

LEGAL SERVICES CORPORATION
Board of Directors
Provision for the Delivery of Legal Services
Committee Meeting
and Hearing

April 7, 1992
10:15 a.m.

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

Board Members Present:

J. Blakely Hall, Chairman
Howard H. Dana, Jr.
Jo Betts Love
George W. Wittgraf
Jeanine E. Wolbeck
Basile J. Uddo

Staff Present:

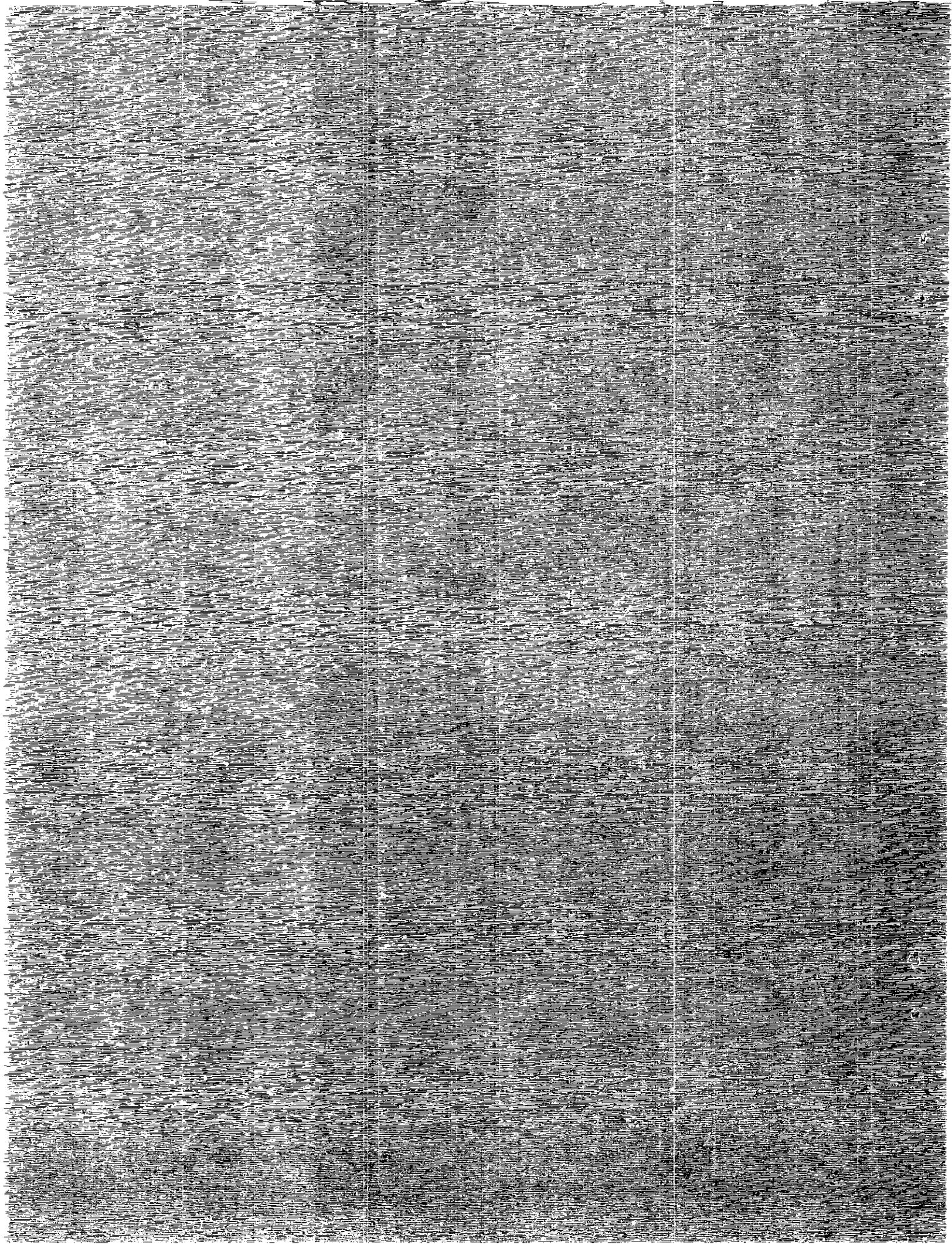
John P. O'Hara, President
Emilia DiSanto, Acting Vice President
Patricia Batie, Secretary
David Richardson, Treasurer and Comptroller
Victor Fortuno, General Counsel

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P R O C E E D I N G S

1
2 CHAIRMAN HALL: It is getting late, and we have a
3 lot of speakers today. Our court reporter has told me that
4 she has had a malfunction with her machine, and I think she
5 is depending on us to speak clearly and speak into the
6 microphone today to take down most of this. Is that correct?
7 So if everybody would try to recall that.

8 This is the meeting of the Provision for the
9 Delivery of Legal Services Committee. Jeanine Wolbeck and Jo
10 Betts Love are sitting today, as well as Basile Uddo, our
11 chairman, George Wittgraf, and Howard Dana. And there may be
12 other board members about. I see our president, Jack O'Hara,
13 as well.

14 Today, we have a number of speakers who are going
15 to give us different viewpoints on alternate dispute
16 resolutions, what it is, how it is done. Perhaps we can
17 explore the role of the Legal Service provider in this area.
18 I will get right into it.

19 I do want to say in the beginning, though, if there
20 is anyone who has anything to say or wants to speak that is
21 not on this published list of speakers, if they would let
22 Chris Sundseth know, and Chris is the gentleman with his hand

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1 up over there, he can let me know, and give him a sense of
2 time, and so forth, on what you may need.

3 With that, I will begin the meeting by asking for
4 an approval of the agenda as it is printed in the board book.

5 M O T I O N

6 A PARTICIPANT: So moved.

7 CHAIRMAN HALL: I have a motion to approve it.

8 A PARTICIPANT: Second.

9 CHAIRMAN HALL: A second. All in favor, say aye.

10 (A chorus of aye.)

11 CHAIRMAN HALL: The agenda as printed is approved.

12 I will move on to the second topic, which is the public
13 comment on alternate dispute resolution mechanisms. Our
14 first speaker is Mrs. Martha Hill Jamison. She is an
15 attorney. She is from Houston, correct? She is a mediator.
16 She is with U.S. Arbitration and Mediation of Texas. And
17 with that, I welcome you to Austin. She has a flight to
18 catch, and so we will give her our best attention.

19 STATEMENT OF MARTHA HILL JAMISON

20 MS. JAMISON: Thank you very much. I represent
21 United States Arbitration and Mediation. We are an
22 international network of 47 regional offices in the United

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1 States, Canada, and Europe rendering attorney mediator
2 services. I am the chairman of USAM Texas with
3 responsibilities for the southern half of the state. We are
4 one of the oldest for profit organizations in this burgeoning
5 new industry.

6 Alternative dispute resolution, or ADR, is more
7 than a fad or even a trend. It is a fundamental change in
8 the way people, the public approaches problem-solving. A
9 proactive use of ADR could dramatically change the ability of
10 all of us to deliver legal services to the people of the
11 United States.

12 I have brought with me a rather painless videotape
13 that I think might help just set the tone for all the public
14 speeches today. There is a segment of Good Morning America
15 that aired the day of the flood a couple of weeks ago
16 -- those of you who were in Houston -- and then last May on
17 the Today Show there was another segment, and they will
18 follow one after the other, and then I will cut off the last
19 bit of the videotape.

20 (A videotape was shown.)

21 MS. JAMISON: They knew they were going to be on
22 national TV, and they don't want to be perceived as weak, so

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1 right at the last minute Allen had to kind of save the day.

2 CHAIRMAN HALL: You're telling us that wasn't
3 rehearsed?

4 MS. JAMISON: It was real. They ended up
5 structuring, I think, \$3,000 or something. I have some
6 materials that I will pass out in just a few minutes, but
7 basically, the services of our company fall into three
8 primary areas, consulting, training, and the rendering of
9 arbitration mediation services such as was portrayed in the
10 video.

11 In consulting, that would include designing various
12 techniques for resolving problems, creativity being the key,
13 or volume claims. For example, a state attorney general's
14 office, such as in the State of Washington, might file a
15 -- have a consumer protection complaint, either in the area
16 of a lemon law, or might have filed suit against a chain of
17 health clubs, and those claims need to be processed.

18 And if they could be done outside of the port
19 system and through more of a quasi-administrative system that
20 was agreed to by the participants, our company has done such,
21 and that takes a lot of the administrative overload off of
22 the state agency or the individual litigant. Those are some

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1 of the ideas that can be developed in a specific situation.

2 Normally, the defendant in that area would bear the
3 cost of developing and administering that system. That
4 relieves administrative cost, staffing, and other concerns.

5 Our second area of service are the mediation,
6 arbitration services. Now, ADR encompasses many different
7 techniques, including mediation, arbitration, mini-trials,
8 summary jury trials, and hybrids that have been created for
9 specific situations of the above. Our current case load is
10 more than 80 percent mediation. So I will be focusing my
11 remarks really to that technique, but it is not meant to be
12 exclusive of the other techniques that are available.

13 Mediation reduces time and expense, and can defuse
14 or retard hostilities between parties. It can give the
15 general public more access to meaningful justice, as well as
16 a greater control over the result that is achieved, and it
17 can probably been why it has gained in popularity over the
18 last several years.

19 Our company primarily uses attorneys as mediators,
20 except in specific certain instances, particularly in the
21 area of construction, where sometimes an architect or an
22 engineer is more readily accepted among the parties than an

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1 attorney might be, but we have a specialized panel of those
2 non-attorneys and attorneys with specific experience in
3 construction.

4 Our policy is not to mediate with pro se claimants.
5 I was explaining before the session started that sometimes
6 when you have an attorney as a mediator and you are in a
7 private section with a pro se claimant, it is very difficult
8 for that claimant not to think that you are giving legal
9 advice. It is a real hindrance to the mediation process.

10 We need to develop, and this is something you all
11 might give some consideration to, a team of lawyers who would
12 volunteer to represent claimants during a mediation session
13 only, not necessarily to sign up as counsel of record on that
14 case, but who could serve in a limited capacity to facilitate
15 mediation and allow that claimant to have equal footing for
16 the day through the mediation session.

17 CHAIRMAN HALL: Ms. Jamison, that would kind of cut
18 out your business, though.

19 MS. JAMISON: No, our attorneys would be, as Mr. Al
20 Haddock was in the film. He would be still the facilitator.
21 What we need is a team of lawyers who would be advocates.
22 Does that make sense?

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1 CHAIRMAN HALL: Yes, I understand.

2 MS. JAMISON: Who would represent the claimant.

3 CHAIRMAN HALL: That's in a pro se situation?

4 MS. JAMISON: Right, would represent the pro se
5 claimant for the course of the mediation session. The third
6 area of our services has to do with training. We have
7 trained HUD investigators in conflict resolution skills to
8 help them to be more effective in dealing with the public.
9 We have trained thousands of attorneys and claims handlers in
10 how to use ADR, either as neutrals or as advocates,
11 particularly in the mediation field.

12 We help them understand the processes, identify the
13 proper cases that might be resolved through an ADR technique
14 rather than having to go to litigation, and help them
15 actually participate in the mediation and arbitration, and
16 sometimes serve as the neutrals in those.

17 We have also trained mediators for in-house
18 mediation with human resource personnel or as an in-house
19 ombudsman to help companies or organizations resolve their
20 own disputes in-house that may come up. We draw upon
21 trainers from around the country, and we are experienced at
22 customizing training programs.

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1 United States Arbitration Mediation offers full
2 service ADR, and we would be happy to provide you with
3 further information on our service, our program, or more
4 information about the company. As I say, I have these
5 brochures that will give more information, and I would be
6 happy to answer any questions that you might have about
7 either the tape or my remarks.

8 CHAIRMAN HALL: Thank you. Do any of the committee
9 members have any questions?

10 (No response.)

11 CHAIRMAN HALL: Do any of the other members of the
12 board have any questions? Mr. Dana?

13 MR. DANA: Is your company a for-profit company?

14 MS. JAMISON: Yes, we are.

15 MR. DANA: Is your stock traded on the Texas or
16 national stock exchange?

17 MS. JAMISON: No, we are closely held. Each
18 individual office is locally owned and operated. We are
19 networked, but we are not a national corporation at this
20 time.

21 MR. DANA: What kind of quality control is there?

22 MS. JAMISON: We have I guess you would say unified

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1 training. The gentleman you saw in the film, Allen, Al
2 Haddock, trains all of our mediators that we have across the
3 country, or someone he has trained may train. We will go one
4 generation away, and so, we have a uniform training. It's an
5 excellent training program that has been -- I shouldn't say
6 copied, but I will say duplicated by other organizations, and
7 it is very highly regarded.

8 We also administer evaluations following every
9 mediation session. I send it to all the participants on all
10 sides, and when those comments come back, if there is a
11 problem, we try to address it while protecting the anonymity
12 of the person who is giving the comment through additional
13 training, and we have advanced mediator training, and we have
14 newsletters and various things to keep people abreast of new
15 emerging techniques.

16 MR. DANA: The feedback comes to the national?

17 MS. JAMISON: It will come to the local office. It
18 will come to each local office.

19 MR. DANA: Thank you.

20 CHAIRMAN HALL: Jo Betts.

21 MS. LOVE: The client in the film, how much of the
22 funds does she receive after she settled?

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1 MS. JAMISON: In the second one? Of course, I
2 wouldn't know what her arrangement is with her attorney. I
3 don't know if she was paying her attorney by the hour or
4 whether they had a percentage arrangement, but that is
5 between her and her attorney. Is that your question?

6 And so, I would assume that the attorney probably
7 in that case also probably -- I don't know for sure, but
8 probably the insurance company underwrote the entire
9 mediation, so she probably didn't have to pay anything for
10 the mediation. Sometimes the parties split the fees in half,
11 and in Texas, if it is court-ordered that is the normal
12 model, is that all the participants split the fee in terms of
13 the number of parties.

14 CHAIRMAN HALL: Ms. Jamison, has your firm ever
15 mediated any cases that involved Legal Service lawyers?

16 MS. JAMISON: Not that I am aware in Texas. I will
17 be happy to make an inquiry among the network.

18 CHAIRMAN HALL: Mr. Dana.

19 MR. DANA: Is one of the factors that motivates
20 your business the high cost of legal fees?

21 MS. JAMISON: I would say that is probably the
22 Number One driving force. The Number Two is the avoiding an

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1 kind -- the stress of actually going through trial. Also, a
2 few of our courts in Texas are a bit backlogged, and so we
3 have people who would rather try to settle it rather than
4 wait several years.

