

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS  
OPERATIONS AND REGULATIONS COMMITTEE MEETING

April 7, 1992  
8:30 a.m.

The Stouffer Austin Hotel  
9761 Arboretum Boulevard  
The Sabine Room  
Austin, Texas 78759

Committee Members Present:

Thomas D. Rath, Chairman  
Howard H. Dana, Jr.  
Jo Betts Love

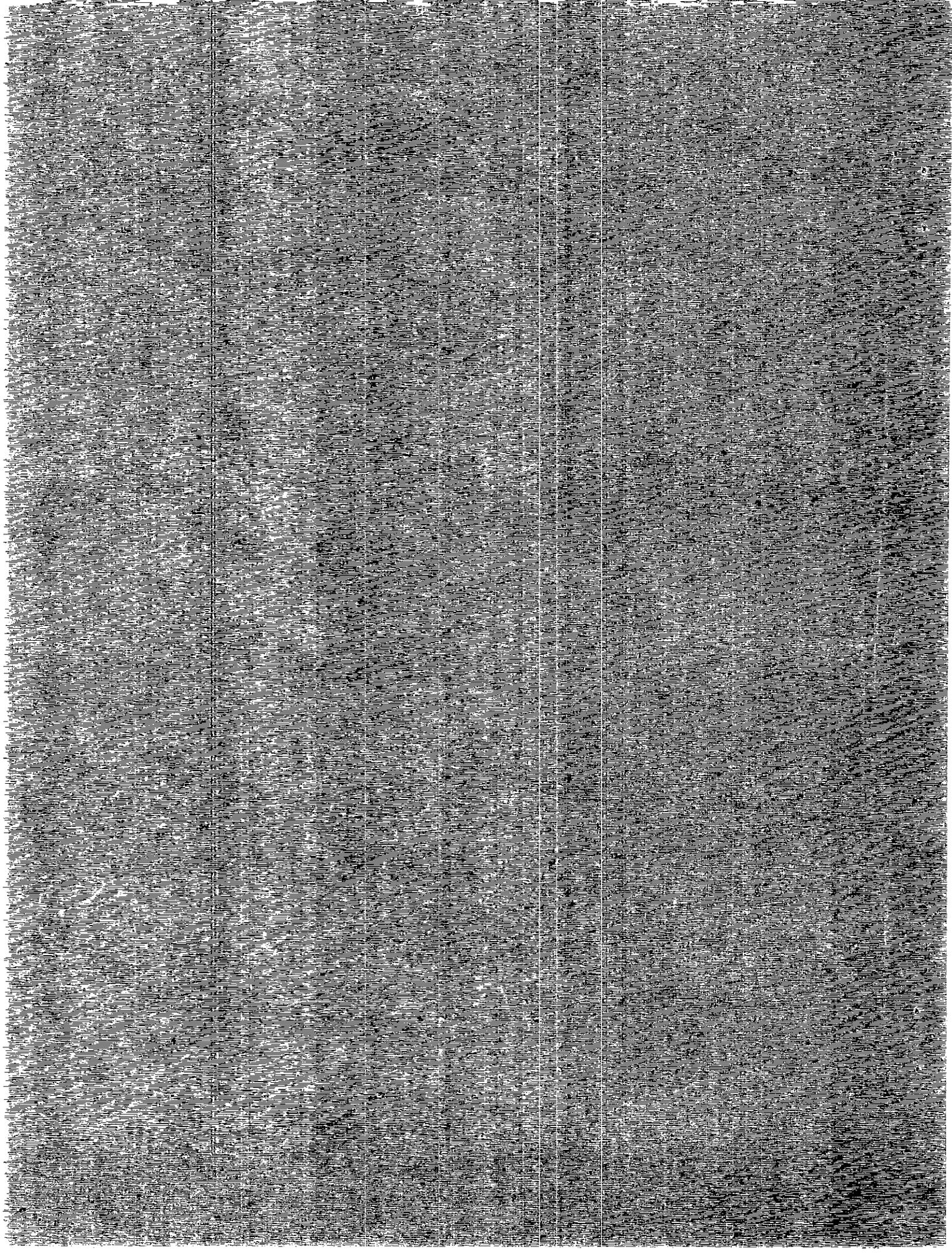
Other Board Members Present:

J. Blakeley Hall  
Basile J. Uddo  
George W. Wittgraf  
Jeanine E. Wolbeck

Staff Present:

John P. O'Hara, President  
Emilia DiSanto, Acting Vice President  
Patricia Batie, Secretary  
David Richardson, Treasurer and Comptroller  
Victor Fortuno, General Counsel

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

1  
2 CHAIRMAN RATH: It being the appointed hour, we  
3 will begin the meeting of the Operations and Regulations  
4 Committee of the Board of Directors of the Legal Services  
5 Corporation. For the record, I am Tom Rath, who is chairing  
6 the committee.

7 Other committee members present this morning are  
8 Ms. Love, Mr. Dana. We are also joined by the Chairman of  
9 the Legal Services Corporation, Mr. Wittgraf. Ms. Wolbeck is  
10 here, and Mr. Hall is here. And, I don't know, are there any  
11 other Board members that I am missing? And also with us at  
12 the table is Mr. O'Hara, who is the president of the  
13 Corporation.

## A P P R O V A L O F A G E N D A

14  
15 CHAIRMAN RATH: I will begin by entertaining a  
16 motion to approve the agenda with the condition that we swap  
17 Items 3 and 4, in light of Ms. deBettencourt's travel plans.

## M O T I O N

18  
19 MR. DANA: I so move.

20 CHAIRMAN RATH: It has been moved.

21 MR. LOVE: Seconded.

22 CHAIRMAN RATH: And it has been seconded. Are

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1 there any questions or comments?

2 (No response.)

3 CHAIRMAN RATH: Hearing none, all in favor, say  
4 aye.

5 (A chorus of aye.)

6 CHAIRMAN RATH: Contrary minded?

7 (No response.)

8 CHAIRMAN RATH: So moved.

9 APPROVAL OF MINUTES OF MARCH 8, 1992, MEETING

10 CHAIRMAN RATH: Next will be the approval of the  
11 minutes of the March 8, 1992, meeting which are contained in  
12 the book.

13 M O T I O N

14 MR. DANA: So moved.

15 MS. LOVE: Seconded.

16 CHAIRMAN RATH: It has been moved, and it has been  
17 seconded. Thank you. Are there any questions or comments?

18 MR. DANA: Are the attachments appropriate for this  
19 meeting?

20 CHAIRMAN RATH: Is that the handwritten part?

21 MR. DANA: Yes.

22 CHAIRMAN RATH: I don't know. My reading of those

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1 attachments, Mr. Dana, is that they reflect some comments  
2 that were made in New Orleans, and since I wasn't there, it  
3 is difficult for me to comment on them.

4 MR. DANA: My recollection was that we had two  
5 meetings in New Orleans. Am I wrong?

6 CHAIRMAN RATH: Well, let me say, I think that what  
7 that does --

8 MR. DANA: No, this is the Washington meeting.

9 CHAIRMAN RATH: This is the Washington meeting, but  
10 the attachment, the handwritten attachment reflects the  
11 comments made in New Orleans and I believe what those are is  
12 just a statement of the Options 1, 2, and 3, which might make  
13 the reading of the rest of the minutes more meaningful.

14 MR. DANA: Or the prior minutes.

15 CHAIRMAN RATH: Right.

16 MR. DANA: Okay. I'm happy now.

17 CHAIRMAN RATH: Any further questions or comments,  
18 additions or omissions?

19 (No response.)

20 CHAIRMAN RATH: Hearing none, all in favor, say  
21 aye.

22 (A chorus of aye.)

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1 CHAIRMAN RATH: Contrary minded?

2 (No response.)

3 CHAIRMAN RATH: So moved. We will now move to Item  
4 4, which will become Item 3, being warned that Item 3 might  
5 take hours to complete. Ms. deBettencourt and Ms. Smead have  
6 approached the table. Good morning. Thank you for joining  
7 us.

8 We did have a brief discussion yesterday at the  
9 Board meeting, Ellen, as you know, to the nature of your  
10 discussions, but I would appreciate putting on the record  
11 before this committee the information you gave me yesterday,  
12 and which I reported in rather halting fashion to the full  
13 Board on the nature of your discussions with the advisory  
14 group and the status of the discussions on the competition  
15 project. Thank you.

16 CONSIDERATION OF REPORT BY STAFF REGARDING

17 COMPETITION DEMONSTRATION PROJECTS

18 MS. SMEAD: Thank you. For the record, my name is  
19 Ellen Smead. I am director of the Office of Field Services,  
20 and I chair the Staff Competition Committee as well as the  
21 Advisory Group. Kathy deBettencourt will introduce herself.

22 MS. deBETTENCOURT: Kathy deBettencourt, of the

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1 Office of Field Services.

2 MS. SMEAD: She has also been chairing the small  
3 group that has been reviewing the criteria and developing the  
4 criteria.

5 The Advisory Group met with staff on March 31st to  
6 discuss the performance criteria and to discuss Options 1 and  
7 2. We started out with a presentation by Jim Durkin of  
8 General Motors Corporation, and he showed us the indicators  
9 that he uses in assessing the work done by his -- the law  
10 firms that do work for GM.

