

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
OPERATIONS AND REGULATIONS COMMITTEE MEETING

February 16, 1992

3:55 p.m.

The Westin Canal Place Hotel
100 Rue Iberville
THE TERRACE ROOM
New Orleans, La 70130

Board Members Present:

Norman D. Shumway, Acting Chairman
J. Blakeley Hall
William L. Kirk, Jr.
George W. Wittgraf
Jo Betts Love
Howard H. Dana, Jr.
Jeanine E. Wolbeck

Staff Members Present:

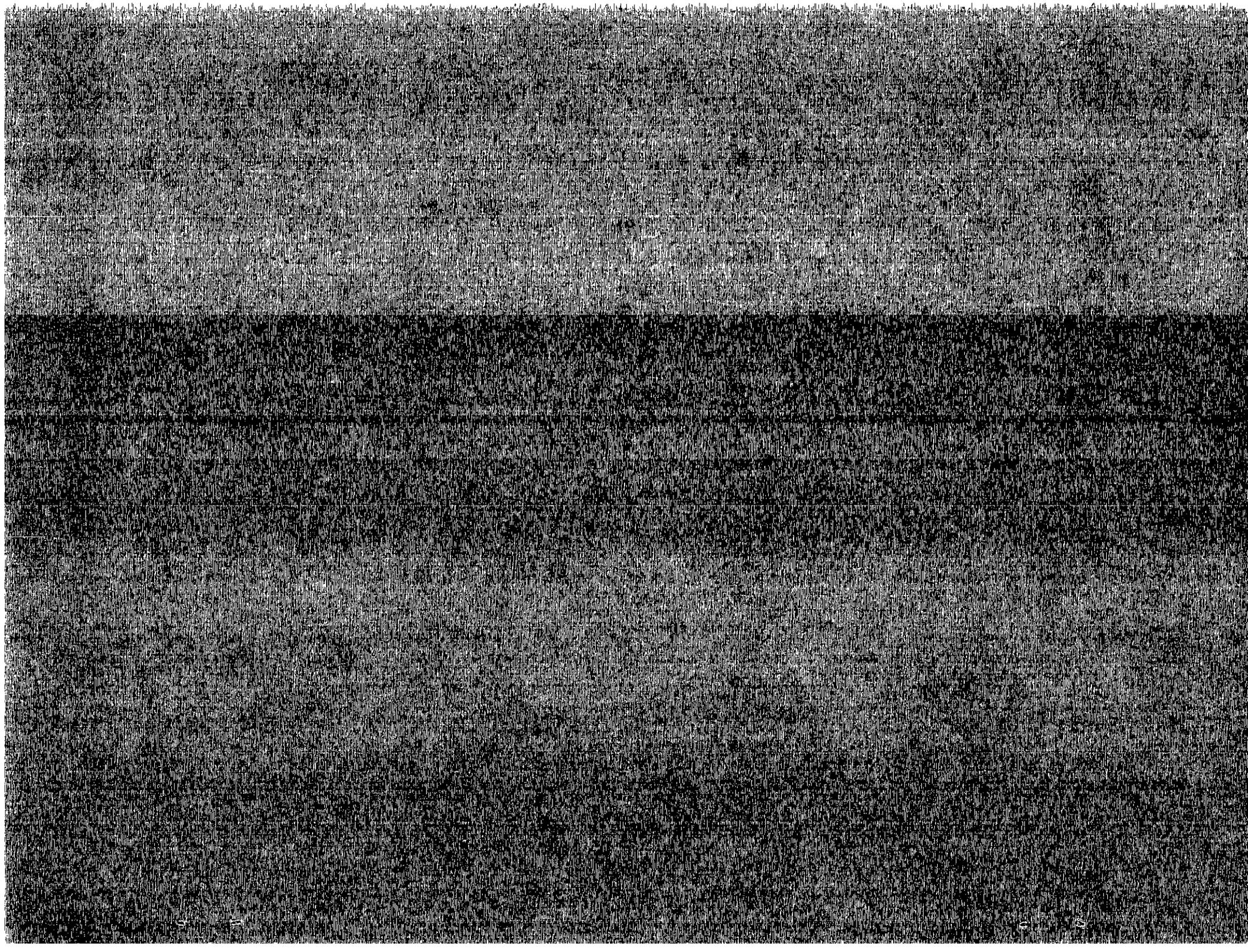
John P. O'Hara, President
Emelia DiSanto, Vice President
Patricia Batie, Secretary
Kathy deBettencourt
Ellen Smead

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C O N T E N T S

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Report of Ms. Kathy deBettencourt regarding
previous meetings and questions of concern

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MOTIONS:

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P R O C E E D I N G S

1
2 CHAIRMAN SHUMWAY: We would like to begin the
3 meeting of the Operations and Regulations Committee. We
4 apologize for being late. We have gone beyond the appointed
5 hour, but we trust that the time that we spend together will
6 be meaningful and make up for the fact that we are late.

7 I am Norman Shumway. And, for some reason, I have
8 been designated to chair this meeting. I would like to know
9 how that came to be the case, maybe someone will tell me
10 later.

11 MR. WITTGRAF: Because you are not from New
12 Hampshire, I think is the reason why.

13 CHAIRMAN SHUMWAY: Well being from California,
14 doesn't that count? I would think that it would.

15 MR. WITTGRAF: Not this weekend.

16 CHAIRMAN SHUMWAY: But Tom Rath will not be with
17 us, and in his absence I am pleased to chair this meeting. We
18 have Ms. Love, Mr. Kirk. And I am sure we will soon be
19 joined by Mr. Dana. We also have George Wittgraf and
20 Blakeley Hall with us.

