

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
OPERATIONS AND REGULATIONS COMMITTEE MEETING

March 8, 1992

4:15 p.m.

The Washington Marriott Hotel
1221 22nd Street, N.W.
The Dupont Room
Washington, D.C. 20037

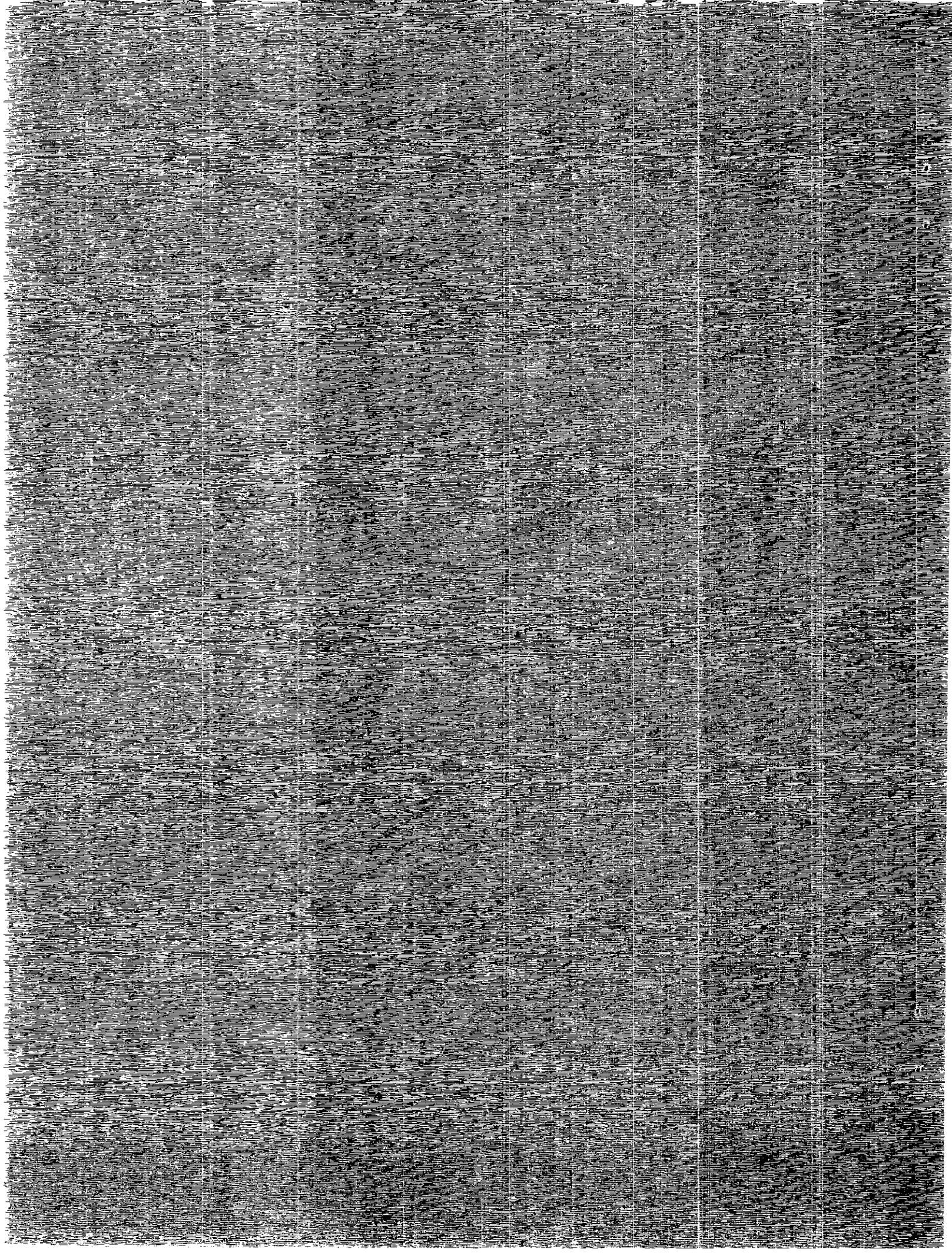
Board Members Present:

Thomas Rath, Chairman
Howard H. Dana
J. Blakeley Hall
Jo Betts Love
George W. Wittgraf
Jeanine E. Wolbeck

Staff Present:

John P. O'Hara, President
Emelia DiSanto, Vice President
Patricia Batie, Secretary
David Richardson, Treasurer and Comptroller
Ellen Smead, Director, Office of Field Services
Charles Moses, Deputy Director, Office of Field Services
Kathleen deBettencourt
Susan Sparks, Acting Director, MAC

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WASHINGTON, D.C. 20006
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P R O C E E D I N G S

1
2 CHAIRMAN RATH: Let's get started here. It being
3 close to the appointed hour, we will begin the meeting of the
4 Operations and Regulations Committee of the Board of
5 Directors of Legal Services. Present from the committee are
6 the Chair, Mr. Rath, Ms. Love, Mr. Dana. We are also joined
7 today by our colleagues from the Board, Ms. Wolbeck, Mr.
8 Hall, Chairman Wittgraf. I believe Mr. Shumway is expected
9 at some point. I'm not sure whether Mr. Kirk is going to be
10 able to make this. He's not going to be able to make it. Of
11 course, the president is here.

12 The Chair will begin the meeting by apologizing for
13 the state of his voice. I will show to you a copy of the
14 Sport's page of the Manchester-New Hampshire Union Leader
15 which says that the Concord High School Crimson Tide hockey
16 team won the New Hampshire state championship yesterday 3 to
17 2 in overtime, the first championship for Concord in 13
18 years. There is a forward on that team by the name of Rath.
19 So we don't have much voice left.

20 APPROVAL OF THE AGENDA

21 CHAIRMAN RATH: The first item on the agenda is the
22 approval of the agenda. It has been pointed out to me by

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1 staff that we probably ought to amend that agenda slightly in
2 that items 3 and 5 probably should be taken up together or in
3 seriatim, and item 4 probably should be dropped.

4 If someone would move approval of the agenda, but
5 move it with swapping items 4 and 5, that would probably be
6 the most straightforward way to do it.

7 M O T I O N

8 MR. DANA: I so move.

9 CHAIRMAN RATH: Mr. Dana moves.

10 MS. LOVE: Second.

11 CHAIRMAN RATH: Ms. Love seconds.

12 Is there any questions or comments?

13 (No response.)

14 CHAIRMAN RATH: Hearing none, all in favor?

15 MR. DANA: Mr. Chairman, I don't take it
16 personally, but that side of the table has five microphones
17 and Blakeley and I have to share one.

18 MR. WITTGRAF: No, Howard, there isn't any
19 microphone by you.

20 CHAIRMAN RATH: So, contrary minded, that was
21 moved.

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1 APPROVAL OF THE FEBRUARY 16-17 MINUTES

2 CHAIRMAN RATH: Next we have approval of the
3 minutes of February 16 and 17, which have been distributed by
4 mail to the members of the Board. Are there corrections to
5 those? Howard?

6 M O T I O N

7 MR. DANA: Mr. Chairman, I would move the minutes,
8 but I would ask the appendix to the second set of minutes is
9 the one page -- should be in my view the one page motion to
10 which the whole meeting related. We don't normally do that,
11 but it does seem to me that --

12 CHAIRMAN RATH: You think that adds to the clarity
13 of the --

14 MR. DANA: Well, frankly, I've lost my one page so
15 I don't know what we did at the meeting.

16 CHAIRMAN RATH: Since I don't have the one page, I
17 can't help you. Does anyone have any problem with us doing
18 that? Ms. deBettencourt is circulating the -- what I believe
19 we are approving is a blue jacketed document entitled "Legal
20 Services Corporation Board of Directors Operations and
21 Regulations Committee Meeting, February 16, 1992, 3:55 p.m.,
22 at the Weston Canal Place Hotel, Terrace Room." Is that what

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1 you thought we were approving?

2 MR. DANA: I thought we were approving the minutes
3 that are attached to the March 8th --

4 CHAIRMAN RATH: I was referring to the transcript,
5 okay. You would like to see with those minutes the addition
6 of the motion?

7 MR. DANA: The proposal that the staff made, the
8 options that the staff made which we then adopted.

9 CHAIRMAN RATH: Ms. Love, do you have any problem
10 with that?

11 MS. LOVE: No.

12 CHAIRMAN RATH: She has none. We'll take that in
13 the form of a motion. We'll approve the minutes with that.
14 All in favor?

15 (No response.)

16 CHAIRMAN RATH: Contrary minded, so moved.

17 We will now proceed to item 3, which is
18 consideration of draft request for proposals for
19 demonstration project funding. When last I left you all, we
20 were proceeding very nicely. Judging by my correspondence
21 and phone calls, I don't want to say we have strayed, but we
22 have developed a more intense interest than I had noted

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1 before.

2 Why don't we start, as is our custom, if it's
3 agreeable to the members of the committee, with a staff
4 report to bring us up to date as to where we are. Would that
5 be acceptable?

6 (No response.)

