart and
13 soul of what we have done in that connection. I'm
14 particularly proud of our pro bono system.

15 I can sit here and tell, and I can speak with some
16 authority on it because I've worked with it, I'm proud to say
17 that my law firm, because I pushed it so hard, this year won
18 the award for doing more pro bono service. But we are glad to
19 be in there helping the Legal Services Board and working with
20 them as a partnership in serving the great needs that we have
21 in this state.

22 As a matter of fact, with only two staff members,

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1 they served over 1200 clients this year. I'm proud of that.
2 I'm proud as the president of this Bar to sit up here and tell
3 you all that. We're going to do more and we're going to be
4 doing more next year because we've got to. As professionals,
5 as lawyers, we owe a duty to see that everybody gets
6 representation. That's what we're about in this state.

7 A couple of topical issues and I'm going to get our
8 of your, way, Mr. Chairman. I do feel I need to bring them up
9 to you for a couple minutes. The Mississippi Rural Legal
10 Services, as you all know, has been funded on a mouth-to-mouth
11 or month-to-month -- mouth-to-mouth is probably a better way
12 to say it.

13 They can't exist that way. These people need to be
14 stabilized. They need to be funded. The Mississippi Rural
15 Legal Services is doing a great job. We've got dedicated
16 people. They have implemented every change that the Legal
17 Services staff recommended. The Mississippi Bar is interested
18 in seeing that they do their work. Help us. Help us take
19 care of those people up there.

20 The second little local problem that I wanted to
21 point to your attention is the funding application from
22 Central Mississippi Legal Services to provide services to

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1 migrant farmworkers in Mississippi. This money we feel has
2 been too long denied to one of our most vulnerable
3 populations. We think the proposal is solid, and we would
4 hate to see it unduly delayed.

5 As far as the national affairs are concerned, I'm
6 not going to spend but just a second to say that thank
7 goodness you are now in the process, as I understand it, of
8 selecting a new president. As I say again, we are all about
9 the same thing, providing legal services to poor people.

10 We hope that you will listen to the people in the
11 local services and see what recommendations that they have on
12 this. I know that we are all looking for a president -- and
13 let me just say this. It's certainly been too much division
14 in what we're going about. Our job is too great to serve
15 other people with all these divisions.

16 We hope that the person that you can find for the
17 new president will be somebody that can heal some wounds and
18 get in here, and regardless of whatever our philosophy might
19 be on how to do it, let's go about our job of helping these
20 poor people.

21 I applaud you. Let me applaud this Board while I'm
22 sitting here seeking the \$355,000 fiscal year 1992 grant. I

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1 appreciate -- hope it comes out of conference okay, Mr.
2 Chairman. We feel that hopefully it will. It's woefully
3 small funds, but we at least hope that much comes out of it.

4 I think I'd be remiss if I didn't say that the
5 Mississippi Bar, by resolution, I believe last September,
6 voiced strong opposition to the so-called McCollum-Stenholm
7 amendments. I think you're aware of that. We're concerned
8 about the implementation of a haphazard system of competitive
9 bidding.

10 We feel the staff model that we have in Mississippi,
11 the staff model that we have in Mississippi with the
12 partnership of the Mississippi Bar, and that's a strong
13 partnership, these dedicated people have really served the
14 people, the poor people of this state. We don't see why we
15 would put that in some kind of competitive situation. It also
16 concerns me of the impact of that on our pro bono project.

17 I'm thinking of my law firm where I have to sit down
18 and twist my partners. You've got to have more pro bono.
19 We've got to have more hours of pro bono. I'm concerned with
20 the fact that I've got a competitor down the field that's in
21 this business getting paid for that. That's not the situation
22 now.

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1 I can tell my partners you've got to do it. It's
2 your obligation to do it. Get yourself out there and do it.
3 I'm just concerned about that. I just wanted to bring that to
4 your attention. I'm concerned about any restrictions on
5 private funds. We've done better in Mississippi. We've been
6 able to reach out and grab hold of some private funds. We
7 would hate to see that restricted in any way.

8 I would certainly urge this group to oppose any
9 restrictions on services that we are able to render our
10 clients. Lawyering is such a great profession. I've loved
11 lawyering. When my son came up to me, my youngest son,
12 Sheldon, came up to me this year and said, "Daddy, I'm going
13 to law school," I nearly cried.

14 He's seen me. He's seen me fight battles and lose
15 battles and take an issue all the way to the Supreme Court.
16 He's seen me win great issues and celebrate and pop the cork
17 and have a great time. He's seen all that. He's seen the
18 sorrow and the depression I'm in.

19 But he's seen me representing clients from the very
20 beginning and wherever it may take me. Certainly, let's not
21 restrict that to only rich people. Let's not restrict it to
22 only those. Let's let the poor people be represented in the

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1 same manner that somebody with gobs of money will be
2 represented.

3 That's all I've got to say. I'm delighted that you
4 are all here in the State of Mississippi. This is your third
5 meeting here. I don't know whether you remember that.

6 CHAIRMAN WITTGRAF: The first one for this board.
7 It seems there was a chairman not long ago who was even from
8 Jackson, Mississippi.

9 MR. ALSTON: That's exactly correct.

10 CHAIRMAN WITTGRAF: I suspect that had some
11 influence on being here. We're glad to have a Board member
12 from the same neighborhood, if 170 miles down the road.

13 MR. ALSTON: If there's anything we can do to make
14 your stay more pleasant, please call on the Mississippi Bar.
15 The 6,000 members of the Mississippi Bar warmly welcome you to
16 our great city. Thank you very much.

17 CHAIRMAN WITTGRAF: Thank you very much, Mr. Alston.
18 We do appreciate your taking time away from football or
19 something else serious to be here this afternoon.

20 MR. ALSTON: Really, I'm not going to miss much.
21 That's why I kept it short.

22 (Applause.)

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1 CHAIRMAN WITTGRAF: Those of us who aren't able to
2 watch any NFL games this afternoon will go ahead with the
3 agenda that's been presented.

4 APPROVAL OF THE AGENDA

5 CHAIRMAN WITTGRAF: At this time, if you'll refer to
6 the agenda, you'll see that our first item of business is
7 approval of the agenda as presented in draft form. At this
8 time, the Chair would be pleased to receive a motion for the
9 approval of the agenda as presented.

10 M O T I O N

11 MR. UDDO: So moved.

12 CHAIRMAN WITTGRAF: It's been moved by Mr. Uddo. Is
13 there a second?

14 MS. LOVE: Second.

15 CHAIRMAN WITTGRAF: It's been seconded by Ms. Love.
16 Is there discussion?

17 (No response.)

18 CHAIRMAN WITTGRAF: Hearing none, those who are in
19 favor of the approval of the agenda as presented, signify by
20 saying aye.

21 (A chorus of ayes.)

22 CHAIRMAN WITTGRAF: Those who are 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 agenda is approved as presented.

4 APPROVAL OF THE MINUTES

5 CHAIRMAN WITTGRAF: Secondly, of a somewhat
6 perfunctory nature, we have the review and approval of the
7 minutes of our meeting of August 12, 1991, in Washington, D.C.
8 Those minutes have been presented to you in the form of the
9 Board booklet. I'm prepared at this time to receive a motion
10 for the adoption of those minutes as presented.

11 M O T I O N

12 MR. DANA: So moved.

13 CHAIRMAN WITTGRAF: It's been moved by Mr. Dana. Is
14 there a second?

15 MS. WOLBECK: Second.

16 CHAIRMAN WITTGRAF: It's been seconded by Ms.
17 Wolbeck. Discussion?

18 (No response.)

19 CHAIRMAN WITTGRAF: Hearing none, those who are in
20 favor of the adoption of the minutes as presented by the
21 secretary will signify by saying aye.

22 (A chorus of ayes.)

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1 CHAIRMAN WITTGRAF: Those opposed, nay.

2 (No response.)

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

5 REPORT OF THE CHAIRMAN

6 CHAIRMAN WITTGRAF: The next item of business, then,
7 is the Chairman's report. I'm going to say very little at
8 this time, but instead exercise the opportunity to add some
9 things as we go through the Board meeting this afternoon and
10 tomorrow.

11 One comment I'd make at this time is that I think
12 all of the members of the Board know, based upon conversations
13 and upon information provided by the secretary, Ms. Batie,
14 that our immediate past fellow Board member, Luis Guinot, who
15 is now the Ambassador to Costa Rica, has been replaced on a
16 recess basis, just as we all technically are serving, by a
17 former member of the United States Congress for 12 years from
18 the State of California, Norman Shumway.

19 Norm should be with us later this afternoon, just as
20 Mr. Rath should be. Norm comes from California and Mr. Rath
21 comes from New Hampshire. Mr. Molinari is planning to be here
22 later tomorrow morning from Staten Island, the New York City

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1 are. Blakeley Hall will not be able to be here because of
2 trial commitment, as I mentioned earlier. We're not sure
3 about Ms. Pullen, who is from the Chicago area, in Illinois.

4 Those of you who are with us today and have not been
5 at a Board meeting, at least not in the last couple of years,
6 we do encourage you to take the opportunity to meet those of
7 us here at the table, the members of the Board, our president,
8 Dave Martin, as we take some breaks in our proceedings either
9 today or tomorrow.

10 Obviously, one of the reasons for our being here is
11 to get to meet more people who are involved in the provision
12 of legal services for the poor, to get to know them, to get to
13 hear from them. We're actually, as most of you know, going to
14 do that the structured way early tomorrow afternoon. But we
15 certainly want to meet you and get to know you in the
16 meantime.

17 At this time, it's my pleasure to turn the
18 microphone over to David H. Martin, president of the
19 Corporation. I think, as most of you know, Mr. Martin
20 recently has submitted his resignation as president of the
21 Corporation, after a year providing leadership at the helm of
22 the Corporation.

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1 He has, I think, at this time some reflections about
2 what's been a tough and trying year. I think we told him that
3 going in, but he still said he was interested. The only
4 question is if we can find somebody else who is willing to try
5 as well. I hope you won't run anybody off, David, with
6 anything you say.

7 Mr. Martin?

8 REPORT OF THE PRESIDENT

9 MR. MARTIN: Thank you, George. I appreciate your
10 kind remarks. It has been an exciting year and an interesting
11 year. I'm going on to something that will be smaller in
12 dollar figures but a for-profit venture. Hopefully, I won't
13 encounter some of the difficulties, different difficulties,
14 that I've encountered here and that we all have encountered.

15 I kind of did want to reflect and share with you
16 where we are now, kind of a state of the Corporation message.
17 It won't be long, very short in fact. But in order to do
18 that, I want to share with you, those of you who are in
19 attendance and for anyone who may want to read the record,
20 what it was like when I arrived because I see a light at the
21 end of the tunnel.

22 I see improvement, encouragement, along the lines

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1 that Mr. Alston talked about. I want to share that with you.
2 Please come up to me afterwards if you disagree or have some
3 thoughts about how things can be improved.

4 When I arrived at the Corporation a little over a
5 year ago -- I actually started full time on September 1 -- I
6 did my own little management study and had a larger one done
7 later. But by interviewing all the officers and directors in
8 the Corporation, I was stricken by the amount of mistrust that
9 I found in the Corporation among the various offices there and
10 in particular the mistrust that extended -- perhaps it was a
11 result of what was going on in the Corporation -- to the field
12 programs and the mistrust that went both ways.

13 I have never really been in a culture like that,
14 where there was not a total mistrust but certainly no one's
15 words were taken at face value. That was a problem for me and
16 it was problematic as to what to do about it. In the
17 Corporation itself, the various offices maintain their own
18 files. We didn't have a central filing system.

19 Information was not shared. Some offices were run
20 on a rather rigid management style, and there was a genuine
21 lack of communication, which not only was within the
22 Corporation but extended, I think, to the field, genuine

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1 communication, not the official memos that flew back and forth
2 that I read and observed in my first month there.

3 Throw into that a new inspector general who was
4 trying to exercise his independence, which I encouraged him to
5 do and assisted him in that area. You had a volatile, I
6 think, mixture. I set about to change the culture a little
7 bit. The culture was a result of mistrust. How do you get
8 trust back into an institution and among a collegial group of
9 people who have the same objective in mind?

10 My experience has been that you work together. You
11 build trust by working through relationships. People whom you
12 trust have exhibited that through a working relationship,
13 through integrity, through decisionmaking. Those whose word
14 you can rely on, you can extend more trust to. Those whom you
15 do not, you withdraw it. I found that there had been not
16 total withdrawal but a large amount of withdrawal of trust in
17 and out of the Corporation.

18 So I sought out to change the culture. Internally,
19 I created committees. Every time there was an issue or
20 problem that came up, I said okay, my officers and directors
21 are going to work together. It's what in quality management
22 they now call team building.

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1 Well, I built teams and called them committees. I
2 had a competition committee. I formed a timekeeping
3 committee, a committee to review about what we should do about
4 centralizing a file system, creating an enforcement committee.
5 I had a committee to reorganize the Corporation or at least
6 consider reorganizing the Corporation, along the lines that I
7 wanted to make it more efficient and more reflect my attitude
8 of reaching out and conciliation to the field programs.

9 At the same time, I started a program, part of which
10 will occur tomorrow, called My Forums. First I didn't know
11 what to call them. I originated this when I was in the ethics
12 office in the Reagan Administration with the various general
13 counsels in the Executive Branch by calling those general
14 counsels in and meeting with them once a week to hear what
15 they had directly to say to me about the problems with my
16 office and in the Executive Branch in the Standards of Conduct
17 and Ethics area.

18 So I wanted to do the same thing, only there are
19 many, many more programs that are funded through the Legal
20 Services Corporation, through Congress, than there were
21 general counsels. So I set about to meet once in Washington,
22 have a forum and invite executive directors in and talk to

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1 them directly.

2 I went out to regions and had regional forums. I've
3 been all over the country. I found that the professionalism
4 and the dedication of the executive directors that I met was
5 outstanding, and that they were dedicated people, and they had
6 something to say to me, and I listened.

7 Those forums, I think, are an valuable, valuable
8 thing. I commend to the Board to continue them and to whoever
9 succeeds me. You should reach out to the field, continue to
10 talk to them, not to the established organizations only. Of
11 course you have to stay in touch with them.

12 But I met executive directors who did not speak out,
13 who talked to me in a confidential fashion, and who gave me
14 insights that I could not have gained otherwise through formal
15 meetings and through committee meetings. So I think that has
16 been, I think, a hallmark of what I've tried to do in opening
17 up a dialogue. I think it was successful.

