

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
OPERATIONS AND REGULATIONS COMMITTEE MEETING

July 13, 1992

3:37 p.m.

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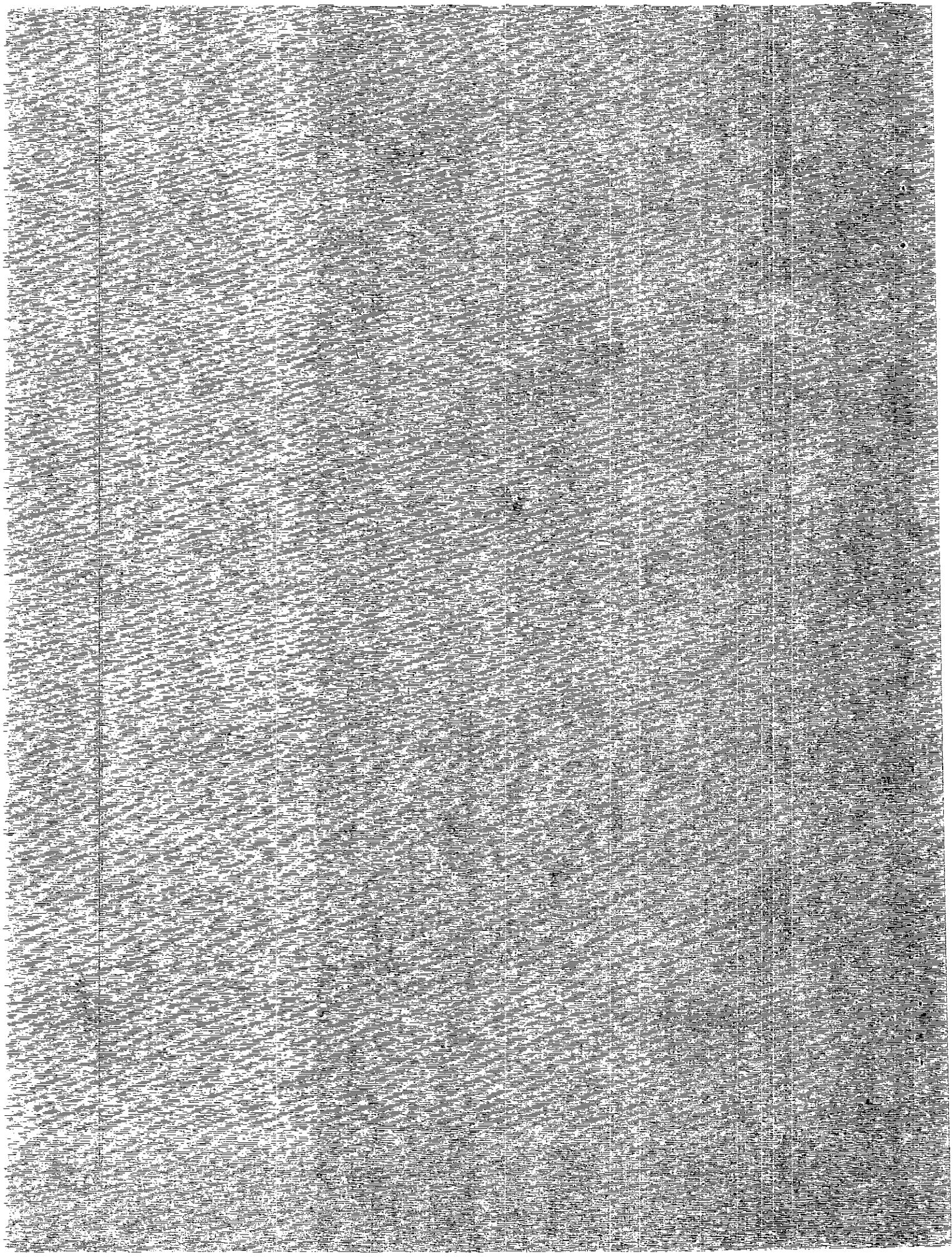
Board Members Present:

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

Staff Present:

John P. O'Hara, President
Patricia Batie, Secretary
Victor Fortuno, General Counsel
Edouard Quatrevaux, Inspector General
David Richardson, Comptroller & Treasurer
Charles Moses
Ellen Smead
Kathy de Bettancourt

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MOTIONS:

3, 4, 8, 34, 62

* * * * *

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P R O C E E D I N G S

(3:37 p.m.)

CHAIRMAN RATH: We will call to order the meeting of the Operations and Regulations Committee that has been noticed for this date and hour.

In attendance, besides the Chair, are Mr. Kirk, Mr. Shumway, and Ms. Love is here and is just out of the room momentarily. Mr. Dana is here. Excuse me. I'm sorry.

I will entertain a motion to approve the agenda which has been distributed to the committee.

M O T I O N

MR. KIRK: So moved.

MR. DANA: Second.

CHAIRMAN RATH: Moved and seconded. Questions or comments on the motion to approve the agenda?

(No response.)

CHAIRMAN RATH: Hearing none, all in favor?

(Chorus of ayes.)

CHAIRMAN RATH: Contrary-minded?

(No response.)

CHAIRMAN RATH: So moved.

Next, we have the minutes of May 18, that have

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1 equally been distributed to the committee. I want to get a
2 motion to approve those, first.

3 M O T I O N

4 MR. DANA: So moved.

5 MR. SHUMWAY: Second.

6 CHAIRMAN RATH: Moved and seconded. Ms. Love is
7 now with us.

8 The minutes of May 18 have been moved as
9 circulated, and that motion has been seconded. Are there any
10 questions or comments, additions or corrections to those
11 minutes?

12 (No response.)

13 CHAIRMAN RATH: Hearing none, all in favor of the
14 adoption of those minutes will say aye.

15 (Chorus of ayes.)

16 CHAIRMAN RATH: Contrary-minded?

17 (No response.)

18 CHAIRMAN RATH: So moved.

19 Now, the original notice of this meeting had three
20 items on it. We have added a fourth, which I guess is not in
21 the materials circulated to the public, and that was added as
22 the result of a conversation between the Chair and Mr.

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1 Fortuno and Ms. Batie, I guess, on Thursday or Friday, and
2 that was the attempt to get us in a position to make rules.

3 We missed a deadline that we would have had to get
4 it into the Federal Register so that we could adopt rules at
5 the August meeting; and we are going to place this item,
6 which is Item 4, which I think I'll go to out of order,
7 because I don't think it's --

8 MR. KIRK: Mr. Chairman?

9 CHAIRMAN RATH: Yes, sir.

10 MR. KIRK: Is this sufficient notice for the change
11 in the agenda?

12 CHAIRMAN RATH: I believe it is. Mr. Fortuno?

13 MR. FORTUNO: It is being published in the Federal
14 Register at the earliest practical time. We contacted the
15 Federal Register on Thursday and asked them if we could
16 possibly get something in for Friday under the emergency
17 provisions.

18 Because it didn't involve the public health and
19 safety, we were told that there was no way it could be
20 published in time, and that it would be sometime this week.

21 We called the Chairman to ask, since there was no
22 way it could be done anyhow, whether we should wait until

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1 this week so that the committee and the Board would have an
2 opportunity to review the submissions to the Federal
3 Register. We could fit them in this week, if the Board so
4 choose and the committee so choose, and that would still give
5 the Board plenty of time for the 30-day requisite time
6 period.

7 It would not be in time, but the only way that it
8 would have been before the committee and the Board at the
9 August meeting in San Francisco would have been for the
10 notice to have appeared in the Federal Register on Friday,
11 last Friday.

12 Since it did not, we're not going to have time for
13 the 30-day comment period before the meeting in August, so it
14 wouldn't be before the committee -- but there is time to
15 publish it this summer, give it the requisite 30-day period
16 for comment, and for the comments to be copied and provided
17 to the committee and Board and staff for analysis and for the
18 Board to consider at its September meeting in Minnesota.

19 MR. KIRK: That was really more than I wanted to
20 know. All I wanted to know is if the agenda --

21 MR. FORTUNO: That's GAGAS.

22 (Laughter.)

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1 CHAIRMAN RATH: That's one for Mr. Fortuno.

2 MR. KIRK: I think that's a two-pointer.

3 MR. WITTGRAF: Don't ask him what time it is. You
4 might learn how to make a clock.

5 MR. KIRK: We can amend the agenda on Friday for a
6 Monday meeting?

7 MR. FORTUNO: The issue can be talked about at this
8 time.

9 MR KIRK: That's all. It seems like when I want to
10 put something in the agenda, it's like it has to be a month
11 in advance.

