

LEGAL SERVICES CORPORATION  
OPERATIONS AND REGULATIONS COMMITTEE MEETING

Wednesday, November 13, 1991

1:35 p.m.

The Hyatt Regency O'Hare Hotel  
9300 West Bryn Mawr  
The Mexicana Room  
Rosemont, Illinois 60018

Board Members Present:

Thomas D. Rath, Chairman  
Howard H. Dana, Jr.  
William L. Kirk, Jr.  
Jo Betts Love  
Norman Shumway  
Jeanine Wolbeck

Staff Members Present:

Jack O'Hara, President  
Kathleen de Bettencourt  
Ken Boehm  
Lauren Fuller  
Charles Moses  
John Pensinger

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

RETURN TO CORPORATION<sup>2</sup>  
SECRETARY ARCHIVES FILE

C O N T E N T S

	PAGE
Presentation of Kathleen de Bettencourt Acting Chairman of Competition Committee	8
Presentation of Linda Bernard Executive Director, Wayne County Neighborhood Legal Services	61
Presentation of Robert Yeager Midwest Organizer, District 65, UAW, AFL-CIO	82

MOTIONS: 4, 95

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

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

1  
2 CHAIRMAN RATH: Good afternoon. Let me call the  
3 meeting of the Committee on Operations and Regulations of the  
4 Legal Services Corporation to order, it being the appointed  
5 hour, and we are in the scenic Mexicana Room of the O'Hare  
6 Regency Hyatt. I thank everyone who has made an attempt to  
7 come here.

8 For the record, my name is Tom Rath, and I am  
9 chairing this committee. This is my first time as chairman,  
10 so please be kind.

11 With me today are the other members of the  
12 committee who will have a chance to talk a little bit later.  
13 They include Howard Dana, Norm Shumway, and Bud Kirk. We're  
14 also very pleased to have with us two additional members of  
15 the Legal Services Corporation Board who are not members of  
16 the committee but are going to be with us for these  
17 deliberations. That's Jo Betts Love and Jeanine Wolbeck. We  
18 really appreciate the effort that you made to come and be  
19 with us today.

20 Additionally, Mr. O'Hara is at the head table, Jack  
21 O'Hara, who is our president. We have some staff folks with  
22 us as well who will identify themselves as they help us out

Diversified Reporting Services, Inc.

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 in our discussions today.

2 The first matter which I will do to get us in  
3 motion today is to approve this Wednesday agenda which is  
4 laid before you. I would entertain a motion to approve that  
5 agenda.

6 M O T I O N

7 MR. DANA: I so move.

8 MR. SHUMWAY: Second.

9 CHAIRMAN RATH: There's a motion and a second. Is  
10 there any discussion?

11 (No response.)

12 CHAIRMAN RATH: Questions or comments?

13 (No response.)

14 CHAIRMAN RATH: Hearing none, all in favor of the  
15 motion to approve the agenda, say aye.

16 (A chorus of ayes.)

17 CHAIRMAN RATH: Nays?

18 (No response.)

19 CHAIRMAN RATH: The agenda would be approved. The  
20 agenda is decidedly vague because this is a process that  
21 we're trying to put in place today, begin a process today to  
22 accomplish that which the Congress has given us some leave to

Diversified Reporting Services, Inc.

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 do in terms of testing areas of competition to see whether  
2 they can be effective in assisting the delivery of legal  
3 services to those in need.

4 It is the Chair's intent, first of all, to cover a  
5 couple of housekeeping measures. Keeping in mind the flight  
6 schedules of the Board, those who have talked to me, we'll  
7 conclude today's session at 4:30 because I know people do  
8 have connections back, including the Chair who has to be at a  
9 soccer dinner at some point tonight back in New Hampshire.

10 I intend to make part of this meeting available for  
11 public comment. In the room at this time there are a fair  
12 number of folks who have come to the meeting, I think, with  
13 legitimate concerns.

14 Speaking as one member of the committee, but I  
15 think the sense of the committee, as we go forward and design  
16 a process, it is not going to be a very good one unless we  
17 have as many people included in designing that process and  
18 designing this study as possible.

19 So, I am very grateful, first of all, for those of  
20 you who have come today to observe our deliberations. It is  
21 certainly my intent as Chair to not allow yourselves to limit  
22 yourselves to observers. I want to see people participate in

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 this process as we go forward. To that end, I'm going to set  
2 aside at least a half an hour today at some point to solicit  
3 some comments and get us thinking, because I really believe  
4 this is the beginning of the process.

5 So that the members of the committee have some  
6 sense of what the Chair is doing -- I'm not as organized in  
7 this sort of mission as our normal Chair is -- I've got a  
8 minute-by-minute chairman's itinerary planned out here which,  
9 of course, Brother Dana always interrupts anyway.

10 What I intend to do is start with some comments  
11 from the staff about how we got here, to give us kind of a  
12 historic prospective and try to help define what our mission,  
13 what our goal would be.

14 Then I would like to do a period of, for want of a  
15 better term, free association among the Board, among the  
16 committee members and additionally our other colleagues from  
17 the Board who are here today -- we welcome your comments as  
18 well -- as to where your thinking is at this moment on the  
19 subject of competition and how we can best study this thing.

20 I want those comments to be kept relatively brief  
21 but certainly give a sense of where we are. Then I would say  
22 that we would halt that one until we've had a chance to go

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 through it a little bit, and I'd like to get public comment  
2 then, and then maybe go back to a session with the members of  
3 the committee to try to give the staff some direction as we  
4 go forward from here and we take the next step in designing  
5 this process.

6 So that's the Chair's intent. All this and Heaven  
7 too will be done by 4:30. So I'm going to ask everybody's  
8 indulgence to keep their comments specific. I'm really  
9 anxious to hear what people have to say. I know the  
10 committee is, but I want to keep it moving. I don't think  
11 today is the day, in my judgment, for an extended, ideologic,  
12 philosophic debate about where competition is and what it  
13 means in the grand scheme of things.

14 I view the charge of this committee as a precise  
15 one which is to try to utilize these additional funds that  
16 the Congress has given us to grant in the most effective way,  
17 the fairest way, so that we can get a sense of what could  
18 hold the possibility of improving the delivery of legal  
19 services. That's what the Chair's intent is. If the  
20 committee is agreeable, that's a good start.

21 With that, I'd ask Ms. de Bettencourt to identify  
22 first yourself and your colleagues. I would ask that you

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 begin, as we had discussed, giving us a little bit of a  
2 historic perspective on where we are and what we need to do.

3 Kathy?

4 PRESENTATION OF KATHLEEN de BETTENCOURT

5 MS. de BETTENCOURT: I am Kathleen de Bettencourt.  
6 I'm acting chairman of the Competition Committee. I have  
7 many members of the Competition Committee with me today: Ken  
8 Boehm, as you know, special counsel to the Board; Charlie  
9 Moses, who is acting director of the Office of Field  
10 Services; Lauren Fuller, who is --

11 MS. FULLER: I am the new manager of the new  
12 Program Monitoring and Evaluation Division of the Office of  
13 Monitoring, Audit and Compliance.

14 CHAIRMAN RATH: Give me that one more time.

15 MS. FULLER: Program Monitoring and Evaluation  
16 Division --

17 MS. de BETTENCOURT: Of MAC.

18 MS. FULLER: Office of MAC.

19 MS. de BETTENCOURT: And John Pensinger, who is  
20 from the office of our general counsel. He's senior  
21 litigation.

22 CHAIRMAN RATH: It's nice to have you all with us.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 Ms. de Bettencourt?

2 MS. de BETTENCOURT: The debate over competition  
3 began, it's incredible to think, almost four years ago when  
4 Congress first included language in the Corporation's fiscal  
5 year 1989 Appropriation's Act requiring the Corporation to  
6 develop and implement a system for the competitive award of  
7 all grants and contracts.

8 At that time, the first mention of competition,  
9 that language was more of an imperative, "the Corporation  
10 shall develop and implement." There were restrictions. Only  
11 a Board appointed by President Bush and confirmed by the  
12 Senate could implement such a system, and it could not take  
13 place until after the end of the fiscal year, permitting  
14 Congress a chance to review it.

15 Discussions of competition during floor debate over  
16 LSC appropriations indicate that Congress, in at least  
17 tentatively embracing competition was concerned that the  
18 presumptive refunding rights enjoyed by all legal services  
19 grantees constituted a monopoly that provided no incentive  
20 for accountability, productivity, or innovation.

21 Any grantee who happened to get a grant 20 years  
22 ago continues to receive more money each year regardless of

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 how well it's performing or how well it's serving its  
2 community.

3           At that time, the Corporation interpreted this  
4 rider language to require that if a competitive award system  
5 was implemented, then all grants and contracts would be  
6 periodically awarded through a competitive bidding process  
7 for each service area. Each service area receives a grant  
8 based on the per capita population.

9           Every three or five years, whatever the period  
10 designated, that grant would be put out for bid. The  
11 Corporation would request proposals and entertain bids by  
12 programs who wish to submit a bid to provide services in that  
13 service area.

14           The Corporation then published an advance notice of  
15 proposed rulemaking which set out selection criteria and the  
16 procedures that would be used in such a competitive awards  
17 system. This was, as I said, an advance notice. It was a  
18 proposal which was intended to be used as the basis for  
19 discussion and public comment and hearings on competition.  
20 The Corporation did hold two public hearings to solicit  
21 comment on its proposed competitive award system.

22           As you may have guessed, the field was somewhat

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 less than enthusiastic about the Corporation's proposal. The  
2 comments at that time ranged from a suspicion at that time  
3 that this was a veiled attempt to dismantle the existing  
4 delivery system to fears that periodic competition would  
5 prove disruptive to programs with ongoing cases, changing a  
6 provider every two or three years, and questions about the  
7 selection criteria; how do you choose one grantee or another?

8 In response to criticism by the field and by the  
9 bar, Congress decided that the Corporation was moving too  
10 fast. In a mid year dire supplemental appropriations bill,  
11 Congress inserted another rider which changed the language on  
12 competition from an imperative to a restriction.

13 In other words, it wasn't "the Corporation shall  
14 develop" but "none of these funds shall be used to develop a  
15 system for the competitive award of grants," except it did  
16 not prohibit the Corporation from engaging in in-house  
17 reviews or hearings. There the matter rested for a period of  
18 time.

19 Competition was discussed during two  
20 Reauthorization Committee hearings, but before the  
21 Reauthorization Committee of this Board. During those  
22 discussions, a different version, a different concept of

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 competition was introduced.

2           Some of you who were present at those hearings may  
3 recall that Professor Steven Cox testified before the Board  
4 that the competition that we had discussed before,  
5 competitive bidding, was really replacing one monopoly with  
6 another. For competition to be effective, you had to have a  
7 dynamic competition. In other words, two or three actual  
8 delivery models competing with one another in the same area.

9           There were certain practical and theoretical  
10 problems with Professor Cox's proposal. For example, how  
11 efficient would it be to have three different delivery models  
12 in every area and how do you award the winner? Other  
13 criticisms were raised. But he did introduce the idea of  
14 head-to-head competition, that programs competing in the same  
15 area would tend to improve their performance.

16           From those discussions, something like a third  
17 theory of competition evolved, which is more of a targeted  
18 competition. For example, in a particular service area where  
19 the existing grantee is providing less than high quality  
20 service or is less responsive to the community or the bar  
21 than others, the theory is that if a competitor moves in with  
22 the potential of providing better service to the community

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 and perhaps receiving the basic field grant at the period of  
2 evaluation, then that would provide an incentive for the  
3 existing grantee to improve or lose its grant.

4 The best provider would get the grant at the end of  
5 the evaluation period. Also, as a part of our discussion,  
6 the question of how to measure performance has been raised.  
7 So we can actually compare one program with another. This  
8 has never been adequately done. Even in the delivery system  
9 study, which was a multi-year, \$13 million study, the  
10 questions of comparing cost across geographic areas was never  
11 resolved.

12 Particularly when you're analyzing the performance,  
13 the delivery system study didn't look in a detailed fashion  
14 of actually how much it cost to do intake and how do you  
15 break down the cost of services by paralegals versus  
16 attorneys and those distinctions.