5 MR. DANA: Have you had any personal experience
6 with a mediation in which one side, while represented by
7 counsel, was not paying his or her counsel?

8 MS. JAMISON: You mean, was that their arrangement,
9 or is that the way it ended up?

10 MR. DANA: That's the arrangement.

11 MS. JAMISON: Again, I wouldn't be inquiring into
12 the arrangements between counsel. I know that we -- my
13 partner and I fairly regularly volunteer our services with
14 the county dispute resolution center, and you will probably
15 hear from probably the Travis County Dispute Resolution
16 Center later today, if not other agencies, so that is a way
17 that a mediator can volunteer their services. Again, we
18 don't really have an avenue that I am aware for someone to
19 volunteer to serve as a mediator for a day.

20 Certainly I am very aware of lawyers who have said,
21 "I'm not going to charge my client for this case," or, "In
22 order to settle the case, I'm going to waive my fee," and

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1 I've had that just come up rather incidentally through the
2 course, but I would not inquire beforehand what their
3 arrangement is.

4 MR. DANA: Thank you.

5 CHAIRMAN HALL: Chairman Wittgraf.

6 MR. WITTGRAF: Ms. Jamison, has your office or have
7 any of the other offices, so far as you know, been involved
8 in any disputes involving farmers or agricultural producers
9 on one hand and migrant workers on the other hand?

10 MS. JAMISON: I wish I had a greater depth of
11 knowledge, but I am aware that there is a significant pilot
12 program in the midwest, and I would be happy to get you all
13 some further information similar to the construction law
14 program that we have. There is a specific farmer's program
15 that --

16 MR. WITTGRAF: The ombudsman program operated by
17 private non-profit corporation called Proteus? Is that the
18 one you are thinking of? Do you know? Involving Pioneer
19 Seed?

20 MS. JAMISON: I'm not sure, but I will --

21 MR. WITTGRAF: No, that's fine. I think that is
22 the one you are referring to. Your office, so far as you

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1 know, either yours here in Texas or any of the other offices
2 across the country, haven't been involved in any of those
3 kinds of dispute resolutions or mediation?

4 MS. JAMISON: Well, they have had some programs
5 where they have facilitated between banks and farmers, and I
6 know that for a fact, but I just don't have the details of
7 who the parties were on either side, and who developed the
8 program, but I am aware that there is a program in the
9 midwest, and I apologize that I don't have more information
10 on that.

11 MR. WITTGRAF: That's fine. Thank you.

12 CHAIRMAN HALL: Ms. Jamison, you mentioned that you
13 all do training.

14 MS. JAMISON: Yes, we do.

15 CHAIRMAN HALL: What is the cost of that? Can that
16 be -- it may be depend on what training.

17 MS. JAMISON: It may depend on the number of
18 participants, and how far they have to bring the trainer in
19 from, and the duration of the program. I am sure it could
20 probably run from almost nothing to probably \$500 per person.
21 I am sure something could be developed.

22 CHAIRMAN HALL: Are there any steps that have to be

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1 taken before a case is ready for mediation? When do you know
2 when a case is ready or can be mediated?

3 MS. JAMISON: If the case can be evaluated by
4 either side, it doesn't matter if they agree on the
5 evaluation of the case, but if it can be evaluated, for
6 example, in an injury case, if someone is still being treated
7 by a doctor, perhaps it can't quite be evaluated yet, but if
8 a value, a market value can be placed on the case by both
9 sides, then it can be mediated.

10 Also, you would want to ascertain whether face-to-
11 face or telephonic negotiations had been attempted, and make
12 sure that it can't be settled by traditional negotiation and
13 there is some kind of a communication problem that would
14 necessitate the mediation session.

15 CHAIRMAN HALL: Do you know you all's rate of
16 success? I am sure you do.

17 MS. JAMISON: It is greater than 80 percent of the
18 cases settle, most of them at the mediation session, although
19 sometimes there will be some follow-up work that would need
20 to be done.

21 CHAIRMAN HALL: Any other questions? President
22 O'Hara?

1 MR. O'HARA: Thank you, Mr. Chairman. Ms. Jamison,
2 the question I wanted to follow up on was the chairman's
3 regarding mediation skills training for human resource
4 departments. Is that done at your location? Is it done on a
5 regular or irregular basis?

6 MS. JAMISON: Our office has not sponsored that
7 training in the last year. I know our Chicago office has
8 done that fairly recently and actually fairly regularly, and
9 it is something that just, as the need arises, we can tailor
10 something that will meet the needs of those who are
11 requesting that service to be done.

12 MR. O'HARA: So that, for instance, if I had an
13 attorney in the human resources department or someplace in
14 the corporation that I wanted to send to your training, that
15 could be done? You have classes scheduled at different
16 times?

17 MS. JAMISON: Certainly.

18 MR. O'HARA: Thank you.

19 CHAIRMAN HALL: Are there further questions?

20 (No response.)

21 CHAIRMAN HALL: If not, thank you very much for
22 coming.

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1 MS. JAMISON: Thank you so much.

2 CHAIRMAN HALL: Our next speaker will be Bob Byrd,
3 Robert Byrd, the executive director from Gulf Coast Legal
4 Services. Bob, would you come forward, please?

5 STATEMENT OF ROBERT BYRD

6 MR. BYRD: Good to see you, Blakeley.

7 CHAIRMAN HALL: Nice to see you.

8 MR. BYRD: Good to see you in our home state.

9 CHAIRMAN HALL: True. This board has had a good
10 time in Texas. I can tell you that.

11 MR. BYRD: You almost had to guarantee it, didn't
12 you?

13 CHAIRMAN HALL: Well, they have all told me they
14 have had a wonderful time, so I am very proud.

15 MR. BYRD: My name is Robert Byrd. I know many of
16 you. Glad to see you again. I am the executive director of
17 Gulf Coast Legal Foundation in Houston, and I am here to tell
18 you the exciting news that Legal Services people across this
19 country have actively been engaged in exploring ADR for some
20 years now, and I'd like to talk to you about my experience in
21 Houston. There will be others here who will talk about their
22 experience elsewhere in this country.

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1 The fact is that mediation can be a fantastic
2 resource, and this board, I am happy to see, is expressing an
3 interest in it, and hopefully will follow up that interest
4 with an exploration of methods for nurturing negotiated
5 resolution of conflict, alternative dispute resolution.

6 Our experience with this and primarily what I'd
7 like to talk about in terms of mediation experience is in two
8 very large cases in my office. One is the Allen Parkway
9 Village housing site, which has been in conflict for 12 years
10 and only now may be -- may be -- nearing resolution, but by
11 mediation, not by court action. It was mired up in the
12 courts for a decade before there was any inkling that a
13 resolution might take place.

14 We identified a resource for mediation services in
15 Conflict Mediation, Inc., located at Cambridge, Mass. It is
16 associated with the Harvard Law School Program of
17 Negotiation. The professor of negotiation there, Roger
18 Fisher, is one of the founders of Conflict Management, Inc.
19 I highly recommend them because of their involvement in Allen
20 Parkway Village and the second case I will discuss in a
21 moment.

22 The Allen Parkway Village site is a mere 38 acres.

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1 It has on it now 1,000 units of housing but only 35 of those
2 units are occupied, so, when people are talking about the
3 opportunity cost involved in going to court, the fact that it
4 takes so long to get something through court, there is no
5 more real expression of the cost of time than what has gone
6 on at Allen Parkway Village, the fact that over time people
7 have moved out to the point that there are so few units
8 actually occupied, but yet, because it is all in court,
9 nothing can be done with those remaining units, but with
10 mediation, again, perhaps we can do something.

11 This site happens to be surrounded by a large
12 number of acres that are being considered for a master plan
13 development. The total value of the master plan development
14 is estimated at \$6 billion, but they do not believe, the
15 insurance companies involved and the trust that will fund all
16 of this activity, that anything can happen without resolution
17 of this housing conflict.

18 They have a variety of interests that cause them to
19 hold back any development even on their own land until this
20 matter is resolved, but they are committed to the mediation
21 process, in part because of the expertise of this firm, and I
22 believe that we will see a resolution to that conflict.

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1 We served as the attorneys to the tenants'
2 association for a number of years. Recently, by agreement,
3 we have been replaced, and we think that these parties will
4 go forward, and that a negotiated outcome is only a matter of
5 months away.

6 The second dispute we did not actually enter into a
7 representational role. We have not had to yet. We hope we
8 don't have to. The Methodist Hospital is a very large
9 hospital. It is of international note. It has doctors there
10 that do the transplants of hearts and open heart surgery and
11 so forth on major figures of world renown. The Saudi prince
12 had open heart surgery there, and so forth.

13 Methodist Hospital generates about \$220 million a
14 year in profit, and yet has been called to task by the
15 Attorney General of the State of Texas for not spending
16 enough money on indigent health care. About the same time
17 -- it is very interesting how this happened in my office. At
18 about the same time staff attorneys came to me expressing
19 concern that some clients are showing up increasing numbers
20 of people were noting that there may be a problem at
21 Methodist.

22 One of my managing attorneys received a phone call

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1 from an Attorney General staff friend who was saying, "We are
2 very concerned about this matter. We are more so concerned
3 that each year that we spend waiting for resolution is
4 another year that indigent health care is not provided. What
5 can be done?"

6 And then a member of my board advised me that there
7 was concern on the part of the board at Methodist that this
8 might generate some bad press for the hospital and, indeed,
9 another board member is the minister at my church, First
10 Methodist Church. Methodist Hospital is a wholly owned
11 enterprise in the Methodist Church. And my minister
12 approached me about his concerns over publicity.

13 And it seemed to me that having some training in
14 negotiation skills, that it was technicolor clear to me that
15 each of these parties having expressed different interests,
16 they had a common interest. Though different, they were
17 similar enough to cause them perhaps to consider alternative
18 dispute resolution.

19 I advised the folks that if Gulf Coast had to
20 become involved we would. We would intervene in the court
21 action, but that I hoped that we wouldn't have to do that. I
22 urged them to consider using CMI. They did so, and in fact

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1 retained them, and they are now actively engaged in
2 attempting to resolve that dispute, and one of the things
3 that comes about in pursuing mediation as opposed to court
4 action is that things can happen in a mediation that don't
5 necessarily happen in the courtroom. Take Methodist, for
6 example.

7 In other hospital cases that I have experienced
8 personally or that others in this room have experienced
9 across the country, what you wind up, as any good trial
10 lawyer ultimately winds up, is a good eulogist. You declare
11 the relationship dead, and then you have a giant trial over
12 it, and then you assess the damages, and somebody has to pay.

13 What we hope evolves from the Methodist exercise is
14 a new relationship. We hope that in fact Methodist is caused
15 to spend more money on indigent health care, but we also hope
16 that they build a relationship with the very client groups
17 that are at the table, at the mediation, to form a civic
18 community/hospital partnership to deliver those indigent
19 health care services through local neighborhood clinics and
20 the like.

21 That wouldn't have necessarily come up in a
22 courtroom. I've got to tell you. It would just be, oh, I

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1 don't know. I guess there are possible ways it might have,
2 but it is just unlikely. It is more likely that the judge
3 would say, we have to stick to the rules of evidence, and the
4 whole procedure here is rather bound by some English
5 traditions that limit our abilities to do equity.

6 We have to propose then that mediation be explored
7 as generating a lot more options, similar to what was done in
8 the videotape. The fact that at the end a structured payout
9 of the money was utilized, feature value of dollars is often
10 used by expert mediators as a method for bringing parties
11 together. Those kinds of things can happen in a mediation,
12 and they don't necessarily happen in a courtroom, so I would
13 urge you to, in fact, continue to pursue this, and I will
14 have some suggestions in a moment about some concerns, on the
15 other hand, about mediation.

16 I would like to shift now to discussing with you
17 the fact that very much related to alternative dispute
18 resolution and, in fact, every training event that I have
19 ever been involved in, including those that are done in
20 Harris County -- I am a member of the advisory board of the
21 A.A. White Dispute Resolution Center.

22 In Harris County you file a civil, and part of the

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1 court costs go to ADR, and I have been involved in doing
2 their training events, and in all that experience, I have
3 found that you always start with good negotiating skills
4 before you get to how to be a good mediator.

5 It is important to understand what causes people to
6 get into disputes, and it is important to understand how you
7 can see commonality of interest and creation of options,
8 where you can find the levels of commitment, what
9 appreciation of the relationship can be developed, and those
10 are negotiation skills. Those are not, strictly speaking,
11 mediation skills.

12 It is important for you to note that Legal Services
13 programs do negotiate to very good outcomes a lion's share of
14 the cases they close right now. You need only read your CSR
15 reports to see that. And so, the Legal Services community is
16 quite skilled at this already. However, there have been
17 efforts to enhance our skills in that regard.

18 In Snowbird, Utah, and in Philadelphia, in '90 and
19 '91, there were training events around the subject of
20 negotiation skills. Having a relationship with Harvard has
21 been helpful. A number of the members of the community have
22 been involved in the Harvard Program of Negotiation. I was a

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1 teaching fellow myself in the summer of 1991. A staff
2 attorney at Texas Rural Legal Assistance, Brian Ganson, was
3 also a teaching fellow that same summer.

4 I have an agreement with CMI whereby I have a
5 license to use certain of the materials to do training, and
6 colleagues of mine, Toby Rothschild and Carolyn Morel,
7 Carolyn Morel recently -- she has now departed from her
8 responsibility as the interim director of Pennsylvania State
9 Support. Toby Rothschild is the director of the Long Beach
10 Legal Services program.

11 The three of us do training around negotiation
12 skills, and we have done it in the fall and Massachusetts,
13 and we will be doing it this Thursday here at this hotel for
14 ABA pro bono folks. I do the training, and I have seen
15 others who do the training. There are others who you should
16 consult with about those cost questions and so forth. I have
17 some rough ideas, and perhaps can be of some assistance to
18 you.

19 I would like to now shift to -- both in terms of
20 mediation and negotiation skills there are a number of things
21 I would like to point out. First of all, we have heard cost
22 come up, the fact that \$150 an hour is charged by these

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1 services. CMI has similar rates. How do you obtain payment
2 for that? I would like to stress that it seems to me to be
3 very important for you to explore as fully as possible the
4 possibility that there are neutral third parties available
5 for funding this kind of thing.