12 MR. WITTGRAF: Don't take that personally. You're
13 learning.

14 CHAIRMAN RATH: So all we're trying to do is get
15 this noticed properly so that we can have discussion in
16 August and take action, hopefully, in September. Is that
17 right, Vic? Is there a problem? Does anybody have any
18 problem with doing that?

19 (No response.)

20 CHAIRMAN RATH: Can we move to the adoption of Item
21 4, which would permit the publishing process to go forward to
22 the Federal Register?

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M O T I O N

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MR. DANA: So moved.

CHAIRMAN RATH: Moved. Can I have a second?

MS. LOVE: Second.

MR KIRK: There's no -- we're not voting on the --

CHAIRMAN RATH: We're not voting on the merits, we're simply trying to put a process in place whereby should this committee decide, at some point down the road in its wisdom to recommend to the Board that it do something, we will be positioned properly within the federal administrative practices to take that action.

It has been moved and seconded. Are there any other questions or comments on that?

(No response.)

CHAIRMAN RATH: Hearing none, all in favor?

(Chorus of ayes.)

CHAIRMAN RATH: Contrary-minded?

(No response.)

CHAIRMAN RATH: So moved.

All right. So we now go to Item 3, which is the consideration of the staff report regarding competition demonstration projects. And we have a veritable plethora of

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1 staff. At the table are Ms. Smead, Ms. de Bettancourt, and
2 Mr. Moses. There are copies available of the staff report.

3 MS. SMEAD: No, that's the census data that's
4 available.

5 CHAIRMAN RATH: All right.

6 Ms. SMEAD: A couple committees behind.

7 CHAIRMAN RATH: This has been circulated and
8 available for public review, and my thought would be to have
9 the staff comment, get some questions from the Board. I know
10 there is some desire for public comment as well, and we'll
11 make sure that we make time for all that this afternoon.

12 With that, unless anyone in the committee wants to
13 lead off, Ms. Smead, do you want to make comments?

14 PRESENTATION BY ELLEN SMEAD

15 MS. SMEAD: Mr. Chairman, I'll keep my remarks
16 short. As you know, we've been involved in a long process of
17 trying to develop a solicitation for a comparative
18 demonstration project. We received variable input from an
19 advisory group and from a staff committee, and many issues
20 were debated, discussed, and now has come the time to make
21 some decisions on them.

22 In the process, we've had to weigh often

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1 conflicting advice from members of the advisory group,
2 members of the staff committee. Even within this groups,
3 people disagreed. It's been a very productive session.
4 We've narrowed issues, and I think it's been very helpful.

5 The proposal which you have before you that was
6 sent to you differs from the previous proposal in several
7 ways, and I'll just highlight a few of those changes.

8 CHAIRMAN RATH: Just so the record is correct, this
9 is the report that's under date of July 7?

10 MS. SMEAD: Correct.

11 CHAIRMAN RATH: Does everyone have it? It's a
12 memorandum that comes through the president's office from Ms.
13 Smead, and the subject is "Staff's Draft Solicitation for
14 Participation in Competitive Demonstration Projects."
15 Correct? That's for the record.

16 MS. SMEAD: The first change that we made was to
17 put only one winner in each of the four clusters. Before, we
18 had two winners. Two out of the four people competing in
19 each of the four clusters would have won something. Now,
20 we've changed it so you have only one winner per cluster.

21 A second change has been to decrease the
22 demonstration project, or demonstration period -- evaluation

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1 period -- from two years to 18 months. This is just for
2 administrative purposes. It's going to take us a little over
3 two years just to do an 18-month demonstration project
4 because of the staggering of reviews.

5 Another major area where we've had a change is in
6 the peer review teams. They'll be selected from current and
7 former LSC staff, former LSC program staff, and other
8 interested and qualified individuals. The difference is here
9 is that current program staff would not serve on the peer
10 review teams.

11 And then just some minor changes in timing, just
12 some technical matters, where the selection for the people to
13 be involved would be made in September, and we could start
14 the peer reviewing. The first project would begin in
15 December and the peer reviews would start in October, to do
16 the baselines.

17 And that summarizes the changes at this point.
18 We're giving you the staff recommendation to the Board to
19 accept, reject, make any changes, and we'd appreciate hearing
20 comments.

21 CHAIRMAN RATH: What I'd like to do is have
22 questions and comments from the committee on the proposal as

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1 presented, members of the committee. Mr. Dana.

2 MR. DANA: Mr. Chairman, I have two concerns. One
3 is modest, and one is not. Let me deal with the easy one
4 first.

5 Your proposed method of combining absolute
6 performance final score with improvement produces, may
7 product, very bizarre results. For instance, if a person --
8 if a program starts out with an 80, which we all think would
9 be a pretty good score, and concludes with a 100 -- best
10 possible program -- the final score would be, I think, less
11 than 60, or would be a relatively low score, because they
12 would have only improved 20 points, and therefore couldn't
13 possibly get more than an 8 on that component of the score,
14 so that you get a situation where someone who starts with a
15 50 and ends up with an 80 beats that person, because their
16 improvement was, in an absolute sense, larger, but their
17 relative improvement, in terms of the distance between where
18 they started and where they ended was smaller.

19 What I would like to see you do, if you wish to
20 combine the absolute score with the performance score, is to
21 do it on a proportional basis, such that if a program goes
22 halfway from where they are to 100, they would get 50 percent

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1 of the available points in that area. If they go all the
2 way, they get 100 percent. And I think you proposed to
3 allocate 40 percent of the points to improvement and 60
4 percent to the final score.

5 In that way, a program that is -- it seems to me
6 that that accurately balances final score with improvement.
7 I think I've discussed this formula with each of you, but I
8 have the formula, which is somewhat complicated, but
9 basically it is the fraction of the absolute improvement over
10 the maximum possible improvement for any give person,
11 multiplied times 40 so that, wherever the program is at the
12 beginning of the test, if they go all the way to Heaven, and
13 they get a 100, they will get the same score for that
14 improvement effort.

15 Reactions?

16 MS. SMEAD: After you discussed with each of us
17 individually, we, among the three of us, were able to discuss
18 it, and it seemed to make a lot of good sense, when we
19 discussed it.

20 MR. DANA: Great.

21 MS. de BETTANCOURT: But can you explain it in
22 language that we can put in the Federal Register?

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1 MR. MOSES: Well, I have written it down.

2 MR. DANA: I think it is final score minus original
3 score, all over 100 minus original score, times 40.

4 MR. MOSES: Yes.

5 MR. DANA: Plus final score times .60. And that is
6 the overall score for purposes of comparing the performance
7 to the other three competitors.

8 Since my other point is likely to take a little
9 longer, maybe other people would like to monopolize the floor
10 for a minute.

11 CHAIRMAN RATH: Let's deal first with this
12 amendment that Mr. Dana proposes. I had read the original
13 proposal in my limited, non-arithmetic mind to sort of be the
14 sort of prodigal son, that we were going to rejoice more in
15 the program that went from somewhere to someplace as opposed
16 to nowhere to someplace, as opposed to the one at the top.
17 And there's a slight change in philosophy in what Mr. Dana
18 suggests.

19 I don't have a particular problem with it. We want
20 improvement, however it comes. I just want to make sure the
21 committee is of a single mind on this. Joe and I are going
22 to give detailed lectures on this change in formula a little

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1 bit later.

2 MS. de BETTANCOURT: It doesn't totally change the
3 philosophy, but as Mr. Dana pointed out, I think, to all of
4 us, we went so far in trying to reward the program that
5 improved the most that we gave a disadvantage to those
6 programs that start out at fairly high levels, and they would
7 have no chance of winning under the scoring that appears in
8 the solicitation. This levels the playing field somewhat.

9 CHAIRMAN RATH: I don't know quite what you would
10 expect from the committee here, and I will look to the staff
11 for help. Do you need a vote to do this? Ultimately, the
12 committee will report this to the Board tomorrow, and I would
13 assume that the Board would be prepared to adopt it.

14 I want to make sure we have a moment for public
15 comment as well but, on this point, does the committee all
16 think of one mind?

17 (No response.)

18 CHAIRMAN RATH: All right. We will incorporate
19 that tomorrow when we describe it to the Board.

20 MR. KIRK: Can I just ask --

21 CHAIRMAN RATH: Yes, sir. Mr. Kirk.

22 MR. KIRK: I know that without that we might have

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1 trouble getting the better programs to participate, but is
2 there sufficient incentive now for the weak programs, the one
3 that scores a 40?

