

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS  
OPERATIONS & REGULATIONS COMMITTEE MEETING

May 18, 1992

9:04 a.m.

The Marriott Suites Alexandria  
801 North St. Asaph Street  
The Conference Center  
Alexandria, Virginia 22314

Board Members Present:

Norman D. Shumway, Chairman  
Howard H. Dana, Jr.  
William L. Kirk, Jr.  
Jo Betts Love  
J. Blakeley Hall  
Basile J. Uddo  
Jeanine E. Wolbeck

Staff Present:

John P. O'Hara, President  
Emilia DiSanto, Acting Vice President  
Patricia Batie, Corporate Secretary  
Ellen Smead, Director, Office of Field Services  
Kathy de Bettencourt

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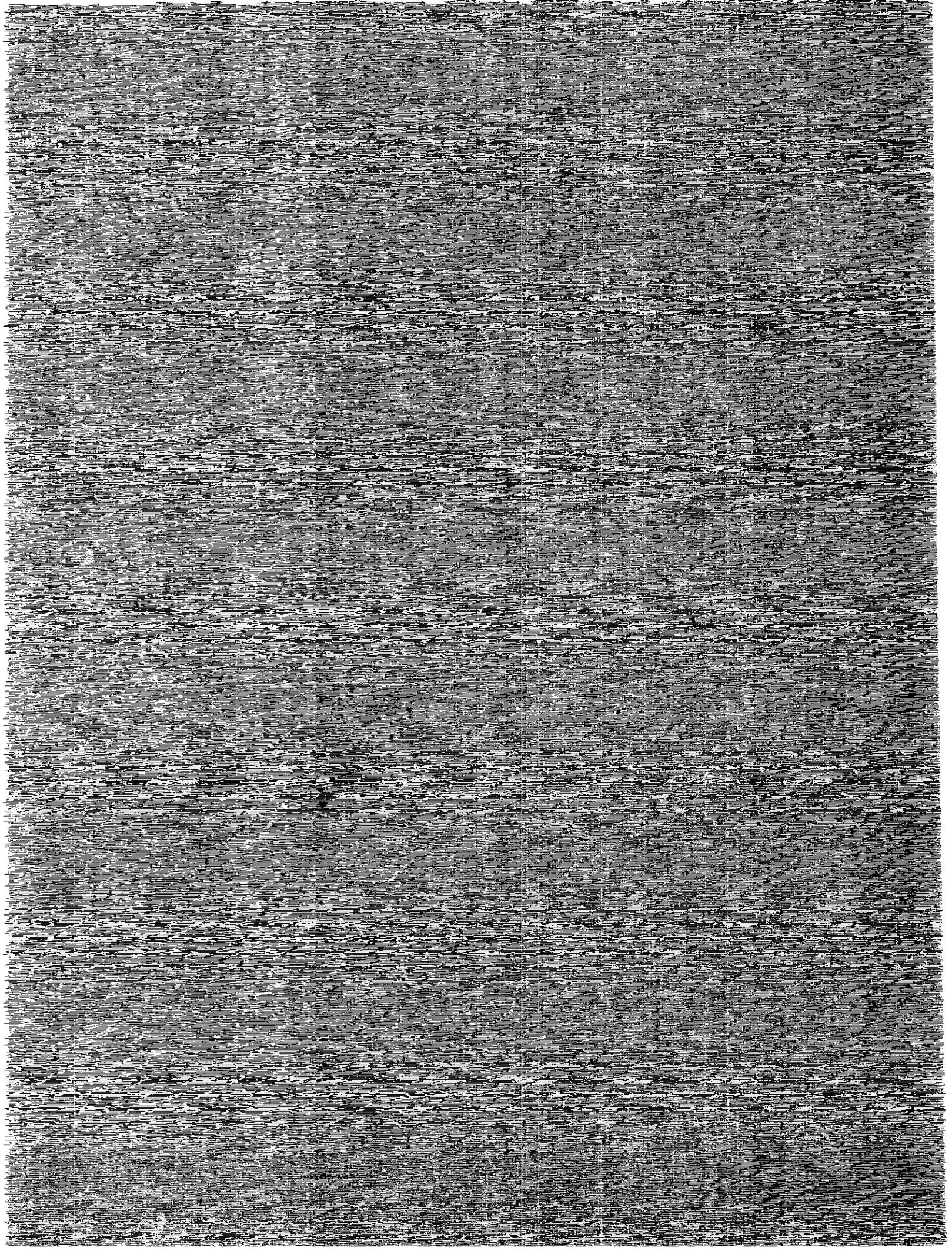
Executive Office

Diversified Reporting Services, Inc.

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3, 4, 44

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CHAIRMAN SHUMWAY: Ladies and gentlemen, if you would take your seats, please, we will begin this committee meeting. Nine O'clock was the hour set for convening the Operations and Regulations Committee. I'm Norman Shumway, sitting in this morning for Tom Rath, who could not be with us. But we do have as members of the committee present Bud Kirk, Jo Betts Love, and Howard Dana. We also have joining us Blakely Hall, Jeanine Wolbeck, and perhaps George Wittgraf may drift in or drift out.

## M O T I O N

CHAIRMAN SHUMWAY: The first item on our agenda this morning is the approval of the agenda, consisting of three items. Would someone please move the approval of the agenda?

MR. DANA: I so move.

MR. KIRK: Second.

CHAIRMAN SHUMWAY: Mr. Dana moves, Mr. Kirk seconds. Is there discussion?

(No response.)

CHAIRMAN SHUMWAY: Hearing none, those in favor say aye.

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1 (Chorus of ayes.)

2 CHAIRMAN SHUMWAY: Opposed no?

3 (No response.)

4 CHAIRMAN SHUMWAY: The ayes have it. The agenda is  
5 approved.

6 M O T I O N

7 CHAIRMAN SHUMWAY: We next have as an item of  
8 business the approval of minutes of our meeting of April 7,  
9 1992. Have all Board members or committee members seen the  
10 minutes, satisfied with them? If so, may we have a motion to  
11 approve them?