18 What were the results of what I tried to do both
19 within the Corporation and out? Well, I wanted to make us
20 more efficient and to do it with less money. I wanted to
21 reduce the burden that I heard loud and clear from the
22 programs about funding the application, about monitoring, and

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1 about relations with Corporation.

2 Well, we have this year reduced the funding
3 application by over 40 percent. That congratulations go to
4 the Office of Field Services and to Ellen Smead and Charlie
5 Moses for their terrific work in putting out -- I pushed them,
6 but they responded and responded well. It's gratifying. I
7 think that you'll find in the application that you get for the
8 next fiscal year it will be easier and will get easier as we
9 work with it.

10 I wanted to reorganize the monitoring function to
11 add an element of quality as well as quantity of what we
12 looked at and to make decisions as to whether or not a grantee
13 needed to be monitored every year, every six years, every
14 three years based on a qualitative assessment of how they're
15 doing and whether or not you needed to have a full court
16 press, as I call it.

17 That is five or six monitors and everything from
18 financial to administrative -- whether you needed that big a
19 team, whether you needed only financial advisors and support
20 people. I wanted to create a regional program so that a
21 particular supervisor was assigned to, let's say, the
22 southeast region, four or five states in the southeast, a

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1 different four or five states maybe in the northwest.

2 So in that monitoring supervisory arrangement, that
3 person would get to know the programs in their area better.
4 We created a self assessment tool so that the grantee, you the
5 grantees, could self appraise how you're doing. We can look
6 at that back at the Corporation and decide okay, what kind of
7 monitoring process should occur now.

8 I want to thank the monitoring, Emilia DiSanto and
9 Susan Sparks, for their help in biting into that process. It
10 was a change from what they had experienced before, what they
11 were used to doing. I wanted to make us more human at the
12 Corporation. That is, to ease the rhetoric and tension. It's
13 going to be a natural tension between the regulated and those
14 who do the regulating. That exists.

15 But what I wanted to do was make it more of a
16 partnership, make it more of a "we're in this together." I
17 think the Corporation headquarters has responded. I say to
18 those of you in the field, you should respond in kind. I
19 think you will find that we are reaching out to be a kinder,
20 gentler monitoring process and more understanding.

21 For instance, in the Office of Field Services, we've
22 created an Office of Technical Services that will also be an

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1 assistance to programs and not be so ready to be criticized.
2 There's also been, I think, more teamwork within the
3 Corporation and more dialogue from the Corporation out to the
4 field.

5 The various offices in the Corporation work
6 together. I think they now trust one another. We have
7 centralized the files. Everybody, in my opinion, in a
8 corporation or in an organization should play from the same
9 sheet of music.

10 We have hired an archivist. He has dispensed with
11 tons of what he calls cubic yards of information that we no
12 longer need, that's outdated. We will centralize those files
13 so that everybody will share equally the same amount of
14 information within the Corporation and that you can access to
15 if the programs feel that they need information. To the
16 extent that the central files are available for proper access,
17 they will be available.

18 The general counsel's office is now, I think,
19 viewed with a great deal of trust and confidence. I was
20 chief counsel to an agency years ago, but I always thought the
21 general counsel's office should be the conscience of an
22 agency. I think we've made it become that now.

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1 Vic Fortuno has done an outstanding job as general
2 counsel. He settled and won a number of lawsuits this year.
3 So I believe that we have made good strides in the last year.
4 It is not over. Certainly increased funding will help.
5 Greater pro bono will help. A spirit of cooperation will
6 help.

7 We are doing, I think, a more efficient job and
8 we're doing it with less money. We're going to come in under
9 budget, at least my comptroller, Mr. Richardson, tells me.
10 We're projected to come in under budget in just about every
11 component except one, and I won't mention which one that is.

12 So we're getting more bang for the buck internally
13 in the Corporation. We're doing a better job, I think, and
14 will do in the future based on the restructuring and the
15 things that we've implemented in the last year, be doing a
16 better job with less money.

17 So while patting myself a little on the back, I
18 think I have given a direction to the Corporation that it
19 didn't have before I got there. I think I've opened up a
20 dialogue of trust and understanding that didn't exist before I
21 got there. I guess what I look at is is it a better place to
22 work now then before I arrived. I think it is. In honesty, I

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1 think it is.

2 So what does the future hold? Let me say three
3 things about the future that I think are quite important. I
4 think, and I wanted to implement and unfortunately will not be
5 here to do that, a peer review system. I think as part of the
6 monitoring process that either you, the programs, should look
7 at the quality of services that are delivered.

8 Take a team from New York and send them to
9 Mississippi. Take a team from California and let them look at
10 Oregon's programs -- a peer review, pay them. I think it's
11 very important to do that as a component part of the
12 monitoring process, part of it but separate, independent.
13 Reports would go back to the Corporation, of course. Peer
14 review, it should be implemented. We're in the process of
15 doing it. I hope that my successor will continue that.

16 Mr. Alston mentioned competition. I think it's
17 true that where appropriate, competition is something that has
18 to be looked at very seriously. It is not appropriate, in my
19 view, in all instances. It could work and would work, I
20 think, in many instances but not everywhere.

21 So it has to be done with some measure of caution
22 and with some careful deliberation. But I think that working

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1 together, the Board and the programs and the Corporation can
2 do a responsible job in that area.

3 Those are big issues and things that I think you
4 will be facing in the next year. But I think that this Board
5 is responsible. I want to thank them for a good year. I want
6 to thank my staff and thank them for supporting the Board in
7 all of its endeavors and all its desires to meet frequently.

8 It has been a demanding Board, the committee as well
9 as full Board. But the staff responded and responded in a
10 very good way. I'm proud of the way we have supported the
11 Board in the last year. With that, I will close and say no
12 more. Thank you, Mr. Chairman.

13 (Applause.)

14 CHAIRMAN WITTGRAF: Thank you, Mr. President. Let
15 me say on behalf of the Board that we sincerely do appreciate
16 your hard work during the last year. I think, to go back to
17 Alex Alston's term, some of the wounds have been healed,
18 hopefully, between Washington and the field, which is a little
19 easier for those of us as Board members to see, and hopefully
20 internally as well.

21 We commend you for the accomplishments that you've
22 described. I guess I could go one step farther and commend

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1 you for having helped create an atmosphere in which the level
2 of funding for the Legal Services Corporation for fiscal year
3 1992 will be the highest ever, at least in absolute dollars if
4 not in inflation index dollars, and also an atmosphere in
5 which the reauthorization process has moved the farthest that
6 it's moved since 1981, in more than a decade.

7 Hopefully, we will see that process continue to
8 completion here yet this year and next year. But I think your
9 efforts also have added to the atmosphere that allowed those
10 things to move forward as well. We thank you and commend you.

11 At this time, I'm prepared to call for another
12 report, this from the vice president of the Corporation, Alan
13 Severson, specifically dealing with the areas of legislative
14 activity as they affect the Board, the Corporation and the
15 field.

16 Alan?

17 REPORT OF THE VICE PRESIDENT

18 MR. SEVERSON: Thank you, Mr. Chairman. Greetings
19 to my president and all the members of the Board. Let me just
20 say by way of a beginning that I would like to reiterate to
21 the members of this Board partly what David has said. You
22 have now at this Corporation a comptroller. You have a

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1 general counsel.

2 You have a head of field services. You have a head
3 of MAC. You have Pat Batie and myself and other officers.
4 You have a policy office. I guess my fight is that if you
5 took any one of us aside and said what's your opinion of your
6 colleagues, I think you would find a mixture of respect and
7 affection that strengthens the Corporation.

8 We don't presume to be a perfect place, but I think
9 that it is a strength that is there to support whomever this
10 Board chooses as a new president in a time of transition, and
11 also, I hope, always as a point of support for this Board and
12 its committees.

13 The same people that are producing the work in
14 hopefully a creative, and professional, and articulate way are
15 still there to support you and whatever your individual needs
16 are as Board members. I think it will help everybody's
17 reputation in Washington and with the field that this type of
18 strength is there.

19 It will certainly be a support hopefully to your
20 efforts to find and attract a good president, a good new
21 president for this Corporation and also support for the
22 interim. So, if I can speak for my colleagues, I'd like to

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1 say we're there for that and rise to this challenge during a
2 tentative time for the Corporation.

3 Now, if I could just briefly bring you up to date on
4 the legislative outlook for items of interest to the
5 Corporation, first of all, of course, the authorization bill
6 and secondly the appropriations bill.

7 Congress has returned from the summer recess. The
8 Senate came back on September 10th; the House returned on the
9 11th. They have had a slow beginning to their fall session.
10 The House, for instance, will return to session on Tuesday and
11 then will adjourn for the remainder of next week for the Yom
12 Kippur holiday. The Senate is in session next week but will
13 be taking no votes. Therefore, there is unlikely to be any
14 major legislation moving in either house before the week of
15 the 23rd of this month.

16 Regarding the authorization bill, the Judiciary
17 Committee itself has several priorities that are higher than
18 the movement of the Legal Services Corporation reauthorization
19 bill, most notably the omnibus crime bill, also the vertical
20 price fixing bill. There is also a move to amend the RICO
21 bill. All of these things are pending priorities of the
22 chairman.

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1 The House, as a whole, again has a lot of things on
2 its calendar that they would like to finish prior to
3 adjourning for the year, probably sometime around
4 Thanksgiving. At any rate, the fact is that the Legal
5 Services Authorization Act will not be taken to the House
6 floor before mid October at the earliest. I don't think this
7 comes as a surprise necessarily to all of you.

8 There's also the factor that the Legal Services
9 Authorization Act remains a controversial bill. It is a
10 controversial bill. There are elements in it that are very
11 touchy, various elements within Congress. When you have a
12 legislative calendar that is this crowded, any bill that
13 appears to be provoking a floor fight that could be extensive
14 tends to go down the stack of things they want to take care of
15 so they can take care of them expeditiously.

16 So the word on that would be, again I would say,
17 October at the earliest. Keep in mind the distinct prospect
18 that our bill will not reach the House floor in this session
19 of Congress.

20 The appropriations bills, as you may or may not
21 know, of course need to be enacted, but probably will not be
22 prior to the end of the fiscal year of October 1, 1991. The

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1 House has passed all 13 appropriations bills. The Senate has
2 passed eight. Two of them have reached the president and been
3 signed, the legislative branch appropriations as well as the
4 energy and water development.

5 The others remain pending House-Senate conference.
6 The House-Senate conference for the Commerce-Justice-State
7 bill, of which we're a part, will not convene before the week
8 of September 23. The House bill, as you may recall, contained
9 no funds for the Legal Services Corporation. Those funds were
10 eliminated, along with the National Endowment for Democracy
11 and the Economic Development Administration during the floor
12 consideration of the bill on a point of order because we're
13 not authorized. But in the subcommittee recall, they had put
14 in \$335.2 million.

15 On the Senate side, the Senate has put in \$350
16 million in their bill. The Senate has also continued all
17 riders that were included in last year's appropriation's bill,
18 most notably the one that places restrictions on the
19 regulatory authority of this Board before you are confirmed
20 and, secondly, requiring that the Corporation and its Board
21 explore elements of the competition issue. The same language
22 that's in this year's appropriation's act has been included in

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1 the Senate bill for fiscal year 1992.

2 So, given the fact that I don't believe either bill
3 will -- the conference will complete its action prior to the
4 end of the fiscal year, it will complete it at some point this
5 fall. In the meantime, one would expect that this Corporation
6 will be funded under a continuing resolution. As that has
7 occurred in the past, they have normally continued it at its
8 current \$327 million loan.

9 When our funding is resolved, I expect again the
10 final figure for the year to be higher, somewhere between the
11 original subcommittee passed House bill of \$335.2 and the
12 Senate version of \$350 million. We'll know more as this
13 continues.

14 Are there any questions I can respond to in any way?

15 CHAIRMAN WITTGRAF: Any questions or comments for
16 Mr. Severson?

17 (No response.)

18 MR. SEVERSON: Thank you, Mr. Chairman.

19 CHAIRMAN WITTGRAF: Thank you, Mr. Severson.

20 MR. KIRK: I have one questions.

21 CHAIRMAN WITTGRAF: Mr. Kirk?

22 MR. KIRK: Do you have any idea what the status of

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1 our confirmation agenda is? I'm sure that's so high on the
2 list --

3 MR. SEVERSON: Well, the Labor and Human Resources
4 Committee has an extensive backlog of people who are pending
5 confirmation. The paperwork that is sent to you all must be
6 completed finally by all 11, and then the committee will take
7 a close look at scheduling a confirmation hearing.

8 That really is where it stands at the moment. I'm
9 not optimistic that this would reach, again, a hearing or
10 confirmation stage in this hearing, but we don't know. We'll
11 have to, again, look for a full response from the Corporation.
12 Hopefully, they can schedule it. You'll certainly know
13 quickly when that occurs.

14 CHAIRMAN WITTGRAF: Mr. Dana?

15 MR. DANA: According to the New York Times, some of
16 us haven't gotten our paperwork. Who in the Corporation is
17 monitoring our performance in that regard?

18 MR. SEVERSON: Well, certainly Ken Boehm and myself
19 are monitoring that closely. As it stands at the moment,
20 there are four of you who have completed the forms. The
21 remainder still, again -- I know they are complicated forms.
22 They are due to the Labor Committee as soon as possible. So

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1 when they are all completed, the committee will take a close
2 look at scheduling a hearing and confirmations.

3 MR. DANA: So the Corporation isn't sitting on any
4 forms?

5 MR. SEVERSON: No, sir.

6 CHAIRMAN WITTGRAF: We're sitting on the forms
7 ourselves.

8 MR. DANA: Yes.

9 MR. SEVERSON: Thank you, Mr. Chairman.

10 CHAIRMAN WITTGRAF: It's a self-fulfilling prophecy
11 that if the committee is not inclined to act, we're not
12 inclined to act. But if we're not inclined to act, the
13 committee is not inclined to act. I think, at least, the
14 implicit point I'm taking from Mr. Dana is that those of us
15 who haven't completed our questionnaire should do so so that
16 we take away at least one barrier or excuse that stands
17 between us and the beginning of the confirmation process.

18 REPORT OF THE OFFICE OF GENERAL COUNSEL

19 CHAIRMAN WITTGRAF: The next agenda item is the
20 inspector general's report. Let me make a brief report
21 regarding the inspector general, the Office of the Inspector
22 General.

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1 As I think the members of the Board all know, and
2 perhaps as many of you in the audience know, we have been
3 required as a Corporation legislatively, by legislation from
4 the late 1980s, to have an inspector general for an
5 independent review and by independent oversight to what is
6 going on within the Corporation and also in the field.