4 Let's say there's a program that scores a 90 and
5 they go from 90 to 95. A team that scores a 40, starts out
6 with a 40, would have to go from 40 to --

7 MR. DANA: Seventy.

8 MR. KIRK: -- 70 to match that. Is that just too
9 great a jump, or are we sitting here making the rich richer
10 by the way that is? That's my concern.

11 I, here, am exposed to all the really neat
12 programs, you know, the ones I'm interested in. And I'm
13 wondering if part of the purpose is to really improve the
14 weak ones, and maybe we ought to give the better program a
15 little tougher starting block or something.

16 CHAIRMAN RATH: It occurs to me that that's almost
17 a philosophic decision in terms of where you want this
18 project to go. If the emphasis is on leveling the playing
19 field, then there's an arithmetic formula that ought to be
20 found that somewhere treats to that.

21 If the measure is going to be on improvement from
22 where you are to where you might be, take a look at that. I

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1 don't want to do something which has a chilling effect and
2 keeps sort of the weak program out and says "I'm not going to
3 compete against Program A because they're so big and well-
4 funded and they know how to do this stuff and therefore,
5 we're not even going to get into the game."

6 I don't want to rig the data. What I want to do is
7 find a data which adequately tracks the concept of
8 competition to see whether it works, and that's what we're
9 trying to do.

10 MR. DANA: That's right. I think you can -- if you
11 look at a program that scores an 80 or a 90 initially, going
12 in, so it's a good program, they know that they're going to
13 have to get significantly better in order to win this
14 competition.

15 I think that, if we have a good measuring device,
16 as you approach perfection, it gets harder to make
17 significant improvements. So I think I would argue that to
18 go from 90 to 100 or 90 to 95 is harder than to go from 20 to
19 40 or 50, and so, quite frankly, if pressed, I could make the
20 opposite argument.

21 CHAIRMAN RATH: I could, as well. I think it all
22 depends on what it is we're trying to accomplish.

1 Mr. Kirk had his hand up, so Ms. de Bettancourt,
2 will you hold for must a second?

3 MR. KIRK: I was going to state the opposite. I
4 bought into Howard's initially, but I think about, you know,
5 the guy that goes from 80 to 90, improves 12.5 percent.
6 Maybe he has to get 12.5 percent more people running through,
7 and you know, more efficiently, 12.5 percent.

8 And to match that, the guy that goes from 40 to 70
9 has to improve 75 percent, you know. If he's taking 40
10 people a week through, he's got to come up with 70 people a
11 week. And that's a tough thing to match. And maybe we have
12 found it.

13 CHAIRMAN RATH: I have to tell you that, left to my
14 own devices, and only as a member of this committee, I would
15 prefer to see the dollars go to encourage the 40 to 70 leap
16 than the 80 to 90 leap, which is not to say that 80 to 90 is
17 a bad leap, but it's the 40 to 70 leap that I would want to
18 get at. That's why I read this, as I told, the prodigal
19 model.

20 That, to me, in the end, is the kind of improvement
21 that I would like to see, which is not to diminish what the
22 one at the top end of the scale does, but I really would like

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1 to force-feed that one that is perhaps underachieving.

2 I'm prepared to go along with whatever the
3 committee wants, as I don't have that strong a feeling about
4 it, but the way read the formula, it was for the model that I
5 just described, and I didn't have any problem with it.

6 Having heard these telling comments, Mr. Dana, do
7 you still wish to pursue this?

8 MR. DANA: Yes. I think if we don't have a -- if
9 we have a formula that says good programs don't play, because
10 you've got almost no chance of winning, I think that's too
11 bad. I think we're trying to -- what we're trying to do here
12 is learn, and it may be that we, in this first test, we learn
13 that this doesn't work with good programs, it only works with
14 weak ones. Maybe we learn that.

15 But I would think it would be too bad to basically
16 say, if you're a good program, you got no chance of winning
17 this competition.

18 CHAIRMAN RATH: Kathy, I know you're trying to say
19 something and I keep interrupting, and I apologize.

20 Maybe the answer lies in the clustering.

21 MS. de BETTANCOURT: That's what I was going to
22 say. Ellen has the solution.

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1 CHAIRMAN RATH: And maybe what we do is we cluster
2 the 80-to-90s in a group so that they compete against each
3 other --

4 MR. DANA: Regardless of size.

5 CHAIRMAN RATH: -- and we cluster the 40-to-70, you
6 know what I'm saying, in a group, and have those --

7 MS. de BETTANCOURT: We avoided doing that in the
8 beginning because that would -- the feeling of the committee
9 was we didn't want to tag people.

10 MS. SMEAD: We also wanted to keep some things that
11 were somewhat similar to be in the program.

12 CHAIRMAN RATH: The other thing is let's not forget
13 that what we're doing here is experimental, and I would
14 prefer to get something going and see what it does, and what
15 kind of results it does produce, and then amend it perhaps a
16 second time through to reflect, you know, another impetus or
17 another set of imperatives that we might want to test.

18 MS. SMEAD: One option is that we could take Mr.
19 Dana's formula, but instead of using a 60-40 ratio, we could
20 use a 50-50 ratio. That might make it a little bit easier.

21 Another alternative is to use different formulas in
22 different clusters. That would be harder to do, but that

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1 would compare to the impact of the two formulas.

2 MR. DANA: I don't care, in terms of the split
3 between 60-40 and 50-50. To my way of thinking, a way to do
4 it would be to throw out the first number entirely and go
5 entirely on improvement, so that if a --

6 MS. SMEAD: We looked at that last time. I think
7 there was some -- we were trying to respond to who mentioned
8 it that a program could increase substantially. We were
9 trying to deal with the problem.

10 Somebody mentioned that the program going from 80
11 to 90 was a better program overall than one that went from 50
12 to 75 but the one that went from 50 to 75 would win.

13 CHAIRMAN RATH: Wouldn't that be in response -- if
14 what we are trying to do is to make people better, that would
15 be a legitimate object in terms of rewarding the one that got
16 the most better, the best better.

17 MS. SMEAD: That's why initially we have two awards
18 per group, so we recognize both the one that was overall good
19 and the one that improved the most. And then we went and
20 fudged with that and tried to combine.

21 CHAIRMAN RATH: I think it's a very legitimate
22 thing. Ms. Wolbeck.

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1 MS. WOLBECK: The programs that don't win, there's
2 no penalty. But will it cost them a lot to compete and not
3 win?

4 MS. de BETTANCOURT: It gets them up-front money,
5 which will be a consolation prize.

6 MS. WOLBECK: So will they lose anything?

7 MS. SMEAD: We don't think so. We think that the
8 up-front money will cover their costs.

9 MS. WOLBECK: So does it really matter if you win
10 or lose, if you've learned something and if you've improved
11 your program?

12 MS. SMEAD: Hopefully, that's the way it would be
13 viewed.

14 MS. WOLBECK: I mean, is it a big thing if a good
15 program competes and a poorer program competes, and the
16 poorer program happens to win it because they improved more?
17 If the good program improved, and they don't get the money,
18 if they didn't lose anything, they've still improved their
19 program. Am I right?

20 MS. de BETTANCOURT: The problem that we've been
21 dealing with all along is that we want good programs to join
22 the competition. If they don't have a fairly good chance of

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1 winning then those programs who are good, who know they are
2 good, say "Why bother?"

3 MS. WOLBECK: But if they went from 90 to 95 and
4 this other program went from 20 to 70, that improved -- the
5 winning program improved a lot.

6 MS. de BETTANCOURT: At least you get A for effort.

7 CHAIRMAN RATH: I'm going to break in the normal
8 routine with the permission of the committee. Mr. Miller
9 wanted to make a comment, without objection. Why don't you
10 join us at the table?

11 MR. MILLER: On this issue, the advisory committee,
12 I think, at several of its meetings, went around on this one
13 as well and, depending on which time of the meeting you were
14 there -- this is well-ground.

15 I guess I would urge, consistent with those, I
16 think those discussions to think one more time about an award
17 for best and an award for most-improved, rather than mixing
18 the formula on the most improved piece.

19 The purpose of giving all programs an incentive is
20 that the goal is to learn how much programs improve with a
21 bonus as an incentive. That's the point here. And if you
22 only get 40 percent, 40 or below, scoring programs in there

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1 because they know they're weak, you haven't really learned
2 very much about how money affects the behavior of the people
3 at the top. So you really need a solid motivation for the
4 good programs to be involved.

5 Frankly, I think that the tinkering with the
6 formula dilutes it in ways that we really can't foresee, and
7 if you were going to just jump into it and err one way or
8 another on the side of something, at this time I think I
9 would go with one award for best and one award for most-
10 improved and no weighted formula in terms of the calculation.