11 Some of these indicators were the number of  
12 billable hours per attorney and the cost per case, and some  
13 of these criteria could be useful for us, but they were also  
14 just showing us a way to evaluate. The examples that he used  
15 in the morning were useful throughout the day through other  
16 discussions.

17 We then were able to achieve a general consensus on  
18 the draft performance criteria, which the small group had  
19 worked on. We expect, of course, that there will be change  
20 as we implement these criteria and test out the hypotheses.  
21 We are in general agreement on the criteria.

22 CHAIRMAN RATH: Is there an iteration of those

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1 anywhere for us?

2 MS. SMEAD: I have the draft here.

3 CHAIRMAN RATH: I don't know that I need to go  
4 through it today, but I think it would be helpful as we try  
5 to contribute some small part to your progress, that we at  
6 least get a chance to read it and react to it.

7 MS. SMEAD: We can distribute this.

8 CHAIRMAN RATH: All right. Make sure it goes -- I  
9 should note for the record that Messrs. Shumway and Kirk  
10 could not be here today, and it was an unfortunate part of  
11 scheduling. We seem to be having some problems in getting  
12 everybody in the same place on the same day. We are just  
13 going to have to work hard on that for our next meeting.

14 But if you could make sure that we get those, I  
15 assume that they will be the subject of further discussion as  
16 we get closer to actually doing something, but I would think  
17 that it would be helpful to circulate them certainly through  
18 the committee, and I have no problem with them going to the  
19 full Board. Thank you.

20 MS. SMEAD: The next thing we did was, we began  
21 discussing some measurement methods for those criteria. We  
22 had some general ideas, but the small group was going to get

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1 back together later this month, on April 27th, and do more  
2 work on the measurement tools.

3 We next moved to Option 1, which was the so-called  
4 tri-parish area, where we have the unserved area.

5 CHAIRMAN RATH: Well, let's put it the other way  
6 around. The subject was serving the unserved area --

7 MS. SMEAD: Which is the tri-parish.

8 CHAIRMAN RATH: -- which we had identified as the  
9 tri-parish area of Louisiana as a potential test case.

10 MS. SMEAD: Correct. And in our discussions, the  
11 group felt that that was such a small area and so  
12 unrepresentative that it really wouldn't be worth spending  
13 the money on that area. Over a two-year period that would be  
14 \$250,000, approximately, out of the competition budget, which  
15 we felt could be better spent someplace else.

16 That doesn't mean that we won't have -- that that  
17 area will remain unserved. We would just process it through  
18 our regular channels, which would be a competition, a head-  
19 to-head competition, selecting only one grantee for that  
20 area.

21 CHAIRMAN RATH: Now, is there going to be another  
22 -- Option 1 was an option where I thought there was some

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1 degree of closure. Are we going to identify another  
2 geographic area where Option 1 might fit better and be a more  
3 representative model?

4 MS. SMEAD: We don't have another area. We don't  
5 have another unserved area.

6 CHAIRMAN RATH: Obviously, competition has worked  
7 well.

8 MS. SMEAD: We spent a good two or three hours  
9 discussing Option 3, which people felt was more useful, and  
10 we had lots of ideas going all over the Board, literally, but  
11 we do think it will be useful for testing the criteria that  
12 have been developed, and we expect to have more discussions  
13 on this Option 3 when the full group meets again on May 7th.

14 CHAIRMAN RATH: Well, are we now down to really two  
15 options?

16 MS. SMEAD: Yes, we said down to two options, and  
17 we are only focusing on the so-called Option 3 at this point.  
18 We will begin discussing option 2 at the next meeting, but we  
19 have been focusing -- we focused most on the last meeting on  
20 Option 3.

21 CHAIRMAN RATH: Okay. Do you want to restate for  
22 us Option 3, just in the interest of the record?

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1 MS. SMEAD: It is where similar programs would  
2 compete against each other for a one-time performance bonus,  
3 and that can take different forms. We have talked about  
4 having almost head-to-head competition, two programs  
5 competing against each other, or possibly a multitude of  
6 programs competing against each other.

7 Other issues are, should we look at where they are  
8 at the end of the competition period, or should we look how  
9 far they came from the beginning? So, there is --

10 CHAIRMAN RATH: Well, I think either way we are  
11 going to have to identify where they are at the beginning.

12 MS. SMEAD: Yes, we always have to identify where  
13 they are at the beginning, but when choosing the winner, do  
14 we look at how far the program came, or do we look at where  
15 the program is, a snapshot at the end, or head-to-head?

16 CHAIRMAN RATH: I also assume that an option within  
17 Option 3 could be, there could be a couple of winners, and  
18 that you could, if you awarded them on how far they have  
19 come, one could get rewarded more. If both improved, each  
20 would get something.

21 MS. SMEAD: Yes, we were talking about that, too.

22 CHAIRMAN RATH: Mr. Dana, did you have a comment?

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1 MR. DANA: Just, am I correct that the common  
2 denominator of Option 3 is that it is not competition head-  
3 to-head in the sense of the same geographical area? They  
4 could be miles apart?

5 MS. SMEAD: Correct.

6 CHAIRMAN RATH: Further comments, Ms. Smead?

7 MS. SMEAD: No, I don't have any further comments.

8 CHAIRMAN RATH: I think the thing that I sense from  
9 my colleagues on the Board, both within the committee and  
10 without, is a desire to put this on some kind of a reasonable  
11 time line, and I wonder what your thoughts are on that this  
12 fine morning.

13 MS. SMEAD: Well, the goal I set -- I will iterate  
14 it, I guess, because I was using your goal -- was to get this  
15 done, get Option 3 done in May. We are still on that track,  
16 and hopefully we will get it done.

17 CHAIRMAN RATH: And when we say "get it done", that  
18 means we would have an RFP that goes out, or some kind of  
19 announcement of competition, so we would begin soliciting  
20 proposals or responses or entrants?

21 MS. SMEAD: Hopefully, we will have a draft to the  
22 committee next time, at least a good outline, so that we

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1 could have a draft shortly thereafter.

2 CHAIRMAN RATH: All right. Kathy, do you have  
3 anything to add beyond what Ellen said?

4 MS. deBETTENCOURT: No, only that the small group  
5 will be next working measurement. We have pretty much  
6 isolated what we need to do, but we need to refine that. We  
7 didn't want to hand out the criteria yet, because we are  
8 still in the process of producing them.

9 CHAIRMAN RATH: I think that's fine, and I just  
10 think in order to make sure the interaction goes well between  
11 the committee and the group and staff at a fairly early  
12 stage, when you think it is ready for us to see, I'd like to  
13 see it just to make sure we haven't completely strayed from  
14 what -- I am very sensitive to what members of the committee  
15 want to see, and I want to make sure that they are built into  
16 this process, too, because the way it is going to work best  
17 is if there is some degree of closure, both on the process  
18 and the results.

19 So, the quicker that I can disseminate that through  
20 my committee, and get them, hopefully, all pointed in the  
21 same direction, the quicker we are going to be able to get  
22 out to bid.

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1           Now, let me ask you another question, not to  
2 prolong this, but do you need this committee again to sit as  
3 a committee prior to the Board's May meeting, which is when I  
4 would anticipate we would be meeting again? Is there a need?  
5 It sounds to me like still the most important work is being  
6 done between the staff and the advisory groups.

7           MS. SMEAD: We wouldn't need another meeting of the  
8 committee.

9           CHAIRMAN RATH: Fine.

10          MS. SMEAD: We scheduled our May 7th meeting so  
11 that we can come to some closure before the next Board  
12 meeting.

13          CHAIRMAN RATH: Howard, or Jo?

14          MR. DANA: I am looking at an Attachment 2 to some  
15 communication I received, which is the spread sheet. Has  
16 this evolved much beyond this?

17          CHAIRMAN RATH: Well, let me, just for the record  
18 -- Ms. deBettencourt has just handed me a 16-page plus spread  
19 sheet. You couldn't do this in my office, because we  
20 skinned all the paper up so it fits in these smaller  
21 folders, but I have just seen this for the first time. Is  
22 this the document on criteria that you are working on, Kathy?

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1 MS. deBETTENCOURT: Yes.

2 CHAIRMAN RATH: Do you want to talk about this,  
3 Howard?

4 MR. DANA: I just want to ask a question about it.

5 CHAIRMAN RATH: You may.

6 MR. DANA: This is an analysis where we have the  
7 performance areas on the lefthand side, the major criteria  
8 column the next column, indicators that the criteria are  
9 being met in the next column, measurement steps in the fourth  
10 column, and then data sources in the fifth column.

11 One of the problems that has not been addressed in  
12 here as yet is the apples and oranges problem. If, in fact,  
13 you are going to make a comparison, you have almost got to  
14 attach numbers to these, I think, or grades, or letters, or  
15 something, and evaluate, and so you are, almost by  
16 definition, going to have to attach some objective criteria  
17 to these.

18 Have we moved to that step? I would think that  
19 that might cause a lot of concerns.

20 MS. deBETTENCOURT: Yes, we have begun discussing  
21 that. We haven't come to any closure on it. We are sticking  
22 with the five performance areas that we set out at the

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1 beginning. Those do seem to be fairly comprehensive in  
2 describing the program's performance. The second column, the  
3 criteria under each of those areas explains what we mean  
4 under each of those five areas.

