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LEGAL SERVICES CORPORATION
COMMITTEE ON THE PROVISION FOR THE DELIVERY
OF LEGAL SERVICES MEETING

August 24, 1989
9:00 a.m.

The Washington Marriott Hotel
West End Ballroom D
1221 22nd Street, N.W.
Washington, D.C. 20037

BOARD MEMBERS PRESENT:

J. Blakeley Hall, Chairman
Hortencia Benavidez
Lorain Miller
Claude Swafford
Basile J. Uddo
Robert A. Valois

STAFF PRESENT:

Terrance Wear, President
Timothy Shea, Vice President and General Counsel
Maureen Bozell, Secretary

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P R O C E E D I N G S

(9:15 a.m.)

1
2
3 CHAIRMAN HALL: I am going to call to order today the
4 meeting of the Committee on the Provision for Delivery of Legal
5 Services. My name is Blakeley Hall. Also present today is
6 Lorain Miller, Basile Uddo, Claude Swafford, Hortencia
7 Benavidez, Bob Valois, and various staff members, Terry Wear. I
8 have seen Maureen Bozell here as well.

9 We have several items on the agenda today and I want
10 to get started. I am going to begin by asking for an approval
11 of the agenda as written in our book. I suppose everyone has
12 seen it. Do I have a motion?

MOTION

13
14 MR. VALOIS: So moved.

15 MS. BENAVIDEZ: I second.

16 CHAIRMAN HALL: All in favor, aye.

17 (A chorus of ayes.)

18 CHAIRMAN HALL: Opposed?

19 (No response.)

20 CHAIRMAN HALL: The agenda is approved as written.
21 Our next thing on the list is the approval of the minutes from
22 our June 12-13, 1989, meeting of the Committee on the Provisions

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1 for Legal Services. Has everyone gotten a copy of those minutes
2 and read them?

3 MOTION

4 MR. VALOIS: I move that they be approved.

5 MS. BENAVIDEZ: I second.

6 CHAIRMAN HALL: I have a correction and want to make a
7 motion that this be added in there and then I am going to take a
8 vote on the minutes as amended. On page 2, the third paragraph
9 down it begins, "The Chairman turned to the next item on the
10 agenda..."

11 I think that paragraph should read, "The Chairman
12 turned to the next item on the agenda, consideration of the
13 competitive award system for LSC grants. He recommended the
14 committee" -- and he is my addition -- "hear the witnesses on
15 the Corporation draft proposal on competitive bidding but take
16 no action of their own and postpone further consideration of
17 competitive bidding until Corporation could be clear about its
18 authority to investigate this subject."

19 The purpose of my motion -- I believe what I wanted to
20 do that day was hear everybody that was there, but past that
21 point, not take any further action until we had some say on
22 whether or not we were going to be banned from taking further

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1 action.

2 MOTION

3 I make the motion that the minutes as written be
4 approved as I have set forth.

5 MR. VALOIS: I have no objection to the amendment.

6 CHAIRMAN HALL: All for it, signify by aye.

7 (A chorus of ayes.)

8 CHAIRMAN HALL: Opposed?

9 (No response.)

10 CHAIRMAN HALL: The ayes have it. I am going to ask
11 that the minutes as amended be approved. Motion?

12 MOTION

13 MR. UDDO: So moved.

14 MS. BENAVIDEZ: Second.

15 CHAIRMAN HALL: All in favor?

16 (A chorus of ayes.)

17 CHAIRMAN HALL: No?

18 (No response.)

19 CHAIRMAN HALL: The minutes are approved as written
20 with the amendment. The next item we have on the agenda, I
21 believe, is consideration of competition for federal legal
22 services grants.

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1 I am really unclear on how our schedule is going to go
2 here with the discussion topics. I suppose the first one is
3 going to be "Competition Models Used by Selected Federal
4 Agencies." Is that correct?

5 I am going to ask the speaker to come forward and
6 identify himself.

7 MR. RUSSELL: My name is Leslie Russell.

8 CHAIRMAN HALL: Where are you from, sir?

9 MR. RUSSELL: I am a staff member of the Legal
10 Services Corporation.

11 CHAIRMAN HALL: Nice to meet you. What do you have
12 for us today?

13 PRESENTATION OF LESLIE RUSSELL

14 MR. RUSSELL: I was asked to talk briefly about the
15 private law firm project. The project is one of the
16 Corporation's first efforts in utilizing competition to provide
17 legal services.

18 The project was initiated in about 1984. As I stated,
19 it is one of the Corporation's initial efforts to utilize the
20 competitive market to assist in the provision of legal services
21 to the poor.

22 The project was conducted in 11 sites. The

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1 Corporation entered into 42 contracts with 35 contractors. The
2 objectives of the project were to number one, find out if these
3 type of contracts could augment existing legal services; to
4 determine the cost in quality of high volume, high quality legal
5 services contracts, two private attorneys; and lastly, to
6 collect comparative data which we could use to assess private
7 attorney contracts as against the staff model.

8 Originally, as planned, the project was only going to
9 utilize the divorce, wills and bankruptcy type cases. Those
10 cases have been identified as most suitable for high volume
11 contracts and quick resolution.

12 As we experienced and went on with the project, we
13 received recommendations from field programs to try other types
14 of contracts which would more closely address the service needs
15 of their particular communities.

16 As a result, we entered into contracts in several
17 additional areas including social security, child support,
18 landlord/tenant, juvenile dependency type cases, adoption cases,
19 child support enforcement and spouse abuse type cases.

20 We pretty much ran the gamut in terms of cases, in
21 terms of easy cases to the more complex, especially in the
22 domestic relations area where we have done both contested and

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1 uncontested divorce types.

2 When the project started, LSC conducted site analyses
3 in 73 cities across the country. There were several criteria
4 used to select the site, the principal criteria being that local
5 programmers interested in the project, that there was a pool of
6 eligible clients who needed the service, and that the local bar
7 association was interested in the project.

8 Subsequent to finding amenable sites, the Corporation
9 undertook its solicitation process. Normally that entailed the
10 preparation of the solicitation package which described the case
11 services to be rendered, provided instructions to the potential
12 bidders on how to formulate a bid and provided contract
13 requirements.

14 Additionally, notices and requests for comments were
15 sent to the governors and state and local bar associations in
16 each site city. The notice was similarly published in a local
17 newspaper.

18 As we went on in the project, in order to increase
19 interest, we utilized mass mailings to all local attorneys and
20 conducted bidder's conferences in each site city. The bidder's
21 conference was geared to assist the potential bidders in
22 understanding the process.

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1 A staff member would travel to the selected city. At
2 an important place and time, would meet with potential bidders
3 and discuss the ramifications of the contract, of the bid
4 process, et cetera.

5 Once the solicitations were received, the Corporation
6 would log in each proposal and each proposal would be evaluated.
7 We established what we called a bid review committee consisting
8 of three experienced LSC staff members and a nonvoting secretary
9 whose job was to record the conversation of discussions of the
10 bid review committee and make a formal report of the committee's
11 recommendations.

12 The committee reviewed each proposal. Each committee
13 member reviewed each proposal independently and themselves
14 ranked the proposals. The committee then met as a team and
15 ranked the proposals jointly.

16 Several criteria were utilized in ranking the
17 proposals. The criteria basically were the price of the bids
18 per case, the ability to provide the service, the extent to
19 which the proposal indicated an ability to provide the service,
20 the experience of the bidder with high volume case service, the
21 automation and standardized techniques of the proposal and the
22 extent to which the proposal indicated that the bidder would or

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1 could cooperate with the LSC and our local program.

2 Subsequent to the review process, the proposals were
3 ranked and the committee made recommendations for further
4 negotiations. Those negotiations were generally conducted by
5 the chairman of the bid review committee.

6 We called them best and final negotiations. The
7 purpose of those negotiations were to try to obtain the best
8 possible price for the services considering the limited dollars
9 available.

10 Subsequent to the best and final negotiations, the
11 committee also reviewed the comments of the local bar
12 associations. The local bar associations were requested to make
13 comments in terms of the good standing and the reputation of the
14 bidders.

15 Subsequently, we would make recommendations to the
16 director of the Office of Legal Services who would review our
17 comments and recommendations. The director's recommendations
18 were forwarded to the president who would make the final
19 decision of the contracts.

20 When the president made the final decisions, notices
21 and requests for comments, et cetera, were again sent to the
22 governors and state and local bar associations.

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1 Generally, the criteria established for contractor
2 selection of the review by local bar associations established
3 what we call an up front quality control mechanism. One of the
4 criticisms of the project was that the Corporation had no handle
5 on the quality of the attorneys with whom they contract.

6 However, I believe there is a criteria we establish.
7 The comments and recommendations from the local bar associations
8 and from the local programs help to assure us that we contracted
9 with quality attorneys.

10 All the comments we received from the local bar
11 associations and the local programs regarding the attorneys were
12 positive. In essence, we have had few problems with the
13 contract attorneys.

14 The contracts were organized in a fashion whereby they
15 were pay-as-you go type contracts. We devised a mechanisms
16 called fractionalization, whereby the private attorneys would be
17 paid for services actually rendered.

18 For instance, most contracts in the general case were
19 divided into four parts.

20 (Interruption to the proceedings.)

21 I was discussing the fractionalization.

22 (Interruption to the proceedings.)

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1 As I was discussing, the fractionalization payment,
2 the method of payment was geared towards payment for --

3 (Interruption to the proceedings.)

4 For instance, one full billable case in the
5 fractionalization --

6 (Interruption to the proceedings.)

7 One full billable case in the fractionalization
8 terminology represented a case closed by judicial resolution.
9 There were three other levels of case closure.

10 If a case was closed after the initial client
11 interview, for instance --

12 (Interruption to the proceedings.)

13 -- the attorney would be paid one quarter of the
14 billable case. If the attorney prepared documents prior to
15 filing, that would represent one half billable case.

16 If documents were prepared, filed and the client
17 subsequently withdrew, the attorney would be entitled to three
18 quarters of a billable case. However, the contractors
19 contracted for a set number of billable cases, not necessarily
20 "any set number of clients."

21 So if a contractor contracted for 100 billable cases,
22 that could potentially mean that that attorney would have to

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1 service 150 clients or whatever to equal that 100 billable
2 cases.

3 Another contract mechanism was the advance payment.
4 We paid the contractors 30 percent of the contract price up
5 front. That was done to help cover some of the overhead costs
6 and somewhat as an incentive for the attorneys that contract
7 with the Corporation.

8 The 30 percent advance payment was deducted from the
9 fractionalized levels of payment. For instance, if one billable
10 case represented \$100 and the attorney closed the case at one
11 full billable case, instead of being paid \$100 at the
12 presentation of the invoice, he would be paid \$70, the 30
13 percent having been paid in advance for that particular case.

14 The attorney, of course, were required to submit
15 monthly billings. They did not always do it regularly, but
16 pretty much they complied with that. Every month they would
17 send us billings and we would pay the invoice.

18 We would track expenditures as well as case services.
19 Part of that tracking system was the case service report system
20 which we utilized. We devised and expanded case service report
21 form for the private law firm project and for -- most of the
22 demonstration projects done by the Corporation utilized and

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1 expanded the CSS form.

2 This form provided us with information regarding
3 demographics, name, age --

4 (Interruption to the proceedings.)

5 -- name, age, sex, race of the client, the type of
6 case served, the reason the case was closed, dates of referral,
7 dates of initial appointment and the date of case closure, the
8 name of the attorney.

9 The most critical information we captured on this form
10 was the attorney's -- the hours expended by the attorneys,
11 paralegals and secretaries in providing the case service.

12 Additionally, as an evaluation tool, we utilized the
13 client satisfaction survey form to gauge client satisfaction
14 with the services rendered. This was not -- our sample was not
15 a scientific sample.

16 We felt that with the newness of the delivery model,
17 that each client ought to have the opportunity to respond to the
18 survey. So we requested that each attorney upon case closure
19 provide the client with the CSS form.

20 The forms were in English and Spanish depending on the
21 locale --

22 (Interruption to the proceedings.)

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1 -- and the primary language spoken by the client.

2 (Interruption to the proceedings.)

3 The clients were additionally provided --

4 (Interruption to the proceedings.)

5 -- with postage pre-paid envelopes so that they could
6 return the form directly to the Corporation. I will note that
7 for this project we received a CSS return rate of close to 40
8 percent which is very good for a nonscientific sample.

9 Additionally, we utilized progress reports. The
10 contractors were requested to send in progress reports every six
11 months which would advise us of how many cases they had open,
12 how many cases were pending, how many had been closed, on which
13 they could relate to us any problems, difficulties or comments
14 they had with respect to the project as a whole.

15 There is some cost information that I can provide
16 generally which speaks to the cost efficiency of a competitive
17 bid contract model. The Corporation along with or in
18 conjunction with the local legal services programs had devised
19 cost estimates for case services in each city.

20 For the 11 cities, the estimated cost for the total
21 project was \$1,928,500. The competition process in market
22 forces as well as the negotiation process resulted in the actual

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1 project cost for all 11 projects of \$959,500, a savings of
2 almost \$1,000,000.

3 Finally, I guess it is important to note -- one of the
4 additional criticisms was that the project may have a negative
5 impact on existing PAI services or the PAI relationship between
6 a local program and the private attorneys in the area.

7 As the project developed, we observed no negative
8 impact that the project had on local PAI efforts. I will also
9 note that none of the programs involved with the project had
10 requested PAI waivers for the year they were involved with the
11 project.

12 Along those lines I should also note that the programs
13 involved were allowed PAI credit for their participation in the
14 project. Generally, they were required to screen clients, make
15 referrals to the private attorneys.

16 Many of them actually tracked the cases which was a
17 positive thing. So they were allowed to offset those
18 administrative type costs against their PAI requirement.
19 Finally, the corporation conducted site visits to each project
20 site to gain firsthand knowledge regarding the progress of the
21 project.

22 That basically entailed interviews with the local

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1 program staff, the contractors and the local bar and the
2 collection of standardized forms that the contractors may use
3 which may assist us in future projects.

4 The project has closed. We are in the process of
5 writing a report. The report ought to be available for release
6 shortly, hopefully within the coming few weeks.

7 Generally, with respect to the contracts and as an
8 indication that they can and do work and that there are people
9 interested in them, I will give you a few statistics about the
10 proposal solicitation process.

11 We solicited in 11 cities for 30 different case
12 services. We received 140 separate proposals from different
13 contractors. In total by case type, we received 310 proposals.
14 That averages 12.73 proposals per city, 10 per case type.

15 If you are interested in by case breakdown for
16 uncontested divorces, we received 113 proposals, an average of
17 12.5 per city. For social security cases, we received 15
18 proposals in two cities which would be 7.5 per city.

19 For bankruptcy type cases in 7 cities, we received 57
20 proposals, an average of 8 per city. For adoptions in 3 cities,
21 we received 34 proposals, an average of 11 per city. I think
22 these numbers tend to indicate that there is a pool of private

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1 attorneys out there willing to participate in such projects and
2 be involved in the competitive process.

3 I believe that our demonstration project visited
4 cities of various types, small cities, large cities, cities with
5 large rural components. That tends to indicate that pretty much
6 across the spectrum there is a pool of private attorneys willing
7 to undertake services under these type contracts for the benefit
8 of poor people across the nation.

9 If anyone has any questions, I am willing to --

10 CHAIRMAN HALL: Do any of the board members have any
11 questions for Mr. Russell?

12 MS. SWAFFORD: You may have addressed this. I just
13 did not hear it if you did. Did you have any mechanism for
14 evaluating client satisfaction?

15 MR. RUSSELL: The client satisfaction form itself
16 requested a lot of information from the client. There were
17 approximately 20 different categories of questions. When the
18 CSS's were returned to the Corporation, they were input in our
19 database system and analyzed.

20 Statistically, on all different variables, client
21 satisfaction has been high, in excess of 90 percent I would say,
22 depending on which particular client satisfaction element you

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1 are interested in.

2 We did analyze and do analysis of the information when
3 it was returned.

4 MS. SWAFFORD: Yes, I was interested in total. I am
5 not really interested in the breakdown of how many people were
6 satisfied with bankruptcy representation, but just the total
7 evaluation.

8 MR. RUSSELL: Overall, more than 90 percent of the
9 clients expressed satisfaction with the services they received.

10 MS. BENAVIDEZ: What were the cities involved?

11 MR. RUSSELL: The 11 cities were: Jacksonville,
12 Florida; Des Moines, Iowa; Portland, Oregon; Laredo, Texas;
13 Orange County, California; Lexington, Kentucky; Belton, Texas;
14 Auburn, Michigan; New Orleans, Louisiana; Paris, Louisiana; and
15 Columbus, Ohio.

16 MS. BENAVIDEZ: How did you pick the cities?

17 MR. RUSSELL: Seventy-three cities were initially
18 selected for site analysis. We were interested in poverty
19 populations, funding per capita and a pool of private attorneys
20 available to provide the services. Those were some of the
21 criteria.

22 Contacts were made with most of those 73 cities. Then

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1 the selection process was refined, depending on expressions of
2 interest from the program directors and the local bar
3 associations in those several cities.

4 The final selectees were cities where we received
5 positive responses from the local program, where we received a
6 positive response from the local bar, where there was service
7 need and where there was a pool of private attorneys to provide
8 the service.

9 CHAIRMAN HALL: Mr. Russell, did you have any kind of
10 a written agreement with the attorneys that were providing these
11 private services?

12 MR. RUSSELL: Yes, the Corporation entered into a
13 contract, a separate contract with each private attorney for
14 each type of case services. For instance, in a city where we
15 contracted for, say, 400 divorces, we may split that up into two
16 contracts with two different private attorneys.

17 The contracts set forth the fractionalized payment
18 schedule so that the contractors knew how much they were being
19 paid, how many case services they were to provide and explained
20 the billable process that they were responsible for, 100
21 billable cases versus 100 clients.

22 It pretty much -- it indicated that client grievances

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1 would be handled through the local programs, grievance
2 procedure. It set forth basically all of the requirements of
3 the contract. There was a separate contract for each
4 contractor.

5 CHAIRMAN HALL: In your 11 cities, did the different
6 projects in each city do the same type of cases? I may have
7 missed that in your report. Did the people in Des Moines do the
8 400 divorce cases and the people in another city do different
9 types of cases or was it a mix in every city?

10 MR. RUSSELL: There was pretty much a mix in every
11 city. The initial projects were geared towards, I guess -- the
12 first city was the basic standardized case types; uncontested
13 divorce, wills and bankruptcy.

14 As we went on, certain cities had other ideas in terms
15 of what their service needs were. That provided us an
16 opportunity to find out whether or not these type of case
17 services could work with other case types.

18 So the case types varied from city to city. The only
19 case type common to virtually every city would be the divorce
20 case.

21 (Interruption to the proceedings.)

22 CHAIRMAN HALL: Did you have anything in your report

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1 about any conclusions about the quality of the work done?

2 MR. RUSSELL: The conclusions about quality are
3 basically derived from, as I indicated before, our up front
4 quality control mechanisms. That would be the comments of the
5 local bar associations, the bid review process itself, as well
6 as the client satisfaction survey data.

7 As I indicated, we did receive a fairly client
8 satisfaction survey return rate which, although it was not a
9 scientific sample, I would -- the results themselves would, in
10 my mind, be somewhat reliable because of the large number that
11 were returned. As I indicated, the satisfaction rate was high.

12 CHAIRMAN HALL: So you had the local bar there,
13 perhaps, review the cases that were done.

14 MR. RUSSELL: No, we did not have a peer review
15 process. I believe you are thinking about the San Antonio study
16 where there was an official peer review panel established for
17 that particular purpose. We did not have such a peer review
18 process for these contracts.

19 CHAIRMAN HALL: I am wondering if there is any way you
20 can know the quality work was done by these attorneys on these
21 different cases. Is there any mechanism for knowing that other
22 than client satisfaction?

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1 MR. RUSSELL: Other than client satisfaction, the only
2 other mechanism would be a review of pleadings or by peers.

3 CHAIRMAN HALL: That was not done?

4 MR. RUSSELL: No, that was not done.

5 CHAIRMAN HALL: Did you find any -- for all the
6 different types of cases that the poor needed to be addressed,
7 did you find lawyers that were willing to do all those types of
8 cases in your cities? Did you have any lawyers say, "We would
9 rather not do those. We would rather just choose these"? Did
10 you have any problem like that?

11 MR. RUSSELL: No, we did not. I do not think that
12 this particular project was geared so that we would receive that
13 type of information. When we solicited, we solicited for
14 specific case types.

15 If attorneys were interested, they would submit a
16 proposal. If they were not interested, they would not submit a
17 proposal. So the only expressions we received would have been
18 expressions of interest.

19 CHAIRMAN HALL: Any other questions? Ms. Benavidez?

20 MS. BENAVIDEZ: You said that if the lawyers were
21 interested, what would happen to those cases where they were not
22 interested?

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1 MR. RUSSELL: We solicited for a certain number, a
2 volume of cases of any particular case type. So when attorneys
3 sent in bids, we assured and we were assured that all of those-
4 - that we received bids and let contracts for all of those case
5 services.

6 So we always had enough bidders and enough quality
7 attorneys that we could contract for the full number of cases
8 solicited. I would imagine that if there was an instance where
9 we did not receive enough bids or the attorneys did not appear
10 to be the quality that we were looking for or of a nature that
11 could provide the services in a quality fashion, that we just
12 would not have let a contract for those particular cases.

13 The theory behind the project was to augment services
14 already being provided by the local program. So in theory, I
15 guess, if we were unable to contract, those cases would be
16 handled normally by the local program.

17 CHAIRMAN HALL: Ms. Miller?

18 MS. MILLER: I noticed the city that you dealt with in
19 Michigan, that is one of the richest cities in the county there.
20 It is one of the richest in the United States. So I am
21 wondering why was Auburn Hills chosen?

22 MR. RUSSELL: Ann Arbor, Michigan?

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1 MS. MILLER: Yes, that is one of the richest counties.

2 MR. MOSES: Basically, Ann Arbor was chosen the way
3 that a lot of the other project sites were chosen. It was not
4 just Ann Arbor; it was the Ann Arbor area. It was with the Ann
5 Arbor program which took care of the city of Ann Arbor and
6 Ypsilanti which is about 30 miles away from Ann Arbor.

7 MS. MILLER: I know when you mentioned Auburn Hills,
8 that is one of the wealthiest.

9 MR. MOSES: Right. What we actually did before we
10 actually accepted the Ann Arbor site -- and that was one of the
11 later sites that was put into this study -- we talked with the
12 program director and the program director's board concerning the
13 need for a project, not only in the Ann Arbor area but just as
14 importantly in the Ypsilanti area.

15 So it was the entire service area that was helped not
16 just the city of Ann Arbor.

17 CHAIRMAN HALL: Charlie, you need to identify yourself
18 on the record, if you would.

19 MR. MOSES: Excuse me. I am Charles Moses, the
20 Associate Director of the Office of Field Services. I had been
21 working with this project when it was originally begun, and that
22 is why I thought maybe I should jump up and see if I could

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1 assist Leslie a little.

2 CHAIRMAN HALL: Ms. Miller, is that -- gentlemen, it
3 is my understanding that a lot of these cities were chosen by
4 how much interest the different bars there took in your
5 proposal.

6 If a city did not come back and say we are interested
7 in doing that, then the city was not in the study because there
8 is no one there that would do it. Is that basically correct?

9 MR. RUSSELL: There is some validity to that. We
10 would not have been able to actually do the project in a city
11 where we did not receive the cooperation minimally of the local
12 program.

13 The local program screened cases, referred clients to
14 the private attorneys. Client grievances were handled through
15 the local programs grievance procedure. Without that mechanism,
16 it would have been difficult to impossible for us to actually
17 undertake this project.

18 CHAIRMAN HALL: I think -- I cannot read Ms. Miller's
19 mind, but I think what she is concerned about is if you are
20 doing this to see how it will work for the benefit of the poor,
21 you might ought not to go to a rich city but go to a poor area
22 where there will be a lot more need than in the rich cities.

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1 There is poor people everywhere and I do not know if
2 what I have just concluded is accurate or not, but that is just
3 an assumption. I do not know if that was answered for you or
4 not.

5 Apparently they did not have total control over which
6 city that they would pick. I guess that would go to the weight
7 of the city. Are there any other questions?

8 MR. MOSES: If I might add one thing to what Les said
9 earlier, the study was specific in each location to different
10 types of cases service. The idea behind the study was that by
11 the end of the study, after we had gone through each of the
12 cities, we had done a cross spectrum of the case types that
13 normally you would find in LSC case statistics, everything from
14 emergency spousal abuse problems to less complicated problems
15 dealing with bankruptcy or wills.

16 We tried to test the entire spectrum then, not just
17 any specific one type. In that particular instance, we wanted
18 the study read together as a whole as opposed to divided up into
19 its individual parts.

20 MR. RUSSELL: The local programs were somewhat
21 instrumental in that process also in that they often made
22 recommendations in terms of what types of cases would be useful,

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1 in terms of the need in their particular jurisdiction.

2 CHAIRMAN HALL: How many cities did you offer this
3 involvement to?

4 MR. RUSSELL: For this project, 11 cities.

5 CHAIRMAN HALL: Well, I assume that some cities -- did
6 you all go to some different bar groups and say here it is and
7 they said we do not want it. So only those 11 -- did any cities
8 turn you down or did any bars turn you down or did any people
9 say hey, we are not interested.

10 If so, did you keep any record on who they were and
11 how many they were? Do you think that would be any indication
12 of whether or not there would be an interest if competitive
13 bidding went into effect?

14 MR. MOSES: When we originally started the study back
15 in 1983, we went to -- as Les earlier said, we had considered as
16 many as 73 different sites. Various different cities were at
17 various different stages along the approval process.

18 We knew that we had a certain amount of money that was
19 earmarked for that process and no more. So that as soon as we
20 could get a city to agree along with the local bar, the local
21 program, that was the city that would move to the top of the
22 list for competition.

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1 What that meant was there were still some cities that
2 we were still working with that would have gone forward. In
3 answer to your question, there are some cities that we had
4 originally worked with that later changed their mind. That is
5 true.

6 In many of those instances, what happened was that the
7 local bar wanted to go forward with the project and the local
8 program changed its mind. In at least two instances, we had
9 gotten toward the solicitation stage.

10 We had not made virtually -- we had done virtually
11 everything that needed to be done for implementation of the
12 project. The local program changed its mind. Rather than put a
13 project in a site where a program no longer wanted it, we chose
14 to withdraw.

15 CHAIRMAN HALL: Of course they were free to do that if
16 they wanted to. Are there any other questions? Ms. Benavidez?

17 MS. BENAVIDEZ: How many programs changed their mind?

18 MR. MOSES: I know of two that I can remember that
19 changed their mind. Both of those changed their -- it was the
20 local program director or board that changed its mind after the
21 solicitation had already been issued, I believe.

22 MS. BENAVIDEZ: When did you complete the report on

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1 Laredo and the other city?

2 MR. RUSSELL: Laredo was included -- the project
3 report encompasses all of the cities. Laredo will be included
4 in the overall report which should be released shortly.

5 MS. BENAVIDEZ: When did you finish the work in
6 Laredo?

7 MR. RUSSELL: The entire project ended as of June
8 1988.

9 MS. BENAVIDEZ: What about the other city in Texas?

10 MR. RUSSELL: Belton, Texas? That was similarly--
11 all the projects came to a close on that date.

12 MS. BENAVIDEZ: Have you checked with them again?

13 MR. RUSSELL: Have I checked with them again?

14 MS. BENAVIDEZ: The project director, yes.

15 MR. RUSSELL: Not as of yet, no.

16 MS. BENAVIDEZ: Has there been a change of directors?

17 MR. RUSSELL: In Belton?

18 MR. MOSES: No. There was a change of directors in
19 Laredo. Mr. Gutierrez left. He worked with us when we
20 originated the project in Laredo, but I believe he left after
21 about a year or a year and a half of operation.

22 There was no problem with the new program director

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1 there. Regina has been in central Texas the entire time.

2 CHAIRMAN HALL: Gentlemen, for the cities and the
3 different lawyers that took this on, was it a money-making
4 process for them?

5 MR. RUSSELL: I think that when the contractors decide
6 to submit a bid, I think there is somewhat of a profit
7 motivation. During the site visits, I personally went to five
8 different cities and spoke to each of the contractors there.

9 The general impression I got was that they wanted to
10 make some money, but they were not looking to make a fortune. I
11 think a lot of them felt that they did not make even as much as
12 they thought they would make.

13 The general impression that they had of the project
14 was positive. There were some complaints in terms of the number
15 of referrals, the administrative red tape sometimes, things of
16 that nature.

17 Overall, the comments I received from those five
18 cities, the contractors there, was positive.

19 CHAIRMAN HALL: Is it a fair statement that these
20 lawyers were not making \$100 an hour doing these cases?

21 MR. RUSSELL: No, they were not making anything near
22 \$100 an hour. Some of them were making \$100 a case.

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1 CHAIRMAN HALL: They were taking them on at your
2 request knowing it was something they were not bound to do,
3 knowing that their livelihood did not depend on it; is that a
4 fair statement?

5 MR. RUSSELL: I think that is a fair statement. I do
6 not think any of the contractors lived or died by this contract.

7 CHAIRMAN HALL: Do you think there would have been a
8 little more interest if a little more money?

9 MR. MOSES: One thing I might add that would go to
10 that. When we originally were sending out requests to find out
11 people who were interested in competition several months ago--
12 I know at the Shaumburg meeting we reported that there had been
13 well over 400 individuals, law firms or partnerships that had
14 submitted requests to the Corporation to be kept informed about
15 competition.

16 The list included, for the original mailing, the names
17 off each of the contractors that had been connected with this
18 study. I believe it was around 40 percent, 30 to 40 percent of
19 each of them wrote in saying that they did in fact want to be
20 kept attuned to whatever additional information the Corporation
21 had.

22 CHAIRMAN HALL: Are there any other questions?

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1 MR. VALOIS: You just answered my question in part
2 which was what followup for the people who had the contracts has
3 there been to determine if they would bid again. If so, under
4 what circumstances? Has there been any systematic study done?

5 MR. MOSES: Well, between -- I would give a two-part
6 answer to your question. The first part is that the most recent
7 followup was the one that I just told you about which was the
8 letter.

9 The second type of followup was done in two of the
10 cities. That was what we called the PLF-2 portion of it.

11 MR. VALOIS: What does that stand for?

12 MR. MOSES: Basically what it was was a second round
13 of competition after the first round. So we went into two of
14 the specific sites that had had the original private law firm
15 projects.

16 We worked with the project directors in those sites
17 and helped the projects conduct their own competition. In the
18 PLF-2 competitions, we did receive bids from people who had bid
19 for the PLF-1.

20 So I think that also indicates there is a continuing
21 support for this.

22 CHAIRMAN HALL: Any others?

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1 MS. BENAVIDEZ: As of today, how many comments have
2 you received that are negative?

3 MR. RUSSELL: Comments from the contractors or
4 clients?

5 MS. BENAVIDEZ: From the project directors or the
6 people or whatever.

7 MR. RUSSELL: We received some criticisms, I guess,
8 from some of the contractors. Numberwise, I would say, to my
9 knowledge, out of the 35 contractors, I would say maybe 5 have
10 voiced some type of complaint with respect to --

11 I guess the complaint would pretty much be geared to
12 the amount of money they made on the contract. Most of the
13 referrals were -- excuse me, most of the criticisms came with
14 respect to the number of referrals.

15 There was a lag in referrals that -- we contracted
16 based on program estimates of the number of cases that could be
17 provided within a year period. That estimate was somewhat high
18 in most of the cities.

19 So the referrals lagged; the contracts had to be
20 extended. The attorneys were involved for a slightly longer
21 period than they anticipated. Some of them complained about
22 that.

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1 The project directors complaints generally centered
2 around the "administrative burden" in terms of making referrals
3 and things of that nature.

4 MR. MOSES: I will say that whenever there was a
5 project director that had a complaint or a question, we either
6 sent someone to the site to investigate the complaint or we
7 checked it out as thoroughly as we could from Washington.

8 I will not say that there were not some questions from
9 project directors as we were going through the process, many of
10 which were probably legitimate dealing with -- they might have
11 had a problem with this case or that case, but we would always
12 try to check that out.

13 CHAIRMAN HALL: Are there any others?

14 (No response.)

15 CHAIRMAN HALL: If not, Leslie, I appreciate your
16 presentation. Charlie, thank you for helping us. When will
17 your report be written up and ready?

18 MR. RUSSELL: The report has been prepared in draft
19 form. I believe it is going through a final review now for
20 release. In terms of time, I guess --

21 CHAIRMAN HALL: I am interested in getting a copy of
22 it. I am sure the other board members would, too, along with

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1 your comments on the faults and the weaknesses of it compared to
2 what a real competitive bidding program would be, how it
3 compares.

4 MR. WEAR: Mr. Chairman?

5 CHAIRMAN HALL: Yes.

6 MR. WEAR: Mr. Chairman, we will be sending that
7 report to all the board members when it is in final form.

8 CHAIRMAN HALL: Okay, I think that is going to be very
9 helpful. We are going to -- Charlie, am I interrupting you?
10 Did you want to say something to me?

11 MR. MOSES: No.

12 CHAIRMAN HALL: Okay, we are going to move on. We are
13 going to do everything that is on our agenda, but we may do it
14 in a little bit different order. So if I say something that is
15 not in line with what is in the book, there should not be a
16 problem with that.

17 I think our next thing is going to be a discussion of
18 the Department of Education research grants. The speakers are
19 going to be Charlie Moses, Kathy DeBettencort, and John
20 Pensinger. I will ask all three of you to come forward and to
21 again identify yourselves for the record in this presentation.

22 MR. MOSES: I am Charles Moses. Again, I am the

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1 Associate Director of the Office of Field Services of the
2 Corporation.

3 MR. PENSINGER: Good morning. My name is John
4 Pensinger. I am with the General Counsel's Office at the
5 Corporation.

6 MS. DeBETTENCORT: I am Kathleen DeBettencort. I am
7 Assistant Manager of the Office of Policy Development at Legal
8 Services Corporation.

9 MR. UDDO: Excuse me. Are you folks going to talk
10 about the Department of Education report? Was that not in the
11 book?

12 MR. MOSES: In part, yes. There had been some
13 questions, Mr. Uddo, as you remember from Illinois, concerning
14 what other agencies or federal agencies were doing.

15 MR. UDDO: I understand that, Charlie. What my
16 problem is is you guys were not involved in this. I mean, I
17 have read the report. I know what the report says and the
18 speech says.

19 I would like to ask Mr. Preston some questions about
20 it or somebody that was involved in it. No disrespect intended,
21 but if you were not involved in it, I do not think you are going
22 to be able to answer some of the questions I have about it.

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1 CHAIRMAN HALL: What is the purpose of discussing it
2 then? Maybe that would clarify.

3 MR. MOSES: Basically, what we would like to do -- and
4 it is not just the Department of Education that we are going to
5 talk about, Mr. Uddo. We are going to expand on this to
6 basically deal with other federal agencies so that there is some
7 information concerning not just DoD but what Commerce is doing,
8 what Justice is doing, so that there is a groundwork to show
9 that Legal Services Corporation is not the only entity that
10 deals with competition.

11 MR. UDDO: I mean, I think we can take that as a
12 given. I mean, if I have got specific questions about how some
13 of these things were done and some of the results from them and
14 some of the problems they might have had, are you all in a
15 position to answer those questions?

16 MR. MOSES: We can answer some of them. I must --

17 CHAIRMAN HALL: Mr. Valois?

18 MR. VALOIS: I think I was the one who raised the
19 issue of having some explanation of what the experience of the
20 federal agencies was. I agree with Professor Uddo that it would
21 be useful to have people from those agencies present at some
22 point in this process, which I do not think it is going to end

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1 today.

2 I would like to hear what the staff is willing to give
3 us at least in a way of a survey in response to my request of
4 last week.