17 Again, there's also the problem of measuring  
18 quality. That still remains illusive. I think it is  
19 possible to measure quality. This Board has heard from many  
20 programs who have appeared before the Board to testify that  
21 they have a really good program, that they're really proud of  
22 it and mention reasons why.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1           What we need to do is to take those reasons why and  
2 say what is it that makes a good program. Why do you think  
3 you're doing a good job, and how can we use that to say that  
4 another program is not? Again, how can we take that  
5 information to help other programs do a better job?

6           At that point, the Board directed the Competition  
7 Committee to come up with some suggestions concerning options  
8 on different ways to study competition. Those options are  
9 before you and we can talk about those in more detail or  
10 other possible options.

11           Whether we moved ahead, of course, depended on  
12 whether Congress appropriated the funds. They did. Our  
13 fiscal year 1992 appropriation included \$977,000 for this  
14 purpose. It's a small amount. This is significant.

15           As I mentioned before, the Corporation has  
16 requested funds to study competition for the last four years.  
17 Congress has never given it to us. Because they gave it to  
18 us this year, it shows that Congress is aware of what we're  
19 doing and has some confidence that we're moving to do  
20 something that might be useful. So, for the first time, they  
21 were willing to give us money.

22           It's clear that they were apprised of the kinds of

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 demonstration projects we've been talking about because the  
2 actual language in the conference report carefully describes  
3 what we've been talking about; in other words, a comparative  
4 demonstration project with appropriate standards and  
5 criteria. So, it is clear that they have given us some  
6 authority to move ahead on the kinds of things that we've  
7 been talking about.

8           Again, the message is not unambiguous. Congress  
9 did not take out the appropriations rider concerning  
10 developing a competitive award process. I mean, it is clear  
11 that those restrictions are still there. But we haven't been  
12 talking about developing a competitive bidding system for  
13 every grant and contract, at least for this demonstration  
14 project.

15           So, it is clear that we have some authority to move  
16 ahead. We have somewhat limited authority. We don't have  
17 discretion over funding. Now, we do have to go ahead and  
18 design a project. Social scientists use terms such as  
19 hypothesis and construct validity.

20           But, very simply, what we have to do is to find out  
21 what question are we trying to answer so that we can design a  
22 project that will give us the data that will permit us to

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 answer the question. In other words, after a year, we will  
2 have collected enough information to say yes, this works or  
3 no, this doesn't.

4 We also need to be concerned that whatever we do is  
5 not completely site specific. In other words, what we do,  
6 whatever project we do, will give us at least some  
7 conclusions that we can generalize from. We can learn  
8 something from this that we can use to improve delivery  
9 overall.

10 So, before we start, we need to have an agreement  
11 on what is the question we're trying to answer. For the  
12 purposes of discussion, so we can begin to discuss the  
13 possible questions, let me just pose a few. Are we trying to  
14 find out if having a competitor in the area will improve the  
15 performance of a less-than-great program?

16 Are we trying to find out if having a competitor in  
17 the area will improve all programs? Are we trying to find  
18 ways to deliver more services for the money, more ways to  
19 increase the amount of services we can give for the funds we  
20 have? Are we trying to find out if other providers are  
21 interested in providing legal services that might be willing  
22 to bid and might be able to provide more and better services

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 for the money?

2 Are we trying to find out if the threat of losing  
3 funding to another provider is an efficient incentive to  
4 improve performance; in other words, the carrot-and-stick  
5 method. Is the opportunity to obtain more money an incentive  
6 to improve performance? That's the carrot method without  
7 sticks.

8 Are we simply trying to compare how existing  
9 programs compare with one another? These are all  
10 possibilities. The project design will depend on exactly  
11 what it is we are trying to find out. These are just some  
12 suggestions. It may be a variation of something I've  
13 suggested or other questions.

14 I think at this point if you want to ask any  
15 questions, or do you want to move on?

16 CHAIRMAN RATH: Anyone else want to comment on the  
17 staff?

18 (No response.)

19 CHAIRMAN RATH: I don't see anyone jumping to the  
20 microphone. I want to find the best way to handle this, and  
21 it might be, first, to sort of go around the committee, if  
22 that's okay, and get some general comments, and then go back

Diversified Reporting Services, Inc.

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 and ask specific comments.

2 I don't want to run off in one direction or the  
3 other before people kind of get a chance to say sort of  
4 what's on their mind coming out of the gate. Then that may  
5 actually focus questions. So, if I could do that, I think  
6 the Chair will delay his comments and start with Mr. Kirk.  
7 Your hand was up.

8 MR. KIRK: If I understand, you want us to make  
9 general comments initially and then after that make the  
10 specifics.

11 CHAIRMAN RATH: Yes.

12 MR. KIRK: I don't have many generals, but one of  
13 them is sort of directed to your last point of what questions  
14 do we want. I'm a believer that even a poor plan followed is  
15 far better than no plan at all. Even though I may not agree  
16 with whatever we finally arrive at, my goal is to jump on the  
17 bandwagon and support it to see what it will reflect.

18 For those of us that sit in the background and say  
19 gosh, there's got to be some benefits flowing, competition,  
20 but at the same time knowing that hey, there may be just too  
21 much involved here that it won't work, but down deep I truly  
22 believe that there are going to be some benefits from it, I

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 think there's a broad issue of --

2 Well, two people in competition, whether carrot or  
3 stick, working in the same area, want to do better and to  
4 improve themselves and to learn to be more efficient so that  
5 the people that we're trying to serve will: one, have more  
6 volume being served; two, better quality; and, three, they  
7 will walk out feeling better about the service that they've  
8 gotten.

9 I probably won't defer totally -- I don't think  
10 I've ever done that, Kathy, but I think we need to look at  
11 you, the staff, that's spending the time evaluating what the  
12 options are. If you say hey, we've got two big questions  
13 that we're going to aim for, and we have these other ones  
14 sitting here that we may get some additional information for,  
15 I would rather set my sights low and solid and make sure that  
16 we get something back, and then have some gravy and some  
17 icing on the cake, and what have you, whatever metaphor you  
18 want to use, to come back and bring the rest of it home.

19 What we're looking at here is something that I have  
20 asked, and I've been a proponent of the field and some of the  
21 representatives of the field, because this kind of program  
22 has got to work with cooperation from the field. If it comes

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 to the point where we're going to be enemies and all, then we  
2 ought to go to the straight competitive bidding or something  
3 like that.

4 But I don't think that's the best way to go. I  
5 think this is the best way to go. That's why I wanted Howard  
6 to be on the committee. That's why I want to get input. I  
7 want a lot of cooperation. Hopefully, we will end up with an  
8 effective means of evaluating the performance as well as the  
9 efficiency. I know that we can't do the performance end of  
10 it without a lot of input from others.

11 CHAIRMAN RATH: Mr. Shumway?

12 MR. SHUMWAY: Thank you, Tom. As some of you may  
13 know, in my other life when I'm not doing Legal Services  
14 Corporation business, I serve as a member of the California  
15 Public Utilities Commission. As Kathy spoke, some analogies  
16 occurred in my mind between what I do there and what the  
17 challenge facing us here is.

18 For a long time in dealing with public utilities,  
19 not just California but all 50 states, assume the position  
20 that because they are, by nature, monopolistic, that we must  
21 carefully control them and regulate them, set their rates,  
22 and watch over their expenditures, and so forth.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1           That mindset prevailed for many, many years. It  
2 was the way that we all did business. But beginning,  
3 perhaps, 12 or 15 years ago, we began to change that  
4 philosophy and we are now at the point -- California has been  
5 kind of a pioneer in doing this; that's why I mentioned it --  
6 we are now still regulating, but we are regulating more by  
7 incentive.

8           In many respects, we are giving utilities which  
9 otherwise would be monopolistic. We're giving them certain  
10 incentives to provide more efficient services, more  
11 affordable rates, do those things that we want them to do.  
12 We're doing that by introducing market forces within certain  
13 parameters.

14           I realize that to go too far with that analogy  
15 would be a mistake because there's a great deal of difference  
16 between the service a public utility provides and the kind of  
17 legal services we're talking about here. I mentioned that  
18 because I believe very much that we do achieve a great deal  
19 of efficiency by introducing some aspect of competition.

20           I recognize that it's very difficult to find our  
21 way to do that here. Kathy has sent me a great deal of  
22 material, and I've read that. It's been a real education to

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 me. But I really think to the extent that we can, we need to  
2 give very serious thought and a great deal of consideration  
3 to moving in this area.

4 In fact, it seems to me that one of the problems  
5 the Legal Services Corporation has had for many years is the  
6 attitude that Congress has had about what it is that poverty  
7 lawyers should be doing in terms of providing services. It's  
8 obvious that Congress watches this group very carefully.  
9 It's obvious that they want us to do things that they've  
10 directed us to do.

11 I think here now, since 1989, is it, Kathy, or  
12 1988, perhaps, we've had this directive from Congress albeit  
13 conditioned, nevertheless a statement from Congress that they  
14 want us to explore in one way or another this subject of  
15 competition. I really think that we need to do that.

16 Because we've had it now for so long, I think now  
17 is the time we should move out on it. Even though there are  
18 some ambiguities about what limitations might face us, I  
19 think we're going to have to plow through those and at least  
20 make a try. As Bud says, some kind of effort, even though it  
21 may not be the right effort, is really called for at this  
22 time.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1           At the same time, I recognize that providers of  
2 services are not going to be very happy with this program.  
3 We've already heard from some in the public hearings we had  
4 in Jackson and Portland. I recognize there will be a lot of  
5 uneasiness about what we do in that regard. I, for one, and  
6 I wasn't here in the past, but I wouldn't want to be party to  
7 something that might resurrect a lot of the difficult  
8 controversy that has faced this Corporation for so many  
9 years.

10           I think that we need to approach this in a way that  
11 will have some degree of support from the field and yet carry  
12 out the congressional mandate that, to me, is quite clear.

13           I had just a couple of questions I wanted to ask  
14 Kathy, if I might, Tom, while I have the microphone. One is,  
15 I'm curious, if you know, how did Congress arrive at the  
16 amount of money which was earmarked for this study?

17           MS. de BETTENCOURT: One million dollars was  
18 requested. They downsized our entire budget line by line.

19           MR. SHUMWAY: A certain percentage?

20           MS. de BETTENCOURT: By a percentage. So, we lost.  
21 We tried to ask for a round number.

22           MR. SHUMWAY: Then, I noticed in the presentation

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 that was made some time ago by Professor Cox, he talked about  
2 competition in terms of grants in one plane and then  
3 competition for clients in another plane. Have we focused on  
4 either one or are we still talking about two different  
5 dimensions like that?

6 MS. de BETTENCOURT: Well, we're not using that  
7 terminology. But yes, we are in a certain.

8 MR. SHUMWAY: Both areas?

9 MS. de BETTENCOURT: The competition for grants --  
10 Professor Cox called it static competition -- whoever bid for  
11 the grant and had the best proposal, however that was  
12 evaluated, whatever criteria were used, would get the grant  
13 for that service area. That's what he called static  
14 competition.

15 The concept of competition for clients, he  
16 introduced as having two or more different kinds of programs.  
17 But it could work with two different full service, even staff  
18 attorney programs, however, competing in the same area for  
19 clients.

20 In other words, in the client community, whichever  
21 program had the reputation for providing the best service  
22 might attract more clients. There are some questions as to

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 how to measure that. So we've not talked in terms of  
2 counting clients.

3 MR. SHUMWAY: Well, that means, then, that we're  
4 looking at a very broad spectrum with which we can formulate  
5 ideas about competition. I think our primary responsibility  
6 is going to be to focus and to narrow down perhaps some of  
7 the parameters that we're going to devise for this program so  
8 that it's not so broad that it loses its purpose. Maybe  
9 that's something we can do today.

10 CHAIRMAN RATH: Mr. Dana?

11 MR. DANA: Mr. Chairman, I would hope that we would  
12 concentrate our effort on -- in talking about the questions  
13 that are facing us, if we could answer the following  
14 questions this year, one or more of them, I think we would  
15 have made a major contribution.

16 One is a fairly simple one to say but I think very  
17 hard to do, and that is can we measure cost, quality and  
18 effectiveness? If we can measure cost, quality, and  
19 effectiveness, the next question is can we influence cost,  
20 quality, and effectiveness with either a club or a carrot?