5 We would still have to assess or grade a program  
6 under each of the five areas. We haven't come to a decision  
7 yet on exactly how that grading would occur. We had  
8 discussed, for an example, in this committee the five areas,  
9 for example, each being worth 20 points, you know, for a  
10 total of 100, and then they would have a score on each one.

11 The five areas are very interrelated, which is one  
12 issue that keeps coming up. How do you weight each of the  
13 five areas? You might say that quality -- there is a  
14 tradeoff involved in all of these. You know, there is a  
15 certain amount of access that is required.

16 But that always requires a tradeoff with cost, and  
17 also with quality, so we have to go back now and figure out  
18 what is the best way to weight the five areas, or how do we  
19 reassess or how do we assess the tradeoffs each program has  
20 to make in determining how many to serve at what quality,  
21 level of quality, and for what cost.

22 So, we are still working on that. But these are

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1 all criteria within those original five areas that we would  
2 still be evaluating.

3 MR. DANA: So, in order to meet the May deadline  
4 for an RFP, you are saying that you will have all this done  
5 by, in effect, the next meeting of the Board?

6 MS. deBETTENCOURT: We are trying.

7 MR. DANA: Mr. Chairman, I think that is true. And  
8 I don't think it helps necessarily to have another meeting of  
9 this committee, but if there is an area where -- or if there  
10 is a time in this process where somebody needs to make a  
11 decision that the committee and the Advisory Committee are  
12 having trouble with, I think you might want to think about  
13 the possibility of at least scheduling something right around  
14 the middle of the period between now and when we meet.

15 CHAIRMAN RATH: Well, that was the point of my  
16 inquiry earlier, Mr. Dana, and actually, in the colloquy  
17 between Board members at the table, Ms. Love indicated to me,  
18 too, her concern that we keep this process moving, that we  
19 think we have been clearly charged by the Board to bring this  
20 to closure in terms of getting an RFP in the field in a  
21 timely fashion.

22 And, as I indicated, I accept the decision on

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1 Option 1, and I think probably rather than have invested a  
2 lot of time and money and sort of even psychic commitment to  
3 that project if it wasn't going to work, I think that is one  
4 of the benefits of the discussions that you have had to come  
5 to that conclusion, so I don't have any problem with that  
6 decision.

7 But I do have a concern that we keep this process  
8 engaged and moving forward, and I want to be in a position to  
9 report to the Board in May that we are either about to do  
10 something or in fact are doing something. And my only  
11 concern, and I know the difficulty of scheduling, is that  
12 this is the 7th of April, and it just seems like a long time  
13 between now and the 27th before there is further discussion,  
14 which I realize doesn't mean there is not other work being  
15 done, but I just wonder whether we can sort of put the whip  
16 on the process a little bit.

17 MS. SMEAD: Unfortunately, we tried to schedule  
18 meetings earlier, but other people's schedules could not  
19 accommodate it. That was the earliest we could get the small  
20 group together.

21 CHAIRMAN RATH: I was afraid of that. I guess what  
22 I would hope is that in the meantime, to the extent drafts

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1 can be exchanged, and material can flow back and forth, while  
2 we are sitting around the table, would really, I think, send,  
3 in the terms of this election year, the message that we have  
4 to get done.

5 MS. deBETTENCOURT: We have started doing that, and  
6 even among the small group we have broken up this and started  
7 passing it around, and everyone has taken a part of it to  
8 work with, so we are not relying on the meetings. Hopefully  
9 that will happen.

10 CHAIRMAN RATH: Okay, you hear what we are saying.

11 MS. deBETTENCOURT: Yes.

12 CHAIRMAN RATH: Thank you. Further questions or  
13 comments for these folks?

14 MR. DANA: The scheduling problems, I think it  
15 might be very helpful, both for internal Board politics and  
16 otherwise, to be absolutely clear that the scheduling  
17 problems are with the Advisory Committee and not with our  
18 staff.

19 MS. SMEAD: That's correct.

20 MR. DANA: Thank you.

21 CHAIRMAN RATH: Internal Board politics? Further  
22 questions or comments?

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1 (No response.)

2 CHAIRMAN RATH: Hearing none, thank you both very  
3 much. Now the dreaded committee report from Hades. Ms.  
4 Sparks and Mr. Richardson, good morning.

5 MS. SPARKS: Good morning.

6 MR. RICHARDSON: Good morning, sir.

7 CHAIRMAN RATH: Now, let me just put this in  
8 context as well. I was joking, trying to joke, last evening  
9 that this committee had labored in relative obscurity, and  
10 gratefully so, for much of my time on the Board, and seems to  
11 have late become a place where people like to give problems.

12 So I see us at the moment dealing with the  
13 competition issue, with the work that you are doing on  
14 timekeeping, and waiting in the wings, although not far in  
15 the wings, is the work that Mr. Dana correctly apprises us  
16 that we must get on with in terms of reviewing regulations,  
17 in terms of the October deadline.

18 I see them moving somewhat in that sequence,  
19 although I think that there are aspects of what you are about  
20 in terms of timekeeping that clearly impact on the  
21 competition schedule, in terms of some issues that are in  
22 there, in terms of how you measure, and it does seem to be

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1 being forced upon us a little bit by what the Congress is  
2 doing, although informed this morning that that discussion on  
3 reauthorization may be put off a while yet, but even so,  
4 there is a fairly clear direction in some of those comments  
5 about their desire to do timekeeping.

6 So, while I see it perhaps sort of next up to bat  
7 or the on-deck circle, in the idiom of the day, I don't sense  
8 that it is one that shouldn't be brought along as quickly as  
9 we can, and I know from both Mr. Kirk and Mr. Shumway that  
10 they have a desire to bring this along, and I would not be  
11 doing them service if I didn't make that comment, that they  
12 are both anxious to see a proposal come together.

13 We have seen your proposal, and I think that what  
14 we really want to hear today is sort of your report on that  
15 and reaction to it, and get some reaction from the committee,  
16 but I am putting everybody on notice through this meeting  
17 that this is upon us, and even though we are focused most  
18 directly in terms of timing on moving the competition piece,  
19 Option 3, probably, into place by May, this has got to follow  
20 close on its heels, and to that end, I'd be glad to hear what  
21 you have to say this morning.

22

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## 1                    CONSIDERATION OF STAFF PROPOSAL ON TIMEKEEPING

2                    MS. SPARKS: Thank you, Mr. Rath. For the record,  
3 my name is Susan Sparks. I am acting director of LSC's  
4 Office of Monitoring, Audit, and Compliance. I am joined by  
5 David Richardson, who is LSC's comptroller and director of  
6 LSC's Office of Financial and Administrative Services.

7                    I thought it might be helpful for us to clarify  
8 what staff is thinking, talk a little bit more about our  
9 proposal, and offer some plans of what we would like to do  
10 next, if that is consistent with this committee's wishes.

11                    As you know, this proposal, which was presented at  
12 the last Board meeting, is preliminary in nature. We would  
13 like to do a further analysis of the potential cost and  
14 benefits of a timekeeping requirement. As discussed at the  
15 last Board meeting and in our preliminary proposal, the March  
16 1988 GAO report recommended that LSC do four things.

17                    Among those was to determine what information LSC  
18 and programs needed to better manage and monitor programs.  
19 They asked us to establish objectives and functions for the  
20 information system. They asked that we use systematic and  
21 analytical techniques to assess cost, and that we develop an  
22 orderly design and development implementation process.

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1           You should know that the GAO report, when it talks  
2 of an information system, it had in mind what LSC at that  
3 time was looking at, which was an integrated, automated  
4 information system that involved case service reporting,  
5 functional accounting, and timekeeping, integrated,  
6 automated, with a reporting element to the Corporation.

7           Our proposal is not that. We don't recommend that.  
8 We instead are looking at a timekeeping requirement, and we  
9 would like to use the GAO recommendations as a guide, but we  
10 don't feel that we are bound to those.

11           We have looked at and done a preliminary analysis  
12 of the benefits. That is Attachment 4 of the red binder that  
13 was provided at the last Board meeting. We have also  
14 developed criteria and objectives for the system.

15           Here, I am referring to the four minimum criteria  
16 of the proposed timekeeping requirement, which includes 15-  
17 minute intervals; second, that the funding source be  
18 identified for the time spent on each activity; third, that  
19 programs distinguish between direct and indirect time  
20 relating to the delivery of legal services; and fourth, that  
21 time records be maintained in a manner that allows LSC  
22 access.

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1           The two objectives of the proposal are to identify  
2 the percentage of LSC and non-LSC funds expended on direct  
3 delivery to a named specific client versus that expended on  
4 indirect support functions, and to identify the work funded  
5 by LSC versus that funded by other funding sources.

6           CHAIRMAN RATH: Could you give me No. 4 again,  
7 Susan?

8           MS. SPARKS: The fourth objective?

9           CHAIRMAN RATH: Please.

10          MS. SPARKS: The criteria is that time records be  
11 maintained in a manner that allows LSC access.

12          We need to do some additional work on the  
13 assessment of the cost of a system that meets these criteria.  
14 We also need, of course, to do more work in preparing the  
15 implementation of the process. What we would like to do is  
16 refine the proposal in these areas, following a more in-depth  
17 analysis of those programs who are actually keeping time.

18          We would like to work with them, contact them to  
19 learn more about the benefits that they see, more about the  
20 actual costs that they are incurring. We would like to know  
21 what they think of the overall cost and benefits, and we'd  
22 like to work with them to develop a reasonable estimate of

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1 the staff time involved in working with the system now in  
2 place.