12 MS. LOVE: So moved.

13 MR. KIRK: Second.

14 CHAIRMAN SHUMWAY: Ms. Love moves and Mr. Kirk  
15 seconds. Any discussion?

16 (No response.)

17 CHAIRMAN SHUMWAY: All those in favor, say aye.

18 (Chorus of ayes.)

19 CHAIRMAN SHUMWAY: Opposed, no.

20 (No response.)

21 CHAIRMAN SHUMWAY: The ayes have it, the minutes  
22 are approved.

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1 week.

2 I want to caution that this is a preliminary draft  
3 in that it does not reflect the comments from the advisory  
4 committee, and it does not reflect staff comments, either.  
5 We'll be getting those within the next week, and Kathy de  
6 Bettencourt will be finalizing the solicitation later next  
7 month, based on those comments.

8 Two issues I would see where there might be some  
9 further discussion between the parties: (a) on peer review,  
10 and (b) on measurements.

11 With that, Kathy can briefly summarize the way the  
12 project is designed and how it would operate.

13 PRESENTATION OF KATHY DE BETTENCOURT

14 OFFICE OF FIELD SERVICES

15 MS. DE BETTENCOURT: I'm Kathy de Bettencourt,  
16 Office of Field Services.

17 The demonstration project, as it is proposed, would  
18 be a multi-year project, with several phases. What you have  
19 described before you is Phase 1. Phase 1 is intended to test  
20 whether monetary incentives affect program performance over  
21 time, measured according to the criteria that we've  
22 developed.

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1           Phase 2 will follow up on the results of Phase 1,  
 2 and we will test other interventions and other incentives.  
 3 Phase 1 is limited to that question -- whether monetary  
 4 incentives have an effect on program performance.

5           We will publish a solicitation. We have had some  
 6 discussion. I'm not sure that a Federal Register  
 7 notification is necessary for the solicitation, because we're  
 8 really just asking existing legal services programs if they  
 9 want to participate. So it may suffice to send a letter to  
 10 every legal services program and their board requesting  
 11 participation.

12           From those who do indicate a willingness to  
 13 participate, we will select 16 programs. Now, the 16  
 14 programs will be selected. The programs who agree to  
 15 participate will be categorized into four clusters, according  
 16 to budget size and size of service area.

17           We decided that, if you're going to make rough  
 18 categorizations of programs, that these are the four that are  
 19 most meaningful. There is a chart which makes it a little  
 20 easier to see. There will be four programs selected who have  
 21 a small budget, but a large service area.

22           That would be a small rural program that covers a

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1 lot of counties but has only a small budget, as opposed to a  
2 large budget, large service area.

3 These would be programs that would be large state-  
4 wide programs, like Maine.

5 The third cluster would be small budget, small  
6 service-area programs. We found when we looked at the number  
7 of programs we have that we have quite a number who are two-  
8 or-three-attorney operations with very small budgets, almost  
9 little. Under a half of our programs have budgets under  
10 \$600,000.

11 The fourth cluster would be large budget, small  
12 service area. This would describe urban programs that have a  
13 concentrated service area.

14 We did a lot of discussion about what would be the  
15 most meaningful breakdown, so that we would have, as much as  
16 possible, similar programs competing against one another, and  
17 we agreed that these were the best categories.

18 Now, once programs have been put into clusters, we  
19 will select four programs by lottery. We decided that was  
20 the fairest way of selecting them, because the programs who  
21 enter have a chance of winning a lot of money, plus we didn't  
22 want to burden the project with a lot of selection criteria

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1 at the outset that we would have to defend. This way is  
2 simplest and fair.

3 The 16 programs who agree to participate will be  
4 assessed at the outset of the project by a team of peer  
5 reviewers who will evaluate the program according to the  
6 performance criteria. I did see your copy of the performance  
7 criteria. Those haven't changed.

8 Programs who agree to participate will also receive  
9 a one-time grant at the beginning. The amounts that were  
10 originally proposed were, for small-budget programs, \$20,000;  
11 large-budget programs would receive an upfront grant of  
12 \$30,000 to cover the cost of competing in the project, the  
13 administrative cost, for example, of any data collection, any  
14 new equipment needed.

15 The small working group had originally argued that  
16 we didn't want to give any upfront money. But the advisory  
17 group argued that, to do this right, you really need a good  
18 range of programs. You need a good range of very good  
19 programs, and some mediocre programs.

20 The best way to encourage the broadest range of  
21 applicants is to make sure that the cost of applying would  
22 not be a factor, and also, so that if we're going to give

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1 large prizes at the end, that it would be perceived as more  
2 fair if everyone were permitted, who put a lot of time and  
3 effort into participating, would be able to recover some of  
4 their costs.

5           The project period of Phase 1 was suggested as two  
6 years, because it will take a few months to do all the  
7 baseline measurements. People who put in place innovations  
8 with the upfront money will require some time to see some of  
9 that come to fruition. And so the advisory group recommended  
10 two years.

11           At the end of that period, the 16 programs will be  
12 once again evaluated by a peer review team who will assess  
13 their performance again according to the criteria, and two  
14 prizes will be awarded for each cluster -- one award for the  
15 most-improved program and one award for the best.

16           Now, it is conceivable that one program could win  
17 both, so there will be four prizes for most improved, four  
18 prizes for the best program in the cluster. Now, we agreed  
19 again that the prizes should be proportionate to the size of  
20 the program's budget, so it was recommended that \$50,000 be  
21 awarded to the most-improved program in the small budget  
22 categories and \$50,000 for the best program in the small-

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1 budget categories and, for the larger budget, \$100,000 for  
2 each, for each cluster and for each award. Again, that is  
3 summarized on the chart and in the budgets that are included.