6 Because of the groundswell of interest in this
7 country in ADR, you should seize the benefit of that interest
8 and tap as much of that money now as you can. It would not
9 necessarily be in the interest of the Legal Services
10 Corporation to fund mediators. I urge you that it is very
11 much in your interest to fund training, very much in your
12 interest also to provide technical assistance, to have
13 someone maintaining lists of mediators, lists of funding
14 sources.

15 Let me be specific. In the Allen Parkway Village
16 dispute I appeared before a third party, the Houston Housing
17 Finance Corporation. Houston Housing Finance Corporation is
18 actually a quasi-governmental entity that you have similar
19 such organizations elsewhere where you come from. That is,
20 they have the authority to issue general obligation bonds and
21 sell them, and then the revenue from the mortgages, they are
22 guaranteed by those bonds to repay those bonds. So that is

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1 what the corporation does.

2 I appeared before them and raised the figure
3 \$100,000 to pay for the fees of CMI in an effort to resolve
4 the Allen Parkway Village case. Those funds are just about
5 used up. So mediation can be itself expensive. However, we
6 know that there are at least two foundations in Houston that
7 have expressed interest in backing us up. In other words,
8 should those funds be used up, they will come in.

9 So, I would suggest to you that the best source of
10 funding for this may be foundations, even corporations who
11 are interested, but corporations who are not involved in the
12 dispute itself, neutral funding sources.

13 And I think that that is one area where the
14 corporation could be helpful from a technical assistance
15 point of view, because you are sitting in Washington. You
16 have access to a lot of information, and staff should be
17 preparing that information, I would suggest.

18 The benefits of the kinds of things that Conflict
19 Management, Inc., does, and the kinds of things that have
20 taken place in Allen Parkway Village and in the Methodist
21 case, and the kinds of things that I and my colleagues train
22 in is not limited to negotiating or mediating an outcome that

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1 comes quicker so you avoid court delay. That is important,
2 but it is not really the critical element that we see as
3 beneficial to the way we engage in our enterprise.

4 The actually most critical thing to us is to cause
5 parties to come together and develop a better relationship,
6 even if that relationship ultimately winds up in them
7 continuing to disagree, but at least by having some
8 relationship, they can continue to engage in businesslike
9 communication, so that if a resolution is possible, it is
10 more likely to happen.

11 Remember my example of the typical trial lawyer
12 being the eulogist. We do not believe it is a good idea to
13 come in and say, you know, this relationship is over and this
14 is all your fault. That is just not the way to cause people
15 to come back together, so the relationship is very important.

16 The second benefit is that we try to develop
17 outcomes that are durable, that are going to last over time.
18 That is very important, because particularly here with the
19 insurance company that agreed to a structured settlement of
20 that case, that raises some questions on the part of that
21 litigant, I am sure, about the durability of the company. It
22 is important that that be well understood and should be

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1 treated very carefully.

2 I think that also one of the benefits of the way
3 that we approach this, and it has certainly been the case in
4 both Allen Parkway Village and in the Methodist case, is our
5 ability to educate people. When you are in the courtroom you
6 can't educate the Methodist Hospital board of directors about
7 the indigent health care needs. You don't really do a very
8 good job of that because the trial really would take place
9 along the lines of, well, look what this hospital did
10 compared to their other hospitals, and that ain't enough.

11 But the sheer power of education is very important,
12 and I have seen in service case type mediations where I have
13 been the mediator that often times the most powerful tool in
14 your tool kit when you approach mediation is education. You
15 will find people's faces lighting up. You will see people
16 saying, it dawns on me now why you locked horns with me.
17 Education is something very valuable about this.

18 I want to recount to you actually that those who
19 have noticed the dramatic changes in Russia have noted in the
20 print media and so forth that those are probably more likely
21 to have occurred because of the Voice of America as opposed
22 to our defense spending. Everybody knows we had to have that

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1 defense spending. I am not going to comment on that whole
2 subject, but the point is that education is critical to the
3 changes that are taking place in Russia.

4 The same is true of the changes that might have
5 happened, didn't but might have happened in China when the
6 reporters over there said that they believed that was all due
7 to the fax machine, the fact that people were able to get
8 information quicker. I think it is no less true in mediation
9 that education is a powerful tool for doing that.

10 I would like to mention a couple of things that you
11 want to be aware of. There are mediators and then there are
12 mediators. There are some who are very good at it, very
13 artful, and then there are others who are not terribly good
14 at it, and I think it would be helpful if the staff would sit
15 down with some of us with experience to collect information
16 about that so that we can all together as a community be
17 leery of certain things.

18 Certain mediators are guilty too often of locking
19 the parties into position. Their approach to negotiation is
20 not terribly good. It is like the examples that have been
21 -- I think there is a lot of literature on this about the way
22 that Alexander Haig treated the Falkland Islands dispute, and

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1 Secretary of State Haig wasn't in much longer after that.

2 The fact is that you can cause the parties to be
3 more intransigent simply by your approach as a mediator, and
4 it is important that you have the skills to find out what the
5 interests of the parties are before you are guilty of locking
6 them into a position.

7 Others have told me, others who fortunately only do
8 service cases, and I say only because even the service cases
9 are very important, that the John Deere Tractor incident was
10 very important to that gentleman on the television show.

11 But still, I have friends who do mediation who tell
12 me, well, you now how to do this in a little bit of time is,
13 you try to bring the parties in one at a time, and you try to
14 get each of them to fill your bag with concessions, and then
15 you get them back together and you are able to take as few of
16 those concessions out of each bag as you can to develop a
17 negotiated outcome. To me, that is not good mediation
18 services. It is not a good idea to simply browbeat each
19 party into as many concessions as possible.

20 There are other drawbacks to some mediators, and at
21 a convenient time I would like to more fully explore those
22 with staff people here. I don't want to take your limited

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1 time here today, and there are many others who wish to speak
2 here. I would close on this note. There is experience out
3 there in the field with this. A lot of negotiated outcomes
4 take place already. Again, look at the CSR data.

5 I would also point out to you that mediation is
6 something that we are very interested in. There are only
7 certain types of cases in which they are a fit, but where
8 they are a fit we should fully explore it, and wherever
9 possible we should tap some of these third party resources to
10 pay the bill.

11 CHAIRMAN HALL: Thank you, Bob. Are there any
12 questions for Bob?

13 MR. WITTGRAF: Mr. Byrd, have you been involved in
14 any mediation or negotiations involving farmers or
15 agricultural producers and migrant workers?

16 MR. BYRD: I have not been involved in that, but I
17 would suggest that the corporation should get in touch first
18 with Brian Ganson at Texas Rural Legal Assistance. Perhaps
19 he has had an opportunity to use his rich skill in this area.
20 I think that is a very good idea to explore that, farm worker
21 litigation. It was, unfortunately, handled by certain
22 proposals before the Congress.

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1 I think if it had been handled from a nurturing,
2 training perspective, then we might have been able to bring
3 that to the community. That is something I had an interest
4 in doing some years ago, some of you recall.

5 MR. WITTGRAF: How does Mr. Ganson spell his last
6 name? Do you remember?

7 MR. BYRD: It is G-a-n-s-o-n. And I would
8 recommend him. He is a Harvard grad himself.

9 MR. WITTGRAF: We won't hold that against him.
10 Thank you.

11 MR. BYRD: No, we won't hold that against him.
12 Those of us who went to Texas schools understand that.

13 MR. WITTGRAF: Thank you, Mr. Chairman.

14 CHAIRMAN HALL: President O'Hara.

15 MR. O'HARA: Thank you, Mr. Chairman. Thank you,
16 Bob, for that presentation. I have a question here that
17 relates to -- I have only handled one arbitration case, and I
18 had a very interesting situation develop where it was to be a
19 binding arbitration between a very -- I won't get into the
20 company -- and a client.

21 Prior to the arbitration starting the arbitrator
22 wrote to the client and requested advance payment. He said

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1 that he estimated the time to hear the case and then make his
2 decision, review, et cetera, would cost so much money, and he
3 wanted half of the money up front from the client. Of
4 course, I immediately objected because he didn't request the
5 same thing from the blue chip corporation.

6 You raised the question before about financing, and
7 I think that that is an area that I would be interested in
8 exploring with you, plus, the second part of it I immediately
9 wrote him and said, as far as I was concerned he was
10 disqualified from the arbitration because of the fact that he
11 requested the money. He said that it was because he hadn't
12 been paid in a prior situation where a union was involved,
13 and my feeling was that that didn't involve my client. I
14 would be interested in your comments on that.

15 MR. BYRD: Well, I would say that often times the
16 parties who mess up the effort to mediate to good outcome is
17 oft times the lawyers in the room. And this is an example of
18 practices of folks in the legal community. I agree with you
19 that that kind of practice is not a good idea. It puts a
20 chill on the entire process. People are not going to be as
21 open.

22 If you don't have open communication, then the

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1 creative option finding is not going to take place. That is
2 simply not going to happen, and the dollar has the ability to
3 send a chill across the room faster than this noisy air
4 conditioner, and it is very important that that be
5 considered. We have to explore it with you.

6 I mentioned it's kind of very much related that in
7 a matter that I mediated involving a bank and a real estate
8 broker, the real estate broker and the bank had had an
9 ongoing business relationship for years. This particular
10 dispute had derailed that relationship.

11 I attempted to find ways to bring the relationship
12 back together, and did so, and they promptly decided -- this
13 is far too briefly put, but it's a rough summary of what
14 happened. They then decided to reestablish the business
15 relationship and kind of hold in suspension this particular
16 instance of disagreement. In other words, they just decided,
17 well, we'll just wait on that, and maybe we'll settle it.

18 In fact, it was said that maybe at some point later
19 we will settle this over drinks. We'll just deal with it
20 later, because we have decided to be back in business. I
21 thought, this is beautiful. This is fantastic.

22 Until one of the answers raised his hand and he

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1 said, "When are you going to talk about money?" And what he
2 meant by that was that he was there because one of his ways
3 of supporting himself, obviously, is the collection of a fee,
4 and he wanted to know. Well, talk about a chill. It had a
5 refrigerating effect upon that relationship that I was about
6 to paste back together. We were able to settle that matter
7 later, but it was not helped by that attitude.

8 What you do in this training is that a lot of it is
9 technique and skills that you impart to folks, but you also
10 try to change attitudes, and one of the attitudes you need to
11 change is the attitude that the dollar is almighty in these
12 circumstances.

13 The dollar is not necessarily what is -- now, in a
14 given insurance claim such as we saw in the videotape, the
15 dollar is pretty hard to escape, is what you are talking
16 about, but in business relationship type disagreements such
17 as the one I handled between the bank and the real estate
18 broker, the Allen Parkway Village matter, Methodist Hospital,
19 all of those are ripe, very ripe for avoiding dollars but
20 exploring other interests.

21 MR. O'HARA: Well, it turned out in my situation
22 that my client then spread the word amongst other people who

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1 were potential litigants also in the same arbitration, but
2 fortunately, we were able to get a law school professor who
3 agreed to arbitrate the matter, and it came out and it was a
4 successful conclusion.

5 But the idea was spreading amongst many of the
6 people in this particular area that arbitration was not the
7 way to go, and fortunately, we were able to defuse that. So,
8 I am interested in that aspect of funding. I think it is an
9 important thing as we go down the road, because many of our
10 clients or your clients in the program would not be able to
11 afford payment offers like that.

12 MR. BYRD: Absolutely true. I would be happy to
13 explore it with you.

14 MR. O'HARA: Thank you. Thank you, Mr. Chairman.

15 CHAIRMAN HALL: Thank you, Jack. Bob, other than
16 the Allen Parkway Village case and the Methodist case, you
17 all have not sent any other of your cases to mediation?

18 MR. BYRD: We do because of the existence -- and
19 this is one other area, and thank you for asking. I was
20 about to neglect another piece of information that the
21 corporation could provide in terms of technical assistance,
22 is to be sure that all programs have a list of the already

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1 available ADR services. Again, in Harris County, part of
2 every civil filing, a small fee goes to an ADR service. And
3 that ADR service uses pro bono attorneys.

4 Now, they would not be the folks that you would
5 utilize because of the limits on pro bono time. Volunteer
6 lawyers cannot spend the time that APV is going to take,
7 Allen Parkway Village, but they are very good at service case
8 dispute resolution. So we do that now. There are referrals
9 to that.

10 Now, of course, we make it very clear that if
11 something is not going to work out for our clients, those
12 clients come back and we go to court. I don't want you
13 coming way from this saying, "Bob Byrd said that this is the
14 wy to go. We don't do court actions any more." No, that is
15 not true. But we believe that there are certain very, very
16 good opportunities where it can be used and should be.

17 CHAIRMAN HALL: Do you feel that the mediator who
18 oversee a case such as Allen Parkway or the Methodist
19 Hospital case, which obviously have some complex issues, do
20 you feel that mediator needs more training than the mediator
21 who might settle or work on a simple divorce case or
22 landlord-tenant dispute?

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1 MR. BYRD: I certainly do. I think they need
2 training and experience, and I think that what the staff
3 together with consulting with those of us who are testifying
4 before you today, what you are going to have recommended to
5 you is that there be certain levels of training, that there
6 be, in fact, folks who attend one-day events, three-day
7 events, week-long events.

8 Some folks perhaps by arrangement with an
9 independent funding course, perhaps we could have a greater
10 number of our folks sent to the Harvard event that takes
11 place every June. That would be a very powerful thing to do.

12 And then, I think it would be a good idea to start
13 stimulating interest in what some in the State Bar of Texas
14 have been talking about, which is creating a certification
15 for what they will call negotiation specialist, in other
16 words, having folks who among our community are recognized as
17 folks who are specialists in negotiating good outcomes, or
18 mediating, so that my suggestion would be, you would have
19 levels.

20 Thousands of the cases in this country are service
21 cases, so you don't need to train everybody for a week, but
22 it is a good idea to have folks who have been trained, and

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1 rather well trained, and rather experienced, available for
2 those few cases like Methodist Hospital, that require that
3 kind of skill.

4 CHAIRMAN HALL: Thank you. Does anyone have any
5 other questions?

6 (No response.)

7 CHAIRMAN HALL: If not, thank you, Bob.

8 MR. BYRD: Thank you very much. Thanks for having
9 me. Have a good stay in Texas.

10 CHAIRMAN HALL: Thank you. I think we next are
11 going to hear from Karl Bayer, who asked to go a little bit
12 out of line from the published list. Karl, would you come
13 forward, please.