21 Third, if we can influence positively cost,  
22 quality, and effectiveness with either a carrot or a club,

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643  
WASHINGTON, D.C. 20005  
(202) 628-2121

1 what are the negative consequences for the programs; and can  
2 those negative consequences be mitigated in some way? I  
3 think that the staff's initial proposals -- of five options,  
4 I think the Board zeroed in on three and five.

5 I believe those two proposals contemplated  
6 something approaching dynamic competition not the concept of  
7 moving from one monopoly to another. So, I really don't  
8 think that at least the competition part is viewed  
9 preliminarily as a dynamic process with two or more programs  
10 in the same geographical area serving the same client  
11 population.

12 Where it's not clear to me where we're going is why  
13 would those two programs necessarily compete. We really  
14 haven't defined clearly whether at the end of the experiment  
15 there is a club or a carrot waiting for them. I think we  
16 need to spend some time on that unless the Board is -- the  
17 committee initially and then the Board ultimately -- prepared  
18 to visit other options such as the option 6 and the  
19 yet-to-be-introduced option 7. We'll talk about that later.

20 CHAIRMAN RATH: Ms. Love, do you have anything to  
21 comment?

22 MS. LOVE: My question is, who makes the final

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 decision on who gets the grants? What states will you start  
2 in?

3 CHAIRMAN RATH: Let me answer for the staff. I  
4 think those are all parts of the so-called model that are  
5 really not decided yet. I think that site selection and  
6 ultimate selection between programs would be something that  
7 would be very important in terms of designing a model so that  
8 it was as broad acceptance as possible by the field in terms  
9 of buying into a model. If the field doesn't buy in, if it  
10 is put in an area that somebody just doesn't want it, I'm not  
11 sure just how effective it's going to be.

12 So you're asking, I think, really important  
13 questions, very specific questions that, in my judgment, are  
14 a little bit down the road in terms of being answered. I  
15 think we need to keep focused on the fact that we're going to  
16 have to answer those questions at some point. I guess the  
17 short answer is there is no answer right now.

18 MS. LOVE: Now, it was my understanding when she  
19 first brought this to the committee, I had a feeling that she  
20 kind of knew what state she wanted to start in.

21 MS. de BETTENCOURT: Well, we had talked about what  
22 areas would be good. There are certain criteria that we have

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 to think about. We only have \$900,000, roughly. We have to  
2 do a small program. We don't have enough money to do a large  
3 program. We need to be concerned with geographic  
4 representativeness.

5 We need, if possible, to try and find an urban  
6 program somewhere and perhaps a more rural area. We started  
7 looking at -- also, if we're talking about overlapping  
8 programs, we've been looking at a map to see who is near who.  
9 So, we have been doing some work. We don't even know at  
10 this point whether we're going to be using all LSC programs  
11 or non-LSC programs. That's yet to be decided.

12 MS. LOVE: Thank you.

13 CHAIRMAN RATH: I would just make the point that in  
14 the end, it's the Board that's going to make that choice and  
15 make this model. Certainly, we'll rely heavily on the staff.  
16 We're going to rely on the field and try to arrive at a  
17 consensus. So, hopefully, it isn't a fiat.

18 Additionally, I'm going to apologize to my  
19 colleague, Mr. Kirk, who wanted to ask some questions. I  
20 asked him to hold on it and he graciously has. My colleagues  
21 have made a run around me a little bit in order to keep the  
22 dialogue progressing. But I have not forgotten that you want

Diversified Reporting Services, Inc.

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 some questions.

2 MR. KIRK: It doesn't matter.

3 CHAIRMAN RATH: Ms. Wolbeck?

4 MS. WOLBECK: No. I have nothing now.

5 CHAIRMAN RATH: Let me make a couple of comments  
6 myself and then go to some additional questions before we do  
7 some public comment. I also want to give Mr. O'Hara a chance  
8 to make some comments if he wishes.

9 I am pleased at the nature of the comments of the  
10 committee because I think they reflect the spirit that I  
11 think we need to approach this with. It is very clear that  
12 we are a creature, a creation of the Congress, in terms of  
13 the funding. That institution wants us to do something.

14 As is often the case with the Congress and with  
15 legislative bodies generally, I might say, exactly what they  
16 want us to do is somewhat unclear. I think that this  
17 progress that we're about today is designed to try to bring  
18 some definition to that.

19 My guess is if you cross examined each member of  
20 this committee and asked them what they thought competition  
21 meant, they'd all give you a very different answer. They  
22 would respond with varying degrees of enthusiasm for it, and

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 some not enthusiasm but skepticism.

2 But I don't think that in any way colors what our  
3 task is here which is to utilize these funds that have been  
4 appropriated in a way to produce some information, some  
5 light. I guess in my reaction to what Kathy, you said, in  
6 your opening comments, I'm not sure we know what questions  
7 we're going to answer.

8 What I think we're trying to do is find some  
9 consensus on what the questions are we ought to ask. I don't  
10 want to do it in such a way that it becomes so limited that  
11 we don't get data that means something. A million dollars  
12 from where I come from is still real money.

13 It's got to be applied efficiently. It's got to do  
14 something. It's got to tell us something; good, bad, or  
15 indifferent. It's got to be the basis upon which, in the  
16 end, the entire delivery system can work better. To me, it's  
17 not sort of black magic. It's just that simple. We've got  
18 to find a way with these dollars to make this system work  
19 better.

20 Now we've got to use these dollars as effectively  
21 as we can in designing a model. I don't have Howard's  
22 ability to spin off the options quite as quickly. But I

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 think that the fact that there is a thought process engaged  
2 among the committee members and concern among the committee  
3 members is helpful. I think we've got to keep working with  
4 you to work through these options.

5 None of us will probably ever live long enough to  
6 take an oath of office in this job. But as long as we sit  
7 here, I think we do have public responsibility to do those  
8 things that we are asked to do and do them well. That's what  
9 I want to do in terms of my discharge of these  
10 responsibilities.

11 I think we need to be clear of what we're doing. I  
12 think a very important task with which I would charge the  
13 staff of the Board and the field is to communicate. People  
14 need to know what we're doing and, as importantly, what we're  
15 not doing.

16 I think that's got to resonate. There needs to be  
17 closure among the constituencies as much as possible. What  
18 we're trying to do is get their input and learn from them,  
19 because a project of that is dismissed ab initio by the field  
20 is one which is not in the end going to prove very helpful.

21 These people have been at it a long time. We need  
22 to hear what they have to say. To the extent I can

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 facilitate that process, I intend to. There are parts of it  
2 that I don't understand how they are going to work. That  
3 comes, in some ways, from the area in which I live.

4 I need to be educated. I need to be brought along.  
5 I suspect Board members need to brought along. I think this  
6 is an important project that we're on. I think this Board  
7 and our successors, in a very real way, are engaged in a  
8 credibility-building process, not just with the legislature  
9 which funds us but with the constituencies with whom we  
10 interact.

11 We need to demonstrate that we can take on a  
12 project of this sort free of sort of ideologic bias and try,  
13 in an honest information broker way, to gather information  
14 and to make intelligent decisions. The design of a model is  
15 where we start.

16 As you know, and you have been more than generous  
17 with your time with me, I have some very real questions about  
18 competition. It's very hard to be against that term. But I  
19 want to understand it and I want to understand the attraction  
20 that it holds on people. I want to understand the concerns  
21 that the field has.

22 Ultimately, or ideally I should say, if we design a

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 model that can speak to those concerns and produce  
2 information, good, bad or indifferent about how competition  
3 works, I think we will have done a very important project for  
4 this Board.

5 I agree with my colleagues; the measurement  
6 function is one that I find daunting. I don't know how you  
7 do it. Each day those of us who are in private practice, I  
8 suppose, are in competition with other people. I don't know  
9 how in the end clients measure us. I guess what I'm most  
10 concerned about -- I have sensed, but I can't tell you how.

11 What I'm more concerned about, and I don't know the  
12 answer to this, is measuring it from a client standpoint.  
13 With all due respect to the staff and to the Board and the  
14 programs, what really counts here is whether the client feels  
15 they are getting the best service possible.

16 Somebody has got to speak for the client. That's  
17 what I want to measure. I want to measure is there a way  
18 that we can get service better delivered to that client. I'm  
19 not sure that the answer is sort of graphically statistical.  
20 That's my problem.

21 I know what I do. I know that I'm going to do it  
22 different than the fellow or the woman down the street. I'm

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643  
WASHINGTON, D.C. 20005

(202) 628-2121

1 trying to produce a result for a client. That's what it  
2 seems to me we're all about. That's the hardest thing I find  
3 to measure.

4 So, I'm really interested in this exercise because  
5 it's real life. I mean, it really has implications far  
6 beyond what this Board may do with this \$977,000. So, I  
7 agree with Bud. I think the worst thing would be to tangle  
8 this Board up in a long discussion about the concept. We  
9 have been given the charge.

10 My job as chairman, the job of this committee  
11 is -- members of the Board have given us responsibility.  
12 Let's design something that makes sense, not just to us but  
13 to all the people with whom we interact. Let's try to move  
14 that project forward at a reasonable and timely pace. So,  
15 that's where I start.

16 Jack, I should have deferred to you earlier.  
17 You're not uncharacteristically silent. I'd like your  
18 comment before we go further.

19 MR. O'HARA: Thank you, Mr. Chairman. I'm not sure  
20 I need the mike, but I'll use it as long as it's here. I  
21 wish I had your rider, although I know you made that off the  
22 cuff. I would echo that I agree with everything you said. I

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 think this committee will take that as a charge.

2 I would like to say, just in closing, that I've had  
3 the opportunity for a few months at least before I was voted  
4 into this office to have sat with this committee. There are  
5 a couple other members of the committee. When they were in  
6 their deliberative stages -- there are four attorneys sitting  
7 in front of you, and Kathy is a Ph.D.

8 I think the balance is good. The four attorneys  
9 have practiced law in the private sector as well as being  
10 with the Corporation. I've heard them discuss reaching out  
11 to the field to get their views on this. I think that you're  
12 looking at a group that are not going to be -- I hate to use  
13 the word psychopods, but they are not.

14 You will hear what you want to hear and you will  
15 hear what you won't want to hear. I think that's the charge  
16 that you've given them this morning. I think that's the same  
17 position I would take.

18 CHAIRMAN RATH: Bud, you had some questions. I  
19 didn't want to cut you off, not that I ever could.

20 MR. KIRK: I think I'm going to wait until John  
21 speaks to address the questions. But if I could just make a  
22 couple further comments. I won't be very long.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 CHAIRMAN RATH: Sure.

2 MR. KIRK: Kathy, I'm going to reiterate something  
3 that I've said to you and I said to Jack and he mentioned it  
4 again. I really want this group to be absolutely  
5 independent. I have showered you probably more than anybody  
6 else with scores of ideas.

7 MS. de BETTENCOURT: I think Mr. Dana has.

8 CHAIRMAN RATH: I sit between two strong fronts.

9 MR. KIRK: I only ask that you listen to them and  
10 consider them, but that your decisions all be made  
11 independently. I'm asking that likewise you talk to the  
12 field and listen to the field. But again, as a person who  
13 just went through in the law practice being put in  
14 competition with other firms, and being compared to them, and  
15 having to go through some gymnastics for timekeeping, and  
16 seeing that it worked, and knowing that if somebody had asked  
17 me if it would have worked, and if I designed my own, I would  
18 never have quite been able to have done as well as someone  
19 else did on the outside.

20 I ask you to tell them "I'm sorry but this is what  
21 I believe" and be able to stand up to them. But I want all  
22 the input in the world to come from them. I want

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 independence from us, all of us. I mean, we're putting a lot  
2 of weight on your shoulders and Jack's shoulders to do this.

3 Finally, I have a lot of confidence that we will be  
4 able to measure to some degree certainly client satisfaction  
5 if we're able to send out evaluation forms to clients. We  
6 can have the local field offices send out the evaluation  
7 forms. Send them back and give us what their views are.

8 I hope that we're able to institute some  
9 timekeeping, effective timekeeping solution because I don't  
10 think we can measure effectiveness without that. But again,  
11 that's my view and I invite you to go forward and tell me I'm  
12 wrong if you disagree.

13 CHAIRMAN RATH: Anything else from the Board? I  
14 have a couple of things I want you to do before we get to the  
15 public section. Howard?