4 Now, there was not unanimity on the size of the  
5 awards and the size of the upfront grants. A lot of people  
6 argued that you need to have a larger upfront grant to  
7 encourage participation and a smaller reward at the end,  
8 because being recognized as the best is, in itself, a pretty  
9 good award. Others argued that you should have a larger  
10 award at the end and a smaller upfront grant.

11 We've included what the budget would look like if,  
12 for example, for the small-budget programs, they received an  
13 upfront grant of \$10,000 and the large-budget programs an  
14 upfront grant of \$20,000 for costs.

15 We agreed in principle that an upfront grant is a  
16 good idea and the two awards at the end. We also agreed that  
17 we can tinker with the money to decide what the best  
18 configuration is. But we did agree that the ratio of awards  
19 from small budget to large should be one to two on the  
20 upfront grants and two to three on the award money grants,  
21 the performance awards -- or the other way around. Ellen  
22 corrects me. It was three to two on the upfront grants

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1 and --

2 CHAIRMAN SHUMWAY: Was there budgets A and B?

3 MS. DE BETTENCOURT: Yes. Budgets A and B and then  
4 the charts.

5 CHAIRMAN SHUMWAY: So A would be the smaller amount  
6 of money at first?

7 MS. DE BETTENCOURT: Upfront, right.

8 CHAIRMAN SHUMWAY: And the larger grant?

9 MS. DE BETTENCOURT: At the end.

10 CHAIRMAN SHUMWAY: And B would be a larger amount  
11 of money upfront?

12 MS. DE BETTENCOURT: Right.

13 CHAIRMAN SHUMWAY: With a larger grant as well, a  
14 larger award?

15 MS. DE BETTENCOURT: Yes. And the arguments for  
16 both are, if you have a large upfront grant, then you're  
17 going to perhaps attract some of the better programs who  
18 otherwise would enter, but wouldn't want to incur the costs  
19 and don't really need the recognition. And also, you would  
20 pull in some of the poorer programs, who ordinarily wouldn't  
21 compete, but might, so that they could get some upfront money  
22 for other things.

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1           So the size of the upfront grant would depend on an  
2 incentive to participate. The large money at the end would  
3 be a larger incentive, in theory, to perform.

4           MR. KIRK: Mr. Chairman?

5           CHAIRMAN SHUMWAY: Mr. Kirk.

6           MR. KIRK: Ms. de Bettencourt, my concern is that  
7 this is just sort of like a lottery and you throw your name  
8 in the hat, and if your name comes up, you get 10,000 bucks.  
9 And I think that, at the appropriate time, I'm going to  
10 recommend that we have a review, you know, midway through,  
11 before the \$10,000 is given, maybe a group of two peer  
12 review, two LSC.

13           I'm hopeful that we can use a four-person group  
14 like that, and there will just be universal agreement. But  
15 if they need to, they can add a fifth, to ensure that there's  
16 been good-faith participation. And, if not, then you don't  
17 get the \$10,000. I just don't want it to be something you  
18 get because your name was drawn out of a hat.

19           Does that seem --

20           MS. DE BETTENCOURT: No, we agreed on that. There  
21 was quite a bit of discussion on that issue, that what if  
22 people just enter for the money? We agreed that it had to be

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1 a good-faith effort on the part of the programs and that we  
2 would -- I don't know if a grant condition, or what we  
3 decided to do, but to assess that. Yes, that was a concern,  
4 particularly if the money is substantial.

5 CHAIRMAN SHUMWAY: Before we go further, I think it  
6 might be helpful just for members of the committee to clarify  
7 what our purpose is here this morning.

8 We have before us the draft request for  
9 solicitation, and my understanding is that staff would like  
10 to have comments in the way of reaction from us as to that  
11 draft.

12 There also is, as Ellen pointed out a few moments  
13 ago, they are expecting further comments from the staff as  
14 well as the advisory group. So the draft is not in final  
15 form. What we're hearing is simply a proposal. And if we do  
16 have some constructive ideas for staff, they will go back  
17 between now and the next meeting, put those proposals into a  
18 more concrete form, and then bring to us something that  
19 indeed we might then adopt.

20 But I think there is no action required this  
21 morning, other than to hear our reactions to what the draft  
22 provides for us.

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1           One question that I had -- I don't want to  
2 interrupt your presentation, but just as a followup to Mr.  
3 Kirk's question: if, because of the luck of the draw, a  
4 given grantee finds itself in the program and receives that  
5 upfront money, but then it turns out that that grantee does  
6 not desire to stay the course for two years and be in the  
7 competition for a prize at the end, how do we decide whether  
8 that decision has been made and whether we want then to  
9 require a refund of the upfront money?

10           It would seem to me that every grantee would say  
11 "Oh, we're going all the good things that we wanted to do."  
12 But, indeed, we might be of the impression that they are not.  
13 How do you resolve that difference?

14           MS. SMEAD: Well, first of all, we decided if they  
15 did not participate, if they terminated before the end of the  
16 period, they had to refund the total amount of the upfront  
17 grant. It was felt that we could assess that through the  
18 peer review system in one way, and that we would have a good-  
19 faith -- we would, in their grant condition, in essence say  
20 that they have to participate in good faith, and rely on the  
21 good faith aspects of it, with the peer review followup.

22           CHAIRMAN SHUMWAY: Is one of the reasons for having

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1 the peer review committee establish a baseline early on to  
2 have something from which to measure?

3 MS. SMEAD: Yes, it is.

4 CHAIRMAN SHUMWAY: So if there is not some progress  
5 made from that baseline, that committee could decide that  
6 they're no longer participating in the program?

7 MS. SMEAD: We haven't discussed that issue  
8 specifically, but that would sound logical to me.

9 CHAIRMAN SHUMWAY: Mr. Dana.

10 MR. DANA: Mr. Chairman, what is the rationale for  
11 making an award to the "best" program at the end? It occurs  
12 to me, just so you'll know where I'm coming from, that if  
13 four programs get in there, and one is evaluated to be an A-  
14 plus program to start with, and the other three programs are  
15 indicated to be average programs, absent a change, the person  
16 who just happened to be the best program selected at the  
17 outset is likely to be the best program at the end of the  
18 program.