3 We then, of course, are prepared to refine the  
4 proposal, based on what we learn. We also have begun  
5 initially reviewing commercial timekeeping software packages  
6 to try to identify some that would be helpful or suitable,  
7 available to our programs. We have seen a few. Our initial  
8 review indicates that the hardware and software necessary to  
9 run a fairly sophisticated timekeeping package which is  
10 actually used by one of our grantees can be attained for as  
11 little as \$1,000.

12 Given that most grantees have PCs -- most of them  
13 do -- to run the timekeeping software that we are looking at,  
14 the start-up purchase costs appear to be relatively minimal.  
15 We do expect that our analysis and our review of these  
16 programs will provide us with sufficient information to come  
17 to you with cost.

18 I also wanted to just briefly address the Board's  
19 thoughts expressed at the last Board meeting on LSC's access  
20 to time records. You may recall, Mr. Rath, you and Mr. Dana  
21 expressed some concern about how programs can maintain  
22 meaningful time records which would be useful in their work

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1 while protecting confidential information from disclosure to  
2 LSC.

3           Again, LSC is not interested in reviewing  
4 confidential information. We want to do everything from the  
5 very beginning to encouraging programs to maintain records  
6 that minimize the risk of disclosure of that information. At  
7 the same time, we need to tell you that access to these  
8 records is essential if the benefits relating to  
9 accountability are to be realized.

10           We need time records so that we can determine which  
11 funding source is being charged for the various activities  
12 engaged in by a recipient. At the present time, many of our  
13 programs allocate staff salaries monthly, quarterly, or even  
14 annually, based on a flat percentage which represents their  
15 rough estimate of time spent under each grant.

16           This means that at any given time, on any given  
17 day, there is no way to tell what grant an attorney is  
18 working under. It also means that there is no way to verify  
19 the program's estimate of the percentage of time spent on,  
20 for example, IALTA-funded activities and LSC-funded  
21 activities. In short, in David's words, there is no audit  
22 trail. There is no clear audit trail.

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1           CHAIRMAN RATH: I understand that, and I don't have  
2 a problem with the need to maintain it, that is, the trail,  
3 but your second objective is the funding source. Now, I  
4 think you are being nice on the 15-minute segment. I do that  
5 in my business. I make all of my associates very happy  
6 because we do it in tenths of an hour, which I think is  
7 pretty common in private practice, so I don't have any  
8 problem with the 15-minute segments.

9           But the funding sources, do you envision that being  
10 done by the individual attorney as he or she enters their  
11 time?

12           MS. SPARKS: I think that is one way it can be  
13 envisioned. The other way is that it could be, at the end of  
14 the day, given to the recordkeeper, the timekeeper, who can  
15 make those allocations on a daily basis.

16           CHAIRMAN RATH: That's a lot of work.

17           MS. SPARKS: Yes, sir.

18           CHAIRMAN RATH: I mean, if you are asking me as an  
19 attorney whose principal -- I am playing devil's advocate  
20 with you now, but my principal job is to render service to my  
21 client, and unless I've got some ready-made formula -- which  
22 I don't think you are going to find acceptable, David. You

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1 are going to want it broken down by task.

2 I can't say to you, Mr. Richardson, you are a 60-  
3 20-20 attorney, you know, 60 LSC, 20 IALTA, 20 something  
4 else, United Way attorney, so you just do a routine across-  
5 the-board breakdown. If I've got to go on a case-by-case  
6 basis or on an hour-by-hour basis and break down my time and  
7 say, now, wait a minute, is this going to be allocated to  
8 this or that, that is a pretty tough thing to do.

9 Is that what you envision doing? Do you envision  
10 each lawyer as they enter their time going through some  
11 mental calculus that says -- and, by the way, while we are  
12 doing this mental calculus, do they get to bill that time to  
13 LSC? I mean, I always wonder that. Do I get to bill the  
14 time I'm billing to the client?

15 MS. SPARKS: LSC would be happy to show that  
16 overhead in this instance.

17 CHAIRMAN RATH: Well, be careful what you ask for,  
18 because you just might get it.

19 MS. SPARKS: I think that that is an option, and in  
20 the scenario that you lay out, when I think of a program with  
21 33 funding sources, it is a very difficult option. I think  
22 there are other options, that at the end of the day, or

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1 depending on what kind of software used by the program --

2 CHAIRMAN RATH: Be careful when you use that  
3 shorthand, "at the end of the day." Remember that the end of  
4 the day is at the end of the day, and I'm carrying around in  
5 my bag right now my times sheets for last week, and I hope  
6 they get done some time on an airplane between here and  
7 wherever I go to next.

8 MR. DANA: By the end of the day.

9 CHAIRMAN RATH: But by the end of the day, they may  
10 not see these timesheets at the end of the day. The end of  
11 the day is when you are in a crisis mode, and you are running  
12 off to court, and you've got the client whose life is coming  
13 apart or whose business is coming apart in your office, and  
14 you don't always get those done. The end of the day may be 8  
15 o'clock at night. It ain't that easy.

16 MR. DANA: Mr. Chairman.

17 CHAIRMAN RATH: Yes, sir.

18 MR. DANA: If you are playing the devil's advocate,  
19 I would like to play the devil. Am I correct that this  
20 program is currently under the exclusive control of the  
21 committee that appears in the footnote 1 of your memorandum  
22 of March 4?

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1 MS. SPARKS: Yes, sir. That committee was the  
2 committee that worked together in 1989.

3 MR. DANA: Who is on the committee that is working  
4 on the timekeeping program?

5 MS. SPARKS: There is no committee. It is a number  
6 of staff members, David, myself, Ellen, Jack, Amelia.

7 MR. DANA: Is it entirely in-house at this point?

8 MS. SPARKS: Yes, sir, at this time.

9 MR. DANA: Mr. Chairman, until we get -- I can't  
10 say this in a particularly delicate way, so I won't. But I  
11 think the longer that this project is done entirely in-house,  
12 it dooms the final product to going nowhere. The field is  
13 out there listening. They have no input. We are talking  
14 about quarter hours or tenth of hours or details.

15 This discussion right now is sort of without regard  
16 to the Houseman-Miller memorandum. Mr. Miller is here in the  
17 room. We are talking about it as though this was really  
18 going to happen, notwithstanding the fact that Congress has  
19 spanked us once for proceeding in an in-house, quick way. I  
20 understand that my fellow Board members are anxious to  
21 demonstrate that they mean business in some respect, but I am  
22 really concerned about process.

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1           CHAIRMAN RATH: I understand that, and I hear what  
2 you are saying, and I hope staff does. I have to tell you  
3 that Mr. Kirk was very clear with me yesterday. He could not  
4 be here, so I am going to try to be very sensitive to his  
5 concerns. He -- and I don't want to misstate it -- he was  
6 not in favor of some kind of a collaborative process in the  
7 same sense that there has been involved in the competition  
8 study for timekeeping.

9           I am in the middle ground a little bit. I think as  
10 long as the proposals keep getting made, and they are reacted  
11 to, you almost have a de facto process, but I guess I would  
12 tend to side with you that when we get a little further along  
13 in this, we ought to get people sitting down, because we can  
14 design what we think is the most effective system in the  
15 world, and if there is not support for it from the field it  
16 is not going to go anywhere.

17           I am concerned about timekeeping, and I think -- I  
18 am concerned about it at two levels. I might as well say it.  
19 Number One, I am concerned about what appears to me to be the  
20 unyielding opposition from the field, and I think the field  
21 is wrong. There is going to be timekeeping, and there is  
22 gong to be some form of it. It is not unreasonable. I think

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1 it can be an effective management tool.

2 I brought it in to the attorney general's office  
3 when I was attorney general of New Hampshire. I did it on  
4 the basis of trying to help young lawyers -- I think a lot of  
5 these staffs have young lawyers -- try to manage their time  
6 effectively. There is a big difference between a \$100 job  
7 and a \$1,000 job, and timekeeping helps you on that.

8 So, I am not opposed to it as a concept. I think  
9 it is the tyranny with which we live in private practice, and  
10 I don't want to ever visit that evil on anybody who didn't  
11 sign up for that, but it is part of the world. I think it is  
12 clear that the Congress wants us to do it and that some form  
13 of it is going to occur.

14 But I also have a problem with going too far with  
15 it, and I think what I am looking for is some ability to  
16 strike a balance here between what I happen to think -- I  
17 think my comments, obviously, betray that, that you can try  
18 to build too much into a timesheet. I mean, darn it, the  
19 lawyer's job is to represent their client, and I think the  
20 audit trail is important, and I think we clearly have a  
21 responsibility to check on the efficient and the effective  
22 utilization of the funds we are making available to him.

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1           But I don't know how much you can put that on a  
2 lawyer, and I think what we've got to be is creative, and  
3 find some other way to model that. Now, I don't have any  
4 problem with saying to people who want you to keep time in  
5 fractions of hours, and that goes someplace at some point in  
6 time.

7           I'm okay with you to that point, but then to break  
8 down this funding source thing, while I know it makes sense  
9 from an accountant's standpoint and from somebody who is  
10 following track numbers, it is a very tough thing. I mean, I  
11 am not an accountant. I couldn't do that. I can't remember  
12 the numbers of the client matters. I give this piece of  
13 paper to my secretary, and she makes sense out of it. I  
14 respect what she does, because they pay the bills.