16 MR. DANA: I think it might be helpful for me. I  
17 always forget what options 3 and 5 --

18 CHAIRMAN RATH: I think you're anticipating what I  
19 intended to do next, which was to state clearly what those  
20 options are.

21 MR. DANA: I can't promise to do that, but I can  
22 try.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643  
WASHINGTON, D.C. 20005  
(202) 628-2121

1           CHAIRMAN RATH: I was going to ask their  
2 interlocutor to do that, if you wanted.

3           MR. DANA: Well, if I could cross examine on the  
4 subject, I think it would be helpful.

5           CHAIRMAN RATH: Within limits.

6           MR. DANA: My understanding, and I want you to  
7 correct me if I'm wrong, is that concept 3 is to introduce a  
8 new competitor into a grantee's territory during the  
9 competition period with the consequences of the competition,  
10 the territory. In other words, in the final analysis, we  
11 would provide new funding for a second program in an existing  
12 territory so that we would, on a poor person basis, perhaps  
13 even double in the short term the amount of funding going  
14 into that territory.

15           But at the end of the test, or end of the  
16 experiment, the territory would go to one or the other or, in  
17 fact, it might be split so that funding at some level would  
18 be shared by the then two programs. Is that essentially  
19 concept 3?

20           MS. de BETTENCOURT: Yes, with the exception that  
21 whether to give the territory to one or the other would be an  
22 option for the Corporation. If the results were not clear, I

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 think the Corporation would move to a defunding process.

2 MR. DANA: Would defund who?

3 MS. de BETTENCOURT: The existing grantee. The  
4 existing grantee would still have all of its presumptive  
5 refunding rights. We don't have the discretion to do in and  
6 say whoever does a better job at the end of this year gets  
7 the grant. I mean, at the end of that year we would have to  
8 go through the same procedure we go through now.

9 MR. DANA: Well, we would not have to go through  
10 that procedure with the new kid on the block.

11 MS. de BETTENCOURT: No.

12 MR. DANA: Why would anyone -- if you are not  
13 prepared to, in effect, put the territory up for grabs, why  
14 would anyone, A, go to work for this new entity? B, what are  
15 we proving by this?

16 MS. de BETTENCOURT: Because they would have the  
17 possibility of proving to the Corporation that they would be  
18 a better grantee. We have people who do it. We have non-LSC  
19 programs now who inquire about the possibility of getting  
20 legal services funding.

21 MR. DANA: Well, so, I think I may have -- is what  
22 you're saying that the outcome of the test year under option

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 3 is unclear, but it might well result in one or the other of  
2 the programs -- inevitably, it would result in one or the  
3 other losing their funding or some sharing of funding. As  
4 far as I can see, they are the only possibilities.

5 MS. de BETTENCOURT: Right.

6 CHAIRMAN RATH: May I interrupt just for a second?  
7 Why are those the only options? Why are those the only  
8 outcomes? Why is not a possible outcome that you do this for  
9 a year, or you do this for as long as the funds run out, and  
10 you then leave the providers as they were prior to getting  
11 the dollars, and you simply use that experience to tell you  
12 something about what happens when you set these kinds of  
13 forces into play?

14 Let me just extend that. I don't understand off of  
15 Howard's reading of option 3 why we have to get to that kind  
16 of definitive judgment at the end of 3 if indeed what we're  
17 trying to do is simply test the marketplace to see whether  
18 these forces work the way we think they might.

19 MS. de BETTENCOURT: Yes.

20 CHAIRMAN RATH: Am I correct that you could have  
21 that middle ground position?

22 MS. de BETTENCOURT: Yes, that's correct. That's

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 what I'm saying. It would only be an option for the  
2 Corporation. If the new provider turned out to be doing a  
3 great job, at that point the Corporation might then say let's  
4 think about this.

5 But if a non-LSC program, non-LSC-funded program  
6 comes in and agrees to do this for a year, at the end they  
7 would just -- at the end of the year period, they wouldn't go  
8 out of existence. They would maintain the same existence  
9 they always had before. I think that's correct.

10 CHAIRMAN RATH: Let me just follow that. There  
11 would be nothing, and I'm looking at all of you now in your  
12 attorneys plus social scientist's role in terms of testing,  
13 there would be nothing that would invalidate the data or the  
14 outcome or the results or the experience because the  
15 willingness to engage in this enterprise did not include the  
16 sort of doomsday solution here. Is that correct?

17 MR. DANA: The answer is no.

18 CHAIRMAN RATH: Well, I'd like them to answer.

19 MS. de BETTENCOURT: Well, I mean, we all know do  
20 or die situations provide a lot more incentive than any  
21 other. But we're not in a position of a do or die situation.  
22 This is a demonstration project.

*Diversified Reporting Services, Inc.*

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 MR. DANA: Mr. Chairman?

2 CHAIRMAN RATH: You're going to scare Professor Cox  
3 when you see him.

4 MR. DANA: Could I respond to your question?

5 CHAIRMAN RATH: Yes, go ahead.

6 MR. DANA: It does seem to me that we probably  
7 don't need to go through this exercise if all we are doing is  
8 trying to determine what happens when there are two legal  
9 services programs operating in the same territory. We have  
10 variations on that theme all over the country, not uniformly  
11 all over the country, but there are plenty of examples of two  
12 different programs providing service at the same time.

13 I understood that the function of this was to see  
14 if competitive forces might influence quality, effectiveness  
15 and cost, not just coexistence. I understand the problem for  
16 our staff is that we have no regulatory, statutory authority  
17 to defund an existing grantee based upon the results of a  
18 test.

19 We could only defund an existing grantee if we were  
20 to conclude under Section, I think, 1011 that it ought to be  
21 defunded and the money would go somewhere else. It would  
22 only go somewhere else in accordance with a competitive

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 process that would involve a potential for yet a third entity  
2 to come in.

3 So, I guess the reason for my trying to understand  
4 what the staff is talking about when they talk about option 3  
5 is that I think it is very important for the committee and  
6 for the staff and for the field to understand what the real  
7 game is. Since I'm sufficiently clear that 3 is unclear, may  
8 I ask about 5?

9 CHAIRMAN RATH: Let me just mention for the  
10 convenience of the committee and the members of the Board,  
11 Ms. de Bettencourt sent us a memorandum under date of  
12 November 6th. On pages 2 and 3, 4, of that memorandum is an  
13 outline of what option 3 and option 5 and the so-called  
14 option 6 are. So, if you have them handy for reference  
15 purposes, it might facilitate discussion.

16 Howard, do you want to go to option 5?

17 MR. DANA: Yes. The difficulty with the  
18 description -- well, if you look at option 5 on this memo,  
19 Tom, you will realize that there is no indication of what  
20 happens at the end of option 5. But option 5 for everybody's  
21 benefit is where we take two existing LSC grantees and  
22 encourage them to compete or to serve in the same area.

Diversified Reporting Services, Inc.

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1           It might well be the current area served by one of  
2 the two. It might be currently an unserved area. In a prior  
3 incarnation of this description, the staff recommended that  
4 the consequence of that competition would be a one-time bonus  
5 grant. But I see no particular reason why the consequences  
6 couldn't be a continuation of one or the other program to  
7 serve that area.

8           MR. MOSES: I think that you're correct. In fact,  
9 if the Board would like to make that the option, we can  
10 certainly design the system so that it's point blank at the  
11 start; that that will definitely happen. However, the one  
12 thing that I think you always have to understand under any of  
13 these options, none of the grantees, none of the existing  
14 grantees that would participate would lose any of their  
15 rights that they currently have.

16           So, any existing grantee that were to participate  
17 in either of these studies would continue to maintain their  
18 presumptive refunding rights. Now, one thing that probably  
19 should be understood, we always have the option at the end of  
20 this study, if we were to show that there is another provider  
21 that is better, it's my understanding that one of the grounds  
22 for a defunding would be that there is a more efficient,

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 effective, provider in that area that can provide the  
2 service.

3 So, I think that if this Board wanted to have the  
4 option of moving money at the end of the study, if it was a  
5 definitive, they certainly have -- the Corporation has some  
6 leeway toward moving toward that option. Again, it could not  
7 be done overnight and would have to be done according to the  
8 procedures as established by our existing regulations, I  
9 believe.

10 MR. PENSINGER: That's correct. Charlie is  
11 referring to, I believe, what's in 1625.3(d). That provision  
12 basically speaks in terms of an alternative provider. What  
13 else Charlie was saying, I believe, is the fact that we would  
14 have to go through the whole proceeding most likely if the  
15 current recipient did demand a hearing.

16 Then you would have to have a hearing in front of  
17 the hearing examiner and a final decision, and then any  
18 further judicial review of that if it came to that, before  
19 you could in fact switch the funds from one recipient to a  
20 replacement or alternative provider.

21 MR. DANA: Just to finish it quickly, option 6  
22 would be, assuming we knew how to measure quality, cost, and

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 effectiveness, to set up a competition between two programs  
2 operating in their own areas who would compete for a prize, a  
3 carrot, a reward, a benefit. Whichever program improved the  
4 most during the period, based upon this measuring system,  
5 would receive that reward.

6 That is option 6. It has the advantages of not  
7 resulting in any defunding. It presumably may answer the  
8 question whether in fact we can influence performance by  
9 throwing money at a problem, something that is assumed but  
10 has not been established in legal services debates.

11 Finally, option 7 would be to ask the field to  
12 design their own test of competition and to submit proposals  
13 to the Corporation to test these principles. Then the  
14 Corporation would select one or more of the proposals. That  
15 too would have the advantage of not being viewed as an  
16 impending club, which is a large stick.

17 Thank you, Mr. Chairman.

18 CHAIRMAN RATH: Thank you, Mr. Dana. Mr. Kirk?

19 MR. KIRK: Mr. Dana, I have a question for you.

20 MR. DANA: Yes, sir.

21 MR. KIRK: What is wrong with the concept of  
22 defunding or large sticks?

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 MR. DANA: In the abstract, nothing except that it  
2 is something that for reasons that, frankly, escape me, this  
3 Corporation has resisted for many years doing. The law and  
4 the explanation that has always been given is that the  
5 current law provides so much of a built-in presumption that  
6 it would be very difficult, very expensive, very time  
7 consuming to defund another program.

8 So with 300-odd programs, we just -- presumably  
9 there are some really terrible programs out there, although  
10 I've never heard of one. But we sit there and monitor them  
11 year after year, encourage them to improve, and it's been so  
12 long that when I asked the staff to dig up the records to  
13 prove that it's expensive to defund a program, the  
14 institutional memory was such that no one could remember the  
15 last time they had defunded an actual program.

16 The evidence that was provided was the effort to  
17 defund a national support center. But, in fact, we did  
18 defund some programs in the deep dark recesses of our  
19 corporate history.

20 CHAIRMAN RATH: The Chair is being very  
21 non-Wittgrafish in allowing this colloquy back and forth.  
22 But for a few more moments we can continue.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 MR. KIRK: Thank you. Let me ask you, other than  
2 the baggage that this Corporation carries for the bad motives  
3 of past Boards, what is the stigma of defunding? I mean, why  
4 don't we want that to be a part of what we can do, or is it  
5 something we can do?

6 MS. de BETTENCOURT: Well, I don't think that we  
7 should necessarily say that it isn't. I mean, ultimately,  
8 under any theory of competition -- the best incentive for  
9 improving your performance is to say if you don't, we're  
10 going to give someone else the grant who can do it better.

11 The few defundings that were done by the  
12 Corporation of basic field programs took place in the early  
13 1980s, before there was a Reagan Board or a Bush Board, and  
14 they did it on the grounds that this program isn't doing a  
15 good job. We're going to take its grant and give it to  
16 another provider.

17 You can merge with it if you want to. But there's  
18 a better program out there, and we're going to fund that one.  
19 They did it on the 1625.3(d) provision. There is a more  
20 efficient and economical provider out there. I think this  
21 Corporation has lost some credibility in that it hasn't been  
22 able to measure performance of programs. So it's very

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 difficult to go to a program and saying you're not doing as  
2 good a job as the other program.

3 MR. KIRK: If I'm representing Acme Widget Company  
4 and I'm not doing their work effectively and efficiently,  
5 then Tom Rath may get the work and he may be able to do it.  
6 I, in effect, become defunded. Here it seems that we have  
7 even more obligation.