5 MR. UDDO: I am told that at some point we will have
6 one or more of these people who have direct experience with
7 these projects come before the committee. With that assurance,
8 that is fine.

9 I guess I do question whether or not we should take
10 much time having you folks tell us what a couple of pieces of
11 paper could tell us that these departments are doing these
12 competitive things.

13 It seems to me that that should be sufficient to put
14 it on the record that there are federal agencies doing some kind
15 of competitive bidding in certain areas. I do not understand
16 why we are going to take time to let you guys tell us what is in
17 the paper. I am not the chairman of the committee.

18 CHAIRMAN HALL: I would like to hear what they have to
19 say. Maybe they will tell us something that would be helpful to
20 us. I do not think that this presentation is going to take that
21 long.

22 I certainly do not think they are going to be able to

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1 answer any questions about what is behind this study, but I am
2 interested in hearing it. Apparently, Mr. Valois requested it.
3 Apparently, you are not superopposed to it.

4 MR. UDDO: No. I mean, I am here for the day. I am
5 just saying I do not see the point. I am wasting time talking
6 about it.

7 CHAIRMAN HALL: Let's go ahead and get started,
8 gentlemen and ladies. Go ahead.

9 MR. MOSES: Basically, Mr. Uddo, we will start with
10 that Department of Education project and we will not spend a lot
11 of time on it. We do have other things that we want to cover.
12 That was illustrative of an agency that was moving from a series
13 of noncompetitive awards towards competitive grants.

14 That was the specific reason that we put something in
15 your board book concerning the Department of Education Research
16 and Contract Center.

17 MR. UDDO: Let me ask a question then. Just from my
18 reading of it, how is it even remotely analogous to what we are
19 talking about? I mean, you have got these little centers that
20 do some kind of research in the education field where it seems
21 that one would really be fungible with another.

22 Is this supposed to be an example of how support

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1 centers could be put on competitive bid or is this supposed to
2 be some explanation for how the whole delivery of legal services
3 should be put on competitive bid?

4 I do not see it even roughly analogous to delivering
5 direct delivery of legal services.

6 MR. MOSES: Mr. Uddo, the reason why we felt it was
7 analogous is that this is a project similar to the Legal
8 Services Corporation that began with the OEO projects in the
9 '60s.

10 These projects began in the 1960s also. They went
11 through a series of transformations at the Department of
12 Education. In those transformations, there began to be attempts
13 to compete these specific grants.

14 The reasons for competition were basically that they
15 felt it would help the performance of the centers. There was
16 opposition to the idea of competition. The opposition was
17 forceful and strong and, in fact, delayed competition for
18 several years.

19 In fact, what we have is a program where we began out
20 of the 60s as a social service for the public. We are
21 considering going to competition and we know that there is
22 opposition to competition.

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1 MR. UDDO: Let me disagree with you, Charlie. I think
2 Congress has said we have got to look at competition and propose
3 something to do with competition. So I mean if the point of
4 this is to convince us that competition that something other
5 agencies are using and there ought not be general, unrelenting
6 opposition to competition, I will concede that now.

7 I am not so sure that is what the criticism is. I
8 think the criticism is more focused than that. That is, how is
9 it going to work in the context of direct delivery of legal
10 services.

11 That is what my problem is with this education
12 department thing. It is not that detailed. Am I reading it
13 correctly? These are little centers that do education research
14 and try to come up with ideas and innovations about improving
15 education.

16 MR. MOSES: I do not think I would say they are little
17 centers. They are multi-million dollar centers. They are
18 regional centers. In part, your analogy to support might be very
19 informative.

20 I do think that basically what we have here, though,
21 is the instance where competition was instituted. The benefits
22 of competition that were sought were derived without a major

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1 disruption to the system.

2 In fact, because of the five year grant cycle, they
3 have only had one cycle of competition. They are preparing next
4 year for the second cycle of the competition of their grants and
5 contracts.

6 The RFP should be -- the solicitation for their next
7 round should be out at the end of the year. That is important
8 in that they are continuing the competitive cycle. They are not
9 considering going back to a one-time grant to specific entities.

10 In fact, from what the people at the Department of
11 Education tell us, there was, in fact, competition for these
12 grants. There was, in fact, change of some of the grantees.
13 These are the types of things that if the Corporation proceeded
14 further with competition, we would be facing --

15 MR. UDDO: Correct me if I am wrong, but wasn't one of
16 the key points to selling this idea the acceptance of the
17 continued existence and funding of the centers conceptually? It
18 seems to me that, again from what you have given us, that was
19 taken off the table; the question of whether or not the centers
20 should exist.

21 That was acknowledged and accepted and then the
22 question became who is going to run these centers and who is

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1 going to get money from these centers. Isn't that true?

2 MR. MOSES: That is true. I do not think that in
3 sitting here and trying to talk about competition, that we are
4 in any way saying that funding for legal services should not
5 exist.

6 MR. UDDO: Well, I am talking more about, I guess, the
7 support centers. I mean, there is a fairly clear record by this
8 board that support centers should not exist. So again, I have
9 problems with using this as an analogy because this fellow says
10 right out there was no question of asking seriously whether we
11 need regional laboratories at all.

12 What do they do? Are they worth the \$17 million a
13 year? That kind of question never got asked. It was
14 politically impossible. So again, using an analogy that I think
15 has some serious distinctions -- in addition to which it sounds
16 to me like their competition, what they call competition, is
17 really nothing more than peer review.

18 A blue ribbon committee of people got together and
19 looked at these centers and made judgments about which ones were
20 doing a good job and which ones were not doing a good job. So
21 again, it seems to me that we already do that in monitoring.

22 MR. MOSES: In actuality, that is not what happened.

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1 CHAIRMAN HALL: Mr. Valois?

2 MR. VALOIS: Again, I am -- one of the things I was
3 concerned about time was whether any thought, if so, what
4 thought, had been given to, frankly, the mechanics of
5 determining who would receive award.

6 It seems to me that the material that we have been
7 given, which was 34 C.F.R. Chapter 7, here deals with that in
8 part. I find myself in disagreement with Professor Uddo about
9 whether or not his analogous --

10 I think the issue of whether or not there is going to
11 continue to be legal services is analogous with the introduction
12 of Mr. Preston here. I think there is going to continue to be
13 legal services.

14 How that is going to be administered is, I guess, a
15 question of whether by competitive bidding. Then we get to the
16 question of competitive bidding and how is that going to work--
17 what has been the experience of the federal government in
18 awarding contracts and soliciting bids and that sort of thing.

19 That is what I thought we were going to talk about in
20 part in this section. I really would like to hear it.

21 MS. SWAFFORD: Can I say something?

22 CHAIRMAN HALL: Yes, Ms. Swafford.

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1 MS. SWAFFORD: In connection with what Professor Uddo
2 said --

3 MR. UDDO: Everybody is calling me Professor again
4 today. (laughter)

5 MS. SWAFFORD: You said that Congress had mandated but
6 it would seem to me just from today from what we have heard it
7 still is an ongoing debate.

8 CHAIRMAN HALL: Well, it is on our agenda.

9 MR. UDDO: All I am saying is, I was hoping to get
10 some more specific insight into things that more readily apply
11 to delivery of legal services. I do not argue with the idea of
12 competition being a good thing.

13 I do not deny that there are federal agencies doing
14 it. My problem is that I thought in Shaumburg we had asked a
15 lot of questions about how is it going to work in the context of
16 delivering legal services.

17 In just looking at these things in the committee book,
18 I do not find them analogous enough to really be helpful. I
19 think they are very general -- and I am going to shut up after
20 this.

21 To me, you could have passed these out and said there
22 are other agencies doing competition in the areas where they do

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1 their work, but they are not particularly helpful to us. They
2 will just justify the idea of competition and show you other
3 federal agencies are doing it.

4 We need to find something much more specific with
5 respect to how it is going to work in delivering legal services.

6 MR. MOSES: In fact, Professor Uddo, what we have is a
7 mixture of different federal and other programs, some of which,
8 in doing competition, specifically provide legal services. The
9 example that we put in your book was simply that, an example of
10 something we felt was analogous.

11 It was not intended to necessarily pinpoint the idea
12 of competition exclusively for support centers or --

13 MR. UDDO: I am going to shut up now and you all go
14 ahead with your presentation.

15 CHAIRMAN HALL: With all that in mind, the panelists
16 will begin.

17 MS. BENAVIDEZ: I want to say something.

18 CHAIRMAN HALL: I am sorry, Ms. Benavidez. I did not
19 see you.

20 MS. BENAVIDEZ: I agree with Basile. I think this is
21 a waste of time.

22 CHAIRMAN HALL: Let's go ahead and begin.

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PRESENTATION OF CHARLES MOSES

1
2 MR. MOSES: Basically, what we have been asked to do
3 after Shaumburg by Mr. Valois, he was interested in seeing that
4 there were other examples within the federal system of
5 competition and how that competition was implemented.

6 What we have put in your book is an excerpt from the
7 American Enterprise Institute Conference in 1986 by Ronald
8 Preston. Mr. Preston at that time was the Deputy Assistant
9 Secretary for the Office of Research and Improvement at the
10 Department of Education.

11 That particular office has since been reorganized. Mr
12 Preston was a political appointee and is no longer at the
13 Department of Education. This was part of the problem in having
14 Mr. Preston specifically here himself.

15 Because the Department of Education, as all federal
16 agencies. is now going through a reorganization itself as new
17 appointees are brought into the department, we felt that it
18 would not have been appropriate at this point to get a specific
19 person who was new to the program that had any knowledge of this
20 particular program.

21 That is why we felt we only wanted to present it as a
22 demonstrative evidence of competition moving forward, not as

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1 competition from the beginning but as an example of where a
2 noncompetitive program goes competitive.

3 Many of the examples that we will be giving you today
4 are in fact examples that have always been competitive. That is
5 the one reason why we felt the DED research and grant program
6 was different and should be highlighted for your board book.

7 CHAIRMAN HALL: Charlie, is this a portion of your
8 report or is it still in response to Basile? We are ready for
9 your report.

10 MR. MOSES: Basically, I am going forward to introduce
11 this particular concept. I was trying to try and address Mr.
12 Uddo's concerns at the same time I could introduce it.

13 CHAIRMAN HALL: If you do that, he is going to want to
14 say something else.

15 MR. UDDO: No, I promise I am not going to say
16 anything else.

17 CHAIRMAN HALL: Go ahead and let's get going on it.

18 MR. MOSES: The Department of Education, like most
19 federal agencies, does normally have a grant and contract
20 procedure for the competitive bids of a variety of different
21 awards.

22 The grants and centers is only one example of that.

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1 Another more specific example dealing with legal services
2 delivery is the Department of Education Clinical Education
3 Program.

4 I am sure that each of you are aware of the LSC
5 Clinical Education Program. The Department of Education has a
6 similar program which we have discussed on several other
7 occasions with this board.

8 The interesting thing about the grant for the law
9 school clinical experience program through the Department of
10 Education is that it is much more similar in focus to what a
11 legal services service delivery grant would be.

12 Granted, that the primary focus of the Department of
13 Education, clinical education experience program is and should
14 be legal education. Its secondary focus is for client service,
15 the same time of service delivery that Legal Services grants
16 normally provide.

17 I think that it is important in that respect to see
18 that there are, at least within the Department of Education,
19 programs that deal directly with the types of legal services
20 that can be provided, the need for legal services in a
21 particular area that are competed directly.

22 Now the Department of Education, I think we have had

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1 some discussion about the grants and research programs here.
2 The only additional information that I would add concerning the
3 grants and research projects, other than saying that it is
4 demonstrative of moving to competition from a situation where
5 you had no competition before, is that these centers and labs
6 were first put on contract in 1985.

7 In actuality, the centers are on grant documents. The
8 labs are on a contract document so that both of the documents
9 for competitive bidding that we have been talking about are used
10 by each of these centers.

11 Basically, what the Department of Education had for
12 that particular program was a regional structure so that each of
13 the various different regions -- they were nonregions for the
14 labs -- each of the various different regions would have a lab.

15 What they found when they moved to a competition was,
16 in many respects, has to do with the types of things that we
17 would find as we moved towards competition. In some areas, you
18 had more competition than you did in other areas.

19 In fact, that is one of the things that we had been
20 telling you in Illinois and we will continue to tell you that
21 today. What you had was pure competition in many of those
22 regions.

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1 In fact, using a pure competition, some of the
2 existing grantees, existing labs did in fact lose their
3 contract. The contract was given to another existing lab. Now
4 these particular labs and centers were, in fact, and are, in
5 fact, analogous to legal services programs.

6 They are a nonprofit corporation. They, in fact, have
7 a variety of outside funding sources. They had been established
8 in the 1960s as part of the war on poverty. They also had been,
9 for a period of at least almost 20 years, under what we would
10 call an automatic refunding.

11 Each of those points are analogous to the type of
12 system that the Legal Services Corporation currently has. That
13 is why we felt that it is beneficial to examine not only the
14 Department of Education Law School Clinical experience which has
15 competition directly related in part to the delivery of legal
16 services, but also the Department of Education lab and center
17 experience which has a lot of the same characteristics that we
18 are dealing with.

19 We certainly need to be aware of that system so that
20 we can understand that going to competition did, in fact, work
21 when you were starting from a situation where you had an
22 automatic refunded grant to begin with.

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1 The second part, and I will move off of the Department
2 of Education onto several other agencies, which again Mr. Valois
3 had requested us to do, there are a variety of other programs,
4 some of which do, as I said earlier, offer the direct delivery
5 of legal services to the poor that are competed through a
6 variety of different federal agencies.

7 We had examined a majority of these prior to the
8 meeting in Illinois. Unfortunately, at that time we did not
9 bring this information out because it was background information
10 on which, in fact, we had created our regulation.

11 Considering the questions in Illinois concerning the
12 amount of background research and information we have looked at,
13 we felt that it would be appropriate to let the board have an
14 understanding of the wide variety of background information that
15 is available from other federal agencies.

16 At this point, John Pensinger will deal with several
17 of those other agencies.

18 CHAIRMAN HALL: Mr. Valois?

19 MR. VALOIS: One of the things that we have talked
20 about repeatedly and members of the field have talked about
21 repeatedly -- my friend Terry Roche has written on some in an
22 article which ought to be put into the record entitled, "LSC's

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1 Competitive Bidding Scheme."

2 Again, one of the subjects that I am going to get to
3 is the issue of quality of legal services. I have not had time
4 to complete Terry Roche's article yet, but one of the issues he
5 discusses is quality.

6 Relating that to this handout, 34 C.S.R. Chapter 7,
7 which is in the board book, I call to your attention that on
8 page 29, one of the factors in determining in this case how the
9 secretary makes an award is quality of key personnel.

10 It receives, under this scheme, 20 points. I guess
11 that is the sort of thing which I think we need to begin to
12 focus on; how is it and what are the mechanics of awarding
13 grants on a competitive basis.

14 You have done what I have asked you to do. I hope
15 there is more to this.

16 MR. MOSES: Yes, sir, there is. At this point, John
17 Pensinger will deal with several other agencies that also, in
18 their regulations, address the issue of quality of service
19 providers in a manner very similar to that which we had
20 initially considered in Shaumburg.

21 CHAIRMAN HALL: Mr. Pensinger?
22

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PRESENTATION OF JOHN PENSINGER

1
2 MR. PENSINGER: Thank you. Basically, I would like to
3 start with just a very quick review of the regulation you have
4 in front of you at page 29 of the board book, the part of
5 education regulation.

6 What we tried to focus on was the selection criteria,
7 because it appears that that is the major problem that everyone
8 is concerned about. The important point is the tie in between
9 the selection criteria and what is stated in the actual
10 solicitation.

11 If you notice in the selection criteria for the part
12 of education, it is similar to what was proposed in the advanced
13 notice of proposed rulemaking in that there is a set of criteria
14 that are weighted with various points that are used by the
15 secretary in making a determination as to who will receive the
16 award.

17 CHAIRMAN HALL: Where is that, John?

18 MR. PENSINGER: Page 29 in your board book. It is
19 707.31. This is also the regulation governing the
20 implementation of competition for the laboratories that Mr.
21 Preston was talking about.

22 If you notice, there are several themes that will

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1 recur in the course of my discussion which I will try to keep
2 brief, because unfortunately we have to go over it again because
3 these same themes keep recurring in the selection criteria. It
4 appears regardless of the agency which we are considering.

5 The first one is not really a theme that we would hear
6 again, fortunately. The second one, number B, the
7 organizational ability to conduct planning and design tasks, is
8 a common theme that recurs over and over again.

9 Also, the third one, C, the plan of operations, is
10 another theme that recurs over and over again. The critical
11 theme, I believe, the one that Mr. Valois mentioned, is the
12 quality of key personnel.

13 If you notice, it addresses not only the individuals
14 working in the program but also the project director; in other
15 words, the actual manager personnel of the organization. The
16 next theme that recurs over and over again is budget and cost
17 effectiveness.

18 Again, this is a theme that I think we will be hearing
19 again and again as I mention a few other agencies. The
20 evaluation plan is another theme that is not -- I do not think
21 it is specific to this program, but it is not as general as the
22 other themes.

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1 Finally, the adequacy of resources is again another
2 general theme that appears again and again in reviewing the
3 various federal agencies.

4 With that in mind, beginning with the Department of
5 Health and Human Services, in a very brief review of their
6 runaway youth program grants, in the regulation governing those
7 grants, the criteria mentioned are the costs of the program and
8 again the personnel involvement in the program and the project
9 design.

10 As I said before, these seem to be common themes again
11 and again of the three I mentioned. Personnel and costs are two
12 things that we will keep hearing again and again because they
13 are key points.

14 As I will demonstrate later on this afternoon, these
15 are two of the things we are trying to work into the
16 solicitation package for LSC. Another HHS program which was
17 briefly reviewed was the Head Start Program.

18 Again, the criteria, as I said -- it sounds very
19 repetitive -- the criteria again have to do with the costs of
20 the program, the qualification experience of the applicants, the
21 suitability of facilities and equipment, the administrative and
22 fiscal capabilities of the applicant.

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1 Again, these are the same themes we noticed before;
2 that in selecting a successful applicant, it is critical that he
3 have the personnel, the budget, the resources, and the
4 management capability to carry out the program.

5 Another HHS program, one that is very similar to LSC
6 in the fact that if you read the regulation governing legal
7 assistance under the administration on aging, you will note that
8 there is a very strong similarity between what is stated in that
9 regulation and what is stated in the LSC regulation.

10 MR. VALOIS: Have you presented us or provided us with
11 a copy?

12 MR. PENSINGER: Of which, sir?

13 MR. VALOIS: The legal -- under the aged program,
14 legal assistance?

15 MR. PENSINGER: No, sir. I have one with me.

16 MR. MOSES: Mr. Valois, what we did was we gave you an
17 example of the various different regulations rather than give
18 you about 20 different pages of regulations for your board book.
19 If you would like specific examples of each of these --

20 MR. VALOIS: Yes, Mr. Pensinger just told us that that
21 has comparable value. I think I would like to see it.

22 MR. MOSES: We will make sure that you get a copy of

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1 that.

2 MR. PENSINGER: To begin again, on the Administration
3 on Aging under HHS, which does make awards to area agencies for
4 legal assistance projects which are related to LSC programs, the
5 two criterion there are staff expertise and the ability to meet
6 program needs.

7 What we see again is the importance of the quality of
8 the personnel who will be running the program. Now, there are
9 also grants administered by the Department of Commerce under the
10 public telecommunications facilities program.

11 The criteria used to make those grants are the project
12 description, the amount of funding available, the inventory of
13 equipment and community involvement. Again, there is a certain
14 similarity and, especially for the LSC, the community
15 involvement criteria.

16 In addition, also the Department of Justice makes
17 grants under the Office of Juvenile Justice programs. In making
18 these grants, there are six criteria used. These six criteria
19 are the statement of the problem, the objectives, the project
20 design, project management structure, organizational capability,
21 and the budget.

22 Again, what we are seeing, although the names may be

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1 changed in some of these cases, it appears that the four common
2 themes that run throughout the various agencies are that the
3 criteria used are the quality of the personnel, the budget and
4 costs involved, the facilities and resources of the applicant
5 and the management ability of the applicant.

6 MR. MOSES: In addition to those programs, one thing
7 that we should expand upon, as John mentioned, HHS runs a
8 project called the -- well, the Administration on Aging is run
9 out of HHS.

10 Basically, the Administration on Aging has a structure
11 whereby money is given from the federal government to a state
12 agency on aging. The state provides money to the areas and so
13 forth.

14 Generally, what you have with the Administration on
15 Aging, is that at the lowest level where money is funnelled from
16 the federal government, there is a variety of competition for
17 the uses of that money.

18 Now the Administration on Aging deals with everything
19 from home meals to legal services. Legal services is a set
20 percentage of Administration on Aging funds. In fact, currently
21 it is a significant percentage of the outside funding that is
22 reported by most of the LSC grantees.

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1 So it is a significant percentage of the funding that
2 LSC grantees currently receive. What we did was examine the
3 solicitations of a selected group of area agencies on aging to
4 try and see what types of criteria these area agencies on aging
5 would use for the actual solicitation of legal services' money.

6 What we found, again as John has told you was found in
7 the original HHS regulations, was that there was a concentration
8 on the objectives. There was a concentration on the quality of
9 the personnel.

10 There was a concentration on budget commitments
11 including a matching commitment which the Administration on
12 Aging has. There was a concentration on the ability of the
13 organization to provide the services for which it contracts.

14 One interesting twist in those different
15 Administration on Aging competitions that we looked at was that
16 generally each of the individuals will be asked to look at and
17 give their grant application in terms of units of service.

18 So they will have to specify the numbers of units of
19 service that they are going to provide for eligible clients
20 under the Administration on Aging Act in that area. This is
21 something that certainly the board might want to consider.

22 We have not at this point talked about formally

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1 including it in the regulation, but the inclusion of a specific
2 service requirement in a competitive solicitation certainly
3 could be done.

4 The Administration on Aging solicitations that we
5 examined generally looked at the unit of service as an hour of
6 service provided to eligible clients under AOA. You will note
7 that that is not yet in a regulation, but that is certainly
8 something that this board should and could consider because
9 other funding agencies that fund competitive grants for the
10 provision of legal services do consider it.

11 CHAIRMAN HALL: Does that complete the report?

12 MR. MOSES: That completes a review of --

13 CHAIRMAN HALL: Are we not going to hear from Ms.
14 DeBettencort?

15 MR. MOSES: I think Ms. -- I believe she is outside
16 for a moment.

17 CHAIRMAN HALL: Have you all covered --

18 MR. MOSES: We have covered most of the federal
19 agencies. I think that later on this afternoon we will hear
20 from Ms. DeBettencort concerning some of the nonfederal
21 competition.

22 CHAIRMAN HALL: I have seen Mr. Besharov in the room.

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1 I wanted to call for questions at this time unless we need to
2 hear from Ms. DeBettencort. I do not want to keep her from
3 speaking if she wanted to, but do you all feel like you all
4 covered what she would?

5 MR. MOSES: She will be covering a different aspect
6 this afternoon.

7 CHAIRMAN HALL: Do the board members have any
8 questions for this panel?

9 MS. SWAFFORD: I think we ought to have a recess
10 though.

11 CHAIRMAN HALL: We will take a recess if there are no
12 questions.

13 MR. VALOIS: Just one that may be profitable, probably
14 directed at President Wear. Is somebody in the beginning stages
15 of trying to draft some competitive bidding regulation scheme,
16 proposal?

17 MR. WEAR: Mr. Valois, as I think the board knows, the
18 Corporation published a notice of proposed rulemaking in a bare
19 bones proposal. The purpose of these hearings is to try to
20 flesh out various issues. The staff will then turn its
21 attention to try to put these issues on paper.

22 I am hopeful that as a result of the various witnesses

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1 that will appear here today, we will have some specific items to
2 work on and we will be doing that.

3 MR. VALOIS: Thank you.

4 MR. UDDO: Terry, wasn't the appropriation language
5 such that that is what we could not do, draft a specific
6 proposal or make a specific proposal? I do not have it in front
7 of me, but I thought that that is what the committee said we
8 were not supposed to do.

9 MR. WEAR: No, that is not concluded by the
10 appropriations language. That is part of the in-house review
11 provisions.

12 CHAIRMAN HALL: I think we are all in favor of taking
13 about -- let's come back at 11:00.

14 (A brief recess was taken.)

15 MR. WEAR: Ladies and gentlemen, if you can take your
16 seats again, the chairman would like to resume our meeting here
17 this morning.

18 CHAIRMAN HALL: We are going to reconvene. I am going
19 to ask Ms. DeBettencort to come forward. She is going to
20 introduce our next speaker for us. Ms. DeBettencort, would you?

21 MS. DeBETTENCORT: I just wanted to introduce Doug,
22 even though most of you are familiar with him and his work.

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1 Douglas Besharov is a resident scholar at American Enterprise
2 Institute.

3 He is on the adjunct faculty. He is an adjunct
4 professor at Georgetown and American University. He also has
5 taught at Osgood Hall in Toronto and the college of William and
6 Mary. He is also the first director of the National Center for
7 Child Abuse.

8 Several years ago, the American Enterprise Institute
9 in LSC co-sponsored a conference on "Maximizing Access to
10 Justice. During that conference, staff members from LSC and
11 from client community and legal services community came together
12 to talk about just these same issues.

13 Several years since then, Doug Besharov and AEI has
14 conducted a study of the Legal Services Corporation utilizing
15 case service data and other information. From that study, Mr.
16 Besharov has written a paper, "Legal Services for the Poor: A
17 Time for Reform."

18 That paper is in final form and will be published as a
19 book in about six weeks, I believe, and will be available. I am
20 sure it will be a best seller. So Mr. Besharov is here to
21 discuss the findings of his paper and especially his thoughts on
22 competition. I think he is going to leave a lot of time for

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1 questions from the board.

2 CHAIRMAN HALL: I will ask him to come forward. He
3 has written, "Legal Services for the Poor: A Time to Reform."
4 I have read it. It is a lengthy report. I understand that
5 portions of it does refer to competition. Mr. Besharov, would
6 you tell us your name again and give us your report, please.

7 MR. BESHAROV: Sure.

8 PRESENTATION OF DOUGLAS BESHAROV

9 MR. BESHAROV: My name is Doug Besharov. I am from
10 AEI, the American Enterprise Institute. It is a great pleasure
11 to be here. I know some of you, at least in passing. I know a
12 number of the members of the board actually attended the
13 conference that we held, gosh, more than two years ago.

14 As Kathy said, this report is part of a project that
15 we performed for the Corporation. It was basically made up of
16 three parts. I will be very blunt about it.

17 The first part was a full-day conference at which we
18 invited a full range of legal services people from boat camp, so
19 to speak, and I think the people in the middle as well. We
20 spent a day examining issues from competition to co-payments to
21 questions of productivity and accountability.

22 We, by the way, transcribed those sessions, had them

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1 edited substantially with the concurrence of the speakers. As
2 part of the report in the book that we will publish early this
3 fall, we will have the transcript of those proceedings. I know
4 members of the staff have the final typescript version of that
5 transcript as well.

6 In relation to the topic today, that transcript
7 includes, for example, an additional paper by Alan Houseman
8 about competition. I would recommend to the members of the
9 board that they review that separately.

10 Although there has been a polarization on the issue,
11 my message to you is that there is broad support for many
12 elements of competition. I think that the main concern that
13 folks have is just how it is going to be brought about.

14 Anyway, one part of our project was this conference
15 and preparing the transcript that followed from it. The second
16 part was our own intensive examination of what statistics were
17 available about legal services.

18 Here we use the Corporation's statistics. We tried as
19 best as we could to find numbers, data, anything from other
20 programs and other sources. We also did extensive interviews
21 with people around the country.

22 On the basis of that work which I would not

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1 characterize as the epitome of the scientific method, I wrote
2 this report which is, in some respects, an essay and some
3 respects a restatement and a summary of what happened at the
4 conference.

5 Very clearly, based on my impressions of the data and
6 the conference, I do not want to say that this was the consensus
7 view of the conference because we were trying to get all points
8 of view represented.

9 The report represents my interpretation of what I
10 learned both from the meeting and our own independent research.
11 The report was published first in draft. I think, actually, if
12 you have the February 3rd version, you actually have the first
13 draft submitted to the board.

14 This was widely circulated and we received additional
15 comments and corrections on some of the numbers. We actually
16 did a revised version which I think the Corporation staff has.
17 I could be wrong about that, but I think there is another draft.

18 CHAIRMAN HALL: Maureen, do you have the revised
19 version of this article?

20 MR. BESHAROV: If not, I will be sure to get it. The
21 contents are not very different.

22 CHAIRMAN HALL: Just a few days ago, the report I was

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1 provided with was the February 3rd. Apparently, there are some
2 changes in numbers and things, but you do not think it is --

3 MR. BESHAROV: So you will understand, this version
4 went out to folks for comment. People would say well, you know
5 the number is not exactly that and so forth. The main thrust of
6 the report has certainly not changed at all.

7 CHAIRMAN HALL: Okay.

8 MR. BESHAROV: With this report, I also did an update
9 editorial for the Wall Street Journal, and a truncated version
10 of this paper was distributed at an American Bar Association
11 meeting in New Orleans just about a month ago.

12 I mention all that because I have had the benefit of
13 substantial feedback about this report and I wanted to share it
14 with you and then invite you to ask any questions you might have
15 about issues of competition and how it might be managed.

16 That feedback which I received is that once folk's
17 concern about the political issues of competition are put aside,
18 that is, once that argument subsides or moves off to the side of
19 the conversation, then there is very wide support for some form
20 of competition or recompetition for grants under the
21 Corporation's sponsorship.

22 I would tell you that as personal testimony. That

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1 support is from the left and the right. The concern that folks
2 have, I think on both sides, is that there be a procedure that
3 identifies -- the phrase I used in the report was "politically
4 neutral."

5 It really goes beyond that. This is a very complex
6 subject. Trying to recompute these projects when there is
7 really not, in many places, a market for this kind of legal
8 services, it is very complicated.

9 So I would say to you that to me the issue is not
10 whether there should be competition or not; the issue is how one
11 does it, how one explains the process, and how one builds
12 broader support for the recompetition of grants.

13 Actually, I shot my wad when I wrote this thing. I
14 would be glad to kind of summarize it, but I assume you all have
15 had a chance. So I guess I would rather just answer your
16 questions.

17 MR. UDDO: I guess my question, Mr. Besharov, is, have
18 you really gone into any of the details of how such a system
19 would work? I have read your portion of the report that deals
20 with competition and again, it is very good but fairly general
21 that competition is a good idea.

22 Have you gone much into the kinds of specific problems

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1 that we have to contend with to implement such a system?

2 MR. BESHAROV: Our mandate on this was fairly general
3 to start with. Although we should not talk dollars, it was a
4 relatively modest project considering all we did. I made a few
5 points which I would be delighted to share with the board.

6 They are my views and the board might disagree, but I
7 think there are some basic conceptual issues that have to be on
8 all of our minds on this. The first point we make in the report
9 is the real danger of low balling; that is to say whether or not
10 the competition is open to profit making firms or organizations
11 as well as nonprofits. I emphasize as well as nonprofits.

12 One of the clear dangers, and we have evidence of this
13 from other experiments, is that folks who do not exactly
14 understand what is involved and folks who think well, you know,
15 maybe the sun will shine at midnight, will underprice their
16 services and the proposal review process will not pick that up.

17 So my first point would be beware of and have a
18 procedure for making sure that you do not have a low baller in
19 there.

20 MR. UDDO: Can I stop you a minute? Do you have any
21 thoughts on how you would shelter out low ballers? In the
22 context of what we are talking about, it is an extremely serious

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1 problem because you have got ongoing lawyer/client
2 relationships.

3 If the successful bidder does low balling and finds
4 out that they cannot do it for what they said they could do it
5 for, it jeopardizes the conduct of the case and the
6 lawyer/client relationship.

7 MR. BESHAROV: Well, I think for that, I would look at
8 past experience about per case costs. I would look not for
9 individual case cost across all cases, but I would look to see
10 what similar cases might cost.

11 The evaluation process of individual grants should
12 include a process that says well, these folks are claiming that
13 they can handle a divorce for \$12.50 each. We know that some of
14 our best grantees are costing \$27.00 each.

15 For \$12.50, it just does not look as if it is in the
16 ballpark. It is that kind of process. Many government agencies
17 have to do that everyday when they look at contracts. So that
18 would be one way that I would look at low balling.

19 I think that there is no guarantee in one practice or
20 one way to make sure that the system works. I made some other
21 suggestions as well. I think the continuity problem is a very
22 big one, which is why we recommended a much longer period of

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1 time in recompetition.

2 I think when we made a distinction, by the way,
3 between a period of time that one of the national support
4 centers could be recompeted and the period of time for a local
5 program, we conceived of just the mechanics of organizing street
6 level delivery of services to be much more involved and much
7 more difficult and the lawyer/client problems much more serious.

8 So for that, for example, we suggested a longer period
9 of time between competitions. I think that helps too. If you
10 are not doing this every year, and, frankly, if you are not
11 doing it every three years, you can have a much more careful
12 evaluation.

13 One other thing that we recommended that I think helps
14 on the low balling question because it gives you a fail safe
15 position -- and I know I noticed in some of the materials it
16 was, in part, criticized by PAG and whatever -- is that we
17 specifically recommended having a procedure where you could have
18 a second grantee in the same geographic area.

19 We called it second sourcing. I think it is very
20 important. It is what the Pentagon is doing now for many
21 important contracts. That gives you an opportunity to watch two
22 different organizations providing essentially the same kinds of

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1 services.

2 If one organization has low ball or becomes
3 unresponsive, you can shift resources to the other. That
4 involves a level of supervision of grantees which, in the past,
5 has not occurred with the Corporation; but I think time has come
6 for that as well.

7 MR. VALOIS: Professor Cox made that same point at
8 Shaumburg. I think he had a slightly different rationale for it,
9 though, which was, if I could roughly describe it, competition
10 among the competitors which would give us an opportunity to see
11 which one did the better job and perhaps after some initial
12 period of observation, consider single source or sole source.

13 MR. BESHAROV: If I could add, I am sure that might
14 happen in some places, but I am a New York City boy. I can tell
15 you that in New York City, you will never decide, I think, that
16 one organization is best, I think.

17 You may well want to keep your options, especially
18 because of the problems involved if one organization is unable
19 to meet its responsibilities. You may always want a capacity
20 out in Brooklyn someplace or in Queens or whatever to pick up
21 the load.

22 I think that is a second reason why even when there

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1 are gross disparities in efficiency, the Pentagon still
2 maintains the second source. It is an important fallback
3 position for you.

4 I think, to be very blunt about it, when you have got
5 that kind of fallback position, many of us have lesser concerns
6 about the competitive process because it is not as if you are
7 sweeping from the field other potential providers.

8 You are, in fact -- you have, in effect, a farm team.
9 You have a second string, ready to go if there is a problem wit
10 the prime. I think that is an important thing that would build
11 support for your proposals.

12 MR. UDDO: If I could ask a couple more questions.
13 Did you give any thought to quality control? I did not really
14 see that in the part of your paper that I read. Again, our
15 statutory mandate and professional responsibility is to provide
16 high quality legal services.

17 I think one of the concerns that a lot of people have
18 is that the lowest bidder may not be providing the highest
19 quality legal services. So we may be in a little bit different
20 position than some other people that engage in competition.

21 MR. BESHAROV: I think that the report contemplates a
22 form of competition for grants that might be a little different

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1 than the way most other people are viewing -- or at least some
2 other people are viewing this debate.

3 The report describes, for example, that an important
4 component of the evaluation, whether it is every three years or
5 every five years or whatever, of the competitive proposal would
6 be the past evaluation of that project.

7 So what I mean to say by that is that if a project in
8 the Corporation's regular monitoring process comes up with all
9 As, that project should have a leg up, should have bonus points
10 when it comes to the point of refunding.

11 I do not think there should be, in this process, an
12 assumption at the three year mark that everybody is at square
13 one. I do not think that is the way you would want to influence
14 this program.