11 CHAIRMAN RATH: I have to tell you that I guess
12 without the benefit of any of the extensive discussions,
13 that's sort of how I come out on this.

14 MR. DANA: I have no -- that sounds fine. My
15 concern is how do you define "most improved"? Do you define
16 it if someone starts at 20, if they go to 60, which is a 40
17 percent increase, do you view that as an improvement of 40
18 points or do you view that as a 50 percent improvement, or a
19 200 percent improvement, or a 50 percent of the way to
20 perfection?

21 MR. MILLER: As far as we pushed it as an advisory
22 group, it was raw score, not the kind of percentage

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1 improvement that you were talking about. Not that I would
2 suggest that was deeply reasoned.

3 MR. DANA: I see. And if you separate the two -- I
4 see actually how we got to this.

5 MR. MILLER: Right. It's called aggregation and
6 disaggregation.

7 MR. DANA: If you separate the two, then the person
8 with a low score has a really good shot of gaining a lot of
9 points. And that encourages them.

10 MR. MILLER: And there's a reason. I'm sorry.

11 MR. DANA: Okay. But if you have a good score to
12 start with, you still have a fight to compete against another
13 good program.

14 MR. MILLER: Right. And let me just amplify. The
15 reason for the split -- we have a couple concerns. Will the
16 ones on the high end participate; will the ones that are the
17 really poor programs participate?

18 The concern about the really poor ones is some
19 don't -- I mean, there's this hypothesis that there are some
20 out there that don't know that they ought to improve, or how
21 to improve. And we really need to draw them in.

22 Whether or not that's true, it was at least a

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1 concern of the advisory committee, so that that supported the
2 raw score, not the percentage approach.

3 CHAIRMAN RATH: If we proceeded on the
4 recommendation from the staff, we would be testing on the
5 improvement model as opposed to the best program.

6 MR. SMEAD: We were trying to combine the two
7 concepts.

8 CHAIRMAN RATH: But it would be weighted towards
9 the improvement side. Is that a fair comment?

10 MS de BETTANCOURT: Yes.

11 CHAIRMAN RATH: Yes. And my only comment is that's
12 an entirely legitimate aim for the program in its first year.
13 And the issue is, given the limited funds, can we afford to
14 do more than that?

15 I think, designing a model, we can test for best
16 overall program and see whether competition can make a good
17 program better, or we can test whether the competition can
18 improve. We can do both of those things. However, to make
19 the prize worth the game, I think you've got to realize that
20 we have limited dollars.

21 So, I guess having come full circle through this,
22 in trying to give some direction to the committee, your

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1 choices are to go for best program, most improvement, or A
2 and B, realize that you've got a limited amount of money to
3 do this.

4 And what the staff have come up with, along with
5 the advisory group, is a recommendation which is somewhat
6 weighted towards the improvement measure, and is that
7 something that we can live with? I can live with it in the
8 short run.

9 MR. DANA: Mr. Chairman, I would --

10 CHAIRMAN RATH: I'm glad this is the easier of the
11 two questions.

12 MR. DANA: Yes. I thought this was a piece of
13 cake.

14 I think the problem with the combining of these two
15 things is that you do make it -- if a program is regarded as
16 a really good program, there's no point in joining this game.
17 So we are not going to learn anything about whether or not a
18 carrot will improve a good program. And I think that's too
19 bad.

20 CHAIRMAN RATH: You realize we have a limited
21 amount of carrots.

22 MR. DANA: We have a limited amount, but we have

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1 some. I don't know how much these awards will produce, but I
2 would -- I think we ought not to -- I think we can get some
3 more money if the program is valid.

4 I also think it's too bad if we say only poor
5 programs should apply, which is --

6 CHAIRMAN RATH: I don't think we're saying -- we're
7 saying we've designed different tests to do different things.

8 MR. DANA: I'm perfectly comfortable with that
9 notion, as long as we provide some reason for a good program
10 to apply. And this doesn't. This is a positive disincentive
11 for somebody who's starting out as a 90. They'll never get
12 much above 60 as a final score, whereas a program that starts
13 out at 20 could do much better.

14 CHAIRMAN RATH: I guess then the issue is --

15 MR. DANA: Two prizes or one.

16 CHAIRMAN RATH: Well, no. The issue really, the
17 nub of that -- the hypothesis you have just posed is are we
18 more prudently expending the commonweal's dollars to bring
19 the 20 up to the 60 or the 90 up to 95? Isn't that really
20 the nub of this issue?

21 MR. DANA: If you view this as an educational
22 process --

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1 CHAIRMAN RATH: Right.

2 MR. DANA: -- for the field then for us, the issue
3 is do we design a system that only encourages poor programs
4 to seek the money, or do we design a system that provides
5 adequate incentives for good, middling, and poor programs?

6 I think if we are trying to learn by this process,
7 we ought to design a system with our available funds that
8 encourages all programs to compete. And a way to do that is
9 to (a), do as I suggest or (b), not do as I suggest, and
10 break out these two tests and go back to the original
11 advisory committee recommendation, which was to have a raw
12 score improvement award, and a best program at the end of the
13 day.

14 Frankly, what I would like to see -- and this is
15 maybe going to shoot myself down -- is to see a best
16 improvement on a raw score basis, and a best improvement in
17 the sense that I'm using it, so that an 80 and a 90 are
18 competing on the extent to which they get to 100, so that a
19 10 percent increase from the 80 program is equal to a 5
20 percent increase on the 90 program, and you've got to get to
21 96 if you're going to beat the person who went from 80 to 90.

22 So that's entirely improvement-oriented, but it's

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1 entirely focused on programs that start in the above-60 area.
2 Then you have, for every program that is below 60, or the two
3 lowest programs in the quadrant, they compete for the program
4 that improves the most on absolute scores.

5 You take the four programs in each quadrant. The
6 two compete in one sense against each other, and the bottom
7 two compete, and we split the prizes in half.

8 CHAIRMAN RATH: I have a couple of comments here
9 before we go to the staff, if I can. Mr. Kirk and Mr.
10 Shumway. Mr. Kirk first.

11 MR. KIRK: I don't think this is worth spending a
12 whole lot of time on and, you know, what I wish that we could
13 do is delegate it back and somehow just count it being done,
14 because I'm afraid that what we come up with, after a little
15 thought, we're going to find another hole in it.

16 But with that said, you know, if we have to go back
17 to just two like we started out with, that would be okay. I
18 suspect that if we did as the two the one that you proposed
19 and the one that Howard proposed, those are sort of
20 equalizers but, in one of them, the poor program has an
21 advantage and in the other one, the better program has an
22 advantage; yet, they're both focused on improvement.

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1 I think those may be the two that we really want to
2 look at, just the way Howard has done it and just the way
3 you've done it. But the key is that whatever we do, we can
4 come back next year and apply a lot of numbers to it and come
5 out with something that's more fair.

6 What do you-all think of what you've done, which
7 Howard says is poor-program prejudiced and what Howard
8 suggested, which is good-program prejudiced?

9 MS. SMEAD: One concern I had was that there was no
10 guaranteed that we get two good and two not-so-good programs
11 within a cluster, because we're planning to do this by
12 lottery.

13 MR. DANA: My thought is to go out and evaluate all
14 four programs. And then what you do is you take the two
15 lowest programs, and they're competing against each other;
16 and you take the two highest programs within the cluster, and
17 they're competing against each other; and you design a
18 measurement device that awards the victor in this battle and
19 the victor in this battle.

20 I think the fairer way to do it, frankly, is to, in
21 each case, view relative improvement, given the amount they
22 had to go.

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1 CHAIRMAN RATH: Mr. Shumway.

2 MR. SHUMWAY: I'm probably not going to say
3 anything new, but I think we could tinker with this for the
4 rest of the day and probably have still different opinions at
5 the table and here among the board members.

6 What I think we need to do is keep in mind the fact
7 that this is a trial balloon we're floating. We're going to
8 see how this thing plays. The staff, I think, has come up
9 with a workable scoring method, and I'm prepared to sustain
10 it.

11 It seems to me, from our point of view, we're going
12 to get a lot more positive results from a group that makes
13 substantial improvement than we are from one that starts high
14 and makes little improvement, not that the latter is not to
15 be encouraged. And I think you've embraced those ideals
16 within the formula and I think to me it's satisfactory.

17 I think what we need to keep in mind is that this
18 is only a beginning, and we can certainly refine it. If it
19 doesn't play well, we can come back and amend it for
20 subsequent years.