7 CHAIRMAN RATH: Ms. deBettencourt?

8 CONSIDERATION OF DRAFT REQUEST FOR PROPOSALS FOR
9 DEMONSTRATION OF PROJECT FUNDING

10 - and -

11 CONSIDERATION OF REPORT BY STAFF COMPETITION COMMITTEE

12 MS. deBETTENCOURT: At the last meeting, this
13 committee passed a motion, as has been referred to, which
14 stated or which directed the Staff Competition Committee to
15 study whether competition by another provider in the same
16 service area will tend to improve the performance of each;
17 and b, whether competition for performance bonus will tend to
18 improve the performance of each program competing.

19 Three options were discussed as possibilities and
20 approved. The first, competition in an unserved area between
21 two neighboring programs whom both serve the unserved area;
22 the competition between two programs in an overlapping area;

1 c, competition between two similar programs for a one-time
2 performance bonus.

3 The Board requested that the staff return at this
4 meeting with a draft solicitation for at least two of the
5 three options for discussion. A draft solicitation has been
6 sent to the Board for option 1. The unserved area is
7 Tri-Parish and Louisiana. It's been unserved for some years.
8 Other programs have been providing service in that area. At
9 least two grantees will be chosen to provide service in the
10 area.

11 Ellen, do you want to give more detail?

12 MS. SMEAD: We will select two. We will set up a
13 solicitation once it's finalized. A draft was provided to
14 you earlier this week setting forth -- that solicitation
15 tells people how to apply for the money and what factors will
16 be taken into consideration when we receive the applications.

17 CHAIRMAN RATH: Just so we're all talking from the
18 same sheet, Ellen, this is the document that was provided to
19 the Board through the Office of the President from you, dated
20 March 5, 1992. It came in a clip.

21 MR. MOSES: I just wanted to add to that.

22 CHAIRMAN RATH: Mr. Moses?

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1 MR. MOSES: We have already started discussions
2 with at least two programs in the area that are both
3 interested in this. In fact, in New Orleans they began to
4 discuss it with us and so at least we know that as far as
5 this particular option is concerned, we have people who
6 voluntarily want to participate.

7 MS. deBETTENCOURT: The only question with option
8 1, I believe, is whether at the end of period one or two
9 years, whether the Corporation should choose to give the
10 service area to one of the programs or whether both programs
11 should continue to serve that area, an ongoing double
12 service. That is the only unanswered question there.
13 Otherwise, I think that's a fairly uncontroversial proposal.

14 A draft outline for option 3 has also been prepared
15 for discussion. That, I believe, was also sent to the Board.
16 That option has also been sent to the advisory group for
17 comments. We will take any questions. That's the shorter
18 draft.

19 CHAIRMAN RATH: That's the shorter draft that's in
20 the Board packet entitled "Draft Outline of Solicitation for
21 Option 3 Request for Proposal."

22 MS. deBETTENCOURT: That would be competition

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1 between two similar programs for a one-time performance
2 bonus. There were some questions from this committee that
3 the legal questions on some of the -- particularly in option
4 1 and option 2, I believe. Someone from our general
5 counsel's office is here and can address those questions.

6 I think their opinion is that it's certainly easier
7 to implement a demonstration project and perhaps preferable
8 to implement a demonstration project where there's a
9 performance bonus. Under this demonstration project, the
10 Corporation has no more authority than it currently does
11 under its statute and regs to take service area away and
12 funding a way from any program that -- any choice that the
13 Corporation made would have to be under existing statutory
14 authority.

15 The advisory group has met again in a smaller task
16 force to develop performance criteria. We made a great deal
17 of progress at our next meeting, and we have decided to
18 meet -- we couldn't finish. We had only a day. We're going
19 to meet again on Friday the 13th, which we hope will be an
20 auspicious day. We will complete the work on the performance
21 measures.

22 CHAIRMAN RATH: If I could just step in, I know

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1 that there are some people here from the advisory group who
2 would like to speak to us too. With the committee's
3 indulgence, I want to make sure we have that opportunity to
4 hear them. I know that we're reacting to things quickly
5 because the drafts are coming out of the staff and to the
6 committee and to the Board and to the public and the advisory
7 group quickly.

8 We're trying to do as much as we can timely to
9 these meetings. I don't want to suggest that there is some
10 sort of immutable line in the sand that can't be crossed. At
11 least this Chair, I'm very conscious of continuing the
12 dialogue that's gone on because I think that's helpful.

13 I also understand that's dynamic in terms of trying
14 to make sure that we hit targets so that the Congress, when
15 they take a look at what we think is our budget mark, which
16 we think is helpful to the overall picture, that they don't
17 say where are you on this aspect of it. So we're trying to
18 balance a couple of things here.

19 I'm tempted to say how we do it is as important as
20 what we do, but I don't want to diminish either piece of it.
21 How we do it is very important and what we do is obviously
22 very important. The thing that I am most pleased about is

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1 that since -- if the train didn't quite go off the rails in
2 New Orleans since then, we've kind of got it realigned a
3 little bit. I'm very grateful to everybody who has been part
4 of that. I know this is a difficult process that we're going
5 through.

6 I don't quite know what the pleasure of the
7 committee is as to the most effective way to proceed. We've
8 got everybody in the room here, so I don't think we have to
9 stand on ceremony. I would kind of like to -- I know there's
10 another group that wants to talk, and then we'll get back and
11 forth and have some input.

12 Does the committee want to do something with staff
13 right now? Howard?

14 MR. DANA: I just have a few questions, and I'll
15 try to keep them brief.

16 CHAIRMAN RATH: Fine.

17 MR. DANA: I have a number of concerns with this
18 first draft of the solicitation for proposals for the first
19 competitive demonstration project. First of all, it looks to
20 me as though there is a total of approximately \$130,000 that
21 we should be spending on the people in the tri-county area.

22 MS. deBETTENCOURT: That's correct.

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1 MR. DANA: It is contemplated to divide that money
2 in half and award it to two programs.

3 CHAIRMAN RATH: Mr. Moses is shaking his head
4 negatively, which, in my part of the country, means no.

5 MR. MOSES: Actually, that's not correct. When you
6 look at that figure that is divided in half, a large part of
7 that is because it would be a six-month grant for this year
8 that started -- it's presumed it would start in July. So for
9 this year, each of those individual grantees, if two got the
10 award, would get \$60-some thousand. On an annualized basis,
11 that would be about \$130,000 per the service area.

12 CHAIRMAN RATH: Walk me though that again.

13 MR. MOSES: All right. Because of the starting
14 time --

15 CHAIRMAN RATH: Are they calendar year?

16 MR. MOSES: It's calendar year, \$130,000 for a
17 calendar year.

18 CHAIRMAN RATH: For each program?

19 MR. MOSES: For each program. This particular
20 grant would start in July. So, therefore, for the first
21 year, i.e., 1992, each grantee would receive \$60-some
22 thousand.

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1 CHAIRMAN RATH: Whatever the period from July 1
2 through the end of the year represents of the \$130,000?

3 MR. MOSES: Exactly.

4 CHAIRMAN RATH: And then for the second year, they
5 would get the full \$130,000?

6 MR. MOSES: That's what was contemplated, yes.

7 MR. DANA: And the last year they'd get \$66,000
8 again?

9 MR. MOSES: That would be correct.

10 CHAIRMAN RATH: Well, they actually would get the
11 amount, whatever prorata, from January 1 through June 30; is
12 that right?

13 MR. MOSES: That's correct.

14 MR. DANA: That was not at all clear to me. I
15 would revisit your grant proposal with that in mind.

16 MR. WITTGRAF: In effect, Mr. Chairman, what we're
17 doing is taking the money that's been the Tri-Parish area
18 now, doubling it, and making it available to each of two
19 providers. So it's really double the amount for a 12-month
20 period of time.

21 CHAIRMAN RATH: That's right. As I understand it,
22 we're doing it to provide coverage to an area which has not

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1 been within the -- I use the loose term -- the catchman area
2 of either of the service providers to date; is that correct?

3 MS. SMEAD: That's correct.

4 MR. DANA: I don't see anywhere in this document
5 the competition. I see the presence of two legal services
6 providers providing legal services in the same area for a
7 two-year period. Then I'm left hanging as to why we're doing
8 this. If, in fact, the intention is to make a judgment as to
9 who gets funded thereafter, I think we ought to say that.

10 Maybe by not saying it, we make this consistent
11 with our regulations. But then I don't really see what we're
12 doing this for.

13 CHAIRMAN RATH: Can I follow up? If I understand
14 what Mr. Dana is asking, it is are we, in effect, in option
15 1, as is currently drafted, offering dollars to serve a
16 territory which has not been served, as opposed to saying
17 here's an area which has not been served. Each of you serve
18 it and then we will fund the one prospectively that does the
19 best by our measurement standards. It's lacking that second
20 part that you see in the RFP.

21 I guess my question to you guys is: should that be
22 in the RFP or should the RFP simply say if you do these

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1 things, you'll get this money? I want to make sure I
2 understand what you thought you were designing.

3 MR. DANA: Since you're following up on my
4 question, let me make sure that I -- I understand that both
5 applicants are going to get the money.