15 So one issue of quality control, one way of assuring
16 or at least monitoring quality control, is to plug the
17 Corporation's own monitoring process into the refunding
18 decision. That would be number one.

19 Number two on this, it is very difficult. You are
20 talking about a service, a service that many organizations may
21 or may not have provided. One thing that you might want to
22 consider in something like this is sending some people out there

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1 in the field.

2 I assume that if there is a competition, it will be
3 between people who are providing some kind of legal service
4 already. You might want to see what kinds of legal services
5 they are providing now, whether this is being provided by the
6 Catholic Church, by a private law firm, or by one of these legal
7 clinics.

8 MR. UDDO: And evaluate their current performance?

9 MR. BESHAROV: Sure.

10 MR. UDDO: Would your suggestion that you give
11 successful providers a leg up in the subsequent competition
12 apply to the initial competition if there was going to be a move
13 from the current funding system to a competitive bid system?
14 Would you suggest that that same sort of bonus system apply to
15 the initial ground of bidding?

16 MR. BESHAROV: If there were an evaluation system in
17 place that would enable the Corporation to make those judgments,
18 my impression is that that system may not be in place right now.

19 MR. UDDO: The monitoring system does not really do
20 that?

21 MR. BESHAROV: That is right.

22 MR. UDDO: What about the question of setting

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1 priorities? That is an important part of, I think, some of the
2 concerns again about competition. How do you think priorities
3 would be set and how should they be set?

4 Can that -- I guess ideally in a competitive model,
5 that ought to be done at the local level. That ought to be done
6 by the demand of the people who are being served. Would that be
7 the best way to do it or is that something that should stay in
8 the hands of the Corporation?

9 MR. BESHAROV: I think I would take the middle road on
10 that one. I read the regulations, the proposed regulations on
11 competition. I think you could see them operating in either
12 direction. I think it would be an interesting question how to
13 draw the line.

14 Let me backup and say where I come from on this and
15 maybe that will help in this discussion. Clearly, at the
16 national level someone has to set general priorities. That
17 someone or that some institution starts with a Congress which
18 describes the general gamut of legal services responsibilities.

19 Secondly, just as clearly, this Corporation, the
20 board, has an equal responsibility not only to ensure that
21 Congress' decisions are implemented but that they are taken to
22 the next administrative step.

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1 That, I think, means, for example, that if there is a
2 malfunction in the priority setting process at the local level,
3 that the Corporation can step in and assert national standards
4 based on the will of Congress.

5 Now you are going to ask me what happens at the local
6 level. There I will backstep a bit and say I am very worried.
7 I will tell you what I learned in my conversations with people
8 in the report. That is why we proposed as part and parcel of
9 all this that the priority setting mechanism at the local level
10 has to change.

11 I make many enemies with my friends in bar
12 associations and in local legal services programs by saying that
13 many of the present boards are like many of the Boards of
14 Directors on which I sit, which is, we tend to go along with the
15 CEO.

16 We tend to go along with what the staff recommends and
17 only step in when there is a real problem. I think that is
18 equally the case with local programs. I think that there is a
19 tendency on the part of local programs to select their
20 priorities based on who they have as staff members and the
21 interest of staff members.

22 I think that status quoism is very strong. If there

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1 was a housing program and such and such a program and for some
2 reason the housing lawyer leaves, they hire another housing
3 lawyer.

4 So I think that there are problems at the local level.
5 At the same time it is mind boggling to me to think that the
6 national board could set priorities and say well, at a minimum,
7 32 percent of every program should be family law; 27 percent
8 this and that.

9 You might have general targets or whatever. That is
10 why I recommend very strongly that the board consider in the
11 long term a different priority setting mechanism at the local
12 level and that be client co-payments.

13 That is the way to get out of this box of who sets
14 priorities. It should not be bar associations. It should not
15 be the lawyers who run the programs. It should be, in large
16 measure, clients.

17 MS. SWAFFORD: I do not want to interrupt your line of
18 questioning, but based on what you have just said -- and if I
19 have misread it, you can correct me -- but one of the things
20 that came to me quite vividly is that the faces of poverty have
21 changed in the last 20 years.

22 Twenty years ago people were poorer because of their

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1 minimum amount of education and part of it because of what race
2 they were. Today poverty is a result of female headed families.
3 I believe you observed that there had not been changes to deal
4 with this.

5 For some reason, I did not understand how do we deal
6 with it. I would agree from my very limited perspective -- and
7 it is certainly true in the small community in which I live that
8 poor people are -- essentially the women who are pretty well
9 employed, but still they are at poverty level because they
10 cannot collect child support and they do not make enough. Their
11 skills do not allow them.

12 How does Legal Services -- what do we do about it? I
13 mean, how do we help with it? How do we change the status quo?

14 MR. BESHAROV: I looked at that question and thought
15 about trying to write about it in the report and did not. So
16 you caught me. The reason I did not was because first of all,
17 it seemed beyond the scope of our report.

18 Also, it seemed to me to raise a very fundamental
19 question about the role of Legal Services' attorneys and the
20 role of the Corporation in "fighting poverty." If the role of
21 the Legal Services Corporation is to help people get out of
22 poverty, there would be a range of different kinds of cases and

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1 approaches I think that the lawyers would take.

2 If the approaches to represent individuals who are
3 caught up in poverty and having to deal with the government, you
4 get a different range of cases. Let me be specific and explain
5 what I mean by that because I know I was not exactly clear.

6 When the Corporation -- when Legal Services was first
7 envisioned as an anti-poverty program -- by the way, I was in
8 law school just a half a mile away from MFY and know a lot of
9 the people who got started in MFY.

10 One of the ideas was, in effect, that this was a way
11 to get people out of poverty. Sometimes we kind of thought of
12 it as suing people out of poverty, but the notion was to make
13 poor people unpoor.

14 Well, when you want to make poor people unpoor, you
15 have to have behind that idea some concept of what makes them
16 poor and what kinds of things will help them not be poor. You
17 are imposing on them those views.

18 I have views about what it takes. Number one is that
19 when there is a divorce or a baby born out of wedlock, that in
20 addition to, but maybe before, sending that young mother to
21 welfare, you ask who the father was and whether there is any
22 money there for child support.

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1 In addition to fighting about work requirements or
2 education requirements, the best way for a poor person to get
3 out of poverty in this country today is to work. So the
4 emphasis if I were representing a poor person would be to get
5 that person in the best training program, get them the best
6 education so they would no longer be poor.

7 That is my imposing my view of what I think that
8 client wants. Now if that person were my client and it were a
9 true lawyer/client relationship, I would really be asking what
10 do you want me to do.

11 If that client said I want you to get me on welfare, I
12 do not want you to go after my husband or my boyfriend, as that
13 person's lawyer, I would respect that person's view. That is
14 how I am trained as a lawyer.

15 The Corporation is in this funny position because it
16 is sold in part on the Hill as something that fights poverty.
17 Yet, I can tell you that if I were choosing, I would do
18 something different for that client than when I am her lawyer or
19 his lawyer.

20 That is why I am answering this question kind of
21 shelly-sallying back and forth. I do not think that the
22 Corporation in today's atmosphere can come down firmly on one

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1 side or the other.

2 I think that you have to create procedures whereby at
3 the local level people can address these questions and work them
4 out. There is right now a revolution going on in welfare
5 policy.

6 It is called work fair or job training. Only to a
7 limited extent, as far as I can tell, are local legal services
8 attorneys tooling up for what will be a revolutionary change in
9 the way public welfare agencies relate to their clients.

10 I would encourage the Corporation, both in the central
11 office and at the local level, to respond to those needs. The
12 last thing I would suggest is that you impose on the local
13 lawyers a prescriptive rule about how they should represent
14 those clients.

15 MS. SWAFFORD: Just to follow up on that, is the role
16 of this Corporation to provide help for how to get out of
17 poverty or just to help what that specific need is. See, I find
18 it difficult to say that it is the role and just how far can we
19 go with the funds we have to help people get out of poverty.

20 Every lawyer ought to assume responsibility to say
21 have you thought about going back to school. Have you thought
22 about taking the GED test? Have you thought about this, that or

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1 the other? Just how far do we go in meeting the needs of the
2 poor? I guess you have already answered that.

3 MR. BESHAROV: Well, let me just make one more point.
4 In part, the changing face of poverty makes this question much
5 harder to answer. Twenty years ago when a great deal of poverty
6 was structural, when a great deal had to do with much more overt
7 racial discrimination, the lawyer's answers and the client's
8 answers much more tended to be the same; sue the bastards, if
9 you do not mind my slang on that.

10 Things are changing now. Nowhere is that more obvious
11 than in the selection of clients. Perhaps let me make a point
12 about that while I have got you all. Everyone has been waiting
13 for the first Legal Services program to represent the person
14 running a crackdown and to fight an eviction order. Those
15 people are also poor.

16 It is an interesting question whether the Corporation
17 represents people because they are poor and want to get out of
18 poverty or just simply because they are poor. In the old days,
19 the selection of clients was simple.

20 They were poor and they had similar needs which tended
21 to be vis-a-vis the government. If you look at the child
22 support program, in many cases both the mother and the father

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1 are poor.

2 Obviously, I am asserting a point of view here which
3 is the Corporation should be representing the mother. The
4 Corporation could just as easily or the lawyers could just as
5 easily be representing the father and defending him against
6 having to pay child support for his children.

7 It fits within the rubric or the rhetoric of the
8 Corporation. Soon I think you are going to have to face these
9 kinds of questions and decide just who gets represented. That
10 is why I go for co-payments.

11 That is why I said let local community make these
12 decisions. You do not want to get caught up in these decisions.
13 I think neither does the Congress.

14 MR. UDDO: How will co-payments achieve that goal?

15 MR. BESHAROV: I think that you will be able to say
16 that folks vote or choose the services they want by their
17 willingness to pay for them. You have created a mechanism
18 whereby those kinds of decisions are largely made by clients
19 themselves.

20 MR. UDDO: Explain the co-payment system to me. I am
21 not sure just in the abstract how that would do that.

22 MR. BESHAROV: Well, I think first of all that there

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1 are some people think that co-payments become an important
2 source of funding for legal services. I am not one of those. I
3 think that the co-payments have to be sufficiently large to
4 affect a client's decision but not so large that they preclude
5 someone who needs those particular service from seeking it.

6 Then you have in a program a program which naturally
7 wants to satisfy the needs of its clientele a way of measuring
8 what those needs are, a much better way of measuring what the
9 needs in the community are than these surveys that are done.

10 MR. UDDO: If it is not going to be a source of
11 funding -- I mean, the program is no more obligated to take the
12 case than they are now.

13 MR. BESHAROV: Well, I thought about that as well. I
14 think there is a passage in the report about that, although I
15 suggest that the Corporation do some experiments about this. It
16 is one thing to say that it is not a source of funding that co-
17 payments and clients are not directly a source of funding for
18 programs.

19 It is quite another to say that the Corporation and
20 its refunding or funding of a program should not be monitoring
21 the degree to which there are co-payments or should not be
22 matching the co-payments.

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1 In other words, what if you said -- I think this does
2 have to take some experimentation -- what if the Corporation
3 said, for every 10 cents you bring in, we will give you 90 cents
4 or you have got to bring in that 10 cents before we give you 90
5 cents.

6 You would have a vehicle for identifying client needs
7 pretty soon. What I am worried -- I do not mean to suggest that
8 you go right ahead and do that. I think it is a very powerful
9 notion.

10 It would answer as many of these questions, but I
11 would like to see it in operation on a limited level before
12 trying it out widely.

13 MR. UDDO: What if a bunch of clients got together and
14 used their co-payments to generate a class action suit?

15 MR. BESHAROV: I have no problem with class actions
16 suits.

17 MR. UDDO: You do not think it is any problem for
18 Legal Services grantees?

19 MR. BESHAROV: No, I do not.

20 MR. UDDO: How about if they wanted to use their co-
21 payments for laundry?

22 MR. BESHAROV: There are rules about that. For so

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1 long as there are rules about that, there are rules about that.
2 I would just note that this hits at the heart of what lawyers do
3 these days.

4 MR. UDDO: Lobbying? Do you think our lobbying reg is
5 ill-advised?

6 MR. BESHAROV: No. I think, though, that when one
7 talks about public funds for lobbying, it is very different than
8 when lawyers do it. There has been some confusion about this.
9 I think that there has to be some middle ground.

10 Whether the lobbying reg does it or not -- I have got
11 to tell you I read that lobbying reg and I do not always
12 understand what it means.

13 MS. MILLER: Am I understanding that you could get--
14 a co-payment can be a dollar's worth of service or ten dollar's
15 worth of service depending on what your co-payment is?

16 MR. BESHAROV: Yes.

17 MS. MILLER: That is the way I am understanding you.

18 MR. BESHAROV: Yes, or it could be a hundred dollars
19 worth.

20 MS. MILLER: In fact, I might not have but a dollar
21 and I need ten dollars worth of services.

22 MR. BESHAROV: Let me put it in this way. What if we

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1 said that a divorce front to back which costs the Corporation, I
2 do not know -- I keep saying Corporation because you all sign
3 the checks -- my guess is that a divorce front to back costs you
4 between \$200 to \$400 per case, at least that is what it ought to
5 cost you.

6 So a woman comes in and says, "I want a divorce." The
7 local program attorney says, "Fine, that will cost you \$20."
8 She says, "But my income is only 120 percent of the poverty
9 line, so I am technically eligible in many places."

10 I would say, "My dear, you can afford \$20 for this
11 divorce and it's good that you pay that because it is a service
12 and you should understand what you are buying." Now in divorce,
13 most people when they come in for a divorce, they only want to
14 get one at a time and so forth.

15 It works a little better when you are thinking about
16 some of the other more discretionary kinds of legal questions
17 that arise. What you want to do to be very direct about this
18 is, in part, you really want to limit the number of people who
19 walk in the door for what are insubstantial question.

20 Our research, which is admittedly based on somewhat
21 shaky data but is reinforced very strongly, very strongly by
22 data from individual state studies, shows that Corporation

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1 lawyers or local program lawyers are spending much too much time
2 saying no to people.

3 That is because people are coming in much too often
4 with what I think are problems that do not belong in legal
5 services. So if they knew it was going to cost them some money
6 to ask -- and I do not mean for a divorce now.

7 I do not mean to fight an eviction. If you have a set
8 of rules about what is and what is not legal services, you could
9 free up attorneys to spend more time providing serious services
10 to families. I would be all for that.

11 CHAIRMAN HALL: Mr. Besharov, are you telling us that
12 it is your belief that right now a lot of the clients who are
13 being served by recipients would refuse that service if they
14 were required to pay partly for it?

15 MR. BESHAROV: I think in some respects they would not
16 even come in and ask.

17 CHAIRMAN HALL: What do you base that belief on? Do
18 you have --

19 MR. BESHAROV: My own understanding of how markets
20 work but also, to some extent, the work of Professor Cox,
21 although I think it is hard to generalize two sites to a whole
22 nation.

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1 I think that work just reconfirms what we talked about
2 in every sphere. You know, here I know that there is this
3 debate about market services and whether people pay. I would
4 just say that this is a little bit about debating whether the
5 sun comes up in the morning.

6 We are watching in eastern Europe economies that do
7 not operate on the basis of price, do not give anybody the
8 notion of the value of things. The Soviets are having this
9 problem now.

10 They have not got the slightest idea of what a tank
11 costs to build because their market has no real prices in it. I
12 am not suggesting having poor people and certainly people who
13 are on welfare and so forth.

14 For them, the report says probably exclude them from
15 the co-payment requirements all together. I am not suggesting
16 in any way locking the door on people with real legal needs. We
17 have seen, for example, in the medicaid experiments -- and there
18 there is some fairly effective research that has been performed
19 by the Rand Corporation -- that people pick and choose much more
20 carefully even the medical procedures, the elective medical
21 procedures that they will have if they have to pay a co-payment.

22 I think that evidence is there. It is unmistakable.

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1 The real debate ought to be who has to pay for what. That is to
2 say, do not exclude people with emergency or deep needs. That I
3 think the debate is implementation not whether it should be
4 done.

5 MS. MILLER: You do not necessarily have to be on
6 welfare. You could just be a working person that makes a
7 minimum amount of money to be considered poor. Being on welfare
8 is not always the poorest.

9 MR. BESHAROV: I know that.

10 MS. MILLER: Some of the people that do work, they are
11 really poorest because a lot of them cannot afford medical
12 insurance meaning they do not have this medicaid card so they
13 can go to the doctor. So the co-payment is not always where
14 someone can pay.

15 I believe somewhat in co-payments; I really do. I
16 know if I do not have that dollar or that ten dollars, I will
17 not get service. I need that service now. So what do you do in
18 that case?

19 MR. BESHAROV: Well, what I would do is draw -- I
20 would do it the way some medical co-payment schemes work. That
21 is to say, I would draw a list of problems for which a co-
22 payment can be waived or would not be required in the first

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1 place.

2 I can think of some right off the top of my head;
3 spouse abuse. If a woman comes in and says this guy is beating
4 me up. I do not have a dollar. I do not even have that dollar,
5 although I am not sure about that in many cases, then I do not
6 wait for her to come up with a dollar.

7 The same is if a family comes in and says I am being
8 evicted tonight.

9 MS. MILLER: Well, I was waiting on you to say
10 something like that.

11 MR. BESHAROV: There are other kinds of situations in
12 which a woman comes in or a man comes in -- sorry, but, you
13 know, we are talking about clients and who they are -- and says
14 I have got this stereo that I bought and they want to take it
15 back from me.

16 It does not work and this and that. It is a \$75.00
17 stereo or whatever. In the scheme of things, I am ready to ask
18 for a dollar or two in a co-payment or more.

19 MS. MILLER: That is not the necessity there.

20 MR. UDDO: Would a co-payment system work without a
21 competitive bid system?

22 MR. BESHAROV: Yes.

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1 MR. UDDO: Would it achieve some of the same things
2 that you suggest ought to be achieved?

3 MR. BESHAROV: I think so.

4 CHAIRMAN HALL: What would it achieve, just the
5 priority setting? Do you think it would bring the priorities
6 more in line through needs?

7 MR. BESHAROV: That is right.

8 CHAIRMAN HALL: That is the only thing that would
9 achieve or are there others?

10 MR. BESHAROV: Well, I think there are other things
11 too. I think that it is -- and here we are talking in a very
12 ephemeral area. I want to say that people can shoot me or
13 whatever afterwards.

14 I do believe that in our society and in our economy
15 people feel better when they pay for things. I think it is good
16 for clients. If it is not prohibitive, I think it is much
17 better to come in and say I am buying a service.

18 Now it is a subsidized service, but I am buying it.
19 Geez, the the middle class are subsidized all the time, but we
20 buy things. So I think that there would be a healthy
21 modification in the attorney/client relationship in the office
22 when there is a payment, when there is a payment changing hands.

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1 I would just, if you have questions about that, go
2 take a look at how mental health programs for the last 20 years
3 have had co-payment schemes and ask the psychiatrist, the
4 psychologist and the social workers how the clients feel about
5 that.

6 The clients feel as if they are the clients not the
7 supplicant. So I would say that that is one other very
8 important reason for doing this. I would add another thing. I
9 have not been in practice for a long time.

10 In effect, I am in a different kind of practice. I
11 know that having a payment scheme, having someone having to pay
12 for your services is the best way to keep in touch with what
13 people think is important in your community.

14 As a part-time Washington consultant, when people
15 start saying well, I will pay you to do this and I want to do
16 that, I know I am not in touch with my market. So I think it
17 would be a healthy thing for the attorneys as well as long as it
18 is done with great care and not as an attempt to prohibit or
19 exclude people from the legal system.

20 MS. SWAFFORD: On page 43 of your report, you allude
21 to the English system the 25 percent co-payment. I guess that
22 is the right copy. Do you know about the English system? Could

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1 you tell us a little bit about how it works?

2 MR. BESHAROV: No, I do not. I do not know too much
3 more than this. What I said there, though, and what I think
4 that the board has to be very aware of is that the English
5 system has eligibility much higher than the American system
6 which is why they can have a higher co-payment requirement right
7 across the board.

8 I have watched -- I taught for a year in Canada where
9 they also have a modified version of co-payments. You know, it
10 is like everything else; what you grew up with you are used to
11 and you say it works.

12 MS. SWAFFORD: Well, does Great Britain have a legal
13 service comparable to ours? I guess that is my question.

14 MR. BESHAROV: They do not have a corporation. They
15 do it through -- I think they do it the way the Canadians do it.
16 Let me describe the way it is done in Ontario because you might
17 want to think about that as a model to explore. It has got good
18 and bad things, and I will talk about both.

19 In Ontario, at least, there is a Legal Aid Society. A
20 client goes to the society and says I have a problem. If the
21 problem is on the list of approved problems, and many problems
22 are not, that potential client gets what is called a certificate

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1 of need or representation which the client then takes to a
2 designated lawyer who is in private practice.

3 The lawyer represents that client for either a set fee
4 paid by the government or a proportional fee if there is a slide
5 in scale. It is, in effect, a modified form of voucher and
6 private attorney model.

7 It works in a small jurisdiction where there is not a
8 lot of litigation. I do want to emphasize that they exclude
9 from that list large categories of cases. It would be -- they,
10 in effect, have a list of acceptable kinds of lawsuits that one
11 can bring.

12 I can tell you one of them is not class action. For
13 that reason, I think it would be very tricky to apply in this
14 country.

15 CHAIRMAN HALL: I am not sure if you are telling us
16 that you do not think people would pay to join in a class action
17 under a co-payment system?

18 MR. BESHAROV: No, no. What I am saying is I do not
19 think the Congress would stand for a moment for the board to
20 have a list of approved kinds of lawsuits.

21 MR. UDDO: What does competition add to the net result
22 that your co-payment system would achieve?

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1 MR. BESHAROV: Well, I hope -- if I were doing this, I
2 would be very careful that no individual change was so radical
3 that it could remake the program to be perfect. Any change that
4 is that radical could also be very harmful to the program.

5 MR. UDDO: You say "the" program.

6 MR. BESHAROV: The legal services program, the whole
7 thing. I am an incrementalist. I would do things a little bit
8 at a time.

9 MR. UDDO: So you would not be in favor of
10 implementing a competition system overnight?

11 MR. BESHAROV: No, as a matter of fact, I have said
12 slow and easy. I would start with selected kinds of grantees,
13 as a matter of fact, build staff capacity, build evaluation
14 capacity and go from there.

15 MR. UDDO: I cut you off. You were going to tell me
16 what competition would add that your co-payment system would not
17 achieve.

18 MR. BESHAROV: Well, I think that I have observed a
1 number of federal programs where, for various reasons, there was
2 no competition for refunding over a period of years. I have
3 watched that eat at the soul of those programs.

4 I think in everything we do -- and, in fact, there are

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1 very few programs left where there is no recompetition. A major
2 one is Project Head Start which was protected from recompetition
3 at about the same time the legal services was made into a quasi
4 private corporation.

5 The effects on the Head Start program, in my opinion,
6 have not been positive. There has been an absence of new blood
7 coming into the program. There has been an escalation of
8 administrative costs and, basically, a lack of innovation which,
9 for someone like me who is a real supporter of Head Start
10 programs, has been very troubling.

11 I see the same kinds of things developing or developed
12 in various legal services programs. I think a kind of reminder
13 to people is that the money does not automatically come every
14 year or three years or five years. It is very healthy for
15 building accountability to clients as well as to the national
16 Corporation.

17 MR. UDDO: Can you tell me some of the things you say
18 you see in local programs that would indicate that? Are there
19 some specific things? Is it decline in quality or decline in
20 productivity? What sort of things would indicate that?

21 MR. BESHAROV: Well, in the report -- and we were very
22 careful to say that these were based on shaky but we thought,

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1 nevertheless, reliable data, we think we detect --

2 MR. UDDO: Tell me what the data is just briefly. You
3 said it is shaky a couple of times and I am not sure what it is.

4 MR. BESHAROV: It is the Corporation's own case report
5 data.

6 A PARTICIPANT: Yes, it is shaky.

7 MR. BESHAROV: That is why I keep saying it that way.

8 MR. UDDO: That is why it is shaky because it is the
9 Corporation's?

10 MR. BESHAROV: We detect in our evaluation of the
11 numbers that the Corporation has as much as a 20 percent
12 reduction of productivity. Let me emphasize that I would not
13 have written that if I had not also talked to attorneys around
14 the country.

15 MR. UDDO: Legal Services?

16 MR. BESHAROV: Legal Services attorneys who agree. In
17 these kinds of debates, it would be very easy -- let's say
18 Michael Dukakis had one in November and this one now a
19 Massachusetts board.

20 I could come to you and say, after eight years of
21 Ronald Reagan, there have been so many cutbacks, moral is so
22 low, people have not been hired, good people have not wanted to

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1 work for the Corporation, that we have a deteriorating quality
2 of attorney.

3 We are getting them green out of law schools. We are
4 not paying them enough. They are not as efficient as the people
5 we had 20 years ago. See, the fact of the matter is, whatever
6 the reasons, there is, I think, agreement out there that the
7 program is not as efficient, not as productive as it was in the
8 past.

9 There have been studies, one in Massachusetts, for
10 example, and other places that I think similarly document that.
11 Productivity is down. There are a lot of reasons for that.
12 Some of them have to do with the kind of storm and drama of the
13 last eight years.

14 Some have to do with much more deep seated problems
15 facing poor people, facing the provision of legal services in
16 general, and changes in the legal profession. When I graduated
17 from law school, going into legal services was one of the prime
18 types of jobs one would go for.

19 I think I read someplace where we are down to 100
20 graduating law students applying to legal services a year. Is
21 that the number? Don't count on me on that. That is a teensy
22 number.

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1 Instead they are all going and making their \$60,000,
2 \$70,000 and \$80,000 a year. They are making -- if you want some
3 judge of this, here in Washington, D.C., my students, as
4 research assistants at the law firms here, can make \$35.00 an
5 hour.

6 For those of you who have any contact with law
7 students, I can tell you that they are not worth \$35.00 an hour.
8 It is true, as I understand it, around the country. Their
9 salaries are being bid up.

10 They are not going into legal services. The ones who
11 are productivity is going down. You need to inject a little bit
12 of competition into the system. I want to say something else
13 because I know time is late.

14 I do not think --

15 CHAIRMAN HALL: Time is early.

16 MR. BESHAROV: I think it is important as you write
17 these regs to think about the potential market out there. I
18 would be real surprised if you have competition for every
19 grantee.

20 There are parts of this country where no one is going
21 to be interested in bidding. There are going to be other parts
22 of the country where there is going to be a line of folks. The

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1 difference, I think, in large measure being urban versus rural.

2 As you look at how this will play out, I think you
3 should keep this in mind. Think about who the potential
4 competitors would be, what they will look like, and so forth. I
5 know in many big cities, for example, and in some states, you
6 may find a surprising number of not-for-profit organizations who
7 have been waiting to provide legal services for the poor, not
8 because they are anti-poor but because they think they could do
9 a better job.

10 If you look at who provides social services to the
11 poor, for example, you would see an amazing mix of sectarian as
12 well as nonsectarian, nonprofit organizations. Again, if you
13 think in terms of not just kind of a national question but where
14 the competition would be, you will see very substantial
15 differences in parts of the country, in urban versus rural, and
16 in types of grantees.

17 MR. UDDO: Let me backtrack a second. Your comment
18 about law students not being worth \$35.00 --

19 MR. BESHAROV: I knew that was going --

20 MR. UDDO: Not mine. My law students are worth more
21 than that. (laughter) It is an interesting observation. How do
22 they get away with that? Isn't the delivery of legal services

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1 in the private sector competitive?

2 MR. BESHAROV: Sure.

3 MR. UDDO: So how do they get away with that?

4 MR. BESHAROV: Well, what they are doing is this is an
5 advanced payment on getting these kids when they get out of
6 school.

7 MR. UDDO: It is not just law students. We have heard
8 about lawyers getting paid \$175.00 an hour who were not worth
9 it. How do they get away with that?

10 MR. BESHAROV: Someone wants to buy those services and
11 it is the market. That is how the market is valuing those
12 services. As lawyers become more and more important --

13 MR. UDDO: Is there lack of competition among lawyers?

14 MR. BESHAROV: On the question of price up there? No,
15 I do not think so.

16 MS. SWAFFORD: What about the factor that the law
17 schools are turning up more and more lawyers; is that not going
18 to be a factor involved, people who are wanting business,
19 lawyers who ar wanting business or willing to compete

20 MR. BESHAROV: I used to think so. As recently as
21 three years ago, I thought that was where the market was going.
22 When we were watching, for example, three years ago, the average

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1 starting salary of all lawyers in the state of Florida was, I
2 think, \$16,500.

3 The market has heated up for young lawyers, for
4 lawyers fresh out of law school. Some were not that young.

5 MS. SWAFFORD: Isn't that maybe just the top 10
6 percent? Think of the other 90 percent that are not really
7 finding jobs all that easily, at least that would be my
8 assumption.

9 MR. BESHAROV: My impression is that in the last year
10 or two the market has heated up top to bottom. Isn't that
11 yours?

12 MR. MOSES: Oh, yes, there is no question.

13 MR. BESHAROV: It is very different. It is surprising
14 to me, but it sure is there. Part of it is that there are
15 different measures that you can use for whether lawyers are
16 needed. The most obvious one is per capita, the number of
17 people in the country.

18 That is not growing that much. Another way of
19 measuring the need for lawyers is the amount of economic
20 activity. Our gross national product is now five trillion
21 dollars. That is basically three or four times what it was in
22 the mid-60s, adjusted for inflation.

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1 That is a lot of tech writing and contract writing and
2 so forth and so on. Even though more people are not dying and
3 getting divorces and so forth, there is so much business
4 activity going on out there that it is absorbing large numbers
5 of lawyers.

6 It is really quite surprising and I am glad I am a
7 lawyer, but it is distorting -- it is raising prices across the
8 board, I think.

9 MR. UDDO: Let me get back to what we were talking
10 about. You said the decline in productivity is one of the
11 things you saw among out grantees. Again, based on a
12 combination of our shaky data and your conversations with people
13 in the field, what about quality?

14 MR. BESHAROV: The same.

15 MR. UDDO: You think there is a decline in quality and
16 based on what?

17 MR. BESHAROV: Conversations with people in the field.
18 I did not write about that because I think that is very tricky.
19 I am not sure how important it is.

20 MR. UDDO: Why wouldn't that be important? I mean, if
21 competition is going to improve quality, that would be a fairly
22 important justification for competition, given our statutory

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1 mandate.

2 MR. BESHAROV: Tell me what quality is. I have
3 already found and said that I think it is down a little bit, but
4 I am not sure what the measure means. I am ad libbing a little
5 bit here. I am not sure what the means.

6 MR. UDDO: We have got to provide high quality legal
7 service to the poor.

8 MR. BESHAROV: Well, I think that is a goal and, in
9 fact, has to be tempered by the fact that you are not paying
10 your lawyers high quality, \$250.00 an hour salaries.

11 MR. UDDO: So you think that we have to accept that we
12 are not going to get the kind of quality that you get when you
13 pay \$250.00 an hour?

14 MR. BESHAROV: I think it is a fallacy to try -- I
15 think you try to maximize the quality of whatever service the
16 poor get. As a society, we honestly do not try to give every
17 poor person a Cadillac or a BMW.

18 Although we try to give every poor person the highest
19 quality medical care that we possibly can, the truth of the
20 matter is that the rich get better care. For so long as we have
21 system like ours which has many other benefits, that is one cost
22 we have.

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1 As there are levels of medicare care, there are levels
2 of legal care. We ought to face that reality and work within it
3 instead of trying to fight it. The end would be better services
4 for the poor, I think.

5 MR. UDDO: You think competition will improve quality,
6 whatever it is?

7 MR. BESHAROV: I think to an extent, yes.

8 MR. UDDO: Why do you think that?

9 MR. BESHAROV: Because I think it keeps people on
10 their toes. It keeps people caring and it brings in every now
11 and then, not everybody, but it brings in new blood. The
12 process of regeneration, I think, is very important.

13 MR. UDDO: Is there the danger of a kind of a mill
14 approach to some of the legal services that -- see, one of my
15 concerns has been I do not think anybody in any city is going to
16 compete for all of the legal services that the current grantees
17 provide.

18 Somebody might want family law. Somebody might want
19 housing. Somebody might want entitlements. I think it is going
20 to be very unrealistic to assume that anybody is going to come
21 along and going to want to compete on everything.

22 Do you get divorce mills? Do you get housing mills

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1 where it is just we competed for X number of cases and we are
2 just going to run them through as quickly as we can?

3 MR. VALOIS: What is the matter with mills? Henry
4 Ford thought it was a pretty good idea and sold a lot of cars
5 after that. I do not mean the mills in a pejorative sense --

6 MR. UDDO: That is how I meant it.

7 MR. VALOIS: If it means an increase of standardized
8 to the extent that the standardized legal services began,
9 increase in quantity of those available at a different price, I
10 am not sure that is all bad.

11 MR. UDDO: I think if the quality of the
12 representation goes down, it is bad.

13 MR. VALOIS: I agree with that. If you degrade the
14 quality by increasing the quantity, you probably have not
15 achieved very much. That is good.

16 MR. UDDO: I think, Bob, that is my question. I think
17 Mr. Besharov understands the nature of my question. There are
18 ways of achieving a certain kind of productivity that can
19 sacrifice quality or the human element of the lawyer/client
20 relationship which I think is fairly important.

21 Is that a risk when you start parcelling out different
22 segments of legal services and bid them out to someone who

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1 really is concerned with a bottom line result of getting X
2 number of divorce cases done within a specific period of time?

3 MR. BESHAROV: Well, there are a lot of questions that
4 you actually asked there, as you know. So let me try to
5 remember them and answer them as best as I can.

6 I think that, first of all, there is always a balance
7 between a mill and quality. There are times when we want a
8 mill. I want a mill. It is not for cars, but it is also for
9 certain kinds of basic legal services where, as a society, we
10 need a mill.

11 Parking violations is a real good example of where we
12 have kind of created an administrative procedure to move large
13 numbers of cases an, in fact, at some cost to due process and no
14 doubt about it.

15 Since the average person who would take it no longer
16 has the convenient right to go to court and insist that a police
17 officer come and prove beyond a reasonable doubt that they
18 parked at a meter five minutes too long, we have to prod that
19 person in a technical sense of the kind of due process they had
20 when it was a full judicial proceeding.

21 We do it because everyone is better off including the
22 person who pays the ticket, I think. The same is, in part,

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1 true, I think, in certain forms of legal services. A legal
2 service program that schedules all its divorces for a Tuesday
3 morning, once a week or once a month, and there are some like
4 that, and brings in five, ten, twenty clients for a set time for
5 divorce, is considered efficient.

6 That is terrific. Yet, looked at from a distance, it
7 looked like a divorce mill. The difference, I think in part, is
8 that before that courtroom appearance someone, whether a lawyer
9 or a paralegal, by the way, has explored the case to see if
10 there are other needs.

11 If there are not other needs, that kind of quick
12 processing is, to me, very valuable and quite appropriate.
13 There is something that --

14 MR. UDDO: Let me ask you one question since you
15 brought that up. How can someone bid on divorce cases
16 considering that there might be other means?

17 Are they absolved in being concerned about those other
18 needs or is that just the risk that they take, that they may
19 take on divorce cases that have other needs that may make the
20 delivery of the service more costly because they will be
21 obligated to deal with those other needs?

22 MR. BESHAROV: Winston Churchill said, "the wonder of

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1 insurance is that it brings the law of averages to the masses."
2 That is how medical insurance works and so forth. As long as
3 you do not have a distorted base, you can make predictions about
4 the percentage of matrimonial cases, for example, that are more
5 complicated.

6 You do not have to provide that Cadillac of services
7 across the board. There is an underlying point here which I am
8 afraid that I am going to be either misinterpreted or we are not
9 going to reach.

10 Competition in this area does not have to be purely
11 bottom line. The Corporation may well decide that there are
12 characteristics or qualities that it wants to emphasize beyond
13 price.