15           But I just can't do that. And that is not what I  
16 am. I have a lot of resources at a lot of these agencies. I  
17 have telephone sheets that come to me every day off a  
18 computer with clients, you know, with telephone numbers and  
19 the amount of time I spent on the call, and all those things,  
20 and that will clue me back in.

21           I mean, it's all a method of recovering costs, but  
22 I can't structure that. I'm just not good enough, and I

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1 think it is asking a lot to the lawyer who is principally  
2 concerned with getting the result for their client to do it.

3 So I think you need to really think that aspect of  
4 it through, but I think there has got to be a message here,  
5 to the field, it is going to happen, and two, to the staff,  
6 that as it happens it has got to be in a way which is  
7 reasonable. And I am not sure how we get there if we don't  
8 talk to each other.

9 MR. DANA: You don't.

10 MS. SPARKS: Mr. Rath, just one point. In '89,  
11 when we initially identified these criteria, the criteria  
12 came from our review of packages in place in our programs.

13 CHAIRMAN RATH: From timekeeping packages?

14 MS. SPARKS: Yes, sir. There are programs, and I  
15 can't give you a number, to answer the follow-up question,  
16 there are some programs that do allocate along funding  
17 sources. So this is not something that is in our mind as an  
18 ideal theoretical concept. This occurs.

19 CHAIRMAN RATH: It is done?

20 MS. SPARKS: It is done. It is done in Tennessee.  
21 It is done in Florida. It is done, and I can give you some  
22 examples of timesheets that show you how it is done. So,

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1 these are not theoretical concepts. What we would like to do  
2 is get more information from those programs that have  
3 timekeeping systems so we can tell you more about that.

4 CHAIRMAN RATH: I think that's good, and I think  
5 that that is where you ought to go from here, but I think it  
6 is clear from what my colleagues on the Board have told me,  
7 from the Congressional impetus that is contained in the  
8 latest report on reauthorization, that we are moving towards  
9 it, but it has got to make sense.

10 I mean, if it can be done, let's find out where it  
11 is being done, and then let's find out what the objections  
12 are to it if we try to do it. There are some things that  
13 work that are so idiosyncratic that they cannot be  
14 transported. And I want to make sure that we don't get into  
15 that.

16 I mean, there are certain things that work in a  
17 certain setting that just can't be expanded to a broader  
18 world. On the other hand, there are ideas, and creative  
19 ideas, that come out of individual situations that can be  
20 modified and altered and made available. I don't have any  
21 problem with where you want to get with it, and I think you  
22 are clearly being told that we have to get there. I've got a

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1 question about -- I do it every day, or once in a while I do  
2 it every day.

3 MR. DANA: Mr. Chairman, I understand that you  
4 understand from Mr. Kirk that he doesn't want to involve the  
5 field in a collaborative, deliberative way to develop  
6 timekeeping proposals. I do. And if I am outvoted, fine.  
7 But I think it is nuts to proceed down this road that we have  
8 already done once before in the GAO report, to come up with a  
9 system that Congress tells us we can't implement, the GAO  
10 says we haven't developed properly, with adequate  
11 consultation.

12 We've got people who in some cases have never  
13 practiced law, who haven't filled out their own timesheet,  
14 who don't understand the field, deciding what is to be done  
15 on a nationwide basis.

16 CHAIRMAN RATH: Mr. Dana, I don't disagree with you  
17 on that. What I will not do is violate a representation I  
18 made to Mr. Kirk yesterday, and to Mr. Shumway, that we were  
19 not going to take dispositive action today, it was going to  
20 be in the nature of a report. That's why I do think that the  
21 next time we have this meeting, to the extent we can do it,  
22 we need to have everybody here, and I know with this

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1 particular committee, given schedules, it is a difficult  
2 thing to do, but we have to have everybody in the room if  
3 that is the direction we are going to go.

4 What I understand from our two staff members who  
5 are in front of us this morning is that they want to do some  
6 more work before we even get to that point, before we are  
7 even ready for a collaborative, which involves going out and  
8 getting additional data and reviewing places where it is  
9 working. I think that that is a sufficient instruction for  
10 this morning, to keep this process going.

11 In the meantime, I need to react more thoughtfully  
12 to the original proposal to Mr. Houseman's material, which I  
13 have read but have not digested, and to the Congressional  
14 material, which I just received yesterday, to have a sense of  
15 where we are.

16 MR. DANA: Could we get, before the next meeting, a  
17 staff response to the Houseman-Miller memo?

18 CHAIRMAN RATH: Well, I would think that to the  
19 extent your proposal has another iteration it would encompass  
20 that, wouldn't it?

21 MS. SPARKS: Yes, sir.

22 MR. DANA: What I want to get is some sort of

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1 dialectic here where we are going back and forth, I say this,  
2 you say that, and I think each side -- I mean, we are a bunch  
3 of grownups in the room. They can read it and see where it  
4 has been modified to reflect their changes.

5 And I have enormous regard for the Houseman-Miller  
6 team and their ability to generate reaction very quickly to  
7 any document. I think it would be better if you all were at  
8 the same table, but I can't do that this morning and keep my  
9 commitment to other people.

10 Mr. O'Hara?

11 MR. O'HARA: Thank you, Mr. Chairman. I just want  
12 to, for the record, respond to some of the comments that have  
13 been made. I have sat with the staff when they have been  
14 doing this, and I know that there is the impression that some  
15 of the staff has never practiced law and has never done  
16 timekeeping. There are some that have practiced law, and  
17 have done timekeeping, and I am going to tell a little story  
18 right now about timekeeping that not even the staff knows.  
19 We haven't discussed this.

20 My position on this is to sit and listen and  
21 evaluate what the staff is saying and to evaluate what we  
22 receive from the field, and then we kick it around and

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1 discuss it, but timekeeping is not new. I guess I am giving  
2 away my age now. I can remember as a very young FBI agent in  
3 1955, when Mr. Hoover required all his agents to account for  
4 their time.

5 Now, the reason we did that was for three purposes.  
6 One, we worked alone. We worked in very rural areas, and in  
7 very dangerous assignments at times. If any of us got hurt,  
8 as sometimes happened, that daily sheet was in the car, and  
9 we could tell where the agent had been, what he had been  
10 doing, and we could almost tell where he was headed because  
11 of the types of interviews he was doing, the things he was  
12 looking at.

13 We used to keep that, not in 15-minute increments,  
14 but in however long it took us to do the particular task that  
15 we had. We also had 116, as I recall, different violations  
16 that we had to investigate, and on that sheet we had to  
17 record -- and I can remember back, and this shows you how  
18 ingrained this can be. I can remember 91 was a bank robbery  
19 classification; 42 was a fugitive classification; 25 was  
20 Selective Service; 26 was interstate theft of vehicles,  
21 dealing with car rings. I could go on and on, but it just  
22 becomes a part of you, it becomes so automatic.

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1           The second thing it was used for was the fact that  
2 when Mr. Hoover went to the Hill to ask for money, I would  
3 challenge anybody in here to go back and find out a time when  
4 he not only got what he asked for, but he got more, because  
5 he was able to take our daily reports and show what we were  
6 doing and the amount of time we were spending, and that it  
7 was well worth it.

8           CHAIRMAN RATH: Do you think those were the only  
9 reports Mr. Hoover used when he went to the Hill?

10          MR. O'HARA: I think he liked to -- I will be  
11 honest with you. There were some things we didn't put on our  
12 daily reports. I can remember going to certain meetings  
13 where you had to wear certain garments that I did not put on  
14 my daily report, because it was activities that we were just  
15 not supposed to do, but you had to do it to find out what was  
16 going on.

17          So, what I want to say is, I think, from my  
18 perspective, as I watch the staff, I think they are being  
19 fair. We want to hear from the field. We will evaluate what  
20 they give us. And I don't think we are going to ignore  
21 anything they say. I haven't heard anybody say that's a lot  
22 of nonsense, you know, we won't do that. I think they are

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1 listening. They are reading. We are discussing. I think we  
2 will kick around ideas with them, and I am concerned that the  
3 committee not be delayed.

4 I think we've got to move quickly. I think that  
5 what they are proposing is kind of rough. It can be  
6 improved, and we look forward to suggestions on improving  
7 things, and I think we will come out with a product that  
8 everybody can live with.

9 But I think that it is something that -- having  
10 spent 24 years of my life on Capitol Hill, I can tell you  
11 when something is floated for the first time, it's a pretty  
12 good sign that it is going to float until it gets up there  
13 and becomes a part of our everyday life.

14 MR. DANA: Mr. Chairman, Mr. President, I have been  
15 filling out timesheets for 30 years. Is that right?

16 CHAIRMAN RATH: I beat you by eight.

17 MR. DANA: Pretty close. I hate them. Most  
18 lawyers do. I think under circumstances that you describe,  
19 that made a lot of sense. I think that an FBI agent who is  
20 risking his life understands that a paper trail of what he  
21 was doing would be very helpful in solving a problem.

22 The field doesn't understand right now. It is

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1 something that has achieved political mass on Capitol Hill,  
2 might actually get passed, although right now we are  
3 operating under an injunction not to implement it except by  
4 regulation.