6 CHAIRMAN RATH: That's correct. We agree on that.

7 MR. DANA: The issue is what happens at the end of
8 the program.

9 MS. SMEAD: The simple answer is we don't know
10 what's going to happen at the end of the program because in
11 discussing it amongst ourselves, the committee, staff
12 committee, we thought it could be a win-or-take-all
13 situation. It could be that the two programs that are doing
14 it could continue to provide service overlapping. Or three,
15 they could divide up the three counties amongst themselves.

16 Like, one would take one county and another one
17 would take two counties. So, in other words, we did not know
18 how it would end up. This would depend in part on the data
19 and how that would be evaluated or what the result of the
20 evaluation of the data would be.

21 In terms of doing the staff evaluation, the data
22 evaluation, we've been preliminarily talking about doing an

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1 evaluation at the six-month mark, after each of the grantees
2 is made to operate in the service area for six months, and
3 use that as a baseline. We'd be using the criteria that the
4 task force has been working on.

5 Then at maybe a year-and-a-half or a
6 year-and-three-quarters, we'd do another evaluation so that
7 we could see the change over the period. At that point, try
8 and make a decision on who should get what portion of the
9 money, either all of it, none of it, or a portion of it.

10 MR. WITTGRAF: Isn't it possible, Mr. Chairman,
11 even for those three conclusory alternatives to be spelled
12 out in the scope and intent?

13 MS. SMEAD: Yes. We could spell those out.

14 CHAIRMAN RATH: Let me just say, you guys are
15 working very hard and I don't want to get in your way here,
16 but my sense is we're doing this for a purpose. We ought to
17 at least give a clue as to where we're going. I will
18 stipulate to the hypothesis that if we provide money for a
19 provider to go into an area, the provider may well choose to
20 go in the area.

21 Where I think we're trying to go with this option
22 is if we provide a discreet pool of money, funding, for

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1 various providers to go in that area, the provider that
2 "measures up the best or does the best" in the study is the
3 one who is going to succeed on a going-forward basis when the
4 demonstration project is over.

5 If I sense what the other committee member and
6 Chairman Wittgraf are saying, that is what we think ought to
7 be there in the statement so there's no question when we come
8 out. I think even more important for the overall purposes of
9 the Board which is, after all, designed to carry forward the
10 case in the budget mark, is to demonstrate to people who are
11 watching what this Board is doing, that there is a link
12 between this option and a desire from other people to see if
13 we're testing this hypothesis, that we can distinguish
14 between who is doing a good job and who is not or who is
15 doing the best job.

16 Is that the sense of the committee?

17 MR. WITTGRAF: So our intent is for there to be a
18 winner which then takes all responsibility for the service of
19 that --

20 CHAIRMAN RATH: Well, see, I don't know. I think
21 there's going to be clearly in my mind -- and I like the idea
22 of winner take all for the next few weeks. The more we're

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1 saying winner take all, the better I like it.

2 MR. WITTGRAF: It helps address other facts of
3 recent weeks, but go ahead. We've all had to go through
4 repression and unpleasant political events over the years.

5 CHAIRMAN RATH: When I got more than the other guy,
6 I always thought we won. But I'm not sure that's the answer.
7 What I'm trying to say is I think that there's got to be a
8 message to the would-be grantees that it's not just a grant
9 of dollars, that there is going to be --

10 I mean, I think they are aware of this anyway, but
11 I think the document ought to make it explicit that there is
12 going to be a measurement function applied to their
13 performance by staff, by this committee, by the advisory
14 group. In the end, on a going-forward basis, their ability
15 to continue funding in these geographic areas are going to be
16 determined on some measurement basis.

17 I thought that was the sense of where we wanted
18 this project to go; is that correct? Mr. Dana, do you agree
19 with that?

20 MR. DANA: Well, yes.

21 CHAIRMAN RATH: I like that answer. Ms. Love, is
22 that sort of your sense that ultimately we're going to

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1 measure how these two teams do and see which one we keep
2 funding on a going-forward basis?

3 MS. LOVE: Yes.

4 CHAIRMAN RATH: Thank you. Can you accommodate a
5 draft that does those things?

6 MR. MOSES: Yes, we can. I would add to that that
7 part of the reason why that specifically is not totally
8 included in this draft is because we're going to make sure
9 that we use the measures that the advisory committee is
10 coming up with.

11 CHAIRMAN RATH: I understand that.

12 MR. MOSES: To the extent that the advisory
13 committee still has not quite completed its work, we did not
14 want to put something in that would --

15 CHAIRMAN RATH: I even think if you simply note
16 that this is going to be sort of a son of option one or
17 something or option one sequel, that would be helpful in
18 accomplishing what I think Mr. Dana's concern was.

19 MR. DANA: I also was troubled by the total
20 absence, as near as I could tell, of any of the input of the
21 advisory committee in this proposal.

22 MS. SMEAD: The proposal was sent to the advisory

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1 committee yesterday. We would expect to convene a meeting of
2 the advisory committee to get some input into it.

3 MR. DANA: But in your draft outline of option 3
4 you at least make reference to the five standards that the
5 committee had generated. There's not even hint that an
6 advisory committee has been involved or that the evaluation
7 is going to be done in a way that is consistent with the
8 congressional authorizing requiring I think some committee
9 supervision of the assessment.

10 I was just wondering if the reason for the absence
11 of any reference to any of the effort of your committee was
12 because if you put that in there, we're going to run afoul of
13 an objection from the general counsel's office. What we are
14 doing is making a permanent grant in accordance with a
15 procedure that is different than is set forth in our
16 regulation.

17 MR. MOSES: If I may respond to that, your second
18 question first, no, that's not the reason. As I stated
19 earlier, what we are trying to wait for, as the advisory
20 committee finishes its work, it's going to come up with
21 various specific data collection methods that would be used.

22 Generally speaking, that data collection method is

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1 the type of thing that would be included so that any
2 responding individual would know exactly the type of
3 information that they would be responsible for collecting.
4 So, it's always been the intent of our committee to put in
5 almost a module explaining all of the data collection
6 information and all the performance criteria as established
7 by the committee.

8 MR. DANA: Another area of concern is that in order
9 to get people to do this, you're going to have to give some
10 kind of a life boat to the losing outfit. They are
11 presumably going to hire staff, although I'm not clear how
12 much. One staff is going to have a job at the end of two
13 years, and one staff isn't.

14 They can arrange their rent, utilities and
15 everything else to zero out at the end of the day, but I
16 would give some thought to structuring some kind of a --

17 MR. WITTGRAF: Termination transitional funds.

18 MR. DANA: Yes, so that somebody says all right,
19 I'll compete for this full-time job. But if I don't get the
20 job, I'll at least get four months severance pay and then go
21 off and do something else.

22 CHAIRMAN RATH: Well, it occurs to me that one

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1 thing we can do, and I hesitate to micromanage. Do what
2 you're supposed to do.

3 MR. WITTGRAF: We were talking about office
4 furniture earlier. Don't hesitate to get specific.

5 CHAIRMAN RATH: See, I have solved that in my firm.
6 I don't engage in any discussions. I have people in my firm
7 who like to talk about those things.

8 MR. WITTGRAF: That's why the Board has an Audit
9 and Appropriations Committee.

10 CHAIRMAN RATH: God bless them. It may be that
11 what we want to do is work on timing in the document, and
12 just say that an evaluation or determination will be made on
13 a certain date so that we build in that kind of decision.
14 There may be some ways we can find -- number one, I think
15 you've got a good start.

16 You hear what we want in terms of a preface or some
17 kind of an introductory statement that this is part of a
18 bigger picture. I think you've identified an area that
19 everyone seems to -- I don't hear anything on the specifics
20 of the area that you've identified, that it's inappropriate
21 or people from the region are screaming don't bring it here.
22 So I think all those things are pluses.

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1 It's a document which only existed the word
2 processor Thursday, so let's be gentle with it. Anytime you
3 have lawyers reviewing other people's documents, it's a
4 terrible, terrible thing. But I also want to get a sense of
5 the fact that an ongoing concern I have is how it would be
6 received by the people on the advisory group because I think
7 that input is extremely important.

8 I know you're working hard to accommodate that and
9 they've obviously only had it for a day. I'm not expecting
10 any kind of full-blow reaction from them. But before this
11 thing bursts under the world full grown, I want to make sure
12 that they've had some opportunity to interact with you.

13 I don't know what we want to do as a committee.
14 I'm conscious that two members of the committee who have
15 strong opinions are not here today. I don't know how final
16 we can be on this. To the extent we have one of these
17 options that there is some degree of closure on, and I will
18 take heart Ms. deBettencourt's characterization is not
19 controversial, I would like to move forward on that basis.

20 So I guess I would continue to -- I don't quite
21 know what this committee needs to do other than to say we've
22 reviewed it. You've heard our comments on it. Would this be

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1 an appropriate time to see what other people are thinking
2 about this particular item? I'm looking out to the audience
3 to Mr. Miller and Mr. Houseman. Do you want to comment on
4 this at all? This is a very open meeting. I don't even have
5 a tie on.