7 A man named David Wilkinson was hired to fulfill
8 that position or fulfill the responsibilities of that
9 position on or about September 5, 1989. He was employed for a
10 two-year period of time. The Board decided when it met in
11 February of this year that it was not going to extend Mr.
12 Wilkinson's contract beyond the two-year term.

13 After awhile, and as oft happens in the legal
14 services community, Mr. Wilkinson filed a lawsuit against the
15 Corporation asking for damages for various reasons.
16 Ultimately, about two weeks ago now, asked the District of
17 Columbia District Court to grant him a temporary restraining
18 order preventing the Corporation, particularly the Board,
19 which is the head of the inspector general for purposes of
20 reporting and oversight of that function, asking that the
21 Board and Corporation be enjoined from having him leave office
22 on the 5th.

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1 On the 4th of September, the presiding judge denied
2 that request for a temporary restraining order. Excuse me,
3 that was on the 5th, Thursday the 5th. So that as of the end
4 of Thursday the 5th, Mr. Wilkinson completed his
5 responsibilities. He still has litigation pending against us,
6 but he's in front of the long line in that regard.

7 Although thanks, as Mr. Martin indicated, to Mr.
8 Fortuno's efforts and the efforts of others, our track record
9 is improving. So the threat of being sued is not much of a
10 threat in this context.

11 We have, under the leadership of Mr. Guinot, and
12 with the very able help of Pat Batie, our Corporation
13 secretary, undertaken a search for a new inspector general
14 beginning the middle of this past April. We completed the
15 process at our last Board meeting on August 12th and agreed
16 then near the end of our meeting to extend the position to a
17 man named Edouard Quatrevaux who has professional experience
18 in the inspector general arena.

19 We have in principle, subject to ratification by the
20 Board, tomorrow entered into a contract with Mr. Quatrevaux,
21 and we anticipate, if all goes well, that Mr. Quatrevaux will
22 begin serving as the Corporation's new inspector general this

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1 Tuesday, September 17th.

2 So there will only have been a 12-day lull, if you
3 will, between the outgoing and the incoming inspector's
4 general. In fact, there's a deputy inspector general who has
5 been functioning as inspector general during this very brief
6 interim period.

7 We will hope to have Mr. Quatrevaux with us then at
8 our next Board meeting in October, both introduce him to the
9 world who is interested and to ask for him to present us with
10 a report regarding those matters that can presented publicly.
11 Then the team will visit with him in Executive Session and
12 hear anything of a confidential nature from him as well.

13 That is the status of the situation. For any of you
14 who were concerned, be assured that the inspector general
15 function has been maintained throughout this process.
16 Discussion, questions, comments regarding the inspector
17 general?

18 (No response.)

19 CHAIRMAN WITTGRAF: Our special counsel for purposes
20 of the litigation brought against us by Mr. Wilkinson, that is
21 Charles Fax, practicing attorney in Baltimore, Maryland, will
22 be with us later today and will be meeting with us in

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1 Executive Session tomorrow, at which time we'll be able to
2 discuss the litigation in some detail, and also be able to
3 discuss Mr. Quatrevaux's proposed contract in as much detail
4 as you wish.

5 The principle subject of the Board meeting today,
6 then, is the matter of competitive bidding or competitive
7 funding, alluded to already both by Mr. Alston in his remarks
8 and by President Martin in his remarks. We do have several
9 people present from the staff of the Corporation to discuss
10 with us the progress that they are making in helping us decide
11 how to pursue the possibility of competitive funding on a
12 demonstration basis in the upcoming fiscal year.

13 The Senate version of the appropriation bill
14 referred to by Mr. Severson in his report does include
15 \$981,000 for Board initiatives. At this point, I think it's
16 the Board's intention to attempt to use most or all of that
17 money, and perhaps even a little bit more if Mr. Richardson
18 can find it, for demonstration efforts in the competitive
19 bidding or the competitive funding arena.

20 As Board members, we have received a current
21 memorandum from the internal competition committee that Mr.
22 Martin referred to. You should have that before you at this

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1 time. You will recall, too, perhaps, that we had presented to
2 us at our last meeting on August 12th a draft report prepared
3 by Professor Steven Cox, providing overview in the area of
4 competition.

5 Is there a Board member who doesn't happen to have
6 those materials and needs to have them provided at this time?

7 (No response.)

8 CHAIRMAN WITTGRAF: I'd like to ask Kathy de
9 Bettencourt and Ellen Smead and Charlie Moses to come forward
10 at this time. It may be that our general counsel, Vic
11 Fortuno, or the director of our Office of Monitoring Audit and
12 Compliance, Emilia DiSanto may want to comment as well. I
13 certainly don't mean to inhibit them from that possibility.
14 I'm just trying to give them a break by not having them come
15 forward. But at any time it's appropriate, don't hesitate to
16 come forward.

17 Before we turn to Kathy and to Charlie, I've asked
18 Ellen Smead if she wouldn't follow up on a point already
19 touched upon by Mr. Martin, and that is the 1992 application
20 for funding, the so-called refunding application. It's
21 significantly different, as Mr. Martin indicated. While it
22 isn't directly a part of competitive funding or competitive

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1 bidding, I think it's significant in that it does say
2 something about the evolving relationship of the Corporation
3 and the projects in the field.

4 I think the Board also should have the blue 1992
5 funding application before them. Ms. Smead?

6 REPORT OF THE 1992 APPLICATION FOR FUNDING

7 MS. SMEAD: For the record, my name is Ellen Smead.
8 I'm the director of the Office of Field Services, also with a
9 slight cold. It's going around here today.

10 One of the duties of the competition committee this
11 spring was to go through the refunding application and
12 consider the comments that have been made by the field, by the
13 president, of course, under the direction of the president,
14 and to really assess what materials that we were requesting we
15 actually needed year to year and what couldn't be done maybe
16 on a survey basis, ad hoc basis, and we also want to avoid any
17 duplication with MAC.

18 As you know, monitoring gets a lot of information
19 when they are on site and during their monitoring reviews.
20 Typically, those are done every one and a half to two years.
21 As a result of that review, we reduced this considerably,
22 approximately 40 to 45 percent.

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1 We did ask a couple of executive directors to look
2 at it, and they said that the time involved may be reduced by
3 as much as 60 to 70 percent. The volume of paper that has to
4 be submitted may be as high as 80 percent. Part of that is
5 due to the fact that we've reduced a lot of the information
6 that's asked. Even if we kept a form, we've reduced the
7 amount that's being asked. We've also reduced the number of
8 copies that has to be submitted by one, and that's a
9 significant volume right there.

10 Another big thing that we tried this year is again
11 what we started last year, a little bit more automation.
12 Last year we had two forms that were automated. This year
13 we're looking at approximately six forms are going to be
14 automated. The principal addition this year is the budget
15 forms. That should be much easier for everybody concerned
16 completing the application.

17 The software itself will do the addition, so it
18 should avoid some of the mathematical errors and complications
19 there have been in the past and also get rid of the
20 secretarial burden of trying to type numbers into little spots
21 on pieces of paper. It's from a practical standpoint.

22 The other thing is they should be able to get both

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1 portions of the application out at the same time. If you look
2 at the applications side by side, last year the two portions
3 which are contained in just the one item we sent out, it
4 looks smaller even than just the one portion, first part, last
5 year.

6 We reduced it without reducing the essential
7 information that we needed to judge the grants. I commend
8 everybody that worked on it. I appreciate the direction the
9 president provided us in doing that.

10 CHAIRMAN WITTGRAF: Any questions or comments about
11 the 1992 application for funding?

12 (No response.)

13 CHAIRMAN WITTGRAF: Thank you, Ms. Smead.

14 At this time, then, let me turn the floor over to
15 Kathy de Bettencourt and Charlie Moses and ask them first to
16 provide us with some more background about what efforts have
17 been made within the Corporation through the last decade to
18 assess delivery and also to test new ways of delivering
19 services, and then to talk about the options that are
20 summarized in the memorandum that bears Kathy's name, dated
21 September 11th.

22 Kathy, how you and Charlie want to divide your time

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1 is fine with me.

2 REPORT OF DELIVERY OF SERVICES

3 MS. de BETTENCOURT: I'll just begin and then
4 Charlie will talk to you specifically about the PLF report
5 which the Board requested some information on.

6 The competition committee was requested to come up
7 with some options, possible options for demonstration projects
8 with money that may or may not be appropriated for Board
9 initiatives. One thing that we considered initially is
10 studies that had been done in the past by the Corporation.

11 There are a long history of delivery studies and
12 demonstration projects which the Corporation had undertaken in
13 the past. We don't want to repeat the past. We don't either
14 want to reprove what has been proven to everyone's
15 satisfaction or to repeat the mistakes of the past in any
16 previous demonstration projects.

17 For example, the largest demonstration project or
18 the largest delivery system study that the Corporation has
19 ever done was the delivery system study which was required by
20 Congress when it created the Corporation in 1974. At that
21 time, Congress directed the Corporation to do a comparative
22 delivery system study, to compare staff attorney systems and

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1 judicare and other various forms of private attorney models.
2 That was a four-year, \$13 million, study, very extensive. I
3 think the final report was given to Congress in 1980.

4 That study established that the staff attorney
5 model, the various private attorney models, for example,
6 judicare, certain pro bono projects, are viable. They're
7 comparable in cost to the quality of legal services and client
8 satisfaction.

9 The staff attorney model was rated higher in terms
10 of impact litigation. That study concluded that the
11 Corporation should concentrate on finding ways to develop
12 creative local delivery systems in which all of these
13 different delivery models would be used.

14 There were several follow up studies to that because
15 the original delivery system study, while it compared staff
16 attorney models with various other private attorney models, it
17 did not compare them in the same city. So one argument was
18 that you couldn't really compare the cost and quality of legal
19 services accurately when the differences in geography and
20 client population and various other factors weren't taken into
21 account.

22 So several comparative studies were done in one area

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1 or another. The major follow-up study to the delivery system
2 study was the PLF project, which included a Phase I and Phase
3 II. Another comparative project was the San Antonio voucher
4 project.

5 Charlie Moses, deputy director of OFS, has been
6 overseeing the writing and finalization of the PLF report. So
7 he is going to offer some information.

8 CHAIRMAN WITTGRAF: Charlie, for the record, why
9 don't you tell us what PLF stands for?

10 MR. MOSES: PLF is private law firm project.

11 CHAIRMAN WITTGRAF: Thank you.

12 MR. MOSES: Essentially, what had happened as an
13 outgrowth of the delivery system study, it was decided back in
14 1983, after examination of the delivery system study, that one
15 particular item had not been necessarily examined. That was
16 the idea of high volume contracts.

17 At that time, after probably about a year, half a
18 year to a year, of looking at what should be done, the
19 Corporation Board of Directors voted to use approximately \$1
20 to \$1.5 million to fund a series of projects designed to see
21 whether or not high volume contracts could be a benefit or
22 could be of use, if it was a viable method of delivery, if it

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1 would work.

2 What the outgrowth of that was was what we call the
3 private law firm project, competitive bidding project. When I
4 say competitive bidding, I think it's very important that
5 people realize that competitive bidding and competition are
6 not synonymous items.

7 When our committee talks about competition, it
8 doesn't necessarily talk about competitive bidding because
9 that might or might not be a component of competition. This
10 particular project is designed to look at the effect of
11 competitive bidding on legal service delivery.

12 What happened was a national effort -- there were 11
13 separate sites for bidding spread throughout the country.
14 That represented 10 cities. One city, because of individual
15 local situations, actually had two separate bidding
16 components. The theory was that there would be solicitations
17 developed after consultation with the local program in the
18 area and after consultation with the local bar association in
19 the area.

20 As many as 73 different sites were examined for
21 implementation of this project. After consulting with local
22 bar and local program, it was only these 10 cities that were

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1 selected. To make a long story short, which I was going to
2 try to do and then open up for any questions that the Board
3 has, because of various different aspects of the project, what
4 was designed to have been a series of one year contracts ended
5 up being essentially a three to four year project.

6 That particular project spanned several different
7 administrations of the Corporation, several different Boards
8 of Directors and as many as 57 different staff individuals at
9 the Corporation working on the project because of staff
10 turnover from one group to another.

11 All of these different changes are what have
12 complicated somewhat the final release of information.
13 However, we are at the point where the final report has been
14 prepared and is ready for the presidential approval for
15 release. It has not at this point gotten that approval, so I
16 can't say it's being released here today.

17 The Board will remember, however, that back in April
18 the executive summaries of this particular project were
19 released to the Board for discussion at that time, which
20 basically summarized the primary information that was
21 developed through the project.

22 Just to give you a little bit of a background of

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1 what was involved here, as I said before, we had 11
2 competitive bidding sites in 10 cities. We dealt with 42
3 separate contracts that were let just in those 10 cities
4 dealing with 35 separate law firms.

5 These were spread throughout the country. There
6 were, in fact, over 7500 separate clients that were involved
7 with legal delivery. We used some of the components that
8 you've heard talked about at other hearings. For example, the
9 fractionalization method of case counting was used.

10 Not each client was counted as a separate case. All
11 the contracts were based on a billable case, which might or
12 might not be one single client. If any particular client's
13 problem was taken care of prior to judicial resolution, then
14 that would not count as a full case. It would count as a
15 partial case, either a quarter case, a half case, or a
16 three-quarters case.

17 So, in fact, at the end of the project, there were
18 over 6200 full billable cases represented by those 7500
19 clients. Essentially, this worked out to a cost -- which is
20 our cost per client was around \$102. The cost was, in fact,
21 per hour at the very low end of a reduced fee or judicare
22 range. It was approximately \$22 per hour. So, as far as the

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1 viability of this type of method, as far as the cost effect of
2 it, this was one of the things that we looked at.

3 When we were looking, however, at this particular
4 idea, we were also concerned about other things than simply
5 cost. Client satisfaction with the particular program was
6 very important, so that client satisfaction surveys were
7 distributed to virtually each of the 7500 clients. Those
8 satisfaction surveys came back uniformly positive.

9 We also had extensive contact with the local
10 programs. I think we can be honest in saying that reaction
11 has been varied, depending on which city you're in and which
12 contractor you're dealing with. But by and large, we did not
13 have, for example, a high incidence of grievances reported to
14 us at the Corporation. I mean, we had asked on two or three
15 separate occasions, separated by several years, for numbers of
16 grievances. It was essentially negligible.

17 Also, we were quite concerned, as the president of
18 the Mississippi State Bar mentioned earlier, about the effect
19 that this might have on private attorney involvement programs.
20 So, in effect, what we did was we tried to examine as best we
21 could what impact some type of a compensated model might have
22 on private attorney involvement.