5 My concern is entirely with process. Our staff,  
6 under your leadership, is trying very hard to regain respect  
7 within the field. I think our staff, working in  
8 collaboration with the Advisory Committee on Competition, is  
9 beginning to do that. There is a dialogue. We are breaking  
10 down the stereotypes. We are building and solidifying the  
11 stereotypes by proceeding in this fashion, and I am concerned  
12 about the process.

13 I may be, and I appear to be, a lone wolf on this  
14 issue, but I think the process is wrong and is going to doom  
15 this effort to conflict and reaction instead of working with  
16 the field, as we are doing in competition.

17 CHAIRMAN RATH: Well, I don't want to suggest that  
18 you are a lone wolf, but this morning I am just not going to  
19 bring anything further, because I will honor the commitment I  
20 made yesterday.

21 I thought you were going to tell us the story about  
22 the lawyer who dies and goes to heaven. He gets up there and

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1 St. Peter says, "And how old are you?" And the guy says,  
2 "Forty-six." He says, "You are 46?" He says, "Yeah, what  
3 did you think?" He says, "I've been looking at your  
4 timesheets. I thought you were 212." That's an old joke.

5 MR. O'HARA: If I could comment on that joke, I  
6 really am 240.

7 CHAIRMAN RATH: You never worked in the private  
8 sector.

9 MR. O'HARA: But I did work in the private sector,  
10 as a matter of fact, and I did keep timesheets, both at  
11 Flying Tigers and in our law practice. We kept ours in the  
12 law practice in 10 minute intervals.

13 I think there is another thing here that I am  
14 looking at, and looking at the appropriations process and the  
15 legislative process on the Hill. Let's say we get  
16 timekeeping on the books.

17 I think this is the way we're going to get this  
18 \$700 million and more that we need to do this, because I  
19 think that is the thing that the Congress looks at, and the  
20 amount of work that goes into something, and when they see  
21 the need and they know that these attorneys can't possibly do  
22 it in the amount of time they have, I think that is what is

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1 going to help us to get the additional money we need, because  
2 while we are talking, and I have said this before, and  
3 everybody else knows it and says the same thing, the client  
4 population is growing.

5 MR. DANA: I must confess, I do not understand how  
6 filling out timesheets is going to persuade --

7 MR. O'HARA: Well, I can tell you that in the case  
8 of the Bureau, you will remember I said we used to write the  
9 classification down. The timesheets we used for the purpose  
10 also in determining how much time we were spending on each of  
11 these cases in the classifications.

12 And Mr. Hoover used to go before the Appropriations  
13 Committee and point out that we had -- at that time I think  
14 we had about 5,500 agents, and several hundred were assigned  
15 to security, and several hundred were assigned to criminal  
16 matters, and several hundred were assigned to account  
17 matters, and he would be able to lay out before the  
18 committees the number of agents he had and how many he  
19 needed, and he would justify that by showing the amount of  
20 time that was spent and the work that was still yet to be  
21 done.

22 CHAIRMAN RATH: I don't want to cut this off, but I

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1 think you know where we want to go. I also want to allow  
2 some time for some public input, and I see some members of  
3 the -- Susan and David -- David, you have been remarkably  
4 restrained this morning. Always welcome your contributions.  
5 Is there anything further you want to add? I know, Susan,  
6 you had several more hours you could go, and could probably  
7 have this place surrounded like the Alamo by the time we are  
8 done, but do you have anything else you want to add on the  
9 record at this point?

10 MS. SPARKS: No, sir.

11 CHAIRMAN RATH: Okay. Well, you will keep us  
12 current, and you are going to go out and try to see how this  
13 works, and I think you have heard our concerns, and we may --  
14 I think this is clearly bubbling right up there, so I think  
15 the next time we meet, I would like to see how much further  
16 along you are. I clearly want that shared, even if we don't  
17 have meetings. I want it shared with everybody.

18 I don't want any surprises. The Holiday Inn  
19 approach to timekeeping: the best surprise is no surprise. I  
20 want people to see it and get a chance to react to it, get us  
21 memos, and hopefully we can discuss and put on the agenda the  
22 next time a discussion of how this can best happen, and we

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1 are glad to hear what Mr. Kirk has to say, and Mr. Shumway.  
2 Hopefully they will be present.

3 We will give you some direction in the meantime.  
4 If, as you do this, you feel the need to pick up the phone  
5 and call somebody from the field, you have my blessing to do  
6 so.

7 MS. SPARKS: Thank you.

8 CHAIRMAN RATH: Thank you both. Mr. Miller is  
9 here. Is there anybody else on the staff who wants to  
10 comment on this? If not, Dee, do you want to give us your  
11 thoughts? I mean, you have heard where we are going. By the  
12 way, I do appreciate the material we have gotten from you,  
13 and it is helpful in focusing it, and the mere fact that we  
14 are not -- does everyone have it, or do just the members of  
15 this committee have it?

16 MR. MILLER: I have extra copies here if there is  
17 anyone who does not have it.

18 CHAIRMAN RATH: I think that Mr. Wittgraf and Mr.  
19 Uddo and others would probably like to stay current with it,  
20 but the mere fact that we are not going over it in detail  
21 doesn't mean it is not being read and considered, and I am  
22 trying to get the most complete package together before we

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1 can have some substantive discussion.

2 MR. MILLER: I appreciate that.

3 CHAIRMAN RATH: Do you want to identify yourself  
4 for the record, Dee?

5 STATEMENT OF MELVILLE "DEE" MILLER, JR.

6 MR. MILLER: I am Melville "Dee" Miller, Jr., from  
7 Legal Services of New Jersey. I just want to make a couple  
8 of observations. I am not going to go through an exegesis on  
9 the 11 pages or whatever it is. First of all, just from a  
10 personal perspective, I speak as a person who has kept time  
11 for 23 years, and my program keeps time and has down to  
12 tenths of an hour.

13 But that is a system that was designed to meet our  
14 needs, to manage the program, to, indeed, segregate funds by  
15 funding source, by function, and to meet a variety of  
16 informational needs in terms of what is going on in the  
17 program. I would not for a moment want to impose an aspect  
18 of that on another program, because they've got their own  
19 kind.

20 The key question, I think, if you boil down where  
21 all of the verbiage in our memorandum, the key question, it  
22 is both Congressionally, through -- at least GAO-mandated,

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1 but it is also mandated by common sense, is, what is it we  
2 need to know?

3 CHAIRMAN RATH: I agree.

4 MR. MILLER: With the greatest degree of clarity we  
5 can mount. And the second question then is, what is the --

6 CHAIRMAN RATH: How do we do it?

7 MR. MILLER: What is the waterfront of ways in  
8 which we can get that?

9 CHAIRMAN RATH: I appreciate that statement,  
10 because were I to counsel privately with the staff, that is  
11 what I would say. You've got to decide what it is you need  
12 to know that we need to present to somebody who is looking  
13 over our shoulders, and then we need to work with our folks  
14 in finding what is the most effective, least painful way to  
15 do it. That, to me, is the nature of this inquiry.

16 MR. MILLER: That is at least speaking for the  
17 authors of the memorandum. That is where we come from. It  
18 is not -- you made the comment before -- unyielding  
19 opposition. I think it is only unyielding opposition if  
20 there is a notion of, impose the timekeeping system without  
21 dealing with those questions that I just posed in an up-front  
22 fashion.

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1           The one other comment I would make is, I understand  
2 the staff needs to have time to regroup and do its further  
3 analysis, but from the experience I have had, both in 22  
4 years or something of legal services, both exchanging memos  
5 and exchanging things in person, what I think we are going to  
6 need very soon in this process is face-to-face interchange,  
7 talk, not the exchange of paper, because the exchange of  
8 paper can be misunderstood, misread, et cetera, et cetera.

9           So, in terms of struggling to, especially, as you  
10 just said, the answer to how do we meet the needs once the  
11 needs are identified, that face-to-face interchange, I think,  
12 is critical. I would be happy, for those of you who have had  
13 a chance to look at the memo, if there are any specific  
14 questions or challenges or whatever, I would be happy to  
15 respond to them, but that is the end of my presentation.

16           CHAIRMAN RATH: Any comments from the committee or  
17 questions from the committee for Mr. Miller?

18           We are joined now at the table by our colleague,  
19 Mr. Uddo. Mr. Uddo, do you have some questions? Mr. Miller,  
20 don't quite go away. Mr. Uddo has joined us somewhat later  
21 than the other members of the committee, but he is here.

22           MR. UDDO: I am not a member of the committee, I

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1 will point out to the chairman.

2 CHAIRMAN RATH: He distinguishes us by his  
3 presence.

4 MR. UDDO: It took you long enough to recognize I  
5 was here. I haven't read your memorandum yet, but a couple  
6 of questions. First of all, do you think that there are  
7 things a corporation legitimately needs to know that  
8 timekeeping will assist them in finding out?

9 Mr. MILLER: The question for me, as I said  
10 earlier, is, Is timekeeping either the only or the best way  
11 to find out some of these information needs? I am not sure.  
12 I am open on the question. I am really not sure. I have a  
13 lot of trouble with the question until I know specifically,  
14 until there is really the interchange around the purpose.

15 I am not trying to sandbag here.

16 MR. UDDO: You are trying to avoid my question,  
17 though. Either you think there is stuff the Corporation  
18 needs to know or there isn't.