14 STATEMENT OF KARL BAYER

15 MR. BAYER: Thank you, Mr. Chair. I appreciate the
16 accommodation of my schedule. I have several different hats
17 here today which I hope will be beneficial to the committee
18 and to the corporation. I am a trial lawyer. I represent
19 people in personal injury cases, primarily medical negligence
20 and product liability cases.

21 Last year I served on the Dispute Resolution Center
22 board of directors here in Travis County at the same time I

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1 was serving as president of the board of the Legal Aid
2 Society of Central Texas. I am also a private mediator, have
3 mediated in approximately 200 cases in the last four years,
4 mediated or arbitrated. I teach courses at the law school in
5 winning at trial, negotiation, and professional
6 responsibility, and I am currently chair of the Travis County
7 ADR Committee, Alternative Dispute Resolution Committee, and
8 we have several activities which may be of interest to the
9 corporation and the staff as you focus on this.

10 I would like to try to be as helpful as I can today
11 and to go over broad points and try to give you some of the
12 things we thought about in Travis County this last year as we
13 tried to think about how to integrate the DRC, the Legal Aid
14 Society, and try to implement and encourage ADR in our local
15 program.

16 The Dispute Resolution Center here in Texas, there
17 are 12 of them around the state. There can be any number of
18 them really. They are funded by a \$10 fee on each District
19 Court filing. So it is essentially public money, and there
20 are accountability issues that I think we had to face that
21 might be issues that you need to think about and want to
22 think about, and I will be glad to share my thoughts on that.

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1 The Dispute Resolution Center mediators are highly
2 trained. I have heard questions about training of mediators.
3 They have all had 40 hours of specialized training in general
4 mediation techniques. In family areas, they've had an
5 additional 25 hours of training. In Travis County, at least,
6 approximately 20 percent are lawyers, but the rest are other
7 kinds of professionals, doctors, dentists, professors,
8 business people.

9 The mediation is done usually about three hours at
10 the Dispute Resolution Center. It costs \$10 a party. So one
11 thing I would encourage this corporation is, don't pay for
12 it. There are plenty of places out there that will do this
13 stuff for free or next to nothing if you all want to
14 encourage it.

15 The Dispute Resolution Center also has training
16 that it offers. Training has actually gotten fairly
17 competitive in the State of Texas. There are people in
18 Dallas that do it, people in Houston that do it. A 40-hour
19 training is approximately \$750. I think the Dispute
20 Resolutions Centers is a little less, but that is a person.

21 In terms of the kinds of cases that the DRC handles
22 here, they are community-based mediations, things like

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1 neighborhood disputes, small business claims, consumer-
2 merchant, landlord-tenant, family, divorce mediations,
3 juvenile court mediations, parent-adolescent mediations. In
4 short, I think a lot of poor people have these kind of
5 problems, and so the DRC has long prided itself, too, in not
6 letting even that \$10 fee be an impediment. That is often
7 waived.

8 To give you an idea, that program has been going in
9 Travis County many, many years and is well established and
10 has a fairly substantial staff. They got something like
11 1,500 referrals last year; 530 mediations were done with 423
12 agreements. In trying to then see how that might fit in with
13 the demands of the clients we serve at the Legal Aid Society
14 of Central Texas, we had 11,000 applicants. We had 8,000
15 here in Travis County alone.

16 If all of those had been mandated to ADR, as you
17 can see, the DRC would have been overwhelmed, and there are
18 not enough private mediators in town, even if every one of
19 them had volunteered their time, to handle that case load.

20 So one message I would like to give to you today
21 is, please encourage it. It is an important tool in
22 representing clients. I intend to take the position in later

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1 professional malpractice cases that it is not only a
2 violation of your ethical responsibility to not advise your
3 client of ADR, it is a potential basis for legal malpractice.

4 At the same time, I think mandating it would be a
5 serious, serious mistake. I don't think it fits every case,
6 despite the nice videotape that you saw this morning.
7 Frankly, I thought that was a very oversimplified view of ADR
8 and how it might apply in the legal aid context.

9 I had thought also about other situations that
10 might be available to help us out, help us clear our cases.
11 Travis County is not that different from other counties in
12 Texas. It had Settlement Week, which occurs now twice a year
13 and is now mandated by statute here in Texas. What it is,
14 for one week the court system basically shuts down. The
15 judges go away and turn the courthouse over to volunteer
16 mediators or arbitrators or case evaluators, as the case
17 might be, that have had some training, but not 40 hours.

18 This 40 hours I keep mentioning, the reason it is
19 kind of a magic figure is, the statute now in Texas, the ADR
20 statute that allows judges to mandate ADR procedures and
21 litigation says that a mediator ought to have 40 hours of
22 training. so that has kind of become a standard.

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1 The Settlement Week people have not had 40 hours of
2 training. It is typically eight hours or so. It has been
3 more sometimes in the past, it has been less than that
4 sometimes. It is a three-hour procedure, and it is much more
5 of a case evaluation approach rather than a mediation to try
6 to facilitate the settlement between the parties.

7 That is its purpose, but I think the mediator plays
8 a much more active role and feels freer to say who wins and
9 who loses and how much, even though it is non-binding, so
10 there is that Settlement Week that is available to us, and
11 Travis County Settlement Week has been particularly
12 successful and well subscribed by the volunteer lawyers that
13 mediate the case as well as people submitting cases. It is
14 regularly oversubscribed now.

15 Even that clears maybe 100 cases. Probably 200
16 cases get mediated in a week, and it clears 100 to something
17 slightly more than that. That is done twice a year. So,
18 again, in terms of making a real dent in our Legal Services
19 case load here in Travis County, that was not going to be the
20 panacea either.

21 The private mediation bar, I mentioned in addition
22 to doing PI litigation I do mediations and arbitrations. I

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1 charge \$200 an hour for mediation. Legal Aid shouldn't pay
2 me to do that. That is probably at the top end of the
3 market, I think. The typical fees would be between \$150 and
4 \$200 an hour. Many mediators charge on the basis of the
5 number of parties, too. They increase the fees for the
6 number of a parties.

7 Some mediators charge on a per day basis. The
8 private mediation bar here in Travis County, there are
9 several different societies, but I would be surprised if more
10 than 100 private mediators were doing this as a substantial
11 amount of their practice. It is probably a third of my
12 practice.

13 In particular, I guess, in terms of application to
14 the Legal Aid context, I think the question has been raised a
15 couple of times, Mr. Chairman, about the migrant farm
16 workers. I see mediation as a perfectly appropriate forum
17 for those kinds of disputes, as long as people are adequately
18 represented by counsel.

19 The first speaker seemed to indicate that perhaps
20 somebody could volunteer for a day. I think that is
21 incredibly naive. I have also represented over 50 clients
22 that I represent, my clients, in personal injury cases where

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1 we have gone to mediation. I try to prepare, and I think
2 most lawyers try to prepare as hard for that mediation as
3 they would for the trial of the case. And so, I would have
4 that concern, I guess.

5 MR. WITTGRAF: Excuse me just a minute, Mr. Bayer.
6 I suspect that Ms. Jamison was really talking about farmer-
7 creditor foreclosure situations rather than farmer or
8 producer-migrant worker situations. Have you been involved
9 yourself in farmer-migrant worker situations, mediations?

10 MR. BAYER: I have not, and I am not aware of any
11 that have occurred here in Texas, although I think all that
12 would really take is for some groups to suggest it. I think
13 that could certainly be done, and would certainly be welcome.
14 That is one, though, that, needless to say, would require a
15 very skilful mediator. It might even require additional
16 expertise. I know in complex mediations that I have done
17 usually they are court-ordered an ordered by a judge.

18 I have been given the flexibility to hire experts
19 myself in a technical area, be it a legal advisor, be it an
20 economist or an engineering expert or whatever. I think
21 whoever did a mediation like that would need to have that
22 capability. I have done complex ones in connection with a

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1 co-mediator, a judge, a retired judge, and that might be
2 appropriate in that case, so you are getting a practicing
3 lawyer and a judge that are in there, too.

4 Usually I don't think it's important for the
5 mediator to have that much substantive law knowledge of what
6 is going on in a situation like that where it is an
7 incredibly complex area of law that is not within the realm
8 of the normal practitioner. I think I would want to change
9 that.

10 MR. WITTGRAF: Thank you, Mr. Bayer. Thank you,
11 Mr. Chairman.

12 MR. BAYER: If there are other specific questions,
13 I am here to answer them. We have thought about applying it
14 in a wide range of areas. We have used it in areas that I
15 think -- I guess the traditional ones of family mediation
16 come to mind.

17 A particular problem, of course, in all mediations,
18 whether they are family areas or not, are imbalances of
19 power, and I think many of the mediation models don't deal
20 very well with the imbalances of power that we see in legal
21 aid cases. A family case, for example, spousal abuse.

22 A straight up and down mediation where a woman

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1 victim of abuse is supposed to come in without a lawyer and
2 look straight in the face of that husband who has just beaten
3 her and negotiate on an equal playing field with a non-
4 directed mediator seems inappropriate to me. You need a
5 specialized mediator in that case that is going to be able to
6 be more directive, that is going to be able to basically keep
7 the playing field a little more level.

8 Similarly, there are big power imbalances,
9 landlords and tenants often, consumers in businesses, so I am
10 troubled in applying even the dispute resolution center model
11 of mediation which is a very, very non-directive, minimal
12 role for the lawyer, face-to-face mediation kind of approach,
13 instead of the caucusing kind of approach that you saw in the
14 television there.

15 That doesn't seem appropriate for many of our cases
16 were there are large power imbalances, not only as between
17 clients, which I mentioned in the family case, excuse me,
18 between the parties, where on the face of it husband and wife
19 appear to be equal, but there are reasons for a power
20 imbalance, or between a landlord and tenant, many of our
21 cases involve the government, the ultimate power imbalance.

22 And so, I think a very highly specialized mediation

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1 would be required to handle cases where we are either
2 negotiating a rule -- we are encouraged now under the federal
3 law to have negotiated rulemaking. I can see it being
4 applicable there for us in fully representing our clients.
5 Negotiating about benefits. I will say to you that the State
6 of Texas has also gotten interested in alternative dispute
7 resolution for its own state agencies, and you all may well
8 want to look to see what is going on here.

9 The Water Commission in the State of Texas has led
10 the country in setting up alternative dispute resolution
11 procedures with the eye to citing kinds of things where
12 citizen groups may well want to have a mediation before going
13 into a contested case hearing followed by long drawn out
14 litigation.

15 The Public Utility Commission here is looking into
16 it. The State Department of Insurance is looking into it.
17 And so, I think many agencies are considering various avenues
18 of ADR. I don't see this corporation's role as attempting to
19 develop new areas, but rather to help our staff, the lawyers
20 that are down in the trenches, learn about what is available
21 so that they can use that to represent their clients
22 effectively.

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1 CHAIRMAN HALL: Karl, are there a lot of mediations
2 where one of the clients is pro se and unrepresented?

3 MR. BAYER: I have done those. They are very, very
4 difficult to do, and it requires the mediator, I think, to
5 get out of the pure mediator role.

6 And I can see that would be a not atypical case for
7 us, and that is why I had concerns, even though I was on the
8 board of the DRC, the Dispute Resolution Center, in saying
9 wholesale, send us all your cases, because those folks are
10 just not trained in a model of mediation that would allow
11 that imbalance to be addressed.

12 But I think a substantial number of our cases, if
13 we were really to use it actively, might well involve
14 somebody without a lawyer. Somehow getting them training, I
15 think, is important. One of the things we are doing here in
16 Travis County is working through the school system. We now
17 have peer mediation training set up at several different high
18 schools where the high school students themselves are trying
19 to mediate disputes.

20 I think the community education programs of the
21 Dispute Resolution Centers are getting people interested.
22 Many of the cases that the DRC clears are without lawyers.

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1 Some of the times, probably most of the time I would say
2 neither side has a lawyer, so you are able to get away from
3 that problem, but sometimes somebody has lawyer and somebody
4 doesn't and the DRC tries to deal with it as best they can.
5 Usually it is by minimizing the lawyer's role.

6 CHAIRMAN HALL: If you have a divorce case where
7 custody is not an issue, although there may be children, and
8 property is not extensive, perhaps some furniture, no real
9 estate or anything, that would take about an hour and a half
10 to try, if that long, in a case like that, is it cost
11 effective to mediate that?

12 MR. BAYER: I think that's a wonderful question.
13 One of the questions I have about that PI case is, why the
14 hell do we need another level of bureaucracy superimposed on
15 this? What happened to our lawyers' ethical responsibility
16 to negotiate a case?

17 Why aren't lawyers negotiating these case without
18 the necessity of having a separate mediator? Often times in
19 mediations I've done I've been frustrated with both attorneys
20 for sort of an ineptitude at the negotiating process, and it
21 may well be that in a case such as you describe, if lawyers
22 are well trained in negotiation skills and are living up to

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1 their ethical responsibilities it will never even make it
2 into mediation.

3 CHAIRMAN HALL: Even if they couldn't negotiate it
4 and the clients are hard-headed, it is still only going to
5 take you an hour and a half to get a decision.

6 MR. BAYER: I think that is a wonderful example of
7 why you might not want it blanket across the board. I think
8 if a lawyer is advising those folks, they need to see what is
9 best for their client. One thing I forgot to mention was
10 accountability, and after our discussion yesterday I know the
11 board's real concern in accountability, and I appreciate
12 that, we thought about that in connection with DRC, trying to
13 do more legal aid cases.

14 The statute here in Texas that authorizes ADR
15 procedures has a very strong confidentiality provision, much
16 stronger than any attorney client or work product privilege
17 that I know of. It is clear and unequivocal, unambiguous.
18 So, as we started thinking about, well, how do we find out
19 whether mediating cases was working, whether it was achieving
20 our ends, whether the Travis County taxpayer dollars were
21 being used wisely, how do we get some accountability, we
22 never really thought that out.

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1 About all you can get back from a mediation, if you
2 are looking for recordkeeping, at least in Texas --- I don't
3 know how other states will address this -- will be whether or
4 not it is settled. If that is sufficient, then you will be
5 okay. If you want to know more about what kind of goals were
6 achieved at the mediation and whether those goals were
7 consistent with the kinds of things that the Legal Services
8 Corporation wanted to foster, I'm not sure how you're going
9 to find that information out.

10 CHAIRMAN HALL: Well, also, as I understand it, for
11 \$10 I can have my case mediated?

12 MR. BAYER: That's correct. In Travis County, and
13 that is probably not that far off from other dispute
14 resolution centers in Texas.