MOTION

21
22 CHAIRMAN SHUMWAY: I think the first thing that we

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1 should do is to approve the agenda. Has everyone had an
2 opportunity to read it and to come to some opinion about it?
3 If so, will someone move for approval, please?

4 MR. KIRK: I so move.

5 MS. LOVE: Second.

6 CHAIRMAN SHUMWAY: Is there a discussion? If not,
7 all in favor say aye?

8 (A chorus of ayes.)

9 CHAIRMAN SHUMWAY: Opposed no?

10 (No response.)

11 MOTION

12 CHAIRMAN SHUMWAY: The agenda is approved. We now
13 should approve the minutes that were issued to all members of
14 the meeting of this Committee, held on January 13th, 1992, in
15 Washington, D.C. Has everyone had a chance to look at the
16 minutes?

17 (No response.)

18 CHAIRMAN SHUMWAY: Do we have a motion to approve
19 the minutes of the last meeting?

20 MR. KIRK: So moved.

21 MS. LOVE: Second.

22 CHAIRMAN SHUMWAY: Any discussion about the motion?

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1 (No response.)

2 CHAIRMAN SHUMWAY: All in favor say aye.

3 (A chorus of ayes.)

4 CHAIRMAN SHUMWAY: Opposed?

5 (No response.)

6 CHAIRMAN SHUMWAY: The minutes are approved. Is
7 there any routine business that we need to accomplish before
8 we call upon our staff for some information?

9 (No response.)

10 CHAIRMAN SHUMWAY: If not, then I think -- Kathy
11 deBettencourt, would you come forward, please, and tell us
12 where we are? While you are coming to the microphone, I
13 would like to say that there has been a fly in here today.
14 This is a real Mardi Gras.

15 (Laughter.)

16 Ms. deBETTENCOURT: In honor of the carnival
17 atmosphere.

18 CHAIRMAN SHUMWAY: I did read the minutes of the
19 last meeting and the material that Kathy sent out to all of
20 us; and I think that we all appreciate the fact that five
21 performance areas have been indicated.

22 But I think that perhaps we realize also that that

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1 represents the easy work, and now we have some tough choices
2 ahead of us in terms of developing measurements for each of
3 those performance areas, in terms of the developing
4 priorities among them.

5 We need also to talk about what has been referred
6 to as modeling for programs that we might want to look at.
7 And, certainly, I think we need to discuss, if time permits,
8 the matter of timing itself.

9 We do need to make representations as we seek new
10 authorization of Congress as to when this money appropriated
11 will be spent. And, I supposed we should also talk about the
12 amount of the budget that we are requesting, the \$2.5
13 million, as to whether that is adequate or not, that is in
14 the budget that was approved in the last meeting and will be
15 part of the presentation made to Congress.

16 But I think the Committee might well address itself
17 to that subject, if indeed there is time available to do so.

18 We do have to be out of this room, I understand, in
19 50 minutes so that the room can be made ready for the
20 reception tonight. So our time is limited.

21 Kathy, do you want to go ahead?

22 MS. deBETTENCOURT: Yes.

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1 CHAIRMAN SHUMWAY: All right, please proceed.

2 PRESENTATION OF MS. deBETTENCOURT

3 MS. deBETTENCOURT: I was going to welcome Ellen
4 Smead back, as Chairman of the Staff Competition Committee.
5 I am sure she will be joining us shortly.

6 With the indulgence of the Chair, I would like to
7 lay out at some length some of the issues that have been
8 raised in our meetings thus far. As you know, we have had
9 three meetings with an advisory group concerning this
10 demonstration concept.

11 We have had some success in building a consensus on
12 what it is we are going to measure. We have agreed on these
13 areas which are acceptable, because they presume the programs
14 wouldn't be measured or assessed simply on cost alone, that
15 there would also be -- that quality and comprehensiveness of
16 services would also be assessed in relation to cost.

17 In other words, not simply how many cases do they
18 close but how well, how effectively and efficiently they
19 close cases. That is, I think, where the consensus ends. If
20 you have had an opportunity to read the notes of our
21 meetings, you will note that there are some unanswered
22 questions that have blocked us from going further.

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1 Some of the questions are difficult to answer, some
2 are not. But the uncertainty is slowing us down. I have
3 summarized the questions that have been raised, and perhaps
4 you can either send us back the answers, or at least the
5 authority to negotiate.

6 One, we have talked about carrots or sticks. The
7 field wants to know which one is going to be used. They have
8 argued that a far more comprehensive set of measurement
9 criteria is needed if what is involved is a stick. In other
10 words, if it is de-funding.

11 And, two, we keep coming back at the end of each of
12 our meetings, at each of our discussions to a question, "What
13 is the purpose of competition?" How you design this study
14 depends on your answer to that question. Is it constant
15 competition, aimed at improving all programs? Or, is it a
16 targeted competition, targeted towards improving particular
17 programs?

18 Each implies a different study design and ways of
19 measuring improvement. Improvement has caused competition in
20 opposition to some other factor. One example was given that
21 if you have -- if you have a competition used in Area A as a
22 means of improving performance then you need to have

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1 some -- use some other method, like technical assistance, in
2 Area B.