19 And what have we learned? I don't understand what  
20 benefit we gain from making an award to someone because they  
21 are the best, as distinguished from the most improved.

22 MS. SMEAD: I initially shared your concern about

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1 that, along the same lines -- why should we reward somebody  
2 for not moving at all? If they come in as the best program,  
3 they're likely to end up as the best program. That was an  
4 issue that was extensively discussed at the advisory group.

5 It was mainly the program directors that were  
6 speaking of this, that if you want to attract the good  
7 programs and be able to measure the good programs, you need  
8 to have some incentive for them to say in or to even  
9 participate.

10 It is assumed that a mediocre program has a lot of  
11 room to improve. An excellent program only has a little bit  
12 of room to improve, so at the end, they may still be the  
13 best, but they may have only moved five points, whereas  
14 another program may not be as good as them yet, but have  
15 moved 20 points.

16 MR. DANA: Well, maybe that's my problem. My  
17 assumption is that, on a scale of 1 to 100, if somebody was  
18 at 40 to start with and someone else was at 90, the person  
19 who went from 40 to 70 would have gone halfway between where  
20 they were and perfection, which had been a substantial  
21 improvement, or a 50 percent improvement.

22 And so the person -- in order for the person at 90

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1 to beat that program, they'd have to get somewhere above 95.  
2 That puts everybody on an equal footing, but starting at  
3 different places. Am I right?

4 MS. SMEAD: Right.

5 MR. DANA: Is the committee thinking about that  
6 kind of an analysis, or are you talking about absolute  
7 improvements?

8 CHAIRMAN SHUMWAY: In that case, each program has  
9 made a 50 percent improvement. So ostensibly, the margin of  
10 improvement is the same. Do they both get the same prize, or  
11 because one is higher than the other in the end, does that  
12 one get the prize?

13 MR. DANA: My concern, if you just take those two  
14 hypothetical programs, the bad program -- the worst program  
15 to start with, the 40 -- could go to 70. The program that  
16 started at 90 could go to 85. The 90 to 85 could go  
17 backwards and get the best program award, and that just  
18 doesn't seem to make any -- I mean, I don't see what we're  
19 learning by that. They started way ahead of the pack and  
20 they ended up way ahead of the pack, and they may have  
21 actually gone downhill in the process.

22 So I would rather, frankly, I would rather see the

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1 most improved and the next most improved, and try to develop  
2 a schedule and, if you're going to give two awards, give them  
3 for improvement, but make sure that it's relative, and the  
4 task for everybody, 100 percent of their task is to go from  
5 where they are to the end. And in terms of the percentage  
6 improvement is how you measure what the competition is, so a  
7 program that is very good has got to go from 90 to 100 and a  
8 program that's not so good has got to go from 40 to 100, but  
9 if they go halfway, you compare it that way.

10 MS. DE BETTENCOURT: Well, I think there are two  
11 issues here. One is that one of the main objectives -- well,  
12 the main objective of the project is to take the poorer  
13 programs and encourage them to approve.

14 MR. DANA: I thought the objective of the program  
15 was to see if -- one of the principle objectives is to see if  
16 by putting out these carrots we can create change.

17 MR. KIRK: May I interrupt, just for a second, Mr.  
18 Dana? My understanding is that this was something suggested  
19 by the field and a concession made by the Corporation in the  
20 field. It may be well to have Mr. Asher or someone comment  
21 on this, because it seems like they had some thoughts on it,  
22 and you might get more information.

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1 MR. ASHER: John Asher.

2 CHAIRMAN SHUMWAY: Would you come to the  
3 microphone, please?

4 MR. ASHER: I am John Asher, the director of the  
5 Legal Aid Society of Metropolitan Denver, and a member of the  
6 advisory committee.

7 At our meeting last week we did not discuss the  
8 exact scale or approach that Mr. Dana has put forward. I  
9 think it's fair to say that the idea of rewarding both the  
10 best and the most improved came from the small study  
11 committee, made up of staff and a few members of the advisory  
12 committee, of which Dee Miller is the only project director.

13 The project directors, I think, Ben Cole from West  
14 Arkansas -- West Memphis -- East Arkansas, excuse  
15 me. West Memphis to East Arkansas. I'm having a little  
16 trouble -- was the need for both some upfront money to  
17 encourage programs to change computer systems possibly, to  
18 deal with the administrative necessities of gearing up to  
19 have much more accountability of program performance, while  
20 we also recognized there had to be a good-faith obligation.

21 My sense is that most programs will really, if  
22 they're going to bid, they're going to try to do, they're

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1 going to go for the big prize, not just the small one, but if  
2 there really is evidence of a failure of good faith, we ought  
3 to be able to deal with that. What we don't want is many  
4 evaluations diluting the attention from real progress towards  
5 improvement to simply good faith participation in the  
6 project.

7 I think we'll be able to know, but that's a  
8 separate issue.

9 CHAIRMAN SHUMWAY: Mr. Houseman.

10 MR. HOUSEMAN: Just so everybody is clear on what  
11 happened, the small group -- which was Dee Miller and myself  
12 and Leona Vote, and Kathy and Charlie and Lauren Fuller and  
13 Ellen, in and out, and Ressie Walker -- we debated the issue  
14 of awards and improvement and best program.

15 While there were some differences among us, our  
16 initial cut at this was different from what the advisory  
17 group came out. Our initial cut was not to give upfront  
18 money, first; secondly, to reward any program that made  
19 significant improvement -- which had to be defined in some  
20 way -- and then to award the best program.

21 But that was a cut that was -- we weren't sure that  
22 made a lot of sense. We were struggling with the very issue

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1 that you've raised, Howard. That was one cut. The advisory  
2 group, particularly Mr. Dirken from GM and the other project  
3 directors in the group, were much less enthused with that  
4 approach, and ultimately came up with what is before you now.