15 CHAIRMAN HALL: The same center in Dallas I think
16 you described. It seems like you all would be just
17 overloaded with -- you are.

18 MR. BAYER: We are. There's a problem. People are
19 beginning to have to line up as more folks find out about it.
20 I think the only thing that has limited the demand on the
21 Dispute Resolution Center here in Austin is the lack of
22 public awareness, and as the public becomes more and more

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1 aware, it gets more and more attractive.

2 CHAIRMAN HALL: It seems to me, too -- I've been
3 kind of concerned with all this level of training, because
4 you obviously have more folks who aren't as trained than
5 those who are. It seems like a lawyer who is certified in
6 family law could mediate a tremendous amount of family law
7 cases without having to undergo all the training, and that
8 lawyer might do that as his pro bono contribution rather than
9 actually take on a client.

10 MR. BAYER: I think that is an excellent point, and
11 I think that is why the artificial training requirements is
12 something I have always been opposed to. I think 40 hours is
13 a good target, but I probably had done 50 court-ordered
14 mediations without any training just because a judge would
15 call up and say, "I've got a dispute over here. If I ordered
16 it over to you, will you mediate it?"

17 And so, I guess in that judge's mind there was
18 something about either familiarity with the Travis County
19 courts or what a jury might do in Travis County, some of that
20 knowledge that I might have that might have been useful to
21 those people. I think there are retired judges, for example,
22 that have had no mediation training, and yet I would be

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1 comfortable as an advocate submitting my case to mediation
2 with them.

3 CHAIRMAN HALL: Well, they may not have had the
4 formal training that Bob may have spoken of, but they
5 certainly have a lot of on-the-job training of getting people
6 to settle their case.

7 MR. BAYER: That is exactly right.

8 CHAIRMAN HALL: And another good way to find out
9 the good mediator is to call the judges or the clerk and find
10 out who that judge recommends. That is one good day.

11 MR. BAYER: Absolutely, and regardless -- I guess
12 the one thing I would caution the committee about is people
13 painting with too broad a brush right now about ADR, gross
14 generalizations about how great it is -- it is important, but
15 it is not everything -- gross generalizations about what the
16 qualifications of mediators or arbitrators ought to be.

17 I think we can hit some of them, but you have
18 correctly pointed out that there are other intangibles or
19 other kinds of experiences that are equally important to
20 hours of specialized training.

21 And so I would tread very carefully on making broad
22 brush assumptions about ADR or the qualifications of

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1 mediators and what is necessary or what goes into -- how do
2 you evaluate a case as to the appropriateness of ADR. You
3 had asked a question earlier about how do you tell when a
4 case is ready for ADR.

5 I think that is one of the most important things I
6 do in trying to do mediations myself, is to have a pre-
7 mediation conference with the lawyers, without the clients
8 there, to see if it is ripe. It is the very question you
9 ask. And sometimes we will conclude, maybe we ought to do a
10 little bit more discovery on this case. Sometimes we don't.
11 Probably most of the time we don't.

12 CHAIRMAN HALL: Maybe a deposition needs to be
13 taken from a witness before you know what that fact is.

14 MR. BAYER: Exactly. I have even mediated them
15 where we have agreed to try the jury case on liability and
16 come back and mediate damages to remove that uncertainty.

17 CHAIRMAN HALL: Interesting. And what role do you
18 see for the LSC?

19 MR. BAYER: I think initially, initially, making
20 sure all our people are aware of the wide range of
21 institutions that are already out there doing it, things like
22 the Dispute Resolution Centers, Settlement Weeks, provision

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1 within different statutes that we already are dealing with
2 that either require it or encourage it, making sure they are
3 familiar with local rules.

4 For example, in the Western District here in Texas,
5 if you file a lawsuit and it is less than \$150,000, it is
6 going to arbitration. Well, our people need to know that.
7 We need to have the training about the rules and the
8 statutes, too, the lawyers down in the trenches.

9 I agree with the earlier comment that having some
10 training in negotiation is a good first step. Getting to YES
11 and Roger Fisher and William Geary are real important aspects
12 of my practice. I don't see how we could afford to send
13 everybody to the Harvard Negotiation Project. I think it
14 would be wonderful if we could. But some sort of training
15 about the mediation and arbitration and interest-based
16 bargaining process itself for our people would be very, very
17 helpful. So, I think that role in particular.

18 Beyond that, at this stage, I just think it is too
19 dynamic an area to get locked into anything in particular. I
20 would also encourage you that once again, I don't think it
21 requires a bunch of money from you.

22 I think, at least in Travis County, and maybe we

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1 are atypical, but I don't think that is right, you could
2 achieve a lot of ADR usage here just by making the lawyers
3 aware of it and aware of DRC and Settlement Week and those
4 kind of things, and making sure that I think that our legal
5 aid attorneys knew that it was to be encouraged, and I think
6 most of ours do now, and to get them just thinking about how
7 it might be useful as a tool.

8 In terms of direct funding for any particular
9 programs, I would say mostly of training kinds of things, the
10 negotiation training would be my first thought. Are there
11 other areas where you were contemplating? I would be glad to
12 react or respond to my thoughts on other things that you
13 might be considering.

14 CHAIRMAN HALL: I had one last question that kind
15 of goes off in a different direction. I was just curious,
16 your mediators at the Dispute Resolution Centers, how do the
17 make their money?

18 MR. BAYER: Well, as I mentioned, 20 percent are
19 lawyers. Probably 80 percent of them have a college degree
20 of some sort, maybe even an advanced degree. They don't make
21 any money out of the mediation. It costs the Dispute
22 Resolution Center about \$160 to \$200 per mediation. If they

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1 are charging \$10 a party and it's a two-party case, they are
2 losing \$140 to \$180 a mediation. Where is that money coming
3 from? Well, I think this is elegant.

4 CHAIRMAN HALL: It's volunteer.

5 MR. BAYER: Well, the time is coming from the
6 volunteers, people that believe in the process. The
7 shortfall is coming from a \$10 per lawsuit rake-off that is
8 authorized by the county commissioner, so the very litigation
9 process that is driving the disputes is also funding the
10 dispute resolution source.

11 CHAIRMAN HALL: But you pay your mediators \$150 or
12 so an hour?

13 MR. BAYER: No, don't pay them at all. They are
14 volunteers. The mediators at the Dispute Resolution Center,
15 and there are two of them for each mediation, are purely
16 volunteer, and they volunteer three hours at that time for
17 that one mediation.

18 CHAIRMAN HALL: Do you find a lot of non-lawyers
19 that want to volunteer for that?

20 MR. BAYER: Mostly non-lawyers that want to
21 volunteer. The Settlement Week is all lawyers, and they
22 volunteer -- well, typically a lawyer that is doing it, that

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1 has had the training, will do two to three three-hour
2 Settlement Week Conferences during a Settlement Week.

3 CHAIRMAN HALL: I had a question for our president.
4 Jack, how difficult would it be for the staff to get together
5 a list of all the different mediators and so forth available?

6 MR. O'HARA: A list of all the mediators?

7 MR. BAYER: Well, different procedures and
8 institutions that do mediations, that sort of thing. I think
9 that would be fairly easy in Texas. You could identify all
10 the DRCs with precision. You could identify all the
11 Settlement Weeks and when they are happening. Usually a
12 Settlement Week has been the province of the bar.

13 There is, for example, a Travis Court Bar
14 Settlement Week Committee, so you could identify those people
15 that are chairing those various committees, and there are
16 private mediation societies.

17 For example, there is an Austin Mediators
18 Association. There is an Austin Association of -- it used
19 to be of Family Mediators. It has broadened out. There is
20 the National Institute SPIDER -- wait a minute. The Society
21 for Professionals Involved in Dispute Resolution. There is
22 the American Arbitration Association. I think it is an

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1 easily defined list of associations and institutions.

2 MR. O'HARA: Yes, we have already been in touch
3 with the American Arbitration Association in connection with
4 doing something internally with a view towards expanding it
5 to the program center. I don't see it as a large project to
6 develop a complete list of the people that are available. It
7 seems to be readily available.

8 CHAIRMAN HALL: I don't think we need a motion or
9 anything to do that, do we, Mr. Chairman? Just a direction?
10 They are already doing it.

11 MR. O'HARA: No. I think we are already doing that
12 in the sense if we made a motion we would already be
13 compiling the information.

14 CHAIRMAN HALL: That's all I have. Any other
15 questions?

16 (No response.)

17 CHAIRMAN HALL: Thank you, Karl.

18 MR. BAYER: Thank you.

19 CHAIRMAN HALL: It is 15 until 12:00. I had kind
20 of wanted to hear one more speaker, which was going to be
21 Leslie Hume, since Dee Miller had volunteered to be stacked
22 down. Is that correct, Dee?

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1 MR. MILLER: How far down?

2 CHAIRMAN HALL: How far down? I don't know. You
3 should tell me what suits you. Do you have an airplane out?
4

5 MR. MILLER: No, I can go after this --

6 CHAIRMAN HALL: Well, I have received a list of the
7 speakers with an arrow around your name and it goes way down
8 and points at somewhere down at the bottom.

9 MR. MILLER: I knowingly agreed to going down one
10 slot.

11 CHAIRMAN HALL: One slot. Okay. One slot is fine.
12 I thought perhaps we might break at 12:00 for lunch. I don't
13 know what arrangements have been made, but let's do one more.
14 Does the reporter need a break? Does anyone? Let's go with
15 one more, and then we'll break. Ms. Hume.

16 STATEMENT OF LESLIE HUME

17 MS. HUME: Thank you.

18 CHAIRMAN HALL: Thank you.

19 MS. HUME: My name is Leslie Hume, and I am the
20 managing attorney of the Family Law section at the Legal Aid
21 Society of Central Texas here in Austin, and I am sorry I
22 didn't get to meet you when several of you visited our office

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1 yesterday. I was out of town trying to settle a case.

2 CHAIRMAN HALL: Mediating?

3 MS. HUME: No, it was just a settlement conference.
4 Mediation might have helped, however. We didn't get it
5 settled. Just to give you a little bit of information about
6 myself, I have been a staff attorney with the Legal Aid
7 Society since 1979. I have been the managing attorney of the
8 Family Law Section since 1983. Last year I became board
9 certified in family law by the Texas Board of Legal
10 Specialization.

11 I am also a trained mediator. I have gone through
12 the 40-hour training that was conducted by the Dispute
13 Resolution Center here in Austin that Karl Bayer talked
14 about, and I have received the 24 hours of training to
15 qualify me to mediate family law cases.

16 In addition to that, I have been involved with the
17 local bar association. Last year I was the president of the
18 Family Law Section of the Travis County Bar Association, and
19 I am on the Alternative Dispute Resolution Committee of the
20 Bar Association.

21 I have participated in Settlement Weeks for the
22 last three or four years, both by submitting cases myself and

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1 serving as a mediator in Settlement Week. I have also
2 mediated cases as a volunteer mediator at the Dispute
3 Resolution Center. So I have had experience, I think, in
4 many different areas of mediation or structured mediation.
5 In my years as a lawyer, I have mediated many cases, family
6 law cases primarily.

7 I have also mediated -- I think the earliest case I
8 mediated was back in 1981 or 1982. The Texas Education
9 Agency had a mediation project where, in lieu of -- or
10 parents who had requested a due process hearings because they
11 believed the school was denying their child special education
12 services to which the child was entitled, you could, before
13 going to a due process hearing, have a mediation.

14 And I decided to take advantage of that because I
15 was going to have to wait a few weeks for a hearing, and we
16 successfully resolved all of the issues because I think that
17 was the first time that the school district truly understood
18 what their obligation was.

19 And when they heard from TEA, from the mediator
20 from TEA what they had to provide, well, they went ahead and
21 provided it, the services for the child, which means that we
22 were able to get the services started sooner. In this case

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1 it was a summer school program for the child.

2 We were able to get the services provided with a
3 lot of enmity between the parent and the child and,
4 importantly for me, without spending a lot of time in a
5 hearing and preparing for a hearing, and, important for my
6 client, without having to subject the client and the family
7 to the stress of going through the hearing.

8 Since then I have become more involved in mediation
9 and learned a little bit more about it, and I encourage my
10 staff to submit cases for mediation. I submit cases myself.
11 In family law cases we have submitted many divorce cases for
12 mediation at the Dispute Resolution Center, and to the more
13 structured mediation system that is used at Settlement Week,
14 and I would like to reiterate what Karl talked about earlier.

15 Family law cases are in any ways ideal for
16 mediation in that the parties, especially if there is a child
17 involved -- they have had a relationship, obviously. If
18 there is a child involved, even though they are getting a
19 divorce, they need to maintain that relationship. Mediation
20 offers them a way to resolve the instant dispute, but
21 maintain and in many cases enhance that relationship that is
22 going to continue on in the future.

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1 However, mediation is not appropriate in all family
2 law cases, and I would like to tell you a few cases in which
3 it is not. In the case of family violence, it is clearly not
4 appropriate where one party, usually the battered wife,
5 continues to be very fearful of the husband, her abuser, and
6 this happens in many cases.

7 Even if you have a structured mediation, even if
8 you have the most skillful of mediators, if the woman
9 believes that her husband is going to harm her, then she
10 will, in many cases, agree to terms that are not in her
11 interest, agree to terms that she doesn't really want, just
12 because she is just per se coerced by being in the same room
13 with the husband.

14 I think mediation is a complete waste of time if
15 one of the parties that you are mediating with is an active
16 substance abuse, is under the influence of the substance, or
17 is just in a state where they are not going to listen to
18 reality no matter what, and you do encounter that sometimes
19 in family law case where people are just entrenched in their
20 position and they are not willing to listen to communication
21 from the other parties. That is kind of a fine line, because
22 in many cases mediation offers a tool to open up that

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1 communication.

2 I have also, and staff members in my office have
3 mediated cases in which the Texas Department of Human
4 Services, which is our welfare organization, has filed a suit
5 seeking to terminate parental rights. We have mediated cases
6 coming up with a case service plan so that the child can be
7 successfully reunited with the parents, so that everyone
8 will agree what steps the parents need to do, you know, what
9 requirements they need to fulfill before the child can be
10 returned home.