21 CHAIRMAN RATH: Just to move this along, does
22 anybody have anything to say that we haven't said yet?

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1 MS. SMEAD: The issue of budget has been raised
2 here a couple of times and, actually, there's only \$150,000
3 difference between the proposal that was presented in May and
4 this proposal, and that's because, although we've only giving
5 one prize per cluster now, we've raised the amount of each
6 prize.

7 MS. SHUMWAY: Is there a change in the up-front
8 fees?

9 MS. SMEAD: No, there was no change in the up-front
10 fees, just in the amount awarded.

11 CHAIRMAN RATH: Well, how does the committee wish
12 to proceed? The Chair is prepared to go, I think, on the
13 proposal as presented.

14 MS. SHUMWAY: Do you want a motion to that effect?

15 CHAIRMAN RATH: I guess so. I think we ought to do
16 something, and this gets us there. It's between -- I'm
17 sorry.

18 MS. de BETTANCOURT: With Mr. Dana's amendment,
19 which I think we --

20 CHAIRMAN RATH: I'm prepared to go with the
21 proposal as presented, what I will call the improvement.

22 MS. SMEAD: Okay. The July edition.

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1 MS. MOSES: July 7 edition.

2 CHAIRMAN RATH: With the option of in the future
3 revisiting it and attempting to reflect have a different test
4 to reflect the "good, better, best" test.

5 M O T I O N

6 MR. SHUMWAY: I would so move if you want a motion
7 to that effect.

8 CHAIRMAN RATH: All right.

9 MR. SHUMWAY: And we're dealing here just with the
10 formula for measuring the prize; is that correct?

11 CHAIRMAN RATH: Right. Is there a second to that
12 motion?

13 MS. LOVE: Second.

14 CHAIRMAN RATH: Seconded by Ms. Love.

15 Any further questions or comments?

16 (No response.)

17 CHAIRMAN RATH: All in favor?

18 (Chorus of ayes.)

19 CHAIRMAN RATH: Contrary-minded?

20 MR. DANA: Aye.

21 CHAIRMAN RATH: Are you voting in favor of it, Ms.
22 Love? That's three. Well, shall we wait until Mr. Kirk

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1 comes?

2 MR. FORTUNO: Three carries.

3 CHAIRMAN RATH: I understand three carries, but I'm
4 ever seeking the elusive consensus.

5 We have sided with the improvement model.

6 Now, for the more difficult of these points.

7 MR. WITTGRAF: Did you want dinner before we start?

8 CHAIRMAN RATH: I think so.

9 MR. WITTGRAF: We'll have it brought in.

10 MR. DANA: I have to get somebody else to make
11 these motions. My biggest concern with this proposal is the
12 decision to make sure that the peer review teams do have any
13 peers on them.

14 I think that this is an unbelievably bad decision.
15 We have invited --

16 CHAIRMAN RATH: Do you want to side with Mr. Dana
17 and be recorded?

18 MR. DANA: Mr. Chairman, I'm not going to be here
19 tomorrow, and I've got one opportunity, to my way of
20 thinking, to try and save this project. I am that concerned
21 about the decision of senior management to exclude the field
22 from peer review teams.

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1 I think that it is basically highjacking this
2 project, and I think it is not in the interests of the
3 project. I think the field will view this as business as
4 usual, as a return to the "we-they" attitude that the
5 president has been working so very hard to break down.

6 It says to the field that "You are not qualified to
7 evaluate your peers," that "Only we at the Corporation or
8 people who have moved on into private practice are grownups."
9 It says to D. Miller and Alan Houseman and Regina Rogoff and
10 other leaders of this profession and this industry that your
11 views are not welcomed on this evaluation process.

12 My belief is that it is motivated by either fear,
13 of a variety of kinds, or just a power play. And I hope that
14 this Board says to the field, "While we would like to have
15 staff from this Corporation involved in this process, we
16 would like to have peers from the field who are in programs
17 that were not lucky enough to be selected in the lottery to
18 validate the fairness with which the standards that have been
19 worked on by the advisory committee and our staff are
20 implemented."

21 I can't, I really can't urge this Board and this
22 committee any more forcefully to bury this notion that we

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1 know best and that only we at the Corporation have the
2 requisite capacity to make informed judgment and to invite,
3 on this demonstration project, members of the field --
4 however selected -- to come in and see that we are open and
5 receptive of their views.

6 CHAIRMAN RATH: Can I ask a couple of questions
7 about this recommendation?

8 In the summary, Page 2, I take it the language
9 which Mr. Dana objects to is the final sentence, which says
10 "Current program staff would not serve on peer review teams."
11 Is that correct?

12 MS. SMEAD: That's correct.

13 CHAIRMAN RATH: All right. Now, tell me what that
14 means, "current program staff." Does that mean current
15 program staff of a program that's involved in a competition,
16 or does that mean current program staff of any program
17 anywhere?

18 MS. SMEAD: It means current program staff of any
19 program anywhere.

20 CHAIRMAN RATH: All right, now. I'm going to break
21 it down to the kind of peer reviews that I'm familiar with.

22 My wife is the Principal of Concord High School.

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1 They're going to be accredited this year. They're going to
2 have a peer review by the Northeastern Accrediting
3 Organization.

4 When they come in, they bring principals from other
5 high schools in to look at her school. When those other high
6 schools get accredited, along with the professional staff, if
7 she's on an accrediting team -- Portland, Maine or wherever
8 else -- is that not peer review?

9 MS. SMEAD: Yes, that's a form of peer review.

10 CHAIRMAN RATH: Okay. Concord hospital just went
11 through accreditation by the JCAH -- Joint Committee on
12 Accreditation of Hospitals. When it went through that
13 process, administrators from other hospitals came in and
14 reviewed that hospital. That is equally a form of peer
15 review, correct?

16 MS. SMEAD: Right.

17 CHAIRMAN RATH: Tell me why there would be a
18 difference here that you would not involve other
19 professionals who were practicing in the area, not to make
20 the final judgment, but just to be part of the peer review
21 process?

22 MS. SMEAD: Other professionals would be involved.

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1 Number one, Alan Houseman would qualify under here --

2 CHAIRMAN RATH: There was other language here,
3 which I found somewhat inconsistent, because you used the
4 term "other interested and qualified individuals."

5 And then in the delineation of who could be on the
6 team, you say reviewers will be selected from current and
7 former LSC staff, and other interested and qualified
8 individuals. "Every attempt will be made to select reviewers
9 who accurately reflect the diverse legal services community,"
10 and then some specifics.

11 Why, if you had people who were, I will say
12 disinterested, who were program staff in non-competing
13 programs, would you exclude them from the definition of
14 "other interested and qualified individuals"?

15 MS. SMEAD: The other LSC --

16 CHAIRMAN RATH: No, no. Not other LSC. Other
17 program staff from non-competing programs. What is the point
18 to be gained by excluding them by that language, "Current
19 program staff would not serve"?

20 I agree it clearly would not be program staff who
21 were part of competing in some area for these dollars, but
22 why would you not bring those people in from other non-

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1 competing programs for the same reason that a principal would
2 come in to review a high school or an administrator would
3 come in to review a hospital?

4 Why would you not bring in people if they were
5 willing to make the commitment of time -- and I think that's
6 a fair comment -- in the training program that you
7 contemplate and all those things? Why would you not bring
8 those people in if they're willing to go through and be part
9 of the process, to review, as peers, other programs? What do
10 we gain by doing that?

11 MS. SMEAD: We would be including lawyers, so we
12 aren't trying to exclude other professionals. But the
13 concern here was that there is the potential for conflict-of-
14 interest and appearance of impropriety of having program
15 staff involved in the evaluation, and they will be making
16 recommendations about who should be receiving the funding.

17 CHAIRMAN RATH: But that would be true in any of
18 these circumstances I've just outlined where peer review
19 commonly employs others in the field in what they do. And if
20 we somehow found a way -- I don't know how you do it, but you
21 shroud them from making the dollar definition -- I would just
22 think that their input would be very valuable.

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1 Mr. Shumway.

2 MR. SHUMWAY: I'm not taking issue with you, but I
3 think a distinction could be drawn between accreditation --
4 which is done in the case of the high school or the college
5 or hospital -- and the case of expenditure of monies.

6 These people, even though they simply -- as I
7 understand, it they make a recommendation back to the Board.
8 I suppose if we didn't like it, we could still reject it.