6 MR. WITTGRAF: Mr. Chairman?

7 CHAIRMAN RATH: Yes, sir.

8 MR. WITTGRAF: May I inquire briefly of the staff
9 members?

10 CHAIRMAN RATH: Briefly.

11 MR. WITTGRAF: I do have some of the concern Mr.
12 Dana mentioned regarding looking to the wording of the
13 appropriation and the conference committee report and trying
14 to tie the notice for the RFP together with that so that it
15 appears that what we're doing is consistent with what the
16 Congress says we should be doing.

17 It may be helpful as well to go to the next step.
18 This isn't spelled out so much in that authorization, but if
19 you get some agreement in the next week or two or three,
20 whatever it is, on the specifics of the five performance
21 criteria, to include that in the RFP as well, if I'm
22 understanding this process, it may be that some agreement

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1 about those criteria and the measurement of those criteria
2 really means more in the long term than this particular form
3 of competitive demonstration.

4 Again, I think it's suggested by Mr. Dana, if we
5 are able to hold that out at the beginning, I think it may be
6 better. Maybe that will be a thread of continuity or five
7 threads of continuity through all of the RFPs that we develop
8 for two or three or more different options.

9 Those two comments, which are somewhat reiterative
10 of what Mr. Dana said, lead me to my question. That is do
11 you think that we can learn anything, besides testing these
12 performance criteria, that we can learn anything from this
13 type of competition that will be applicable in other parts of
14 the country, or do you think that this is largely unique for
15 the Tri-Parish area for the great State of Louisiana?

16 MS. SMEAD: This is a very limited and a very small
17 area. In many ways, Louisiana is not representative of any
18 state in the union. These aren't even counties; they are
19 parishes. There are differences.

20 MR. WITTGRAF: Is Mr. Uddo still on the phone or
21 not? I think what you say makes sense.

22 MS. SMEAD: However, given that we will learn

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1 nothing definitive from a one or two year competition in a
2 small area such as this -- I mean, for \$200,000 we're going
3 to serve the area for two years, roughly. But the more areas
4 that we can use and the more places we can test our
5 performance criteria, the more we'll learn.

6 The one reason for using this area at all is that
7 it gives us another side to test, and it gives is another
8 side to test cheaply because we already have the grant there
9 to us.

10 MR. WITTGRAF: I think it makes a lot of sense.
11 I'm just trying to determine whether it's a unique situation
12 or whether it has some broader applicability. I think Mr.
13 Houseman and Mr. Miller have suggested in some of their
14 correspondence that it may be a unique situation.

15 On the other hand, as I look at the lists that Ms.
16 Smead, through the president, provides us each month of the
17 people who continue to be on month-to-month funding, for
18 example, I wonder whether either implicitly or explicitly
19 there aren't other areas of the country that could become the
20 subject of this kind of approach as well.

21 MS. SMEAD: They could, but there would be a
22 defunding proceeding before we ever consider that. Nothing

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1 that the committee is doing relates anything at all to the
2 month-to-month funding. We are not contemplating anything
3 beyond the Tri-Parish area.

4 MR. WITTGRAF: Tri-Parish, as I understand it, is
5 actually a voluntary defunding as opposed to an adversarial
6 or contested defunding.

7 MS. SMEAD: Correct.

8 MR. WITTGRAF: At this point, we're not aware of
9 any other part of the country where a voluntary defunding is
10 about to occur?

11 MS. SMEAD: Not voluntary defundings, but we are
12 aware of voluntary consolidations.

13 MR. WITTGRAF: Thank you, Mr. Chairman.

14 CHAIRMAN RATH: We could probably make a bigger
15 table. Mr. Houseman and Mr. Miller have just come to the
16 table. For the moment, let's keep our comments to option 1
17 and what we've just discussed. I know there's going to be
18 some overlap, necessarily, but I wanted to see whether we've
19 got closure.

20 Mr. Dana?

21 MR. DANA: I don't think they have much to say on
22 it.

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1 CHAIRMAN RATH: Well, I want to find that out. If
2 we, we'll go to the next one.

3 MR. HOUSEMAN: Just for the record, let me just be
4 clear on who I am and who Dee is, just to start this both for
5 her and for others. I'm Alan Houseman for the Center for Law
6 and Social Policy. I'm on the advisory board. As you know,
7 I represent the National Legal Aid and Defender Association
8 and the Project Advisory Group.

9 In this capacity, I'm speaking as a member of the
10 advisory board most of the time, possibly reflecting some
11 views of PAG and NLADA, on occasion. That's who I am, just
12 so the record is clear on this.

13 MR. DANA: I don't claim any mantle other than
14 speaking for myself. As a member of the Advisory Committee,
15 the one thing just on option 1 that I would observe, the
16 comments in the second memo that we sent, in the footnote in
17 particular, about option 1 were not meant to suggest that it
18 was severable because of the uniqueness of the
19 characteristics of Louisiana, geographical or otherwise, but
20 rather that it was made unique by the fact that it was two
21 competitors or competing providers coming into an existing
22 unserved area.

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1 So a variety of almost the whole range of
2 complexities that are introduced by head-to-head competition
3 where you've already got an existing provider in an area are
4 not present here. For that reason, in terms of the question
5 that Mr. Wittgraf asked a few moments ago, we may learn
6 something; we may not.

7 But my hunch is that much of what we learn won't be
8 terribly useful to a situation where you introduce a second
9 provider in a head-to-head competition because that raises a
10 whole set of other issues. But I wouldn't foreclose it.

11 The other comment I would make on your prior
12 discussion is I would think you would be well advised to talk
13 in your RFP and in your dealings with the providers and
14 everywhere else in predictive but not dispositive terms.
15 That is, it may well be that it results -- you decide or
16 whomever is here two years from now decides that it's win or
17 take all and there's a single provider that makes the most
18 sense.

19 But it also may be that two providers are
20 relatively close enough in performance. We don't have
21 experience with these performance measures yet, so we don't
22 even know how well they'll work. But they are relatively

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1 close enough that you don't feel that confident pushing one
2 off and that you see other benefits in shared provision of
3 services.

4 I mean, there's just too much that you as the
5 Corporation, not just the Board, have to learn in this area
6 so that it's fine to be predictive or it's fine to say it's
7 possible that or it's contemplated that there's a possibility
8 that one provider will emerge, but you want to leave enough
9 escape room and flexibility so that you can go as the
10 evidence and as the findings really tell you to do.

11 CHAIRMAN RATH: Let me just do one thing to
12 clarify. The two memos that you're describing for the
13 record, I think the first one is the letter of February 27,
14 1992, on the letterhead of the Center for Law and Social
15 Policy, directed to the Chairman, Mr. Wittgraf, the
16 president, Mr. O'Hara, and members of the Board and signed by
17 Messrs. Houseman and Miller. That was circulated to the
18 Board and to the advisory group, I believe. That's memo 1.

19 Memo 2 is a memorandum from Messrs. Miller and
20 Houseman to Mr. Rath, members of the Operations and
21 Regulations Committee, and members of the Board under Dave,
22 March 7, which was distributed to us, those around the table,

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1 at the beginning of this meeting.

2 So, for the record, one is the letterhead and two
3 is the March 7 one. So those are before us, and we'll make
4 them part of the record. I understand what you're saying.
5 Mr. Houseman, I cut you off and didn't mean to.

6 MR. HOUSEMAN: There is a lot of little key points.
7 I don't think it's worth our time here today to do those.
8 We've been given March-something-or-other to comment. We
9 will comment. The only substantive point that rises to
10 something that's worth saying at least is that I think
11 there's some difficulty --

12 If you're going to use this to refine, to improve,
13 to learn about performance measures, that you have in place
14 the criteria the programs are going to be judged by by the
15 time they are competing as opposed to six months down the
16 road or some other time.

17 So, to the degree that the performance measures
18 developed, I think it's very important to include them up
19 front and not later on as we go. That may delay the RP
20 process for a week or two, but I think it's not going to
21 delay it substantially. We're able to get out the money
22 pretty much along the lines that the staff suggested here.

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1 But that I think is very important to do.
2 Regardless of what the programs say now, I think it's
3 critical that they know the rules of the game that they're
4 going to be playing under and not worry about it six months
5 later.

6 CHAIRMAN RATH: I think that's a good comment,
7 whether we can have complete closure. But the idea that
8 they're going to be measured I think is appropriate.

9 I don't want to cut this off, but we spent a half
10 an hour on the noncontroversial one. I think both the staff
11 and the working group have --

12 MR. HOUSEMAN: Why don't we spread out?

13 CHAIRMAN RATH: Yes. I'd like everybody to come to
14 the table. I think we have a sense that option 1 is going to
15 be refined further to reflect the discussion of the
16 committee. We'll look forward to seeing it back in a timely
17 fashion. We commend you all for your willingness to respond
18 to our timing concerns in moving it along and appreciate it.

19 Now, the other draft that is in front of us today
20 is option 3, which is the shorter of the two. We'll leave
21 option 2 for the moment and we'll go to option 3. This is
22 the sketch here. This is the incentive bonus one, for want

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1 of a better term.