11 I have also successfully negotiated such issues as
12 grandparent visitation, and I think in family law cases one
13 of the advantages of mediation is that you can get a result
14 that is forward-oriented, that really suits the parties. You
15 can go through a process that facilitates communication
16 where, if there is a contested trial, it really destroys
17 communication, if sometimes only temporarily, sometimes
18 permanently. Sometimes family relationships are just totally
19 destroyed by going through a contested custody hearing.

20 I would like to talk a little bit about what
21 think Legal Services Corporation could do. First of all, I
22 think that you should take steps to encourage the use of

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1 mediation and other alternative dispute resolution
2 techniques, and I will admit that I have not had experience
3 with arbitration.

4 Here in Travis County the courts are in the process
5 of developing an arbitration process to be used in family law
6 cases, and I am looking forward to doing that. I think it is
7 probably a pretty good way to cut through to the bottom line.

8 I think in many cases, just like that special
9 education case, I told you about, people don't want to listen
10 to what the reality of their situation is. People don't want
11 to listen to the fact that they may not have very good case.

12 And I know sometimes people don't listen to their
13 lawyers. You know, they will listen when you tell them the
14 strong points of their case. They are not going to listen
15 when you tell them the weak points of their case, and I think
16 in those cases arbitration procedure would be very helpful.

17 Mediation, and the other alternative dispute
18 resolutions, the resolution techniques are just a tool, I
19 think, to be used in mediation. There are some cases that
20 can be successfully mediated that don't require any type of
21 litigation, and Karl told you about some of those that take
22 place at the Dispute Resolution Center, neighborhood dispute,

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1 parent-child disputes.

2 But there are many disputes that do require
3 litigation, and I think family law case are a key example of
4 that. There has to be some kind of litigation pending.
5 There has to be an attorney who has filed a petition in order
6 to get a divorce, and I think in most cases you need
7 attorneys advising people as to their particular situation.
8 A mediator can't really wear those two hats. So, while
9 mediation is a helpful tool, I think it is not a replacement
10 for litigation.

11 I would not like to see the Legal Services
12 Corporation mandate the use of mediation or any other type of
13 alternative dispute resolution technique. I think it is just
14 going to be adding another layer in cases. Good lawyers
15 should be able to settle many cases. Good lawyers should
16 always try to settle cases before going to mediation, and I
17 think a requirement mandating mediation is just going to cut
18 out that step.

19 Also, as I mentioned before, and I used the example
20 of battered women, sometimes mediation is just -- it is
21 harmful. It is not helpful, it is harmful.

22 The other suggestion that I would like you to

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1 follow is to encourage programs to use those resources that
2 are close to home. In addition to the Dispute Resolution
3 Center and Settlement Week, I have had a number of family law
4 mediators in Travis County, and here we are talking about
5 attorneys who have gone through 40-hour training -- most of
6 them have gone through the additional 24-hour training to get
7 the qualification to mediate family law cases in Texas -- who
8 are willing and in fact very happy to mediate cases pro bono.

9 I have several people on that list who will mediate
10 cases for free, and we have been able to take advantage of
11 those services, and I think the selling point for these
12 lawyers is the more cases they mediate, you know, they can
13 advertise that, that they have successfully mediated 60 cases
14 and they have any 80 percent success rate, or whatever.

15 So, right now there really are pro bono attorneys
16 or pro bono mediators willing to work, and I might be a
17 little bit spoiled because I am in Travis County, and we have
18 a really good pro bono system, and I think attorneys take
19 their responsibilities seriously, but I wouldn't be surprised
20 if that is not true across the state, because many attorneys
21 are getting this mediation training, and they want to use it,
22 and mediation is like anything else, you know.

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1 The more you practice it, the better you get at it.

2 I think there are some very good mediators around
3 here, too, and there are many people who are very adept at
4 techniques, who have been doing this for a while, and who are
5 very sensitive to working out these cases.

6 Does anybody have any questions?

7 CHAIRMAN HALL: Ms. Hume, I just had one. The
8 cases that you described that have been mediated, were those
9 cases you mediated or cases that you represented a client
10 which were mediated buy someone else?

11 MS. HUME: The ones I gave you as examples, those
12 were cases where I was an attorney and I submitted the cases
13 for mediation. I have also mediated cases as a mediator,
14 family law cases at the Dispute Resolution Center and at
15 Settlement Week.

16 CHAIRMAN HALL: You were an attorney at Legal Aid
17 Society when those cases were mediated?

18 MS. HUME: Right.

19 CHAIRMAN HALL: Do you feel like there are some
20 family law cases that could be mediated by others, buy folks
21 who do not have the 40 hours or the extra 24 or 5 hours of
22 training?

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1 MS. HUME: Sure. I think many times, as long as
2 you have a neutral third party who is sensitive enough not to
3 antagonize people, it is almost always helpful. I am in a
4 fortunate position of being in a community where there are
5 many, many lawyers who do have that 40-hour training, and I
6 mean, I couldn't give you the numbers, but more and more
7 people are going through that training, so those are the
8 people that I have most often utilized.

9 A lot of these techniques are common sense
10 techniques that I think many of us develop over the years
11 without exactly knowing what names to give them.

12 CHAIRMAN HALL: Thank you. Does anyone have any
13 other questions. Jeanine?

14 MS. WOLBECK: I may have missed this when Karl was
15 speaking, but could you explain to me what Settlement Week
16 is?

17 MS. HUME: Okay. Settlement Week is a procedure
18 that takes place in the District Courts in Travis County and,
19 I think, the other larger counties in Texas, where it occurs
20 twice a year.

21 It is a week-long procedure where the courthouse
22 basically shuts down. It is usually takes place when the

1 judges are at a judicial conference, and volunteer mediators
2 come in, volunteer attorney mediators come in and settle
3 cases.

4 In other counties, I know some of the smaller
5 counties in our service area, the Legal Aid Society of
6 Central Texas -- our Austin office covers an eight-county
7 service area, and Travis County is only one of those. Some
8 of the smaller counties have something similar to Settlement
9 Week, except instead of volunteer attorneys they have retired
10 judges for example, who mediate cases, and those have been
11 -- I have submitted cases for those procedures, and that has
12 worked out very well, too.

13 I would also like to talk about something that
14 several of you brought up earlier. I grew up on a farm in
15 western Kansas, and at some times during my childhood my
16 parents raised sugar beets, so we had migrant farm workers.
17 Later on, when I was in law school, I worked as a legal
18 intern at Colorado Rural Legal Services, and I worked on
19 cases where farm workers were suing, farmers suing,
20 producers.

21 Most of those cases involved violation of minimum
22 wage laws, things of that nature, where the law really was

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1 pretty cut and dried that the farm workers would be
2 successful after they got the case to court. You know, they
3 almost always prevailed, and that is the way I understand
4 -- that is true for many cases brought by farm workers.

5 I found in most cases, and this fits with my
6 experience as a farmer's daughter, that many times the
7 farmers, the producers were just not aware of the law that
8 they were kind of reluctant to really learn what the law was,
9 and kind of amazed that they did have to comply with these
10 laws.

11 Based on that experience, I think some sort of
12 mediation project for those cases would be very helpful just
13 to sort of communicate in a way that is face-saving to all
14 parties, you know, what the obligations of both sides are.

15 CHAIRMAN HALL: Thank you, Ms. Hume. Others?

16 (No response.)

17 CHAIRMAN HALL: I have mediated Dee Miller's
18 position here. We moved him down, with the agreement that he
19 could go now and that he would be brief. Right, Dee?

20 MR. MILLER: Correct.

21 CHAIRMAN HALL: If the others will indulge me on
22 this, let's go ahead and hear from Dee. Allen Houseman was

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1 going to speak. He could not make it. You are here speaking
2 instead of Allen. And I will also tell everyone in the room
3 that Mr. Michael Snyder, who is next on the list, is not
4 going to be able to make it, so he won't be speaking today,
5 although he is submitting a paper that we will attach as part
6 of the record, and then after lunch we will just have two
7 more, I think, Greg Murray and Lynette Braxton. Dee.

8 STATEMENT OF WILLIAM "DEE" MILLER

9 MR. MILLER: Allen's paper, I think you all have,
10 and I assume that will be made part of the record, and those
11 really are his reflections along, I think, with those of
12 Linda Singer and Michael Lewis, two people who have had a
13 great deal of experience at the national level.

14 I actually will try simply to focus on a couple of
15 choices, I guess, or points of emphasis, questions of
16 emphasis in policy for the board, and I in some ways will
17 step away a little bit from some of the things that Allen
18 said.

19 Just a note of background. I have been involved in
20 one way or another with ADR or complementary dispute
21 resolution, CDR, activities in Jersey since 1976. I am a
22 member of the very first State Supreme Court Committee there

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1 to get into the alternative dispute resolution area, which
2 began in '83.

3 That has led Jersey to a point where it is going to
4 adopt this July one of the country's first comprehensive
5 rules on court annexed complementary dispute resolution,
6 which will have a multi-tiered, multi-court kind of
7 involvement, mediation, arbitration, family municipal court,
8 small claims court, and civil court, some mandated, most not
9 mandated, and a court rule which I helped draft large parts
10 of which addresses the issues around confidentiality, tries
11 to address the issue of power imbalance, at least in theory,
12 and so on.

13 So, I have seen a fair amount and been involved in
14 a lot of these debates over the years. In terms of Allen's
15 memo, one thing I would caution is, the sweeping
16 generalizations about what Legal Services programs do and
17 don't know, are and are not involved in, I am a little bit
18 leery of.

19 My experience is that in the states that I know,
20 Legal Services programs are pretty focused on this if ADR is
21 advanced at all in their state. They understand. It is not
22 like the mid-eighties any more. A number of years have

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1 passed.

2 They understand that this is an area they have got
3 to focus on if courts have started to integrate it into the
4 judicial system. There has certainly been an increasing bar
5 association focus on these activities. That brings Legal
6 Services people in, typically, and a number of the speakers
7 today have talked about the ethics obligations and ethics
8 questions as well as the legal malpractice questions that
9 surround it. It is another attention-getter for Legal
10 Services programs.

11 So I don't come from an assumption that there is a
12 huge lack of knowledge out there, at least not in the states
13 where ADR activity has been pushed or examined by the court
14 system.

15 There is fundamental underlying tension here that
16 you have heard a number of speakers allude to this morning.
17 That is the second class justice fear on the one hand versus
18 the promise of empowerment on the other, that ADR is a way of
19 helping to offer people the opportunity to resolve this on
20 their own without perhaps total dependency on the lawyers,
21 the court system, and that sort of thing.

22 That is a tension. It is a tension that is

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1 inherent in this area. It only instructs this board, I
2 think, in terms of suggesting that you go very slowly and
3 with great circumspection around national policy decisions.
4 Some ADR is good. Some is bad. Some is well thought
5 through. Some is flawed and problematic, and so on and so
6 forth.

7 And it is, I think, terribly difficult for you to
8 get in. One of the messages that almost sounded like an
9 anvil chorus this morning was, nothing mandatory. Don't
10 mandate it. I would certainly second Allen's views along
11 that line.

12 I don't think a mandatory posture of the
13 corporation toward this is a sensible posture. On the other
14 hand, a posture of poking and prodding programs to make sure
15 that they are focused on it and thinking about it might not
16 be a bad sort of presence for the corporation. There are a
17 variety of ways you can do it. Allen talks about an emphasis
18 on training, an emphasis on technical assistance.

19 I think that might best be played out by two steps.
20 One is, if the corporation, through its evaluation monitoring
21 process, starts to get into a look more broadly at
22 qualitatively what programs are doing as opposed to the rigid

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1 kind of compliance check approach that was used for much of
2 the last decade, and there have been a lot of representations
3 and promises, sort of suggestions that that would be the
4 direction that the corporation is tending to go. Staff is
5 tending to think in those terms.

6 This is part of the mix, ADR is part of the mix
7 that the corporation should be then inquiring about when it
8 goes on site, just as you would inquire about the
9 comprehensiveness of a program's approach and services
10 generally. Do they appear in all forums? Do they do all
11 kinds of cases? Do they pursue all kinds of legal remedies?
12 So ADR is certainly one of the areas you would want to, it
13 seems to me, inquire into, and that creates a highly
14 interactive effect. It starts to affect program behavior
15 quickly.

16 The other thing is, some small support in the way
17 of mini-grants for efforts on the state level of even a
18 regional level, if that happens to be the focus, for training
19 or convenings of advocates to share experiences around ADR
20 probably makes sense as a limited investment. What doesn't
21 seem to me to make sense for several reasons is a program of
22 giving grants to entities to operate ADR programs.

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1 Reason One, as I mentioned to Howard out in the
2 hall, it is a bottomless pit. We are now finding out in
3 Jersey, which is so far advanced in terms of having a court
4 annexed system that they are now totally unsure as to where
5 the money, the multiple millions of dollars is going to come
6 from to fund the operations that they have set out. It is a
7 whole new area of investment that would be very costly, and I
8 think you really can't see the end of the cost.

9 The second is to justify the corporation's funding
10 of a direct AAR provision operation as opposed to encouraging
11 programs to get involved with it. It would probably, to
12 justify that, have to be a poor person, low income person
13 means tested, focused and centered kind of operation. I
14 frankly think that that is not practical.

15 It ignores the probability that the other party to
16 the dispute or other parties to the dispute won't be poor.
17 You are not going to have the power to fund something that is
18 court annexed, so you are not going to have the power of a
19 mandatory system. That kind of separateness of something
20 which has one mean tested participant is more likely to lead
21 to some kind of stigmatization. It just doesn't seem to me
22 real as a kind of a funding approach.

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1 It may make sense if the corporation is genuinely
2 going to go down the role of innovative grants, keeping an
3 eye open for something like farm worker mediation in a
4 specific project designed to do that may make sense as one of
5 a number of innovative grants. I would not suggest, though,
6 an ADR focus as part of an innovative grant program. I think
7 that is tilting the innovative grants too much in any ADR
8 direction.

9 In general, ADR has to become part of each Legal
10 Services program's policy and implementation mix. It is
11 something that every program, I think, ought to have a
12 responsibility to explore, monitor in their area, analyze in
13 their area, and utilize where appropriate. That is why I
14 made the monitoring and evaluation reference at the
15 beginning, and it is, I think, increasingly clear as a couple
16 of speakers mentioned this morning, that it is part of every
17 lawyer's ethical responsibility as well.

18 So, the guideposts that I would leave you with, and
19 I would be happy to take any challenges, don't mandate, be
20 very chary of delivery grants, consider mini-grants in the
21 way of enhancing meetings, convenings, technical -- not so
22 much technical assistance but the training, and I probably

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1 much technical assistance but the training, and I probably
2 would step sharply away from Allen. I don't think you need a
3 national support center in the area of ADR. There is some
4 reference to that in his paper.