14 I noticed in the paper the other day that the Pentagon
15 has asked a specific legislative authority so that when it
16 chooses contractors, it does not have to just go with bottom
17 line, lowest price.

18 Frankly, I would concur to you not to say well, the
19 per case, as I tried to indicate earlier -- I think you are not
20 talking just about a low price bidder. You are talking about a
21 series of considerations, price being one of them but many other
22 issues as well that come together in your determination that

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1 this is or is not the best quality bidder.

2 You mentioned something else which we learned about
3 after the report was done. I would strongly encourage the board
4 to take a look at this, as a matter of fact. That is the actual
5 practice under the private attorney involvement.

6 There are some fascinating, fascinating practices
7 evolving under that as I understand them. Again, I have -- this
8 has just been kind of looking at it from the outside after the
9 contract was completed. I just emphasize that it has been, in
10 part, a casual examination so far.

11 My impression, though, is as follows. Increasingly,
12 that is becoming an area in which family will matters
13 predominate. Increasingly, everyone is feeling very comfortable
14 about referring you to family will matters.

15 They tend to have a discrete beginning and end. There
16 is a predictable percentage of them that will be extensive, but
17 most of them can be handled -- I do not want to say like a mill
18 -- relatively efficiently.

19 Well, there is a lesson there because in many of those
20 situations there are agreements being drafted about those cases.
21 To back up a minute and give you some of the numbers, I think it
22 looked to us as if whereas the nationwide totals were under 30

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1 percent -- I do not know the figures in my head -- for family
2 law matters handled by local programs, that private attorney
3 numbers were in the 30s, the high 30s if I remember, and moving
4 up.

5 This is from memory. I am sorry not to be prepared on
6 that, but I would encourage you to look at that because I think
7 people do feel as if those cases are being handled well, even
8 though they are being handled separately from the mainstream
9 legal services program. So there are models out there to
10 explore.

11 MR. UDDO: I have two more questions. An important
12 part of your recommendation is that any competitive bid systems
13 would have to be politically neutral. That is obviously, I
14 think, a key to the whole thing. How can that possibly be
15 achieved?

16 MR. BESHAROV: Well, some things are impression and
17 atmospherics. Some things are realities. I think that if, at
18 some point in the future, the board is authorized to approve a
19 competitive process and so forth and that vote turned out to be
20 6 to 5, people would be very concerned.

21 I think beyond that -- I made some notes about this--
22 I think it is important, as I mentioned, to consider past

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1 performance in a very formal way. I think it is important to
2 give existing grantees rights, whether it is a right to an
3 appeal, an administrative appeal or whatever.

4 I think that it helps to have a kind of representation
5 from different groups on the panel so -- I know that the
6 regulations talk about a minimum of three members of the review
7 panel. You can make them a little bigger.

8 I still make sure that key people are on there, but
9 then you could also insure that there is bar association
10 involvement, some academic involvement, some client involvement.
11 Remember, I am thinking that if you are not only going to do
12 this every three years or every five years for each grantee -- I
13 think in many places there will not be competition -- it becomes
14 a much more manageable process.

15 So I would look for panels that are more broadly
16 represented, in some respects almost institutionally so, but
17 without being all that -- I do not think the ABA should have a
18 veto on whatever, but I think --

19 Thinking about local bar association representation,
20 local client group representation on these panels is not a bad
21 idea. Make these panels a little larger and you avoid these
22 kinds of problems.

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1 A right to appeal, I think, is a good one. In federal
2 agencies, if you look at the model there, I know that there is
3 some criticism, well, you know that the president of the
4 Corporation under the regs has final authority.

5 In fact, in every government agency, the responsible
6 head of the agency has final authority on grant making. I work
7 in HHS where we have some very elaborate review panels. The
8 final decision is the head of the agency's.

9 There are various kinds of appeals possible. There
10 are internal constraints. I would look at those kinds of
11 constraints, those appeals processes, to make sure the people
12 feel they have their day in court before a final decision was
13 made.

14 CHAIRMAN HALL: Mr. Besharov, I think what you are
15 telling us is that -- you have read our proposed draft and you
16 are telling us ways to make it best politically -- to make it
17 more political for people to trust.

18 How do you feel about the part that does give our
19 president total discretion? Do you have any recommendations on
20 that?

21 MR. BESHAROV: As I am saying, it is very hard to
22 think of a model that does not give the head of the organization

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1 final decisionmaking authority. It can be characterized as
2 "total discretion" or it can be characterized as "the buck stops
3 here."

4 As I say, having worked in agencies where we had very
5 elaborate peer review panels and having seen the head of the
6 agency go down to the bottom of the approved grantees to select
7 a grantee, I know that that authority is there.

8 I would tell you that there is no way around it unless
9 you transfer the battle from a very clear, on-the-surface one,
10 that is for Mr. Wear's decision or anyone else's, to a more kind
11 of subterranean battle over who sits on the panels.

12 If you give the panels final say or make it very hard
13 to undo a panel decision, maybe a panel mistake by the way, then
14 you have raised the stakes of who sits on those panels so
15 substantially that you will have a battle for each panel member.

16 I am suggesting that rather than kind of get into that
17 right, if you put more procedural protections -- not court
18 appeals and all this -- the way it is done in other executive
19 branch agencies, people will see the opportunities for these
20 kinds of discussions to be handled out in the open, see the
21 considerations that are made.

22 Not everyone will be satisfied, but I think a much

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1 broader cross section of certainly the legal profession,
2 certainly the legal profession, would relax.

3 MR. VALOIS: With all due respect to Mr. Besharov
4 whose thoughts I always admired, I wonder if he isn't going a
5 bit far on the politically neutral idea. While I assume there
6 are no studies which show that Democratic lawyers are more--
7 deliver higher quality of legal services in a more efficient
8 manner than Republican lawyers, I wonder if the quest to remain
9 or become politically neutral might not interfere with the real
10 poll star which ought to be high quality and efficiency?

11 MR. BESHAROV: First, I would say that if it don't
12 look politically neutral, the Congress ain't going to let it
13 happen. I think that that has to be a very strong
14 consideration.

15 If you believe, as I do, that competition would be
16 good for the program and good for the clients, then you look at
17 the realities around you and you say how much can we push
18 without the Congress or somebody else pushing back.

19 I think part of it is very clearly to have a process
20 that has great apparent -- and I said some of this is
21 atmospheric -- fairness and so forth. The other side of this is
22 that in the past when grantees were selected, before this board

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1 and before the board before this board, there were very many
2 informal practices about grantee selection; in fact, grantee
3 creation before grantee selection.

4 This board, as much -- or the next board -- ought to
5 be as much concerned about a return to those very informal
6 practices, whether they are from the left or the right or
7 conservative or liberal or Republican or Democratic, there is an
8 important thing to be said about formalizing the procedures in a
9 way so that whoever is on top, there is kind of a middle ground
10 that people feel pretty comfortable about.

11 MR. UDDO: Let me ask my last question. You said a
12 bit ago that you are an incrementalist on this. I take that to
13 mean that you believe that the appropriate approach to
14 developing a competitive bid system would be some kind of a
15 demonstration project or some sort of a small scale experiment
16 to see how it works and to see where the bugs are and to see if
17 it can be done on a small scale before there would be any
18 attempt to do it on a national scale.

19 MR. BESHAROV: Actually, I am not sure about that. I
20 said that about co-payments in the report. I think in co-
21 payments there are those kinds of questions. For competition, I
22 do not think I would -- I think for the competition, it would be

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1 very hard to do a demonstration and I am not sure I would
2 recommend that.

3 MR. UDDO: Why would it be hard? Why couldn't you
4 take one city and do it in one city?

5 MR. BESHAROV: I think in part because you would have
6 great difficulty choosing that city.

7 MR. UDDO: Well, let's assume you could choose a city
8 that has a population and a mix of legal needs for the poor
9 that, after some thought, we think is a pretty good
10 demonstration project of how this is going to work.

11 MR. BESHAROV: I happen to think that the underlying
12 results from the Cox study were probably correct. Two
13 observations do not a conclusion make. You could pick a city
14 and things could go well and therefore the folks who are pro-
15 competition will say, see, you can do it everywhere and things
16 could go very poorly.

17 I think the chances of an individual human factors
18 intervening would be very great. I guess if I --

19 MR. UDDO: Explain that to me.

20 MR. BESHAROV: Well, for example, you have either a-
21 - what if you pick a city with a very strong legal services
22 program. Where is the competition? There are going to be

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1 places where there is not going to be competition.

2 Then if you take a city with a weak legal services
3 program, someone will say to you well, you just chose one that
4 was a sitting duck. I would take classes or larger categories.
5 I would, for example, as a first order of business, recompute
6 the national support centers.

7 MR. UDDO: Why is that?

8 MR. BESHAROV: Because there are few of the negatives
9 about competition for them. The client base is small, either
10 easily transferrable or maintainable by those programs.

11 If one is, say, not refunded, that program could
12 continue with whatever client -- or it would be a place for that
13 client. We are not talking about large numbers of clients. We
14 are not talking about large community-based installations,
15 whether it is office space or whatever people in the community
16 getting used to it.

17 Their clientele, although they do have some direct
18 clients, tends to be the program so you have a fairly -- local
19 programs -- so you have a fairly sophisticated core client base
20 that can shift from one support center to a new one that is
21 funded.

22 Also, you know, the world has changed in 20 years. I

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1 would love to see what some law school folks would bid on some
2 of those projects. It would be very interesting to see how a
3 national consumer center or a family law center or a children's
4 law center or you name it might look.

5 You do not have the problem about priority setting.
6 That is basically already set. That is a very, very provocative
7 area in which to take a look at some competition. It is a
8 manageable size.

9 For every reason I can think of, that would be an
10 interesting place to start.

11 MR. UDDO: When you say recompetete, you mean put the
12 contract for those services out to bid again, not the voucher
13 system that you talk about in your report?

14 MR. BESHAROV: That is correct.

15 MR. UDDO: So you just open the whole thing up and say
16 who wants to bid on the national consumer law center given these
17 specifications of what you have got to do.

18 MR. BESHAROV: Yes.

19 MR. UDDO: For the very reasons you give, that would
20 not tell you much about how the direct delivery competition
21 would work.

22 MR. BESHAROV: That is correct.

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1 MR. UDDO: I guess I am a little bit confused. I
2 thought you said you really advised not doing anything that
3 would run the risk of being so disruptive or so dislocating that
4 it would screw up the whole system.

5 I thought you meant generally, but yet you seemed to
6 be willing to jump into direct delivery competition nationally,
7 pretty much all at once. That does not seem to make sense to
8 me.

9 It seems to me you almost have to say that there is
10 great risk in doing it on that scale all at once without some
11 attempt to try to pick some cities or areas where you see how it
12 works before you take it on as a national project.

13 MR. BESHAROV: Well, we suggested in the report, I
14 think, that the local programs be on a five year cycle. So even
15 if you jumped in, the maximum you would be doing would be 20
16 percent a year. That is number one.

17 Number two, if it is true, as I believe and as many
18 other people also assert --

19 MR. UDDO: It would be 20 percent because you would
20 only bid on 20 percent. You would still be picking. I mean,
21 where does the 20 percent come from?

22 MR. BESHAROV: Well, you would still be picking but it

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1 would be for only 20 percent of the programs.

2 MR. UDDO: As opposed to one city or two cities?

3 MR. BESHAROV: That is right. Secondly, since I
4 believe it is the case that in many places there would be no
5 competition, you would not be recompeting 20 percent of the
6 grantees. It is much more likely to be in the neighborhood of
7 10 percent of the grantees.

8 MR. UDDO: But you are saying that you have not
9 advised or would not advise a total shift of the entire delivery
10 system in one fell swoop?

11 MR. BESHAROV: Even the regulations do not propose
12 that. As I understand it, they propose a three year cycle so it
13 is one-third every year. It is physically impossible to do 100
14 percent -- well, it is not physically -- you could increase the
15 size of your staff ten-fold and take a crack at it.

16 There is so much to do, so much to learn, that I would
17 think that something that phases this in it at what we suggested
18 which was 20 percent, which is I think really 10 percent, is
19 doable.

20 You could start the first year by doing the nationals,
21 maybe not the support centers and maybe not doing them all, do
22 half and see how the process works then do the next half.

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1 MR. UDDO: In a year?

2 MR. BESHAROV: Sure.

3 MR. UDDO: So you do not think it would make more
4 sense to try to give a demonstration project a few years to see
5 how it works and where the problems lay?

6 MR. BESHAROV: Not in competition because I do not see
7 -- I actually do not see major problems, for example, in
8 recompeting. I keep going back to it. To me, I do not see any
9 technical obstacles to recompeting the national support centers.
10 I simply do not --

11 MR. UDDO: We have already agreed that that is not
12 going to tell you much about the direct delivery part of it.

13 MR. BESHAROV: No, but that is a major component of
14 your program.

15 MR. UDDO: Well, it is a major component but some of
16 the most difficult questions and problems have been raised about
17 how you would do it with the direct delivery part of it. There
18 are enormous problems that have been raised at our last meeting
19 and the last hearing on competition.

20 I think they are going to continue to be raised. I
21 have not heard any answers to them yet. I guess that is why I
22 am a little surprised that in the face of all the really obvious

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1 problems that you have in making that kind of a shift,
2 especially since you identify yourself as an incrementalist,
3 you would not be more in favor of a kind of modest project that
4 ran a few years so that you could look at it and say these are
5 the problems.

6 These are how they can be addressed. We can make
7 competition work if we address these problems, rather than say
8 20 percent over the next five years. Every year we are going to
9 phase in another 20 percent. You are really not getting any
10 substantial feedback or indication as to whether or not we can
11 deal with some of the problems.

12 MR. BESHAROV: First of all, I have a feeling we are
13 in a debate that goes beyond the discussion you and I are
14 having.

15 MR. UDDO: There is no question that that permeates
16 the whole competition area.

17 MR. BESHAROV: I would first point out to you at the
18 risk of being a little bold about this, if there are no
19 obstacles on the national support centers, then that is a
20 discussion that ought to be held separately from the discussion.

21 All of the concerns are about how you recompute the
22 local programs, then talk about the problems there and go do

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1 these.

2 MR. UDDO: Let me just say, I do not think they have
3 been discussed. That is why I think most of the focus has been
4 on the direct delivery. We have not really had a discrete
5 hearing on a competition proposal from national support.

6 The only one we have had was more like a voucher
7 system that you talk about in your report which I think is a
8 different animal altogether. We really have not focused
9 exclusively on national support.

10 I would be willing to concede that there are not near
11 the problems in that that there are in direct delivery. That is
12 where most of our discussion has been, on direct delivery.

13 MR. BESHAROV: As an advocate here, I would encourage,
14 to the extent that it is appropriate --

15 MR. UDDO: You would -- I am sorry?

16 MR. BESHAROV: As an advocate, and I am an advocate on
17 this point, I would suggest to the extent that it is
18 appropriate, a separate discussion. I notice in my
19 conversations with people around this town and around the
20 country, a much clearer understanding of the need to recompute
21 the national support centers, just to be very clear about that.

22 For the others, I would say to you that it is not

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1 clear to me what a demonstration would be unless it were a very
2 careful implementation of competition for a relatively small
3 percentage of the local programs.

4 Then you and I are only arguing about whether it is 20
5 percent, 10 percent or 5 percent.

6 MR. UDDO: And we are arguing about whether you let it
7 go a few years before you start phasing in more.

8 MR. BESHAROV: Wouldn't you, though, do it in one
9 place in one year and then try a little bit more the next year?
10 You might be learning.

11 MR. UDDO: No, and this is highly theoretical, I am
12 just saying it seems to me when you are doing something that
13 different, you want a few years experience to find out where the
14 problems are and what works and what doesn't work before you
15 start doing it in other areas.

16 It just strikes me that you are risking compounding
17 problems before you get a chance to identify what they are and
18 how you respond to them. I guess that is where we are
19 disagreeing.

20 I do not see why you would start phasing them in on a
21 yearly basis if you could do it on a level where you could watch
22 it, examine it, study it and come out with some sort of

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1 conclusions about what works and what does not work and where
2 the hidden problems are that we have not even isolated and where
3 the predictable problems are and how you deal with them.

4 It just seems to me that you are not really an
5 incrementalist. You are an advocate in favor of competition,
6 which is fine, but I do not see the rationality of diving into
7 something like that that thoroughly until you know whether it is
8 going to work or not.

9 MR. BESHAROV: If you are going to criticize me that
10 much --

11 CHAIRMAN HALL: Mr. Besharov, unless Basile is calling
12 for an answer to that, I think he --

13 MR. UDDO: Give me just two or three more minutes to
14 see if Mr. Besharov has an answer to that.

15 MR. VALOIS: Are you trying to change his mind?

16 MR. UDDO: No, I am not. Well, if he is an advocate,
17 I am an advocate. I really do not think I have gotten an answer
18 yet to how it makes sense to phase this in, to say, okay,
19 starting in 1991 and every year thereafter, we are going to
20 phase in 20 percent of the programs in this competitive model.

21 If problems start developing with the first group and
22 we do not have a chance to respond to them, tough.

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1 MR. BESHAROV: First, I do not perceive that we are
2 disagreeing that substantially. I want to emphasize that. To
3 demonstrate that, let me describe how I would see "your
4 demonstration" working.

5 Remember now that I think doing it in one jurisdiction
6 would be a real mistake because well, if it worked out great,
7 people would say, "Well, it is just one jurisdiction." If it
8 works out terrible, people will say, "Ah, see." So you really
9 have to have something more.

10 MR. UDDO: No, some people would say well, it is just
11 one jurisdiction. It depends on which people you are talking
12 to.

13 MR. BESHAROV: See, that means that this one
14 jurisdiction ruled it like a -- this is a like a Trojan horse.
15 This is just an attempt to buy off time from doing the actual
16 thing. You either do it or you don't.

17 If you do it in one place knowing that it does not
18 teach a lesson, then it really just is a token to avoid taking
19 an up and down vote on whether you do competition.

20 You all made decide to do that, but I would say -- and
21 I would say that very bluntly -- if you are only doing it in one
22 place, there is nothing to be learned from that except whether

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1 the Corporation staff can manage one grant or contract coming
2 through the office.

3 That is not sufficient to me as a test for whether
4 competition would work. Therefore, I think if we were
5 separating politics from all this, there would be an agreement
6 that it has to be more than one site.

7 We would disagree a little bit about whether it should
8 be 10 sites or 35 sites. What we would say is, once we kind of
9 had an up and down vote on that -- and let's assume for a minute
10 it ends up being 12 sites -- then we would say, well, this year
11 we are going to do it under this set of rules.

12 Six months after we make those decisions, we are going
13 to reexamine the situation and decide whether the rules need
14 changing. Well, you can call that a demonstration or you can
15 call that a very careful management of a program.

16 If, to get your vote, it had to be called a
17 demonstration, as long as I knew there was a planned phase in
18 over a period of years to hit 20 or 30 percent of the grantees
19 to see how it worked, we would be in about the same place.

20 All we would be arguing -- I think all we would be
21 debating is how formal is the promise to evaluate the
22 competitive process before we do the next round? I think it is

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1 very important to evaluate that process, but it can be done
2 within the rubric of phasing in competition or demonstrating up
3 to a substantial portion of grantees.

4 MR. UDDO: I think it would have to be a very formal
5 evaluation proposal and one that was really intended to evaluate
6 the relevant success of the project. I can assure you it would
7 not happen in six months because nothing happens in six months
8 around here.

9 CHAIRMAN HALL: Basile, does that pretty well exhaust
10 that?

11 MR. UDDO: Yes.

12 CHAIRMAN HALL: We can continue after lunch. If no
13 one has any other questions --

14 MS. SWAFFORD: Is he coming back after lunch?

15 CHAIRMAN HALL: Maybe you could talk to him. Is there
16 something you wanted on the record?

17 MS. SWAFFORD: His recommendation with regard to the-
18 - which starts on page 45, national support for local needs.
19 Your recommendation has to do with vouchers usable only to
20 support the work of the LSC national support centers.

21 Well, isn't really that is what this board tried to
22 do? We can succeed and it looks to me like there are programs

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1 that we -- that is ever going to be given the temperament of
2 Congress. So what makes
3 you think that that is a -- if you cannot do it, what makes you
4 think it is a viable recommendation?

5 MR. BESHAROV: I think, first of all, it is a little
6 different. We did kind of pass some people in various places in
7 town. The major objection to the board's proposal a few years
8 ago was that since these were funds directly given to the
9 grantees at the local programs, that they would be free to
10 either use them to purchase the services of the support centers
11 or use them for something else; the classic free rider problem.

12 That is to say, I will use this money to buy a new
13 personal computer for my clients. Someone else will pay the
14 national health resource, whatever, center and I will still be
15 able to call on them when I need to.

16 The criticism was that it would be too easy for the
17 national process by which people tend to operate in this world
18 for the national support centers to wither on the vine. What I
19 was suggesting here is something where you avoid the free rider
20 problem.

21 The script is only good for supporting them. You
22 would see which ones are more important to the projects. I am

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1 careful to say it should not be 100 percent of their funding but
2 maybe 50 percent.

3 It would be, to me, real interesting to see which of
4 the national support centers are viewed as most helpful. You
5 would find out very soon some of the rumors about who is
6 responsive and who is not.

7 MS. SWAFFORD: In other words, you are making a
8 distinction that that would only be usable for spending on
9 support centers.

10 MR. BESHAROV: That is right.

11 MS. SWAFFORD: If you just did not use them period,
12 the conclusion you would come to is that you did not need them.

13 MR. BESHAROV: Yes, that is right, but I think they
14 would use them. What you would get here -- this is another form
15 of co-payment accountability. This would be a way of making the
16 support centers, in part, accountable to their clients who are,
17 in part, the local programs.

18 In some respects, they should be. They should be
19 doing the things that are, in part, important to local programs.
20 Right now there is no mechanism except we go to some meetings.
21 We talk about what is important.

22 Maybe some local program people are on the boards of

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1 the national programs, this informal stuff. I do not mean to
2 say that that is useless or meaningless but just that you put in
3 a formal mechanism and you will begin to see who has a
4 reputation for being a good program.

5 You will see some of the programs, I think, some of
6 the support centers growing because their services will be more
7 highly valued by the field attorneys. I think that is an
8 important thing to discover.

9 CHAIRMAN HALL: Any others?

10 (No response.)

11 CHAIRMAN HALL: Thank you, Mr. Besharov.

12 MR. BESHAROV: Thank you very much.

13 CHAIRMAN HALL: We are going to take lunch now and
14 reconvene at 2:00.

15 (A luncheon recess was taken.)

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1 AFTERNOON SESSION

2 (2:10 p.m.)

3 CHAIRMAN HALL: The first thing we have to have is a
4 discussion of other forms of competition for legal services.
5 Charlie Moses will be one of our speakers and I think John
6 Pensinger and Kathleen DeBettencourt as well. If they will come
7 forward, please.

8 PRESENTATION OF CHARLES MOSES

9 MR. MOSES: Basically, what we had proposed to talk
10 about the first thing this afternoon dealt with -- this morning
11 we dealt with other federal agencies in competition; what they
12 look at, the types of topics that would be necessary for their
13 solicitations.

14 This afternoon the first topic that we would like to
15 address is types of other competitions for funds that are not
16 federal agencies but are major competitive sources of funding
17 for the Legal Services Corporation.

18 At the same time we will deal with types of
19 competition solicitations that the Corporation itself has been
20 instrumental in putting out. The first topic that we would deal
21 with, we touched on briefly this morning, is the Administration
22 on Aging.

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1 Technically, as we told you this morning, the
2 Administration on Aging is federal money, but it is passed
3 through and dispersed at the state and local level to local
4 grantees not directly from the federal level.

5 Basically, Administration on Aging funds have a
6 variety of different methods for solicitations. The primary
7 types of things that they are concerned with, though, when they
8 offer solicitations specifically for legal services, are the
9 things which happen to be the same things that federal agencies
10 are normally concerned with.

11 This would deal with the quality of the personnel
12 involved, the objectives of particular projects, how well the
13 personnel and the budget can meet those objectives. Basically,
14 the competitions that are done using AOA funding, since it is
15 done at a local level, though, it allows variations by the local
16 area agencies on aging.

17 CHAIRMAN HALL: Charlie, just to keep the record
18 clean, I do always want you to identify yourself. You may have
19 done it and I may have been looking down and reading something.

20 MR. MOSES: Excuse me. My name is Charles Moses. I
21 am still the Associate Director of the Office of Field Services.

22 CHAIRMAN HALL: Thank you.

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1 MR. VALOIS: As far as you know.

2 MR. MOSES: As far as I know. Basically, though,
3 there is room for innovation and has been room for innovation
4 with the area agencies on the aging and the types of
5 competitions that they have.

6 One of the more interesting ones that we have seen
7 recently actually comes from a state in the midwest that has
8 what they call a two-tiered system of competition. You heard
9 Doug Besharov this morning telling you that he felt that you
10 would have competition in some areas and you would not have
11 competition in other areas.

12 What this program has done in the midwest is try to
13 recognize that you are not going to have competition in every
14 location. Therefore, what they do is they have a two-tiered
15 application process.

16 The idea is to identify those areas where you have
17 legitimate competition for a grant initially. Once you have
18 identified the areas that you have legitimate competition for a
19 grant, that can go into a full blown competitive cycle.

20 If, however, you have an area for service that does
21 not have more than one responsible party that is trying to
22 compete for the money, and there might be a few of those areas,

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1 we do think that competition can be fostered in all areas but at
2 the very beginning of the cycle, as Mr. Besharov was trying to
3 tell you, that might not be everywhere.

4 Those people that would be in that area where there is
5 no competition would have a different type of application
6 procedure. The advantage here is an administrative advantage in
7 that from a management perspective, the Corporation or, in this
8 instance, the area agency on aging is able to concentrate with
9 time and resources in developing the competition and in
10 developing and going through a peer review process for those
11 areas that have the most significant competition.

12 In those areas that do not have competition, you can
13 have a much more pro forma type of application procedure that
14 would more so resemble our current refunding situation. You
15 still have the same type of information solicited, but you would
16 not be out trying to drum up the competition in the area and you
17 would not necessarily be concentrating your peer review panels
18 for an area where there is no true competition.

19 That does have a wide variety of advantages from an
20 administrative perspective. So I think that is one innovation
21 which various area agencies on aging have made that the
22 Corporation would want to consider as a possibility as it looks

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1 toward competition.

2 At the same time that we were talking about the area
3 agency on aging, however, I believe Kathy DeBettencort, Kathleen
4 DeBettencort would like to address another primary funding
5 source of legal services funds. That is the IOLTA programs
6 around the country and how they operate competitions.

7 PRESENTATION OF KATHLEEN DeBETTENCORT

8 MS. DeBETTENCORT: I am Kathleen DeBettencourt from
9 the Office of Policy Development at the Legal Services
10 Corporation. We have been looking at IOLTA for other reasons.
11 It occurred to us that this is a perfect example of another
12 program that goes through the same sort of questions that we
13 have, especially in our law school clinics, on funding cycles,
14 grant competition.

15 So we -- as a part of our research, we started looking
16 at some of the requests for proposals or solicitations sent out
17 by various IOLTA programs. As Charlie mentioned, beyond the
18 Legal Services Corporation, IOLTA is the single largest source
19 of funds for our legal services recipients and for all legal
20 services programs.

21 Forty-nine states now have established IOLTA programs.
22 This was just a list from the IOLTA clearinghouse of their

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1 projected 1989 annual income which they estimate at \$57 million
2 for 1989. That is based on their annual income in 1988.

3 This will probably be a low figure because several
4 states are in the process of converting to mandatory or have
5 already converted since that time. A very large percentage of
6 IOLTA grants go to our current LSC grantees.

7 CHAIRMAN HALL: Ms. DeBettencourt, we think that
8 instead of going back we should have come forward. So, if we
9 could have maybe five minutes, we are going to bring it probably
10 in front of you if you think it would help in the aid of your
11 presentation.

12 (A short recess was taken.)

13 MS. DeBETTENCORT: This is the update and this is the
14 projected 1989 incomes for the various states. As I was
15 saying, a large percentage of this \$57 million goes to legal
16 services grantees.

17 However, there are many IOLTA grants made by various
18 states to a variety of other programs that provide legal
19 services to the indigent. Of course, since they have to go
20 through the same process that we do, it was an interesting
21 question; how does the various bar foundations -- how do they
22 select grantees, what criteria, how do they plan for evaluation

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1 of grantees and what procedures do they use.

2 I am sure most of you are familiar with IOLTA, but I
3 will just mention it is Interest On Lawyer's Trust Accounts. It
4 is a fairly recent innovation in the United States. Attorneys
5 routinely receive funds that are either nominal in amount or
6 held for such a short amount of time that it is impractical and
7 economically not feasible for these funds to be held in a
8 separate interest bearing account with interest accruing to the
9 client.

10 Since they cannot ethically collect the interest on
11 the accounts, customarily they had placed them in noninterest-
12 bearing checking accounts. However, based on the experience of
13 Australia and British Colombia, Florida began to explore the
14 idea of developing a program to pool these funds in an interest
15 bearing account as a way of developing funds to provide an
16 alternate source of funding for the legal services to the poor.

17 In 1978, the Florida Supreme Court issued an opinion
18 establishing an IOLTA program in Florida. There were several
19 obstacles that had to be worked out. The Internal Revenue
20 Service objected at first that this was an assignment of income
21 by the client.

22 However, they were persuaded that the client never had

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1 any control over the money either in the generation of the
2 interest income or in the dispersement of it. The IRS agreed
3 that the IOLTA income could be used for certain purposes; legal
4 aid to the poor, to provide student loans for legal education,
5 to improve the administration of justice and other projects for
6 the benefit of the public which would be approved from time to
7 time by either the bar foundation or the court.

8 Other obstacles also fell. Banking technology
9 improved and the Federal Reserve Board approved NOW accounts,
10 Negotiable Order Withdrawals. So it made it much easier to pool
11 the money into an interest bearing checking account.

12 There have also been several constitutional
13 challenges, but the federal courts have upheld the program in
14 both Florida and California and as a mandatory program in
15 California.

16 The Supreme Court has declined to grant a writ in
17 either case. Following Florida's lead, many states began
18 organizing IOLTA programs. Many of these states received grants
19 from the Legal Services Corporation to organize their program
20 within their states.

21 In 1983, only six states had IOLTA programs that had
22 enough funds to disperse grants and they distributed

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1 approximately \$4.5 million. However, by 1985, 21 states
2 distributed 40 million. Of course, in 1989, 49 states will
3 distribute around \$57 million.

4 It is a rapidly growing program and a very new
5 program. The grant process in the various states are just
6 beginning to be organized. They have a large amount of money
7 that they have to distribute, and they are developing their
8 grant procedures.

9 IOLTA programs vary according to state. The IOLTA
10 program itself is either instituted by court or by statute. As
11 you can see above, according to the clearinghouse, 23 states
12 currently have voluntary programs.

13 In other words, the attorneys have to volunteer to
14 participate. Eleven have opt out programs. In other words,
15 they have to send in a special form or card saying they do not
16 want to participate.

17 The current trend is a comprehensive or mandatory
18 program. Fifteen states have mandatory programs. As you can
19 see, some of the larger states have mandatory programs; New
20 York, California, Maryland, and Texas. So it is a growing
21 program.

22 Now as I mentioned, a significant portion of these

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1 grants go to LSC recipients. In 1988, LSC recipients reported
2 receiving approximately \$30 million. IOLTA programs also award
3 grants to a number of other organizations.

4 This, for example, is Minnesota. Minnesota gives a
5 very large grant to Minnesota Legal Services Coalition.
6 However, they also fund a variety of other organizations. As
7 Doug Besharov mentioned this morning, there are lots of groups
8 out there -- the Minnesota Coalition for Battered Women, the
9 Minnesota AIDS project, Legal Advice Clinics -- not LSC
10 recipients.

11 However, they do provide legal services. So there are
12 a lot of organizations out there. Grants are awarded to these
13 as well as to other programs that offer specialized legal
14 assistance such as spousal abuse, AIDS, domestic abuse, elderly
15 or handicapped.

16 These grants are awarded through a competitive process
17 similar to the law school grant competition conducted by the
18 Legal Services Corporation. The actual process varies according
19 to state.

20 As I said, since they are new, some of them are just
21 getting organized. Among the states that we looked at, there
22 are general similarities. A request for proposal is

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1 disseminated.

2 It is usually advertised in the bar journals. Mailing
3 lists are developed and other efforts are made to ensure that a
4 variety of providers are at least notified of the availability
5 of funds.

6 The IOLTA programs in each state are administered by
7 usually -- they are usually administered by a bar foundation or
8 another form of nonprofit corporation governed by a board of
9 directors.

10 Usually a grant committee is established which
11 consists both of members of the bar and also lay members of the
12 community. In larger states that process a number of grants,
13 the IOLTA programs usually have a larger staff that perform
14 preliminary review of grant proposals and also assist the
15 possible grantees with writing their proposals or answering
16 questions.

17 Because of IRS restrictions, IOLTA grants are awarded
18 only to nonprofit organizations or, in most cases, there is a
19 restriction on awarding grants to private attorneys. The exact
20 percentage varies according to the state.

21 Of the four categories -- the legal aid to the poor,
22 the student loans, other projects and administration of justice

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1 -- most states award the bulk of their grant funds to the
2 category legal aid to the poor.

3 A much smaller percentage goes to the other types.
4 The selection criteria used by the IOLTA programs in the grant
5 applications or the grant solicitations that we looked at vary
6 but they have several similarities.

7 They prefer to fund programs that have other sources
8 of funding. In most cases, they state we do not want to be your
9 only source of funding. That takes care of the stability
10 problem.

11 You want to make sure that you are going to be around
12 next year. It is also leveraging. Also, greater weight is
13 given to those programs who have a prior history of ability to
14 delivery quality legal services.

15 So they do look for experienced programs; one reason,
16 of course, for naturally funding the existing legal services
17 provider. They also look for community support. They want to
18 make sure that the program is supported by the bar and supported
19 by other people in the community.

20 They also look for broad geographic or demographic
21 coverage. Usually they require that the grant -- the grant
22 applicant submits some statement of the need in the area and how

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1 they are going to cover that need.

2 There are provisions for performance evaluation.
3 Interestingly enough, this is something that is still untested.
4 In several of the grant applications that I looked at, the
5 solicitation requests that the grant applicant propose a plan
6 for performance evaluation.

7 In other words, they have to report in the grant
8 application themselves how they propose to be evaluated on their
9 own performance. Also, in addition to wanting to fund those
10 grantees with a history of providing quality legal assistance,
11 the IOLTA solicitations usually say that they also would like to
12 use seed money to develop new programs or to encourage the
13 development of new programs.

14 So it is used in a variety of ways. Grants are
15 awarded by, as I said, an IOLTA grant committee which, of
16 course, the construction of a grant committee would vary
17 according to state.

18 However, there are, again, similar requirements.
19 Grantees are required to submit case closure data. That is the
20 minimal evaluation that is done during the year. They have to
21 at least submit periodically through the year how many cases
22 they have closed with the money.

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1 There is monitoring of performance, again which
2 varies. Some states do on-site monitoring. Also, most
3 solicitations have some requirements for a periodic audit. So
4 it is very similar in many cases to our law school clinic,
5 grants competition.

6 There are also, among the applications, similar
7 requirements for information. They are requested to address the
8 program priorities or objectives. I think we have a similar
9 phrase in our competition -- in our reg.

10 We have to address other funding, again their previous
11 history of caseload data. Also the staff, their organizational
12 ability, what kind of staff they have, what kind of offices they
13 have, what sort of equipment, all of these elements are used to
14 assess the program.

15 Again, the they have to address their governing body.
16 These are nonprofit organizations so there is some monitoring of
17 that. There is a requirement for client eligibility standards.
18 Most IOLTA programs use the same eligibility standards that LSC
19 uses.