2 Kathy, do you want to speak to this? No, she
3 doesn't. The record will reflect that Ms. deBettencourt
4 winced when the Chair asked that question, but she will rise
5 to the occasion.

6 MS. deBETTENCOURT: Well, this one does at least
7 make passing of the mention of performance and criteria.
8 This is option 3 in which two pairs of legal services
9 programs which are similarly situated both in size of budget
10 and the demographic characteristics of the areas they've
11 served. So their performance can be compared on as many
12 equal grounds as possible.

13 The two pairs of programs would be selected. For
14 the promise of a performance bonus ranging up to \$150,000 to
15 the winner, the two would agree to be compared for at least a
16 year on the performance criteria that are developed by the
17 staff and the advisory group.

18 At least the staff committee agreed that the
19 programs who apply should be -- if they need any up-front
20 money for any expenses to be covered, for example, for
21 computers or whatever, to assist them in data collection
22 connected with this project, that the Corporation would

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1 consider proposals for small one-time grants for that.

2 At the end of that period, the programs would be
3 assessed according to the criteria that have been developed.
4 It would require on-site visits, probably by both a peer
5 review panel of attorneys which we are still in the process
6 of defining, but also on site by staff committee and
7 consultants.

8 At that time, the winner would be judged. It would
9 have to be, in this case, a winner take all since it is for a
10 performance bonus. There had been some discussion like --

11 CHAIRMAN RATH: Do we have a rollover like in a
12 lottery if we --

13 MS. deBETTENCOURT: If no one wins, I guess we
14 could throw it into the pool. I think there's still some
15 unanswered questions that we hope to work out with the
16 advisory group.

17 CHAIRMAN RATH: Let me ask you just where 3 sits at
18 the moment.

19 MS. deBETTENCOURT: In your hand.

20 CHAIRMAN RATH: I understand. What you really want
21 us to do is give you general reaction to this. We're not
22 voting to adopt it or move forward?

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1 MS. deBETTENCOURT: No, and it was sent to you the
2 same day that it was sent to the advisory group. So there is
3 some more discussion. It has not been commented on.

4 CHAIRMAN RATH: Fine. So I guess what you would
5 want from us and before I go to the advisory group -- well,
6 it doesn't really matter. What we want is reaction to it.

7 Mr. Dana, do you want to give something? This is
8 your baby; isn't it?

9 MR. DANA: This is my baby. If I read your
10 proposal, your approach correctly, you would pick two
11 similarly situated program, or what you believe respectfully,
12 looking from the outside, are similar. You would spend this
13 money or you would actually get them launched. Then, at the
14 end of the program, you would measure and conclude that one
15 was better than the other.

16 I proposed this idea not as an idea to -- it seems
17 to me that what you have proposed is guaranteed not to tell
18 us anything. Won't anybody say if one program comes in at 65
19 and the other comes in at 64, well, one was better to start
20 with? The competition didn't change the rankings.

21 There's no way of measuring the impact of the gain,
22 if you will. So you guarantee this sort of a no help

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1 to -- you learn nothing by the proposal that you have made.
2 As near as I can tell, without a pretest, you don't know
3 where they are going. It's pretty clear, at least from this
4 report, that there was --

5 CHAIRMAN RATH: Well, you want a baseline, Howard?
6 Is that what you're talking about?

7 MS. deBETTENCOURT: You're right. The Staff
8 Competition Committee has agreed that we have to do a
9 baseline measurement; otherwise, you can't tell whether there
10 was any improvement that was not spelled out here, basically
11 because we were still working on how to do that. Does it
12 have to include a full measurement along all the criteria?

13 We imagine that we would at least need an initial
14 peer review process. How much data are we going to need to
15 collect up front? Yes, those are unanswered questions, but
16 there will have to be a baseline.

17 Too, if I may just address, what it will tell us,
18 we'll be able to see if there was any improvement.

19 MR. DANA: I have no problem with the concept. It
20 has a familiar ring to it. But without the baseline --

21 CHAIRMAN RATH: You're right. Any other committee
22 members or Board members? It's sort of an open forum that

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1 we're conducting here this afternoon for the staff. If not,
2 we'll talk to Mr. Miller and Mr. Houseman.

3 MR. MILLER: Turn it over to the lunatic fringe
4 here. I would suggest that you see the draft outline of
5 option 3 and our comments as really the beginning of -- even
6 though they are written independently as reactions on the
7 question of option 3 and really the start of the dialogue,
8 most general comment I would make about option 3 and also
9 about option 2 is it's critical.

10 If this really is going to tell the Corporation
11 anything over time, that the hypotheses, the things you want
12 to test for and find out, drive the models and not the other
13 way around. It's critical that we get clear what it is we
14 want to learn. I would submit to you that what we want to
15 learn or can be learned is a good bit more than what was
16 developed in New Orleans.

17 We tried to, in the second memorandum, the March 7
18 memorandum that we submitted today, to outline some of the
19 questions on page 2 of that memorandum that we would like to
20 see addressed. I don't think, in fairness, it might be a
21 trifle utopian, we expect to address everyone of them.

22 But I think it would be important for the advisory

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1 committee, the staff, and then ultimately the committee and
2 the Board to wrestle a bit with what's reasonably attainable
3 for this effort in terms of these kinds of questions. I
4 think most of them can -- with an experiment on the order of
5 magnitude of dollars that you have to proceed with, and its
6 reasonable extension in the ensuing fiscal year if that
7 occurs, I think it's reasonable to get and grapple with most
8 of these questions.

9 We tried to suggest on page 3 -- I'd be happy to go
10 through them.

11 CHAIRMAN RATH: I hear what you're saying, Dee.
12 I'd almost like to keep it more generic at this moment. I
13 haven't read it and I'm not going to read it. What I really
14 am most interested in as one member and the Chair of this
15 committee is the process that's happening here.

16 It's much better to see you people than to read the
17 correspondence because I'm encouraged by that. That's what I
18 most want to see. I have some ultimate questions, as
19 everyone knows, about how you answer the ultimate questions.
20 But what I want to see is whether a group of intelligent
21 people acting together in some degree of good faith and
22 openness can devise a mechanism to test these hypotheses.

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1 When I see the beginning of a proposal and reaction
2 to it, I think there is a process engaged which gives me some
3 hope that we may achieve that. I guess that's where I want
4 to come. I cannot react obviously to anything that you just
5 gave me, and you wouldn't expect me to. I wouldn't expect
6 you to do it. But the fact that you're talking to each other
7 and that we're beginning to get some exchange I think is
8 helpful.

9 I'll leave it at that. I don't want to cut you
10 off, but I --

11 MR. MILLER: I'm pleased because I didn't
12 particularly want to go through each seriatim of the six
13 questions. The one thing I would observe is as you read or
14 reread the draft outline as submitted by staff and our
15 comments, at this point, start with the assumption that there
16 are no particular assumptions about the model that need be
17 made. There need not be a pair.

18 It may well be that you're better off with a
19 multiplicity of providers. It need not be -- we submit this
20 really hasn't been aired with the advisory committee yet.
21 But at least we submit that it need not be from comparable
22 areas, that as long as you have a fair before measure and a

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1 corresponding after measure, you may actually be better off
2 trying to not hold constant for two of 36 possible variables
3 about things that make program performance difference.

4 We can generate lists of variables that go up to 80
5 or 100 if we were so challenged.

6 CHAIRMAN RATH: Well, it occurs to me, and this is
7 probably -- it doesn't work in the demonstration model, but
8 down the road, if we could ever get to the point where there
9 was acceptance of measurement standards, that it might not
10 even be competition in the sense of I'm competing.

11 A competes against B. But A competes against A
12 through Z. All around the country, someone who said we are
13 going to achieve a certain measure of improvement in the
14 standards over the course of the year, even though they are
15 not competing, everyone is looking at a pot of money and
16 trying to demonstrate why they ought to get more of it the
17 next time through.

18 If you could reach into that with some program that
19 has said we're going to concentrate in a certain area this
20 year, we're going to move our standard up, our measurement
21 up, that area may well get some kind of pot of money. I
22 don't know -- that's even more ephemeral than what you're

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1 talking about, but I don't know that that's not a bad idea
2 down the road.

3 So I don't know that it always has to stay head to
4 head. I guess I agree with that. Again, that's just me.

5 Other comments?

6 MR. HOUSEMAN: The other thing I want to
7 underscore, and I think we're clear on this. It's probably
8 beating a dead horse. There are other hypotheses. The
9 hypotheses need to be refined. This is a start at a quick
10 reaction. But hopefully we're not locked into these
11 hypothesis from what happened last time and at the last
12 committee meeting.

13 We can refine these hypotheses. After doing so,
14 that will tell us about the kind of things that we need to
15 test.

16 CHAIRMAN RATH: Not having been at the last
17 meeting, and I will stipulate that.

18 MR. HOUSEMAN: No, I understand. Neither were we.

19 CHAIRMAN RATH: My sense is that the balance you
20 must strike, which is a balance that all of us in this
21 business of public policy or law have to strike occasionally,
22 is the balance between thoughtful reflection and movement.

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1 Neither one should get in the way of the other.