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1 We noted that during the time period of the study,
2 over the three years that these contracts remained in effect,
3 that there was no reported instance of an adverse impact on
4 PAI by the local programs, at least not to us. Again, we did
5 ask on a few separate occasions for that.

6 We also, however, looked at objective measures such
7 as the PAI statistics from the local areas, which did not
8 decrease. Then we also looked at whether or not there had to
9 have been any waivers requested for PAI requirements in these
10 local areas where the contracts were involved.

11 During the years of this study, there were no
12 waivers requested by any programs. All of these are designed
13 to be some type of an independent indication of the effect
14 that there might be having on the local PAI programs. In
15 effect, because of the different sites that we did utilize,
16 there were PAI programs that ran the entire spectrum,
17 everything from organized pro bono to reduced fee judicare
18 panel to attorney referral, the entire spectrum of
19 approximately 10 different types of private attorney
20 involvement programs.

21 The final thing that we did do, and I'm not sure
22 that this particular Board would remember it but it was

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1 looked at, the effect of compensated delivery systems on pro
2 bono particularly. I believe this report was actually
3 presented to the Board about a year and a half ago.

4 That particular report found that when you looked
5 only at those areas where there was both a pro bono program
6 operating and a compensated program operating -- by area I
7 mean in state jurisdictions -- that there did not seem to be a
8 negative effect either on the number of attorneys willing to
9 participate in pro bono or in the number of attorneys who
10 actually took pro bono cases. Granted, this is now a
11 two-year-old study, but that is what we found at the time and
12 was presented at the time to the Board.

13 I think rather than drag on, there are several
14 lessons that I think possibly this Board should consider
15 getting. These are outlined in the actual report, which
16 hopefully will be released as soon as it gets presidential
17 approval.

18 The first most important lesson might be the fact
19 that there is or did seem to be during the course of this
20 study a number of separate institutions and law firms and
21 individuals who are interested in this type of work.
22 Frequently, a lot of people have indicated that they did not

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1 think that there would be interest in providing this type of
2 service among the private bar.

3 In effect, what we found, however, in these 11
4 separate sites was that there were over 342 separate bids
5 submitted for these 42 contracts. There were 135 separate law
6 firms that were submitted, out of which only 35 were selected.
7 So I think you can see from the numbers that was relatively
8 competitive. I would see no reason to suspect that that would
9 change.

10 Now, of course that does vary with your location.
11 Even with the locations, the acceptance rates of the bids vary
12 between as low as six percent in one of the sites to only as
13 high as 33 percent. So that still indicates that there was a
14 variety of people in each of the locations we examined that
15 were trying to get these bids.

16 A second important thing that I think can be said
17 for any study, but particularly for any study if you use any
18 method similar to that that we use with the contract method,
19 you have to be extremely careful when you make the estimates
20 for any types of contracts or give estimates to anybody who
21 asks you what they're going to be asked to do under these
22 contracts.

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1 The primary reason why this particular project ended
2 up going three to four years instead of the one year, which
3 each of the contracts was written for, was that we would
4 originally take the estimates as presented to us by both the
5 local bar, estimates of need, estimates of cases that could be
6 referred out within a year by the local bar, and the local
7 program and we went with those estimates.

8 We found out that in fact it would take three to
9 four years in most locations, depending on exactly the type of
10 case involved, three to four years to do what originally had
11 been estimated would take one year. All of these things are
12 things that you would tell any potential contractor or anybody
13 who might be interested in competition, and say you need to be
14 very careful when telling them what they can expect from the
15 Corporation.

16 One other thing that I mentioned very briefly that
17 you should probably be aware of with any multi-year study,
18 you might have a problem if you have high staff turnover. The
19 fact that we had 57 different professional people working on
20 this project within such a short period of time I think shows
21 part of what the problem was.

22 In fact, that has a lot to do with the fact that the

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1 actual report, the typing on this report, was just finished as
2 we left Friday afternoon. That's why it's just now being
3 submitted for presidential approval.

4 A final thing that I think should be addressed, or
5 you probably have some interest in, is the concept of
6 replicability. What we initially had one with the report,
7 with the study, was we had it set up in these 11 sites.
8 However, there were a lot of individuals, including people on
9 the staff, who were concerned that this might have been a
10 fluke, that you could not go back into the same location and
11 get continuing interest in this type of program.

12 So we did set up a replicability site. Some of you
13 might know it's the Orange County Family Law Project. The
14 primary purpose for the Orange County Family Law Project was
15 replicability not only of the PLF but also of the voucher
16 project in San Antonio.

17 There were some very complicated negotiations with
18 the American Bar Association which essentially did not work
19 out in time for cosponsorship of it. The timing was such that
20 unfortunately it did not exactly replicate the San Antonio
21 project.

22 However, the one portion of it which it did

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1 replicate was the PLF contract sites in toto. Orange County
2 had been one of the original sites. After the original
3 contracts had expired, we went in and did a replication in
4 Orange County.

5 I think that it's interesting to find out that in
6 the original Orange County proposal, we had 11 proposals for 3
7 contracts. In the follow-up Orange County proposal, we had 19
8 proposals for 4 contracts for a much more complicated area of
9 law than the original one.

10 These contracts did not necessarily, as some people
11 have said, concentrate in exclusive areas of law. They were
12 very wide ranging. The majority of them did deal with family
13 law, but that can mean everything from divorce to spousal
14 abuse, which was done in one of the sites.

15 So, as far as replicability, I think that you can
16 see that we've had a relative wide range look at it. With
17 that, I don't have anything else that I planned to say right
18 now. I think that once the president approves this report,
19 I'm sure there will be other questions. If you have any other
20 questions now, I can answer them.

21 CHAIRMAN WITTGRAF: Charlie, let me ask you first,
22 did you want to say any more about the San Antonio project? I

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1 assume virtually all of what you've been saying has to do with
2 the private law firm project, the PLF project.

3 MR. MOSES: Well, I was involved with the San
4 Antonio project. I don't know exactly what you would like to
5 know about it. I can tell you that it was a joint project
6 with the American Bar Association Committee on the Delivery of
7 Legal Services.

8 CHAIRMAN WITTGRAF: Let me interrupt you just a
9 moment. You gave us a lot of detail on the PLF project which
10 was very helpful, particularly the so-called inclusions or
11 lessons that you see that might be growing. Detail or not, do
12 we have any tentative or rough conclusions or lessons from the
13 San Antonio project?

14 MR. MOSES: Well, the San Antonio project was
15 finalized, and the report by the American Bar Association was
16 released, I believe, about two years ago. I would have to
17 refresh my memory of exactly what that report said as its
18 conclusion. I know that there was some controversy over what
19 the conclusion of the San Antonio project report should be.

20 MS. de BETTENCOURT: I do have a memo. I did a memo
21 several months ago for President Martin to summarize the
22 delivery system, which had been done in the past, their

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1 findings and methodology. I didn't release it to the Board
2 because my figures on the PLF, I wasn't quite sure if they
3 were going to change.

4 I have copies and it does summarize for anyone who
5 is interested. The San Antonio project was in 1983. It was
6 conducted in Bear County, Texas. That was, again, a
7 comparative project. Two different private attorney models
8 were established to compete with the staff attorney model.

9 In that particular model, divorce cases were
10 selected as the cases on which the three models would be
11 compared. One was a private attorney selected through
12 contract. The other was a voucher. There are actually three
13 private attorneys that accepted contracts for divorce cases.

14 For the voucher model, there was a solicitation to
15 the bar to select a panel of attorneys, private attorneys
16 interested in accepting vouchers. Fifty attorneys from 44
17 firms agreed to have their names placed on the voucher.
18 According to Steve Cox -- Professor Cox, of course, was the
19 project director in that one -- there was some concern in his
20 original version of the report about the low funds of quality
21 among all three models.

22 There was a peer review panel who reviewed the

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1 cases. They found that the staff attorney model received the
2 lowest number of quality points by a few points lower than the
3 two private attorney models, the contract and the voucher.
4 But all three models the peer review found low on quality.
5 There was some concern about why this was the case. Was it
6 the site or, you know, what effected the findings of low
7 quality?

8 The two private attorney models were found to be
9 somewhat more cost effective. The staff attorney averaged a
10 cost per case of \$491. The cost paid to private attorneys
11 either by contract or voucher ranged from \$100 to \$360. This
12 was somewhat of a controversial report.

13 There was some considerable correspondence between
14 Professor Cox and the ABA after the report was finished. So a
15 full analysis of that report, I think, should include some of
16 the correspondence.

17 CHAIRMAN WITTGRAF: The conclusions or the lessons
18 so called then, would be the point you just made regarding the
19 so-called quality and the cost per case?

20 MS. de BETTENCOURT: Yes. There is some dispute in
21 all of the comparative studies in trying to compare staff
22 attorney model to a private attorney model in either Orange

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1 County, San Antonio, and to a certain extent in PLF because
2 previous methods -- for example, the case fractionalization
3 method that was used in some of the previous studies, has not
4 given sufficient information on what administration,
5 overheard, and that sort of thing cost.

6 That's why I think I mentioned in my memo that in
7 the design for any future demonstration project we do that we
8 have timekeeping rather than case fractionalization, and that
9 we require as a part of this a breakdown of the budget, cost
10 of intake, administration, just the paperwork that has to be
11 done, so that we can compare costs more accurately.

12 MR. MOSES: One thing I would add to that is that in
13 all of the studies, the delivery studies, at least both in the
14 San Antonio project as well as in the PLF projects, case
15 fractionalization was used for the private models but so was
16 timekeeping.

17 Timekeeping was used for the private attorneys
18 involved in either the voucher panels or for the contract
19 cases. However, it's just that the timekeeping records were
20 kept. The payments was not made on an hourly basis. The
21 payment was made on a case basis. However, all of those
22 records exist.

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1 In fact, those are dealt with somewhat in the PLF
2 study. That's one of the reasons why we know, for example,
3 that the costs in the PLF study were at the low end of a
4 judicare range because we know the hourly fee that would have
5 accessed out to.

6 CHAIRMAN WITTGRAF: Before we get into a discussion
7 of it, I was hoping, Kathy, that you would summarize your memo
8 of September 11th. Even before we do that, why don't we take
9 a 10-minute personal convenience break.

10 (A brief recess was taken.)

11 CHAIRMAN WITTGRAF: The meeting will be in order.
12 Following our recess and before we move to a more general
13 discussion of competitive bidding or competition or
14 competitive funding, whichever characterization you choose or
15 whichever content you're talking about, I'll ask Kathy de
16 Bettencourt to summarize for the benefit of the Board, the
17 benefit of the audience, the most recent memorandum that she's
18 presented on behalf of the Corporation's internal competition
19 committee, a memo that's dated September 11th, which presents
20 in her and the committee's words five alternative approaches
21 or five possibilities for competitive funding.

22 Kathy?

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1 MS. de BETTENCOURT: I should emphasize that these
2 are ideas. They have to be flushed out depending on how much
3 money we get, if we do get money, and depending on which ideas
4 are most promising. There will be a lengthy design process
5 during which we would solicit input from as many people as we
6 possibly can, particularly the bar and the field programs,
7 whose support of any of these projects or options or ideas is
8 essential.

9 For the purposes of this study, we are not comparing
10 delivery models. We are talking about the effect of
11 competition on the performance of legal services programs,
12 however defined. There are two different theories of
13 competition that have been proposed.

14 One is that legal services grant providers selected
15 through competitive bidding will tend to provide high quality,
16 most cost effective legal services. A second thesis is that
17 competition between legal services providers within a
18 geographic area will tend to promote high quality, more cost
19 effective legal services.

20 CHAIRMAN WITTGRAF: Would another way to look at
21 those hypothesis, using some of the terms we've been using
22 this year, talk about a sort of constant competitiveness

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1 your first hypothesis and I guess a static type of
2 competition for your second hypothesis, to try to put -- or
3 one-time competition to try to bring it back to the Cox
4 analysis?

5 I think in lay terms or in descriptive terms the
6 constant or continuous and static would be the same
7 approaches.

8 MS. de BETTENCOURT: Right.

9 CHAIRMAN WITTGRAF: Let me ask you one other thing.
10 Do one or both of those, in your judgment, speak to the
11 challenge in lieu of defunding under the statute, under the
12 regulations, do either of those approaches speak to
13 replacement of inadequate providers?

14 MS. de BETTENCOURT: Both. The goal in either case
15 would be to permit the Corporation to find and fund the best
16 program. There will always remain hearing rights even under a
17 competitive bidding envisioned in any of the existing
18 reauthorization bills. Defunding procedures will always
19 exist. Competitive bidding will have some effect on that,
20 however.

21 CHAIRMAN WITTGRAF: Mr. Kirk?

22 MR. KIRK: Before you start, would you mind going

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1 through the definitional items so that we all know where we
2 stand and know what words we're going to use?

3 MS. de BETTENCOURT: Well, I was hoping that I could
4 get away from the need for a glossary. In competitive
5 bidding for grants, the Corporation has always envisioned that
6 certain customary procedures would be used in any particular
7 area. Soliciting a request for proposals would be
8 disseminated.

9 Anyone in the area, including existing legal
10 services providers or any other entity, any other models, for
11 example, a private attorney model that was in existence, a pro
12 bono model, could apply for funds. There would be competitive
13 bidding, and the Corporation would choose the best provider.

14 MR. KIRK: Are you going to call that competitive
15 bidding?

16 MS. de BETTENCOURT: That's competitive bidding.

17 MR. KIRK: Professor Cox would have called that?

18 MS. de BETTENCOURT: Static competition. Now the
19 second idea of competition is that when you have two programs
20 in an area that are competing for clients, not competing for
21 grants, although competing day to day for clients, that they
22 will tend to improve, be more productive. They would tend to

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1 be more cost effective. Those are the two thesis that are on
2 the table that we have been asked to think of ideas how to
3 test.

4 MR. KIRK: What term are you using for this second
5 type?

6 MS. de BETTENCOURT: We can use whatever is most--
7 dynamic competition or constant competition, ongoing
8 competition, I think.

9 MR. KIRK: Thank you.

10 MS. de BETTENCOURT: I'll just briefly discuss the
11 various options that we came up with. I think there are other
12 possibilities, but these are some initial ideas. The first
13 one would be that the Corporation could conduct a competition
14 for state support grants and national support grants.

15 There are currently eight states that do not have a
16 state support grant. In our appropriations language, as it is
17 being considered on the floor now, or will be on the floor
18 soon, there is an additional 500,000 for state support grants.
19 So this money could be used in addition to whatever other
20 money the Board would wish to use.