8 If Shelton is out there and let's say that his  
9 program suddenly is in the group 5 with an overlapping area,  
10 and we find that Shelton's group, his field office is more  
11 effective, more efficient, has happier clients than the one  
12 who is doing it now, don't we have an obligation to our  
13 constituency, the corps that we're serving, to, in fact, give  
14 him greater area, reward him so that we get better service to  
15 those people. In fact, reduce the area of the other person.

16 MS. de BETTENCOURT: You're right. As the Chairman  
17 mentioned, this Board, this Corporation, this staff's first  
18 obligation is to the clients. We have to consider what is  
19 the best for the clients in that area. If for some reason  
20 that program fails, we have to look for another.

21 CHAIRMAN RATH: Let me just pick up on Mr. Kirk's  
22 question, if I can, because it's one that troubles me. Acme

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 Widget is trying to decide between Kirk, et al. and Rath, et  
2 al. Theoretically, Acme Widget is in a position where it  
3 knows very much what it wants for its dollar.

4 It is in the business of making sophisticated  
5 judgments like that all the time. It can decide whether it  
6 wants the glitz and glamour of Orlando or the meatloaf and  
7 gravy of Concord, New Hampshire. I mean, it can make that  
8 judgment.

9 Where I have a problem with that analogy is that  
10 the people who are really looking to make this judgment in  
11 this area are not Acme Widget. They don't have those  
12 resources. The question is how do we get legitimate -- and  
13 by legitimate I mean qualified, able, dedicated,  
14 competent -- choices for them where they don't have a lot of  
15 choices.

16 That's where, to me, that analogy breaks down. I  
17 can't deny -- as a matter of fact I said it in my earlier  
18 comments -- that every day in what I do and what Bud does and  
19 Howard, clients make choices. But there's a difference in  
20 terms of what those clients can choose between and what the  
21 clients that we're seeking to serve can choose between.

22 What I'm trying to do is to measure -- the whole

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 measuring issue is really critical to me. I'm trying to find  
2 an option that allows us to measure how that client's choice,  
3 that client's needs are most enhanced. You know, it's a  
4 little of the half full/half empty issue.

5 I don't see why occasionally -- you know, one  
6 lawyer practicing alone in a town is generally going to  
7 starve. Two are going to do all right, and three are going  
8 to make a lot of money. It's like restaurants. You need  
9 somebody to push against.

10 So, I'm not against the idea of having comparables  
11 in an area competing because I think market forces generally  
12 work if, indeed, there are comparables. So, as you go out  
13 and go forward from here, it's designing that measure that  
14 adequately speaks to the unique perspective of this set of  
15 concerns of clients that I am concerned about.

16 That's why that straight competition model, while  
17 it sounds good, doesn't seem to me to always reflect where  
18 the real life is. I think that's the challenge that I'm  
19 going to look to you folks and the others to tell us how to  
20 do.

21 MS. de BETTENCOURT: If I may answer that briefly,  
22 I know that Ken Boehm, in doing some research for this area,

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 found that the Corporation spent \$1.5 million in the mid  
2 1960s to find out how to measure quality, how to evaluate.

3 CHAIRMAN RATH: That was real money then.

4 MS. de BETTENCOURT: We don't even have that. I  
5 think one thing that almost everyone has agreed is that if we  
6 can at least get to that measuring -- and I don't think I've  
7 heard anyone suggest that this will just be a statistical  
8 measure. There's a quality of service that's very  
9 individual.

10 One of the most important things that legal  
11 services do is involve their entire community in what they  
12 do, including the private bar. You might be able to count  
13 how many pro bono hours they've gotten and that might be a  
14 statistical measure, but it's not that simple.

15 So, I think we're going into this with that  
16 realization. That's the first thing we have to do and we're  
17 not convinced that it's going to be easy.

18 CHAIRMAN RATH: Mr. Shumway had his hand up. I  
19 want to get a couple more Board comments. Around 3:00, I'd  
20 like to do public input, if that's okay. I don't want to cut  
21 that short. Norm?

22 MR. SHUMWAY: Just briefly, I think that any client

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 in choosing a lawyer is going to apply both subjective  
2 criteria and objective criteria. I think subjectively they  
3 may think you're more handsome than Bud is and therefore they  
4 want you to represent them. Or maybe they like the color of  
5 your eyes or the way you part your hair. Those are things  
6 that we're never going to duplicate in any kind of  
7 measurement, criteria, that we might come up with.

8 But I think there are objective criteria. We all  
9 know that they're going to look at the diploma on your wall  
10 and see what school you went to. They're going to decide how  
11 many years you've been in practice. They're going to measure  
12 your reputation in the community.

13 There are things they can look at in that regard  
14 that will fit into a more definable kind of criteria. I  
15 think that's what we have to come up against. We're never  
16 going to anticipate all of those thoughts that a recipient of  
17 service is going to have in his mind when he decides. But I  
18 think there are certain objective things that we can  
19 identify. I think that's the task before us.

20 CHAIRMAN RATH: Bud?

21 MR. KIRK: I had just a couple things. I think  
22 that we all agree, the Board members committee, that the

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 measurement is the key. You may require more certitude in  
2 the measurement than I do. I think that to come up with  
3 something -- it may not be perfect, and I don't think that  
4 we'll ever arrive at one that's perfect.

5 But I think with some time analysis, with some  
6 other ideas that will come from the field, I think with the  
7 field telling us how we can measure client reaction, we can  
8 get something to go on. If it's only 60 percent or 70  
9 percent, it's got to be better than just leaving that one  
10 there that we don't have any measurement on and assuming they  
11 are right. So, I agree that the challenge is there.

12 Just two more quick comments and then I'll try to  
13 end this. Howard has really pointed out a good point with  
14 option 3. Unless we have some ability to offer a carrot and  
15 offer them a stick after it's over -- I mean, with option 5,  
16 I think we give them the one-time thing.

17 With option 3, I see the ideal as a continuation of  
18 both programs. Obviously, the old program is probably going  
19 to have some of its money reduced and put into the other  
20 program. Maybe lawyers will leave that one and go to work  
21 for the other one. So there is a constant competition there.

22 I think that's what we're looking for and that

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 would be one of the ultimate results. That's going to be  
2 easier to do if we have a program that's no so good. It  
3 might be more difficult to do to decent programs. We already  
4 have a decent program and we're putting another one in the  
5 field. So, I think we need to look at that.

6 My question to you is is there a chance that we can  
7 go to Congress and say can you give us a little leeway, a  
8 little relief on our defunding restrictions for purposes of  
9 this grant?

10 MR. BOEHM: Yes. Let me just address that. That  
11 really is both in the regs and the act. Right now we're  
12 precluded from doing regulations, of course. In the act,  
13 we're in the reauthorization process. So, Congress, I guess  
14 it could -- I mean, it passed the Judiciary Committee. It's  
15 still waiting for full House consideration. The Senate has  
16 done nothing. Nobody has even introduced the bill.

17 So, the way that that could be done would be the  
18 reauthorization process. I don't think they do it by rider,  
19 not without the reauthorization process pending. So, the  
20 answer is yes, they can do it. They are probably better  
21 posed to do it now than at any point in the last 10, 12,  
22 years, but they couldn't do it any other way.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 MR. SHUMWAY: That's my point. I'm just wondering  
2 if someone can -- maybe we ought to tell them about our  
3 dilemma, that we've got what we think are good plans. We'd  
4 like to put them through. We need a little leeway maybe just  
5 for a one-shot deal or for however many times they end up  
6 giving us more money for studying competition. If they would  
7 give us some leeway on the programs we select --

8 MR. BOEHM: The only problem might be that the  
9 other parts of the legislation may overtake it. In other  
10 words, one of the legislative proposals allows for  
11 competition of all grants and funds that we put out. So,  
12 they did that as opposed to a narrow exception for this  
13 project, they'd be doing it across the board, and you  
14 wouldn't, presumably, need the narrow exception.

15 If the other plan passes, the Judiciary Committee  
16 bill, H.R. 2039, that does not provide for it. That provides  
17 for a study of competition over a period of years, after  
18 which the Corporation has to go back to Congress to get  
19 additional authority.

20 So, you could have a situation -- say that becomes  
21 a law. In its final consideration, there is a feeling in  
22 Congress it should be loosened up a little bit. Then that

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 may be the opportunity to have a specific exemption for this  
2 particular demonstration study.

3 The other proposal, McCollum-Stenholm, that would,  
4 in effect, loosen up the entire process because it would  
5 require competition after a period of study.

6 MR. KIRK: Is this something that we should take to  
7 the full Board and ask that a recommendation be made to  
8 Congress, if that's something we support?

9 CHAIRMAN RATH: No. I think we need to know more  
10 about it. My own sense of it is it's not going to make many  
11 programs volunteer.

12 MR. KIRK: I'd say it would give us the authority  
13 to do it.

14 CHAIRMAN RATH: I understand that. I want to be  
15 consistent in terms of the message we're sending. Howard?

16 MR. DANA: When last we talked on this subject, I  
17 think it was in Jackson. Mr. Houseman gave us a speech which  
18 went down better in some quarters than others. But he has  
19 left us a summary of his remarks, which you distributed to  
20 us, I think, as part of the package dated September 15, 1991.  
21 I would very much like --

22 MS. de BETTENCOURT: Well, that was from a

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 different --

2 MR. DANA: That wasn't Jackson?

3 MS. de BETTENCOURT: No.

4 MR. DANA: In any event --

5 CHAIRMAN RATH: The Chair has no recollection of  
6 that.

7 MR. DANA: Where did we hear from Mr. Houseman?

8 CHAIRMAN RATH: We heard from Mr. Houseman on a  
9 regular basis, but I can't --

10 MR. DANA: On the subject of competition.

11 MS. de BETTENCOURT: It was in Jackson.

12 MR. DANA: That's what I thought. In any event, my  
13 point is that he has some remarks which summarize his  
14 observations in Jackson, which you've distributed, I think,  
15 dated September 15, 1991. I find them to be an excellent  
16 summary of the key of suggestions that he made to us as a  
17 committee.

18 I would very much like, perhaps not today but  
19 sometime soon, this committee's reaction to this  
20 recommendations. Which of those would you urge upon us?  
21 Which of those would you ask us not to follow? My view is  
22 that the Competition Committee that is represented by the

Diversified Reporting Services, Inc.

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 five of you makes recommendations to us for what program you  
2 think we ought to -- how you think we ought to proceed. We  
3 consider that and then make a recommendation to the full  
4 Board which adopts whatever proposal we're going to follow.

5 So, I guess I'm putting the ball into your court.  
6 Mr. Houseman has made a series of recommendations. I,  
7 frankly, would like to know in what respect you feel we  
8 should not follow his recommendations.

9 CHAIRMAN RATH: You don't mean for an answer now?

10 MR. DANA: No.

11 CHAIRMAN RATH: I guess I need a copy of that. I  
12 don't have it.

13 MS. de BETTENCOURT: I'm not sure what you have.

14 MR. DANA: I may be the only one with it.

15 MR. BOEHM: I've seen a copy.

16 MR. KIRK: I saw it.

17 MR. DANA: It's this.

18 CHAIRMAN RATH: Time out. The record is getting a  
19 little bit confused here. The record will reflect that there  
20 has been a review of a document that Mr. Dana has identified  
21 as the Houseman comments from Jackson which now Ms. de  
22 Bettencourt has in her possession.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 I guess what I'd like to do on a going-forward  
2 basis is if Mr. Dana feels that the entire committee ought to  
3 see that, we should get that circulated to the committee, and  
4 it ought to be the subject of some discussion at a later  
5 date.

6 MR. DANA: Mr. Chairman, I assumed that the whole  
7 committee had it because I had it.

8 CHAIRMAN RATH: Mr. Dana, you have many things that  
9 this committee does not have.

10 MR. DANA: To that I will not respond except that I  
11 would ask that the staff distribute that. If the Chairman  
12 likes, we'll make it part of the record so that the --

13 CHAIRMAN RATH: I don't care whether there's a  
14 record or not. I'd just like to have it. What the Chair  
15 would like to do now is to excuse the staff from the table.  
16 I'd like to get some public comment. Now, we're not going to  
17 take a break.