3 So you can determine which method was more
4 causative of improvement, which method, was it competition or
5 was it simply being looked at?

6 To clarify another issue, I will borrow D. Miller's
7 framework. D. is a member of our Advisory Group, and he is
8 very good at outlining. This is a comparative demonstration
9 project, that much we have agreed on. But what are we
10 comparing?

11 D. suggested there are three ways of looking at it.
12 One, you are comparing a program's performance with itself
13 before and after some intervention. In other words, did the
14 program improve its performance once competition was used?
15 It would imply a before and after assessment.

16 Two, we could compare programs performance to
17 another. In other words, take two similarly situated
18 programs and compare how they perform across the spectrum of
19 performance criteria.

20 Three, you can compare all programs against an
21 established norm. In other words, you set up standards of
22 criteria and then you assess all programs against that

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1 standard.

2 From our discussion with the field, it appears that
3 they are most comfortable with Number 1, comparing a
4 program's performance with itself over a period of time. Now
5 comfort may not be our goal here, but let me at least lay out
6 for you some of the concerns that have been raised, because
7 whatever we do we have to at least address these concerns.

8 Comparing all programs against one standard may be
9 difficult because of the wide variation in program
10 characteristics, different size of budget, different types of
11 problems that are faced by a client community in a particular
12 area, even the differences in legal environment. You know,
13 how accessible the courts are, those sorts of factors.

14 So it is difficult to establish one standard. But
15 even the second one, according to some of our discussions, it
16 has been noted that even comparing similarly situated
17 programs is difficult. Each program is different. And this
18 is true.

19 It -- you know, in looking at the program
20 characteristics myself, I attempted to do just a rough linear
21 regression analysis of all the programs. You would expect
22 that as a program's budget increases that the size of its

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1 staff would increase correspondingly, and that it would close
2 an increasing number of cases. That there would be some, at
3 least a rough, linear progression.

4 It is not the case. There is, even among programs
5 with almost identical basic field grants, and non-LSC
6 funding, you will see a wide variation in not only the number
7 of attorneys and paralegals but in total number of advocates,
8 and total number of cases closed. They can vary widely.

9 I handed out -- I don't have a lot of copies. This
10 has been noted by many people. Gary Singen is working on
11 an article that he shared with us, and I am using his example
12 to illustrate this simply because it is not any one
13 particular program. But you can have two programs that would
14 vary widely in number of cases closed and number of
15 attorneys, and simply how they have arranged or structured
16 themselves.

17 You can see what I am talking about if you are just
18 looking through the fact book. And there is a good reason
19 for this. Each program sets its own priorities.
20 They -- even the best programs they assess their target
21 community, they set their priorities, set -- they establish
22 priorities and they set their goals, and then they order

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1 their resources to attack those.

2 And they can vary widely in the strategies they
3 use. One program may decide to devote 80 percent of its case
4 load to housing, another program may decide to invest heavily
5 in community education. Or, on one particular impact case
6 that wouldn't have a payoff for, you know, three years but
7 would have a wide impact across the entire target community.
8 It wouldn't show up on the CSR data.

9 Programs now have considerable independence in
10 deciding how they use their money, how they allocate it.
11 They are very resistant to any attempt to compare them on a
12 standard, such as cases closed, or cost per case, because
13 they don't want to be seen, or they don't want to become high
14 volume/low level service organizations.

15 They rightly point to the fact that a very
16 important part of their mission are activities such as
17 Outreach, community education, self-help, that don't -- that
18 are not easily quantifiable and that do not appear on the
19 case service reporting systems that we have now.

20 That is one important reason why even the best
21 programs dislike the idea of competition. They want to be
22 graded across a full range of services, including legislative

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1 advocacy. the entire range of legal services that they have
2 offered in the past.

3 Now, that said, is it possible to compare programs?
4 The best programs are not afraid of saying they do their job
5 well, and they do it effectively and efficiently. They are
6 also not afraid of saying that all programs can improve
7 themselves. There are always advances, computerization, more
8 efficient ways of handling routine cases. And there is
9 always an upgrading that can occur.

10 And there are also -- I think there is also
11 agreement that there are some programs that need improvement
12 more than others. So the question is where do we think
13 competition can help?

14 Now we are talking about two different issues.
15 One, and first, is it possible to compare Legal Services
16 programs, and on what basis? Is it cost, or is it cost,
17 quality effectiveness and other factors? And two, what would
18 be the effect of competition on program performance? Then
19 you have to ask are they -- and are they competing against
20 their past performance, or are they competing against other
21 programs, to be compared to other programs?

22 In other words, will the winner be the one -- if we

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1 declare a winner at the end of this period will that be the
2 one, the program that improved the most over the time
3 period? Their grades over the performance areas that we have
4 already indicated would have increased the most? Or, is it
5 who performs better in the area measured, against another
6 program?

7 In other words, which of the two programs had the
8 higher score? What we have to resolve before we go further,
9 before we can begin to talk about a study design, is what
10 theory of competition we are going to test. Then we can talk
11 about models.

12 One, the first one, are we trying to use some kind
13 of competition to encourage performance improvement of all
14 programs? This implies competition would have to be
15 continuous, because if it works you can't stop. It has to be
16 ongoing.