21 The Corporation could also hold a competition for
22 national support grants to existing -- national support

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1 centers could bid as well as other entities who might want to
2 apply for national support funds. Now, this would give the
3 Corporation some practice in competitive bidding procedures.
4 However, it wouldn't tell us much about our main area of
5 competition which is basic field grants, legal services
6 delivery. However, we may have this additional money. So
7 that is one thing the Corporation can do in any case.

8 Option two, the Corporation could hold a competition
9 in as many sites as possible for grants for a specific type of
10 service; for example, for a pro se program, for a legal
11 clinic, for a particular of law, homeless or some innovation.
12 Existing legal services providers and others would be eligible
13 to bid.

14 Again, this is a way to test procedures used in
15 competitive bidding. Programs would be competing with one
16 another for grants. It would not tell us anything about the
17 effective constant competition. In other words, we would not
18 have comparative data.

19 Option three, the Corporation could hold a
20 competition to select a second provider in an area where there
21 is an existing legal services program, particularly in urban
22 areas. There are existing legal aid programs that do not

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1 receive legal services funding, or there might be programs
2 that would want to apply for the grant.

3 Both providers would be required to serve the same
4 geographic area. They would both be required to be full-
5 service providers, do intake. They would be compared on the
6 basis of their services after the designated period. For the
7 purposes of this study, it would be useful to study at least
8 in one site, and preferably two, an area in which the existing
9 legal provider has experienced a decline in cases serviced,
10 that there's some indication of a lack of productivity. They
11 are on month-to-month funding, some objective indication that
12 it is not a well managed program.

13 For purposes of comparison, you would have to do a
14 similar study in areas where there's a very effective, well
15 managed program so that you could actually see the effect of
16 competition in the same area on the two programs. At the end
17 of the evaluation period, the two programs would be compared
18 on the basis of cost, quality, and client responsiveness.

19 The one problem with this particular option is that
20 it would be very expensive and would require extensive
21 cooperation of existing legal services programs. It also is a
22 multi-year project. It could not be completed in one year.

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1 Therefore, it would depend on the availability of future
2 appropriations.

3 Option four, the Corporation could select several
4 sites where there are neighboring legal services programs,
5 programs that are contiguous and would offer them additional
6 money to serve an overlapping area. For the purposes of the
7 demonstration grant for this period, we can't simply just ask
8 them to serve more clients because they are funded on the
9 basis of a per capita population.

10 We could, however, give them additional money to
11 serve additional clients. That would be permissible under the
12 terms of the demonstration grant. Now, in option four, we
13 would select two programs that are already serving in
14 overlapping areas and compare their services.

15 Option five, we would select two neighboring
16 programs and request that they overlap and provide services in
17 the same area. Those are the options that we had discussed.
18 We have discussed several other options. I know Mr. Kirk is
19 particularly interested in the idea of taking existing
20 programs and asking them to separate and compete.

21 That is something that would require more, you know,
22 analysis by, I think, our general counsel's office. The

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1 programs themselves would have to volunteer to do that. They
2 would have to each go to the local bar and request a second
3 Board. There would probably have to be some incentive,
4 monetary incentive, to enable them to set up two different
5 programs.

6 CHAIRMAN WITTGRAF: Thank you, Kathy. I think we've
7 got a number of comments and questions. I'm hoping that as we
8 conclude the discussion within the hour that we would like to
9 be able to give you a sense of how we, as a Board, would like
10 to have the options narrowed down to one or two or three so
11 that we can begin to consider more specifically what might be
12 done, assuming the funding is available once an appropriation
13 is made later in September or October, and then shooting,
14 hopefully, for -- I guess the ideal would be to be able to put
15 the money into the field by January 1, 1992. That may be
16 pushing it, but at least with that goal in mind.

17 Before we open it up, Alan Houseman has asked for
18 the opportunity to make a few comments on behalf of the
19 project advisory group and the National Legal Aid Defenders
20 Association. At this time, before we get into a general
21 discussion, it probably makes sense for Alan to make these
22 comments.

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1 If you all can make room for Alan, we'll have Alan
2 slip up to the fourth chair at this time.

3 REPORT OF THE PROJECT ADVISORY GROUP

4 MR. HOUSEMAN: Thank you. I want to give some
5 initial observations on behalf of PAG and NLADA. First, let
6 me introduce myself to you, at least, since you don't know me.
7 I am speaking here as counsel for the National Legal Aid
8 Defenders Association of the Program Advisory Group.

9 I run a nonprofit public interest law firm. It is
10 not affiliated nor does it receive funds from the Corporation.
11 One of my roles is providing counsel to NLADA and PAG and
12 assisting and commenting on regulations and legal matters and
13 other issues of that sort. It's in that capacity and only in
14 that capacity that I am appearing here today.

15 Second, what I'm about to say is an initial
16 reaction. Obviously, PAG and NLADA has not seen this
17 memorandum. It was sent to me late Friday afternoon. I've
18 not had a chance to speak with the leadership of either. So
19 my comments are in the context of a series of long
20 deliberations which a widespread represented group, project
21 directors, clients, staff, board members, and bar
22 representatives have had over the last three years, four

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1 years, in discussing competition.

2 My initial reaction is that the staff proposals on
3 options appears to be a very constructive response to a
4 controversial issue. I think that it offers for once a
5 possibility of actually working together positively and
6 affirmatively to consider how we can improve the quality, the
7 effectiveness and the efficiency of the legal services to the
8 poor.

9 Some of the options and the notion of demonstration
10 projects, the notion of study of feasibility are consistent
11 with much of our own thinking, both within the legal services
12 community and the organized bar. To continue us on what I
13 hope would be a constructive and affirmative course, I'm
14 going to offer several observations and thoughts, generally.
15 Some additional steps, I think, should be taken in order to
16 move forward on an issue that is upon us.

17 Let me make it clear that I would hope we would all
18 start from a perspective echoed by the Mississippi bar
19 president, Alex Alston, that legal services programs are
20 generally doing an effective job, that the integrated,
21 coordinated delivery system that we have developed in this
22 country is effective and should be preserved.

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1 For the field, therefore, the question is how can we
2 improve the quality? How can we improve the efficiency? How
3 can we improve the effectiveness and address client problems
4 effectively, help clients improve opportunities? How can we
5 make the system more responsive to clients the communities
6 serve? That's the perspective by which we look at this issue
7 of competition and the perspective which we bring to this.

8 First, and frankly fundamental, in order to move
9 forward, it seems to me we need to develop criterion,
10 performance criterion if you wish, to evaluate the overall
11 program performance; that is, standards against which we can
12 compare program performance.

13 As part of this effort, we need to develop a
14 performance review system that would utilize peer review, not
15 just by private attorneys, by the way, which the staff program
16 mentions, but by experts in poverty law as well. I would hope
17 that we would build on the prior work done not just during the
18 last decade but on the work done by Leona Voke, who ran the
19 delivery system study for the Corporation, the work that Jim
20 Meeker has done in Orange County, the work that has been done
21 by the American Bar Foundation and others who have looked at
22 the delivery of legal services generally, as well as the work

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1 that has been done by Corporation staff.

2 However, such a system should not be based solely on
3 peer review of individual cases or cost comparisons of
4 individual cases. It should obviously, and I think everybody
5 agrees, focus on the quality of the work done, but it also
6 must focus on the effectiveness of the work on both individual
7 clients served in the client community within the area
8 serviced, the effectiveness in improving opportunities for the
9 poor.

10 It should also focus on how effective programs are
11 on leveraging additional resources, not just private attorneys
12 but public and private resources which have been leveraged and
13 used effectively over the last decade. A review system, a
14 performance review system must also look at institutional
15 viability of programs as an effective actor in the particular
16 community served.

17 It must look as well at the responsiveness to client
18 legal needs as defined by the client community and a number of
19 similar criteria. Why do we need that? Well, for one
20 reason, we need it because without such standards for
21 performance criteria, grant awards would or at least would be
22 perceived to be made on incrimissal, political or ideological

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1 grounds or on the whims of the reviewers, those who actually
2 review them and make decisions.

3 In any case, without having a way of judging
4 performance among the vast majority of grantees, we're not
5 going to know how to make improvements if we don't have in
6 place a performance review system to do that. This is going
7 to come sooner or later anyway.

8 The House Judiciary Committee bill requires the
9 Corporation to develop performance criteria. I think it's one
10 of the least controversial provisions in that bill. I know
11 from discussions with the Senate leaders that they are quite
12 in favor of this. This is going to happen anyway. It seems
13 to me we ought to be in the business of effectively moving
14 forward.

15 Frankly, I think it's a predicate for an effective
16 demonstration project on competition. Most people who have
17 considered this issue agree that we need a performance review
18 system, whether it's Steve Cox or Doug Beshra, the American
19 Bar Association, the House Judiciary Committee, or the legal
20 services community.

21 Can we develop a performance criteria, performance
22 evaluation system? Of course. It will take time. It will

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1 not be easy. It will inevitably involve different
2 perspectives on legal services, but it is doable. How then
3 should we go about doing this?

4 Well, I would urge that you follow some of the ideas
5 I'm about to suggest. The first one, obviously, is built on
6 all the past work that has been done on this, not just the
7 work of the recent decade.

8 Secondly, I think it's essential that you obtain
9 information from those who have focused on similar issues
10 within the delivery of legal services generally and other
11 government programs, issues that have come up; for example, in
12 the Job Training Partnership Act Program.

13 Third, I would urge you to place responsibility for
14 the recommendations of this system into the hands of a
15 politically neutral and experienced lawyer or social scientist
16 with no past involvement in LSC, where a person has not taken
17 clear positions on these issues but who is considered
18 knowledgeable about the delivery of legal services generally
19 and has some familiarity with the delivery of legal services
20 to poor people.

21 Fourth, I think you would be helped by creating an
22 advisory committee to work with the neutral expert that

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1 includes representatives of field programs chosen by PAG and
2 NLADA, representatives chosen by the bar, clients chosen by
3 client organizations, social scientists of repute, obviously
4 LSC staff and program staff of the local programs; including
5 representatives chosen by the union.

6 If we take those steps, this is not a difficult long
7 process. It does not have to be. I think we could put in
8 effect a performance evaluation system, begin to test it, and
9 begin to experiment and work out the bugs within a year. I
10 think by the time we meet next year at this time, if we work
11 together on this, we could have a much more effective way of
12 evaluating the quality and overall performance of programs. I
13 urge that in this general thinking about competition that we
14 move on that.

15 Second, as we consider the use of competition, I
16 think it would help us all to pull back from the rhetoric, the
17 exaggerations, the theoretical claims that are made, and to
18 look carefully, as objectively as possible, at what has been
19 the experience in using competition in an analogous
20 situations.

21 What can we learn from the experiences that others
22 have had, not just within civil legal services but elsewhere.

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1 I would urge that we start by looking at the experience with
2 the defender programs. There has been a long experience in
3 contract bidding in indigent criminal defense which, frankly,
4 everybody that looks at it has been a total disaster.

5 There's been testimony to Congress on this. There's
6 been discussion, thoughtful discussion about this. Every
7 study that has looked at criminal defense contract bidding has
8 found that a number of things occur. First, there were low
9 bids initially. Overtime costs rose substantially. The
10 quality of representation significantly deteriorated.

11 In fact, under the contract system, the cost rose to
12 a level that exceeded both that of the public defender and
13 assigned counsel. In addition, the most qualified and
14 experienced practitioners dropped out and were ultimately
15 replaced by recent law graduates and marginally competent
16 criminal attorneys.

17 Moreover, instability increased among providers,
18 resulting in the dismantlement of effective public defender
19 programs which later had to be reinstated because they proved
20 to be more effective and efficient providers than the
21 contractors that would replace them.

22 Funding sources experience substantial

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1 administrative costs necessary to process the bids and to
2 negotiate contracts. Finally, in a number of states, the
3 courts held the contract defense bidding system to be
4 unconstitutional.

5 There are four or five cases on this, the most
6 prominent being in Arizona on a 1984 decision of the Arizona
7 Supreme Court. I do not know how we can honestly and
8 objectively discuss this issue unless we look at this
9 experience and learn from it.

10 Second, other federal programs, we should look at
11 other federal programs that distribute money to local areas
12 across the country on a geographic basis and on a funding
13 formula basis. We have some other federal programs that are
14 very similar to legal services; Head Start, for example,
15 numerous state and local governmental programs. Somewhat
16 analogous is the JTPA system, though not completely.

17 If we look at the experiences that those programs
18 have had, one, we find few use competition or competitive
19 bidding in grant awards. Very few have competition among
20 providers. There's been some experience with that in those
21 programs. I think it's important for us to look at those
22 experiences.

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1 Finally, in looking at objectively what's going on,
2 I want to make a few comments, observations if you will, about
3 the Corporation's private law firm project. This is not easy
4 to do since I don't have a copy of the final report as neither
5 do you, and I haven't had an opportunity to carefully examine
6 the data.

7 But there are some things that we do know about this
8 project, which I don't think were fully brought out in the
9 earlier discussion. This is the kind of discussion analysis
10 that I think we need to engage in if we're going to
11 objectively work on this together.

12 One of the things we know is that in a number of
13 areas where the private law firm project was conducted, many
14 of the private practitioners made low bids initially. When
15 they tried to raise the cost, they couldn't. In fact, for
16 example, in Orange County, every one of the participants said
17 they would never participate again.

18 The contract attorneys felt their bids were too low,
19 and their lack of experience in competitive bidding and LSC's
20 pressure on them to lower their bids resulted in an unworkable
21 fee schedule. In Jacksonville, another example of the 442
22 cases not done out of the 1,300 contracted for, 34 percent

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1 were the result of three of the four law firms in the project
2 unilaterally terminating the contracts and refusing to accept
3 the referral for further cases.

4 There are similar experiences in a number of the
5 other provider areas. I think before you make judgments based
6 on the private law firm projects, that you hear from some of
7 the people involved in that experience. I know that some
8 testimony was presented in San Francisco to the LSC
9 reauthorization committee.

10 But I suggest you should hear from people in
11 Jacksonville, in Austin, in Columbus, in Orange County, and
12 elsewhere before drawing conclusions about what the private
13 law firm project did and did not accomplish. One of the
14 things that was mentioned, I just want to highlight it a bit,
15 is the cost per case figures used by LSC in the private law
16 firm project are questionable at best.

17 They did not include the administrative cost of
18 soliciting contractors, negotiating contracts, the cost of
19 case screening and referral, the administrative costs of
20 processing and paying invoices, the costs LSC incurred in
21 conducting the project, and the costs associated with
22 accountability, which staff programs but not contractors

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1 incurred.

2 There are a number of other points one can make. I
3 think the only objective way to deal with this is to look at
4 the report, which we will do and others will do, and to fully
5 examine its conclusion. But I think we need to be clear about
6 the experiences that others have had, to build on those
7 experiences that others have had when we think about the uses
8 and the effectiveness of a competitive bidding system.