20 One hundred and twenty-five percent of the poverty
21 population is defined either by OMB or the Department of Labor,
22 also a plan for evaluation, also an outreach plan along with

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1 financial information.

2 One thing that was interesting in looking through the
3 grant application and also the statutes and the orders setting
4 up these programs is their termination procedures; what do they
5 do if they are dissatisfied with the program.

6 They do not have the same difficulty as Legal Services
7 Corporation because a lot of these are assumed to be one time
8 grants. They do conduct an annual competition. Because there
9 is not a presumption of refunding, there is not the -- in most
10 cases, in the states that I have looked at, any provision for
11 hearing rights or right of appeal.

12 The only state that I looked at that actually grants a
13 right of appeal is California. California's program is
14 established by statute and it does permit hearing rights. The
15 grantee can call witnesses and cross examine witnesses and it
16 calls for an independent hearing examiner.

17 The only other state that addresses termination in
18 their grant applications, their grant solicitations was New
19 York. They permit termination when there is a substantial
20 failure by the grantee to comply with the terms and conditions
21 of the grant or there is a substantial failure to provide
22 economic and effective legal assistance, also if there is no

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1 money; in other words, if there are insufficient funds to
2 continue the grant.

3 There are a variety of variations among the programs
4 on how their grants are selected, but the basic requirements are
5 fairly standard. Their grant applications do parallel one
6 another.

7 Bob Rhudy from Maryland Legal Services Corporation,
8 the IOLTA program in Maryland, is here and perhaps he might be
9 able to answer more questions from the board on exactly how
10 performance evaluation is done of their grantees and how
11 extensive they can monitor or predict the quality of their
12 grantees before a selection is made.

13 MS. SWAFFORD: Before you take that down -- it does
14 not have anything really to do with it -- I was just inquisitive
15 about what the M-i-l-l-e wax band is. Is that a school band?

16 MS. DeBETTENCORT: I am not sure exactly what that is.
17 That is from their grants -- no, that is not from their grants.
18 They sent some information to us and that was included. I have
19 another -- I do not know if I brought it -- I have another list
20 of their grants.

21 MR. MOSES: I believe that is a portion of Minnesota,
22 a geographic area, the mid-Minnesota area.

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1 MS. DeBETTENCORT: I am sorry; I do not know.

2 MS. SWAFFORD: I was just curious.

3 MR. MOSES: Basically, what we have been trying to go
4 through and show you this morning and parts of this afternoon is
5 some variety of the extent to which competition is used for
6 different grants throughout the federal system and the private
7 system.

8 We have talked about a variety of different federal
9 agencies including the Department of Justice, the Department of
10 Commerce, HHS, and the Department of Education. We have talked
11 specifically about area agencies on aging which are using, in
12 part, funding from the Department of HHS.

13 We have talked about IOLTA programs which are
14 independent entities set up around the country at the state
15 level. Each of these use some form of competition with specific
16 regulations to govern that competition when they are looking for
17 their grant recipients.

18 Just as importantly, many of these use competition for
19 specific provision of legal services grants. You would see that
20 with IOLTA programs. You would see that in the Department of
21 Education. You would see that with area agencies on aging.

22 So what we have is a broad-based system where

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1 competition is used in general and competition has been used in
2 the past, specifically for the provision of legal services.
3 What we would like to do now to finish the segment of our
4 presentation to the board is take one look at the Legal Services
5 Corporation itself just to reacquaint you with the many uses
6 that the Corporation itself already makes of competition.

7 I am sure I do not have to remind you that when LSC
8 was originally begun as an independent corporation in the 1970s,
9 grantees were not existing in many instances at that time.
10 There were competitions among a variety of different areas to
11 establish who the grantee for the provision of legal services
12 would be.

13 This can be seen both through the delivery system
14 study which had specific solicitations for proposals for the
15 study, as well as, to a lesser extent, through the expansion
16 periods of the late 70s.

17 So the Corporation has always used a degree of
18 competition, in fact actual competition, when trying to solicit
19 new providers. The outgrowth of that has been and continues to
20 be to this day, in those areas where a provider is no longer the
21 existing LSC grantee.

22 The Corporation has a procedure for the competitive

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1 funding of that area. A prime example would be Monterrey,
2 California, which I believe was the last service area to
3 actually be competed.

4 At that time the existing service provider had given
5 up its LSC grant. There was a service area which had no LSC
6 provider. LSC went into the area, met with the bar
7 associations, met with a variety of different people on the
8 local level, created a solicitation for that area.

9 The solicitation went out soliciting not just any one
10 specific type of grant but went out in a broad general sense,
11 meaning that you would have judicare programs that would be
12 responsive.

13 You would have a staff attorney program that would be
14 responsive. You would have a prepaid legal insurance plan that
15 would be responsive to the solicitation. You would have had pro
16 bono clinics that would be responsive.

17 You would have contract systems that would be
18 responsive. At that time, the Corporation solicited requests in
19 this rural area of California and, in fact, did create a grantee
20 for that area.

21 At this time, the Corporation is looking into doing
22 this exact same process in another area that has recently had a

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1 grantee relinquish its grant in Louisiana. So basically, what
2 we have is a system where competition has been ingrained and
3 used quite effectively and should continue to be used quite
4 effectively by the Corporation in these particular instances.

5 What this shows you, though, is that we do have a
6 degree of experience with running a competition. We have a
7 degree of experience with provision of a solicitation which can
8 elicit response from the local community that is interested in
9 legal services to the poor.

10 MR. UDDO: Charlie, we do not have any experience with
11 bidding in a situation where there is an established provider
12 that is not going out of existence.

13 MR. MOSES: At this point we do not. The one thing
14 that we would do in that area where we do have experience, you
15 heard the report this morning on our specialized demonstration
16 project where there was competitive bidding in service areas of
17 existing grantees.

18 That was all done in conjunction with existing
19 grantees; in fact, with the approval of the Board of Directors
20 of the grantees. This is by way of showing that there is a
21 track record at the Corporation concerning competition.

22 I think probably the most important example in recent

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1 years on a continuing basis of the track record that the
2 Corporation has had concerning competition is, in fact, LSC's
3 law school clinical program.

4 As I am sure you are aware, this board oversaw the
5 original law school clinical program when it was first
6 instituted in 1974. Ever since 1984 -- excuse me -- on a yearly
7 basis, LSC has had a specific solicitation geared for clinical
8 law grants.

9 Several years ago, Congress recognized this
10 solicitation and has since been earmarking funds specifically
11 for the clinical law program in its budget. I think it is
12 interesting to look -- I do not want to belabor the point, but
13 for you to understand the system a little bit as it has existed
14 with the law school clinical grants, particularly since we are
15 currently in the 30-day comment period on our last grant
16 selection procedure.

17 Basically, the premise behind the concept of the
18 solicitation for law school clinical grants is very similar to
19 what is done in other federal agencies, what is done at the
20 Department of Education and their clinical program.

21 You have a solicitation which tries to provide
22 sufficient information to each individual respondent so they are

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1 able to put together an intelligent response, an intelligent
2 proposal in response to the RFP.

3 The RFP or Request for Proposals would be distributed
4 on a wide base distribution policy. We have the specific policy
5 with regard to this that each law school proposal is distributed
6 to a mailing list of every eligible law school in the country,
7 to the deans of those schools, as well as to the list of
8 clinical instructors.

9 These are the people who would directly respond to a
10 solicitation. That is given to us each year by the American
11 Association of Law Schools through their clinical education
12 section.

13 The idea is then that you need to target a
14 solicitation that you send directly to those people who would be
15 willing to respond to it. What that is going to do is basically
16 maximize your response.

17 This past year, as all years, we have a panel of peer
18 reviewers that will meet to discuss each of the proposals that
19 are submitted for funding. The peer review panel is made up of,
20 and has been made up of ever since the beginning, individuals
21 from within the Corporation staff.

22 Just as importantly, we have had individuals from

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1 within the community that is actually responding to the
2 solicitation. We have had law school professors, law school
3 clinical professors who know what should be included in a good
4 solicitation on the peer review reading panels.

5 I think that that is very important in that it has
6 enabled the peer review system to work very well with the mix of
7 corporate staff and other knowledgeable peer reviewers. That is
8 similar to the procedure which we had recommended that the
9 Corporation should follow if it were to consider competitive
10 grants in general.

11 With that system, as with any system, however, I
12 should note that the final decision process, by statute, always
13 rests with the president of the Legal Services Corporation. In
14 general, I can say over the course of the five or six years that
15 I have been working with the LSC peer review panel, I can say
16 that most of the peer review panelists, actually even all of the
17 peer review panelists that had had prior experience with any
18 other peer review reading, were complimentary of the fact that
19 they were provided the information that they needed and that, in
20 fact, their recommendations had been considered at the highest
21 level and decisions were made based on the findings of the peer
22 review panel.

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1 I think that is very important, particularly when you
2 consider certain arguments that might be made against, as Mr.
3 Besharov mentioned this morning, about stacking of a peer review
4 panel.

5 This does not occur. The peer review panel in the
6 past as a Corporation has always had great impact on final
7 decisions.

8 That concludes our general overview of the wide
9 variety of agencies and entities that use competition in some
10 way, shape or form and specifically those that use it for
11 provision of legal services.

12 Are there any questions on that general topic?

13 MR. UDDO: Let me ask you a question about IOLTA,
14 Charlie. Is there much experience with IOLTA grantees competing
15 to do the same services or is it pretty much people submitting
16 proposals for a share of predetermined amount of money where the
17 word goes out that we have got some money and you have got a
18 legal services project that you think is worthwhile.

19 You make an application and we may or may not fund
20 you. Is it generally experience that they get people who were
21 directly competing to do the same service or is it more likely
22 that they get a bunch of people asking to do different things

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1 and you just pick the ones that look most -- or the program
2 picks the one that looks most meritorious?

3 MS. DeBETTENCORT: You are talking about IOLTA
4 grantees --

5 MR. UDDO: When people are competing for IOLTA money--
6 - I did not see the whole thing you have got up there.

7 MS. DeBETTENCORT: Oh, I see. They are not competing
8 with legal services groups for the same money usually. They are
9 competing for a set amount of money for a certain proposal.

10 MR. UDDO: Are they usually competing with each other,
11 deliver the same service?

12 MS. DeBETTENCORT: As opposed -- the one state that I
13 put up, Minnesota, had a variety. Some were specialized and
14 others were legal aid clinics. Chicago is a walk-in legal aid
15 clinic.

16 So we do not know specifically whether in Minnesota,
17 for example, there were 30 legal aid clinics competing for that
18 same \$30,000.

19 MR. UDDO: Yes. I mean, in other words, does the
20 experience of IOLTA really tell as much about how a panel goes
21 through determining whether Proposal A is better than Proposal B
22 or C to deliver this particular legal service.

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1 MS. DeBETTENCORT: Right. Well, to some extent, yes.
2 I think we are assuming there is not going to be hot and heavy
3 competition for legal services monies just as IOLTA programs are
4 probably faced with a lot of money.

5 While they probably have a lot of applications, they
6 can probably distribute their money rather widely. In other
7 words, there are not six domestic abuse clinics fighting for the
8 same grant.

9 What we were looking for was what could we learn from
10 their procedures. I mean, they have to look at the same sort of
11 things; selection criteria. How do they choose one or the
12 other?

13 How do they determine whether that particular legal
14 aid clinic who is requesting money is a decent operation? What
15 procedures do they use to see whether it is going to be able to
16 offer quality legal aid assistance?

17 How do they weed out people who are requesting money
18 without the ability to perform? Those are the sorts of things.
19 Also, once they get a grant, how do they evaluate their
20 performance through the year? That, I think, is what we need to
21 look at in IOLTA.

22 MR. UDDO: All right.

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1 CHAIRMAN HALL: Any other questions?

2 (No response.)

3 CHAIRMAN HALL: If not, I will thank you. John, did
4 you have something?

5 MR. PENSINGER: Yes, for the record, John Pensinger.
6 At this time, I was planning to go over a draft solicitation for
7 proposals that is strictly a draft. I am waiting to see if
8 there has been a change in schedule.

9 CHAIRMAN HALL: What do you need to know to determine
10 that?

11 MR. MOSES: The next thing on the agenda was a
12 discussion of what would be included, what a solicitation looked
13 like, what should be included in a solicitation. You might
14 remember that in Illinois there was some discussion concerning
15 what information individual respondents would need in a
16 solicitation in order to make an informed bid and what types of
17 services those individuals could provide.

18 We obviously have certain staff presentation here, but
19 we felt that prior to the staff giving you our interpretation of
20 what should be in a solicitation, it would be beneficial for the
21 board to hear from individuals that actually respond to
22 solicitations for the provision of legal services.

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1 talking to 5,000 individuals.

2 Today we represent some 60,000 families in the greater
3 metropolitan Washington area under either fully pre-paid or
4 partially pre-paid programs. We have three offices; one in
5 D.C., one in Maryland and one in Virginia, all inside the
6 Beltway, and nine satellite offices throughout Maryland and
7 Virginia as well as a community outreach program where we go
8 actually to the membership on evenings and weekends.

9 In addition, we have a 24-hour hotline which is
10 supposed to be available for emergencies in the evenings and on
11 weekends.

12 My background, I graduated from college in 1969, law
13 school in 1973 after which time I was assistant public defender
14 in Dade County, Florida. I was there for two years. My
15 background is, of course, criminal background, criminal law.

16 I have a great deal of experience working with not
17 only indigents but the working poor. Consequently, I was very
18 interested in Legal Services Corporation and have been for a
19 very long time.

20 After I worked in the public defender's office, I
21 worked for the United States Department of Justice Criminal
22 Division Special Litigation Section for a period of two years

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1 and in 1977 founded the firm.

2 I was asked to come here today to tell you basically
3 how we bid on a contract. Since 1977, we have been involved in
4 some 17 different bidding procedures throughout the United
5 States as well as here in the District.

6 The first thing an attorney will say when he is
7 contacted by the trust -- we usually do business through an
8 ERISA trust. In some cases, we do business directly with the
9 employer.

10 In the case of public unions, the police, the fire
11 fighters, the teachers, we deal directly with the city or the
12 appropriate governmental jurisdiction. The first thing we say
13 to them is how many people do we have to cover.

14 The next thing we say is how much money do you have.
15 They say no, no, no, no, that is not the way it works. We are
16 going to do it the other way. How much money do you need to
17 service these people?

18 Now, our plans range anywhere from \$.25 per person per
19 month all the way up to \$12.50 per person per month. The plans
20 go anywhere from an individual coverage only to family coverage.
21 Of course, we include criminal work which is not applicable to
22 the Legal Services Corporation.

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1 We include immigration which is a part of our practice
2 which is not applicable to Legal Services Corporation. What we
3 do is say to them do you want a Cadillac or do you want a Nova.
4 Which plan do you want? What are we talking about?

5 We want a fairly comprehensive plan. So what we do is
6 say to them how many members do you have. In the past 12 years,
7 if you tell me the income level and the education level of the
8 people we are dealing with, we can plug that in and come up with
9 a pretty good idea of what the utilization will be over a period
10 of time.

11 The big problem that we see is getting to the members
12 to tell them that this is available. We are here. We are here
13 to serve you. It is paid for. It is free. In certain
14 situations in dealing with low education level clients, they
15 know you are there but they do not want to come to you.

16 They are afraid of lawyers. I have heard throughout
17 the years that the lawyer is the man who puts you in jail. We
18 do not want to deal with a lawyer. We do not want to have to go
19 to a lawyer. Avoid the lawyer at all costs.

20 What we had to do back in 1977 when we were dealing
21 with the union, with, again, low income level, low education
22 level, I was open for three months and nobody came in. It was

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1 publicized throughout the union newspapers.

2 The employers put up signs at the work place. People
3 did not come in. There was some lack of trust. They did not
4 know who we were. Finally, what I did was put on a pair of
5 jeans and a T-shirt and go into the employee cafeterias, not
6 hustling business but just letting them know who I was.

7 I was a regular person just like they were. After a
8 period of time, the business built up. The utilization
9 increased. That is the way it worked.

10 Anyway, getting back to how we price it out, we come
11 up with a utilization -- what we expect to be the utilization
12 level and the areas of law that we expect them to be in.

13 We work backwards from there. How many attorneys will
14 we need to handle this many cases? How many legal assistants
15 will we need to handle this many cases? We have our offices
16 now. Our offices are in place.

17 So if the client base is within D.C., Maryland or
18 Virginia, there is no problem. We simply plug them in. If it
19 is a large group, we may have to add an attorney or we may have
20 to add several attorneys.

21 If the client base is outside the tri-state area--
22 D.C., Maryland and Virginia -- now we have to talk about opening

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1 up offices. We have to plug in what we call a capital
2 expenditure here.

3 You have furniture, office machinery because we are
4 computer operated obviously, all the start up costs, the
5 typewriters, the copying machines, the telephones. This is all
6 plugged in and amortized over a period of time, depending on the
7 length of the contract.

8 Most of our contracts are for three years and are at a
9 fixed rate or have a built-in increase to them. At the end of
10 three years, we come back to the employer or the trust, as the
11 case may be, and we say we have given you monthly reports that
12 show how many cases we have handled.

13 Let me stop myself there and say what is a case.
14 Someone calls our office and says, "My wife will not make me
15 dinner. I want to sue her." We do not count that as a case.
16 We explain to the individual that this is not something you deal
17 with a lawyer and we usually refer them to family services or
18 something like that.

19 We have provided a service there. Nevertheless, we do
20 not count that as a case. People who call us for advice and
21 consultation, we will give them advice and consultation over the
22 phone or in the office. We do not count that as a case.

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1 When we have to make a telephone call or write a
2 letter on behalf of a client, we count that as a separate case.
3 That is what is known as T-case in our system or a telephone
4 case.

5 It is something that is handled with a phone call or a
6 letter. The only -- we report to them the number of T-cases we
7 handle, but the actual cases, the hard files that we open up are
8 what we count as cases.

9 What about all these other people who have provider
10 service? We do not count that as cases because that is part of
11 what we do. When I talk about cases, I am talking about actual
12 files.

13 Someone comes to us and they say, "I am a member of
14 the United Food and Commercial Workers Local 400. I used to
15 work at Giant Food." "Well, where do you work now?" "Well, I
16 do not work at Giant anymore. I worked there three years ago,
17 but I would like to --" "You are not eligible for our plan."

18 We do not count that as a case. It is the same thing.
19 If someone came to us who said they were part of Legal Services
20 and they came to us for our help, we have initial intake sheet
21 to determine eligibility.

22 We do that now. It would be a different formula than

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1 dealing with Legal Services, but that is the way we would work
2 it. If we found them not to be eligible, we would explain to
3 them that we are sorry they are not eligible.

4 That is it. We do not count that as a case. That is
5 it. Essentially, that is what we do. We work backwards. We
6 come up with a formula and we submit a bid. Now, what will
7 happen in many instances is the employer or the trust will say
8 it is too much money.

9 We say fine, this is what we need. If it is too much
10 money and you have to pay us less, we have to cut back on the
11 services. That is a whole other story and again that is not
12 applicable to you.

13 What we do is add surcharges on certain areas of law,
14 usually in the area of criminal law. Nobody seems to have much
15 objection to that. Essentially, that is how we cost it out.
16 That is how we do it.

17 That is what I was asked to discuss today. If you
18 have any questions or anything else, I brought samples of our
19 plan. There are three brochures here that deal with the police
20 and fire fighters in the District which are, of course -- I am
21 sorry, public unions and then the private unions, the United
22 Food and Commercial Workers. These are samples of the plan.

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1 MR. VALOIS: What would be the low end of the income
2 level of the coverage of participants?

3 MR. ADES: That we have dealt with?

4 MR. VALOIS: Yes, that you deal with.

5 MR. ADES: Well, I would say around \$10,000 a year. A
6 cafeteria worker, for example, may make \$200 a week or \$250 a
7 week. That would be about it. Then again, the question is
8 family income.

9 Is her husband at home? Does he contribute or is your
10 wife at home and does she contribute? That is the key thing.

11 MR. VALOIS: I am talking about the low end of the --

12 MR. ADES: The low end is \$10,000, right, and pop's
13 not home. It is just mom and she is supporting the family.

14 MR. VALOIS: Is it your opinion that those people
15 would have the same range of legal problems as people served by
16 our grantees?

17 MR. ADES: Oh, without question. We have had
18 situations where people have said -- people have come in on one
19 matter. The matter may be they received a bill from the city
20 for real estate taxes that total \$60,000 where they rent an
21 apartment.

22 They got this bill by mistake and they want us to take

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1 care of it. In the course of the conversation, they will say,
2 "You know, I rent this apartment and I have not had heat in the
3 apartment for a month."

4 "Well, what did you do about it?" "Well, I went to
5 the landlord and he told me he would get back to me." "Well,
6 did he ever?" "No, he did not." "Well, what are you doing
7 about it?"

8 "Well, what can I do?" "Well, you can come and see
9 us. That is why we are here, to take care of you, to help you
10 with that." "I did not know that." It is an education. You
11 have to educate your client base.

12 We are here to help you. I think there is an analogy
13 there.

14 MR. VALOIS: Do your staff attorneys keep timed
15 records?

16 MR. ADES: Without question. You have to. All of our
17 attorneys work for us. That is it. We do not have any part-
18 time attorneys or anything else. Our attorneys work for us and
19 they keep time sheets.

20 In each case -- and they submit the time sheets
21 weekly. Basically, it has the area of law on the left side, the
22 plan that we are dealing with over the top, and they fill in the

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1 hours and we go by that.

2 Without time sheets, there is no way to determine your
3 quality control. You must keep time sheets.

4 MR. VALOIS: Of the cases you take in, using your
5 definition of cases as you have just explained it to us --

6 MR. ADES: The hard files.

7 MR. VALOIS: The hard files. Can you give me some
8 estimate of what percentage of those are litigation files? By
9 litigation, I mean, you have brought a complaint or filed an
10 answer or motion or petition?

11 MR. ADES: I do not know, to tell you the truth. I do
12 not know. Many times. We do not break it down by how many
13 cases are litigation. We break it down to areas of law. For
14 example, the largest area we deal with with any of our groups is
15 the same.

16 It is domestic relations. It always ranges between 25
17 percent and 33 percent. Now what percentage of those domestic
18 relations cases are actual filing motions, I would say almost
19 all of them because it is child support.

20 It is custody. It is an actual divorce proceedings,
21 property settlement, something like that. Now they may bring a
22 case of those cases in domestic relations. I am using that as

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1 an area of law, if that is okay.

2 A husband will come in, "I am getting a divorce from
3 my wife." "Have you been served with papers?" "No, we have
4 agreed to get a divorce now. She is going to her attorney and I
5 am going to mine."

6 We may begin negotiations back and forth, open the
7 file, and nothing ever gets filed. They get back together or
8 they just decide not to pursue the divorce. That would be in
9 the other area as opposed to what you were talking about; right?

10 MR. VALOIS: Yes.

11 MR. ADES: I cannot tell you what percentage. I
12 really do not know.

13 MR. VALOIS: What are the other major areas? You have
14 given us domestic as probably being the most numerous. What are
15 the other major areas?

16 MR. ADES: Again, depending on income level; for
17 example, the United Food and Commercial Workers where 90 percent
18 of the people we represent are double income families. There we
19 do a lot of real estate work.

20 With another group where they are low income level, we
21 do a great deal of landlord/tenant. We do a great deal of
22 consumer work for all groups across the board. Wills you would

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1 imagine would be the one area of law that everybody needs.

2 That is what I thought in the beginning. It seems to
3 be some reluctance on everyone's part to have a will. I mean,
4 we have got 7 people sitting up there. I do not want to know
5 who has got a will and who does not, but what I hear when I talk
6 to people all the time --

7 I talk to huge groups and I say I do not want to know
8 how many of you have a will. What I hear all the time, and we
9 are not talking about uneducated people, is, "Rob, if I make out
10 a will, I am going to die."

11 You are laughing but I hear that daily. Well, you are
12 going to die anyway. The only people you are hurting by not
13 having the will are the people who you care about. So wills, we
14 try and promote that.

15 If there is one area of law that we actually go out
16 and say, you need to see us -- there is no reason why everyone
17 who is covered by us does not have a will. There is just no
18 reason for it, but they do not.

19 MR. VALOIS: I would assume that --

20 MR. ADES: I do not know if I am supposed to call on
21 people or not. I do not know how this works.

22 MR. VALOIS: I have a two more questions and I will

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1 quit. I assume on the pre-paid plan you have at least two
2 restrictions. One is you cannot sue the collective bargaining
3 agents for the employees. Two, you cannot sue the employer. Is
4 that correct?

5 MR. ADES: Absolutely.

6 MR. VALOIS: Are there any kinds of cases, given your
7 familiarity with the kinds of grantees who have any kinds of
8 cases, that you think our grantees might currently handle which
9 you would be unwilling to handle?

10 MR. ADES: The type of law we do, our firm -- I am
11 just speaking for us now -- we do what we call people law. We
12 do not handle any important cases. The only people that these
13 cases are important to are the people we are doing them for.
14 They are very important for them.

15 We do not do any securities work. We do not do any
16 corporate work. We do not do things like that. The type of law
17 that your people are going to be requiring is exactly what we
18 do.

19 Now you say well, you do criminal. You do immigration
20 and that is not applicable. Yes, that is a small percentage. I
21 cannot imagine an area of law -- if, for example, they wanted to
22 bring an action against the Legal Services Corporation, as far

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1 as I am concerned, we are not going to handle that.

2 Again, we would want your input. You tell us what you
3 want us to do. That is what I always say to the trust, to the
4 board. What do you want us to do? You are choosing us as a
5 provider of service.

6 That is the term we use. What do you want done? Do
7 you want us to service these people in a quality manner, in a
8 competent manner? Do you want us to be accessible to the
9 people? What else do you want?

10 If you say, we do not want you to do this, we do not
11 want you to do that, we will not do it. In those brochures,
12 there are whole sections of exclusions of areas of law that we
13 will not handle.

14 They are listed because it is coming under an ERISA
15 fund that we are absolutely not permitted to handle. We are not
16 allowed to do any type of law in areas for profit. In other
17 words, if somebody wants to set up a Subchapter S corporation
18 because their wife is opening up a beauty parlor, we do not do
19 that.

20 We cannot, but we would want your input. You tell us
21 what you want.

22 MS. MILLER: You probably answered this already, but I

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1 probably missed it. I want to know how many agencies like yours
2 is there in this particular area that you were in?

3 MR. ADES: Now, when you say agencies, I assume you
4 mean law firms.

5 MS. MILLER: Law firms?

6 MR. ADES: I do not know.

7 MS. MILLER: You do not know if there is many or a few
8 or what?

9 MR. ADES: I am a member of this -- you know, they
10 have got this organization called the American Pre-paid Legal
11 Institute which is out in Chicago. They have got a whole bunch
12 of people. All you have to do to belong to that is send them a
13 check.

14 MS. MILLER: I have heard of the pre-paid -- there is
15 one where I am from in Michigan called Pre-paid Legal.

16 MR. ADES: Well, they probably do the same thing I do.
17 They are either a business or a law firm or whatever.

18 MS. MILLER: Yes, and how do the people pay? Do they
19 just come up with like a set fee of \$12.00 a month or --

20 MR. ADES: I do not know how they do it. Every plan
21 is different. There are plans, for example, Joel Hyatt from
22 Hyatt Legal Services has a deal with CitiBank in New York.

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1 CitiBank has four million customers.

2 In their bank statement every month there is a little
3 card that they can fill out and say we want Joel Hyatt's pre-
4 paid legal services. That cost \$20.00 a month. We will let you
5 debit that from our account every month, pay it to Joel and now
6 Joel will give us service.

7 MS. MILLER: We are familiar with Mr. Hyatt. He has
8 been before the Board before.

9 MR. ADES: Oh.

10 MS. MILLER: I was just wondering how you --

11 MR. ADES: Ours is different. We do not go after
12 individuals. We are not available to the general public.
13 Somebody cannot walk in and say, I want to join. We do not deal
14 with that. We deal with groups.

15 MS. MILLER: Union groups?

16 MR. ADES: Well, in the past, yes. We are now dealing
17 with others besides union groups.

18 MS. MILLER: Thank you.

19 MS. SWAFFORD: I had a question that goes something
20 like this. Suppose somebody had a pre-paid policy with you.
21 You said you didn't deal with individuals, but one of these
22 people --

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1 MR. ADES: Someone was covered?

2 MS. SWAFFORD: Yes, and they say well, Uncle so and so
3 died and he had a will and I think I should come inherit
4 something from that and I did not. Would you do a will contest?

5 MR. ADES: Yes, ma'am.

6 MS. SWAFFORD: You look it over and you say well, I do
7 not believe we have much of a case here.

8 MR. ADES: That is a very good question.

9 MS. SWAFFORD: If I go out and hire a lawyer like Mr.
10 Valois here, he might say I do not think you have much of a
11 case, but he probably would take my case if I had enough money
12 to pay him.

13 On the other hand, in your case where you say, well,
14 you know, you have got \$250.00 worth of legal services.

15 MR. ADES: No, no. We do not have a cap.

16 MS. SWAFFORD: Oh, you don't?

17 MR. ADES: No, ma'am. There are no caps in any of our
18 plans.

19 MS. SWAFFORD: In other words, you would not take his
20 case if you thought it was not much of a case just because he
21 wanted to send his services to through --

22 MR. ADES: If I can answer you, we do not have a cap.

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1 He can come see us as many times as he wants, as many areas of
2 law as he wants. There is no -- he does not have a bank. This
3 is our plan.

4 There is no such thing as a bank. Now, we do not have
5 the luxury that Mr. Valois has as a private attorney of saying
6 to somebody I do not like you. I am not going to take your
7 case. I do not care how much money you have. I do not want to
8 handle your case.

9 If they are part of the plan, we have to represent
10 them unless we feel their case has no merit or is being brought
11 to the purposes of harassment. We have people who come to see
12 us who want they want to sue the President of the United States
13 because he is not protecting them against martian invasion.

14 This happens. We have to -- they appeal. They go
15 right to the trust, say Ades is no good. He would not represent
16 me. What are you going to do about it? He goes before the
17 trust and tells them all about the martian invasion and
18 everything else. That is an extreme case.

19 When there is a fine line and we feel that they do not
20 have a case, they have an appeal that they can go to. With
21 Legal Services, I do not think that would be an issue.

22 MS. SWAFFORD: No, it would not be, but I was just

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1 wondering. That is not a need that they have that could be
2 covered under legal services. I was just wondering like in your
3 case where you did a variety of things.

4 MR. ADES: Yes, ma'am.

5 CHAIRMAN HALL: Mr. Ades, you all serve 60,000 people
6 now?

7 MR. ADES: That is correct; families.

8 CHAIRMAN HALL: So that is more than 60,000 people?

9 MR. ADES: That is right.

10 CHAIRMAN HALL: I mean, there is no question that you
11 began this firm with profit as motivation?

12 MR. ADES: Well, when we started the firm in 1977, we
13 started out to be a corporation for profit. It did not always
14 work that way in the beginning, but now fortunately it does.

15 CHAIRMAN HALL: You do personal injury lawsuits?

16 MR. ADES: Yes, we do.

17 CHAIRMAN HALL: You take 25 percent trial or no trial?

18 MR. ADES: Yes, we do; that is correct.

19 CHAIRMAN HALL: No more?

20 MR. ADES: No more.

21 CHAIRMAN HALL: How much P.I. work do you all do?

22 MR. ADES: Very little.

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1 CHAIRMAN HALL: You do not have many P.I. cases?

2 MR. ADES: No, and I will tell you why. When I
3 started the firm, I said look at this client base. You say here
4 Ades has 60,000 people he covers. My God, think about the P.I.
5 work he must take in. That must be huge.

6 We have a family sitting around at dinner, aunts and
7 uncles and everybody. Everyone is eating and they say, "Uncle
8 Joe got arrested for drunk driving. Does anyone know a lawyer?"
9 Everybody keeps eating.

10 "Aunt Bessie needs a will." Everybody keeps eating.
11 "Uncle Joe fell off the bus." I know a lawyer. I know a
12 lawyer. All these lawyers who are advertising on television,
13 you never see any of them say, "If you have a consumer problem
14 or a problem with your landlord, come and see us."

15 No. "If you were injured and it was not your fault,
16 come and see us. Free consultation and we will not charge
17 anything unless we get an award." Great. They think that is a
18 big deal. I mean -- no.

19 Everyone has a lawyer to do P.I. We do, I would say,
20 10 percent. I would have to check our stats. I can get back to
21 you on it. I would say 10 percent of our cases are negligence
22 cases. It bothers me. It does. I do not want to come off as

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1 an ambulance chaser, but I can tell you a very quick story.

2 Several years ago, there was a terrible tragedy. An
3 Air Florida plane crashed into the 14th Street bridge. You read
4 in the newspaper about how lawyers flew in from all over the
5 country and set up card tables on the banks of the Potomac.

6 They had heaters there and everything. We had three
7 of our potential clients, people who were covered by one of our
8 plans, on that plane. The families interviewed us. "What are
9 you going to do for us?"

10 "What are we going to do for you? We are your
11 lawyers. We are here to take care of you." "Well, what kind of
12 pay?" "Well, we take 25 percent." "We have lawyers who will do
13 it for even less than that." "What do you want me to do?"

14 That is it. If it is a big case, there is no
15 liability question. These guys are going to come in and make
16 all kinds of deals. Usually the people will go with the lowest
17 deal they can get.

18 CHAIRMAN HALL: So you do not make your money on P.I.?

19 MR. ADES: We do, but we do not make as much as I
20 thought we would. That is the way it is.

21 MR. UDDO: Mr. Ades, let me ask you a couple
22 questions. One is, do you really compete for these contracts?

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1 It sounds more like you have a negotiated deal.

2 MR. ADES: Oh, no. Let me give you an example. You
3 talked about how you know Mr. Hyatt. I got a telephone call.
4 We represent the members of the Sheet Metal Workers Local 100,
5 Washington, D.C.

6 Their jurisdiction, it just so happens, extends
7 throughout the state of Maryland and the state of Virginia. All
8 right? We have been taking care of these people for five years.
9 The head of the local union comes to me -- on a partially pre-
10 paid basis, not pre-paid.

11 The union pays a very nominal amount and it is a
12 reduced fee program, \$50.00 an hour. We do this as a precursor
13 to going pre-paid because not everyone can negotiate it into the
14 contract.

15 The head of the union says to me there is going to be
16 a national coast-to-coast contract for all the sheet metal
17 unions in the United States. You are the only attorney in the
18 United States who presently has any type of agreement with the
19 sheet metal local.

20 I said this is great. Now I get all excited and I am
21 starting to contact lawyers for all the big unions, the local
22 unions where the sheet metal workers are. I spent six months on

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1 this thing. There are five other people bidding on it.

2 There was nothing to do. It was already done. It is
3 like you said. The deal was already cut. They brought us in
4 there to keep Mr. Hyatt honest, basically. One thing that I
5 learned -- I told you, I have been on contracts in New York
6 City, Los Angeles, San Francisco, Detroit.

7 I do not do that anymore. We have offices in D.C.,
8 Maryland and Virginia. We can control the quality of the work
9 that is done there. I cannot control the quality of the work
10 across the country.

11 I cannot do it. If somebody has a complaint, they
12 call me. They do not call the complaint center or this and
13 that. They call me. I am here. That is what I do every day.
14 We bid on contracts.

15 Usually the provider is already chosen, whether it is
16 us or not. That is one thing I wanted to make very clear. Just
17 because someone comes up with the lowest bid, it does not mean
18 they are the best provider. There are all types of ways to do
19 it.

20 MR. UDDO: You said in your opening comments that you
21 get programs that run everywhere from \$.25 per month per person
22 to \$12.50, maybe even higher. What is the -- I assume the

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1 difference is in the amount of coverage.