17 The second theory, are we using competition in a
18 targeted area to improve performance of a particular program?
19 In that sense, competition would be used on an as-needed
20 basis. And then we have to answer what are the states. Is
21 it a performance bonus for the winner? Is it more service
22 area, with a corresponding per capita funding, or is it

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1 de-funding, or a reduction in funding and/or reduction in
2 service area?

3 Now the models, again, are dependent on the purpose
4 of the competition. The second one is easier, identifying a
5 problem area. You would identify competitor, and then see
6 who does the better job over a period of time.

7 Now you know that isn't over-simplification of the
8 problem. We still have the questions, a better job of what?
9 What are they graded on? Was it better because of
10 competition, or simply because of increased scrutiny? And
11 also what controls do you have, you know before and after, so
12 you can see what did they improve on?

13 The first is more difficult. One method would be a
14 model that was suggested earlier, you compare two or three
15 pairs of similarly situated programs, measured over a year,
16 and perhaps with a bonus at the end of that time to the
17 winner. Similar questions would still be raised, how do you
18 determine the winner? And, is it a relative improvement, or
19 is it relative to the other program or relative to itself?

20 These are the questions have been raised. I will
21 pause for your questions. I will say that we do have another
22 meeting scheduled in a few weeks, in which we plan -- of a

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1 smaller group, in which we plan to try to crunch through the
2 performance areas and see if we can agree on measures.

3 CHAIRMAN SHUMWAY: But are you looking for guidance
4 today as to the plan for that?

5 MS. deBETTENCOURT: But we have been hindered by,
6 you know, a lack of agreement on the theory of competition
7 that we are going to test first. Not that we can't test a
8 second theory at the second level of study. Yes?

9 CHAIRMAN SHUMWAY: Kathy, I am sure all Committee
10 members have questions, but let me just -- let me ask this.
11 In terms of defining what it is we are after, you said that,
12 you know, we need to adopt a theory of competition? Are we
13 going to address this program to targeted areas, where
14 perhaps there are troubled areas in terms of service? Or,
15 are we going to make it constant for all programs?

16 Does that have to be an either/or proposition?
17 In other words, would it be possible to begin with troubled
18 areas perhaps? Obviously they need some help. It would seem
19 to me that they would even welcome the kind of help that this
20 program might bring to them.

21 And then after we see some measure of success
22 there, then perhaps think about a broader application, and a

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1 more constant kind of application. Could it unfold that way?

2 MS. deBETTENCOURT: Yes. And that may be -- that
3 may be the best way to go.

4 CHAIRMAN SHUMWAY: I am mostly interested in seeing
5 that we get out of the philosophical framework that we seem
6 to be mired in. When I read the minutes of the Advisory
7 Group, for example, the three meetings they have had, those
8 minutes seemed like they could have been a transcript of a
9 college philosophy class debating the essence of reality.
10 Or maybe a transcript of a college debate.

11 And I am sure many of those comments were very well
12 intended, and very, very sincere. But I think that because
13 this is becoming such a cause celeb among many of our
14 provider agencies that maybe somebody's comments are coming
15 in more with the design to obfuscate, and to derail us by
16 getting mired in these philosophical debates, than really
17 arriving at some practical solution that we can put into
18 effect.

19 I am convinced that we have got to make some
20 movement. We are representing to Congress that we are going
21 to do that, and we have been chasing this around now for a
22 long time. And, I think that really we need to make some

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1 decisions. So in the few minutes we have this afternoon we
2 are not going to answer all of these questions that you have
3 raised.

4 But, I suppose if we could talk about, and come to
5 some kind of consensus as to what it is we -- what theory of
6 competition we want to see unfold here, that would be a major
7 step in the right direction. Something we have never done
8 before. Howard?

9 MR. DANA: Thank you, Mr. Chairman. I must say I
10 share the same reaction to the transcript that our Chairman
11 has. I think there are -- I think there is genuine fear out
12 there as to what we intend to do with the knowledge that we
13 are seeking.

14 And, I guess I start from the premise that getting
15 the knowledge is what we are about. And I think that the
16 answers to what we learn may help us in knowing how to
17 influence, how to use this information.

18 I think you asked several questions, speaking for
19 myself, I think it is very clear in the short run we are
20 dealing with carrots, not sticks, if we have any sticks to
21 speak of. I am not sure that there is a difference.

22 It seems to me that we are trying to determine

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1 whether behavior will change in a competitive environment,
2 and the competition that I think virtually all of the
3 competition that we are in a position to implement in the
4 short run involves putting a carrot out there and having
5 programs compete for it.

6 It does seem to me that we are -- you talked about
7 what are we comparing? Programs with itself, before and
8 after, or program versus a program? I would think we are
9 doing both. I don't see how you can have. You could have
10 competition, I suppose, internally, trying to improve, but I
11 think we think of competition as two programs competing.

12 But I would have them compete, in effect, both of
13 them against themselves, to try and go from where they are
14 and make a proportionably larger improvement during the
15 testing period to the program that with whom they are being
16 evaluated.

17 So that, in effect, you are trying to do a
18 better -- you are trying to improve yourself. Hopefully,
19 both programs will improve, but the winner will be the one
20 that improves the most, would be how I would for myself see
21 it working.

22 I think that it -- I think it is possible, but very

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1 difficult, to -- and I think we would, by definition -- well,
2 I would hope that we would compare programs across a wide
3 range of what programs are supposed to be. We have an ideal.