9 Third, we should study the feasibility of
10 competition through demonstration projects as well as
11 examining the past experiences. We should attempt, I think,
12 to objectively test hypothesis that are realistic and based on
13 experience.

14 The staff proposals, or at least option 3 and
15 possibly option 5, provide a basis for an effective
16 demonstration project that could, if a number of changes were
17 made, truly help determine whether, how, and under which
18 circumstances competition can work.

19 Many of the suggestions for improving the
20 demonstration projects are implicit in what I've said already.
21 I don't think the staff paper has fully taken them into
22 account. Of course, this is a very short staff paper produced

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1 fairly quickly. So it's a little unfair to criticize it by
2 not taking into account a variety of factors which the staff
3 committee may have thought about.

4 But it seems to me if we're going to go down this
5 road, if in fact Congress is going to give you money for
6 demonstration projects, and if we're going to try to develop
7 the demonstration projects, I think a number of the
8 suggestions I'm about to make have to be taken into account as
9 we proceed.

10 First, you can't compare programs unless you have
11 some comparative baseline data on the existing program. If
12 you're going to compete between an existing legal services
13 provider and somebody else, you've got to start with
14 something. That's going to take some time to develop.

15 It's not a hard thing to do, but you can't compare
16 apples and oranges. While we have some information from
17 programs, you've got to make sure you're going to look at
18 baseline data as a starting point.

19 Secondly, you can't just look at quality and cost.
20 We must look at effectiveness in providing comprehensive
21 services attuned to local needs. The staff paper, as I read
22 it quickly, seems to see a trade off between cost against

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1 quality. I would look at these as two interrelated variables
2 that have to be augmented by a variable such as effectiveness
3 and a variable such as client responsiveness, among others.

4 I've already mentioned what I think has to happen
5 with regard to performance standards. I don't think you can
6 evaluate individual quality alone. I think you have to look
7 at overall program effectiveness and quality. To do that, we
8 need some standards against which to measure program
9 effectiveness and quality.

10 A very fundamental point which is mentioned at
11 least in an earlier staff paper, and hinted at in this, is
12 the need for a level playing field. If we are going to
13 compare the effectiveness of legal services provider versus
14 another provider or any permutations of that, then both
15 providers have to operate with the same rules, the same
16 regulations, the same requirements.

17 They have to be required to do the same things.
18 It's not, by the way, a matter of solely intake and outreach.
19 It involves a host of things from priority setting,
20 specialization, case review, governing bodies and the
21 requirements of governing bodies, all of the management and
22 accountability issues that are required today of providers of

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1 legal services programs.

2 Those have to be taken into account if you're going
3 to compare them to some other provider. If you don't take
4 those into account, if you don't place them on an equal
5 footing, you're not going to have true competition, and you're
6 not going to learn very much about whether an alternative
7 approach or competition is going to work very well.

8 It's an obvious point. Yet, some of the discussion
9 doesn't, it seems to me, focus on this point sufficiently. In
10 deciding if we use, for example, option three, in deciding how
11 to determine whether a program has a declining performance, as
12 the staff paper suggests, you don't just look at the cases
13 served. You have to look at quality. You have to look at
14 effectiveness. You have to look at responsiveness to client
15 needs.

16 Now there are probably some programs, I don't know,
17 maybe, that everybody would agree are declining performance
18 programs. But most programs don't fall within that category
19 at all. Most programs, even programs that some people may say
20 aren't very good programs, or one set of data may suggestion
21 aren't very good programs may be, in fact, a very good
22 program.

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1 You have to look at much more than just the number
2 of cases being served. I think that has to be reflected in
3 how you decide and make decisions about where you're going to
4 test a demonstration project. In evaluating the capacity of
5 various providers, and in looking at competition, a key issue
6 is how the providers leverage other resources.

7 Now, this is not just how the providers work with
8 private attorneys, as the staff paper suggests. It is how the
9 providers leverage public and private funds, how well they do
10 that, how well they use those funds, how effective they are in
11 doing that.

12 Over the last 10 years, many legal services programs
13 have found new sources of funds, developed new sources of
14 funds, and have become very effective at leveraging those
15 funds. Now in some communities that's very difficult given
16 the particular community involved. In a number of communities
17 it isn't.

18 It's very, very important in judging and looking at
19 and thinking about a demonstration project to make sure that a
20 key thing that's looked at is the capacity of the program to
21 leverage other resources. In that regard, by the way, when we
22 think about the number of issues, I think we ought to be

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1 creating incentives and not roadblocks to obtaining other
2 funds.

3 There are a couple of other points which we have
4 thought about as we have considered competition within the
5 community that I don't think are completely reflected in the
6 staff draft. I think a demonstration project must take into
7 account somehow locally-determined needs for particular kinds
8 of services.

9 In doing so, the demonstration project must provide
10 a meaningful role for the organized bar and the client
11 involvement in selecting grantees, priority setting for
12 program services, and police setting for program managers. In
13 addition, if competition, and I don't read this proposal as
14 doing what I'm about to suggest, but if competition is down
15 the line somehow going to be used to replace an existing
16 recipient, then the use of competition must take into account
17 the ongoing ethical and professional responsibilities of
18 recipients and their attorneys for existing cases, the
19 potential disruption of client services, the loss of
20 experienced staff, the effect on pro bono services, and of
21 course the funds from other sources.

22 Competition must not undermine private attorney

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1 involvement that has evolved in local communities over the
2 last 10 years by discouraging or reducing pro bono efforts by
3 the private bar. I'd like to say in this regard that the
4 comments made earlier about the private law firm project
5 really don't address the issue.

6 Funding one or two attorneys to handle a few cases
7 in a community is not going to tell us anything about the
8 impact of a full-services provider with direct funding on pro
9 bono efforts.

10 Finally, I have two process suggestions similar to
11 ones I made earlier. If you get funds for a demonstration
12 project, and if you decide to move in that direction, I
13 strongly urge you to set up an advisory committee. The staff
14 proposal mentions one.

15 I would urge you to include, in addition to those
16 mentioned in the staff proposal, representatives appointed by
17 PAG and NLADA, people appointed by the bar association,
18 clients, representatives from the National Organization of
19 Legal Services Workers, and social scientists who have
20 knowledge about delivery research, but preferably who have not
21 been involved in this research on legal services in the past
22 from any point of view.

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1 I think a lengthy design process, which was
2 mentioned, is important. I think equally important is an
3 effective advisory committee that you don't control, that is
4 you don't appoint, but that other organizations appoint that
5 work with you on this.

6 Finally, I would urge that you conduct an
7 independent evaluation of the project by a social scientist to
8 repute who has not previously been involved in legal services
9 research, Legal Services Corporation research but who knows
10 something about delivery research.

11 There are a number of such people around. There are
12 organizations like the American Bar Foundation and it's
13 current director, for example, Brian Garth, who could do this
14 well. I think we would all be better off if the
15 responsibility for evaluating this project was handled by
16 someone who everybody would view as independent and not
17 politically or ideologically involved in any other disputes
18 about it.

19 On behalf, therefore, of PAG and NLADA and the
20 programs they represent, we look, at least initially, with
21 some positive reaction to these proposals but urge you to
22 consider suggestions that I have made and the suggestions that

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1 will be made over the next several months, if this goes
2 forward, by the organizations and the programs.

3 I urge you to develop performance standards. I urge
4 you to examine what has and hasn't worked in human services,
5 and filling in the gaps of the staff draft to set the basis
6 for an effective demonstration project.

7 I think if you are willing to work in this direction
8 that you will find cooperation, positive and affirmative
9 response from the legal services community to work with you
10 and to try to together find ways to develop and improve and
11 make more effective the delivery system that now exists.

12 Thank you.

13 CHAIRMAN WITTGRAF: Thank you.

14 MR. KIRK: Mr. Chairman?

15 CHAIRMAN WITTGRAF: Mr. Kirk?

16 MR. KIRK: May I respond, comment?

17 CHAIRMAN WITTGRAF: Sure. I was thinking first
18 before we opened up to the Board members that I'd ask Kathy
19 and Charlie and Ellen if they want to make any response.

20 MS. de BETTENCOURT: I just have a couple of things.
21 I don't know if it's a good or bad sign that I agreed with
22 almost everything you said.

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1 CHAIRMAN WITTGRAF: Probably a bad sign for both of
2 your reputations.

3 MS. de BETTENCOURT: In fact, when you began your
4 discussion of performance monitoring, I had recalled that I
5 had brought enough of these to hand out. When I talked about
6 that we have to have some objective means of assessing
7 quality, one of the things that I think we have to build on
8 was something done by the research institute years ago which
9 identified pages of indicators or measures of quality legal
10 services.

11 There have been other attempts by legal plans,
12 prepaid legal plans to assess quality in legal services.
13 There is a lot of work that has been done in the past. That's
14 essential to any of the options. So that is true.

15 I do have one question. I don't know how to get
16 around it. I agree wholeheartedly that we need neutral
17 figures in both data analysis and design. We currently are
18 restricted to only an in-house study with this money. Do you
19 have any suggestions?

20 I mean, I do think it's essential for the success of
21 this, but at the moment, our hands are tied.

22 CHAIRMAN WITTGRAF: Mr. Houseman?

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1 MR. HOUSEMAN: I'm not sure an in-house study -- I
2 mean, I'd have to look at the language again. I'm not sure an
3 in-house study precludes you from working either with an
4 advisory committee or --

5 MS. de BETTENCOURT: No. We assume we can work with
6 an advisory committee, but we assume that we cannot ask Rand
7 to crunch our data, you know.

8 MR. HOUSEMAN: Well, maybe, but my suggestion was
9 essentially that you hire an independent person to conduct
10 this evaluation and to work with you in the design and
11 implementation of the project.

12 MS. de BETTENCOURT: But that is the problem we
13 have. We have to hire them. We can't --

14 MR. HOUSEMAN: I don't think that's precluded. You
15 can employ him. I don't think that's -- I may be wrong, but I
16 don't think that's the fundamental problem. If it is, I think
17 we can look at that.

18 CHAIRMAN WITTGRAF: It seems to me that if there's
19 some consensus on who is a credible individual or which is a
20 credible institution, that nobody is going to raise a fuss
21 with the Congress that we're doing something inappropriate.
22 So, as long as no one objects to the absence of a quorum, we

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1 won't discuss the absence of a quorum. I think that might
2 apply.

3 Alan raised a lot of questions and made a lot of
4 points. Anything else you want to say at this point, Ms. de
5 Bettencourt?

6 MS. de BETTENCOURT: I mean, there are a few other
7 things that we talked about. These obviously were ideas, and
8 we haven't gone to the detail on every element. That would
9 have to be done as well as site selection by an advisory
10 committee.

11 One thing that we have done years ago is to look at
12 the experience of competitive bidding and public defender
13 contracts. It is abysmal, their experience. One of the
14 reasons in every case was they bid on the basis of cost alone.
15 Any system of competitive bidding or any demonstration project
16 that we would fund would have to be considered relatively the
17 three -- I think we mentioned in the paper that this would be
18 a weighing of cost against quality and client responsiveness.

19 You can serve millions of clients cheaply, but if
20 it's not quality legal services, then you haven't fulfilled
21 the requirements of the act. You can also provide the best
22 legal services in the world, but if you can only serve one

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1 client a year, then, again, you're not fulfilling the function
2 of the Corporation.

3 Both of these have to be weighed against client
4 responsiveness. So I think we do take that into
5 consideration. I think any measures of quality that we would
6 establish, again based on the work that's been done in the
7 past, would weigh these three things in conjunction.

8 MR. HOUSEMAN: Let me just be clear. I don't have
9 any problem with that.

10 CHAIRMAN WITGRAF: Mr. Houseman?

11 MR. HOUSEMAN: My major point was that you left out
12 the statutory requirement for effectiveness. It's not just
13 cost efficiency. It's an independent statutory requirement of
14 effectiveness. We struggled with that for years. You have to
15 measure programs and their overall effectiveness. That
16 involves other kinds of variables.

17 So it cannot just be cost versus quality versus -- I
18 don't think it's a question of cost versus. That's where I
19 somewhat disagree with you. I think it's a question of
20 looking at cost, looking at quality, looking at effectiveness,
21 looking at client response, and then making some judgments
22 about how a particular provider is working.

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1 CHAIRMAN WITTGRAF: Mr. Moses? Ms. Smead? Thank
2 you all. If you'd all stay there, please.

3 MR. HOUSEMAN: There may be other people from the
4 audience who would like to say something.

5 CHAIRMAN WITTGRAF: Okay. Time is going on. I'd
6 like to give the Board a chance to weigh in for a little while
7 before we open up to anybody else. Mr. Kirk?

8 MR. KIRK: Mr. Chairman, I'm mindful that we don't
9 have much time. I think I was viewing this as more for input
10 and listening for the staff proposal than anything else.

11 Mr. Houseman, I must, in all candor, tell you that I
12 disagree with what Ms. de Bettencourt said. I did not agree
13 wholeheartedly with everything you said. I kind of heard it
14 as being almost negative, as we can't do it now. We've got a
15 year to do this. We don't trust you to make the decision. We
16 want you to put us on an independent advisory committee to do
17 it. Then, in addition to that, let's have an independent
18 consultant who can come in.

19 I don't see that leading to some really let's get to
20 the bottom line and let's try it and see if it works. In
21 coming up with your definition of effectiveness, I didn't hear
22 the word cost until late in the presentation. I have a

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1 concern about that.

2 Your fear that there won't be a level playing field
3 doesn't sound like, you know, we're all in the same ballpark.
4 It sounds like more mistrust and what have you. I do agree
5 with you that we need some baseline data. But I think the
6 source of baseline data needs to come from some real support
7 from the field on some timekeeping efforts so we can come up
8 with some accountability to know exactly where we're going and
9 what we're doing.

10 So if we need to go through all that, I suspect that
11 my position would be that ought to forget competition because
12 I think that it's just putting one roadblock after another in
13 an effort to just get out there and let's try one and see if
14 it works. So as far as Mr. Houseman goes, those are my
15 comments.

16 I would like to comment generally on the situation,
17 if I could.

18 CHAIRMAN WITTGRAF: Sure. Before you do, let me
19 just note that our newest Board member, Norman D. Shumway,
20 formally of Stockton, now of San Francisco, California, has
21 joined us. He has found Jackson, as the rest of us have here
22 today. Ms. Wolbeck is here. You're number 7. We hope there

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1 will be a few more by tomorrow.