2 MR. ADES: Exactly, sure.

3 MR. UDDO: What is a \$.25 -- these ones you passed
4 around, I assume are --

5 MR. ADES: No, they are comprehensive.

6 MR. UDDO: The top of the line? They are the \$12.50?

7 MR. ADES: Yes, some of them are.

8 MR. UDDO: More?

9 MR. ADES: No, \$12.50 is the highest.

10 MR. UDDO: What do you get for \$.25?

11 MR. ADES: For \$.25 you get free advice and
12 consultation. That is it, basically.

13 MR. UDDO: Referrals maybe?

14 MR. ADES: We are the referral. We say this is it.
15 This is the way we handle it or you do not need a lawyer.

16 MR. UDDO: If they need a lawyer?

17 MR. ADES: If you need a lawyer, this is what it is
18 going to cost you; \$50.00 an hour or the plan.

19 MR. UDDO: Are you familiar with the kinds of services
20 that Legal Services grantees provide?

21 MR. ADES: To a degree, yes.

22 MR. UDDO: It looks a lot like your comprehensive

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1 plan, for the most part.

2 MR. ADES: Oh, yes, there is no question about that.
3 I do not think -- correct me if I am wrong -- I do not think the
4 cases are as complex because the people do not have as much.
5 The areas that cost big money to us, the \$12.50 plan, includes
6 complete coverage, unlimited coverage, felony work, misdemeanor
7 work. You do not do that.

8 MR. UDDO: No criminal.

9 MR. ADES: If you take criminal out, that drops the
10 price.

11 MR. UDDO: To what?

12 MR. ADES: I do not know. Again, it depends on
13 utilization.

14 MR. UDDO: Given that those are factors, if you were
15 going to bid on a Legal Services contract, say, for the D.C.
16 area, what kind of information would you need to have?

17 MR. ADES: Well, what I would like to do, I would ask
18 you first of all, how many cases were handled by the provider
19 for the Legal Services Corporation last year? What types of
20 cases they were?

21 How many in domestic relations? How many in this and
22 that and how many in different areas of law? Different people

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1 report different ways. Some people call it a case if they give
2 advice on the telephone.

3 I want to know if that is included. I want to know
4 how you arrive at these number of cases, whatever they may be.
5 That is the most important thing right there. If you can tell
6 me -- the other thing is, I want to know what you have done to
7 promote Legal Services Corporation in D.C.

8 Have you gone out to the people? Have you said, "We
9 are here. We want you to know we are here. We are accessible
10 to you. We are available to you. We are here to help you.
11 Come and see us."

12 MR. UDDO: Let's say that is part of your
13 responsibility.

14 MR. ADES: Yes, absolutely it is part of our
15 responsibility.

16 MR. UDDO: If you are going to get the contract, that
17 is part of what you have got to do.

18 MR. ADES: Okay, well, I want to know if he has been
19 doing it or she has been doing it. If she has been doing it, to
20 what degree? If she has not been promoting it, where are her
21 offices?

22 Are her offices in the community? Do you go out to

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1 the people? One thing I learned in Washington, D.C., it would
2 be much more cost effective for us just to have one office in
3 D.C. to service D.C., Maryland and Virginia.

4 The people will not come. The people will not come
5 across the bridge from Virginia into D.C. The people from
6 Prince Georges County, Maryland are fine. If you are from
7 Montgomery County, you do not want to come to Prince Georges
8 County.

9 That is it. We have to know where their offices are.
10 Have they gone to the people? Do they want the people to come
11 to them? These are the types of things. We would make a
12 projection of the number of cases we would handle based on that.
13 Those are the types of things we would need to know.

14 MR. UDDO: They know where you are and they just will
15 not come to you.

16 MR. ADES: Well, I want -- you do not have to be an
17 ambulance chaser. You do not have to go out and hustle these
18 people. If they do not need us, okay, fine. If they need us,
19 we have got to go and get help through the community, through
20 the churches, through whatever, community services to go to the
21 people and say look, this is where we are.

22 Maybe they do not want to come into a law office.

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1 Maybe they are afraid to go to a law office. They are not
2 afraid to go to church. We work with a lot of churches,
3 especially in the District.

4 In the evenings, we are there. We use their community
5 hall. We are doing that now. That is something we would want
6 to do with Legal Services. People are not afraid to come into
7 the church.

8 They will talk to you there. They will feel better
9 about that. You may have to do that in the beginning. You may
10 have to continue to do it. I use the church as an example.

11 MR. VALOIS: Mr. Chairman, it might be useful for our
12 next meeting or maybe in the interim for us to determine,
13 somebody on the staff to determine, whether it can match up
14 information we currently have in the Corporation which is
15 available to the public, of course, with information that
16 people, such as Mr. Ades, say they need; for instance, the
17 demographics in the Washington metropolitan area and what kinds
18 of cases, how many were there, that sort of thing.

19 If we do not have that information, I am not quite
20 sure how we can ask people to bid.

21 MR. ADES: See, Washington is sort of a unique
22 situation. It is one city. We know where the people are.

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1 People are in Washington. That is it. I think if we have legal
2 services for -- I do not know if this is the case -- the state
3 of Virginia, where are the people.

4 Again, in Washington, on a smaller scale, if our
5 offices were on Embassy Row and we had three offices up and down
6 Embassy Row in Washington, D.C., I do not really think that is
7 serving the needs of the people.

8 CHAIRMAN HALL: Mr. Valois, I agree. Mr. President,
9 did you have something to say?

10 MR. WEAR: I was just going to say that I believe we
11 have at least some of that information now, Mr. Valois. I am in
12 the process of having it put together for certain programs now.

13 CHAIRMAN HALL: Mr. Ades, is that \$12.50 per person or
14 \$12.50 per family?

15 MR. ADES: That is a family plan.

16 CHAIRMAN HALL: So it really covers two people?

17 MR. ADES: It may cover five, six, seven, or eight
18 people. Junior may get arrested for drunk driving.

19 MR. UDDO: I have a couple other questions. I noticed
20 in your comprehensive plan you do not cover appeals. You do not
21 cover any appeals, administrative appeals?

22 MR. ADES: Well, when we say appeals, we are talking

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1 about civil matters or criminal matters. Administrative
2 hearings, for example, if you have been denied social security
3 and you are going to appeal it, that is a case.

4 MR. UDDO: So you would take the administrative
5 hearing if it is an appeal --

6 MR. ADES: Sure, absolutely. See, we do not call that
7 an appeal.

8 MR. UDDO: I know. It is an administrative hearing
9 from a decision made by -- I cannot think of the term.

10 MR. ADES: I understand what you are saying. Yes, we
11 do that.

12 MR. UDDO: You would not take a denial from the
13 administrative hearing and appeal that to the court?

14 MR. ADES: We do not do that, no. We do it but there
15 is a surcharge for it. It is not included.

16 MR. UDDO: You would not take a landlord/tenant or
17 consumer matter from trial court litigation to an appeal?

18 MR. ADES: If we lost at the trial court and you
19 wanted to appeal it, we would do it but it would be a surcharge.

20 MR. UDDO: It looks like it is what, \$40.00 an hour
21 with some of these plans and \$50.00 an hour with the surcharge?

22 MR. ADES: Yes.

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1 MR. UDDO: The other thing I noticed is that there are
2 certain contested matters that you have an hour limitation on,
3 contested divorces, contested --

4 MR. ADES: Again, it depends on the plan, yes.

5 MR. UDDO: Contested custody matters.

6 MR. ADES: The reason we did that -- and again, we did
7 that with the input of the Board of Trustees which, no matter
8 who we do business with, we always like to have their input.
9 Whoever the provider is that deals with Legal Services
10 Corporation, he should require the input of the Corporation.
11 What do you want done and how do you want to do it?

12 Well, we found people were abusing the plan. How do
13 you abuse the plan? You abuse the plan when your attorney is
14 free. Let me give you an example. We represent the husband.
15 The husband is covered under the plan.

16 Now he is getting a divorce from his wife. His wife
17 is paying her attorney \$150.00 an hour. He has unlimited
18 coverage with no cap on the number of hours in a domestic case.
19 I do not know if any of you have ever been divorced, but many
20 divorce cases are not real smooth.

21 There is a lot of animosity and there is a lot of
22 problems involved. What we had, we had a fellow who came to us

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1 and said, hey, I do not want to settle this. Drag it out as
2 long as you can. I want her to pay her lawyer a billion dollars
3 before I settle this case. Ha, ha.

4 We put a cap on the number of hours. In most cases,
5 it is ten hours which says, look, we can usually handle it in
6 ten hours, but we do not want you coming up with that kind of
7 attitude.

8 Still we will have people say, I do not want you to do
9 anything until my ten hours are used up. Then I will talk to
10 you.

11 CHAIRMAN HALL: Well, you have co-payments, too, in a
12 fashion; don't you? After so many hours, they pay --

13 MR. ADES: That is what we call surcharges.

14 MR. UDDO: I saw seven hours.

15 MR. ADES: All right, some of them may have seven.

16 MR. UDDO: My question, I guess, would be this, it
17 would obviously affect your bid for Legal Services work if we
18 told you you have got to do appeals because that is part of
19 delivering civil legal services.

20 MR. ADES: You tell us, right.

21 MR. UDDO: And you cannot put a cap on the number of
22 hours in contested matters.

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1 MR. ADES: Right, but you see, these are the areas of
2 law -- remember I talked to you about you are going to show me
3 what is being done now. This is not something new; is it? This
4 is what Legal Services has been doing for years.

5 Fine, this is what we do. Appeals, okay, number of
6 appeals. There is no cap in divorce work; okay, fine. I also
7 would imagine that in domestic relation areas you are going to
8 have the same custody problems.

9 I do not think child support is going to be so much an
10 issue because people do not have a whole lot of money. I do not
11 think property settlements are going to be that much of an issue
12 because people do not have that much property.

13 MR. UDDO: Property settlements are not, but child
14 support payments, at least I am beginning to hear, is something
15 that there is a big demand for among our clients.

16 MR. ADES: Custody is the most important thing. That
17 is it. We found that that is --

18 MR. UDDO: I did not notice that spousal abuse is one
19 of your listed services, but you would be able to handle that?

20 MR. ADES: Sure. The things that we have not handled;
21 labor law, corporate work, securities work, things that have
22 absolutely nothing to do with legal services. This is just me.

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1 I mean, there are many, many other providers here in the
2 District and around the country that say we will do this, we
3 will do that, we will give you want you want. This is what we
4 are doing now.

5 MR. VALOIS: How about when a spouse becomes
6 unemployed, can you attend an employment security commission
7 hearing?

8 MR. ADES: Yes. One question that I had for you, area
9 of conflicts, how do you work -- I do not know who to address
10 this to -- how do you work a conflict? Mr. Hall, I guess, the
11 president is pointing to you.

12 A husband and wife are both eligible for legal
13 services under the Legal Services Corporation. We determine
14 they are both eligible and they want to get a divorce. Who do
15 we cover?

16 CHAIRMAN HALL: You cannot do it. One of them has to
17 be referred out. One of them has got to go somewhere else.

18 MR. ADES: Okay, one of them has to. This is the
19 question I had because this came up in our plans. That means
20 that if I refer the wife out -- I am going to represent the
21 husband -- we refer her out to whom? Anybody we want? Do we
22 give her a list?

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1 CHAIRMAN HALL: That is an interesting question
2 because it ties into one of the criticisms of a competitive
3 system. I think -- and the people here who are more familiar
4 with how the field offices work can correct me -- but I think
5 that is one thing that the private attorney involvement is used
6 for.

7 We have got a requirement that a certain amount of the
8 grantees money be spent in incorporating private attorneys into
9 the delivery of legal services in that area. So that is one
10 place that it can go.

11 It can go to pro bono referral programs. One of the
12 questions that has come up is, if we put these things on
13 competitive bid, will there still be private attorneys and pro
14 bono attorneys willing to take cases for free when for-profit
15 law firms are bidding on and making a profit off of the --

16 MR. ADES: I am sorry, maybe I missed something. Who
17 is providing the service now, for example, in the District? Is
18 that not a for-profit firm?

19 CHAIRMAN HALL: No, it is a grantee of the
20 Corporation.

21 MR. ADES: A grantee, okay.

22 CHAIRMAN HALL: Right now it is a nonprofit

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1 corporation grantee, usually corporation grantee.

2 MR. ADES: How do you decide whether or not it is
3 nonprofit?

4 CHAIRMAN HALL: It is incorporated that way. They
5 have a budget that is appropriated by the board that specifies a
6 certain sum of money that is there budget to operate on.

7 MR. ADES: Let me ask you this. Suppose we are a
8 nonprofit -- so in other words, he cannot handle any other work
9 besides this work; right?

10 CHAIRMAN HALL: He cannot, but the question -- I mean,
11 if you are driving at would you have to be a nonprofit
12 corporation, I do not think --

13 MR. ADES: No, what I am saying is right now, what you
14 have -- you say they are grantees. If we were to get the
15 contract, we would become a grantee.

16 CHAIRMAN HALL: Yes.

17 MR. ADES: If another provider, they would become a
18 grantee.

19 CHAIRMAN HALL: But if you were not one of our
20 established grantees, you would become a contractor, I guess,
21 with the Corporation.

22 MR. ADES: How do you get to be an established

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1 grantee?

2 CHAIRMAN HALL: That is sort of the square one
3 question.

4 MR. VALOIS: Entrenched is a better word.

5 MR. ADES: I am born and raised in the District. I am
6 sorry, I have been here since I was three. There has only been
7 one provider here.

8 CHAIRMAN HALL: Yes, and that is true in most places
9 except where there have been problems, you know, somebody has
10 been defunded or given up their status as a grantee of the
11 Corporation. Most of the grantees have been grantees for
12 awhile.

13 MR. ADES: And perpetuity.

14 CHAIRMAN HALL: Yes, the answer to your question is,
15 there has not yet been much competition for providers,
16 establishing providers in difference service areas.

17 MR. ADES: Well, in our financial statement, the way
18 we pay or taxes, we come down and at the end of the year we come
19 out zero. The firm does not make any money.

20 MR. UDDO: That is because you got a bonus.

21 MR. ADES: Right, doesn't your grantee have --

22 CHAIRMAN HALL: No.

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1 MR. UDDO: Whatever money is not used out of the
2 budget --

3 MR. ADES: No, no. When you say not used, I am sure
4 they will use it all.

5 CHAIRMAN HALL: There is carryover sometimes.

6 MR. VALOIS: I do not think you can compare contract
7 system with grant systems.

8 MR. UDDO: No, I think that is the point I am trying
9 to make.

10 MR. ADES: Okay.

11 MR. UDDO: You are operating for profit a different
12 system.

13 MR. ADES: For example, if I am a grantee and
14 nonprofit, if I take as my salary whatever, \$500,000 a year, and
15 the nonprofit entity bottoms out and does not make any money,
16 that is okay.

17 MR. UDDO: No, we do not have any grantees that pay
18 salaries of \$500,000 a year.

19 MR. ADES: Who decides how much they can take as a
20 salary?

21 MR. UDDO: They have local boards that are established
22 according to the regulations of the Corporation. If what you

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1 are driving at is, are you being asked to bid to be the same
2 kind of thing, we do not know yet.

3 I think the suggestion that is being debated is,
4 should we just have firms like yours come in and make a bid for
5 a contract where they will deliver the services for X amount of
6 money and stating it and using money anyway they want as long as
7 they are delivering the services.

8 MR. ADES: I understand what you mean. What I am
9 saying is, if I am the grantee and I am not-for-profit and I am
10 here and no matter what I do I am still going to get that money
11 every year.

12 I am spending it this way and handling these cases.
13 Suppose I am not doing a good job on the cases. I know the
14 contracts I have now, if I am not doing a good job, they can
15 come in and say, you have 90 days. You are gone.

16 We do not think that is fair. Well, fine. The
17 contract is binding arbitration. We go to arbitration and the
18 arbitrator says, you are doing a good job or you are not doing a
19 good job. I mean, do you have the same type of --

20 MR. UDDO: Well, we have a monitoring and compliance
21 division of the Corporation that is supposed to, on a periodic
22 basis, monitor the programs to make sure they are doing what

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1 they are supposed to do and using the money the way they are
2 supposed to use it.

3 There is supposed to be a procedure whereby grieved
4 clients can make their grievances known, but there is no -- you
5 are dealing with a distinct entity when you have got one of
6 these contracts.

7 A grantee deals with the poverty community at large.
8 So there is a real difference in that regard.

9 MR. ADES: One of the questions you said, what do you
10 need to decide how much you are going to bid, what is our client
11 base? Do we have a client base?

12 MR. UDDO: That is one of that things you would want
13 to know, obviously. Yes, there is a client base.

14 MR. ADES: There is, and that is based on income,
15 obviously; right?

16 MR. UDDO: Right.

17 MR. ADES: I imagine that fluctuates pretty good;
18 doesn't it?

19 MR. UDDO: The number of people? I think that is
20 pretty predictable, but it depends on how you define the service
21 area and then the regulations for what multiple of the poverty
22 level makes them eligible.

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1 MR. ADES: Yes.

2 MR. UDDO: That kind of stuff you can know before you
3 would make a bid. I think that kind of information is pretty
4 clearly determined.

5 MR. VALOIS: There are two major determinants. One is
6 the absolute number of people below a certain number and that is
7 the number established as the poverty level. That number
8 changes.

9 There are two numbers that you have got to worry about
10 to come up with an anywhere near accurate figure. It is only
11 going to be so accurate because you are essentially dealing with
12 some sort of census data.

13 MR. ADES: I understand. Is there anything else I can
14 help you all with?

15 MR. VALOIS: A couple of questions I had. One is, for
16 instance, if at the end of your period, if these things are tied
17 to collective bargaining agreements which frequently run three
18 year cycles, at the end of any particular three years, if there
19 is going to be a bidder to upset your position, you are going to
20 have a certain number of cases pending. What agreement has been
21 made to -- as a lawyer, you cannot simply --

22 MR. ADES: You cannot withdraw, right.

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1 MR. VALOIS: You cannot simply stop representing
2 people because it is time for the collective bargaining
3 agreement again. What do you do?

4 MR. ADES: Let's say we are a provider of service and
5 the trust decides they want to change providers. We have X
6 amount of cases. It depends. You work that out ahead of time.
7 We have had very little problem.

8 We have done it both ways. We have given the cases up
9 and we have gotten them. Usually, in the area of criminal law,
10 you cannot -- you have to have leave from the court to withdraw
11 from the case.

12 Technically, you could say, "Your Honor, my client is
13 not paying me anymore." The client always has the option; does
14 he want to stay with you and pay you or go with a new provider.
15 That is not really applicable in legal services.

16 The best way to do it, I think, is to give them the
17 option of paying. In lieu of that, the provider can continue to
18 work on a pro bono basis or he can complete the phase of work
19 that he is in now.

20 For example, if I have a motion to continue and I am
21 arguing it on September 9th and we are replaced, we do not turn
22 that over. In other words, we would go and we would argue that

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1 motion. Then we would put a memo in the file.

2 We would withdraw from the case at the same time we
3 withdraw, there is a new appearance entered. We would hand that
4 file over to the new firm. That is --

5 MR. VALOIS: You cannot withdraw in a civil case in
6 D.C. without the court's permission.

7 MR. ADES: Right. That is right also. Usually, the
8 court will not deny permission unduly if there is someone else
9 there waiting to enter their appearance. That has been my
10 experience.

11 You do not just drop it in the middle. If you have a
12 motion to compel, if you have a custody hearing that is set
13 October 1, you do not want to walk about from it. You want to
14 finish that phase of the case.

15 I think there is a code of professional
16 responsibility. The bar says you just cannot bye and that is
17 it. You must serve the client. As long as his needs are
18 served, that is the bottom line.

19 I do not think it should become -- I do not think he
20 should be the pawn and he be the one that is going to lose when
21 two firms are arguing back and forth over who is going to handle
22 it.

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1 We are not getting paid anymore so we are not going to
2 handle it. We are going to dump you. You cannot have that.

3 CHAIRMAN HALL: Mr. Wear?

4 MR. WEAR: Thank you, Mr. Chairman. Mr. Ades, suppose
5 we had a situation where we said there was X amount of money to
6 serve this poverty population -- and I think we do have some
7 numbers on how many people that would be.

8 We do have some numbers on the kinds of cases that
9 have been handled in the past. We should be able to come up
10 with some numbers on utilization, what the existing provider in
11 that area has done to promote utilization, what degree.

12 We would know where their offices were. Instead of
13 asking you as your union with whom you negotiate now, they do
14 not tell you how much money they are prepared to spend, suppose
15 we did.

16 We said there was X amount of money for this service
17 area and we could give you, hopefully, the answers to the
18 questions you have raised here.

19 MR. ADES: Then it is very simple. Then I will just
20 say whether or not I can do it.

21 MR. WEAR: Keep in mind that our existing providers
22 also have more clients than they can serve. As a practical

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1 matter, they decide who they will serve and who they do not.

2 MR. ADES: They turn people away?

3 MR. WEAR: Yes. You may well be faced with that
4 problem also. The hope, I think, is that if a new provider came
5 in, that provider would be able to serve more people than the
6 existing providers in the nuts and bolts cases, the child
7 support and things of that nature.

8 MR. ADES: In something like that, if we cannot
9 service someone, then that person is going to complain. That is
10 a complaint. If there are complaints and the complaints are
11 founded and not corrected, we are not doing a good job and we
12 get replaced as the provider.

13 What we would do is serve everyone and we would come
14 back to you whenever our contract permitted whether there was--
15 I use collective bargaining terminology -- a reopener -- I
16 assume that you all know what that means. We can come back at
17 some time and say we need more money because...

18 We would come back, if we had a three year contract
19 which reopened at the end of the second year, we would come to
20 you and say we are getting killed. Look at the number of hours
21 we have spent.

22 We just cannot do it. You guys just have to give us

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1 more money. You say there is no more money. Fine. Then
2 understand that there are going to be these complaints. These
3 people are not taken care of.

4 At the end of the contract term, if there is no
5 reopener, we are going to come to you and say, okay, we handled
6 50 percent more cases than the grantee before us. We spent this
7 number of hours.

8 I do not know if he provides hours or not. We spent
9 this number of hours and we need an increase. We need an
10 increase of 50 percent. Well, Rob, you are not going to get 50
11 percent.

12 We might be able to get you 10 percent. Fine, then
13 still expect these degree of complaints. This is what we need.
14 Now, how do you figure -- with time sheets, it is very simple
15 for you to know if you have got the value for service.

16 I will tell you what we do with a lot of the unions,
17 not all of them, but a lot of the unions and management that we
18 deal with. Let's say you receive a million dollars in the
19 course of the year.

20 Give me your total number of attorney hours, half the
21 number of your paralegal hours, your legal assistant hours.
22 Divide that into the total that you received after you add in

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1 your personal injury work, your surcharges and everything else,
2 the money you received from all that.

3 They will come up with a dollar amount. That is
4 basically your hourly fee. If that dollar amount is more than
5 X, you are making too much money. The trust gets credit. In
6 fact, you have to rebate to the trust.

7 If you are not getting anywhere near that amount, then
8 you can come in and yell and scream at the end of the three
9 years and say, I need an increase. I need an increase. You
10 have to be able to justify.

11 MS. SWAFFORD: Let me ask you something about the
12 present method we have. The local recipients, with their board,
13 board -- they will establish priorities. They will assume that
14 they cannot meet the needs of everybody.

15 So they establish priorities. Does that fall to the
16 wayside in a system like that and do you just serve first come
17 first serve?

18 MR. ADES: I will do what the board tells us to do.
19 When it comes to priorities, the board would say this is the way
20 we want you to handle it, Rob.

21 MS. SWAFFORD: Okay, I guess I am addressing this to
22 Mr. Wear. Would the national board establish priorities? That

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1 would be a good idea. What would be the priorities for a place
2 in Texas would not be priorities for a place in Tennessee.

3 MR. ADES: You are assuming -- I do not mean to
4 interrupt you -- you are assuming that we would not be able to
5 handle all the needs.

6 MS. SWAFFORD: Well, I am assuming that. Is there any
7 other assumption to make? You are not assuming that you could
8 serve everybody that comes in; are you?

9 MR. ADES: Well, that is what we do now.

10 MR. WEAR: I am afraid you will not be able to serve
11 everybody that comes in with the amount of money that we are
12 giving to you. So we will have to have some sort of a rationing
13 system.

14 MR. ADES: Then you would tell us what to do.

15 MR. WEAR: We will have to tell you what that
16 rationing system is.

17 MR. ADES: I assume the local Legal Services
18 Corporation board would tell us what priorities they want us to
19 handle.

20 MR. WEAR: Yes, and that would be one way it could be
21 done. That is how it allegedly is done now.

22 MS. SWAFFORD: One of the real criticisms of the

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1 federal Legal Services is that it is not a serving --

2 MR. ADES: It is not?

3 MS. SWAFFORD: That is one of the criticisms. The
4 other --

5 MR. ADES: Because they do not have enough money, you
6 mean?

7 MS. SWAFFORD: That is right.

8 MR. ADES: Well, something is better than nothing.

9 MR. WEAR: Well, some of it is because they do not
10 have enough money and some of it is because some of the programs
11 are involved in other sorts of cases that allegedly are brought
12 because the program people want to bring them, not necessarily
13 because there is a great demand for them in the community.

14 MR. ADES: Yes, I read that in the newspaper.

15 MS. SWAFFORD: See, that would make a lot of
16 difference on how we would approach those things.

17 MR. ADES: As far as -- the way I look at this, you
18 have a local Legal Services Corporation board, right, in each
19 jurisdiction?

20 MR. WEAR: Yes.

21 MR. ADES: The way I would look at it, these people,
22 this board would be analogous to the trust fund that we do

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1 business with today. We have to keep them happy. If there are
2 complaints, they would complain to them.

3 If there is criticism, it would come from them. They
4 are the ones who hired us. They are the ones who can fire us.
5 I assume you would have a provision -- you do not now because
6 whoever it is has the program in perpetuity.

7 I assume under the new -- if you bid this out, that
8 they would be answerable. If you did not like the job they were
9 doing, 90 days notice, you got it. Well, I do not think that is
10 fair. You do not have cause to do it.

11 Fine. We feel we do have cause. You go to
12 arbitration and you decide.

13 CHAIRMAN HALL: Mr. Ades, what do you think the local
14 priorities of the D.C. area are? Have you thought about it?

15 MR. ADES: I do not know. That is awfully tough to
16 say. Housing is key. You have child abuse problems. You have
17 -- I would want the input of the local board because they are
18 professionals that do it everyday.

19 I have my own ideas, but they are more personal. I
20 would want the input of the board.

21 CHAIRMAN HALL: What are your personal ideas based on;
22 your practice?

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1 MR. ADES: Well, I have a real problem with this child
2 abuse thing. It is a personal thing with me. I just do not see
3 that and the -- somebody brought up before the spouse -- wife
4 beating for lack of a better word.

5 That is not something that is just a problem with low
6 income people, but it is an area that I would want to deal with.
7 Also, the drugs in D.C., the drugs are unbelievable. They are
8 throughout America today.

9 I think part of our job would be education not just
10 looking for -- it is like almost what we call preventive law. I
11 think we have a responsibility to the community. I do not know
12 if it is Legal Services Corporation or not.

13 If the local board said no, that is not up to you.
14 You do not deal with that. You do not worry about that. Let
15 somebody else worry about that.

16 CHAIRMAN HALL: Mr. Ades, you are here today to tell
17 us what you would look for if you were going to do a
18 solicitation or if you were going to apply and bid. Are you
19 full of -- do you have all the work you can do in your firm or
20 would you be interested?

21 MR. ADES: We get new contracts with new groups
22 yearly, not just renewals but new groups come in; small groups,

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1 large groups, whatever it is. We would simply incorporate the
2 Legal Services Corporation into our existing plan.

3 We would have to hire more staff. We would have to--
4 there would be certain things, particular areas in community
5 outreach that we would concentrate on, these things. We would
6 incorporate it into what we do now.

7 It is the same type of thing. We would be interested
8 in this very, very much. Again, this is something that I think
9 could be profitable for us, but maybe it could not. I would not
10 be interested in a long term agreement with you.

11 I would want to start out with something so you could
12 judge me and I could judge you.

13 CHAIRMAN HALL: What would you show us that we could
14 judge you and know that you do quality work?

15 MR. ADES: Well, we would give you, obviously,
16 references of clients, with their permission, as well as the
17 people who chose us.

18 CHAIRMAN HALL: Do you think the people that do the
19 legal services for the poor now would have a jump on your
20 because of their past involvement in it and their experience in
21 it?

22 MR. ADES: I do not really know. I could not answer

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1 that. I could not answer that.

2 CHAIRMAN HALL: Mr. Valois?

3 MR. VALOIS: How many lawyers have you got right now
4 in all of your offices?

5 MR. ADES: Twenty-four.

6 MR. VALOIS: How many other nonlawyer employees
7 approximately?

8 MR. ADES: Paralegals, secretaries, receptionists,
9 messengers, investigators, another 36.

10 MR. VALOIS: That includes bookkeepers and
11 accountants?

12 MR. ADES: We do not know. Our accounting is done
13 outside. That is what we call support staff. Our support staff
14 includes legal assistants, secretaries, investigators,
15 messengers, and receptionists.

16 MR. UDDO: That is to serve 60,000 families?

17 MR. ADES: Yes.

18 MR. WEAR: How many paralegals do you employ?

19 MR. ADES: Fourteen.

20 MR. VALOIS: Which of our offices, if any, comes
21 closest to being in a -- what we might describe for lack of a
22 more accurate term -- a poverty area of D.C.?

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1 MR. ADES: We are not in a poverty area. Our offices,
2 obviously, do not service poverty clients now. Our office, our
3 D.C. office is at 1612 K Street, which is across the street from
4 -- I do not think you could call that a poverty area. It is
5 across the street from the Metro.

6 MR. VALOIS: You do serve a number of clients, you
7 said, who make in the neighborhood of \$10,000 a year?

8 MR. ADES: That is correct.

9 MR. VALOIS: I take it these are -- if they are UFCW
10 people, they are cafeteria workers?

11 MR. ADES: No, those people we service, that is our
12 community outreach. A lot of those people do not want to come.
13 We are talking low education level people. They have distrust.
14 They do not want to come downtown.

15 They do not want to come to Connecticut and L. We go
16 out to them. We will probably talk to them in the church or the
17 community center in their neighborhood. To have our own office,
18 a separate office? No, we do not have a separate office there.

19 If we were to do -- if we were to get the Legal
20 Services contract, you may say to us what do you have. If your
21 office is at 16th and K now, is that where it is going to stay?
22 Yes, it is going to stay there, but we may open another office

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1 in the community to better serve these people.

2 I do not know that it is necessary to do that. Again,
3 we may have to do that. The outreach may not be enough.

4 MS. SWAFFORD: You would not think that the people who
5 need the legal services would come to this address; would you?
6 You said you go to churches, but really how else would you
7 identify to these people that you are there and you are
8 available? I would foresee that to be a real deterrent to the
9 poor people

10 MR. ADES: You mean to come downtown?

11 MS. SWAFFORD: That is right.

12 MR. ADES: Well, of course, we are not -- I would ask
13 you to come and see our offices and then make the determination.

14 CHAIRMAN HALL: Any others?

15 (No response.)

16 CHAIRMAN HALL: Thank you, Mr. Ades.

17 MR. ADES: Thank you very much. I appreciate your
18 time.

19 CHAIRMAN HALL: Mr. Regan, would you tell us your name
20 and where you are from, please?

21 PRESENTATION OF PAUL REGAN

22 MR. REGAN: My name is Paul Regan. I am a lawyer

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1 practicing in Washington, D.C. By way of introduction, I
2 suppose, I am originally from Boston. I am a graduate of
3 Brandise University and Georgetown Law Center.

4 I have been a practicing lawyer in the District of
5 Columbia and Massachusetts since 1977 in D.C. and since 1986 in
6 Massachusetts. I specialize in providing group legal services
7 under primarily collectively bargained plans.

8 I have offices in the District of Columbia, which
9 service D.C., Virginia and Maryland, and I have an office in
10 Boston which services people in Massachusetts. We currently
11 have covered approximately 15,000 working families.

12 For approximately six years, I served as an alternate
13 hearing examiners on the D.C. Bar Board of Professional
14 Responsibility. I might say that I am here under a special
15 dispensation.

16 I was called this morning by your staff and asked to
17 appear so I do not have a formal presentation, but I agreed to
18 appear. Before I agreed to appear, I made a few telephone
19 calls.

20 One of the largest groups I represent is the Hotel and
21 Restaurant Employees Union Local 25 in Washington, D.C. They
22 indicated that I should, at least, make representation that the

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1 board should consider in the future holding its facilities at
2 union organized facilities. So I have made that point.

3 CHAIRMAN HALL: So noted.

4 MR. REGAN: I am perfectly willing to entertain
5 questions. I can tell you that pre-paid legal service providers
6 are experienced in delivering high quality, high volume guide
7 and variety litigation services.

8 CHAIRMAN HALL: How many clients do you all serve?

9 MR. REGAN: About 15,000 families. We handle about
10 2600 cases a year.

11 CHAIRMAN HALL: Are you familiar with what the LSC
12 grantees do for their clients, the type of work?

13 MR. REGAN: When I first started practicing law, I did
14 criminal defense work in Washington, D.C., 5th Streeter work it
15 is called. I did appointed criminal work for five years, self-
16 employed for five years.

17 I am from a neighborhood which is essentially housing
18 projects in Boston, so I am relatively familiar with the
19 clientele. The people I represent now are working people. Some
20 of them are working poor people.

21 CHAIRMAN HALL: Of course, you know, the LSC grantees
22 do not represent anyone in criminal.

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1 MR. REGAN: I understand that.

2 CHAIRMAN HALL: The things that you do for your
3 15,000, is it families or people?

4 MR. REGAN: Fifteen thousand families.

5 CHAIRMAN HALL: Are the things you do for them the
6 same type of things that -- the same type of law practice,
7 varied law practice that the LSC grantees do?

8 MR. REGAN: Well, I can tell you the kind of practice
9 that we have. We do domestic relations work. We do probate
10 work. We do wills. We do personal injury cases, negligence.
11 We do real estate settlements.

12 We do -- we draft various real estate documents. We
13 do consumer related matters, lemon car cases. We do
14 landlord/tenant work. We do administrative law stuff,
15 department of motor vehicle license verification proceedings,
16 social security administration hearings.

17 We do immigration work. We do a little bit of workers
18 compensation work. We do juvenile law and we do garden variety
19 civil litigation and complex civil litigation in both federal
20 and state courts.

21 CHAIRMAN HALL: Did you hear Mr. Ades speak to us?

22 MR. REGAN: I, unfortunately, only caught the last 30

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1 minutes.

2 CHAIRMAN HALL: He told us how much they charge for
3 their different plans and it ranged from \$.25 a plan to, I
4 think, \$12.50 per family for like a comprehensive overall range
5 of services. Do you all do the same type of thing?

6 MR. REGAN: We are substantially less expensive than
7 that, I think.

8 CHAIRMAN HALL: Do you all do just a very low cost
9 program where you just maybe give some phone advice or
10 something?

11 MR. REGAN: No, the \$.25 plan is generally an advice
12 plan, write a letter, talk to the client on the telephone and
13 tell them yes, you have got a problem and you need a lawyer.
14 Then they have to hire you and they have to pay money to be
15 represented.

16 You offer them a reduced fee schedule to do that.
17 Most poor people and working poor people do not have the money
18 to pay even the small services. They go without.

19 CHAIRMAN HALL: I guess I am just interested if you
20 all have ever calculated how much per person --

21 MR. REGAN: Yes, currently our plans cost about
22 \$100.00 per family a year.

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1 CHAIRMAN HALL: Per family?

2 MR. REGAN: Yes, we do not have any co-payments in
3 that plan. We do not have any deductibles. We do not have any
4 limits.

5 MR. VALOIS: One hundred dollars per family --

6 MR. REGAN: Per year.

7 MR. VALOIS: That is the average premium?

8 MR. REGAN: That is \$102.50. I think you should also
9 -- I think the pre-paid legal service providers know how to
10 deliver their services efficiently. I think that is fact of
11 life, which is not to say that the current organization does not
12 know how to do it efficiently. I just do not have any
13 information on what the utilization is or what their caseload is
14 for their lawyers and their support staff.