5 I became persuaded that something along those lines  
6 made the most sense, because of just the discussion and the  
7 advisory group meeting, which was a very full airing of this  
8 issue. But I think the concern about "best" was that, in the  
9 end, that we clearly wanted to reward a program that made the  
10 most improvement. There was no question about that.

11 So the question was, do we also want to reward a  
12 program that was the best? So I think the theory was, as has  
13 been explained, that you want to encourage people to do the  
14 best, and to be the best. And if the program comes in, and  
15 works at it, and becomes the best, even it starts as the  
16 best, they ought to get an award. That was the essential  
17 argument.

18 I'm not sure how carefully it was thought through,  
19 but the feeling was that if a program was the best in the  
20 cluster at the end of the performance, it ought to get an  
21 award for being the best, and not just for being the most  
22 improved. So that's how we came up with that cluster of

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1 positions.

2 CHAIRMAN SHUMWAY: Mr. Dana.

3 MR. DANA: Mr. Chairman, I think if one were to  
4 analyze these program performances on an absolute scale,  
5 maybe the committee was concerned that only mediocre programs  
6 might apply, because a mediocre program had so much to  
7 improve in that they could obviously beat a good program that  
8 had such a relatively small way to go to top out on the  
9 scale.

10 If measurement was going to be absolute, I would  
11 think that might make sense. But my fear is that, in order  
12 that we could solve that problem, as I indicated, by having  
13 some relative measurement, and not take basically half the  
14 money and award it to programs for winning the first lottery  
15 because they happened to get selected, because a really good  
16 program was selected, and was the only really good program,  
17 and would always be, absent a cosmic change over two years,  
18 would always get that best award.

19 MR. ASHER: I'm not speaking, obviously, for the  
20 advisory committee, and we did not really discuss this  
21 approach. I would just raise two fears.

22 One is, if all we do is reward significant

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1 improvement by those programs that need it, that would be a  
2 wonderful accomplishment for this community, and we shouldn't  
3 minimize the importance of that.

4 My concern, though, about your approach, is that  
5 one of the two major purposes for this study is to learn more  
6 about measuring and quantifying quality programs. I think  
7 that peer review makes sense and I think that we will be able  
8 to really make fairly gross judgments -- and by gross, I mean  
9 large, not offensive -- in a program that goes from 40 to 70.

10 I would doubt whether we are prepared yet at the  
11 beginning of this study to know whether we really can judge  
12 the improvement from 95 to 97, and whether we can make those  
13 fine distinctions. I think we will know whether a program  
14 improved, but I'm not sure we can quite quantify it to take  
15 the best programs as to whether they've improved 50 percent  
16 of the way and the others only improve 40.

17 I'm not sure at the top that that may not be a  
18 little difficult to do. But we ought to learn more about  
19 that.

20 CHAIRMAN SHUMWAY: I'd like to get back to Kathy.  
21 I think you had a response before the gentleman came to the  
22 table.

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1 MS. DE BETTENCOURT: Actually, John made my point.

2 CHAIRMAN SHUMWAY: Thank you. Mr. Kirk.

3 MR. KIRK: I'm going to probably make this same  
4 statement each time this comes up between now and when it's  
5 finally voted on. I want it to appear in the record, is what  
6 I'm saying.

7 This is not what I had in mind when I began my  
8 early push for a demonstration project. The mere fact that  
9 we're concerned about whether those that win the lottery are  
10 going to make a good-faith effort illustrates the flaw in  
11 this concept. If we had an ability, if there were a stick as  
12 well as this big prize at the end of the rainbow, we wouldn't  
13 worry about gee, are we going to make them pay back the  
14 \$10,000. We really have no way of enforcing it.

15 I believe that an integral part of competition is  
16 the carrot. But I think also as important is some way that  
17 we would have to make the final judgment to weed out the weak  
18 programs and to say, "You are not doing the job as well as  
19 someone else is, and therefore we're going to benefit these  
20 other programs."

21 However, I do think that this project and this  
22 recommendation, even though it's all that Howard asked for as

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1 far as all carrots, and not what I've asked for, I think it  
2 does demonstrate some working together of the Corporation in  
3 the field. And I'm going to support it, with two caveats.

4 The two caveats are that this is a demonstration  
5 project that we hope will give us some guidelines to lead,  
6 ultimately, to the other side of the thing. And that has to  
7 be a part of it, and I've been assured -- I've talked to Mr.  
8 Houseman -- that what we're aiming for is twofold: one, will  
9 competition create better projects; and two, can we come  
10 up with -- and are we able to, through the peer review  
11 process -- some criteria, and refine our guidelines to be  
12 better able to judge these other programs that may need to be  
13 weeded out.

14 I know that everybody says "if it ain't broke,  
15 don't fix it," and all this stuff. But out of 300 programs,  
16 we have weak programs. We really do.

17 The other is that I want to make sure that the peer  
18 review is a joint effort between staff and the Corporation  
19 and representatives of the field. And I think that that  
20 needs to be a step that's taken to show that, hey, we can  
21 work together. And I'm the guy that doesn't even mind even-  
22 numbered groups, you know, so that a deadlock is assured

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1 unless people get together and can agree to it.

2 But one way or another, I think there needs to be  
3 a joint effort, because that's part of what this is. And I  
4 think the Corporation, in coming up with and in working on  
5 this demonstration project, has offered its hand and has  
6 worked with the field, I think perhaps to an extent that's  
7 not been paralleled before, I mean, to the extent that you,  
8 in my opinion, controlled what we ended up with.

9 So I would like to see it continue to be a joint  
10 project, and work on. And with that, I'm going to support  
11 it. I do share some of -- I hate to say this -- Mr. Dana's  
12 concerns and feelings about do we need the good projects? My  
13 understanding is that people say the good projects won't  
14 participate if they don't think they've got as much  
15 improvement to do.

16 Well, maybe we need to say, do we want the  
17 outstanding projects involved? Maybe we'd rather give a  
18 little money to the outstanding projects to help us with peer  
19 review and something like that, and to participate in this.