5 I don't see that as a massive need. There needs to
6 be a clearinghouse. The clearinghouse is broader than just
7 Legal Services, I think. We need to be using the national
8 clearinghouse, whatever it may evolve to be in the future,
9 but I am not sure that is a sensible investment.

10 I told you I would be brief, brief as this morning.

11 CHAIRMAN HALL: Thank you, Dee. Questions from
12 anyone?

13 (No response.)

14 CHAIRMAN HALL: Are there some unique arrangements
15 or are we on our own? The other speakers that we have, if we
16 break for lunch, say, for about 45 minutes, does that create
17 a problem for them travel-wise or anything?

18 MS. BERNARD: No, Mr. Hall. Greg Murray is part of
19 Wayne County Legal Services. We will be making our
20 presentation jointly. There is no problem whatsoever.

21 A PARTICIPANT: And Michael Snyder got in from
22 Dallas.

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1 CHAIRMAN HALL: Oh, he is here. Okay.

2 A PARTICIPANT: He was No. 4 on the original list.
3 He still has a presentation to make as well.

4 CHAIRMAN HALL: Then why don't we go ahead and
5 break for about 45 minutes or 50 minutes for lunch?

6 MS. BERNARD: What time do you want us back?

7 CHAIRMAN HALL: Near 1 o'clock if that is possible.
8 I don't know how crowded the restaurants are.

9 (Whereupon, at 12:20 p.m., a luncheon recess was
10 taken.)

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P R O C E E D I N G S

1
2 CHAIRMAN HALL: I am going to call the meeting back
3 to order because of our time limitations. I trust Jeanine
4 will walk in. I understand our next presentation is going to
5 be a panel, Greg Murray and Linda Bernard. If they would
6 come forward, please. How are you all today?

7 STATEMENTS OF GREG MURRAY AND LINDA BERNARD

8 MS. BERNARD: Pretty good. How are you? I
9 apologize for my voice. I have a very bad cold. I will do
10 my best to make this presentation as thorough as possible and
11 certainly as interesting.

12 As you will probably seem, at each of your places
13 has been placed a folder that looks like this. It is Wayne
14 County Neighborhood Legal Services' what I euphemistically
15 call white pack. In that I would urge you to take out two
16 documents. One says Housing Dispute Resolution Center. It
17 is a white document with blue lettering at the top. And the
18 other is "What is Wayne County Neighborhood Legal Services?"
19 They look like this, these two. That's them, right.

20 One of our projects is the Housing Dispute
21 Resolution Center, which mediates disputes between landlords
22 and tenants which are basically low income. In our program

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1 brochure, the one that says "What Is Wayne County
2 Neighborhood Legal Services?" on the back page of that, there
3 is a brief summary on what the HDRC does.

4 It provides mediation services to help resolve
5 disputes between landlords, tenants, roommates, co-tenants,
6 and neighbors. Mediation is confidential, quick, and
7 effective. This service allows landlords and tenants to
8 solve their problems without going to court, and is free to
9 all Detroit residents. In a nutshell, that is what the HDRC
10 does.

11 As you can see, the promotional brochure that we
12 use for the HDRC says much the same thing. The only change
13 on that is that, unfortunately, you received the copy that
14 had our previous coordinator's name on it and not Gregory.
15 Greg Murray is in fact the coordinator of the HDRC.

16 Ladies and gentlemen, my commitment is a little
17 different than those that you have heard expressed earlier
18 today. Mine is a fundamentally a commitment to problem-
19 solving. That is why I became a lawyer. It is why I became
20 an arbitrator. It is why I am a mediator, and it is why
21 Wayne County Neighborhood Legal Services has been in the
22 business of mediation, actively in the business for four

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1 years now.

2 I had the training and so forth that was spoken
3 about this morning from the Harvard Mediation Project and
4 other types of mediation centers. In Michigan, however,
5 which is where Wayne County is located, and Detroit is the
6 principal city in Wayne County, in Michigan the state bar
7 leaders decided that we wanted to do something about the clog
8 in the courts in mediation in about 1989.

9 At that time I worked very hard with the bar
10 leadership in setting up a statute similar to what you heard
11 about this morning in New Jersey which provides a \$2 per
12 pleading filing charge that goes into a fund for alternate
13 dispute resolution services.

14 But even prior to that, Wayne County Neighborhood
15 Legal Services has started its own mediation center in 1988
16 with of \$100,000 in funding that we received from the
17 community bloc funds which are federal fund that come through
18 the city. And we had applied for that grant.

19 We were successful in getting it by indicating to
20 the leadership within the city that we could do several
21 things, that mediation was good in housing disputes in
22 particular, for the following reasons.

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1 Number One, it stabilizes communities. When people
2 relocate a lot, kids have to change schools a lot. It is
3 very disruptive within the community. Two, it prevents
4 vandalism. When tenants are upset with landlords, as is the
5 case most of the time in our cases, they will destroy the
6 property.

7 If, in fact, they are going to continue to stay
8 there, they won't destroy the property. So, there was a
9 neighborhood stabilization issue. There was a lack of
10 vandalism, if you will, issue. There are a number of reasons
11 why mediation rather than litigation in ending the landlord-
12 tenant relationship was a preferred solution, at least in my
13 view, for our clients.

14 So, as I indicated, we started our center in 1988.
15 In the process, there were a number of issues that we dealt
16 with prior to the legislature even dealing with it, or the
17 state bar. The first is what we call the Chinese Wall. How
18 do I keep my mediation staff separate from my lawyer staff?
19 The things that are revealed in the mediation process may in
20 fact violate if revealed in the litigation context an
21 attorney-client privilege.

22 The first way I did that was hire only mediators

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1 that were not lawyers. None of our mediation staff are
2 lawyers, and in fact our best mediators are those that are
3 former clients of our organization. Our mediation staff is
4 full-time. We have volunteers and so forth as well, but Greg
5 is going to tell you all about that, but they are full-time
6 trained. But they are full-time, trained staff mediators on
7 our staff as our employees.

8 The mediation center is located on the 29th floor
9 in our building. Our Legal Services operation is located on
10 the 35th floor. So there is a geographic, if you will,
11 separation as well as a complete separation in terms of
12 files, and so forth and so on. Greg does not discuss the
13 particulars or no other mediator on my staff of any of our
14 mediations with me. Those files are completely confidential
15 and they are completely segregated.

16 If in fact the mediation doesn't work, for example,
17 the landlord violates his covenant or agreement that he has
18 entered into pursuant to the mediation or if the tenant
19 breaks it, they may come to our office and seek legal
20 representation, and they will do that. They come upstairs to
21 Wayne County Neighborhood Legal Services, and in fact, one of
22 our staff attorneys and/or paralegals or law students will

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1 assist them all the way through the litigation.

2 So the landlord are both comfortable with this as
3 well as the tenants, and it has been an enormous process
4 working with the courts, working with landlord associations,
5 working with tenant associations, to get them to buy into it,
6 but as you will hear a little later, they have bought into
7 it, and they bought into it in a significant way.

8 This past year or, rather, this year our mediation
9 center is funded at \$174,000. Approximately \$95,000 of that
10 comes from the community opportunity bloc grant funds I was
11 telling you about, and \$79,000 out of the statutorily created
12 fund that I spoke to you about earlier for the \$2 per filing
13 fee per surcharge goes into that, and we had to compete in
14 that grant process in order to obtain that grant.

15 We successfully competed. Several other
16 organizations and so forth competed as well for those funds,
17 and we were the largest grantee of those funds, I am very
18 pleased to say, and we do that in part because of our
19 performance record. It costs us approximately \$162, at least
20 it has for this quarter and this year, to mediate a case.
21 Last year, our budget for the project was about \$123,000, and
22 our cost per case that year was about \$171 a case. We

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1 mediated 719 cases last year, and I think this year for the
2 first quarter it is 268.

3 We have also started a court-based mediation
4 project. There is no funding from the court for this. This
5 is all stuff that we are doing, really, I think, because of
6 our board of directors and because of my own personal
7 commitment to ADR as the preferred way to resolve disputes,
8 whether it is for poor people or rich people or any people,
9 and also the fact that in many instances, at least in my
10 view, sometimes lawyers can be obstructionist to that
11 process.

12 Now, particularly with respect to landlord tenant
13 matters, and I am going to speak to you in a few moments
14 about domestic matters, the economic climate in the state of
15 Michigan is absolutely horrendous, and as a result of GA cuts
16 and others, more than 90,000 people -- 60,000 almost in Wayne
17 County alone -- were laid off or their benefits were
18 terminated for GA and things like that.

19 And we have recently started a special project to
20 deal with that client community which is being evicted in a
21 wholesale fashion through the mediation center, and Greg can
22 tell you about that.

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1 But in any event, we discovered that mediation
2 training is less expensive. It gets the community actively
3 involved. It is a skills development kind of piece, if you
4 will, that can be very, very successful in dealing with low
5 income people, if you will, all people, because obviously the
6 landlord is on the other side of the mediation, and he or she
7 may not be low income in terms of resolving disputes.

8 The other area that I am particularly supportive of
9 in terms of mediation, and as opposed to a broad-based
10 approach to this issue, is in the domestic relations area
11 with respect to custody and visitation.

12 As I said, we have focused so far on the housing
13 area. I do about 5,000 intakes each year in just the housing
14 area. Altogether, we do about 20,000 intakes a year, about
15 8,000 in the domestic relations area.

16 But because those are our two largest areas,
17 housing, as is true for the rest of the country, obviously,
18 with respect to Legal Services, and domestic relations, we
19 have attempted to segregate out certain parts of that case
20 load in order to mediate those types of disputes, in order to
21 further the interests of the client.

22 With respect to domestic relations, I became aware

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1 of a project in California that I was extremely excited about
2 and went to visit. In California, all custody and visitation
3 disputes are mediated mandatorily by statute. I would like
4 to do that in Michigan in as well -- I have been talking to
5 judges about it and stuff -- or at least doing it on a pilot
6 basis in Michigan, and perhaps there is something we can work
7 out in that regard with respect to the corporation in terms
8 of funding that kind of project.

9 If I was Ivanna Trump and you were Donald Trump it
10 wouldn't make any difference if we were fighting over the
11 boys. You have to go to mediation. You can't buy your way
12 out of it. Lawyers can't get you out of it. Mediation is
13 mandatory.

14 They use MSWs for their mediation, people with a
15 master's degree in social work, and others in much the same
16 way that we use paraprofessionals within our staff who are
17 not lawyers and who do not have that type of training to
18 communicate with people and get them to come to the table and
19 buy into a dispute resolution process where neither of them
20 is particularly happy.

21 In California, about 85 percent of all of the
22 custody and mediation disputes are successfully mediated.

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1 Only that little 5 percent that is left go before a judge,
2 and I am a big proponent of that because, as the lady said
3 earlier, in a domestic relations matter in particular the
4 parties have to continue to deal with each other.

5 And it is better if they can learn how to talk to
6 each other and get along and resolve these issues informally,
7 and people who have been trained to do this, to get people to
8 agree, to persuade them, to work with them, sometimes work
9 with grandparents, sometimes work with other persons in this
10 process. It can be a very, very valuable process and a very,
11 very valuable tool in terms of eliminating the case load.

12 To give you an example of how this works in Wayne
13 County, there are 120,000 cases currently pending in the
14 circuit court; 52,000 of those are domestic relations cases;
15 about 30,000 of those deal with visitation and custody
16 issues, child-snatching, the kinds of things that you are
17 very familiar with as lawyers and certainly as members of the
18 Legal Service Corporation Board, because it is the kind of
19 thing that is in our office every day.

20 In those types of matters, mediation is
21 particularly helpful, and can be very helpful, and it does
22 not require lawyers and, in fact, even in our housing areas

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1 and so forth, the client and the landlord, the reason they
2 like it so much is because the service is free and they don't
3 need a lawyer, and they are also assured of confidentiality.
4 Much the same thing occurs in the custody mediation program
5 that is run in Los Angeles County, and which I want to
6 duplicate in Wayne County.

7 Greg is going to give you some of the specifics of
8 our HDRC operation. I am very proud of our program. We are
9 the best at what we do, and we are the largest single purpose
10 mediation center in the state, and because we have been able
11 to develop the Chinese Wall, if you will, between our
12 attorney-client relationships and our legal relationships and
13 our mediation center, we have been enormously successful at
14 resolving disputes of low income clients, which are our own.

15 The final point I would like to make is that
16 mediation is a win-win situation. The community wins, at
17 least in our program, because it is the community that
18 participates. It is the community that we train as
19 mediators. It is the community that sits down and resolves
20 disputes and writes them out and puts the agreement in
21 writing, and we compensate them for that if in fact they are
22 staff mediators, and if they are not, then, of course, they

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1 are volunteers.

2 The funder wins, because training mediators and
3 dealing within the mediation process is cheaper than the
4 litigation process. There is no question about that. And,
5 in fact, it preserves the relationship. It preserves the
6 landlord-tenant relationship. It preserves, or it can
7 preserve the mother, father, child, grandparent relationship
8 in the custody visitation issues.

9 Our objective and my objective personally as a
10 lawyer and as executive direct, as I stated earlier, is to be
11 a problem solver. I understand that there are any different
12 ways to solve problems. Litigation is certainly one
13 alternative, and that is one that we use, and that we use
14 frequently. But it is not our preferred method. And we have
15 found that the services, if you will, of non-lawyers within
16 the mediation context are quite valuable. Greg.

17 MR. MURRAY: I want to thank you for the
18 opportunity to address you, and I would like to begin by
19 acknowledging the fact that your history as a corporation and
20 your involvement, active involvement in providing quality
21 legal representation demonstrates a unique sense of vision
22 and courage and timeliness.

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1 And this sense of vision and courage and timeliness
2 is now called for in regards to your efforts at ADR, because
3 the legal justice system and the social justice system are
4 just crying out for new processes to address increased needs
5 of the people that you service and dwindling resources
6 available, which, as I understand it, is one of the reasons
7 why the corporation was created in the first place.

8 I would like to piggyback onto the comments made by
9 Ms. Bernard and others that community involvement in
10 mediation is very crucial.

11 Our center, as she indicated, which is the only
12 center of its type in the State of Michigan, involves using
13 volunteers as mediators and as staff people as well. We have
14 a requirement whereupon a person volunteering at our center
15 who is interested in being trained as a mediator, which our
16 staff is trained to do -- we are all trained by the Michigan
17 Supreme Court's State Court Administrative Office through the
18 Community Dispute Resolution Program to train mediators.