15 CHAIRMAN HALL: You said you all do do some P.I. work.
16 Do you depend on that for --

17 MR. REGAN: No.

18 CHAIRMAN HALL: -- a lot of your income?

19 MR. REGAN: No.

20 CHAIRMAN HALL: Have you had any -- well, it follows
21 then that you have not had any luck in getting a lot of
22 referrals on P.I. cases from your wealth of clients; have you?

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1 MR. REGAN: Generally, if a -- it depends on the
2 client. Generally, unless you have a good relationship with the
3 client already, they know that they can get -- most people know
4 that they can go to any lawyer and give that lawyer a personal
5 injury case for a third, usually a third of any eventual
6 settlement or judgment.

7 Most people will know some lawyer that they favor, a
8 relative or maybe somebody's son, and will bring the case there.
9 When I did appointed criminal offense work, my clients would
10 have their neighbor call me because they owed me a favor because
11 I did a good job, basically.

12 So we get a smattering of it. We have had judgment
13 recently in -- a settlement recently in Boston in excess of six
14 figures. We have had a lot of garden variety stuff that does
15 not amount to much money.

16 CHAIRMAN HALL: In deciding whether or not you would
17 bid on a program, it would not be an incentive to you then that
18 you were going to acquire an amount of folks as clientele?

19 MR. REGAN: I do not think that would be a factor, no.
20 It is not a factor currently and I know that is the wisdom of
21 some people but it is not my sense of it. It has not motivated
22 me.

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1 In fact, I would routinely be willing to bid a plan
2 cutting out the personal injury practice because perhaps there
3 is a lawyer that has been doing a lot of work with that group
4 and in the area of workers comp and personal injury and we just
5 write off that whole body of profit and just do it for the
6 computed rates.

7 CHAIRMAN HALL: So if we told you that if any of our
8 clients had a personal injury lawsuit that we would require you
9 to refer him out, you would not be opposed to doing that and
10 that would not affect the price that you would ask to gain that
11 contract?

12 MR. REGAN: No, when I bid, I do not factor the
13 personal injury -- that is gravy.

14 CHAIRMAN HALL: I am including workers comp in that as
15 well.

16 MR. REGAN: I understand. I can tell you that it is
17 not -- the question of whether or not any pre-paid legal service
18 provider would be on the work, I think has much to do with the
19 labor movement's interest to the extent to which most pre-paid
20 legal service providers, particularly closed panel operations,
21 are working under collectively bargained plans.

22 A lot -- so before I came over here, I called -- I

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1 made some telephone calls to see whether or not there was some
2 policy in the labor movement about whether or not privatization
3 of neighborhood legal services contracts is favored or
4 disfavored by the labor movement.

5 I learned that the privatization generally is opposed
6 by the labor movement. There is no specific policy on
7 neighborhood legal services specifically.

8 MR. VALOIS: There is an organization of legal service
9 workers that might have a different point of view. It is part
10 of the UAW. They might have a different point of view.

11 MR. REGAN: They may well. I do not speak for the
12 labor movement.

13 MR. VALOIS: I think the representation you made is
14 correct. It would not be widely shared with other labor
15 organizations.

16 MR. REGAN: I was going to point out someone like, for
17 example, the janitors in town are being organized by the Service
18 Employees Union. It has been in all the media. Those people,
19 although organized under collectively bargained plans, are
20 probably working for and are probably currently being serviced
21 by the Neighborhood Legal Services Corporation staff.

22 To the extent to which the privatization may not be

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1 adequately funded, assuming that is what happens, then I think a
2 labor movement would oppose it. If they did -- this is my
3 speculation -- if they did, they would not undoubtedly talk to
4 their service providers and say we would prefer that you did not
5 do that because we philosophically are opposed to that.

6 The end result would be that you might have a smaller
7 group of bidders. You may not, but you may well have a smaller
8 group of bidders and that would affect the price.

9 MR. VALOIS: There are pre-paid legal plans which are
10 not collectively bargained plans. I am sure you know that there
11 are some.

12 MR. REGAN: That is right. There are insurance company
13 plans. Midwest Mutual Insurance Company particularly has a very
14 large pre-paid legal service. It is a reputable operation.
15 There are also some insurance company plans that, on my
16 judgment, are complete scams.

17 CHAIRMAN HALL: Mr. Regan, if we told you we had
18 100,000 poor people that we wanted you to service and that we
19 would pay you \$13.00 per poor person to service those with the
20 same range of services that the present recipients do -- I do
21 not want to put you on the spot.

22 MR. REGAN: Is that \$13.00 per year?

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1 MR. VALOIS: Let me help you. What we are saying is
2 that there would be 100,000 eligible to seek your advice as I
3 assume right now you have 15,000 families but I will bet you do
4 not get 15,000 families calling on you each year.

5 MR. REGAN: Everyday, that is right, otherwise it
6 would be impossible.

7 MR. VALOIS: You would have to make that same sort of
8 comparison to 100,000 eligible poor based --

9 MR. REGAN: Is it eligible -- 100,000 families?

10 MR. VALOIS: Persons.

11 MR. REGAN: Persons. So how many families, how many
12 units?

13 MR. VALOIS: It is hypothetical. We have got -- well,
14 it is not a hypothetical. I assume the chairman is using some
15 number from some local.

16 CHAIRMAN HALL: Well, I picked the highest per capita
17 I could find because I could not find the legal service for this
18 area. Someone may know what our per capita is here. I know it
19 is \$8.00 down south, but I do not know what it is up here.

20 MS. MILLER: It is \$13.38.

21 MR. VALOIS: \$13.38 in this area.

22 MS. MILLER: One hundred and thirteen thousand.

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1 MR. REGAN: Per year?

2 MR. VALOIS: Yes.

3 CHAIRMAN HALL: Yes, sir.

4 MR. REGAN: So it is \$13.00 per year?

5 MR. VALOIS: That is right. The client base, if you
6 will, is 113,000.

7 MR. UDDO: Individuals, which may be, say, 25,000
8 families or something like that.

9 CHAIRMAN HALL: I do not know what the average family
10 would be. I guess 3 or 4 or 3.2.

11 MR. REGAN: 3.2.

12 MR. VALOIS: There is one more factor we have to, in
13 fairness, advise you of. The District of Columbia, 13,356
14 people, served the per capita basis, I take it, for this plan.
15 I do not know whether this multiplies -- \$13.38. This figure,
16 number two, is the annual budget.

17 MS. MILLER: It is the annual grant.

18 MR. VALOIS: The annual grant for this group of
19 people. It is presently \$1,516,575. Before you could properly
20 put a pencil to that kind of a bid, we would also probably have
21 to tell you to what extent this 113,356 are presently being
22 served. In other words, if 10,000 of them came to your door and

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1 you said to 6,000 of them, I cannot help you because I have not
2 got enough budget or time or people or whatever --

3 So that to be fair, we have to tell you that. Do you
4 understand what I am saying?

5 MR. REGAN: No, you are saying you turn them away?

6 MR. VALOIS: Yes, that is right. We turn some of them
7 away.

8 MR. REGAN: Who do you turn away?

9 MR. VALOIS: Well, that is a complicated question.

10 CHAIRMAN HALL: I guess it does make my question
11 impossible to answer.

12 MR. VALOIS: I do not know whether it does or not, but
13 local programs set what they call priorities and they determine
14 -- we cannot serve everybody. Therefore, there are only certain
15 thing which we will do.

16 In some cases, in my own state, North Carolina for
17 instance, there are certain programs saying we are not going to
18 do any domestic work.

19 MR. REGAN: That would chop a lot out of it, I would
20 think.

21 MR. VALOIS: Well, it could well be. They simply
22 refer out all domestic cases or say we do not do that.

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1 MR. REGAN: When they refer it out, how does it get
2 paid for?

3 MR. VALOIS: They do not pay for it. I do not know
4 how it gets paid for. They may have to pay for it all. Some of
5 it is homemade, bar referrals, PAI and all that.

6 MR. REGAN: So is there a question pending?

7 CHAIRMAN HALL: Well, there was, but I really, in all
8 fairness, do not think that you could answer it because we
9 cannot obviously provide you with all those intangibles.

10 MR. VALOIS: If we could provide you with all those
11 intangibles, do you think you could give a guess?

12 MR. REGAN: Sure, that is the business that I am in.
13 You run an economic model and make a -- it is entrepreneurial to
14 the extent that you have to make a guess at the utilization. I
15 think that it is very --

16 I suppose you are saying that currently, perhaps,
17 whenever Legal Services has to close intake it is because they
18 have too many cases at some point and they just cannot
19 professionally take another case in the office.

20 If that is true, I do not see how that would not
21 happen to a private practice operation. In fact, Neighborhood
22 Legal Services, in my experience in the Superior Court in D.C.,

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1 the judges are aware that there are never legal service lawyers.

2 So to some extent, the judges -- if the lawyer is a
3 little disorganized or unprepared, they know that the guys
4 coming in has a lot of cases and give them some slack. I doubt
5 that they would do that with a private law firm.

6 So it would affect how soon you would close intake, is
7 what I am trying to tell you. Private practitioners would be
8 very concerned about their reputation. To be more experienced
9 lawyers, much more concerned about that, you would have a pretty
10 good turnover.

11 They have legal services -- I do not know. I really
12 do not know, but I would imagine there is a good number of young
13 lawyers coming out of law schools, I would think.

14 MR. VALOIS: I think that is one of those famous two-
15 edged swords. On the one hand, the repetition of a certain
16 type of case increases efficiency. I do not care what kind of
17 case it is.

18 MR. REGAN: That is right.

19 MR. VALOIS: There is, as you describe, a garden
20 variety of kinds of cases that are handled at that level. Once
21 you have done 20 or 30 cases of a certain type, you have
22 probably done 90 percent of the variables. They do become a

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1 little easier. I think it works both ways.

2 MR. REGAN: Right. More experienced lawyers can
3 handle more cases because they are able to make judgments about
4 the amount of work that is going to be necessary and what will
5 fly before a particular judge.

6 They are also quicker with the client, figuring out
7 what the client's real problem is, getting to the real issue and
8 calming the client down. I did hear a comment earlier that
9 custody is apparently a big issue in litigation.

10 Frankly, that is amongst poor people, I am almost 99
11 percent certain that that is probably not the big issue in
12 domestic relations work. It is child support. Frequently, even
13 among the working poor, a husband may or may not be available to
14 pay child support and very rarely is interested in litigating
15 the custody question.

16 Usually the women end up with the custody and they do
17 not end up with any child support. So most of our domestic
18 relations were -- that is contested litigation -- is in the area
19 of child support.

20 CHAIRMAN HALL: Mr. Regan, do you take on contracts
21 from different entities or do you serve just one base? How does
22 that work?

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1 MR. REGAN: We bid -- we represent in the District of
2 Columbia area, the food and beverage workers, the cafeteria
3 workers. We represent the hotel and restaurant employees. We
4 represent the baker's union. We represent different groups of
5 people.

6 CHAIRMAN HALL: So when you are awarded a bid, you go
7 out and hire a staff?

8 MR. REGAN: That is right. We have teamster clients.

9 CHAIRMAN HALL: What is your starting salary? Do you
10 have any figures on that?

11 MR. REGAN: I do not think I would be prepared to do
12 that. I start different lawyers at different rates.

13 CHAIRMAN HALL: Would that be comparable to what is
14 paid to legal service lawyers, if you know what legal service
15 lawyers are paid?

16 MR. REGAN: I do not know what they are paid.

17 CHAIRMAN HALL: It depends on the program, but some of
18 them are paid around \$20,000.

19 MR. REGAN: That is a little low, I think.

20 CHAIRMAN HALL: Do you have any legal aid lawyers
21 working for you?

22 MR. REGAN: I have lawyers who have worked in legal

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1 aid, yes. We usually get lawyers from public defenders offices,
2 prosecutors offices, legal aid, 5th Streeters, both criminal and
3 civil, the F Street bar, people who have been in solo practice
4 for awhile.

5 CHAIRMAN HALL: Basile, you have no questions?

6 MR. UDDO: No.

7 CHAIRMAN HALL: Does anyone have any other questions?

8 (No response.)

9 CHAIRMAN HALL: Mr. Regan, do you have anything
10 further.

11 MR. REGAN: If I could just take a look at my notes--
12 I did hear there was some comment about the effective rate, the
13 hourly rate. That is to say, you get one million dollars and
14 you divide that by 1,000 hours and you end up with an effective
15 hourly rate of whatever that number is.

16 Then you can come back in and ask for an increase.
17 Those things are controlled necessarily by the law firms. I
18 might tell you that the hardest thing to do is to get lawyers to
19 keep time.

20 It is the hardest thing to do. The more volume they
21 get, the harder it is to keep detailed records about what they
22 are doing with their cases. I am not so sure that that makes

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1 any sense because you are just going to get a lot of hours every
2 time.

3 The lawyers are going to find a way to justify their
4 40 hours a week. I think a better way to determine things is by
5 counting the number of cases that people are handling.

6 MR. VALOIS: The whole issue of timekeeping -- I am in
7 a firm that now has 60 lawyers. It had six when I started.
8 Timekeeping was introduced the year I got there. There are now
9 60 lawyers keeping time instead of none.

10 I do not see how you could run a law firm or practice
11 law without being able to sort out what it is at the end of the
12 day. I heard previous speaker say they turned in their time
13 sheets once a week.

14 I do not see how that is possible if you do not write
15 it down every time it happens and turn it in at the end of the
16 day and check it over, if it is printed out, the next day.

17 MR. REGAN: That is right or else they will be
18 inventing the wheel. You are absolutely right.

19 MR. VALOIS: I do not see timekeeping -- I recently
20 learned that in another state they do billing, so to speak, on a
21 unit basis. One deposition equals four hours whether it takes
22 20 minutes or 6 hours. One complaint equals 4 1/2 hours whether

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1 it takes 30 minutes or 4 days. That unit pricing business --

2 MR. REGAN: Lawyers do that now with billing in tenths
3 or billing in quarters or billing in minutes. It is all very
4 subjective. In any event, if you do not do it everyday and turn
5 in your time sheets, you will be back there on Saturday or
6 Sunday trying to figure out what you did.

7 Somehow you will come up with a bill or it will be
8 your neck. The point is, it is simply not going to be as
9 accurate of what the client received for services. It is hard
10 to get people in my type of practice to keep time cards because
11 there is no profit. They do not get paid a different amount of
12 money based on the amount of hours that they submit.

13 MR. VALOIS: Maybe they should.

14 MR. REGAN: It is impossible. Well, then it would be
15 much more expensive -- well, we, in fact, do keep time records
16 by the hour and we submit them daily. They are entered by a
17 word processor and all of that.

18 We do the same configuration of figuring out what our
19 effective rate is. There is no way, within our limits -- we are
20 basically bidding on capitated plans. We are basically on a
21 flat retainer every month and we have to work it out within that
22 retainer.

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1 It is for our own intellectual curiosity what our
2 effective rate is because we cannot really change the amount of
3 money that comes in every month.

4 MR. VALOIS: Your own intellectual curiosity but it
5 would also be helpful to you at the end of the contract to know
6 whether you made money on that or loss money.

7 MR. REGAN: Yes, it is. The bottom line is, what does
8 the P&L say. Do you have a profit at the end of the year?

9 MR. VALOIS: On that plan.

10 MR. REGAN: On that plan. We do, we keep it by
11 jurisdiction, by category of law. It is just a code. You just
12 enter the data and the machine puts it in all the right places.
13 It is still very hard for the lawyers to keep their time in my
14 type of practice. I have meetings with them once a month on it.
15 The more volume, the less they keep time records.

16 MR. VALOIS: There are no lawyers in my firm which has
17 60 people keeping time, 60 lawyers, who have ever said we love
18 keeping time. They also do it.

19 MR. REGAN: Right. I understand. There is another
20 problem I did hear earlier. Assuming, for the purposes of
21 discussion, the idea of bidding out the work takes place and
22 people elect to get involved in it, service providers elect to

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1 get involved in it.

2 They are not very good at it for whatever reason. The
3 Corporation decides to replace the service provider. I mean,
4 that has happened. I have replaced a service provider in D.C.
5 I can tell you that is not a simple process.

6 It involved many hundreds, thousands of dollars worth
7 of lawyer time. There were a lot of disgruntled clients. There
8 was a lot of -- the arbitration process is not so smooth. There
9 were varying interpretations, as you can imagine.

10 It cost the organization that sponsored the plan a
11 fortune because the earlier provider was simply unwilling to do
12 what he was charged to do because it was a massive money loser.
13 I mean, you are stuck with 900 cases to turn over, for example,
14 or more.

15 You have to start those cases. You have to make that
16 payroll. As soon as that provider knew he was being fired, he
17 immediately -- the quality of his work performance, according to
18 a subsequent audit by ERISA lawyers of files, indicated that he
19 went into a passive representation immediately, started making
20 appointments for a month instead of two days, and there was
21 virtually no work done in the file for the four, five, six,
22 seven, eight month process of trying to dump him.

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1 Then at the end of that process, he actually made
2 appointments for the incoming service provider so that the day
3 the guy opened business, when I opened my doors, I had 100
4 clients in the hallway.

5 They had had an appointment made for them by another
6 law firm. So it simply fraught with a lot of trouble.

7 MR. VALOIS: You are experienced and will know how to
8 plan ahead now.

9 MR. REGAN: Well, that is right. It was a hell of a
10 good way to learn, I think.

11 MR. UDDO: Have you replaced any providers?

12 MR. REGAN: Yes.

13 MR. UDDO: How did you do it?

14 MR. REGAN: How did I do it?

15 MR. UDDO: I mean, how did you avoid that problem?

16 MR. REGAN: I didn't. That is what happened to me.

17 MR. UDDO: Have you been replaced by any others?

18 MR. REGAN: Oh, no, I have not been.

19 MR. UDDO: What would you do to avoid that problem?

20 MR. REGAN: Well, I would live within whatever the
21 contractual limitation are.

22 MR. UDDO: What would you suggest be in the contract

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1 to provide for that transition?

2 MR. REGAN: There should be an up front payout which
3 there was in this case.

4 MS. SWAFFORD: There should not be an up front payoff.

5 MR. UDDO: No, there should be. In other words, you
6 are suggesting something like a tail on a malpractice insurance
7 policy. When it comes to an end, there is a certain amount of
8 money that gets paid to the prior provider to work through the
9 pending case.

10 MR. REGAN: To work through the cases which would be--
11 - Right. That would be in the client's best interest or it
12 would be in the new provider's best interest that it would be in
13 the best interest of the justice system.

14 MR. UDDO: You would not want a contract that did not
15 give you that option if you were going to be replaced?

16 MR. REGAN: No. I think that that would be a hard--
17 it would be hard to -- it depends on the profitability of the
18 contract, et cetera, et cetera. I would not plan on being
19 replaced.

20 I do not think that that would happen, but assuming it
21 did, you would want some way to protect yourself against
22 catastrophe because you have got a payroll, you have got

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1 clients, you have got malpractice, you have got bar complaints
2 and you would lose your license.

3 You cannot blame it on a third party. You are just
4 not going to be able to explain that to the bar. You could
5 explain it but you would still be published in the Daily
6 Washington Law Reporter.

7 MR. UDDO: So you have a bunch of pending cases and
8 you are not going to be paid anymore from that contractor, you
9 have got to figure out what to do within your professional
10 obligation in the terms of the contract.

11 MR. REGAN: Right, it is a very serious issue.

12 MR. UDDO: I agree with you. I think it is probably
13 the most difficult problem associated with this whole idea of
14 competitive bidding. Every three years you are going to be in a
15 competitive bid. Conceivably, every three years a new provider
16 may take over. I think that is a very serious problem.

17 MR. REGAN: I do too. You are talking about, in this
18 scenario, over six figures a month which you are being paid to
19 run a program. If you are still stuck with 900 clients, you
20 have got that payroll.

21 You just cannot take that 900 cases and dump them off
22 on the six remaining lawyers and say, you figure it out. Now

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1 they all have 450 cases. They will all quit because they would
2 be crazy not to.

3 MR. VALOIS: Basile, if you don't mind, a similar
4 problem is presented in an area of practice that our firm
5 engages in that just came to mind. We do what is called
6 government contract.

7 We basically represent people who contract with the
8 government to operate what would otherwise be either military or
9 governmental functions such as putting gasoline in airplanes or
10 whatever.

11 There is obviously a beginning and end of many of
12 those contracts that are not perpetual. There is a process
13 whereby some contractors are held over until the new contractor
14 gets there and there is an arrangement of per diem and that has
15 essentially worked out.

16 So it is not an impossible task. I certainly agree
17 with you that it presents a difficult task that needs to be
18 solved. Also, because we are lawyers, there are some ethical
19 requirements similar to a presentation that you and I and Dwight
20 Loines got involved with in San Francisco a couple of years ago.

21 What happens if all the lawyers on your staff go on
22 strike. Who shows up in court? Who has got an ethical duty to

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1 show up in court if he is on strike against his employer who
2 happens to be a legal service provider?

3 So there are some serious ethical problems, in my
4 opinion.

5 MR. UDDO: I agree. It is a major ethical problem,
6 but you are working in a corporate structure. Are you a
7 professional corporation?

8 MR. REGAN: Yes, we are a PC. That does not limit
9 your professional --

10 MR. UDDO: No, but lawyers can quit on you.

11 MR. REGAN: Absolutely. They can quit on you under
12 whatever business.

13 MR. UDDO: Unlike a firm where each lawyer is
14 responsible for a certain number of cases. It is a little bit
15 different when they are an employee for a professional
16 corporation.

17 It seems to me that they would have a clearer
18 conscious or a stronger argument that if you cannot pay me
19 anymore, I am quitting.

20 MR. REGAN: It is not only that. What about the
21 lawyers that get the extra 200 or 300 cases dumped on their lap
22 on Saturday morning and say go for it. There they are. Now

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1 they have 450 open files.

2 If they do not quit, they need a psychiatrist, I would
3 think. So you would be in a world of -- it would be a storm.

4 MR. VALOIS: No, it is a very difficult problem that I
5 think clearly has to be anticipated in any proposal for
6 competitive bidding. I think you are right. It has got to be
7 anticipated in the contract.

8 That is basically what you are saying, Bob, that there
9 is some per diem worked out. Maybe with the contracts a little
10 different as opposed to litigation -- I do not know how you
11 would work it out, but there has got to be some sort of
12 proposal, maybe like the tail premium for a malpractice policy.

13 If this is going to end, if you are not going to renew
14 our contract, then you are going to have to pay us X amount of
15 lump sum to compensate us for making the transition or working
16 through the cases.

17 That sum would be based on the number of cases still
18 active at the time the contract was handled. That is certainly
19 a cost that would have to be figured into the system.

20 CHAIRMAN HALL: Mr. Regan, have you anything further?

21 MR. REGAN: No, I think that is it. Thank you.

22 CHAIRMAN HALL: Any further questions from the board

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1 members?

2 (No response.)

3 CHAIRMAN HALL: Thank you, Mr. Regan. We appreciate
4 it. At this time, I believe we are going to hear from Dennis
5 Kaufman from the American Bar Association. Would you come
6 forward, please?

7 PRESENTATION OF DENNIS KAUFMAN

8 MR. KAUFMAN: My name is Dennis Kaufman. I am on the
9 staff of the American Bar Association in the Chicago office. My
10 comments are confined solely to placing on the record a letter
11 which I have provided you all copies of.

12 The letter is from Joanne Garvey, who is the Chair of
13 the ABA Standing Committee on Legal Aid and Indigent Defendants.
14 If you will indulge me for a moment, the letter is addressed to
15 Mr. Hall:

16 "The issue before you committee at today's hearing,
17 the competitive award of grants by the Legal Services
18 Corporation, is a complex and extremely significant matter. The
19 results of your deliberations on this subject will affect not
20 just legal service programs and low-income persons, but bar
21 associations and private attorneys as well.

22 "Experience on the criminal defender side has also

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1 shown that such arrangements may have impact on other aspects of
2 the justice system. Thus, it is vital that any hearings held on
3 this topic allow for a broad range of input.

4 "Unfortunately, the timing and shortness of notice of
5 today's hearing did not permit extensive participation or
6 attendance. We, therefore, urge that reports of the
7 presentations be made available and that an opportunity be
8 provided for considered responses and reactions."

9 That is signed by Joanne Garvey. That is all I have
10 for the committee.

11 MR. UDDO: Mr. Chairman, it is my understanding that
12 these are just, again, general preliminary hearings and that
13 there will certainly be ample opportunity for comment from the
14 ABA and others. Is that your understanding of where we are with
15 this?

16 CHAIRMAN HALL: It is certainly my understanding. I
17 am sure that you all are welcome to make any further comments
18 that you want. There will be other hearings on down the road.
19 Any of the reports and presentations that we have had today, any
20 that I have I know the ABA can have.

21 Maureen, you have heard the reports that have been
22 made today as well as members of the board.

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1 MR. UDDO: How about Mr. Besharov's report, has that
2 ever been made public?

3 MR. VALOIS: It is now. There is a whole pile of them
4 on the table in the back.

5 MR. UDDO: Is that the final report?

6 MS. DeBETTENCOURT: We will bring copies of that
7 tomorrow and we will make it available to anyone who writes. It
8 will be readily available in a week.

9 CHAIRMAN HALL: There is certainly no intention to
10 rush through competition. This board cannot even put it into
11 place anyway. So it is going to take a long, long time in this
12 board member's opinion.

13 There should be ample time for everyone to respond.
14 That is how I would want it to be, and I am sure the other board
15 members would agree.

16 MR. VALOIS: I certainly agree, Mr. Chairman. As far
17 as I am concerned, the ABA does not even have to wait until the
18 next hearing. They can prepare a written report and send it to
19 us in the increment.

20 CHAIRMAN HALL: I think it would be helpful to us
21 because you certainly have good ideas on it, usually better than
22 mine. With that, we do appreciate it.

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1 MR. KAUFMAN: Thank you.

2 CHAIRMAN HALL: Thank you, sir. We will ask Willie
3 Cook if he is here with us. Mr. Cook, will you come forward,
4 please, sir.

5 PRESENTATION OF WILLIE COOK

6 MR. COOK: I am Willie Cook. I am the project
7 director for the legal services program here in Washington, D.C.
8 It was rather interesting listening to, not the last guest, but
9 the two previous guests.

10 I am sorry, but the one -- I do not know where he is
11 from -- the man who just spoke and said that he was called this
12 morning by the staff. I am not sure what his name is or from
13 what form.

14 CHAIRMAN HALL: Mr. Regan. I thought they were both
15 from this area.

16 MR. COOK: They are both from the area, but I did not
17 know -- I just wanted to make sure I identified him. He made
18 one comment that really infuriates me and it is the kind of
19 public condensation and kind of anecdotal garbage which, if you
20 do not know what is going on in an area, it gets in the public
21 domain and it causes problems.

22 What he said, as I understood him, was that it was his

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1 understanding that with the local legal services program lawyers
2 here who practice in Superior Court in D.C., that the judges
3 pretty much give them a "break" because they are young,
4 inexperienced lawyers. Therefore, the judges do not expect as
5 much from them.

6 MR. UDDO: Mr. Cook, just to be fair, I do not think
7 he said young and inexperienced, I think he said they have such
8 heavy caseloads.

9 MR. COOK: Whatever it is --

10 MR. UDDO: I think that is an important distinction.

11 MR. COOK: You know, he also said experienced. I was
12 here listening to him. He did not just say -- I mean, numbers
13 certainly were a point, but he was also talking about experience
14 level. He was saying, basically, that the judges give them a
15 break.

16 I object to that. I do not know how long this
17 gentleman has been practicing in D.C., but I have been
18 practicing here for 20 years. I have been at Legal Services for
19 20 years. He just does not know what he is talking about.

20 If anyone takes the time to spend and take a look at
21 what we have done for the last 24 years, you could not make that
22 stupid statement. I would rather that you ask all of the

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1 Superior Court judges in the District of Columbia and ask them
2 whether or not they agree with that nonsense.

3 I assure you that most of the judges in D.C., far from
4 telling you that, you know, we give these people a break. We
5 wish you would keep the Legal Services lawyers out of our
6 courts.

7 I mean, I just really have a problem with that kind of
8 thing being put on the public record and given to a board which,
9 perhaps, does not practice here on a regular basis and does not
10 know what is going on and accept that kind of thing as gospel.

11 I just wanted to make that point before I forget. It
12 just really bothers some of us in legal services to have some of
13 those kinds of statements made. They are basically uninformed
14 and people get hurt by those.

15 I do not have a whole lot to say as it relates to this
16 whole area because -- but there are just a couple themes. I was
17 very interested this morning in listening to Mr. Besharov. Is
18 that his name?

19 CHAIRMAN HALL: Yes, sir.

20 MR. COOK: He, of course, made a very soothing
21 presentation this morning. I have not read his report. I just
22 got it this morning. He made a couple of points that interested

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1 me.

2 One of the things that he said in talking about
3 competition was that in terms of his instructions to the board,
4 if you can just deal with this competition issue and make it, as
5 he called it, politically neutral, then I think you will get
6 agreement from the left and the right that the competition
7 notion is a widely accepted notion.

8 I just want to tell you folks, at least from Willie
9 Cook's perspective, I do not think there is any way for us to
10 make this program politically neutral. When you start talking
11 about politically neutral, I look at one, the organizations and
12 the individuals that are being picked by the staff to make their
13 presentation.

14 I also look at the people who are picking those
15 organizations. I can tell you they are not the people that I
16 have any confidence in. I absolutely reject anything that Mr.
17 Wear would ever choose to evaluate me.

18 I view it as illegitimate. One of the things that
19 this gentleman said this morning too that really bothered me, he
20 said, for instance, one of the things that we could do is take a
21 look at past monitoring reports and perhaps as a way of dealing
22 with trying to decide which groups or which organization ought

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1 to be chosen, we could, perhaps, give some bonus points for "a
2 good evaluation."

3 Well, that would be good, folks, if the evaluation or
4 the monitoring that has taken place over the last three years
5 is, in fact, a good evaluation. You know, I am not interested
6 in my program being evaluated by LSC in terms of bonus points
7 because I basically view the monitoring process that has taken
8 place in my program for the last three years as politically
9 motivated.

10 It is basically dishonest. It is illegitimate. I
11 absolutely do not view that monitoring process as a fair one.
12 It is a biased process. I have spent, personally, many, many
13 hours trying to deal with the monitoring that is taking place by
14 LSC.

15 So I am not interested in when you talk about bonus
16 points coming from a good evaluation from LSC. That has no
17 meaning for me and it does not give me any comfort. When you
18 start talking about putting aside the politics from competitive
19 bidding, you know, I say personally I understand what is going
20 on.

21 You know, all of these papers and all of these
22 hearings, you know, do not fool me. I mean, competitive

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1 bidding, you know, I understand it to be for what it is; I
2 mean, in terms of the people who are putting it forward, you
3 know.

4 We are basically talking about a political process.
5 It has, as its base, political ideology and that is the bottom
6 line. So, you know, I am not fooled by all of the rhetoric.
7 So, you know, when you start talking about bonus points and good
8 evaluations and being politically neutral, you know, I am just
9 saying that I, as a person who has been here for a long time
10 looking at what this Corporation does, do not for a moment feel
11 that anything fair can come out of the presently constituted
12 LSC.

13 I have no, absolutely no faith in anything that is
14 done here by the president of LSC as it relates to field
15 programs because it is, as far as I am concerned, inherently
16 suspicious.

17 CHAIRMAN HALL: Any questions?

18 (No response.)

19 CHAIRMAN HALL: Thank you, Mr. Cook. Our next speaker
20 will be Esther Lardent. Ms. Lardent?

21 PRESENTATION OF ESTHER LARDENT

22 MS. LARDENT: Thank you, Mr. Hall. I am here with no

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1 organizational affiliation, but as someone who is interested in
2 legal services and has been involved in it from a number of
3 perspectives over the years.

4 I have appeared several years ago before a committee
5 of this board, so I know a number of you. Since Mr. Hall and
6 Mr. Wear were not involved with the Corporation at that time,
7 though, I thought I would just give you a sense of my background
8 and the kind of areas I have been involved in.

9 I wish we had more time in the hour and were not so
10 late because in some sense I suppose I touched on a number of
11 the areas that have been discussed here.

12 I was the director from 1977 to 1985 of one of the
13 delivery system study projects. As a result, I sort of had--
14 not sort of, but had first hand experience with the competitive
15 bidding process in that limited sense and had some experiences
16 from that that I think are interesting.

17 I have worked as a consultant with bar foundations on
18 IOLTA distribution formulas and evaluation processes. I am
19 currently working with national agencies involved in delivery of
20 legal services to the elderly on the question of standards for
21 an evaluation of providers.

22 In addition, I have become quite involved in recent

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1 months in the area of moderate income delivery and have become
2 quite familiar, I think, with clinics and pre-paid plans which
3 are certainly, when they are quality providers, credible
4 delivery mechanisms but I think have some problems when it comes
5 to low income people.

6 In some ways, I am sorry that we do not have more time
7 because I would love to do a full-fledged discussion of some of
8 that.

9 CHAIRMAN HALL: Ms. Lardent, we would love to hear
10 anything you have to say today. Do not feel limited.

11 MS. LARDENT: Let me just comment briefly on a couple
12 of things. The area, I think, in which I have had the most
13 experience has been private attorney involvement. I think that
14 a number of the people on the board and on the staff know that I
15 have been very involved in that area.

16 I, as a result of that, have been consulted by a
17 number of the programs involved in the private law firm project.
18 I would just like to comment briefly on that project. I know
19 Charlie and I know Leslie Russell very well.

20 We have had cordial discussions about this and I think
21 disagreed cordially.

22 CHAIRMAN HALL: Ms. Lardent, as you comment, keep in

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1 mind that we have the room until 6:00.

2 MS. LARDENT: I know there are others who may want to
3 speak, too. Let me just go over a couple of things in terms of
4 the private law firm clinic project.

5 The first thing is, although that project is
6 considered -- was discussed as an analogous project with respect
7 to competitive bidding, it is, of course, not a competitive
8 bidding project except in the sense that it was competitive
9 bidding among a number of law firms in the area.

10 It is certainly not similar to the kind of proposal
11 that the Corporation is considering for competitive bidding for
12 the entire services in the area. In fact, I think Leslie and
13 Charlie would agree that without the presence of a local field
14 program, the project would have been impossible.

15 Indeed, at least with respect to the first phase of
16 that project, all of the letters and correspondence of that
17 project make it very clear that the goal of the project was not
18 all to compare the services provided by the staff of Legal
19 Services program and the participating law firms.

20 So I think one of the problems, my sense, that this
21 committee is having and the staff may be having is it is not
22 entirely clear what competitive bidding is. It could be

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1 specialized grants as a DSS work involving new money that did
2 not in any way dislocate existing providers or could be
3 wholesale revamping the system.

4 The definitional problems are very difficult.

5 MR. VALOIS: That is what I figure we had in mind.

6 MS. LARDENT: I am glad to hear that. I have to say
7 that some of the comments from --

8 MR. VALOIS: I do not think we have been ambiguous
9 about the competitive process.

10 MS. LARDENT: Well, I guess -- well, I do not know how
11 to take that, Bob, because I am not sure what that means. Do
12 you mean that you do want to do wholesale revamping of the
13 existing system?

14 MR. VALOIS: I think that is probably the eventual
15 idea; that as much of this as possible be put out to competitive
16 bidding. Whether that takes place over a shorter rather than
17 longer period of time, I guess, is subject to an awful lot of
18 discussion on how it is done and all the rest of it.

19 MS. LARDENT: Well, I guess, without going into the--
20 well, I will go into the merits of it. I think that would be
21 highly unfortunate because I believe that the existing providers
22 do an extraordinary job under very, very difficult

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1 circumstances.