20 I think we're going to find that in reviewing it,  
21 those on peer review may benefit just as much as the programs  
22 themselves do, because I think you're going to find that

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1 you're going to learn something from what competition has  
2 delivered.

3 So those are my thoughts and comments.

4 CHAIRMAN SHUMWAY: Thank you. Just in terms of the  
5 competitive nature of the project, it seems to me that where  
6 you have four clusters, each with four players, and eight  
7 awards to be given at the conclusion, you're actually looking  
8 at a 50 percent possible return ratio.

9 I recognize there could be some duplication among  
10 the award winners. But theoretically, anyway, there would be  
11 a 50 percent return and some of the reason for being there is  
12 going to be determined by chance. In other words, the  
13 players will be drawn by lottery.

14 The further you move in that direction -- that is a  
15 direction of almost a sure guarantee of winning something and  
16 getting there to be determined by chance -- the less  
17 competitive element there is in the project. Now, I realize  
18 that you had to face choices and you've come up with what  
19 seems to be the optimum of those possibilities.

20 But I guess I might be more comfortable if, instead  
21 of four players in each category, there were five, or some  
22 other situation that would make that ratio a little bit less

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1 than 50 percent, particularly since a lottery scheme is to be  
2 used in getting there in the first place.

3 Kathy?

4 MS. DE BETTENCOURT: We started out with 12. I  
5 originally argued that the Corporation didn't have the staff  
6 or the resources to manage more than six. But I was  
7 persuaded by almost everyone that the more programs we look  
8 at, the more we'll learn about performance review.

9 The more we add programs, we have expanded our need  
10 to monitor and oversee these programs, particularly if --  
11 well, if Mr. Kirk insists that the staff go with all of these  
12 week-long monitoring trips to 24 programs, I mean, we've  
13 already discussed, it will have to be a line item to put my  
14 children in boarding school.

15 We need to start at a manageable level. That's  
16 unfortunate. Ideally, we would look at a wide range of  
17 programs. But I think we're trying to be realistic.

18 CHAIRMAN SHUMWAY: Yet, in reading the minutes of  
19 the advisory committee, I think made the point that one of  
20 the greatest values to be obtained from this project would be  
21 going out and visiting other people's camps and finding out  
22 what they're doing and then incorporating those ideas.

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1           Theoretically, if that's the case, you would have  
2 more benefit by more participants, more monitoring visits.  
3 That compounds the expense, I recognize.

4           MR. DANA: First of all, I'd like to say that all  
5 of us on the committee are very, very appreciative of the  
6 work of the small committees and the staff and the large  
7 committees. I think none of us know for certain where this  
8 is leading.

9           But my sense is that the real benefit is going to  
10 be what we're learning, not only about each other, but about  
11 how to measure programs, and how to evaluate and how to  
12 improve. I've just got a few additional concerns, which I'd  
13 just like to surface for committee consideration.

14           In your A and B comparisons, you almost always use  
15 two to three. You do that under B on both, and on A, for  
16 some reason, you go to one to two on the final award. I  
17 don't know what the logic of that was, but I point that out  
18 to you.

19           Two, for some reason, on Page 2 of the proposed  
20 draft request for solicitation -- I agree with what everybody  
21 has been saying about the lucky people are the ones who are  
22 selected for this peer review effort. They are going to

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1 learn as much as the participants. But at the end of this  
2 project, we are going to have 20 people who lived through the  
3 whole thing.

4 Why are we sending all but four home and not  
5 bringing them all together? It says, "once all post-  
6 assessment evaluations are conducted, one member of each peer  
7 review team will participate in the panel to make  
8 recommendations to the LSC president regarding awards."

9 My assumption is that all four or five members of  
10 the team would come make their decision as to who, I hope,  
11 frankly, that the committee says who's the most improved, and  
12 who's the second most improved. But however, you resolve  
13 that issue, whatever awards are going to be made will be made  
14 on the basis of the recommendation of the full team.

15 I would think we ought to build into this proposal  
16 a conference of those 20 souls to get together and get the  
17 machines out and make sure that we fully understand what each  
18 and every one of them has learned from this process, and not  
19 dismiss all but four, and send them back. So that's enough  
20 on that.

21 MS. DE BETTENCOURT: Could I respond to that logic?

22 MR. DANA: Sure.

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1 MS. DE BETTENCOURT: We recognize that. We  
2 understand that the fullest learning from this is going to  
3 come from debriefing the peers, and that's one very important  
4 reason why, regardless of the makeup of the peer review,  
5 someone from the staff has to go along to collect and record  
6 that collective judgment of the peers on the performance of  
7 the programs in the cluster.

8 However, it was suggested that, to make the final  
9 awards, while the peer review teams who have looked at all  
10 the programs in the cluster obviously know that cluster very  
11 well, we need some provision to make sure that the learning  
12 from one peer review team carries over to the next, so that  
13 the factors that one team considers to be very important have  
14 some commonality with what the factors of another team finds  
15 very important.

16 So in other words, rather than having all 20 group  
17 together to make recommendations, at least for awards, not  
18 that they won't get together, not that we won't combine their  
19 judgment, but that they would recommend the awards.

20 MR. DANA: That's exactly what you've said. And I  
21 don't understand the rationale for it. This is post-project.  
22 Everybody's gone home. Both reviews have taken place. These

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1 peer reviewers are going to go back to their other jobs. And  
2 you're sending 12 of them off, and grabbing at random four.

3 It's not clear to me what this is all about. It's  
4 sort of like being an alternate on a jury and being  
5 dismissed.

6 MS. DE BETTENCOURT: We'll work on that. It's just  
7 that we wanted to make sure that the awards were given based  
8 on some uniform standards, and therefore, all the groups need  
9 to -- but okay, we'll work on that.

10 MR. DANA: If you're going to do that, I think what  
11 you should do is do that at the outset, and maybe have a  
12 steering group of the four peer reviews after the initial  
13 reviews. Before you make the initial assessments, you get  
14 together and each develop a learning at that point.