2 Mr. Shumway retired in 1990 after 12 years of
3 Congress. He was a practicing attorney before that time. For
4 the last seven months now, he has been by appointment of
5 Governor Pete Wilson of California, one of the five members of
6 the Public Utilities Commission in the State of California
7 that oversees the regulation of some 18,000 utilities in the
8 great State of California. Welcome.

9 Mr. Kirk?

10 MR. KIRK: Thank you. Ms. de Bettencourt, I'd like
11 to take an opportunity, if I could, to kind of repeat a
12 conversation I had with you following our last meeting. There
13 was some concern that maybe I was corresponding with people
14 without telling the rest of the Board what I was doing.

15 I don't know if competition is going to work or not.
16 It may well not. But I think that we won't know until we give
17 it our very, very best shot. I know that the concept of
18 competition in a typical situation has been validated by
19 worldwide events and in our everyday lives.

20 We really ought to be looking strongly at
21 competition as perhaps a way of making ourselves and our
22 rendering of legal services to the poor more effective, more

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1 efficient, a substantial cost savings.

2 As far as does it work, can we improve, I keep
3 hearing the statement that look, the way we're working the
4 field, we're doing a fine job. It can't be improved, you
5 know. Competition is not going to make any difference.
6 Folks, it might not make a difference, but I want to tell you
7 that law firms said that throughout the 80s.

8 My law firm said that until some of the clients
9 became really concerned about cost, and I began to feel more
10 of the competition that was being placed upon my by my
11 clients, comparing me to other firms. in my community
12 comparing me to a firm that was set up by one of my clients
13 as a baseline to say can you match that.

14 I want to tell you that it's working and that I and
15 my law firm -- I have some pretty tough clients, I want to
16 tell you, and some very good clients, some of the good
17 corporations of America. They're saying I'm giving them more
18 bang for their buck. I'm doing a better job for less money.

19 The 80s were a period of unprecedented growth of
20 lawyers. We all did well. Law firms grew. We all had jobs.
21 Everybody that came out of law school had a job. Lawyers
22 incomes just soared.

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1 I've got to tell you the 90s is going to be
2 something different. The law firms that are dealing on an
3 everyday basis with clients, they are demanding more. They
4 want more accountability. They want more premise, and they
5 want more responses. We've having to work harder to give our
6 clients more in order to maintain a decent income for all of
7 us.

8 I think that is what we as a whole as lawyers need
9 to look at, how we can better and more effectively serve our
10 clients, whether they are the poor or whether they are with
11 the people in Cherokee, Iowa. I don't know how open bidding
12 is going to work.

13 I was never very optimistic about it, but I have to
14 tell you knowing that law schools are producing graduates and
15 40 to 75 percent are not able to find jobs, it encourages me
16 that open bidding may ultimately work, although I'm not sure
17 that at this point in time we're in a position to really look
18 at that.

19 I had commended the committee to look very hard at
20 an industry that seems to be very similar to what we have
21 here. In your typical competition situation, you have a buyer
22 and a seller. The buyer is the recipient of the services. He

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1 decides whether the services are of a high enough quality. It
2 they aren't, he finds another seller to buy them from.

3 Here we have a different situation. We have the
4 taxpayer who is the buyer but is not the user of the services,
5 the seller or the individual field offices. We have a third
6 person involved which would be the user. So we don't have the
7 user being the person determining whether the quality is right
8 and the price is right because the payer is a taxpayer.

9 That's the buyer. If you look, you will find that
10 that always creates a difficult situation in the health
11 industry, which I think has been an absolute disaster where
12 we have a compulsory -- everyone is entitled to a certain
13 benefit. It's out of control.

14 I suggested a private sector where something similar
15 to this exists, which is the insurance industry. If Kathy de
16 Bettencourt is in an accident, and she causes it, she goes
17 through her insurance company. They hire a lawyer for her.
18 In that instance, the insurance company is the buyer of the
19 services.

20 Kathy is the person who, in fact, receives the
21 services, but the seller -- she's the user -- the seller is
22 the law firm they hire. The insurance industry has tried

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1 valiantly to gain control over their legal cost and to get
2 some accountability by the law firms. They were having the
3 same difficulty that we're having here with the taxpayer as
4 the buyer.

5 The seller is the local field office, but the user
6 is somebody else out there. They've done it by some very
7 stringent accountability on the part of the law firms. We
8 have to respond and say here's what we're doing. They come
9 and they say we want you to have on your bills a breakout, a
10 matrix, that we'll know what you're spending your time on.
11 This enables us to do a lot better.

12 They have created competition by looking at
13 different law firms in the same community. Instead of using
14 the same law firm, they're looking at two law firms and saying
15 who do we get the best results for. It's quality and
16 effectiveness compared with cost. That's a vital factor.

17 You know, law firms one day may not be working for
18 that insurance company if they can't comply. That's one of
19 the situations we have, you know. If you don't do it right,
20 you're going to lose your job. That's going to be a very
21 vital thing for any competition to know that if you don't
22 compete and if you don't live up to it that you might not have

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1 the business in the future.

2 There may be some legal service lawyers that might
3 not be working today for this same company. They may have to
4 go to work for another field office that may be doing a better
5 job in delivering the services. I think that we need to look
6 at other private sector industries and see how, in fact, they
7 have been able to operate.

8 I would like to see an option where we could create
9 a competing services where there is a field office. I think
10 that that is going to give us an opportunity to compare. As
11 Mr. Houseman said, we do need some baseline data. We need to
12 work on that. We need to get it very quickly.

13 Then what the ideal situation would be is to say
14 hey, we've got field office A that is sitting here. It has
15 eight lawyers. It gets half its funding from other sources.
16 Let's create field office B. Let's take two of its lawyers
17 and put them over here, add two more with it, you know. Then,
18 let's compare. Let's find out who is really doing the best
19 job.

20 I think that what we're going to find is that each
21 field office is going to say wait a minute. I need to keep my
22 cost down. I need to respond. I need to make my clients

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1 happy. What can I do to make them happier to be of better
2 service to them, you know? Do I stay open later hours to be
3 of better service, you know? Do I work on weekends? What do
4 I do?

5 I think that each one is going to be competing if
6 they think that at the end of the program they are going to
7 lose some money. They are not going to be able to fund as
8 much. Some of the money is going to go to someone else. I
9 think if we set up our initial program, something like this,
10 balance a method of accountability, try to get some
11 information back, and give some incentives, I think we're all
12 going to do better.

13 I think field office A is going to be a better field
14 office. Field office B is going to be an effective field
15 office. We're going to be able to do as well as -- not as
16 well as private industry probably, but I think we're going to
17 make some improvements. At least we'll be able to see if it
18 works.

19 I don't think that any proposals by Ms. de
20 Bettencourt involve private law firms. I know Mr. Houseman
21 spent a lot of time talking about that. I don't believe
22 that's in one of these; is it, Mr. de Bettencourt?

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1 MS. de BETTENCOURT: We've only specific
2 full-service providers. They can, in any of these, except in
3 the offices where we talked about existing staff programs. In
4 option no. 3, anyone can bid. If the pro bono project wants
5 to bid or if some private attorneys want to start something,
6 under option 3 any model could bid for a grant.

7 MR. KIRK: Yes. But what you're talking about is a
8 bid between themselves, not against an existing program.
9 Would you be bidding against an existing program?

10 MS. de BETTENCOURT: Well, no, they would bid for a
11 grant. The existing program would continue to get its funds.
12 They would bid for a grant out of the million dollars.

13 MR. KIRK: That's all I have.

14 CHAIRMAN WITTGRAF: Thank you, Mr. Kirk. Further
15 discussion? Mr. Dana?

16 MR. DANA: When Bud started his comments, Alan, you
17 seemed to be critical of your approach. The more you talked,
18 the more you sounded the same. I think that those of us who
19 are interested in competition are anxious to test it. I think
20 this Corporation, over its history, has, on several
21 occasions, gone off half-cocked with an idea that has not
22 been well thought out and hasn't been well prescreened and

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1 evaluated.

2 What I heard from you is just a caution not to make
3 that same mistake again. I don't think any of us want to
4 shoot first and ask questions later because we won't have
5 accomplished anything, because if we can't demonstrate to our
6 satisfaction that the results of an experiment are meaningful
7 in one way or another, we'll never be able to persuade anybody
8 else, whether they be in the field or in Congress.

9 The other point that you made, and I thought Kathy
10 made it as well, is the whole question of evaluating what
11 quality legal services is. It like Potter Stewart used a
12 similar analogy when trying to describe pornography. I mean,
13 he knew what it was when he saw it, but he had a very hard
14 time describing it.

15 It does seem to me that we have a little bit of that
16 problem. It is one of the three tests that we are charged as
17 a Board with evaluating. I'm not sure that the Corporation
18 does a very good job of quality monitoring. I heard an
19 acknowledgement from the president and from you that we don't.
20 I think that is something that we could get about. I gather
21 the president and the staff is considering that. I think
22 that we could do that quite quickly.

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1 But I do think we need to know what quality legal
2 services is, how to measure it, how to evaluate it. We need
3 to develop that in a way that everybody is comfortable with
4 that definition. So I hope that we do do something in that
5 area and soon.

6 I too think that the staff memo giving us various
7 options is a constructive step in that direction. I think
8 option 3 is an exciting option. I have some of Kathy's
9 concerns about our ability to do some of the window dressing
10 and some of the prescreening and the experts and the
11 consultants under the existing law.

12 But on balance, I think we have the colonel of
13 something from which we would all learn. I commend the staff
14 and I comment Mr. Houseman for his observations.

15 CHAIRMAN WITTGRAF: Further discussion?

16 MR. KIRK: I have some comments about specific
17 things.

18 CHAIRMAN WITTGRAF: Mr. Kirk?

19 MR. KIRK: Ms. de Bettencourt, my comments are
20 numbers 1 and 2 are not particularly exciting to me. Number 3
21 seems rather wasteful just to the extent that we would be
22 setting up a program side by side and, in fact, duplicating so

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1 many services.

2 The way that I would view that as a possibility for
3 working -- and I don't know all the rules and regulations, but
4 it seems to me that if there is an area that with the 1990
5 Census is entitled to a substantial increase in the funds for
6 that area because of the increased number of poor people--
7 let's say an area has increased a lot, maybe 30 or 40 percent,
8 then maybe take the money and put it there in a competing
9 program.

10 If you selected that one, there really wouldn't be
11 that much of a duplication and an increased funding or
12 funneling of law firms to that particular area. You mentioned
13 declining programs. I think you get great results from that.
14 I think everybody would look good if you compared it to the
15 declining program. Maybe one of those ought to be done.

16 I think just a mediocre, middle-of-the-road program
17 ought to be done, not a great one, but just a regular mediocre
18 program with some baseline comparison on it. The beauty of
19 taking the area that has had a substantial increase in
20 population is that those people really deserve the money.
21 There is extra money, I presume, available as a result of the
22 Census. It could go to be put right there with a competing

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1 program with no real problem. That would do it.

2 Another suggestion I would have would be --

3 CHAIRMAN WITGRAF: Mr. Kirk, let me stop you for
4 just a moment. I'm not sure that it's a valid assumption to
5 be using necessarily, the money automatically available to
6 different areas. That's something the Congress has yet to
7 wrestle with, is what to do about the funding. Automatically,
8 the money isn't necessarily there.

9 It will be Census-driven, but we're not in a
10 position necessarily, unless we would take our more or less
11 million dollars of Board initiative money, to put it into an
12 area where we knew that the population would grow a lot or
13 that the unmet need was particularly high. But I don't think
14 it's a fair assumption -- and Kathy and Alan can comment--
15 that there's automatically additional money available.

16 MS. de BETTENCOURT: That's true. We cannot arrange
17 that with the funding we get from Congress. However, out of
18 this demonstration money, money available for demonstration,
19 we could take preliminary figures from the Census and see
20 where there's been a change in the poverty population and with
21 that money give a one time grant to the area. It wouldn't be
22 a part of their --

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1 MR. KIRK: I understand. Maybe this other point is
2 something we ought to take up with a recommendation to
3 Congress. I know that in my local area they say it sometimes
4 takes 10 years for the fund -- it took until almost like 1990
5 funding in my area to reach the 1980 Census level. I don't
6 see any reason for that. I mean, certainly, if the population
7 changes, somebody ought to go there right away.

8 CHAIRMAN WITTGRAF: That's what happens when you
9 come from the fastest growing area in the country. Not all
10 the rest of the areas have that problem.

11 MR. KIRK: I understand that it would mean that
12 another area would lose money. But it shouldn't take forever
13 to get the money where it's really needed. If somebody loses
14 their job, they lose their job. Could I go ahead and finish
15 up?

16 CHAIRMAN WITTGRAF: Yes, sir. Mr. Kirk?

17 MR. KIRK: Option 4 was not as attractive to me as
18 was option 5 which I think was a suggestion that Mr. Dana had
19 made during our conversation on Friday in Chicago, Mr. Dana;
20 is that right?

21 MR. DANA: It's possible.

22 CHAIRMAN WITTGRAF: Mr. Dana is not sure whether to

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1 associate himself with you at this point or not.

2 MR. KIRK: That's been a very regular situation. I
3 know his feelings. I felt it myself. But I wouldn't look at
4 it except -- I would like for the incentive to be there for
5 the two programs, overlapping areas, to be able to say hey, if
6 I do a good job, you know, maybe we'll end up with that or
7 we'll be able to do more and do it more effectively.

8 MS. de BETTENCOURT: That one does include monetary
9 incentive.

10 MR. KIRK: Well, you said it was a one-time bonus.
11 I thought that, you know --

12 CHAIRMAN WITTGRAF: Ms. de Bettencourt?

13 MS. de BETTENCOURT: We can't increase a program's
14 funding with -- I mean, Congress does that. I mean, we don't
15 have that discretion over the funding, right, under current
16 law unless we take it from someone else.

17 MR. KIRK: If we had a 10 percent limit or something
18 like that that we could deal with on funding --

19 MS. de BETTENCOURT: Okay. I see what you're
20 talking about. If there are two programs and one is going to
21 be rewarded with more money, then up to 10 percent of the
22 other program's grant could be reduced. It's still in

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1 litigation.

2 MR. HOUSEMAN: That's not exactly how the reg reads.

3 MR. KIRK: I really don't want to get involved in
4 that.

5 MS. de BETTENCOURT: This is an option that requires
6 legal opinions by the general counsel's office before it
7 could -- there are some problems with it. The Corporation
8 does not have discretion over funding.

9 MR. KIRK: I understand that.

10 MS. de BETTENCOURT: It's very limited and that's
11 the difficult thing. That's why we're trying to get --

12 MR. KIRK: You know, we may just never be able to do
13 it. But I'd like to either decide we're going to study it to
14 death -- if we're going to do that, forget it. I'd like to
15 see something more than this.