2 Nonetheless, that particularly makes the private law
3 firm project not terribly applicable in many ways as any kind of
4 analogy or model. It is, however, analogous in some sense and
5 that is it is one of the few occasions where the Corporation has
6 attempted to centralize the contracting with local law firms as
7 opposed to the PAI programs where the local legal services
8 program has direct control.

9 I wanted to talk to you a little bit about some of the
10 things that came out of it. I am afraid my view is not as rosy
11 as that provided by the staff. I thought I would mention a
12 couple of the problems and raise the questions for you because I
13 think this committee, the board, may want to get more
14 information about this.

15 For example, someone asked Leslie Russell about
16 whether there were problems with law firms. He indicated that
17 they were fairly minimal. In fact, several law firms, at least,
18 withdrew unilaterally from their contracts having not completed
19 them, not returning the funds because of frustration apparently
20 with the project.

21 Indeed, at least one law firm has filed a suit against
22 the Corporation -- I assume that people on the board are

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1 familiar with that and you have discussed it in Executive
2 Session -- for breach of contract.

3 So the problems were very significant indeed,
4 particularly when you look at the small number of contractors.
5 In terms of nonrenewal, in the two sites where there was a
6 second segment, the percentage of contractors who were willing
7 to renew and were willing to renew at essentially the same rate
8 as opposed to a substantially higher rate, was very, very small.

9 In part, that was because low ball bidding was
10 encouraged under the system. Leslie talked about the fact that
11 the competitive process saved a million dollars. The way that
12 it saved a million dollars was essentially to undercapitalize
13 what the law firms were doing.

14 I do not know whether Mr. Meeker, who is familiar with
15 the Orange County study, told you about the case of the
16 moonlighting nun. If so, I will not mention it. Were people
17 familiar with that?

18 One of the contractors in the Orange County study was
19 a nun who ran, essentially, a kind of not-for-profit clinic
20 providing legal services to low income and working class people.
21 She had taken a vow of poverty, not a typical thing among
22 lawyers, and yet found that her bid was so low that in order to

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1 complete the contract, she had to hire someone to help her with
2 the contract and herself take a second job.

3 Now that is not good business in terms of this lawyer
4 who is simply trying to help poor people. It certainly exhibits
5 the fact that there were some real problems and that any cost
6 estimates that come out of the private law firm study should be
7 looked at very carefully.

8 Charlie Moses indicated that the law firm project
9 handled the complete range of case types. My information
10 indicates that that is not the case; that some of the more
11 mainstream legal services cases -- for example, public housing
12 matters, welfare matters -- cases that are at the heart of poor
13 people's problems were not handled.

14 As a number of people on the board indicated, there
15 was no attempt to do any quality control. You have no idea,
16 after all of this money and all of this time, whether these
17 cases were handled well in any way.

18 The notion that there is up front quality control by
19 asking bar associations if they have anything negative to say
20 about a lawyer in their area, I think, is a very unlikely one.
21 We are not, as a profession, very good about disciplining
22 ourselves.

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1 I think it would be very unusual for a bar association
2 to say negative things about participating lawyers, practicing
3 lawyers in their area.

4 Finally, the question of the impact on pro bono.
5 Leslie indicated that there was not any impact, that he could
6 see any negative impact on organized pro bono. The fact is,
7 though, that many of the attorneys participating in these
8 projects who were questioned about their motivation for
9 participating said they saw this, in fact, as pro bono, pro bono
10 with a bit of subsidy given the dollars involved in the
11 contracts.

12 That was, to some extent, true. Human nature being
13 what it is, if you think you are doing pro bono by getting paid
14 something, you are not going to do pro bono by not getting paid
15 nothing.

16 It is interesting to note that the English system and
17 the Canadian system that were discussed a bit today where the
18 bulk of the delivery of legal services is provided by private
19 attorneys report virtually no pro bono activity on the part of
20 private attorneys.

21 I would suggest -- I must say that just as Mr. Uddo
22 was troubled by the idea of staff talking about what other

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1 agencies in the federal government were doing, I think it might
2 be interesting to get your information from the horse's mouth
3 and to talk to some of the project directors and the
4 participating contractors in the private law firm project to get
5 some idea from them about their experience because I think you
6 might find a different picture.

7 That is it. I would be happy to respond to any
8 questions.

9 CHAIRMAN HALL: You did not cut it short on our
10 behalf; did you?

11 MS. LARDENT: Well, I always talk this fast. It is
12 either about ten minute or two hours. So I thought I would give
13 you the two minutes.

14 MR. VALOIS: I was listening fast.

15 CHAIRMAN HALL: Does anyone have any questions or any
16 response? Mr. President?

17 MR. WEAR: Thank you. Just to clear up any
18 misconceptions anybody may have, I do not think there is any
19 thought or any ideas -- money that is put out under the
20 competitive bidding system is going to be new money or
21 additional money.

22 It is going to be money that is already in the

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1 program. The attempt, I think, is to try and find providers
2 that will be able to do a better job than the existing
3 providers.

4 How we measure that and how we do that, I think is
5 still substantially up in the air. I would not want you to go
6 away with the misconception that there is going to be some new
7 money.

8 MS. LARDENT: I do not have that misconception.

9 MR. WEAR: I thought I heard you say that earlier,
10 that you did not know which way it was going to go.

11 MS. LARDENT: No. Well, no. I guess what I was
12 saying is that I was not sure if the purpose of competitive
13 bidding is, in fact, to completely change the identity of
14 providers currently.

15 The point that I was trying to make, and I am sorry if
16 I did not make it clearly, is that the competitive bidding
17 "experiences" that the staff was referring to have essentially
18 involved new sums of money and have not involved the dislocation
19 of existing programs.

20 Therefore, to look at those as analogies or to somehow
21 say the Corporation has been successful in putting into place
22 competitive bidding plans without destruction or dislocation is

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1 simply not the case.

2 I mean, those experiences that the staff talked about
3 are not analogous. I think that the speaker who was from the--
4 the second speaker from a pre-paid plan -- talked about the
5 incredible dislocation and disruption that can occur when a
6 provider changes.

7 We are not in business and we do not make widgets and
8 we cannot stop the assembly line of widgets when we are doing
9 cases. We are lawyers. We are professionals. We have ethical
10 responsibilities and we have cases that go beyond the life of
11 the contract.

12 I think, as Mr. Uddo said, that is an enormous problem
13 to deal with.

14 MR. WEAR: In fact, we do deal with it when we change
15 providers or a provider quits or we change in some other
16 fashion. We have transition provisions. We have transition
17 provisions in the proposal that is out for comment now.

18 Let me ask you, you mentioned also that pre-paid
19 plans, at least some of them, are good. Some pre-paid plans may
20 or will have problems with low income people. Can you say a
21 little more about that?

22 MS. LARDENT: Well, I think that pre-paid plans in

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1 clinics can both be, if run effectively and run professionally
2 and are adequately capitalized and have adequate controls on
3 them, very effective for middle income consumers.

4 I think the problem is that despite the fact that--
5 and I did not see Mr. -- I cannot remember his name -- material.
6 Despite the fact that they say they can handle a full gambit of
7 issues, the fact is that having worked with very capable -- and
8 I have enormous respect for them -- private attorneys handling
9 cases on a pro bono basis, one of the things we learned was how
10 different their experience was from practicing poverty law, how
11 specialized those cases are.

12 To assume that those cases are routine, simply because
13 a great deal of money is not at stake, is, of course, not true.
14 In fact, what you have is a highly specialized area of law that
15 requires knowledge of the community, knowledge of agencies.

16 Therefore, I do not think, in a cost effective way, a
17 provider that does not have that kind of base into the community
18 that that provider can handle these cases. They are very, very
19 specialized cases.

20 It is like saying that a pre-paid plan could get into
21 bond work tomorrow and do a perfectly fine job of it. They
22 could do it perhaps if they would hire knowledgeable people, if

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1 they would make the outreach efforts to the community.

2 There is one other thing and it came up when you asked
3 the second gentleman about the salary of his staff. Private law
4 firms are not terrifically forthcoming about their operations
5 and particularly financial matters and the kind of oversight
6 that would be required for --

7 I do not think they have a single notion of the kind
8 of oversight that would be required when you receive federal
9 money. Monitoring visits, wanting financial records, audits,
10 particularly audits that may look at non-LSC funds, I think all
11 of that would be anathema to firms.

12 In fact, I know that that is the case because during
13 the delivery system study -- this is not new, any of this--
14 there were pre-paid plans in the delivery system study that very
15 strongly rejected attempts at oversight by the Corporation.

16 I think that is part of the problem as well. Private
17 law firms are private for a reason. They do not want
18 bureaucrats from Washington coming out and getting into their
19 business.

20 MR. WEAR: It is true for anybody that is involved in
21 a federal program, I think, whether you are in agriculture,
22 defense contractor or something else.

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1 Let me ask you this. You mentioned that these poverty
2 cases are specialized. Which poverty cases do you think are so
3 specialized that a pre-paid plan would not be able to handle?

4 MS. LARDENT: I think welfare cases are enormously
5 difficult. I do not know if you have ever seen -- I do not know
6 what the welfare code looks like for D.C. My guess is it is
7 probably about this high (indicating) and it changes weekly.

8 You have to know the agency and you have to know the
9 different district offices and how they deal with people. SSI
10 is another one. Public housing would be another. There are
11 probably others I am not --

12 It has been a long time since I did any case work, so
13 I am not really an expert in this. There are a number of those
14 cases -- and even family law work, which Doug Besharov
15 mentioned, is something that private attorneys are getting
16 involved in more and more which is true.

17 When you have a client who is on welfare, the nature
18 of a family law case changes drastically. If private attorneys
19 are not aware of that, familiar with that, you know, how to deal
20 with the welfare agency, you are not going to be getting quality
21 service for the client.

22 MR. WEAR: You may remember this if you were here.

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1 Two of the last three pre-paid witnesses that appeared before
2 the committee had testified to the fact that they handled SSI,
3 in fact they handled landlord/tenant.

4 MS. LARDENT: Well, they said they handled social
5 security not SSI. SSI is -- for anyone who has ever done
6 deeming and that sort of thing in SSI, you know that SSI is
7 quite different. It is not simply disability issues.

8 So those are very different whether you get a green
9 check or a gold check from the Social Security Administration
10 makes life very different. I am sorry; go ahead.

11 Landlord/tenant, again, public housing matters are
12 very, very different. The rights of tenants in public housing
13 are dramatically different. Section 8 programs are dramatically
14 different.

15 Perhaps those gentlemen handle it; perhaps they do a
16 good job. I do not know how you determine that.

17 MR. WEAR: I would be willing to testify that they
18 handle those cases.

19 MS. LARDENT: It was not my understanding. One of the
20 problems is landlord/tenant is not landlord/tenant and these
21 cases are not fungible pieces of work. Again, once a poor
22 person is involved, things change dramatically.

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1 Again, I say that as somebody who worked on a day-to-
2 day basis for eight years with some of the most talented lawyers
3 and some of the most high-priced talent in the city of Boston
4 and has worked with lawyers in a number of other areas.

5 It is not that those lawyers cannot learn the area; it
6 is that they found that there was -- and we found -- that there
7 was a dramatic, dramatic leap that had to be made in learning
8 how to handle cases for poor people.

9 That is why the private attorney involvement program
10 can only work when there is a staffed legal services program
11 there to provide the kind of backup and orientation and support
12 and quality control to make it work.

13 MR. WEAR: How much time did these lawyers with whom
14 you worked in Boston put in on these cases per week?

15 MS. LARDENT: The average hours per case --

16 MR. WEAR: No, per week?

17 MS. LARDENT: I have no idea. We did not ask them to
18 keep that.

19 MR. WEAR: How long did the cases run?

20 MS. LARDENT: The cases ran anywhere from several
21 weeks to five years.

22 MR. WEAR: Do you suppose they could learn faster or

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1 pick up the information better if they were working with these
2 cases every day?

3 MS. LARDENT: Yes, I think they would if they had
4 someone to orient and train them.

5 MR. WEAR: If a new provider came in and took over
6 cases from an existing provider, he would get that sort of
7 orientation when he came in?

8 MS. LARDENT: If he was motivated to do quality work
9 and if there was someone there to train that person. The
10 difficulty that I have is that I have seen too many
11 undercapitalized sole practitioners in small clinics who try, I
12 think, to provide quality service but never learn to do a good
13 job because they simply did not have the motivation, the
14 background, the ability to learn that kind of work.

15 Mr. Wear, could I ask you one question?

16 MR. WEAR: Sure.

17 MS. LARDENT: Have you visited a legal services
18 program?

19 MR. WEAR: Yes.

20 MS. LARDENT: How many?

21 MR. WEAR: Two, I think.

22 MS. LARDENT: Because I visited, I think in my career,

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1 probably about 150. I really am troubled. I say this as
2 someone who has no affiliation with the legal services program
3 but who certainly knows people in the program.

4 I am troubled by the tenor of the discussion with
5 respect to legal services programs here and the assumption that,
6 of course, they are not doing a good job and someone can do it
7 better.

8 I think I have very high standards. I really do
9 believe that the programs are doing good work. You seem to
10 believe that they are distracted by political agendas. I see
11 them as being distracted by too many clients and too little
12 money.

13 I would really encourage you and other people on this
14 board to perhaps visit more programs to see for yourself the
15 kind of work that they do.

16 MR. WEAR: No, on the contrary. I think there are a
17 number of good programs. I think that there are some that have
18 been distracted because the employees within those programs have
19 their own agendas and tend to select those cases which move
20 their agenda rather than the agenda of the poor people
21 themselves.

22 I do get reports from our monitoring teams as they

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1 come back. So I have been educating myself that way. As I have
2 time, I will go out and see other programs.

3 MS. LARDENT: I would encourage you to do that. I
4 would encourage the people on this board to try to get more
5 information about the private law firm process. As I said, I
6 think the staff has been very involved and has worked in good
7 faith in shaping that process.

8 I do think there is some problems with it that are
9 very important for this board to understand as you move forward
10 in looking at competitive bidding.

11 MS. SWAFFORD: One thing. You were talking about
12 quality control. I do not mean to say that this is a measure of
13 quality control, but I think it is a factor. I noted that Mr.
14 Russell said in his presentation that the client evaluation has
15 been 90 percent satisfactory.

16 I just wondered if you would not think that that is an
17 indication that they were doing a pretty good job?

18 MS. LARDENT: I think client satisfaction is certainly
19 a measure. It is one part --

20 MS. SWAFFORD: A measure. I like that better than
21 factor.

22 MS. LARDENT: It is one part of quality control. The

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1 difficulty is, for example, I would say -- and I do not know the
2 percentages, but that the vast majority of the cases that were
3 handled by these law firms were family law cases.

4 A number of them were uncontested family law cases.
5 If I were getting divorced and I had somebody -- I was poor and
6 I found a lawyer to handle my case for free and that lawyer got
7 me a divorce, I would be very happy.

8 Did that lawyer get me the kind of support that I
9 needed? Did the lawyer know that my about-to-be former husband
10 had a pension or was going to inherit a great deal of money and
11 I lost out on that?

12 Did the lawyer tell me that I should be sure to put
13 the house in my own name? Did the lawyer tell me that I would
14 be liable under the lease? All those are questions that I as a
15 practicing attorney and you as a practicing attorney might ask
16 in terms of evaluating the quality of the work.

17 The client would never know. The client just feels
18 happy to be out of this relationship. So that is the problem.
19 It is certainly important that clients are happy.

20 MS. SWAFFORD: That is to the contrary. I feel like-
21 - at least in my experience -- that people getting divorces are
22 never satisfied. They generally think that the lawyer did not

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1 do a good job because they did not get what they though they
2 should have.

3 MS. LARDENT: The one thing I would say to you is that
4 we did, for our program, a client satisfaction assessment on
5 every case, not a scientific sample but just everybody because
6 we did not know enough to figure out what a scientific sample
7 was.

8 We had a very high degree of clients satisfaction. In
9 fact, we had enthusiastic grades. We also, though, as
10 professionals in the area, reviewed the pleadings and reviewed
11 the outcome of those cases.

12 I am sorry to say that there are lots of time where
13 clients were very happy because a person's desk side manner was
14 good or because, frankly, as people who were poor, they thought
15 they had so little options that someone just paying attention to
16 their problem made them pretty happy where we saw some very,
17 very significant problems with legal work.

18 CHAIRMAN HALL: Ms. Lardent, you do not think client
19 satisfaction then is a very good measure, necessarily.

20 MS. LARDENT: No, I think it is important that clients
21 be satisfied. I do not think it is a measure of quality -- I do
22 not think it really reaches the issue of quality control which

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1 can only be reached by an assessment of the work done by people
2 who are knowledgeable about --

3 CHAIRMAN HALL: I agree with you.

4 MR. VALOIS: Something like monitoring.

5 MS. LARDENT: Well, the problem with monitoring, I am
6 afraid to say, is that one issue that never seems to get dealt
7 with in monitoring is the quality of legal work by programs. I
8 wish it did because then perhaps Mr. Wear would have a more
9 favorable view of the programs.

10 MR. VALOIS: If we had time records, it would probably
11 help a lot in evaluating.

12 MS. LARDENT: Well, you know, the gentleman -- is it
13 Mr. Ades; I cannot remember?

14 CHAIRMAN HALL: It was Mr. Ades.

15 MS. LARDENT: He talked about time records as a
16 measure of quality control. We asked our attorneys -- we did,
17 in fact, ask our attorneys, private attorneys, the number of
18 hours that they handled a case. I reviewed each one of those
19 closure forms personally.

20 Again, I do not pretend to be an expert in all areas,
21 but I used to handle SSI and landlord/tenant and family law.
22 Those hours were all over the place. I do not see that they

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1 have anything.

2 Frankly, I think it is very difficult -- it was very
3 difficult for me at least to establish a correlation between
4 hours and quality. I think that the only way you can do that is
5 really to perhaps have a sense of what -- for a person seeking a
6 particular type of relief, what would be an appropriate series
7 of steps for an attorney to take.

8 We used to ask people, for example, whether they did
9 discovery and what kind of discovery; whether they found
10 interrogatories, whether they went in and got temporary orders
11 and that type of thing.

12 That is going to vary from program to program and
13 state to state. In Massachusetts, if you are representing a
14 tenant, a landlord/tenant case, and you do not file
15 interrogatories, you have not done a good job.

16 In Texas, you may not even be able to file
17 interrogatories from landlord/tenant cases. I do not know. So
18 it is something that is very localized and quite specific. I do
19 not know that hours, frankly, would be helpful. It was not
20 helpful to me in trying to figure it out.

21 MR. VALOIS: Do you think they accounted their own
22 firms as to how many hours they spent on that?

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1 MS. LARDENT: They did. I know they did.

2 MR. VALOIS: Do you think I am going to have to
3 account to the state bar? North Carolina is considering a 40 to
4 60 hour annual mandatory service?

5 MS. LARDENT: I am not in favor of mandatory public
6 service. I would say that what the -- again, what the second
7 man who did pre-paid said was true. What I am sure, Bob, what
8 you think you would find in your firm which is that -- I keep
9 time records.

10 I am a private consultant. I bill people. I have a
11 number of varied clients. I try to keep my hours. I try to be
12 as rigorous as I can. I keep them on a daily contemporaneous
13 basis.

14 Yet, I would not say that they are the most accurate
15 record despite how much I try. I would not say that they
16 measure my quality.

17 MR. VALOIS: I will not tell any of your clients.

18 MS. LARDENT: Actually, there is one of my clients in
19 the audience. It is too late now. Thank you.

20 CHAIRMAN HALL: Thank you. There is nothing else, is
21 there, for this witness? We do have Mr. Rhudy who is going to
22 speak to us.

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1 (No response.)

2 CHAIRMAN HALL: I will ask him to come forward,
3 please. Good afternoon.

4 PRESENTATION OF ROBERT RHUDY

5 MR. RHUDY: Thank you, Mr. Hall, good afternoon. I am
6 Bob Rhudy, the Executive Director of Maryland Legal Services
7 Corporation. I am also the vice president of the National
8 Association of IOLTA programs. I am here on behalf of the first
9 organization, not necessarily the second this afternoon.

10 I did not realize that there would be discussion about
11 the IOLTA programs today, so I really did not intend to make a
12 presentation. There are a few things raised in Kathy
13 DeBettencourt's presentation that I would like to address,
14 respond to, and some questions that were raised by Mr. Uddo and
15 others that I would like to try to respond to as well.

16 I think it is valuable for the Legal Services
17 Corporation to look at the experience of the IOLTA programs
18 across the United States. They are an expanding source of funds
19 for legal services. It is an opportunity to look at what is
20 being done in the 49 jurisdictions, locally controlled programs
21 across the United States, how they are responding to the needs
22 of civil legal services within their jurisdictions.

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1 I think I would probably not agree that they create an
2 experience of competitive bidding. I think that they are grants
3 programs, very much as your grants programs. I do not really
4 think we are doing competitive bidding as such, but I think they
5 are doing a number of things that is of interest, perhaps, to
6 you and they certainly made a contribution to legal services
7 across the country.

8 I am going to talk mostly about what is happening in
9 Maryland, but I will also make some general references to what I
10 see IOLTA doing across the United States as well. I am somewhat
11 familiar with the IOLTA programs across the United States.

12 It has expanded a great deal since 1982 when it was
13 first created in Florida and now almost throughout the United
14 States, with the exception of Indiana and West Virginia. I hope
15 those jurisdictions also come on board at some point.

16 The purpose of IOLTA initially was to raise funds to
17 replace funds which were lost in the major cutback in the
18 federal appropriations for the Legal Services Corporation. I
19 think you need to be aware that the first purpose of most of
20 these programs was to put funding back to your LSC grantees.

21 To somewhat answer that, in most instances you look at
22 other activities and other purposes and other grantees to

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1 receive those funds. Maryland Legal Services Corporation Act is
2 very much modeled on the federal Legal Services Corporation Act.

3 It was passed by the Maryland General Assembly in
4 1982. I was a managing attorney at the Legal Aid Bureau when
5 the program was created. I was involved with the General
6 Assembly when that bill was created.

7 We have a Board of Directors that is appointed by the
8 governor, confirmed by the Senate. It is a nine member Board of
9 Directors; five are attorneys, four are nonattorneys. The
10 purpose of the Maryland Legal Services Corporation is to raise
11 money, make grants to civil legal services programs to provide
12 services to income eligible clients.

13 We use an income eligibility guideline that is
14 somewhat harder than yours, although most programs that we give
15 money to, in fact, use the federal guideline because there
16 simply are not enough resources to serve those persons who are
17 above that level at this point.

18 IOLTA is the primary source of our funds. We make
19 grants for almost \$2 million annually at this point. IOLTA
20 constitutes a little over half of that and we expect IOLTA,
21 since it became mandatory a couple of months ago, perhaps to
22 triple in the next year or so. So we hope to provide a lot more

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1 funds than that for those purposes.

2 We also get some monies from the state, \$500,000
3 annually in a grant to us from the state that we use to offer
4 grants to legal services programs. The state of Maryland makes,
5 in addition to the funding that comes through us, approximately
6 \$4 million in grants directly to legal services programs, most
7 of the Legal Aid Bureau of Maryland, a state that wishes a
8 presubstantial amount of state funding activities for civil
9 legal services.

10 You may look at the experience of that, in addition,
11 when you try to see other models of funding legal services
12 across the country. The major standard, the primary standard
13 for how we make grants is, we should make grants for high
14 quality, effective, statewide legal services and in a manner
15 that preserves the attorney/client relationship, very much like
16 your type of standards.

17 They are very general, very broad. Our act
18 specifically named three programs that should receive funds from
19 us and then other programs that we see as appropriately: the
20 Legal Aid Bureau, the Maryland LSC grantee; the Maryland
21 Volunteer Lawyer Services which was created in 1981 to
22 administer pro bono across the state; and also what is now the

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1 Maryland Disability Law Center.

2 Those three programs continue to receive about 75
3 percent of the funding that we make annually. It is interesting
4 that none of those programs have been reduced in the funding
5 that they have gotten from us.

6 In fact, as our funding has gone up from around
7 \$250,000 or \$300,000 the first year to nearly \$2 million now,
8 their funding has gone up as well. Our act also -- and this is
9 one correction I will make on Kathy's presentation -- does have
10 what I think is essentially a presumptive refunding standard
11 that any grantee who we take funds from is entitled to a
12 hearing.

13 We have to show that there is basis to reduce their
14 funding or defund them. We had, in fact, defunded one grantee
15 last year when we found that they were not complying with the
16 grant under which we had made funding available to them.

17 They did not ask for a hearing. There was an
18 agreement between us and them that they were not able to comply
19 with the grant conditions that we required. I think there was a
20 finding by our general assembly that the percentage of refunding
21 principle served a very valid purpose.

22 It is very difficult to displace funding, displace a

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1 grantee, displace services when you have an ongoing relationship
2 between legal services program and its clients. There should be
3 a burden of showing that the grantee simply is not complying
4 with the contract under which you made the funds available.

5 That is not a burden that is impossible to meet. You
6 have defunded organizations; we have defunded organizations. I
7 think the burden on you and the burden on us is to create
8 standards and conditions and contract terms under which both
9 sides understand what the relationship is, what the basis for
10 the funding is, what the basis for the defunding or reduction in
11 funds, if that is the term.

12 This competition in Maryland's program and I think
13 across the country for programs for expanded funding, for
14 programs to determine to identify -- to have us identify what
15 priorities for funding the increased IOLTA funding is.

16 In 1983, the year after the Maryland Legal Services
17 Corporation was created, there was a contract study performed
18 partly with funding from the state, partly with our funding
19 performed by a law professor and others at the University of
20 Maryland to help us identify what the criteria for funding ought
21 to be.

22 One of the major purposes, as identified in the Act,

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1 certainly was to restore funding to programs like the Legal Aid
2 Bureau who had suffered reduction in funding the prior year. We
3 also identified types of client groups that were perceived to
4 be, on a statewide level, as particularly in need for additional
5 legal services, institutionalized persons, type of persons that
6 are very, very difficult to, I think, create a competitive grant
7 through the private bar and, in some instances, take on; abused
8 persons, homeless persons.

9 We did another study in 1987 and 1988 that resulted in
10 what is called the Action Plan for Legal Services to Maryland's
11 Poor in which we looked again at the priorities that were
12 established in 1983 and looked again at what the priorities
13 should be.

14 So on a statewide basis, there has been an
15 establishment of priority to some degree. I think on a
16 statewide basis, just as you require all grant programs to
17 identify priorities, I think states are an ideal base to do
18 priority identification as well, working with your legal
19 services programs and others.

20 We used those two studies as a basis for evaluating
21 new grants to come in to determine is that an area in which
22 there is a high priority. For example, with the new IOLTA

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1 funding, as soon as we are able to get a sense of how much that
2 is going to be -- the program was started in July of this year--
3 - we intend in December and January, if we have a good fix on
4 what the increase will be at that point, to give additional
5 funding for expanded services to nursing home persons across the
6 state of Maryland.

7 We have identified that as an underserved population.
8 We are also going to fund in early 1990 a statewide study based
9 on, modeled on the past year's action plan for legal services of
10 Maryland's poor to have an action plan on how to expand services
11 in domestic relations cases, to look at a range of legal
12 services approaches, using, perhaps, the private bar staff
13 attorney programs, alternative dispute resolution approaches and
14 a whole range of ways to better serve a type of case that I
15 think all of us agree, staff programs and others, that are not
16 being adequately met at this time.

17 We are going to also look at increased effective
18 monitoring approaches to make sure that as new money becomes
19 available, we are using those in a most efficient manner. A
20 major priority is also identified as to expand salaries for
21 legal services attorneys.

22 There is not a question in any of our board member's

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1 minds that when you ask attorneys to start at Legal Aid Bureau
2 and the other programs in the state at \$19,000 and \$20,000, that
3 you are going to experience turnover.

4 You are going to have a hard time recruiting and
5 retaining the people that you want to manage the services to the
6 low income people.

7 A question was raised about how we do evaluations of
8 legal services applications or ongoing grants. We solicit
9 applications in Maryland. This is fairly consistent, I think,
10 with most programs with some degree of a range of maturity
11 across the country.

12 Somewhat as you do, on an annual basis, we solicit
13 applications for funding. The staff works very closely with
14 programs that express interest in receiving Maryland Legal
15 Services Corporation funds to make sure that they are eligible
16 grantees, that they are able to perform and that they are
17 providing an application for service that the board has an
18 interest in funding.

19 The idea is when an grant application comes in, to
20 make sure that the grantee has an idea of how realistic it is
21 for them to get funding, to know what our funding levels are,
22 how much money is available, and hopefully to the point where

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1 when the grant application actually comes forward, ideally for
2 the staff to be able to encourage the board to look very
3 seriously at that in competition with the other funds for
4 expanded funding.

5 A member of the board of directors and a staff person
6 goes out at the point where the application is actually
7 received, meets with a member of the staff, the staff director,
8 the member of the board in most instances, and other persons and
9 evaluates the capability of the program including discussions
10 with the client community, the bar association and others.

11 In a state like Maryland, you generally know the
12 providers well. It is one of the, I think, advantages in terms
13 of the statewide program to come back with a recommendation to
14 the board whether to approve the grant in whole, in part, and
15 determine special grant conditions on how that grant will be
16 evaluated in the coming year.

17 With the prior year's grant applicants, we do the same
18 thing. We have identified areas in which we would like to see
19 the program work to give more attention to if there are
20 weaknesses in the program.

21 For grant conditions the following year, we address
22 those. That is the primary basis in terms of the subsequent

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1 year's monitoring visit to see if those conditions have been
2 addressed and improvements have been made and whether to
3 increase funding, continue funding, continue to express concerns
4 in those areas.

5 Something that I think is a general statement. I have
6 worked in Legal Services for 11 years at this point, in legal
7 services programs in a grant making capacity and other
8 capacities.

9 I have been in private practice for three or four
10 years. How you create at this point criteria and standards to
11 do a competitive bidding analysis of a full range legal services
12 program, I think is a monumental task.

13 I do not feel capable of doing it at this point. It
14 is something that we are working on in Maryland. It is a
15 desirable goal. I would encourage you to continue working on
16 it.

17 I will continue working on it. I think IOLTA programs
18 across the country offer the opportunity of a laboratory of 49
19 jurisdictions at this point to continue working on how you make
20 these decisions.

21 I do not think any of us have the ability to do it at
22 this point. We are not talking about evaluating who can do a

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1 divorce or an adoption or a single type of service. We are
2 talking about a full-range legal services program that offers
3 community legal education, intakes, screening, referrals,
4 administration, grant making, development activity, policy
5 advocacy, like it or not.

6 Congress still permits it. Many programs across the
7 country encourage it, desire it. They are a very broad service
8 organization that has developed over the past 20 years. I would
9 be very reluctant to set up a mechanism to replace them until I
10 know what I am doing.

11 I really do not think any of us have that sense at
12 this point. We do have the ability to identify a program that
13 is weak, that is not complying with the grant conditions. We
14 have the responsibility to go out and offer technical assistance
15 to that program, to identify the problems they are making; that
16 they are not complying and they need to improve their services.

17 When you can identify to yourself and to them, you
18 have got the ability to do it by working with bar associations
19 and client groups that the program needs to improve. I think
20 you have the obligation, because of the real disruption to the
21 clients who are being served in that program, to try to improve
22 the program before you defund it.

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1 I think the Legal Services Corporation Act envisions
2 that approach. I know the Maryland Legal Services Corporation
3 Act does. That is our obligation. That is our responsibility
4 and we can do those things.

5 There are strong programs. There are weak programs. I
6 think many of the programs, most of the programs, an
7 overwhelming majority across the country of legal service
8 grantees are doing a good job.

9 They need more resources. I think all of us have the
10 obligation to try to advocate for the expansion of resources to
11 help them do their jobs better, to raise the salaries to bring
12 more staff on.

13 When I have been contacted in Maryland by pre-paid
14 legal insurance programs that were interested in getting funds
15 for us to replace Legal Aid Bureau or other programs, most of
16 them are shocked when I tell them how much money there is
17 available and they are not interested in that point.

18 They are looking for two or three times the amount of
19 money on a per capita basis than I can supply and I think that
20 you can at this point.

21 Speaking for myself, and it is a view that is somewhat
22 shared by other IOLTA program directors across the country and

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1 board members, I would like to see this program help maintain
2 that base of service that has developed over the past 20 years.

3 Let's work together to improve it. I do not think at
4 this point that we really have the data and the methodology to
5 put in place a really broad-based competitive bidding approach.
6 I think the states will have the opportunity, since they have
7 set up programs with a great deal of variation.

8 In the 49 across the country, some of them are
9 operated by bar foundations. Some of them are nonprofit
10 organizations that are primarily affiliated with the courts.
11 Some of them are free-standing legal services programs like ours
12 and some others.

13 Massachusetts are modelled somewhat on the federal
14 Legal Services Corporation. I think we are going to get some
15 really good experience out of what is going on on a state-by-
16 state basis.

17 I think on a state-by-state basis you have the
18 opportunity to create a relationship of trust and a relationship
19 where you really know the actors and the needs pretty well. We
20 are still at the developing stages.

21 I look forward to seeing how we develop in the years
22 ahead. I think that I would be -- conceptually, theoretically,

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1 competition is -- competitive bidding is attractive. I really
2 do not think that we have the methodology to apply it at this
3 point.

4 I think it is a real statement of trust that those 49
5 IOLTA programs across the country -- it is my sense that more
6 than 80 percent of the funding that they give out to legal
7 services programs go to your grantees.

8 They do not have to do that. We do not have to do
9 that. In fact, whereas we are experimenting with different
10 programs, different models, trying to hit some services that are
11 gaps and weaknesses, I think we feel like our money is being
12 used well by funding the same programs that you are at this
13 point.

14 CHAIRMAN HALL: Where would your money go if we had
15 competitive bidding?

16 MR. RHUDY: If we had competitive bidding?

17 CHAIRMAN HALL: Where would your money go, IOLTA
18 money?

19 MR. RHUDY: In Maryland, I think it would probably go
20 do the Legal Aid Bureau. I mean, the Legal Aid Bureau gets 50
21 percent of our funding at this point in Maryland. I think if we
22 had a wide open competitive bidding system, I do not think you

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1 would have any real change on that in Maryland.

2 CHAIRMAN HALL: It would not do away with IOLTA?

3 MR. RHUDY: If you had competitive bidding or if we
4 had competitive bidding? I am not sure I understand your
5 question.

6 CHAIRMAN HALL: If the current system was replaced by
7 competitive bidding, if our recipients were no longer given
8 their grant and it was replaced by a competitive bidding system.

9 MR. RHUDY: It depends on how it was operated. It
10 depends on what the standards were. I mean, that is the
11 question. What are you bidding on? Are you bidding to do
12 divorces?

13 Are you bidding to be a legal services program that
14 has a lot of expectations? The question is how you design the
15 contract, what the RFP is and how it is administered. That is
16 sort of hard to answer that question in abstract.

17 I think that is a hard question on how you can
18 implement, design, operate, administer a competitive bidding
19 system in a way that is objective, is rational, is well managed,
20 is cost effective; the administration of operating a system like
21 that, the cost.

22 So I cannot really answer the question in abstract,

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1 Mr. Hall.

2 CHAIRMAN HALL: Apparently you are satisfied with the
3 current system; that they do a good job and that is why you give
4 your money to them?

5 MR. RHUDY: That is correct.

6 CHAIRMAN HALL: Have any questions?

7 (No response.)

8 CHAIRMAN HALL: Mr. Rhudy, I appreciate it. Thank you
9 very much.

10 MR. RHUDY: Thank you for your time.

11 CHAIRMAN HALL: I think you are our last speaker
12 today. We are going to recess and we are going to reconvene
13 tomorrow at 9:00 a.m. So everyone is invited to return. I do
14 not want anyone to think that we had finished up because we have
15 gone through most of the public comment.

16 If there is no objection, we are going to be in recess
17 until 9:00 in the morning.

18 (No response.)

19 (Whereupon, the meeting of the Legal Services
20 Corporation was adjourned until 9:00 a.m. on 8/25/89.)

21 * * * * *

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