2 I would like to see the process continue, but I
3 would also like to see movement. I think that's the
4 direction that this committee has from the Board. It's
5 clearly what the Board has given to staff and what we would
6 like to see. We really want to see this process engaged.

7 I know that everybody is busy and it's tough to
8 make meetings. But it's clear that the people around the
9 table now are all taking their mission on this very
10 seriously, and I applaud that. I just want to see it keep
11 going. I think that that's what the committee feels.

12 Anything else on this draft which we realize is
13 going to be reviewed and discussed further?

14 MR. WITTGRAF: Let me follow Mr. Houseman's
15 comment, if I might, Mr. Chairman. In addition to the three
16 options or approaches, hypotheses if you want to call them
17 that, that came out of our Board meeting last month, do you
18 and Mr. Miller or does anyone else want to put some other
19 hypotheses or models or approaches on the table?

20 MR. MILLER: I think if you look at the memo, the
21 second memo, some of it is probably inferable from the
22 letter, but the second memo is an attempt to begin to do

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1 that.

2 MR. WITTGRAF: I only got to the second page.

3 MR. MILLER: Right.

4 MR. HOUSEMAN: That's the hypotheses page.

5 MR. MILLER: It's probably because of the density
6 of the pros, I'm sure. It's an attempt to do that, summarize
7 how that -- I mean, you can characterize what we're proposing
8 as a new model or really just an adjustment of option 3. I
9 see it as an adjustment of option 3. But what we -- and I
10 hasten to add one last thought.

11 We speak for ourselves on this. We haven't had the
12 opportunity time-wise to check with other members of the
13 advisory committee, unlike the first letter that we sent.
14 Really, the process that the chairman talked about, a
15 dialogue, engagement around this issue is really what needs
16 to take place.

17 But we submit that frankly if the Corporation could
18 go down a revised option 3 road, substantially revised but
19 still option 3, and, frankly, discard from the current
20 appropriation option 2, that to us as individuals would make
21 a lot of sense because you could do option 3 well and learn,
22 I think, a good deal and have time to regroup.

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1 Option 2 is just worlds more complex because of the
2 fact that a provider already being in an area. It's complex
3 enough at a whole lot more levels. It's about page 3 where
4 we get into that, I think.

5 MR. WITTGRAF: Mr. Chairman, would the staff like
6 to talk about what, if any, thought they've given to
7 development of either a draft proposal or a draft outline of
8 solicitation for so-called option 2? I'm wondering if
9 they're sharing the conclusion --

10 CHAIRMAN RATH: If I might retain control of the
11 agenda for just a moment, I was trying to get through these
12 two where we actually had documents in front of us. My
13 understanding was we were not yet ready to discuss in detail
14 option 2. Maybe we're overlapping agenda items here a little
15 bit.

16 I guess where I'd like to get is the continuation
17 of the -- I'm looking at what I guess was number 5. Is this
18 number 5?

19 MS. SMEAD: Five has been incorporated into number
20 3.

21 CHAIRMAN RATH: That's what I thought, so we're
22 doing both together. So, basically, what we're going to get

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1 from staff today is what we've already gotten which was a
2 draft on 1 and a draft on 3. We have gotten further comments
3 from the advisory group or members of the advisory group on
4 those drafts. Clearly there is continuing discussion.

5 I understand there is another meeting set for the
6 13th to discuss all matters before them. I don't know that I
7 want to extend the discussion to go to option 2 because I
8 don't know -- otherwise we keep talking theoretically without
9 anything in front of us to react to.

10 MS. SMEAD: The meeting on the 13th is to go over
11 criteria, not necessarily to discuss the options themselves.

12 CHAIRMAN RATH: I would be amazed if you can run
13 those meetings and keep them to that narrow of an agenda.

14 MS. SMEAD: We'd need to get the whole group
15 together. The meeting on the 13th is only five people. It's
16 not the whole advisory committee.

17 CHAIRMAN RATH: That's fine. Mr. Moses?

18 MR. MOSES: I just want to add one other thing. If
19 you go back to what we originally did in New Orleans, from
20 day one we had said that option 2 would always be the last
21 one that we dealt with.

22 CHAIRMAN RATH: I agree. That's a very difficult

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1 task. I know there are Board members who are interested in
2 how that comes out. I think they are entitled as Board
3 members and committee members to have a full review and an
4 amount of comment upon those considerations.

5 I'm not going to cut them off clearly before this
6 committee signs off. We've got to have answers on those.
7 But I also don't want to spend time today discussing things
8 that are not yet in front of us, that are still work in
9 progress.

10 Does any member of the committee have additional
11 questions for this group, agenda items 3/5, the combined 3
12 and 5?

13 MR. DANA: The issue that I have is how -- you have
14 a large advisory committee. It is from all over the country.
15 I guess what we're saying is the need to move this process
16 along may require meetings more frequently than is possible
17 with as large a group as that. I think it would be our hope
18 that you could maybe develop a steering -- maybe you have
19 already.

20 MS. deBETTENCOURT: We have.

21 CHAIRMAN RATH: I think we may be looking at it.

22 MR. DANA: I guess what I'm really saying is that

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1 we asked you to meet if not on a daily basis at least weekly
2 until we are at a point where --

3 MR. HOUSEMAN: Let me just respond on one level to
4 that, Howard.

5 MR. DANA: I know Alan and Dee have nothing else to
6 do.

7 MR. HOUSEMAN: No, that's true. We don't do
8 anything else.

9 MS. deBETTENCOURT: Some of the other members have
10 full-time jobs.

11 MR. HOUSEMAN: One of the people that's very
12 valuable in this working group process is Leona Vogt. She's
13 not funded by some -- she's not running a non-profit
14 organization that has a funding base that permits her to work
15 quite at the speed that others of us may be able to. Her
16 help, I think, is exceedingly valuable.

17 Secondly, I just want to speak a bit to the notion
18 that the advisory board -- there's a variety of very
19 thoughtful people on the advisory board. They have
20 perspectives that may not be the same as the perspectives
21 which Dee and I bring to this, which perspective has been
22 very helpful in candid exchange in those meetings. I don't

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1 think you want to lose that.

2 MR. DANA: No, we don't.

3 MR. HOUSEMAN: What we're trying to do in the
4 working group process is get to a point where a lot of the
5 hard nitty-gritty work is done so we can get back to the
6 discussion of concrete product and refine it and improve it
7 at the advisory board as opposed to using the advisory board
8 to develop a concrete product for the purpose of discussion.

9 That's the track we're on and that's the track
10 we're going to assume to end shortly. But I think if that
11 track can continue where you will get input and advice that
12 will be very beneficial to your thinking both on option 3 and
13 on option 2.

14 While I've got the floor, let me say one final
15 thing. Option 2 to us raises tremendous problems. We agree
16 we shouldn't go into that today. I don't want us to be in a
17 position where there is not an opportunity to share our
18 concerns and the concerns of other advisory board members
19 with you before some vote is taken that moves us down a track
20 that raises substantial and serious problems.

21 CHAIRMAN RATH: I can't see that. I mean, I can't
22 speak for the committee other than this Chair. But there are

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1 obviously some things that I would want to talk about before
2 we got a vote on option 2. I don't think we're close to
3 that.

4 MS. deBETTENCOURT: As you can see from some of the
5 comments, option 2 is far more complex. It will take us some
6 time to work through that, even if the Staff Competition
7 Committee did it alone.

8 Option 3 is something that is a little clearer. We
9 can work with it. I think that we're a little closer to
10 coming to some agreement of what we can do in that area. If
11 we could perhaps concentrate our efforts in the next month or
12 two in giving a final, Alan, option 3 and then stagger option
13 2 in whatever form it takes eventually for a few months, then
14 that might make it a lot easier for all of us. That will
15 give us some practice.

16 CHAIRMAN RATH: The only way this process is going
17 to work is if you find the things that you can get some
18 degree of closure on, some degree of agreement on, and you
19 work through those things. Hopefully, that process will
20 position you better to deal with the more difficult, more
21 dispositive issues.

22 Now, there are people on this committee and on this

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1 Board who feel very strongly that we must explore and do it
2 vigorously as to what option 2 portends. It would be a
3 disservice to those members if we didn't continue the process
4 on those sets of issues as well as on issues 1 and 3.

5 My responsibility to them as Chairman, as long as I
6 am chairman, would not permit me to say forget about option
7 2. But my advice to you, and I think this is of the
8 committee, is that you continue to work as hard as you can on
9 1 and 3 so that we can demonstrate movement which I think is
10 Chairman Wittgraf's desire and his sort of direction to this
11 Board that we have to show to other people who are watching
12 us movement on the overall issue.

13 We've got tangible, discernable, objective
14 movement. The more extreme questions that are posed by
15 option 2 are just hard questions. To me, I go back to what I
16 said earlier, the nature of these questions speaks a lot to
17 where this Board wants to see the relationship between the
18 Corporation and the providers be.

19 It's not going to be done unilaterally, as far as
20 I'm concerned. It's going to be done as a result of this
21 collaborative process that we're engaged in. We will do it
22 the right way, but we will do it. We will get answers

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1 because we have been instructed to get answers.