4 I thought that your first meeting, or maybe it was
5 your second meeting, you came up with various target areas,
6 and I would hope that we could develop points, if you will,
7 so that people could -- they would get on a before scale
8 score on some kind of an evaluation of those points and we
9 would see how they did at the end of the test, and use that
10 relative improvement compared to where they were, as their
11 contribution in the contest.

12 CHAIRMAN SHUMWAY: In that regard, you are speaking
13 about the five performance areas that they came up? Yes?

14 MR. DANA: Yes. And say, let's assume we awarded
15 20 points to each category, and so perfection would be a
16 score of 100, and two programs started out and got 60 and 65
17 as a starting point, and they got subsequent scores at the
18 end of the test period, that program that improved relatively
19 more, if one went up 10 percent and the other one up 16
20 percent, the one that had gone up 16 percent would win.

21 It wouldn't depend upon -- it would depend on the
22 base. I would think that it was only fair to make sort of a

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1 relative improvement, rather than sort of an absolute. Those
2 are -- I don't know whether that -- that is just one person,
3 and I haven't had the benefit of other people's thinking on
4 the program.

5 CHAIRMAN SHUMWAY: Bud?

6 MR. KIRK: Kathy, I am thinking back to the
7 original meeting, and I am not -- when we gave your committee
8 the charge, and I think we may have gotten a little off -- we
9 set up an Advisory Committee to feed information to your
10 committee, where the ultimate decisions and recommendations
11 would be made.

12 It was viewed, at least to me, and I recall the
13 meeting pretty well, and I think it was that the field was
14 there to give you their input. But I didn't view it as, you
15 know, them having to vote on and agree with everything that
16 your ultimate staff came up with.

17 Approval was not part of it. Input was the key. I
18 read the minutes of three meetings, and the first and third
19 are rather disappointing. The second was -- seemed to show
20 some progress. But I am not sure that you are going to get
21 everybody's agreement on this.

22 And I must tell you that some of the questions you

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1 are asking us today were the questions that I was asking you
2 to come back and tell us, as a result of your fact-gathering
3 and all. And, I am not sure that really I am in a position
4 to do it as well as you are, at least to make the
5 recommendations and do it.

6 The Advisory Committee was set up, I thought, to
7 keep strong personalities out of this, emotions, carrying the
8 torch and flag, and that is why I didn't appear. I don't
9 know that that is -- that goal has been achieved. I don't
10 think that what you are doing is a popularity contest.

11 You know, what we are doing is trying to figure out
12 if we can put on a demonstration project and, if we can,
13 where do we go? I can tell you that I have a concern about
14 being able to measure 27 different sub-parts of five major
15 areas, or whatever it comes being, I don't know that we can
16 ever do that.

17 And, it may be that we just can never gain any
18 input. This Corporation probably doesn't have any reason to
19 exist, frankly, if we can't somehow monitor and come up with
20 some ideas and thoughts, and suggestions, and better ways to
21 spend this money.

22 I don't know. Maybe it cannot be done. And,

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1 certainly the failure to come up with some simple things that
2 can be measured, we just can't do all of these. You know, I
3 can view two schools in a certain area and I know that one
4 school may have a lot of outreach and what you, but if you
5 wanted to just measure the test scores, you know, if the
6 primary goal is to put kids into college -- if it is, then
7 let's do that and let's measure that.

8 And that is a fairly easy thing to do. You know, I
9 can see that if somebody spends a million dollars on a
10 program, and they spend \$200,000 of it on outreach and what
11 have you, you can probably throw that out, throw the \$200,000
12 out, take the \$800 that is devoted to whatever it is, take
13 another program, look at what they devote to cases, if that
14 is what it is going to be, or cases and self-help, or take
15 your restrictive lobbying, you know the things that people
16 can agree on, and come up with some very simple areas that we
17 can in fact compare.

18 But I am not sure that giving somebody points
19 because they are on the bus route is the way to do it. I
20 mean I just -- I think we have got to be a little hard. I
21 think we have got to draw some lines that aren't going to
22 make people happy, but that is not our job, is to make people

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1 happy. Our job is to make some hard decisions, come up with
2 some criteria.

3 I am not sure that Norm, and Howard, and Jo Betts,
4 and I can really give you the answers to these things. I
5 think you guys probably are in a better position to say,
6 "Look, you know, we have got a couple of programs in mind,
7 both of them are borderline, I think we can do it here.

8 "This one, we can use this program and overlap the
9 areas. Here is another way to handle this, this other
10 program here is a go. I suggest we knock out all the
11 touchy-feely stuff, let's get down to some hard stuff." And
12 don't penalize the person that -- and I don't mean in the
13 majority in the sense of touching a few, because I think the
14 outreach has a place, you know. And somebody has got to
15 decide what the place is.

16 But there are certain things that we can monitor.
17 I mean we can figure out client satisfaction. I mean -- you
18 know, good, comprehensive questionnaires can do that. That
19 is one that we can do.

20 We can count, you know, numbers of people and what
21 the geographical area they cover per whatever. I mean, there
22 are things that could be done that are objective. And I

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1 think we need to stick to those because, otherwise, you are
2 going to get in arguments and you are going to have a
3 hearing, and a hearing officer over why you gave one guy a
4 higher mark on this than somebody else.

5 And we just can't get stuck on that. So if I have
6 a charge to you it is -- it is that I want you to tell me,
7 and I would like to see some strong recommendations. And,
8 you know, they don't have to -- you don't have to follow my
9 ideas, or Howard's ideas, or anybody's, just -- I want
10 something that is going to work and give us a demonstration
11 project.