9 MS. SMEAD: They make a recommendation to the
10 president.

11 MR. SHUMWAY: To the president?

12 MS. SMEAD: Yes.

13 MR. SHUMWAY: Okay. But I raised this point in the
14 last meeting. I don't think that we can legally delegate
15 away to a peer review team or anyone else the responsibility
16 that we've been given to expend public monies. And I think
17 that's a responsibility that is distinguishable from one of
18 accreditation.

19 CHAIRMAN RATH: It may be -- and I'm not responding
20 specifically -- in the case of accreditation, especially of a
21 hospital, if the hospital doesn't get accredited, it then
22 doesn't qualify for Medicaid reimbursement, and so there are

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1 still dollars at risk here.

2 MR. SHUMWAY: But in a very different way. Maybe a
3 slightly different way. But it's direct versus indirect as I
4 see it.

5 CHAIRMAN RATH: Well, it seems to me if what we are
6 worried about is appearance of impropriety and conflict-of-
7 interest, if the program is not competing for the dollars --
8 and I don't suppose, Mr. Dana, you were suggesting in any way
9 that a program that was competing could have any of its staff
10 on it?

11 MR. DANA: I was not.

12 CHAIRMAN RATH: If it is not competing for the
13 dollars, it seems to me it addresses your concern.
14 Ultimately, it comes back to the president, who ultimately is
15 responsible to this Board, anyway.

16 I don't understand still why we don't gain the
17 input of these people. In every other kind of peer review
18 process that I am aware of -- and I go back to the old crime
19 commission days. I chaired the New Hampshire Commission on
20 Crime and Delinquency, which expended lots of federal
21 dollars, and we had police chiefs looking at other police
22 departments, and they call some day could compete for those

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1 dollars. That was an accepted way of doing peer review.

2 I want this to work. Let me tell you where I start
3 from. I really want this to work -- me being among the more
4 skeptical about competition, anyway. But I want it to work
5 and I want it to be legitimate, and I want the dollars that
6 come out of this, and I want the point that comes out of
7 this, to be accepted by the field.

8 I'm afraid we are creating an artifice here which
9 is going to cut against the validity of the test by not
10 making it inclusive. And I would urge the staff to take a
11 good, hard look at this.

12 MR. O'HARA: Mr. Chairman, can I address the
13 committee on this?

14 CHAIRMAN RATH: You certainly can, Mr. President.

15 MR. O'HARA: And I'll excuse everybody from the
16 table.

17 I think Harry Truman said it: "The buck stops
18 here." I guess I've made some decisions in my life on doing
19 different things. But I want to talk to the Board about the
20 competition program.

21 Howard and I had a long talk about it last night,
22 and we don't agree on everything, but I think there's room

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1 for agreement. But I want to go back to when the competition
2 first began, when I was in the Corporation as a temporary
3 employee, and I sat in with the Staff Competition Committee
4 and met with them, and spent many hours.

5 After you asked me to become president, I decided
6 that in that position I should not sit in on the Competition
7 Committee meeting, because I didn't want to influence what
8 they were doing. I think you'll recall that I was the one
9 who created the advisory group to bring in the field, because
10 I felt it was important, if not critical, to the success or
11 failure of this thing that we have the people in there who
12 run the programs.

13 D. Miller came in, along with Ramon Arias, and I
14 can't remember all the names of the people. And I stayed out
15 of the meetings, and they were very good. I've not been
16 involved in any of the discussions, other than to review the
17 document which is before you today.

18 After Howard and I talked last night, he said this
19 morning, he said, "Did you think about our conversation?"
20 And I did. And I didn't sleep a lot last night, because this
21 is a real -- it's a tough area for anybody to make a decision
22 in.

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1 I don't want to say the staff is wrong; I don't
2 want to say they're right. I don't want to say that Howard
3 is wrong or Howard is right, or anybody is wrong or anybody
4 is right. This is a very difficult area to work in.

5 Mr. Chairman, you've talked about your experiences.
6 I've had some experiences, and some of them have been good
7 and some of them have been bad. It's a mixed bag. But the
8 difference between the recommendations of the advisory group
9 and the committee or the staff document which is before you
10 this morning is merely a disagreement, and nothing more.

11 As far as I'm concerned, it tells me that they
12 don't agree on how to go about evaluating the competition
13 programs. And I'm reading from notes, because I don't want
14 to go too long on this. Even I have disagreement with the
15 document which is before you, and I disagree on the use of
16 current LSC staff on the review teams. I'm not sure that's
17 proper. There's a role for the Corporation to play in the
18 review of this thing, but I'm not sure it's in that
19 particular role.

20 Should there be people from current programs on the
21 peer review teams? I've given a lot of thought to that. And
22 I'd like to say that I could reach out and put somebody on

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1 those teams and not worry about, but I do worry about it.
2 But not for the reason that you might suspect.

3 I worry about it because my experience, in 25 years
4 on Capitol Hill, where I dealt with a lot of these things,
5 was that the result was not always favorable for the parties
6 who became involved. Ellen has mentioned a couple of them.

7 The appearance of impropriety, that's always
8 there. People who are opposed to this program, or any
9 program, are always going to raise that subject: "It's
10 improper to do that." I'm not sure that's correct. There is
11 the potential of conflict-of-interest. That's always there
12 in everything we do, in every aspect of our lives.

13 We really should be looking for total and complete
14 independence from both the Corporation and the programs, is
15 how I view it. And that's why I think that I'm concerned
16 about the fact that legal services program employees would be
17 considered to on the peer review teams.

18 Now, peer review -- I think Ellen said it -- you
19 will have peer review in the sense that you will have
20 attorneys on the peer review teams. Hopefully, they will be
21 employees who would be well-experienced and versed in these
22 programs.

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1 I have another concern, and that concern deals with
2 the limited resources of the program which we have. We've
3 talked about it. I've been meeting with executive directors
4 all across the country, and I appreciate Howard's comments.
5 I am trying to build bridges, and I think we've built a lot
6 of bridges. But we have a lot more bridges to build. We
7 have a lot more mountains to climb.

8 I don't want to dilute those resources by taking
9 the very best people away from the programs that we have out
10 there, with the job they're doing, which is to help poor
11 people. They have, in fact, told me that. I have had
12 several meetings with executive directors, and I've been
13 doing it by groups wherever I can.

14 I recently had the privilege of meeting in Texas
15 with Regina Rogoff and the people from Texas and Oklahoma. I
16 think we spent about three hours. Prior to that, in Maine, I
17 spent about four hours with the executive directors from New
18 England. It was a very good exchange for me. I'm learning
19 all the time, every day.

20 I used to tell my children when they were home, if
21 you go out and you spend the day and you haven't learned
22 something new, you've wasted the day. You should come back

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1 every night with something new that you've learned.

2 The thing that was brought home to me was that some
3 of them would like to do this. They'd like to be on these
4 peer review teams. But they expressed to me the same concern
5 I had. They didn't want to be away from their programs.
6 There's too much need, there's not enough resources to do the
7 job.

8 One of them put it to me this way: "How can we
9 justify asking Congress for more money and yet justify the
10 time away from our programs?" So I'm torn between them
11 telling me one thing, recognizing that you want to do another
12 thing, and recognizing that you have to make the decision.

13 I'm hesitant to subject either staff -- meaning the
14 Corporation staff or the current program staff -- to
15 unjustified criticism from people who wish to do away with
16 this program.

17 Finally, this is merely a proposal. It's not
18 something the Board has to accept. You can reject it, you
19 can change it. I don't want to jump into another member's
20 shoes. One member has suggested to me that he has another
21 proposal to make to the Board, and I think that's very good.

22 I just want to say that there is no attempt to do

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1 anything to this program other than to make it a success and,
2 as the president, ultimately it comes back to me. If we can
3 find a way to get the right people on these peer review
4 teams, by gosh, I'll do it. I found a way to duck the draft,
5 and that was by enlisting in the Marine Corps. I'm not too
6 sure that was a good idea.

7 I'll answer any questions the Board has, but I
8 really feel that this is a tough one. It really is.

9 CHAIRMAN RATH: Jack, I number one, appreciate --
10 I think the whole committee does, the whole Board does,
11 obviously -- the concern that you evidence for the program.
12 And the points you touch on are legitimate ones that I would
13 be concerned with as well.

14 What I'm trying to do on this committee -- and it's
15 difficult at times -- is to try to find something that we can
16 all buy into, because to make this a valid test, there has
17 got to be genuine concurrence --

18 MR. O'HARA: Absolutely.

19 CHAIRMAN RATH: -- of opinion around it. And
20 that's not just on this committee -- but the committee is a
21 pretty diverse one -- but on the Board, within the
22 Corporation, and within the field.