2 My suggestion to you is to work out what you've
3 got, keep going, and we'll see where we are. Now, I will
4 again offer, without fear that you're going to take me up on
5 it, that if you need me to come to any of these things, I'm
6 available.

7 I think I'm heartened by what I see today and would
8 ask that you keep going. Thank you.

9 We now, as I see it being late in the day, as I see
10 the schedule of the committee, we have one remaining agenda
11 item which had been item 4, which is the timekeeping
12 proposal. Ms. Sparks and Mr. Richardson are approaching the
13 table.

14 I will tell you that this arrived late last week
15 and I have at best a passing familiarity with it. I don't,
16 again, see this discussion as being much more than as
17 informative to the committee as to where we are. It is a
18 red-jacketed item, very impressive, I might say, that is
19 dated March 4. It's called timekeeping proposal.

20 Susan, are you going to lead off?

21 MS. SPARKS: Yes.

22 CHAIRMAN RATH: Why don't you just describe sort of

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1 where it is? As I understand this, it is informational as
2 opposed to an action item by the Board, by the committee; is
3 that correct?

4 MS. SPARKS: Yes, sir.

5 CHAIRMAN RATH: Thank you.

6 CONSIDERATION OF STAFF PROPOSAL ON TIMEKEEPING

7 MS. SPARKS: For the record, my name is Susan
8 Sparks. I'm acting director of the Office of Monitoring,
9 Audit and Compliance. I'm joined at the table by David
10 Richardson, our comptroller and director of LSC's Office of
11 Financial and Administrative Services..

12 At the February board meeting several weeks ago in
13 New Orleans, staff was requested to prepare a timekeeping
14 proposal for your consideration. This proposal, as you've
15 noted, Mr. Rath, was provided to you late last week in a red
16 binder. Copies, I understand, are not available on the back
17 table. Courtesy copies have been provided to several members
18 of the public. Additional copies are available through Pat
19 Batie upon request.

20 Turning to the proposal, you will find a memorandum
21 at the front of the proposal from David Richardson and me
22 that describes our thoughts and our rationale for the

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1 proposal we set forth. You should note that this is a first
2 step.

3 Under our current appropriation rider, this
4 proposal is subject to notice and comment in the Federal
5 Register and must be implemented by rule or regulation which
6 can be effective October 1, 1992. It's during the notice and
7 comment period that all interested parties would have an
8 opportunity to comment on the proposed timekeeping package.

9 Just to highlight a few items for your review, Dave
10 and I want to first begin by telling you what this proposal
11 is not. It is not a call for a nationwide uniform
12 timekeeping system. Rather, we are proposing minimum
13 criteria around which grantees will develop their own
14 timekeeping system.

15 I'd like to just go over those four criteria very
16 briefly. First, we would ask that time be kept in 15 minute
17 intervals. Second, we would ask that the funding source be
18 identified for the time spent on each activity. Third, we
19 would ask that grantees distinguish between direct time and
20 indirect time associated with the representation of eligible
21 clients. Finally, we would ask that time records be
22 maintained in a manner that allows LSC access to original

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1 time records.

2 Again, we would propose that grantees be provided
3 the flexibility to develop a timekeeping system which, at a
4 minimum, meets these criteria but then which can address
5 their individual needs. Those were the only comments that I
6 wish to make. Dave and I are available to answer any
7 questions you may have.

8 CHAIRMAN RATH: I have to tell you that I haven't
9 mastered this yet. I'm going to read it and I want to hear
10 the concerns. The final one just struck me. You want the
11 records kept so that LSC has access to the original records?

12 MS. SPARKS: That's correct.

13 CHAIRMAN RATH: You're going to hear this from
14 everybody around the Board about how we do it, but the way we
15 do it is we have literally a sheet of paper that I make daily
16 entries on if I'm good. I'm not always good, but if I'm good
17 -- Mr. Dana understands the problem.

18 That ultimately, as I pass it to my secretary, gets
19 entered into a computerized system that at the end of the
20 month, theoretically, you press a button and out comes a
21 bill. Now it doesn't always work that way. There's refused
22 statements.

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1 But what I hear you saying is that you want
2 something than the final product. Whether you want those
3 pieces of paper or the transposition in the word processing
4 system -- and there are a lot of ways that time goes into a
5 system today. You want something other than just at the end
6 of the month a narrative that says 42 hours?

7 MS. SPARKS: We would want to be able to look at
8 the system and track certain activities.

9 CHAIRMAN RATH: You are going to be like, to put it
10 in language that Mr. Kirk would understand, you're going to
11 be like the insurance company that wants to know the
12 activity, the lawyer who provided it, the hourly rate, and
13 the amount of time on a daily basis, which is a bane of some
14 of our colleagues.

15 MS. SPARKS: We would want the ability.

16 CHAIRMAN RATH: You would want the ability.

17 Mr. Dana?

18 MR. DANA: Mr. Chairman, I hear them wanting a lot
19 more than that. It seems to me that -- I can't speak for
20 your interest but I can speak for my own. I write down what
21 I did and what the subject matter was. It's very
22 confidential information. At least my entries are clearly

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1 subject to the attorney/client privilege. Do I understand --
2 I mean, there is an issue out there as to whether or not
3 Legal Services Corporation can get the names of clients. Now
4 you want the right to review the daily entries into time
5 records? Why? B, are you concerned about the
6 attorney/client privilege?

7 MS. SPARKS: Absolutely, Mr. Dana. I think what
8 we're talking about is it's important to look at the minimum
9 criteria as a package. When we look at the distinction, for
10 example, between direct and indirect time, those
11 considerations of a client's name perhaps, systems can be
12 developed that client names are not present. Perhaps case
13 numbers can be used.

14 Dave, you may want to talk about some of the
15 systems that are in place of our grantees. They would use
16 codes. Of course we're concerned about the attorney/client
17 privilege. Not only do we not seek that, we are not entitled
18 to that.

19 Did you want to talk about some of the systems?

20 MR. RICHARDSON: Only that we have looked at
21 systems that are in place. Instead of having, for instance,
22 a client name, as you suggest, it has a case number, a file

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1 number. Then that information would be available to us to
2 determine that you're actually providing a direct client
3 service.

4 MS. SPARKS: That's what we have in mind.

5 CHAIRMAN RATH: I hear what you're saying and I
6 hear what Mr. Dana is saying. Just keep in mind -- you're
7 going to go through this. We're going to take a look at
8 this. This is not the time to engage at length in it.

9 It's pretty hard because I suspect that Howard and
10 I keep time pretty much the same way. You describe what you
11 do and who you talk to and what you're thinking about. I
12 keep fairly complex time records. It's discussions raised,
13 strategy as to motion to reconsider and motion to do this and
14 settlement proposal and all those kinds of things which
15 really get to the core of it.

16 It would be hard for me, just thinking here off the
17 top of my head, to clean that record up so that couldn't
18 pretty much guess which client I was dealing with. I think
19 that's what Howard is alluding to. It's a pretty tough task
20 that you got for yourself.

21 MR. RICHARDSON: If I may address, one of the
22 problems that we do have, and Susan is certainly more

1 familiar with this than I am, but there are times when we go
2 on a monitoring, when we send a monitor into the field, and
3 we ask for original documents, cash receipts, cash payables,
4 a general ledger. We get redacted information because it has
5 attorney/client privilege information in it.

6 What we're getting at is we'd like to see the
7 records kept in a fashion that we can audit it. It's
8 available in my field to the CPA, to the accountant who comes
9 in and reviews the records. But it's not available to us who
10 goes in and does a follow-up review.

11 We're just asking that it be kept and fashioned so
12 that we could review them.

13 CHAIRMAN RATH: Mr. Dana?

14 MR. DANA: Mr. Chairman, your Tab 2 encloses the
15 GAO timekeeping analysis. Your report -- I can't tell
16 whether you think you have complied with it or not. I think
17 the impression I get is that you have. You think you have or
18 that you think you have --

19 MS. SPARKS: Trust is a better word.

20 MR. DANA: -- addressed Congress' concern. Given
21 the fact that nothing -- notwithstanding that you had 11
22 votes on the Board to do anything you wanted to in the

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1 timekeeping area, you couldn't move before October 1.

2 I would really counsel -- this last dialogue we've
3 just had over time records I think reveals an undeveloped
4 assessment of the ramifications of what you are proposing. I
5 just think that there is -- I actually like much of this
6 report. I thought it was thoughtful. I thought that the
7 analysis of the benefits of timekeeping were excellent.

8 There was absolutely nothing, however, about the
9 downside. There was no discussion of the cost of the
10 timekeeping. Whereas, this report indicated that there were
11 wide disparate views as to the impact of taking a portion of
12 every day and sitting down and filling these out and handing
13 them to a secretary who then generates another document.

14 What is the cost for that? We don't know. That's
15 one of the things that GAO said we didn't know, and we still
16 don't know. Requiring people to keep time records that are
17 going to be available for their use is one thing. Requiring
18 people to keep time records that are simultaneously going to
19 be available for their use but also subject to view by the
20 inspector general of the monitoring teams adds a complexity
21 to the time records that it's a serious complexity, which I
22 think we have time.