16 I mean, we've worked on this a long time. I'd like
17 to see some real specifics and some outlines and some
18 suggestions of how we would evaluate it. I mean, with all due
19 respect, Mr. Houseman's were frightening to me, you know, in
20 how you'd ever come up with some formula for doing it. I
21 think I'd know it when I see it. Maybe the best is what Mr.
22 Dana said.

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1 But I'm really concerned about having so many
2 different guidelines, so many questions affecting us in
3 leveraging. How do you determine leverage? Well, you know,
4 this guy had a chance -- I think we need to keep it simple and
5 come up with some things at the beginning, and maybe we'll
6 learn as we go along.

7 But just see if by setting certain standards, a few
8 really good standards you can aim for, if they improve on
9 those standards. If they do, then we can refine it and come
10 up with others that give less weight to this one and more
11 weight to this one. But I'd just like to see us give it a
12 shot. Thank you.

13 CHAIRMAN WITTGRAF: Further discussion? Mr. Dana?

14 MR. DANA: Charlie, at the break, you and I talked
15 about your law firm project and the San Antonio project.
16 We've discussed that today in the context of competition. As
17 I expressed to you, I view those as an extension of the
18 delivery system study of the last decade, trying to analyze a
19 different way of providing legal services through sort of
20 repetitive high volume, low cost and the use of private law
21 firm projects.

22 Even though initially those grants were done

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1 competitively, I think you agree with me, do you not, that
2 that really isn't a study of competition as much as it is a
3 particular form of delivery of services?

4 MR. HOUSEMAN: Well, as we discussed at the break,
5 essentially that is a study of a form of delivery. It's a
6 delivery method. It just so happens that the competitively
7 awarded grants and contracts, along with the solicitations and
8 so forth, to an unlimited market began those.

9 MR. DANA: Whenever we do something new at the
10 Corporation, whether it be law school grants, migrant programs
11 like we did this year, or anything, we initially do it
12 competitively. So we've had some experience sort of with
13 initial grants. That's my understanding. Except for your
14 effort to replicate it in Orange County, this was a one-time
15 deal.

16 MR. HOUSEMAN: That's correct. In fact, that's the
17 reason I said at the beginning of my remarks that we need to
18 make sure that people realize that when we talk about
19 competitive bidding, particularly in that project, it's not
20 necessarily synonymous with competition.

21 MR. DANA: But when we talk about competition in the
22 static sense, we're talking about competition that occurs

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1 regularly, every three years or five years or some. People
2 anticipate that after a particular period of time, there will
3 be another competition, unlike the current situation with our
4 grantees where there is presumptive refunding, whatever that
5 means. So that after, unless they are defunded, they are
6 continued to be funded from year to year.

7 MR. HOUSEMAN: That's correct.

8 MR. DANA: Competition in the static sense would
9 indicate that every year or every particular period of time
10 all contracts would be open and people would come in to
11 compete.

12 MR. HOUSEMAN: That is correct.

13 MR. DANA: My only concern is that I think -- one of
14 my concerns with Mr. Cox's analysis, and I just didn't want to
15 repeat it here, was that we ought to distinguish between
16 delivery system studies, which compare and contrast different
17 ways of providing legal services, with "competition" in the
18 sense that Kathy's memo sets it up.

19 MR. HOUSEMAN: In fact, that's one reason why I was
20 very limited in what I said that this committee should
21 consider from that report. We tried to only bring out those
22 points that might have some benefit for competition. There

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1 was a lot of background information that the committee didn't
2 go into.

3 MR. DANA: Thank you.

4 CHAIRMAN WITTGRAF: Further discussion? I think --

5 MR. KIRK: Where do we go from here?

6 CHAIRMAN WITTGRAF: I was going to try to tell you
7 what I think.

8 MS. de BETTENCOURT: Mr. Kirk wants more options.

9 CHAIRMAN WITTGRAF: No. We don't need more options.
10 I think that based both upon the comments that Kathy and Alan
11 have made, the comments made here at the Board table, that
12 there seems to be the greatest interest in blowing up and
13 considering further options 3 and 5, if I'm not mistaken.

14 Option 3, though, is a big deal. It's very
15 expensive, as you indicated. A million dollars doesn't mean
16 very much you look at option 3. There apparently are at least
17 several ways to look at option 3. Now, I was looking at it in
18 my own mind as isolating and putting to the test what I would
19 call the weakest of the legal services basic field grantees
20 and essentially saying, probably over the course of not one
21 year but maybe three, maybe five years that either X, Y, and Z
22 that's been out there for 15 years is going to make it or X,

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1 Y, and Z is going to be supplanted by A, B, and C.

2 That would be the kind of static competition,
3 one-time competition albeit over a few years that Professor
4 Cox has talked about. Mr. Kirk talked about doing it with
5 sort of middling quality projects. I'm not sure what the
6 purpose of that is except to establish a kind of a baseline as
7 to what middling quality is like and to maybe give us some
8 information of how to improve middling projects.

9 You suggested, for purposes of comparison in here,
10 having competition alongside those that were evaluated as best
11 projects. I guess that's to give some comparison with
12 projects that are the weakest projects. I'm not sure I
13 understand what the purpose of competing alongside them would
14 be, except to say to the best this is how you can be, yet
15 better.

16 But if we're dealing with scarce resources, I guess
17 in my mind I'm back at competing alongside the weakest with
18 the thought of either kicking them up or kicking them out.
19 Ms. de Bettencourt?

20 MS. de BETTENCOURT: I don't think I used the word
21 best. I'm really just talking about a decently run program.
22 If you want to see the effects of comparison in one geographic

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1 area between two programs, you need to compare that again to
2 what happens in another area.

3 Is that very specific to that one particular
4 program? You need some baseline, some other geographic sides.
5 So for that one program, it may be do or die in heroic effort.
6 It may not be representative. You would be able to have some
7 notion if competition of head to head with another program
8 affects even a decently run program.

9 CHAIRMAN WITTGRAF: It's a good point. I see that.
10 I'm wondering if another way to approach that, because this
11 kind of competition is so expensive, is by establishing some
12 sort of performance review system, to use Mr. Houseman's
13 words, which I think you've got to do at some point, how is it
14 we pick the weakest?

15 How is it we pick the middling ones? How is it we
16 pick the better or the best before we begin by putting
17 somebody out there with them side by side? I suspect that
18 something, for fear of tainting either of you or Mr. Houseman,
19 you may want to use different terminology. But I do think
20 you've got to get to that point.

21 That then begins to represent a form of baseline, it
22 seems to me too, against which you can then evaluate the

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1 projects before you decide against whom to compete side by
2 side. Mr. Kirk?

3 MR. KIRK: I had a couple of comments. On that
4 one, on the mediocre programs, it was because I think if we
5 take the declining program, it's going to look great and
6 you're going to get copies that will look a whole lot better
7 than it is. I mean, I think we need to really compare and see
8 if on a regular program competition can improve that as well.
9 That's one.

10 Number two, I think that with the mediocre program
11 or the decently run program we'd really do well if the field-
12 - if we could find a field program that was willing to
13 cooperate. If we could find a field program willing to
14 cooperate and say hey, I think this might be worth it, you
15 know, why don't we take 3 of our 12 lawyers and put them over
16 here.

17 We're going to compare them to other three lawyers
18 that are doing the same thing. let us give a little
19 additional funding to each one. Then, at the end of it say
20 what we're going to do is if this one has done better, we're
21 going to take money and give it to that. See if that doesn't
22 improve and give us a better competition. That was the way

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1 that I had talked to Ms. de Bettencourt about doing it
2 earlier.

3 CHAIRMAN WITTGRAF: Do I understand, Ms. de
4 Bettencourt or Mr. Houseman, that to pursue option 3, be it
5 one year, three years, five years, the present law requires
6 the establishment of a private nonprofit corporation with a
7 Board consistent with the so-called McCollum requirements or
8 standards?

9 MS. de BETTENCOURT: Not under a demonstration
10 grant.

11 MR. HOUSEMAN: I don't agree with that. You may
12 have different legal conclusions from your general counsel's
13 office. I don't see anything in the act that differentiates
14 that. I know there is some opinions that have been floating
15 around.

16 May I remind you the writer in particular says any
17 program delivering legal services must have a McCollum Board.

18 MS. de BETTENCOURT: Any grant for the sole purpose
19 of delivering legal assistance. There are other provisions
20 for research grants and also for grants for other purposes in
21 the act, one of which is --

22 MR. HOUSEMAN: It's a question of the interface

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1 between the act and the writer. The writer doesn't say that
2 in my view.

3 CHAIRMAN WITTGRAF: It is problematic. So that's
4 another concern on so-called option 3.

5 MS. de BETTENCOURT: I spoke with you briefly
6 earlier. There is some question with -- it would be easier,
7 perhaps cheaper, to ask for volunteers among staff programs
8 to, amoeba-like, separate and compete for monetary incentives,
9 of course. However, there are certain questions. Do they
10 have to go to the local bar and have a second bar appointed?
11 How would that effect initially their other funding sources?
12 We are looking at how they are leveraging the community's
13 resources.

14 MR. HOUSEMAN: Not to mention the collective
15 bargaining agreements, their staff rights.

16 CHAIRMAN WITTGRAF: Mr. Dana?

17 MS. de BETTENCOURT: That's a little more
18 complicated.

19 MR. DANA: Mr. Chairman, when we were in the
20 reauthorization committee mode, we heard from the famous Mr.
21 Wooten about the rationale for competition way back when. The
22 rationale, as I'd call it, was because it is a general

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1 perception repeated several times in the last 18 months, that
2 it is too difficult to defund a program.

3 So what we need is a way of -- we're basically
4 starting all over again in competing existing programs so
5 that we can "get rid of" our bad programs. I've asked for
6 some evidence of how difficult it is to "get rid of" bad
7 programs.

8 The only evidence that we've been provided is a memo
9 attached to Kathy's memo in which the cost of defunding a
10 national support center and a client's council is provided to
11 us. As I discussed with Emilia, that defunding process is
12 really not comparable to what we're talking about here, which
13 is defunding a bad field program.

14 I understand that there is no extant evidence of the
15 cost of defunding against opposition an existing field
16 program. If that's true, it would seem to me that if in fact
17 of the 286 field programs we all can see that none in these
18 three states here mind you but somewhere else in some other
19 part of the country there is --

20 CHAIRMAN WITTGRAF: Not in Iowa.

21 MR. DANA: Not in Maine, not in anybody else's back
22 yard, but there may, in fact, be a program of the 283 that is

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1 not doing a very good job. In fact we have never tried to
2 defund a bad program. Maybe we ought to take a look at that.
3 In other words, we may have generated this whole subject on a
4 false premise.

5 If, in fact, we could identify some programs that
6 are doing a lousy job, that would be a wonderful opportunity
7 to take Mr. Kirk's suggestion and eliminate the bad program
8 and then divide the resources that was going to the bad
9 program between two new ones and let them compete and see if
10 we could learn something from that process.

11 That wouldn't cost any addition money except the
12 cost of defunding the bad program, examples of which we
13 apparently do not have at the Corporation.

14 CHAIRMAN WITTGRAF: Mr. Kirk?

15 MR. KIRK: I'm sorry to dominate this. It seems
16 like I have such general feelings on it. I really strongly
17 support what Mr. Dana just said. I have one more suggestion
18 I'd like to ask Ms. de Bettencourt with the Board's permission
19 to review.

20 I guess if we all know our own back yard better than
21 anything else. I know that in my home county the local bar
22 has a program that is about the same size as the legal service

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1 program. I think it's one of the most effective locally
2 funded legal service providers in the country.

3 I think at the present time the two of them divide
4 up the cases that are not in really direct competition. I
5 wonder if a funding grant perhaps might encourage them to go
6 into competition and let's see what would happen there. It
7 may not be my county. It may be another county that might
8 have that. But we may have something in place already that we
9 could utilize for this.

10 CHAIRMAN WITTGRAF: Thank you, Mr. Kirk. I think
11 we've got emphasis on options 3 and 5. Three is a very
12 difficult one. I think if you try to blow up 3 and 5, you
13 need would need to make some one and three and five year
14 projections on cost as well as perhaps the legal problems and
15 barriers that exist.

16 Mr. Dana and Mr. Kirk raised another possibility
17 which is, first of all, defunding of an existing organization
18 and perhaps someone would have additional data to bring
19 forward to supplement the data that's in Ms. DiSanto's
20 memorandum.

21 But absent that, as I looked at it, and I think the
22 point Mr. Dana made, those were not defunding of basic field

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1 grant recipients but rather of special grant recipients. I
2 think we're all much more concerned with the basic field
3 projects.

4 If we do that, then we've got several ways with
5 which to substitute the provision of services. It would be a
6 great opportunity if it comes to that. I think perhaps Mr.
7 Kirk's last comment ties into that. He may really have
8 another option.

9 So we've taken three away and we've added a third
10 and maybe we've added a fourth, which is possible monies to
11 stimulate better coordination or even some competition where
12 good projects exist already that happen not to be LSC grantees
13 so we don't run into any legal barriers.

14 I don't know how often such situations exist. As we
15 get west of the Mississippi River at least, we're lucky to
16 have one project of any kind and that is inevitably a Legal
17 Services Corporation funded project providing services. So
18 it's perhaps in the booming and prosperous parts of the
19 country where those situations exist.

20 Pursue that as well, if you will. We should have a
21 better idea when we meet in October as to exactly what monies
22 are available to us so that we can begin to make some more

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1 definite decisions. Hopefully, with the information you've
2 given us and the reaction, that lets you go forward some.

3 I'm concerned, as I said earlier, that you do need
4 some kind of valiative system, as suggested by Mr. Houseman,
5 as we look at the projects and decide where to go. I guess
6 that's all I have. Further discussion?

7 (No response.)

8 CHAIRMAN WITTGRAF: Let me make one comment both to
9 you and Mr. Houseman. I guess I do share Mr. Kirk's concern
10 that we need as soon as possible to begin to try to move in a
11 material way. Perhaps this is a straw. Perhaps competitive
12 bidding is going to be something we're going to try one last
13 time in some form and finally get rid of it.

14 On the other hand, if it's not a straw person,
15 let's learn something so that we can do something with it and
16 get away from kind of the hypothetical discussions down to
17 particulars and see what we've got.

18 If there's no further discussion, we will be in
19 recess until 9:00 a.m. Monday, September 16, 1991, in this
20 room.

21 (Whereupon, at 4:52 p.m., the meeting was
22 adjourned.)

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