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1 I think one of the things that you've been so
2 successful in in your first year is in developing that kind
3 of consensus and saying to the world, we in the legal
4 services community have the capacity to treat with difficult
5 issues and have honest disagreements without tearing down the
6 house. This is another example of that.

7 I know, obviously, Mr. Dana feels strongly about
8 it. I feel strongly about it for another reason. I don't
9 buy into all of his comments, but I do feel, in order to make
10 this program work, this project work, I want people to have
11 some closure on all aspects of it and, clearly, the
12 evaluation aspect is a critical one.

13 I don't have an answer. I know it seems to me that
14 there's a gap. Peer review, by its name, suggests that
15 you're reviewed by peers, and that would indicate that, to
16 some extent, somehow programs are involved. Maybe there's a
17 way around this that I'm missing. I know Mr. Miller wants to
18 chat as well.

19 The time issue, I think, is a very legitimate one,
20 and yet I have learned, even in taking it back to my own
21 experience, that even in towns where school budgets are
22 cramped, administrators can go do peer reviews of other

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1 schools, on the theory that they are learning something as
2 well about their own program, and they are seeing things that
3 make their own programs ultimately work better.

4 So it's not just a one-way street when you go out
5 and evaluate another program. You bring something back to
6 your program.

7 I'd like to find an answer to this, and I don't
8 want this piece of it -- we've come so far on this over the
9 last year, and obviously, it's your guidance effort, and the
10 staff and the field have really tried to work here.

11 This should not be a deal-breaker. We should find
12 a way around this so we can move this along, because I think
13 we've got a lot of closure here, and I want to capitalize on
14 the degree of momentum that's developed around this project,
15 and get it out into the field.

16 I do have -- obviously, I have some problems with
17 this, and I would like to see if we can't find a way to
18 accommodate all those concerns.

19 MR. O'HARA: I think it would be easy for me to sit
20 up here and say that's the right way to go and I'll do it,
21 but what I'm saying is, whatever the Board decides we will
22 do, and this staff will carry out the wishes of the Board, or

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1 I won't be here.

2 CHAIRMAN RATH: I think you've been exemplary. Mr.
3 Kirk, I'm sorry.

4 MR. KIRK: You know -- and I really want to say
5 this to the field -- if this stands as it is, I can't believe
6 it's the staff's effort to highjack the project, so it's
7 another "we versus they," it's a return to the past, where
8 it's words that "we don't trust you," that it's motivated by
9 fear, or it's a power fight.

10 You know, I am the guy that I think has pushed
11 harder for competition than anybody else. And I had an idea,
12 and, you know, it was an idea that had one form back eight,
13 nine months ago. When the advisory committee got through
14 with it, it became a prize. The whole concept of competition
15 was practically gutted, and we came up with a prize -- we're
16 going to vie for the prize. And there's no stick, just
17 carrots. And that was not part of my program.

18 But, you know, there was a lot of fear and concern
19 that the advisory committee did a lot more than I would have
20 wanted them to do, and I've taken a philosophical attitude
21 about it, that this may be the best I can do.

22 I talked to my -- I can't call him my friend -- my

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1 boss, Jim Durkin, sort of, and he told me about the real
2 paranoia that existed. I don't mean that negatively. He
3 talked about the real concern about what the corporation was
4 doing, what the field was doing.

5 I specifically spoke to him about peer review
6 because, you know, I was concerned about the way it came out
7 of there. And he said, "Bud, my concern is that that was the
8 only thing that anybody would listen to, that they weren't
9 going to listen to anything else. If it wasn't their own
10 people, they weren't going to believe in it."

11 I think that the field has a part to play in this,
12 and I'm going to recommend that there be three peer
13 reviewers, at least one of whom should be a current field
14 person, because I don't want the fear and concern, and I
15 honestly think that a lot can be gained from having someone
16 in the field, a current field person, offer and give some
17 advice and give some input.

18 I've even talked about -- no, I won't tell you what
19 I've talked about. I've got some other plans, and I'm
20 working with the Corporation, and I'm trying to increase the
21 field's participation in a lot of what we do.

22 But this is, you know, what Jack has done is not a

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1 "we versus they," it's not something creating a rift. It's
2 something motivated by absolutely good feelings and good
3 faith, and a concern that, you know, we want to give the most
4 objective view that we can of whatever we do.

5 Honestly, the field has practically written
6 everything that goes in here, and you can't say you haven't
7 been listened to, because I believe you have. I believe if
8 we look at this document, it almost all comes from the
9 heavily-weighted field participation advisory committee.
10 I've read the minutes of the meetings. I mean, it's there.

11 So please don't go away from this and think this is
12 another "we versus they," because it's not intended to be
13 that. I just hope that we can come out of this with a common
14 view, and I will offer my suggestion that we have a three-
15 man, or three-person peer review committee, and that at least
16 one of them should be a field person.

17 I hope, Jack, that's not stomping on you.

18 MR. O'HARA: No, it's not. As I told you, I've
19 given a lot of thought to this, and how to do it is the
20 problem. How do you make the right selection? You don't put
21 somebody in the position of being accused of playing
22 favoritism, of being prejudicial in their evaluation of the

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1 program.

2 It's a very tough spot for an executive director to
3 be in, and I'm not sure that some executive directors would
4 be comfortable in a position like that. The pressure is
5 great.

6 I sat on the other side of the table, as you know,
7 for all those years, and I used to see people squirming who
8 were brought in, because there was the appearance of
9 impropriety and, really, there wasn't anything to it, but
10 they were subjected to it, and some careers were ruined.
11 It's very tough to handle that. I have a genuine concern for
12 that.

13 CHAIRMAN RATH: Mr. Shumway?

14 MR. SHUMWAY: I like the idea of using the field,
15 but I think I share Jack's concern about maintaining the
16 objectivity of what it is we're trying to do.

17 How would it be if we had some kind of ongoing
18 oversight of this program as it unfolded, especially during
19 this first year of field people, such as the advisory
20 committee that we've had, but have them charged with the
21 responsibility of monitoring the kind of results that we hope
22 will happen, the implementation that we've talked about?

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1 If we used them in that context, we would still
2 have the benefit of their advice. They'd still be in a
3 position of giving us recommendations, and yet they would not
4 be placed in the compromising position that Jack has
5 described that could possibly occur.

6 CHAIRMAN RATH: Let me just interrupt for a moment.
7 Mr. Miller, you had your hand up for a minute here. We have
8 a lot of ideas out here on the table. Let's hear what Mr.
9 Miller has to say. Please identify yourself for the record.

10 MR. MILLER: I'm Melville D. Miller, project
11 director in New Jersey, but I'm also speaking as a member of
12 the advisory committee and the smaller working committee.
13 I've been with this thing since day two.

14 Let me just give a slightly different perspective
15 to the issue you're now thinking about. As Mr. Kirk noted,
16 field people -- I, in particular, I think -- have been
17 heavily involved in the drafting of the performance criteria
18 that have been developed here, which I think hold the
19 potential for a lot of good in this community over time --
20 that is, an approach to measurement of programs.

21 I think we really can learn a lot. I actually take
22 a fair amount of pride in that. But you must understand --

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1 and I'm sure you do, if you just reflect back on the last
2 time you looked at those criteria -- that every single one of
3 those requires a judgment call from a perspective of
4 experience and knowledge about what it takes to run a legal
5 service program.

6 You can't go into a program and decide whether a
7 program is effectively meeting the most pressing needs of the
8 community, or whether it's efficient, if you've had no
9 experience at a legal services program, so that my first
10 concern about this draft is not the restriction. I come to
11 that second.

12 But rather, on Page 4, there are two qualifications
13 stated -- practicing law or experience in general legal
14 practice, and knowledgeable about the types of cases
15 typically handled by a legal services program. That is not
16 what the advisory committee recommended. It is flat-out too
17 narrow.

18 It's not a big word change we need here, but it's
19 all the difference, because you need somebody who's
20 knowledgeable and experienced about the operations of legal
21 services programs, including, certainly, types of cases.
22 It's a larger kind of experience.

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1 If you don't have that kind of experience, you just
2 can't do the job on peer review. It's not a peer review, as
3 Mr. Rath observed.

4 So that, subtle though it may be, is a change, and
5 it's important. I think Mr. Kirk's suggestion, I think
6 whatever the number is -- I mean, assuming we have a three-
7 person team, then one at least should be -- I think is both
8 an important step and a subliminal message back about we're
9 listening, you know, we are trying to include the field. I
10 think that is an important thing to do.