19 MR. MILLER: There are definitely things that the  
20 Corporation needs to know, but whether --

21 MR. UDDO: That's my first question. Do you think  
22 there is information that the Corporation needs to know.

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1 Just answer that.

2 MR. MILLER: Sure.

3 MR. UDDO: Okay. Secondly, then, is your dispute  
4 really with whether timekeeping helps them find out that  
5 information of if something else is a better way to find out  
6 that information?

7 You are not arguing against the conclusion that  
8 there are things that the Corporation needs to know. As I  
9 understand what you are saying, you really admit that there  
10 are certain things the Corporation needs to know. What those  
11 things may be, I guess, are subject to dispute, but it seems  
12 your bigger dispute is, is timekeeping the way to find that  
13 out, or is there some other way to find it out?

14 MR. MILLER: That's fair. That's right.

15 MR. UDDO: All right. Can you just sort of give me  
16 a couple of the things that you would put in the category of  
17 things that you think the Corporation needs to know that  
18 might be achievable by timekeeping? I am not committing you  
19 to say it is, but might be achievable by timekeeping.

20 MR. MILLER: The Corporation needs to be able, I  
21 believe, needs to be able to understand, describe,  
22 articulate, report to the world out there and Congress, the

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1 variety of things that Legal Services programs do in addition  
2 to direct, individual case services. There are a whole lot  
3 of things we do, community legal education, other kinds of  
4 major impact advocacy, amicus work, all sorts of things.

5           It needs to be able to get its mind around and get  
6 a grip on that and be able to -- it is important work. It is  
7 central to doing good things for low income people. How to  
8 do that has not been solved by the Corporation in its  
9 existence or by OEO before that. There are a variety of  
10 narratives, and that sort of thing, but they don't lend  
11 themselves very easily to that kind of articulation.

12           The argument has been made by some that timekeeping  
13 is a way of quantifying that. My own initial reaction to  
14 that -- not a closed mind on it, but my initial reaction to  
15 that is, there are better ways of trying to quantify it, and  
16 actually, that kind of timekeeping out as a way of  
17 quantifying all of these other kinds of activity leads us  
18 down a road that other government-funded programs have been  
19 led and been bilked in some ways, that is, been taken  
20 advantage of.

21           It is not, I think, the strongest, most powerful  
22 way to communicate the importance of the work, but that is an

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1 example, at least, of an area of inquiry that I think needs  
2 to be pursued.

3 MR. UDDO: Can you give me an idea of some of the  
4 alternatives to timekeeping to finding out that information?

5 MR. MILLER: Well, I think you need to break it  
6 down piece by piece. Take an area like community legal  
7 education, for example. If we got a structure -- this is  
8 really, I think, where the Advisory Committee on Competition  
9 is going in terms of trying to describe program activity.

10 If you get a structured report form which  
11 quantifies instances of community legal education, and  
12 approximates audiences, and perhaps gets into the thorny  
13 world of articulating estimated impact -- that is the kind of  
14 tricky one -- none of that has anything to do, really, with  
15 timekeeping. It is a different kind of quantification.

16 It may be that the Corporation -- if I am a program  
17 manager, I certainly want to know how much time my staff are  
18 spending on community legal education. You know, I want to  
19 know where the resources are.

20 It may be that the Corporation has a legitimate  
21 interest in knowing nationally the allocation of resources in  
22 a gross way. Whether that requires either timekeeping --

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1 maybe timekeeping is the best way to do that, but whether it  
2 requires timekeeping in quarters of an hour or tenths of an  
3 hour and all this other stuff along with it seems to me a  
4 very, very debatable question, and a large margin of room  
5 there to think it through.

6 CHAIRMAN RATH: I don't want to cut you off, but I  
7 know Ms. Rogoff wants to speak, and we have a 9:50 cutoff.

8 MR. UDDO: Okay. That's all. I will wait until we  
9 get further along in the process, now that the Chairman has  
10 cut me off.

11 CHAIRMAN RATH: We appreciate, as ever, your  
12 contributions.

13 MR. UDDO: Despite saying he didn't mean to.  
14 Mercifully brief.

15 A PARTICIPANT: Would this be what you would refer  
16 to as a cameo appearance?

17 CHAIRMAN RATH: It is brief a cameo appearance, but  
18 appreciated nonetheless. Ms. Rogoff, thank you very much,  
19 and thank you for your hospitality yesterday afternoon.

20 STATEMENT OF REGINA ROGOFF

21 MS. ROGOFF: Thank you. My name is Regina Rogoff.  
22 I am the project director of the Central Texas Legal Aide

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1 Society, and I wish that we could have recorded the  
2 conversation in my office yesterday, particularly for some of  
3 those who left early, before the in-depth discussion of  
4 timekeeping took place.

5 CHAIRMAN RATH: You can count on the fact that it  
6 was reported back to us, in detail.

7 MS. ROGOFF: Well, of the group of Board members  
8 from my program, and I will say that this has not actually  
9 ever been discussed at the Board level, so that discussion  
10 did not replicate any discussion that the program has had at  
11 the Board level, but you are getting just the reaction of  
12 individual attorneys who represent a very broad cross-section  
13 of the legal community in Austin as well as a client board  
14 member who is president-elect of the Board. In that cross-  
15 section, you had a plaintiff's lawyer, an IBM corporate --

16 CHAIRMAN RATH: Plaintiff's lawyers don't count,  
17 because they don't keep the time.

18 MS. ROGOFF: That is one perspective on this issue.  
19 Not all lawyers keep time, and we kind of start with the  
20 assumption that somehow timekeeping is universally done by  
21 lawyers, and that is not the case.

22 CHAIRMAN RATH: It is universally hated by lawyers.

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1 MS. ROGOFF: Universally hated. I will accept  
2 that. I think we can stipulate to that. A lawyer from a  
3 major litigation firm and a law professor, all of whom I  
4 thought spoke very articulately and compellingly about how  
5 what we are trying to do with timekeeping is 15 years behind  
6 the time, and is counter to what the latest thought in this  
7 area is, which is that what we are really wanting to do is go  
8 to a private-oriented way of measuring what we do, not a  
9 time-oriented.

10 And I think that they also spoke very eloquently to  
11 the basic abuse of the timekeeping system, and the only real  
12 check on the private attorney timekeeping system is that  
13 clients are billed for it, and since Legal Services clients  
14 would never see that time record presumably because they are  
15 not being charged, there is no protection, no way of assuring  
16 that the time records were accurate.

17 CHAIRMAN RATH: Don't you agree with Mr. Miller  
18 that the essential inquiry in terms of the recordkeeping  
19 issue, and maybe we are confusing it by calling it  
20 timekeeping --

21 MS. ROGOFF: Yes.

22 CHAIRMAN RATH: What we are trying to do in the

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1 recordkeeping and the data trail issue is just what he said.  
2 What do we need to know in terms of the responsibilities that  
3 we have, and what is the best way to accomplish that?

4 MS. ROGOFF: I agree with that.

5 CHAIRMAN RATH: So let's not get hung up on -- and  
6 right now the mechanism that is being focused on we are  
7 calling timekeeping, but maybe my contribution this morning  
8 is, I want to call it recordkeeping.

9 MS. ROGOFF: Well, and I think that would go a long  
10 way towards maybe getting the conversation where it should  
11 be, rather than bogged down in timekeeping, because I think  
12 when we are talking about what information the Corporation  
13 needs to have, in addition to the general information about  
14 what programs are doing in terms of cases, and case types,  
15 and the kind of data that is captured by CSRs, and that we  
16 have talked at various times in the past about improving CSRS  
17 so they provide more information about what stage of the  
18 case, how much effort has gone into a particular case, not  
19 just the reason that it was closed.

20 If we are really honest with each other, what this  
21 whole dialogue is about is prohibited activities, what the  
22 accounting dialogue is about is prohibited activities, that

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1 we not do with LSC funds what we are prohibited from doing,  
2 and that we have a way of capturing that.

3 I see you kind of shaking your head. I think that  
4 the timekeeping --

5 CHAIRMAN RATH: Well, I mean, is the glass half  
6 full or half empty? I don't look at it that way. I really  
7 don't. I look at it as an opportunity to demonstrate what  
8 the programs are doing, to demonstrate that there is a level  
9 of accountability, all the things that the Congress has been  
10 concerned about.

11 I've got to believe that there is enough stuff that  
12 is allowed that is going to keep you folks busy enough, and I  
13 know there is, that I am not worried about that, so don't put  
14 that label on me.

15 MS. ROGOFF: Well, except that the point that I am  
16 getting to is that I think what we have is the tail wagging  
17 the dog, that to the extent that prohibited activities are  
18 the crux of the timekeeping agenda, it would make a whole lot  
19 more sense if we kept time to document those activities that  
20 are performed by programs that are prohibited by LSC but that  
21 are conducted with other funding sources so that we would  
22 know for sure how much time -- for example, we do legislative

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1 advocacy, and in our case we actually do it solely consistent  
2 with the LSC regulations.

3           Nevertheless, we keep time records of legislative  
4 advocacy in the off chance that we may have not dotted an I  
5 or crossed a T, that we would be able to demonstrate that we  
6 had done such a de minimis amount of legislative activity  
7 that we had other funding sources that would more than  
8 adequately offset that. I would like to get that out on the  
9 table, because I --

10           CHAIRMAN RATH: Fine. I don't agree with that. I  
11 mean, I don't agree that that is the crux of the inquiry. I  
12 just cannot accept that. That is not the crux of my inquiry.  
13 That is not where my premise as to why this is appropriate  
14 begins.