18 We're going to keep on trucking here because we've  
19 got some time structures. I really do want to give people a  
20 chance to talk. Can I get an idea of how many people want to  
21 comment? Two? Any others? I don't want to restrict it and  
22 I'm not going to sort of hold you to that pledge, but just

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 give me a sense of where we are.

2           So, what I'd like to do is allow some public  
3 comment and go back to this discussion. What I'd like to do  
4 by about 4:00 o'clock -- because they tell me that I need to  
5 be upstairs about 4:15 to make my connection. By about 4:00,  
6 we'll get in a position so this committee can give some  
7 direction to the Competition Committee as to what to do next,  
8 if that's okay with my colleagues. It appears to be. Thank  
9 you very much.

10           Please come forward. I've been asked by the  
11 stenographer to make sure that everybody identifies  
12 themselves and the organization with which you are associated  
13 for the purposes of the record.

14                           PRESENTATION OF LINDA BERNARD

15           MS. BERNARD: Good afternoon. My name is Linda  
16 Bernard. I'm the executive director of Wayne County  
17 Neighborhood Legal Services. Wayne County Neighborhood Legal  
18 Services services the entire County of Wayne and the City of  
19 Detroit. There are about 2.3 million people in my service  
20 area. Roughly 600,000 are below the poverty level.

21           I'd like to respond in part to several of the  
22 comments that have been made both by the committee as well as

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 by the Board members. But, first, with respect to the last  
2 comment that was made by Mr. Kirk, that there should perhaps  
3 be a one-shot deal that would permit defunding of programs,  
4 and that there sort of be a suspension, if you will, of the  
5 rules or of the constitution, if you will, which is the  
6 equivalent of the regulations that we have, I think that that  
7 would be highly inappropriate.

8           The one time in this country that the constitution  
9 was suspended once before resulted in the incarceration of  
10 the Japanese throughout the western part of this country.  
11 There should be no suspension of the rules under any  
12 circumstances. The rules have been set up to provide for due  
13 process and adequate and proper hearing for all persons.

14           The other comment that I had with respect to that  
15 remark is that when you're speaking about defunding in  
16 particular, you're talking about the lives of people, of  
17 clients, and of communities which have been serviced by  
18 grantees of the Corporation for now more than 20 years, in  
19 many instances.

20           So, you're talking about a very, very serious issue  
21 whenever you're speaking about defunding. On the issue,  
22 however, of competition, perhaps if I tell you a little

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 something about my background, it will give some more  
2 credence perhaps to what I want to say.

3 I am a lawyer and a director. I'm licensed in four  
4 states and I have an LLM from the University of Pennsylvania  
5 Law School. Previously, I worked with the American Bar  
6 Association, not as an employee but as a supervisor, and  
7 assistant corporation counsel for the City of Detroit to set  
8 up the model procurement code project there.

9 Some of you may remember LEAA and the fact that at  
10 one point the ABA and LEAA were working together to establish  
11 procurement policies for all cities, counties, et cetera,  
12 other public organizations throughout the country. Their  
13 interest was the same as yours, which was to provide public  
14 money be spent efficiently, et cetera.

15 We did a lot of work developing a model procurement  
16 code in the City of Detroit that would result in the sort of  
17 thing that the Board is considering here. I saw that to you  
18 so that you will have some sense of where I'm coming from  
19 with respect to my comments concerning competition.

20 My first comment would be that the committee, at  
21 least in my view as an individual now, needs to be broader.  
22 I note that there are no minorities on the committee. I

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 don't know if all the committee members are present. I don't  
2 know if there is any legal services history or background  
3 other than from the position of the Corporation, which is the  
4 funder rather than the grantee, with respect to the  
5 committee.

6 CHAIRMAN RATH: Let me just ask you, Ms. Bernard,  
7 do you mean both committees, that is the Competition  
8 Committee within the Corporation or do you mean the  
9 Operations and Regulations Committee of the Board?

10 MS. BERNARD: No. I meant the competition of the  
11 committee that was sitting at -- certainly it should be  
12 broader. The majority of clients that are represented by  
13 legal services programs in many instances are minorities.  
14 There should be a substantial, if not significant, component  
15 of this committee.

16 CHAIRMAN RATH: I want to make it clear, and I ask  
17 Mr. O'Hara to respond, the full committee is not the group  
18 that you saw today. There are other members, and my  
19 understanding is, Mr. O'Hara, there are minority members.

20 MR. O'HARA: The minorities are represented on the  
21 committee and substantially.

22 MS. BERNARD: Okay, thank you. As you are

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 reviewing this, you look at a cost benefit analysis in terms  
2 of competition. You are speaking about investing a lot of  
3 money, potentially in various service areas, setting up  
4 grantees, setting them up to facilitate competition.

5           Might that money be better spent dealing with  
6 existing grantees and assisting them in improving their  
7 efficiency and so forth?

8           Howard, you indicated that you wanted to measure  
9 cost, quality, and effectiveness of legal services programs  
10 and that you wanted to measure it from a client standpoint as  
11 well. The Corporation has never measured these things. It  
12 has never measured cost, quality, or effectiveness.

13           As you know, the Corporation has predominantly, at  
14 least since I've been director, and that's been more than six  
15 years now, only utilized its resources to one, insure  
16 compliance with regulations and two, to do its monitoring  
17 effort, I mean to make sure that all programs were in  
18 compliance with regulations.

19           There has never been a quality initiative by the  
20 Corporation. There has never been any quality training or  
21 any of the other types of training for managers, if you will,  
22 or for executive directors of programs which focus upon

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 quality, cost, effectiveness, et cetera.

2 CHAIRMAN RATH: Let me interrupt you again. I  
3 apologize.

4 MS. BERNARD: That's fine.

5 CHAIRMAN RATH: The mere fact that it hasn't been  
6 done before would not make it an illegitimate exercise in  
7 your view?

8 MS. BERNARD: No. But before I would test you on  
9 something, I would have trained you in it first and then  
10 tested you. I would not have had the emphasis for the last  
11 seven years on compliance with regulations, very technical  
12 compliance I might add, and there have been enormous  
13 resources put into monitoring, audit and compliance, both by  
14 the Corporation and certainly in terms of it's consultants  
15 and so forth, and never, never put any money whatsoever into  
16 training, quality, good management practices, things like  
17 that.

18 I mentioned the issue about diversity concerning  
19 the committee. Also, I think that the process could benefit  
20 from being more open. I would be happy, as I'm sure other  
21 persons in this room who may have similar backgrounds or  
22 abilities, to work with the staff committee in coming up with

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 a model that would be workable. I think that that process  
2 could include not only project directors but certainly a  
3 couple of clients.

4 Finally, I would urge the committee to look at  
5 existing models and see which programs they view as  
6 "efficient" currently. You can do that by simply looking at  
7 your monitoring documents and looking at your monitoring  
8 reports.

9 If you're considering competition in any area, I  
10 think that the competition would be most appropriate in those  
11 areas where you are currently experiencing problems, where  
12 there are programs that perhaps are not in compliance, et  
13 cetera. Then you open up the grant process in those areas.  
14 But generally, if in fact you are satisfied with what a  
15 grantee is doing or what a contractor is doing or whatever,  
16 you don't seek competition in that manner and in that vein.

17 With respect to what you said, though, concerning  
18 client satisfaction, I measure our client satisfaction. On  
19 every closed case, we send out a client satisfaction report.  
20 Those results are tallied each year. Right now, I think as I  
21 recall from the 1990 report, we were running at about 92  
22 percent in terms of all clients rating our services either

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 good or excellent.

2 So, there is existing client data with respect to  
3 whether or not clients are in fact pleased with the results  
4 of their current legal services provider.

5 Finally, I'd like to say what's wrong with  
6 defunding and with using a large stick? We're in a hotel  
7 right now which is celebrating excellence in management.  
8 That's what the ASAE awards are about. That's what all those  
9 blue ribbons are about upstairs.

10 I dare say to you that that excellence in service,  
11 excellence in quality, excellence in education, excellence  
12 that's being celebrated upstairs has not been accomplished  
13 through the use of a big stick. It has been accomplished  
14 through positive motivation, positive support, through  
15 training, through the exchange of ideas, and through working  
16 together as a team.

17 The client interest here, I think, has to be first.  
18 Resources need to be invested in developing that and in  
19 promulgating, if you will, that quality model from some of  
20 the programs that you currently have. Clients -- I can give  
21 you just one personal example.

22 This past year our lease agreements and so forth

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 were up for our office. So I looked at other space in  
2 downtown Detroit for downtown offices. Even though the  
3 office that we were looking at potentially was only two  
4 blocks away, client members of my Board stated, and stated  
5 rather emphatically, something that I had overlooked in terms  
6 of looking at the improvements and looking at square feet and  
7 cost per square foot and all those other things.

8 They said, "Linda, our clients are shuffled around  
9 every day. They go from the gas company to the light company  
10 to the social services to here to there. They are told that  
11 this person can't help you. Go across the street. Go here,  
12 go there." For 15 years, clients have been coming to our  
13 offices.

14 So they know where legal services is. It's above  
15 the Friend of the Court. They know how to get there. They  
16 know where the bus stops are and all that. Even if it meant  
17 my clients having to go just two more blocks, two-and-a-half  
18 blocks over, to another building, to another facility, that's  
19 one more unnecessary shuffle for them.

20 They are being told once again when they get to my  
21 building, which they've been coming to, which maybe they  
22 haven't visited for three years because their divorce was

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 three years ago and now they've got a custody problem, the  
2 guard says, "Well, they've moved. So you've got to go to the  
3 Penobscot Building or this building or the other."

4 So, as you look at this, and we talk so almost  
5 cavalierly about moving money, about moving resources and  
6 thereby affecting client interest, I'd urge you to look very  
7 hard at investing in what are your current resources. It  
8 takes you a lot longer, for example, to train a new lawyer or  
9 a new director.

10 Whereas in my instance, you might be able to bring  
11 me up to speed to know whatever it is that you want us to  
12 know in terms of management and management principles and so  
13 forth. I mean, it's not always creating something new.  
14 Sometimes it's building upon and improving what you have.

15 The best way, in my opinion, to do that as a  
16 manager is to positively reinforce people, not do it through  
17 negativity.

18 CHAIRMAN RATH: You understand, and I'm certain you  
19 do, that the focus of what we're about on this particular  
20 committee today is to attempt to carry out a congressional  
21 mandate that speaks of competition. So that much of what you  
22 talk about, while I understand it, I need to keep it specific

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 to how we go forward under this competition study.

2 I guess what I am hearing you say, and I don't want  
3 to put words in your mouth, and I doubt I could, is that you,  
4 of the models such as they are, vastly prefer the carrot  
5 model.

6 MS. BERNARD: Absolutely. But I would also prefer  
7 that you permit the grantees to devise a competition method.  
8 I have competition in my service area. I bid out my pro-con  
9 divorces, my bankruptcies and my wills. I got four  
10 responses. I sent out about 70 RFPs. I got four responses.  
11 Of that, I selected three, and those three firms are the ones  
12 that I provide that work to. It has saved us some money.

13 I mean, I can develop, within my own program,  
14 competitive models and at the same time provide the client  
15 oversight and the oversight of the cases and everything else,  
16 and provide the comfort level, if you will, for clients that  
17 they are used to and that they deserve.

18 But to try to create a model without utilizing the  
19 people who do it every day -- also, I think with client  
20 input, I think, is incorrect. I agree that it is the carrot  
21 model that is most productive. It's certainly the most -- I  
22 don't want to say important, but certainly the one that we,

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 as we sit in this building, are recognizing even today.

2 So, other management professionals and other  
3 corporations use the carrot model and that's what this is all  
4 about here on every floor of this building. But I think that  
5 Howard's recommendation that the field programs, if you will,  
6 and clients develop a competitive model.

7 Perhaps that might deal with certain case areas, as  
8 I did, or just deal with certain geographic areas. All of  
9 that would make this committee's mandate with respect to  
10 competition effective and pertinent with respect to Congress.  
11 But you've got a lot of people in here who could really do  
12 this and it wouldn't even cost you a million dollars, and  
13 they'd do it very, very well.

14 CHAIRMAN RATH: We're looking not to spend the  
15 million on creating the model. We're trying to create a  
16 model and then spend the million.

17 Again, Mr. O'Hara, I want to call on you, but it is  
18 my understanding that you have discussed within the  
19 organization the creation of an advisory group of outside  
20 constituencies to work with the committee on designing the  
21 model. Am I correct in that?