12 If it can't be done, if the field won't go along
13 with what you say ought to be done, and we say we just can't
14 do it without their help, let's not waste Congress' money.
15 Let's just tell them that there is not enough cooperation, it
16 is a lousy deal, "Until you give us more authority to
17 actually de-fund the programs and what have you, it
18 can't --" I mean, let's do that, let's not waste the money.

19 CHAIRMAN SHUMWAY: Bud, I would agree with you,
20 that if we essentially construe this participation by the
21 field as their having a veto power we probably would never
22 have a program, because I have not sensed, I'm sure none of

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1 us have, that this has met any kind of universal acclaim
2 among the providers.

3 And so, I really think if our purpose is to wait
4 around and debate this until we get some kind of universal
5 agreement we will never come up with a program. And, in that
6 event, we should tell Congress that it is not going to work.

7 But I'm not sure we are at that point yet. It
8 seems to me that there are some basic steps over which we can
9 transport ourselves and decisions we can make, at least so we
10 could get started.

11 It may not be the perfect program, and it may not
12 even have a consensus of support among the providers, but I
13 think enough time has passed, enough hot air has been
14 expended that now we need to move on to something.

15 And I would -- I think, from what I heard Kathy
16 say, it would be very helpful to her in preparing for the
17 next meeting if we could at least decide today what it is we
18 mean by competition. If we could decide if we want to go
19 into troubled areas, if we want to devise a program that
20 would be a constant, ongoing thing for all programs, I think
21 that would be a very major step.

22 And that seems to be the threshold. Is that right,

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1 Kathy?

2 MS. deBETTENCOURT: Yes.

3 CHAIRMAN SHUMWAY: Howard?

4 MR. DANA: What bothers me about that is that that
5 seems, to me, to be the end of the game. Now I think that
6 may be the final. It may be that what you are hearing is
7 that everybody wants to know where this is leading. They
8 want to know what if you find out that competition works what
9 is it going to mean to us? "What is my life going to be like
10 in this brave new world of competition?"

11 CHAIRMAN SHUMWAY: Why does that have to be defined
12 at the outset? Couldn't we define that when we get to that
13 program if we see the competition does work?

14 MR. DANA: Yes.

15 CHAIRMAN SHUMWAY: Then we could decide what its
16 ramifications are?

17 MR. DANA: That is really where I am coming from.
18 I don't see that it is -- I can understand why people are
19 nervous, but in that respect I wish to associate myself with
20 just a few of Bud's comments. Just because the field is
21 nervous is no reason for us to not keep moving forward on
22 this subject.

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1 I think we need to -- what I would like to see is a
2 demonstration project, some -- a competitive -- a situation
3 where probably two, or three, or four, or five programs are
4 participating, and they are going to get a reward for doing
5 better than the next program. And that is what I think of as
6 some -- a competitive environment.

7 CHAIRMAN SHUMWAY: With a carrot approach?

8 MR. DANA: With a carrot approach. And it is
9 something we could do reasonably promptly as soon as
10 we -- and it would involve pre-testing and pro-testing, and
11 it would be -- and none of us will know, and nobody can tell
12 anyone, Congress or the field, where this is going. That is
13 one of those things about life that you just don't know.

14 And, I think to answer the question where it is
15 going before you do a demonstration project designed to learn
16 is jumping the gun, and I would hope that we don't limit
17 ourselves.

18 CHAIRMAN SHUMWAY: George?

19 MR. WITTGRAF: Mr. Chairman, thank you. I just
20 want to lend some perspective, as I see it, perhaps to the
21 charge. We have been sharing our thoughts with one another
22 and with the staff since mid-September when we were together

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1 in Jackson, Mississippi, and when we thought that we would be
2 receiving just under a million dollars to utilize to this
3 end.

4 I think it is incumbent upon this Committee and the
5 Board, before we leave tomorrow afternoon at 2 o'clock or
6 whenever it is going to be, to resolve whatever questions
7 need to be resolved so that the staff is able to bring to us
8 a request for proposals in draft form at our March meeting,
9 so that by the middle of March the notice process can begin.

10 I think a lot has been accomplished during the last
11 six months, but I think we have to force ourselves to move
12 forward. Let's decide what questions have to be answered,
13 let's get them answered in the context of the Committee or
14 the Board, and let's give the staff whatever guidance it
15 needs so that we can have an RFP drafted when we meet next
16 month. Thank you, Mr. Chairman.

17 CHAIRMAN SHUMWAY: Kathy, could you outline to us
18 what we might do to meet the expectations that George just
19 described? I agree with him, that we would like to take
20 whatever steps are necessary today to get this thing moving
21 by our next meeting.

22 MS. deBETTENCOURT: One reason that we have been

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1 working with the Advisory Group is to get their input on the
2 performance criteria that we would use in any demonstration
3 project, because they are chosen to be on the Advisory Group
4 because of their expertise as field directors, or their
5 experience in some other areas.

6 But also to gain some support for what we are
7 doing, because there it would be very difficult to force a
8 demonstration project on the field. They would just simply
9 askew the data, it would be a waste of money. And that is
10 one process.

11 And so, we have been working at building a
12 consensus. But, as I mentioned, we -- if I could step back
13 from the philosophy and just say very simply, several members
14 of the Advisory Group have said, you know, "Well there is a
15 chicken and egg problem here. You have to have performance
16 criteria, you can't have competition unless you establish
17 some performance criteria."