15 I think there's a typo at the top of Page 6. That  
16 first line doesn't make sense. But, on balance, I think  
17 you've all done heroic work.

18 CHAIRMAN SHUMWAY: Kathy has further comment?

19 MS. DE BETTENCOURT: I never got to respond to  
20 something Mr. Kirk said. We had a very difficult time coming  
21 up with any sort of a demonstration project that involved  
22 sticks. And that is simply because Congress has not

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1 exhibited enough trust in the Corporation's ability to assess  
2 performance to allow it to have any sticks or any sanctions.

3 CHAIRMAN SHUMWAY: Sticks as opposed to carrots?

4 MS. DE BETTENCOURT: Sticks as opposed to carrots.

5 And I think one point that was made by Mr.  
6 Dirken -- who Bud twisted his arm into joining the committee,  
7 one point that he made that was very persuasive, I think,  
8 both to the advisory group and the staff -- is that the first  
9 thing that the Corporation has to do is to develop some  
10 credible way of assessing performance.

11 Grants are now given on a basis of presumptive  
12 refunding, because Congress does not have enough faith in the  
13 Corporation's ability to do that. If the Corporation can  
14 develop a credible method of assessing program performance,  
15 then we can go the next step and start to make rational  
16 funding decisions, based on what we've learned and what we've  
17 tested.

18 So his argument was that this is a preliminary  
19 step. And even John Asher agreed with that.

20 MR. ASHER: I'm not sure what I agree with. Just  
21 one, I think it is true that it's hard to discipline  
22 programs. Until we really can measure performance, it's very

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1 difficult to make those sorts of judgments.

2 And two, I think one thing we may learn from this  
3 study is that you can get hit over the head with carrots as  
4 well as with sticks.

5 CHAIRMAN SHUMWAY: Just before I call on you, Mr.  
6 Kirk, a question that I had, with reference to the peer  
7 review structure, I guess goes to the nature of the  
8 recommendation made by the peer review committee.

9 If that recommendation is binding upon the  
10 Corporation without some role in the outcome to be determined  
11 by Legal Services Corporation, it would seem to me that we  
12 are delegating away a portion of our authority to use this  
13 money which is entrusted to us.

14 I wonder if that would be legal? In other words,  
15 we are saying, "Here's a program; here's a lot of money to be  
16 earned at the conclusion of the program. You, as a peer  
17 review group of people, will decide how that money is to be  
18 awarded." Can we make that kind of delegation of authority?

19 I suppose I would prefer receiving the  
20 recommendations of the peer review committees, or the four  
21 representatives of those committees, but then reserving to  
22 the Corporation the right to review whatever criteria it is

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1 they've applied, how they've measured the results, and the  
2 final decision being made by the Legal Services Corporation.

3 Ellen?

4 MS. SMEAD: The final decision would be made by the  
5 Corporation. Fundamentally, these are -- the awards at the  
6 end are a grant, and only the president has the authority,  
7 under the Act, to make the grant. It would be within his or  
8 her discretion.

9 CHAIRMAN SHUMWAY: Is that going to be tailored  
10 into the criteria here so all the participants will know?

11 MS. SMEAD: On one page, we say "would make  
12 recommendations to the LSC president." And that's what  
13 intended there, that the president would have the final  
14 decision.

15 CHAIRMAN SHUMWAY: Okay. Mr. Kirk, did you have a  
16 question?

17 MR. KIRK: Just I feel very strongly about  
18 integrating LSC personnel and people there in the peer review  
19 teams. And I do hope that you'll take that seriously. But  
20 with this committee, I have tried to stay out of these  
21 deliberations. I want the committee to be independent. I  
22 want you to be independent of the advisory committee. I want

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1 you to come up with recommendations.

2           Howard and I have expressed our views. The  
3 chairman has expressed his views. I'm only speaking for  
4 myself. But you need to take these back, and if the views  
5 aren't right, you need to tell us at the next time, "Here's  
6 why I disagree," and then if we want to overrule you, we can  
7 amend it.

8           But this is one time when I really want staff to  
9 feel that they can be independent, that they're not going to  
10 suffer anything. We may vote you down, but I want to hear  
11 your thoughts on it, and not just oh, here, Bud wants that,  
12 and I'm going to go along with it sort of a deal.

13           Fair enough?

14           MS. SMEAD: Fair enough.

15           MR. ASHER: I think we spent about 15 minutes at  
16 the first meeting trying to guess what any number of people  
17 wanted, and decided that that was impossible. And I think we  
18 have to work as representatives and staff to take our best  
19 shot respecting that, certainly from the field perspective,  
20 we are advisory, and that we will provide as good and as  
21 significant input as we can, recognizing that the ultimate  
22 decision is that of the staff and the Board.

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1           CHAIRMAN SHUMWAY: Mr. Kirk?

2           MR. KIRK: You've done a good job of picking what I  
3 didn't want.

4           CHAIRMAN SHUMWAY: A further question I have -- and  
5 I hate to raise this subject -- but in reading the draft, I  
6 was not able to discern what the role of timekeeping might  
7 be. Is it going to be universally required of all  
8 participants that some kind of timekeeping be had? Or is the  
9 proposal going to ignore that subject and just let the ball  
10 bounce as it may? Ellen?

11           MS. SMEAD: The proposal will not ignore that  
12 subject. It is an issue that's been discussed extensively.  
13 There's differing views on the advisory committee. Some have  
14 indicated that no timekeeping should be required.

15           There's also been some discussion of timekeeping in  
16 general, with certain goals that we would negotiate with the  
17 existing program, with a program that's selected, the type of  
18 timekeeping that would be kept.

19           There's different thoughts on the timekeeping  
20 issue. I think staff is pretty uniform in that some sort of  
21 timekeeping should be --

22           CHAIRMAN SHUMWAY: How did you treat it in the

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1 draft, then? That timekeeping would be a part of the  
2 program?