22 MR. O'HARA: That's correct. I might point out

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 that not only are the minorities represented on the  
2 committee. They are the majority of the committee which may  
3 surprise -- I know the staff was kind of laughing at that  
4 before, but the committee that has been working on this has a  
5 majority of minorities, if that's an acceptable phrase.

6 MS. BERNARD: I'm glad to hear that.

7 CHAIRMAN RATH: We are going to continue to do some  
8 kind of outreach in terms of working on the model.

9 MR. O'HARA: Yes. There's no question about that.  
10 I've already begun the reach out and have contacted -- I've  
11 called Clint and I've talked to Dick Taylor about going  
12 further on meetings with this. In fact, Clint and I are  
13 talking about meeting next week. This is one of the topics  
14 we'll be discussing.

15 CHAIRMAN RATH: I have to say as one member of this  
16 committee and as one member of the Board, I don't know how we  
17 could design a model that works without involving folks just  
18 like you in the creation of it because you know how your  
19 system works. You know how your organization works. You can  
20 give us better suggestions of how to measure that than I  
21 think we could in, I think, kind of an ivory tower kind of  
22 atmosphere.

Diversified Reporting Services, Inc.

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 MS. BERNARD: But I'm not on the committee so I  
2 can't help you.

3 CHAIRMAN RATH: But I suspect we can get your  
4 advice. Mr. Kirk?

5 MR. KIRK: Ms. Bernard, I hope you heard every  
6 member of this committee say that we want input from the  
7 field. I mean, is there any doubt?

8 MS. BERNARD: But what does that mean? Is that the  
9 equivalent of what you do in the Federal Register when you  
10 publish a regulation and you get comments? But when you're  
11 working on the committee that puts together, if you will,  
12 that regulation, then that's real substantive input. It's  
13 not, to me anyway, substantive input to comment after it's  
14 already done.

15 CHAIRMAN RATH: Mr. Kirk?

16 MR. KIRK: Listen to me again.

17 MS. BERNARD: I'm listening. We want input from  
18 the field. We really do. It is not my goal for the field to  
19 design it and tell us what ought to be done. I think we  
20 should make the final decision.

21 MS. BERNARD: I agree with that.

22 MR. KIRK: But we want input from the field. If

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 you didn't hear me before, believe me, that is a strong  
2 concern of everybody. Jack knows how often I've talked to  
3 him about it. I know Howard is concerned. I know Norm is  
4 concerned and Tom is concerned. For everybody here, we can't  
5 do it without you people. I think Howard knows that I'm  
6 committed to that. That's why this has to be done.

7 MS. BERNARD: Are you suggesting that we form a  
8 committee to design and then the Corporation have its  
9 committee? I'm unclear, I guess. I understand that you want  
10 comment, but I don't know how that can best be achieved.

11 MR. KIRK: The Corporation is going to reach out to  
12 you and ask for input. Give us specific recommendations. My  
13 next question to you is you teach quality to your people;  
14 don't you?

15 MS. BERNARD: Every day. Our motto is that we  
16 better our best.

17 MR. KIRK: Why do you think that it would be so  
18 difficult now to have to train people if we start measuring  
19 quality?

20 MS. BERNARD: Because my background is different  
21 from that of many executive directors in the sense that my  
22 background has been private and corporate, for the most part.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 We have a different approach, a different initiative, a  
2 different kind of style.

3 That is not to say, however, that that, in my  
4 opinion, as the grantor agency, if it was the Rockefeller  
5 Foundation or any other foundation that is providing funding  
6 to grantees, and the sheltered market, if you will, that you  
7 are currently operating in, to me, prior to measuring that,  
8 prior to you saying to Detroit, Chicago, Indianapolis, Los  
9 Angeles, we're going to come in and measure this, I would  
10 only measure it if in fact I had already trained people,  
11 worked with them, and done things like that with them.

12 If you have certain expectations that you think are  
13 not being met or that can be met better, then tell us what it  
14 is you want and tell us how it is you want to do it. Then  
15 test us.

16 MR. KIRK: Well, my recommendation is going to be  
17 that a lot of input -- the primary input come from the field  
18 on how we measure quality. Now, I don't think that we can  
19 achieve all of Mr. Houseman's goals, but I think that  
20 measuring the quality, we need a lot of input from you. I am  
21 not moved by the fact that we have to teach people what  
22 quality is.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1           Hopefully, if the recommendations come from the  
2 field, there are some general understandings of what quality  
3 work -- what efficiency is and that that can come. That is  
4 one that I think we intend to incorporate you with. As far  
5 as vast training programs going, I'll have to listen on that  
6 one.

7           I am concerned about who we're trying to protect  
8 with the fear of defunding. If there is a program in podunk  
9 Florida, and we take and put a competing program in there --

10           MS. BERNARD: When you say take and put in there,  
11 what do you mean? You fund another firm? You create another  
12 nonprofit corporation? You invest substantial resources into  
13 X, Y, Z, Inc., nonprofit Inc., in order to compete with this  
14 program that you spoke about in Florida? So, you would take  
15 a couple million dollars, create a new program to compete  
16 with an existing program?

17           MR. KIRK: I think what I'm talking about is set  
18 forth in option 3 and is described by Howard. What we're  
19 talking about is certainly not putting a couple million  
20 dollars, but taking a small program, putting another one side  
21 by side --

22           MS. BERNARD: Creating one?

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 MR. KIRK: Yes, measuring the way the two programs  
2 work. If the new program is substantially better and serves  
3 more people and gives better quality and more people for the  
4 buck, what is wrong with allowing that program to then  
5 coexist side by side, receiving half --

6 Now, taking away the artificial funding, receiving  
7 half the funding from the other one, and letting the two work  
8 side by side so that the people, in fact, are better served  
9 by the new program? What is wrong with that?

10 MS. BERNARD: Because I think the premise is  
11 artificial in the sense that when you're creating something  
12 new, there may be certain benefits to doing that. But the  
13 other program has not had the resources or anything else.  
14 they have collective bargaining agreements. They have union  
15 issues.

16 They have maybe long term lease commitments and  
17 other things that therefore, if you will, from Jump Street  
18 but might make it less competitive than when I'm coming in  
19 from off the streets. I'm starting a new law office. This  
20 is a new law firm. We're going to do public interest work.  
21 I don't have a union.

22 I have a year's lease. I'm leasing my equipment.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 I'm not buying it. I don't have the problems of equipment  
2 that's old or breaking down. I don't have long-term staff  
3 that may have health problems or other disabilities or so  
4 forth.

5 I don't have this regulatory extensive, if you  
6 will, regulatory oversight component that this other program  
7 has been dealing with over a number of years. Incidentally,  
8 refunding alone, each application must cost us at least  
9 \$20,000 just in staff time to complete.

10 I haven't had any of these issues on the new kid on  
11 the block. I don't have any of this baggage to carry along  
12 with me. So, to me anyway, it wouldn't be fundamentally  
13 fair.

14 MR. KIRK: Well, to me, it's not fundamentally fair  
15 to the poor people to say that you get less representation  
16 because somebody else has messed up the lease that they've  
17 signed. They've signed bad union agreements, and they've  
18 gotten some horrendous health policy that they're paying for,  
19 or they messed up because of their past record and they're  
20 having to operate in a different way.

21 I don't believe that the people that we're trying  
22 to serve should suffer because of those mistakes. I think

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 that we need to say I'm sorry, but you messed up. You didn't  
2 do it right and we're here to serve the poor people, not to  
3 serve you and your elderly employees and the people that  
4 you've got on the payroll that shouldn't be there.

5 MS. BERNARD: Then give me a goal that you want me  
6 to achieve in terms of client service in that area.

7 MR. KIRK: I think that's what we're aiming for.

8 MS. BERNARD: That's fine.

9 CHAIRMAN RATH: I think one thing that is very  
10 clear -- and I don't have an answer for it today. I'm going  
11 to take you back to what I said at the beginning. This is  
12 the beginning. One of the purposes of having this kind of a  
13 beginning is to demonstrate to you that unlike reading a set  
14 of regulations in the Federal Register for comment, we're not  
15 there.

16 We're going to clearly work to design a mechanism  
17 that is inclusive. It's inclusive not for show but for  
18 substance. That means getting the involvement from folks  
19 like you and people with your perspective, involvement at a  
20 time when it's meaningful to this committee as it makes it  
21 set of judgments.

22 I hear you. I think the committee members hear

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 you. I think the staff committee hears you in terms of  
2 giving us a call to find a way to make involvement critical.  
3 I don't think it can work without an acceptance by those  
4 we're testing that our test is valid.

5 It's not going to come simply because we from on  
6 high or from whatever status we are come out with some set of  
7 regulations or a project. It's just not going to work. So,  
8 you've got to be involved. I also think that you've got to  
9 keep the scope of this within reason.

10 MS. BERNARD: I understand.

11 CHAIRMAN RATH: I'm not sure how effective we can  
12 be given the dollars we've got. I'm not asking for more  
13 dollars, but I'm just saying that again it's going to be  
14 limited. So, let's keep that perspective here as well. I  
15 would ask as we go forward that you continue to let us know  
16 when we're straying from what you and others in similar  
17 positions feel we need to know.

18 I don't have an answer to all your questions right  
19 now. I want to think them through. I also want to give  
20 other people on the Board a chance to ask you a question. I  
21 ask you to stay at the microphone.

22 There's a gentleman with you and I want to give him

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 a chance to speak before we close. I don't mean to cut you  
2 off. I don't want to cut off questions of Ms. Bernard if  
3 others on the committee have some.

4 (No response.)

5 CHAIRMAN RATH: If not, if you don't mind staying  
6 right where you are. Yes, sir, would you identify yourself  
7 and make some comments for us?

8 PRESENTATION OF ROBERT T. YEAGER

9 MR. YEAGER: Well, I'll take the mike if Ms.  
10 Bernard is done and there are no more questions of her. Do I  
11 understand that to be the case?

12 CHAIRMAN RATH: Yes, sir.

13 MR. YEAGER: My name is Robert T. Yeager. I am one  
14 of the midwest organizers for the National Organization of  
15 Legal Services Workers, District 65, UAW, AFL/CIO. We are  
16 the union that represents the majority of the employees who  
17 work in legal services-funded programs.

18 I beg the committee's tolerance. I just crawled  
19 out of a sickbed after four days, so I promise I won't kiss  
20 anybody before I leave the room.

21 I was not intending to address the Board or the  
22 staff committee on the competition models they proposed

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 because I have yet to see the memo and some of the written  
2 comments on that. I assure you that we would like to get a  
3 copy of that and be giving you comments at a later date.

4 But as I was sitting here, I was hearing some  
5 comments and I feel moved to give you some input at this  
6 point. I am encouraged to hear a number of the Board members  
7 indicate that the quantity and the quality of the service  
8 received by the clients should be our uppermost concern in  
9 this process. I want to assure you that that is also the  
10 concern of our members, the people who actually work in your  
11 programs.

12 Whether it is a question of evaluating existing  
13 programs or developing models for your competitive  
14 demonstration project, I think we have to judge our success  
15 by the quality and the quantity of services received by the  
16 clients as perceived by the clients themselves.

17 This, I think, underscores the necessity for local  
18 priority setting. I think it underscores the necessity for  
19 the involvement of the client community and of the staff  
20 members who provide the actual services. It is difficult, if  
21 not impossible, to draw up a model for evaluation of the  
22 client impression of the quality and quantity of services

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 they receive unless that evaluation is done upon a realistic  
2 and practical basis.

3           You can't conceive of one in the abstract and try  
4 to fit it onto the practice in the field. I would suggest,  
5 among other things, that the Board would be greatly aided in  
6 its efforts to evaluate if members of the Board were to serve  
7 for a week on the staff of any neighborhood field office that  
8 you are now presently funding.

9           I think you should sit in the waiting rooms where  
10 the clients are sitting waiting to see their attorneys and  
11 their paralegals. I think you would learn immensely from  
12 this input that you receive and the impressions you get. For  
13 example, when I was hearing the discussion on the Board about  
14 how in the case of the competitive model, how a poor person  
15 may choose which legal aid office to go to if they were too  
16 serving the territory.