18 But they step back at agreeing on performance
19 criteria until they know what the stakes of the competition
20 are. So you have to resolve competing for what, what are the
21 stakes? And, only then can you say, "Well, we will agree to
22 be measured on this." And that is what we need to decide.

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1 In the short run, it may be that we can only offer
2 a performance bonus to the winner. If we decide to go into a
3 troubled area it may be that, you know, we would say over a
4 period of two or three years that we would have a
5 competition, we would give them an opportunity to compete
6 with another program.

7 And if they improved, fine, that is what we hope.
8 If they don't, at that point you have an obligation to the
9 client community to take some steps. So, again, there are
10 two theories here that are competing, and we need to decide
11 which one we want to test first.

12 MR. KIRK: I don't understand the two theories.

13 MR. DANA: I think I am just beginning to.

14 CHAIRMAN SHUMWAY: Howard.

15 MR. DANA: When you talk about going into a
16 troubled area, are you talking about going into a territory
17 where there is a not particularly well-functioning program,
18 creating a second competitor that would compete against the
19 present program, and something would happen at the end of a
20 period of time as to which got permanent funding, or
21 something like that? Is that sort of what you are thinking
22 about?

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1 MS. deBETTENCOURT: Right.

2 MR. DANA: When you talk about going into a
3 troubled area?

4 MS. deBETTENCOURT: Yes. Or let me give you
5 another hypothetical example. You have an area in which the
6 service, one particular service area is not -- is up for
7 grabs, and you have surrounding programs. They each take a
8 part of that and then compete for the full contract. That
9 would be one model.

10 Or you have an area in which you have an existing
11 service provider, and you have another provider in a
12 contiguous area who you would compare their case load over a
13 period of time, and make some decision over, you know, a
14 period of years and with whatever interventions you might
15 want to offer them, which one should get the service area.

16 MR. DANA: Well, Mr. Chairman, I -- we may be
17 presented with a unique situation where, let's assume, there
18 is no field program in a given area. And we may have an
19 opportunity to double-fund over the same area, and have two
20 programs compete for the same territory.

21 I think that adds a complexity, frankly, to -- or
22 several complexities to resolving who does what client, who

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1 handles what client after the end of the period? If we could
2 answer those questions, I think we could create a
3 head-to-head competition in one territory between two
4 existing programs.

5 MR. KIRK: Is there a territory now you have in
6 mind?

7 MR. DANA: I am hearing. I don't -- I don't have
8 such a one in mind. But if, in the unlikely event, we had
9 that situation, and I think there may in fact be such a
10 situation, you could do that.

11 I don't think -- I think that is a special case,
12 and I am not sure that what we would learn would be as
13 helpful, frankly, as just picking programs that are out in
14 the field, and pre-test and post-test, and evaluate them in
15 the five or so areas that you have indicated and reward the
16 winner.

17 That, I think, we could -- we could -- it is a far
18 more generic experiment that would have application, I think,
19 across the board in Legal Services than a -- than using a
20 special situation that could be whatever the results could be
21 dumped on by social scientists 15 ways to Sunday.

22 I just think that there is a -- I would hope that

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1 we move in the idea of a competition between Maine and Iowa,
2 or some -- just to pick two places at random, and pre-test
3 both states on a common scale that is agreed to by the
4 Advisory Committee. Have a test period where they perform,
5 and then come in and post-test. And a reward of \$200,000, or
6 whatever amount would be necessary to encourage programs to
7 come in and play.

8 And that is -- I think we would solve a lot of
9 philosophical problems if we did something like that.

10 CHAIRMAN SHUMWAY: Well, I think we all agree that
11 we need to solve these philosophical problems. We need to
12 get on with something, and how we do it is the question.

13 I don't want to put you on the spot, Kathy, but I
14 think it would be helpful, to me anyway, if I could see maybe
15 three or four threshold questions that we have to get over,
16 to give you some instruction as to what to do next in terms
17 of designing a program. And maybe even provide those to us
18 in writing, so we can read them and think about them, and
19 discuss them.

20 Because, I think now we are all kind of grasping at
21 something that is very ethereal and hard to get a handle on.
22 And, maybe we are defining terms in different ways so that

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1 even if we did make a decision it wouldn't be very
2 meaningful. And the challenge is to get out of the
3 philosophical framework into something we can do. And I
4 guess I am looking to you for some guidance in that regard.

5 MR. WITTGRAF: I'm hoping maybe, Mr. Chairman, that
6 those questions can be developed overnight, so
7 that -- actually we have seven or eight board members who
8 will be active in the discussion tomorrow here right now. So
9 that, as a board tomorrow, we can then answer those three or
10 four questions.

11 MR. KIRK: Wouldn't it be nice if the Committee
12 could make its recommendation for this?

13 MS. deBETTENCOURT: Briefly -- Yes.

14 MR. KIRK: As they do with other committees?

15 MR. WITTGRAF: Certainly, if the Committee would
16 like to meet in the morning, certainly -- I just hate to see
17 it go another month, Mr. Kirk, is my only concern.

18 CHAIRMAN SHUMWAY: We do have to vacate here in
19 five minutes, so we really have little time to --

20 MS. deBETTENCOURT: Yes. I could say briefly, you
21 know, you could choose either theory A, B, or leave it up to
22 the Committee with the input of the Advisory Group and the

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1 guidance of this Committee to come up with a project.