3 MR. DANA: It's required.

4 MS. SMEAD: Yes.

5 MR. DANA: It's required.

6 MS. SMEAD: It is in there.

7 MR. DANA: It's on Page 7, first paragraph:  
8 "Participating programs without timekeeping will need to  
9 implement such a system in order to be involved in this  
10 project."

11 CHAIRMAN SHUMWAY: All right. Any questions about  
12 that from committee members?

13 (No response.)

14 CHAIRMAN SHUMWAY: Okay. We're jumping around  
15 here, but I guess that's sort of the nature of the game this  
16 morning.

17 How did you decide on the sum of \$600,000 as a  
18 budget figure for distinguishing large versus small? Is  
19 there some relevance to that that we should know about, or  
20 was that just arbitrary?

21 MS. SMEAD: Approximately half have budgets over  
22 600 approximately half have less than 600.

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1           CHAIRMAN SHUMWAY: I see. And the same applies to  
2 geographical limits?

3           MS. SMEAD: The same applies to geographical  
4 limits.

5           CHAIRMAN SHUMWAY: Half and half?

6           MS. SMEAD: Right. Approximately.

7           CHAIRMAN SHUMWAY: So numerically, then, you've  
8 drawn the line about in the middle of the entire array of  
9 providers?

10          MS. SMEAD: Correct.

11          CHAIRMAN SHUMWAY: With reference to the A or B  
12 budgets, are there thoughts by committee members as to which  
13 we might prefer, A being the smaller sum of money upfront and  
14 B being the larger sum, the larger award program?

15          MR. DANA: I think they may have substituted the A  
16 and the B, depending. I guess my preference would be to go  
17 with the larger amount upfront, and the larger awards.

18          CHAIRMAN SHUMWAY: Which would be the B budget,  
19 Howard, or a composite of the two?

20          MR. DANA: It's a composite.

21          CHAIRMAN SHUMWAY: Okay. Was there some mixup in  
22 the two budgets? Did we misunderstand the proposal?

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1 MS. SMEAD: No. We were trying -- we were looking  
2 at approximately a million five for overall costs, and just  
3 in juggling the figures around, that's the way they came out.

4 We, in essence, agreed on some ratios and then  
5 certain members of the group hammered out some numbers,  
6 calculated out some numbers.

7 CHAIRMAN SHUMWAY: So the B budget would have the  
8 higher awards, but the smaller startup fees; and the A  
9 budget, those roles are just reversed. And Howard, you're  
10 suggesting that we have higher startup fees and higher  
11 awards, which would be a C budget?

12 MR. DANA: It seems to me that, in one case, most  
13 of the money is two years downstream, and we've got  
14 demonstration grant money requests in this coming budget and  
15 we would have it in the following budget, so that it's not  
16 going to be difficult for us to get from the million we have  
17 now to a million five or six. If people out there do their  
18 job, we ought to be able to find 600,000 sometime over the  
19 next three fiscal years.

20 So I don't think we need to -- and I thought the  
21 numbers, the concept of having an upfront grant to make sure  
22 that current clients are not handicapped by any startup or

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1 effort associated with this -- am I correct, did I hear  
2 somewhere that it's envisioned that the programs that are  
3 participating in this will not be monitored during this  
4 period, so that they will be monitored twice and not three  
5 times in this two-year period?

6 MS. SMEAD: That was recommended by some members of  
7 the advisory group, and it's not been signed off on one way  
8 or the other by the Corporation.

9 MR. DANA: In any event then, I think the concept  
10 of an upfront amount is helpful to make sure that current  
11 clients are not handicapped by this -- by their participation  
12 in this exercise.

13 CHAIRMAN SHUMWAY: If we had the higher upfront  
14 award and we retained the higher award at the end, the budget  
15 then would exceed 1-1/2 million by considerable, I suppose.  
16 You haven't figured that out, have you?

17 MR. DANA: It's an extra 200,000.

18 CHAIRMAN SHUMWAY: 200,000. It would be about  
19 1-3/4 million, then, perhaps?

20 MR. DANA: No. It's 200,000.

21 CHAIRMAN SHUMWAY: Yes, but we're starting with the  
22 1.5.

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1 MR. DANA: In other words, if you took -- oh, no.  
2 We're talking about the top two lines. The eight grants at  
3 ten and eight grants at 15 on B come to 200,000. And the  
4 only change on A is those two lines come to 400,000.

5 So my C --

6 CHAIRMAN SHUMWAY: But if you had the 200,000 of  
7 the 1.556 million, you'd come up with about 1-3/4 million?

8 MR. KIRK: Can we promise money that we don't have?

9 MS. DE BETTENCOURT: There would have to be a  
10 grant. We would have to make that a condition, that it  
11 depends on future appropriations.

12 MR. KIRK: My views are that I would defer to the  
13 committee's best recommendation on that, my personal views.

14 CHAIRMAN SHUMWAY: Are there other areas that the  
15 committee should address, even going back to some of those  
16 we've addressed and maybe haven't done a good enough job? Do  
17 you have any other questions for this committee?

18 (No response.)

19 CHAIRMAN SHUMWAY: Any further comments from  
20 committee members?

21 (No response.)

22

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## M O T I O N

1  
2 MR. KIRK: I move we adjourn.

3 CHAIRMAN SHUMWAY: Did you have any further  
4 comments?

5 MS. SMEAD: No further comments.

6 CHAIRMAN SHUMWAY: Is there any further business to  
7 come before the committee?

8 (No response.)

9 CHAIRMAN SHUMWAY: Mr. Kirk moves we adjourn. Is  
10 there a second?

11 MR. DANA: Second.

12 CHAIRMAN SHUMWAY: All in favor, say aye.

13 (Chorus of ayes.)

14 CHAIRMAN SHUMWAY: No?

15 (No response.)

16 CHAIRMAN SHUMWAY: The ayes have it. The meeting  
17 is adjourned. Thank you.

18 (The meeting was adjourned at 10:08 a.m.)

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