11 But the bottom line is -- to me, the first point is
12 whether they're from a field program or whether they're now a
13 principal of a high school, they have to know legal services
14 to be on the team. That's the key. And then I would go to
15 the second stage, which is drop the artificial bars, in the
16 way your suggestion would do that.

17 It is, I suppose, because you need the experience
18 to make the calls, it is in that sense a deal-maker or a
19 deal-breaker. I mean it's not that the field is going to
20 walk away from the Corporation and never talk to you again.
21 I don't think that's what's being suggested here but, rather,
22 is this an operation that we should continue to commit our

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1 time to, our reputations, frankly, to, and is it something
2 that's a really worthwhile enterprise?

3 I think it can be, and I think this issue is at
4 that level. I mean, this is a core issue. So you can't
5 over-estimate, it seems to me, the importance of the issue.

6 CHAIRMAN RATH: Mr. Miller, let me ask a question,
7 just to follow Mr. Kirk's suggestion. If we adopted his
8 suggestion -- which I think is a good one -- would we not
9 accomplish, without language change, what you want?

10 MR. MILLER: I just think the language change is --
11 there's no reason not to make that change.

12 CHAIRMAN RATH: I understand, but if we do what he
13 says, and have some element of the peer review team be field
14 personnel, do you still to add the language "and
15 knowledgeable about administration of legal services
16 programs"?

17 MR. MILLER: Operations. Yes, I think you do.

18 CHAIRMAN RATH: All right.

19 MR. MILLER: I very much would push that. I've
20 tried to distill -- I think the advisory committee had four
21 or five criteria -- but I'm trying to distill it down to core
22 knowledge, and I really don't think it's unreasonable.

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1 CHAIRMAN RATH: Mr. O'Hara?

2 MR. O'HARA: The only comment I had, D., I couldn't
3 agree with you more, but I think that's what's important here
4 is that these are minimum qualifications. Obviously, I would
5 look to staffing any peer review with people who have been in
6 a legal services program.

7 One of the things I do in the Corporation is, we
8 have about eight or nine people who have been in legal
9 services programs, and I'm probably telling this in public
10 for the first time. I bounce things off them all the time
11 before I make a decision and before I do anything -- "if you
12 were back in the program, what would you think about this?"

13 I just want to make the point that we would be
14 looking for that, we would not ignore it.

15 CHAIRMAN RATH: Thank you.

16 MR. MILLER: The only other thing on the issue of
17 whether this is an appearance or a real conflict, I really
18 would urge you to not dwell on that one very long. I think
19 that peer review, in the sense of -- and the Board does
20 reserve the ultimate decision. There's no question about it.

21 And I think Mr. Shumway's suggestion about an
22 ongoing -- I don't see that as an either/or. I think that an

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1 ongoing kind of advisory committee is an important link to
2 keep this thing in a healthy framework going on into it.

3 But we've all served on one sort of ethics
4 committee or another. I don't think this one rises to the
5 level of an appearance, as long as there's no involvement
6 with a competitor.

7 CHAIRMAN RATH: I don't want to cut discussion off,
8 but I am mindful of Mr. Kirk's observations about other
9 arrangements that are pending at the moment.

10 Mr. Kirk, do you wish to put that in the form of a
11 motion? I guess what I would suggest, sir, is maybe not a
12 one in three, because I'm not sure a team would be three
13 people. I think you would want some component of a team to
14 be from the field. I think that would be sufficient.

15 MR. KIRK: Maybe somebody on the staff could tell
16 me what I want to say.

17 MS. SMEAD: We had envisioned a four-man or woman,
18 or four people.

19 CHAIRMAN RATH: Ms. Love.

20 MS. LOVE: Once they pick them, narrow it down to
21 the ones they want, why can't Ms. Wolbeck and I review them,
22 since we're clients?

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1 CHAIRMAN RATH: I don't know what the team would
2 be. Would you do it just by having clients on the peer
3 review?

4 MS. SMEAD: We had discussed it, but --

5 MS. LOVE: We would not be showing partiality.

6 CHAIRMAN RATH: I know that. I respect that.

7 MS. LOVE: Just a suggestion.

8 MS. SMEAD: What I thought was we'd have maybe two
9 attorneys, possibly a management person, and possibly a
10 fiscal person. Fiscal and management might be combined, a
11 lawyer and management might be combined.

12 CHAIRMAN RATH: I guess what I'd just like to say
13 is some component of that ought to be from the field
14 programs.

15 M O T I O N

16 MR. KIRK: I would just move that, of the team, at
17 least one person should be an active member of the field, and
18 that due consideration be given to having well-informed
19 clients members, if that's a workable method. There may be a
20 conflict with the Board members being on it but that might be
21 worth thinking about.

22 CHAIRMAN RATH: Would you also accept as part of

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1 that Mr. Miller's suggestion in terms of the language on
2 qualifications, that one member be knowledgeable about the
3 operation of legal services programs?

4 MR. KIRK: Sure.

5 CHAIRMAN RATH: Is that an agreeable suggestion? I
6 want to get back -- I just want to make sure I have the
7 motion correctly stated.

8 Does everyone understand what we would be voting
9 on? It would be inclusion of a field representative on the
10 peer review team, and the language that Mr. Miller suggested
11 on the qualification.

12 MR. KIRK: At least one on the team.

13 CHAIRMAN RATH: At least one. Is that in the form
14 of a motion?

15 MR. KIRK: Yes, sir.

16 CHAIRMAN RATH: May I have a second to that motion,
17 please?

18 MS. LOVE: Second.

19 CHAIRMAN RATH: It's been seconded by Ms. Love.

20 Discussion on this motion?

21 Mr. O'Hara, do you want to comment?

22 MR. O'HARA: No.

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1 CHAIRMAN RATH: I want to just say I'm prepared to
2 vote for this, and I appreciate the spirit in which it is
3 offered.

4 I think we need to be very mindful of what Mr.
5 Shumway has said, because I think the ongoing oversight and
6 the apparatus that's been in place to get us to this point
7 needs to continue to be employed as we go forward, because we
8 are, at least for this member of this committee, in an
9 experimental phase and if this isn't working, or there are
10 things we can do to make it better, we need to accommodate
11 that as we go forward.

12 We are not locked into this, and I would like to
13 see -- and I think that's the sense of what you suggested,
14 Mr. Shumway -- I'd like to see us continue to engage that
15 mechanism.

16 With those comments, all in favor of the motion as
17 offered by Mr. Kirk and seconded by Ms. Love say aye.

18 (Chorus of ayes.)

19 CHAIRMAN RATH: Contrary-minded?

20 (No response.)

21 CHAIRMAN RATH: So moved. Thank you very much.

22 Is there any other business to come before this

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1 committee?

2 The question has been raised by the chairman, with
3 these amendments, are you prepared to move on the timetable
4 in terms of solicitation? Ms. Smead?

5 MS. SMEAD: Yes. With these amendments, it
6 shouldn't take long to retype a couple of pages that need to
7 be retyped, and we can still have this out in time. We
8 envisioned that there might be some changes, and that's why
9 we built in a couple weeks to change the documents, proof
10 them, and stuff the envelopes.

11 CHAIRMAN RATH: All right. Thank you. I just want
12 to make one comment before we adjourn.

13 I want to compliment the entire process for getting
14 this far. This has not been easy. Today I especially want
15 to compliment the staff, who had a hard time. My comments
16 were not directed at your good faith or your efforts, which I
17 think have been exemplary.

18 This really is the right spirit to approach it in,
19 and your tolerance of the meddling of the Board is
20 appreciated as well, and I commend you on it, and I thank you
21 all. This took a lot of work, and I appreciate it very much.

22 Mr. Dana.

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1 MR. DANA: I would also like to say that my
2 comments, while perhaps intemperate, were a reflection of my
3 feeling that this whole thing was going down the drain.

4 I absolutely feel that the members of the committee
5 that were here have been operating in good faith. I believe
6 that the president of the corporation has been operating in
7 good faith. I think we are breaking down the "you people"
8 mentality that --

9 CHAIRMAN RATH: Your people.

10 MR. DANA: Your people.

11 CHAIRMAN RATH: Russ and Ross are in this together.

12 MR. DANA: But I think it is slow, and I think
13 we've all got to be -- myself included -- sensitive to that,
14 and my intemperate comments, I want you to know, are felt
15 deeply, but were not directed at either the president or the
16 members of the staff who were before us today at the table.

17 I think we have dodged a bullet, and I think the
18 program can go forward now that we have peers on the peer
19 review committee, and I commend everybody that's been
20 involved in it.

21 CHAIRMAN RATH: Thank you, sir. We will adjourn
22 this committee until August, when in the home court of Mr.

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