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1 If there is a steamroller involved in timekeeping
2 the way there are in other areas, you've correctly identified
3 the fact that we've got time. We can't actually do much
4 before then. So I'd like to urge the staff to actually carry
5 out the recommendations of this and not just assume that the
6 concerns have been addressed.

7 I read the concerns in this report to be equally
8 focused on the timekeeping proposal as well as the functional
9 accounting proposal. It was not just the functional
10 accounting proposal that concerned the GAO. It was the
11 timekeeping as well. I think their reading of the document
12 indicates that.

13 I see no evidence that the Corporation has complied
14 with any of the recommendations in here concerning
15 timekeeping. Since we have time, I would urge us to do so.

16 CHAIRMAN RATH: Would you like to respond?

17 MS. SPARKS: If I could just make a few comments.
18 Also the GAO report raised some concerns about the case
19 service reporting together with the functional accounting and
20 timekeeping. To talk a little bit about the cost and to put
21 a perspective, a little bit more of Dave's and my thoughts,
22 cost is very much on our mind.

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1 That's why in developing this and in proposing this
2 we would suggest minimum criteria around which grantees can
3 implement a timekeeping system as opposed to imposing on them
4 a timekeeping system that was contemplated prior to the GAO
5 report.

6 I think Dave and I -- that would be cheaper. That
7 much we know. It would be cheaper for grantees to design
8 their own system around minimum standards, particularly
9 looked around and we see the systems in place, those that
10 meet our needs in monitoring.

11 They have these minimum criteria. They meet these
12 minimum criteria. There are timekeeping systems in place in
13 our programs that meet this. I just wanted to add that to
14 the discussion. There's no question that this needs -- you
15 need time to look through it. Mr. Rath needs time to
16 consider it.

17 I also would note that although the regulation
18 cannot be effective until October 1, 1992, we could begin the
19 process so that perhaps we would have timekeeping in place in
20 1993. So we do have time, but we would like to continue to
21 move along and see if we can get something in place.

22 CHAIRMAN RATH: Mr. Wittgraf had a comment.

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1 MR. WITTGRAF: I'll take the floor, Mr. Chairman,
2 thank you. If you will indulge me in a few contextual
3 comments.

4 I guess, in fairness to Ms. Sparks and Mr.
5 Richardson, it was just in our last Board meeting three weeks
6 ago tomorrow that I think first I and then Mr. Uddo later in
7 the meeting asked the president with the staff to light this
8 fire again.

9 CHAIRMAN RATH: Members of this committee certainly
10 appreciate that it got lit and sent here.

11 MR. WITTGRAF: Well, it will teach you to come to
12 meetings, Mr. Chairman. You're able to defer, if that's
13 required. Mr. Uddo and I, I believe, as we've spoken at the
14 last couple of Board meetings, have been concerned that there
15 is some tradeoff politically, if in no other way, between our
16 making the case for increased funding and our making every
17 effort to enhance accountability.

18 I think that at least for him and for me that was
19 the reason for relighting this fire. Ms. Sparks and Mr.
20 Richardson certainly have gone back, as we suggested during
21 the discussion we had three weeks ago tomorrow, to some of
22 the materials that have been prepared before.

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1 As Mr. Dana and Ms. Sparks have both indicated, we
2 don't have authority to mandate a broad system at the moment.
3 But, on the one hand, there is some money that has been
4 available to us for some time to work in this area. It
5 continues to be carried in our budget. We've requested
6 additional monies from the Congress to be used in this area
7 in the next fiscal year.

8 I'd like to think that timekeeping is a fairly
9 narrow issue that goes back perhaps to the performance
10 criteria that the so-called advisory committee and the
11 steering committee of the advisory committee in the area of
12 competition have been working on.

13 I guess it's probably the fourth criteria,
14 effectiveness of program management and governments. Just as
15 we talk about Board structure, Board involvement, and so
16 forth, this is another criterion as to the governance and
17 management of a program or subcriteria.

18 As I look at page 3 of the materials that Ms.
19 Sparks and Mr. Richardson prepared, I try to answer the
20 question raised by the GAO in 1988, why is this and what's
21 the point of this. They mentioned a couple of things that
22 strike me as really not being the objectives but rather maybe

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1 preliminary objectives.

2 They talk about identifying some data. I think it
3 goes beyond that. I don't think it's just a matter of
4 identifying data. I think it's a matter of enhancing the
5 quality of the provision of civil legal services for the poor
6 through our grantees. That's why I'd like to tie it back to
7 the performance criteria that people have been working on for
8 the last six to eight months.

9 Admittedly, this is just a work product that's
10 evolved over the last three weeks, but I'd like to see it
11 considered in that context. I'd like to see it evolve in
12 that context. I would like us to be prepared, then, as a
13 Board and as a Corporation perhaps to put a regulation in
14 place after October 1st on the wild assumption that we have a
15 confirmed Board, unless we're able to have that authority
16 without being confirmed.

17 Perhaps if we're not a confirmed Board and don't
18 have that authority, that we simply have some money that can
19 be utilized to assist the three-fourths of the grantees that
20 don't do much timekeeping right now, to assist them with
21 developing timekeeping that helps us in our keeping tabs and
22 reporting to the Congress, but also helps them in their

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1 program management and governance.

2 I'd like to see us move forward in that way. You
3 and Mr. Dana have brought up some very specific questions
4 about client privilege and the actual mechanics of it. But
5 I'd like to keep it in the context of this being an effort
6 for accountability on the one hand toward the Congress and to
7 help our grantees with their management and effectiveness on
8 the other hand.

9 CHAIRMAN RATH: Thank you, Mr. Chairman. There are
10 a number of issues raised in this that I frankly would like
11 to have some time to think about and talk about. Maybe the
12 next time we meet we will be more articulate on them. I
13 would like to be able to prevail on your folks in the interim
14 if I've got some questions and react to its tough question.

15 I understand where we're trying to get. This is
16 another mechanism on the road, hopefully, to better things.
17 But it's going to take some time. Anyway, there are some
18 very fundamental questions that are not easy to solve.

19 But the point I'd like to make to both of you and
20 those who have worked with you on this proposal is the
21 staff's responsiveness to the Board's concern in generating a
22 draft is much appreciated. I know how much work went into it

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1 and how tired you are. Thank you, both of you.

2 That completes the agenda as I see it for this
3 meeting. As always, the most nervous moment in the Chair's
4 presiding is when he says is there anything further to come
5 before the committee.

6 Mr. Houseman?

7 MR. HOUSEMAN: I don't want to get into the merits
8 of this, but on this last thing, I would urge you --

9 CHAIRMAN RATH: This last thing being the
10 timekeeping?

11 MR. HOUSEMAN: -- strongly not to go about business
12 this way. We get a copy of something 20 minutes before a
13 committee meeting that fundamentally addresses issues that
14 are of major concern in this community, and that's not the
15 way to do this.

16 You've had it for a week. There's no reason that
17 none of this could have been sent out --

18 CHAIRMAN RATH: No, no. It's under the date of the
19 4th. I think I got it probably the 5th, which would be
20 Thursday. But we're not going to take any action on it.

21 MR. HOUSEMAN: I understand. But if you want
22 intelligent reaction to this, that's first.

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1 Secondly, the GAO report says you're supposed to do
2 this in conjunction with grantees. That doesn't mean you
3 talk to somebody here and you talk to somebody there. There
4 ought to be a process that's developed at the outset. I
5 think you'd do well to do that. It will save everybody a lot
6 of time and trouble.

7 Third, when you really get into the substance of
8 this, I urge you to hear from people who have worked with
9 timekeeping and not to hear from characterizations about
10 their timekeeping systems. In the course of work over the
11 last year around some reauthorization matters, I've talked to
12 numerous people who I constantly hear told by the staff here
13 that they do timekeeping and they are hunky-dory with all of
14 this stuff.

15 Everyone I've talked to, bar none, have raised
16 serious concerns about many of the issues that are here.
17 None of their timekeeping systems are at all like what's
18 being talked about here, contrary to what you're being told.
19 My point is don't listen to this from me, let's --

20 CHAIRMAN RATH: I think, Alan, this committee is
21 perfectly capable of reviewing what the staff gives it and
22 reaching out, as I think we've demonstrated to date, and

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1 getting reaction from the provider community and then making
2 judgments about what is and isn't the case.

3 We don't need to do it in an anecdotal basis. We
4 can find empirical data that supports however we -- this is
5 again -- the staff was attempting to respond to a Board
6 initiative, and it was not an attempt to circumvent process.
7 As long as the leadership of this committee remains as it is,
8 the community can rest assured that we will reach out.

9 It doesn't make any sense to put in a process that
10 doesn't work. I know that. I think the committee knows
11 that. Thank you.

12 Now, is there anything further to come before this
13 committee?

14 (No response.)

15 CHAIRMAN RATH: Hearing none, we will entertain a
16 motion to adjourn by Mr. Dana.

17 M O T I O N

18 MR. DANA: So moved.

19 MS. LOVE: Second

20 CHAIRMAN RATH: Seconded by Ms. Love.

21 There is no further questions or comments.

22 All in favor?

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