15           MS. ROGOFF: Because in my mind, from my  
16 perspective as a manager, that is the only reason that I  
17 would choose to impose a timekeeping system, which would be  
18 to assure that I was documenting everything that might be  
19 problematic, that might raise some eyebrows so that we were  
20 able to demonstrate.

21           As far as those other things, the information that  
22 you have, I think there are other ways, without timekeeping,

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1 that we can adequately provide information that would meet  
2 the Corporation's needs, that meet my needs as a manager, and  
3 that would meet Congress's needs.

4 And I think that one of the problems, and it was  
5 actually my client board member last night who said it,  
6 people do that which is measured, and if what we are moving  
7 towards is a timekeeping system, timekeeping will determine  
8 how things are done within the program. People will be  
9 focused on the timekeeping as opposed to on the client  
10 service.

11 Timekeeping will become the club that we have to  
12 have. You won't get your paycheck unless you turn in your  
13 time records. The priorities of the organization will be, I  
14 think, distorted to accommodate timekeeping whereas what we  
15 really want to do is find ways of measuring, and I will give  
16 you one example.

17 CHAIRMAN RATH: Good. I have to tell you, I hear  
18 what you are saying, and I appreciate it, and I don't  
19 diminish the level of your concern but I think some of those  
20 things that you have just outlined as sort of a parade of  
21 horrors are things that you, as a manager, are going to  
22 have to deal with.

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1           To the extent that we can reach closure as to what  
2           is an appropriate way to keep records, I think you are going  
3           to have to -- you and others similarly situated are going to  
4           have to communicate the positive aspects of it, and, I mean,  
5           there may be things. There are times in my office I have to  
6           say to somebody, Look, if I can't get the bills out this  
7           month because you haven't got your timesheets in, that is  
8           going to have an impact on the bottom line.

9           Now, it's a little different story here, but I am  
10          just saying that it is not necessarily bad, and I think that  
11          we have got to find ways to de-escalate the rhetoric here.

12          MS. ROGOFF: I would like to turn back to the idea  
13          of recordkeeping, because we do require people -- and as a  
14          manager I do insist that people turn in documentation of  
15          things that we find important and useful, and again, getting  
16          back to the idea of trying to explain to third parties the  
17          value of what we do, and the accomplishment, one of the  
18          things that we have begun to capture is information about the  
19          dollar value of awards that our clients receive in a variety  
20          of areas as a result of our advocacy.

21          And they range from foodstamp awards, to  
22          supplemental security income awards, to Social Security

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1 disability retroactive awards, and prospective monthly  
2 awards, and when you accumulate that information on a monthly  
3 or quarterly basis and demonstrate to funding sources that  
4 over the course of a year \$1 million of income to the clients  
5 and to the community has been generated, to me, that is a  
6 valuable piece of information, as opposed to the number of  
7 hours that were spent on any of those cases.

8 CHAIRMAN RATH: I don't want to cut you off,  
9 either. We are running up against the time problem we've  
10 got. All I want to say is, it is a method that apparently,  
11 at the moment, has some Congressional support to demonstrate  
12 a level of accountability, and it is all tied up in the  
13 number of dollars that we as a Board are able to achieve for  
14 the field. I mean, there may be, indeed, a political quid  
15 pro quo here that programs are going to have to make  
16 judgments on.

17 MS. ROGOFF: I understand that argument. And in  
18 the context of the political quid pro quo I say that we  
19 should look to those things that -- where reporting provides  
20 assurance to the Board, this Board and to Congress regarding  
21 the activities -- to the extent that this is a political  
22 issue, Congress is concerned about certain types of

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1 activities. I don't really think that a congressman cares  
2 how many hours each individual Legal Services advocate  
3 spends --

4 CHAIRMAN RATH: No, but they do care about our  
5 ability as a corporation to see that our funds are expended  
6 correctly, and I don't mean by prohibitive activities. I  
7 mean that they are used effectively, that we are getting some  
8 degree of value for what we are paying out, and one of the  
9 things they have told us is, here is a way, and again, I am  
10 not sufficiently conversant.

11 I only saw the Congressional report very briefly  
12 yesterday, and I have not pretended to be an expert on it,  
13 but this is another level of concern being expressed for that  
14 approach, and I think we've got to be sensitive to it.

15 It is they that pass out the dollars in the  
16 ultimate sense, and we need to do -- it is no different,  
17 Regina, in my judgment, than if I am in private practice and  
18 I am dealing with an insurance company. The insurance  
19 company wants to employ me. It is work I want to do. And  
20 they say to me, and this is how you are going to bill us, and  
21 this is the level of accountability we want.

22 Not to say that we are doing things that we

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1 shouldn't be doing, but to say, break it down in these  
2 segments, and delineate who is doing what, and what hourly  
3 rate you are charging, and on that basis, I mean, it is  
4 almost like a contract situation.

5 And I think that that is where we are getting, and  
6 the question is, can we keep the terms of that contract as  
7 least onerous as possible to the programs and satisfy the  
8 needs of the Congress, and that is what this process is  
9 about.

10 MS. ROGOFF: We are really saying the same thing,  
11 and the only place that we differ is that I don't think  
12 Congress has said that you have to have 100 percent  
13 timekeeping, that there has to be some timekeeping, and I  
14 think it is this Board's prerogative to decide what that  
15 timekeeping would cover.

16 And I think that you would be consistent with  
17 Congress if you limited it to those things that we believe  
18 Congress would be most concerned about, and in my mind those  
19 are the restricted activities. There may be other things.

20 CHAIRMAN RATH: It seems to me that that is the  
21 enterprise that have embarked upon at this point.

22 MS. ROGOFF: And the only point I am making is that

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1 I think that that can be done short of 100 percent  
2 timekeeping. As the IBM patent lawyer said last night, at  
3 IBM, they rely on the fact that you have time and attendance  
4 records to show that you have a lawyer in the office working  
5 a day, a day's work, and that the lawyer has produced a  
6 certain amount of product, and in her case the product is  
7 different than in our case, but that it is a product, and  
8 that over the course of a year, you have your time and  
9 attendance records and your end result of your work product.  
10 The timekeeping -- I am just saying that there is a lot more  
11 flexibility here.

12 CHAIRMAN RATH: I understand. What I am saying is,  
13 we haven't focused on anything. I don't want to cut you off.  
14 I appreciate your comments. Is there anybody else from the  
15 public? Because we are running up against and I am running  
16 up against a personal time problem.

17 (No response.)

18 CHAIRMAN RATH: Hearing none, I don't see Ms.  
19 McCollum here. Maybe Ms. Batie would note that we would  
20 -- or Ms. Sparks -- clearly are going to need a lot more time  
21 on this when we get together next, so that the next Ops and  
22 Regs meeting, given the scheduling problems that we have, we

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1 cannot have it on Sundays because of Mr. Shumway's schedule  
2 -- I am looking at Ms. Batie for the records standpoint  
3 -- is scheduled for a Monday in May.

4 Is that correct, Ms. Batie? And I don't know how  
5 we're going to do this. We've got to think this through.

6 Both Mr. Shumway and Mr. Kirk have a problem  
7 staying overnight. I don't think we can do this kind of a  
8 meeting and get through the level of discussion we have, Mr.  
9 Chairman -- Mr. Wittgraf is on my left at the moment -- in an  
10 hour and a half.

11 If the Board schedule were sufficiently flexible,  
12 perhaps we could meet at 8:30 and go like 8:00 to 11:00 on an  
13 Ops and Regs meeting and start the Board meeting somewhat  
14 later, depending on how heavy that Board meeting is, and I  
15 would ask that you give that some consideration.

16 MS. LOVE: Mr. Rath, Mr. Shumway suggested going in  
17 one day, coming right back, because he was tied up on  
18 Sundays. Saturday wasn't convenient, so it was a one-day  
19 thing, in and out.

20 CHAIRMAN RATH: That's right. What we are trying  
21 to do, we are still trying to tie it to a meeting of the  
22 Board, if we could, and maybe we could meet here like at

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1 -- we could meet at 8:30 on a Monday morning, which he can  
2 usually make, 8:00 a.m., and then go to like 10:00 or 10:30  
3 and get a little more time, and then start the full Board  
4 meeting a little later that day.

5 MR. UDDO: Mr. Rath, just for your information, Mr.  
6 Dana and I were talking about the possibility, if we do get a  
7 House vote this week, the Reauthorization Committee may want  
8 to meet off schedule from the Board to consider whether to  
9 make any sort of comments as it moves to the Senate, so there  
10 may be a scheduled reauthorization meeting between now and  
11 the next Board meeting which you might be able to hook onto  
12 with this committee.

13 CHAIRMAN RATH: We are going to have to work on  
14 scheduling, and I guess all I am doing is not announcing the  
15 date of the next meeting today.

16 MS. LOVE: Okay. That's fine. I just wanted to  
17 let you know that Ms. Sparks will not be available the week  
18 of the 27th.

19 CHAIRMAN RATH: Of April?

20 MS. LOVE: Of May.

21 CHAIRMAN RATH: Of May. Well, we are going to meet  
22 before then anyway. Thank you all very much. We will

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