2 MR. KIRK: What we are saying is can you isolate
3 these issues?

4 MS. deBETTENCOURT: Yes.

5 MR. KIRK: And I'm sure we understand that.

6 MS. deBETTENCOURT: Yes. Okay.

7 MR. O'HARA: Mr. Chairman.

8 CHAIRMAN SHUMWAY: Yes, Jack.

9 MR. O'HARA: My senses, I have stayed out of the
10 Committee and the Advisory Group because I didn't want to
11 have any undue influence on where they are going. But my
12 sense at this point is that last month we were in a position
13 where we were proceeding down a very definite path, and you
14 had some very good exchanges with the members of the Advisory
15 Group.

16 And then something happened which derailed the
17 train, but that if the Committee, the Board said to you right
18 now, "Can you give us within the next 30 minutes, or 45
19 minutes, if we had the time, three proposals which the Board
20 would consider?" you could probably do that. Putting aside
21 all of the other things which have come up, apparently, in
22 the last month. That you could offer three proposals to the

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1 Board that they might consider and vote on? Is that true?

2 MS. deBETTENCOURT: Yes.

3 MR. O'HARA: It is a matter of making a decision.

4 That is --

5 CHAIRMAN SHUMWAY: That maybe over-simplifies it,
6 but I think that we need to see it.

7 MS. deBETTENCOURT: Yes. Okay.

8 CHAIRMAN SHUMWAY: Probably in alternative forms.

9 And I am talking now about the threshold issues.

10 MS. deBETTENCOURT: Okay.

11 CHAIRMAN SHUMWAY: There are a whole series of
12 things we could talk about and get into. I know Bud is
13 concerned about the sub-parts of those five principals that
14 the Advisory Group has come up with. And I think those are
15 all very relevant discussions.

16 But I think before we get to that, and maybe we are
17 begging the chicken or egg question still, but I think we
18 need to make the basic decisions.

19 MS. deBETTENCOURT: Okay.

20 CHAIRMAN SHUMWAY: Would the members of the
21 Committee like to come back in the morning before the Board?

22 MR. O'HARA: There is a Reauthorization Committee

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1 meeting at 8:00.

2 MR. WITTGRAF: It is at 8:30. I think if you were
3 to meet at say 8 o'clock, the Reauthorization Committee might
4 await its beginning until 9 o'clock, and we would still have
5 time to begin the Board meeting by 10 o'clock. I think it is
6 as important as anything we are going to do with Sunday and
7 Monday, Mr. Chairman.

8 CHAIRMAN SHUMWAY: Well I don't think anyone wants
9 to rain on your Mardi Gras parade, Kathy, but could you come
10 up with something like that overnight? Is that asking the
11 impossible?

12 MS. deBETTENCOURT: No.

13 CHAIRMAN SHUMWAY: Or is it doable? Could you?

14 MS. deBETTENCOURT: Yes. By when, at 8 o'clock?

15 CHAIRMAN SHUMWAY: Eight o'clock.

16 MR. KIRK: Could I just have one final statement?

17 CHAIRMAN SHUMWAY: Sure.

18 MR. KIRK: I think I am -- not the person, but one
19 of the people most interested in competition. You know, I
20 don't want to waste Congress' money, and you know if -- I
21 mean we don't have to set our sights as the moon. It is just
22 would competition improve this portion?

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1 You know we can look at another portion some other
2 time. It is just whatever. But, you know -- and if we set
3 it up so that we have to have cooperation in the field and it
4 is not going to come we need to know that. And, you know, I
5 am the one that has always said we really need cooperation
6 from the field.

7 But let's -- I mean, let's not kid ourselves, and
8 let's not waste the money if it doesn't work. I mean, and
9 between now and next month, you know, I hope you can make
10 some hard decisions on that because I want it to work. I
11 want a good project, and I want it to be a demonstration
12 project.

13 I believe competition can work, but I have got to
14 tell you it may not. But I want it to be a fair, objective,
15 easily ascertainable thing, and not one, you know, where we
16 are arguing how many angels can fit on the head of a pin
17 forever.

18 Now that is mine, and that is a personal charge.
19 It doesn't speak for the Committee at all.

20 CHAIRMAN SHUMWAY: Well I agree with those
21 thoughts. I think we are wasting money if indeed we can't
22 formulate a program. But I am not at the point where I think

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1 that it is beyond this yet. I think it can be done. I think
2 there is some commonality among the points that have been
3 made.

4 And, even though we don't achieve that universal
5 agreement, I think still we need to move in that direction if
6 we can, in a way that Congress will be satisfied.

7 Then, if there is no objection from Committee
8 members, I would ask Kathy to prepare for us such questions
9 that we might address again, and do that overnight so that we
10 could have them in the morning. And, and that we continue
11 the meeting of this Committee until 8:00 a.m., tomorrow
12 morning, for the purpose of addressing those questions.

13 Is there an objection to our doing that?

14 (No response.)

15 CHAIRMAN SHUMWAY: Do you need a motion for that?

16 (No response.)

17 CHAIRMAN SHUMWAY: All right. Now we are not going
18 to adjourn, we will just continue until tomorrow. Recess.
19 Thank you.

20 (Whereupon, at 4:33 p.m., the meeting was
21 recessed.)

22 * * * * *

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