17           I heard suggestions that perhaps the sheepskin on  
18 the wall, what university the attorney graduated from, might  
19 be relevant in that. I heard the Acme Widgets analogy. To  
20 the Board's credit, you realized the limitations of those  
21 analogies.

22           I would like to suggest that based upon the time I

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 served working for the union and the 11 years I served as an  
2 attorney on the staff of the legal services programs, let me  
3 tell you the kind of things I heard from my clients, both in  
4 terms of complaints and positive feedback about what seemed  
5 important to them.

6 Now, I'm urging to you to find out from them, but I  
7 want to give you some direction and what you may find. First  
8 of all, I would suggest that access is highly important to  
9 our client community. There was no complaint so bitter as  
10 the complaint, "Well, you moved," or "I used to be able to  
11 call you on the 800 number, but now you don't have it  
12 anymore," or "I used to be able to walk in and get an  
13 appointment. I don't have a telephone. Now I get there and  
14 you put me on a waiting list."

15 I would suggest that you will find from the client  
16 community that access and ability to respond to their  
17 immediate needs is going to be considered very highly by them  
18 in determining the quality and quantity of services they get.

19 The promptness of response is very important. One  
20 of the greatest complaints we constantly heard was when we  
21 had to put routine matters on waiting lists because we had so  
22 many pressing cases of physical abuse and other kinds of

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 cases that had to take priority.

2 I worked in legal services starting in 1977. I  
3 worked through the period when we had major drastic funding  
4 cuts. I know the complaints of the clients at that time.  
5 They were shocked and surprised that we could no longer  
6 handle certain kinds of cases.

7 They had come to depend upon our ability to handle  
8 things such as routine divorces. There is no case to a poor  
9 person that is routine, if it affects their daily lives, if  
10 it affects their ability to feed their families, to keep the  
11 utilities on and so forth.

12 Another thing that we constantly receive complaints  
13 on are the hoops that they have to jump through to get  
14 services. I suspect you will find this sitting in their  
15 waiting room: the questions we have to ask them, the detail  
16 of the retainer agreements, the race and gender  
17 characteristics of themselves and their families, sometimes  
18 the verification we have to obtain of their income and other  
19 such things, the windows at which times waiting lists are  
20 suspended and people are able to come in and get services,  
21 the time that attorneys are able to spend with their clients.

22 I had many clients say to me thank you for taking

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 the time to talk to me about this problem. I know you're  
2 busy. I've also heard clients complain that other attorneys,  
3 perhaps sometimes myself, didn't take enough time. You need  
4 to have programs where the service providers are not  
5 pressured by the need to crank out a large quantity of cases  
6 to the extent that you do not have the time to talk with the  
7 client and give full hearing to their concerns.

8 Likewise, you need to have stability in the  
9 program. They need to know that you're going to be there  
10 tomorrow. I think Ms. Bernard's comments are well taken.  
11 Many of our clients, when they come to us in the offices,  
12 they have already been to the utility office. They have  
13 already been to the general relief office, to the Department  
14 of Social Services. More often than not, they tell you to go  
15 somewhere else.

16 You need to have stability, central location, easy  
17 access, and so forth. You also need to have the backup to  
18 provide quality services. You need to be able to have enough  
19 money to pay for discovery, to pay for doctor's opinions in  
20 the case of disability cases, and so forth.

21 These are the kinds of things that hit poor people  
22 right in their face. This is what they deal with when they

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 walk into a program. So, I urge you, as you are evaluating  
2 any program, any system, put your ear to the ground as close  
3 as possible. Sit in a neighborhood office. Sit in the  
4 waiting room. Ask the people who are sitting there.

5 I was raised on the banks of the Mississippi River.  
6 The bard of the Mississippi, Samuel Clemens, is known for a  
7 number of stories, one of them being the Prince and the  
8 Pauper. The lesson of the Prince and the Pauper was  
9 something that I'm sure you've heard. The prince trades his  
10 royal robes for the rags of a pauper and sees firsthand the  
11 impact of his royal decrees upon the people.

12 When he returned to the palace, he was remember  
13 then to have been a much more benevolent monarch. I would  
14 urge that Mr. Twain's model be adopted by the Board. Thank  
15 you.

16 CHAIRMAN RATH: Thank you, Mr. Yeager. Questions  
17 and comments for Mr. Yeager?

18 (No response.)

19 CHAIRMAN RATH: I appreciate your time and your  
20 effort in coming here. Further questions or comments for  
21 either Ms. Bernard or Mr. Yeager?

22 (No response.)

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1           CHAIRMAN RATH: If not, thank you. Is there anyone  
2 else who wishes to chat with us at the moment?

3           (No response.)

4           CHAIRMAN RATH: If not, thank you both. We'll look  
5 forward to continuing this discussion.

6           MS. BERNARD: Thank you for giving me the  
7 opportunity to speak.

8           CHAIRMAN RATH: Thank you very much. If the staff  
9 wants to come back up at this point, what I'm going to try to  
10 do in the last few minutes here is use our time most  
11 profitably. Let me attempt to synthesize a little bit where  
12 I see us and then try to get some agreement as to how we move  
13 forward.

14           MS. de BETTENCOURT: May I suggest one thing? We  
15 didn't discuss Mr. Dana's option 7. I think it's a good  
16 idea. Perhaps we can have a very brief competition by having  
17 all the programs compete for the best idea for competition.

18           CHAIRMAN RATH: I think that what I will call the  
19 creativity option is an important one. I'm never skeptical  
20 of what Mr. Dana suggests, but it takes me a little longer.  
21 He has much longer strides than I do so it takes me a while  
22 to catch up to him.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1           The more I think about it, the idea of accurately  
2 measuring excellence and then rewarding it, to me, in the  
3 end, is much more palatable than engaging in some kind of  
4 attempt to point fingers and defund. I am very frightened  
5 about the term defunding. I hear very clearly what it  
6 portends.

7           You know, it's like when you pass the bar now in  
8 our state you take a long course on -- I forget what they  
9 call it. They've changed the name about five or six times.  
10 It's basically how you practice law. The problem is it's so  
11 hard to explain to somebody how you do it that when you test,  
12 it's almost like the test isn't relevant unless somebody  
13 fails it.

14           I don't like that. I have a real problem with a  
15 presumption that the only test that's going to work is one in  
16 which in the end says to somebody you're out. I don't like  
17 that. So I guess I tilt a bit towards the carrot. But I'm  
18 still not sure what I'm testing for, and I want to know more  
19 about it.

20           So, I don't believe this committee -- I'm going to  
21 wait until Bud and Norm are here.

22           MR. DANA: Maybe we could take a vote right now.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 (Laughter)

2 CHAIRMAN RATH: That's following the Al Haig model  
3 of doing things. I don't think we're ready to select an  
4 option. What I really want to do is sort of focus the  
5 committee here and then the staff committee on how we work  
6 our way through our choices.

7 What I was attempting to do today, and I don't know  
8 whether others can judge whether we were successful, is to  
9 get some sense of what is necessary to legitimize the  
10 process. What I'm hearing clearly is a significant portion  
11 of that legitimization will only come from inclusion.

12 I think Bud is absolutely correct that to a person  
13 this committee comes down on the side of involvement.  
14 Everybody is busy, so I'm not asking anybody to do something  
15 just for the sake of taking an airplane ride. I mean  
16 meaningful involvement where there is a contribution to be  
17 made.

18 Bud and Norm have now rejoined us at the table.  
19 I'm trying to synthesize a bit as to where we are and where I  
20 see us going as a committee in terms of process. The first  
21 point I was making is that I think there is a significant  
22 degree of agreement in terms of getting involvement,

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 meaningful involvement from the field as we design this  
2 process on a going-forward basis. I think that everyone  
3 agrees with that.

4 On Monday, the full Board of the Legal Services  
5 Corporation will meet. We'll have to make a report as to  
6 this committee meeting which I gather I will do probably with  
7 Ms. de Bettencourt, if you're available. I think what I want  
8 to tell them is coming out of this I will probably want to  
9 have another session where we put into place a process to get  
10 to agreement.

11 That would include, I think, Mr. O'Hara, hearing  
12 how you have progressed in terms of putting together an  
13 outreach program, an advisory committee to work with the  
14 staff committee. I'm not a great one for labels. I mean, I  
15 really see this as a collegial project.

16 As far as I'm concerned, everybody is working  
17 together. So I don't want to have two dueling committees. I  
18 want people pulling in the same direction. You said you  
19 could get them working with the staff and putting a committee  
20 together, which will be a real test of your not insignificant  
21 skills to get that kind of involvement.

22 I'd like to get a sense of that the next time we're

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 together and maybe meet jointly with that group when we're  
2 together again. I'd like to see some further work done on  
3 spelling out what the options mean, including the option 6  
4 and now option 7, the creativity option.

5 I would like to have, by the next time we  
6 meet -- and I'm not suggesting a date for that now. I'd like  
7 people to think about that until we're together again -- some  
8 kind of a time line. I don't want an exercise which just  
9 indefinitely extends itself.

10 I want to know where we're going and I want to know  
11 when we're going to get there because I think that's  
12 important to the Board, and it is important to the Congress  
13 to see that we're living up to what they've asked us to do.  
14 So I'd like some pretty critical thinking done on that.

15 Mr. Kirk?

16 MR. KIRK: I understand that you said that in the  
17 meetings for the input for coming up with proposals and  
18 models and all, but I think that the final decision needs to  
19 be made by the LSC Corporation.

20 CHAIRMAN RATH: No question. I don't think there's  
21 any doubt about that.

22 MR. KIRK: Okay.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1           CHAIRMAN RATH: I'm just saying as this group, this  
2 in-house committee moves forward on its task, as it  
3 interfaces, and I hate to you use a noun as a verb, but as it  
4 does that thing with this advisory group, I don't want it to  
5 be cross tables. I want you around the same table working  
6 towards the same end, which I think is consistent with what  
7 the members of this committee want.

8           Then, ultimately, out of that effort, come back  
9 with us. We give you some further guidance at another  
10 meeting. We get additional comment. We begin to focus and  
11 sharpen our thinking. Ultimately, we make a recommendation,  
12 hopefully as one body to the LSC Board. The LSC Board will  
13 ultimately adopt or reject what we've done.

14           MR. KIRK: But I think the proposal that comes to  
15 us needs to come from this LSC committee the members are in.  
16 They are the ones charged with --

17           CHAIRMAN RATH: Absolutely. But I'm hopeful that  
18 the other one will meld together. I don't want to stand on  
19 ceremony here. That's where I see us going, and that will be  
20 consistent with the report I mean to give to the Board on  
21 Monday.

22           Mr. Shumway, Mr. Dana and Mr. Kirk are all nodding.

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 Ms. Wolbeck or Ms. Love, do you have any further comments?

2 MS. LOVE: Yes, I do. What I like about the  
3 committee is their involving the people in the field. That's  
4 what I like about the Board because we all are trying to go  
5 to the bill. So, thank you.

6 CHAIRMAN RATH: The Chair has exhausted his agenda.  
7 Mr. Kirk has suggested we need another meeting in the next 30  
8 days. It would be my instinct to follow that. I guess I'd  
9 like to wait until the first of the week to set it and set a  
10 time. I'm also cognizant of the fact that once we get into  
11 December, it becomes very hard to meet.

12 If this is convenient, this has not been a bad way  
13 to do it. I really want to especially thank Commissioner  
14 Shumway, who has made extraordinary efforts to be here today.  
15 I really appreciate it. I appreciate all the efforts of  
16 everyone. So, I will keep that in mind but going forward.

17 Hearing no other business, I'll entertain a motion  
18 to adjourn.

19 M O T I O N

20 MR. SHUMWAY: So moved.

21 MR. DANA: Second.

22 CHAIRMAN RATH: It is moved by Mr. Shumway,

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121

1 seconded by Mr. Dana. All in favor?

2 (A chorus of ayes.)

3 CHAIRMAN RATH: Contrary minded?

4 (No response.)

5 CHAIRMAN RATH: So moved. Thank you all very much.

6 (Whereupon, at 3:50 p.m., the Legal Services  
7 Operations and Regulations Committee meeting was adjourned.)

8 \* \* \* \* \*

**Diversified Reporting Services, Inc.**

1511 K STREET, N.W. SUITE 643

WASHINGTON, D.C. 20005

(202) 628-2121