19 In order for persons in the community to be
20 eligible to be trained to be a mediator, they must first
21 complete 80 hours of volunteer activity with the center.

22 They would then complete the training, which is 40

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1 hours, and then complete an additional 80 hours of volunteer
2 time on the other side of that, so that it is not an award-
3 based situation in regards to training individuals, but we
4 find we have no problems at all generating interest in and
5 willingness to go through the volunteer process in order to
6 participate in mediation projects.

7 And it is particularly important, too, to note that
8 quite a few of the folks who volunteered with us are former
9 clients, and this is a key area of interest to us, and
10 perhaps should be of interest to you, and that is to say that
11 the clients have to be involved in the process, and not just
12 the recipients of good intentions on the part of the service
13 providers.

14 We find, as I said before, that our most effective
15 and enthusiastic mediators are those clients, not from
16 academia, not from the local political or social arenas in
17 our particular city, but actually from the clients, who see
18 this as a process that does empower them, which is another
19 thing that I would like to address, if I may.

20 The need for empowerment is crucial to the success
21 of any community-based program, imparting to them the ability
22 to participate in the solutions to their problems, as opposed

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1 to having those solutions imposed upon them in the instance,
2 let's say, of arbitration, for example.

3 We find that 85 percent of our cases, in 85 percent
4 of our cases the agreements are maintained without the need
5 for immediate followup on the part of the mediators. In
6 those instances where the relationship breaks down, we find
7 that the parties are not reluctant at all to contact the
8 mediator to assist them in bringing the agreement back on
9 track.

10 So, we are very strong on volunteerism and on
11 volunteer participation. It broadens our contact base with
12 the community. It creates additional resources for us, and
13 it is a very, very rewarding situation to see people feel a
14 sense of accomplishment at having contributed.

15 It gets away from the missionary type of attitude
16 where I know how to solve your problem and you will do things
17 the way I determine is best for you to do in order to resolve
18 your problem, and this is very, very critical in whatever you
19 develop as a corporation in regards to how you promote ADR,
20 and I think empowerment of the individual is a key element,
21 and it is a byproduct and should be stressed.

22 The average Joe or Jane in most cases doesn't have

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1 a sense of full participation, and that is what democracy, as
2 you know, is all about, full participation in the processes
3 that govern them, and to the extent that the legal system now
4 is overwhelmed, and more state governments and judicial
5 bodies are looking for creative ways, this is an untapped
6 source of potential benefit, and it brings me back to another
7 thing in terms of the volunteers. I will just take one other
8 comment about volunteers.

9 Our program is in the process of developing
10 training specifically geared towards seniors, and I am sure
11 you all know that the American Disabilities Act is about to
12 explode upon the national scene, and also handicapped
13 individuals as well, people who have traditionally been shut
14 out of the process of continuing a contribution to society.

15 And this September our program, which is the only
16 program in the state focusing on this, will train seniors and
17 handicapped individuals to act as mediators within their
18 respective organizations, and I would say one more comment
19 about that.

20 We are also in the process of empowering community
21 centers around Detroit, that is, setting up satellite sites
22 in order to spread the awareness and use of mediation as an

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1 alternative dispute resolution processes, where community
2 centers will train their on -- we will train their staff,
3 their staff will then train their existing volunteers, who
4 will then -- it is like a rippling out effect.

5 And we are doing this with limited resources, and
6 perhaps one of the focuses of your organization might be how
7 to enable your programs to support this type of expansion of
8 ADR.

9 I have a couple of other things I would like to
10 point out to you. Our program, the Housing Dispute
11 Resolution Program, as Ms. Bernard indicated, has just
12 developed a relationship with the largest district court in
13 the state, where we have set up an office in the courthouse
14 itself for the purposes of providing immediate information to
15 landlords and tenants involved in disputes.

16 And as a result of that entry, our activity has
17 exploded, and what we are finding now is that given immediate
18 information, the people who are most reluctant to mediate,
19 that being landlords, are signing onto the process.

20 One of the things that your corporation could
21 possible do is to join in efforts to educate not only the
22 attorneys for LSC but also other community groups, other

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1 advocacy organizations in the respective states or cities or
2 localities where programs exist on educating persons.

3 There is something that LSC could do, perhaps it
4 wouldn't be very costly, but something that should assist the
5 overall community as well as the individual agency.

6 CHAIRMAN HALL: For example, what group would we
7 educate?

8 MR. MURRAY: Well, take, for example, LSC, based on
9 its history of involvement in the legal area, could help to
10 educate major funding organizations about the importance of
11 alternative dispute resolution, how it -- the common
12 interests of the foundations and your corporation in terms of
13 providing people with access to different models of legal
14 representation and conflict resolution.

15 That is one thing that the corporation could do, is
16 to help sponsors forums with those folks who have the moneys
17 that you don't have to make the delivery of the service
18 available.

19 CHAIRMAN HALL: And the goal would be?

20 MR. MURRAY: And the goal would be to increase
21 awareness of ADR, to enable your programs to tap into those
22 funding sources for the purposes of training and outreach and

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1 things of this nature. So I think that perhaps there is a
2 marriage of sorts of interest that could be exploited and
3 perhaps developed as a result of these educational outreach
4 programs that you perhaps might want to develop.

5 Test pilot programs that would concentrate on
6 whether or not there is an cost effectiveness to be utilized
7 within the particular programs by offering mediation as
8 opposed to litigating. From my understanding, there is very
9 little active support of that right now.

10 One thing that I also would like to point out is
11 that I don't believe we should try to reinvent the wheel.
12 There are number of different organizations which already
13 have a vast body of research that is immediately available to
14 you. I would perhaps suggest that you provide the programs
15 that you fund some flexibility to develop their own ADR
16 components with existing centers and organizations within
17 their service area so as to not become administratively
18 topheavy, but to support the expansion of knowledge and use
19 of ADR within the agency itself as well as the community.

20 So there are a couple of different ways that you
21 can marry this together to provide the service to the client,
22 because that is what this is all about, from what I

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1 understand, is providing means and accesses to creative
2 solutions for problems for the clients, and we are not
3 talking about an activity that further enhances the revenue-
4 producing capability of attorneys or other practitioners. We
5 are talking about delivering a service to people who really
6 need it and who perhaps would benefit from something other
7 than litigation.

8 So, those are my comments in regards to what I can
9 see the corporation might be willing to do. We have a number
10 of other projects going on that perhaps I can answer some
11 questions for you in regards to what we are doing.

12 MS. BERNARD: I would like to give you some
13 examples of some of the types of mediation we are talking
14 about. One involved a building where there were 147 tenants,
15 and they had some major disputes that the landlord had
16 stopped paying rent, all that kind of stuff. The landlord,
17 of course, wanted to evict them all. Greg personally
18 participated in that mediation and mediated that dispute to a
19 successful conclusion.

20 Another that is perhaps a little more dramatic
21 involved a man that was a Vietnam veteran who was very
22 frustrated with the system, as most of our clients are -- we

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1 are their last resort -- and went downstairs one evening and
2 took a 40.06 rifle and pumped about 40 rounds of ammunition
3 into his furnace, which was on, with his family upstairs, and
4 about six children, his wife, et cetera. Nothing happened to
5 -- the furnace, thank God, did not explode, and so forth, but
6 obviously he had a number of problems as a result of this
7 incident.

8 We were able to successfully if you would,
9 negotiate the problems that he had with the police, with the
10 mortgage company, with the extension, and also, ultimately,
11 with DSS, to provide an new furnace for the home, and to do
12 things like that. The mediation process really can and does
13 work. It is a critical, critical thing.

14 And just one final point. We have had a lot of
15 discussion about various alternate dispute resolution
16 mechanisms. The real mediation is what I am talking about.
17 It is two people sitting down and resolving their disputes
18 themselves. Not with a mediator who has the ability to order
19 or decide, like an arbitrator. I am an arbitrator, too.
20 That is not mediation.

21 Arbitration is really a form of litigation, if you
22 will, because most of the time it involves lawyers, and so

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1 forth and so on. It is a very, very formal procedure.
2 Mediation isn't. Mediation brings in all kinds of people.
3 There are no rules of evidence, no hearsay. Everyone is
4 talking, and as you saw in the video and so forth, you do
5 break the parties up and, you know, go back and forth, and so
6 forth, in terms of trying to resolve it.

7 Sometimes you can, sometimes you can't, but you
8 will find that in most instances you can because the process
9 itself is respectful. It is scheduled. You know it is at 1
10 o'clock in the afternoon, for example. You are not sitting
11 all day, like you do in court, waiting for your case to be
12 heard. In the city of Detroit alone there are 35,000
13 landlord-tenant cases filed each year.

14 They estimate that each case, the judge hears each
15 case for about 1.6 minutes, so if you think that as a tenant
16 you can get your point across about why you haven't paid your
17 rent in 1.6 minutes, that may be a better process, but in
18 reality it isn't because you really get an opportunity to sit
19 down with a person in a controlled, peaceful, if you will,
20 quiet environment and try to work through the problem to
21 preserve, in that instance, tenancy, and in certain other
22 instances, as I indicated, the family relationship.

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1 I don't think that mediation works for all cases,
2 and in fact, although our Legal Services program does refer
3 clients downstairs to the mediation project where there is
4 some real urgency and so forth involved, or pronounced health
5 issue involved, or something like that, then we don't do it,
6 but in some instances the lawyers, in fact, do refer people
7 to mediation and in fact I have referred people to our
8 mediation center as well.

9 CHAIRMAN HALL: Are there questions from the
10 committee members? Mr. President?

11 MR. O'HARA: Thank you, Mr. Chairman. Thank you,
12 Linda and Gregory. As always, a very fine presentation. I
13 always enjoy having people who run programs come in, because
14 you cut right to the heart of things, and we don't hear the
15 rhetoric that we frequently hear.

16 In following up on Gregory's comment on the
17 corporation helping the programs in this particular area.
18 Obviously, you don't need any help in getting the word out if
19 you are getting 5,000 cases a year. I believe that is what
20 you said.

21 MS. BERNARD: Fifteen hundred. We have 15,000
22 right now.

1 MR. O'HARA: Oh, 1,500.

2 MS. BERNARD: That was before we started the court
3 program.

4 MR. O'HARA: Okay. Well, I was going by the figure
5 here. You had closed more than 1,500 cases involving housing
6 disputes. So obviously the world is out in the Detroit
7 community, and I know that you have a radio program, and I
8 see that you have brochures. How do you get it to the people
9 that are involved in these? Do you go out and meet with the
10 neighborhood groups?

11 MS. BERNARD: Well, initially, we did two things.
12 First of all, we contacted the association of landlords, and
13 then there are various tenant associations well. There was a
14 big, if you will, kind of media blitz on the issue.

15 Then, finally, we started working with the chief
16 judge of the district court and got the concurrence of the
17 court -- that is the part of the project that we just started
18 -- to refer people to mediation at the same time that they
19 give them the packets and so forth to file a complaint for a
20 landlord-tenant eviction matter. We say, you know, will you
21 give them this package of material on mediation?

22 And this is free for you, Mr. Landlord, so

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1 therefore, you know, you may want to try this as an
2 alternative to litigation. We also set it up so that if, in
3 fact, you were already in the litigation process you did not
4 lose your standing within that proceeding in order to
5 mediate. So the statute of limitations would be frozen so
6 you wouldn't have to go back and restart the process, and so
7 forth.

8 To file a case in Wayne County is \$55 I think now
9 in district court, so there is a built-in incentive there,
10 because the service is free, to mediate, totally free to both
11 parties, and I mentioned the respect factors and so forth.
12 There is not the hassle. There is not the delay. You are
13 not searched going into a courtroom, all of those sorts of
14 things that you have to deal with to go into court.

15 MR. MURRAY: And as she indicated, at the point of
16 filing information is given to the filer about mediation, and
17 the landlord-tenant issues, when the complaint and summons is
18 sent to the defendant inside of the envelope with the
19 complaint and summons is a letter from the chief judge urging
20 them to participate or to follow up or to investigate
21 mediation as a process for resolving it.

22 One of the reasons why the court was enthusiastic

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1 about this is because we designed our program so as to not
2 impede the normal processing of court related activity. They
3 did not want to have anything interfere with their normal
4 processing. There is an average filing of anywhere from 150
5 to 75 cases per day in the real estate divisions of 36th
6 District Court, but we just come in and interrupt that
7 process and create additional work for them.

8 That is what we had to do is to avoid anything that
9 would result in anything labor-intensive on the part of the
10 court, and we were able to do that. It took us a year to
11 develop this program in conjunction with the chief judge, the
12 court administrator, and the deputy court administrator for
13 the real estate division, so we spent a good deal of time
14 planning on how to not complicate the process but how to
15 compliment the process.

16 We also conducted a number -- last year we did 92
17 presentations in the community to the Department of Social
18 Services, for example, to local community groups, to various
19 city forums and to various other agencies, and as a result of
20 that aggressive outreach, we have no shortage of referrals to
21 our agencies.

22 Because of our active volunteer recruitment

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1 activities, we have no shortages of individuals to meet that
2 demand, and that is the key thing, to coordinate the two.
3 You should not create a need that you can't satisfy and so
4 there has to be some sort of balance there and some sort of
5 planning and foresight.

6 And what we have been able to do is to establish a
7 volunteer base that helps us to meet this additional demand,
8 because with 175 filings per day, that is possibly,
9 potentially 300 people calling us on any given day. We are
10 not at that level yet, but we are blowing the switchboard
11 away as a result of the type of response that we are getting,
12 particularly from people who are less reluctant, very
13 reluctant before landlords, and so that outreach activity is
14 very important. That is something that I can see LSC
15 assisting its programs with.

16 MR. O'HARA: That leads me to the next question,
17 which is -- and first of all, preface that with the remark,
18 you indicated it took you a year to get this in place? About
19 one year?

20 MS. BERNARD: In terms of the court process, but
21 the other process, no. We drafted the proposal. We obtained
22 funding for it, and we trained the mediation staff. I hired

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1 mediators, full-time mediators, and we started.

2 MR. O'HARA: Yes, I think that this is something
3 that the corporation could and should help with, but as you
4 indicated before, I don't think we have to reinvent the
5 wheel. I think this is something that our technical
6 assistance office could very well handle with the help of
7 your office, because if you have already done it and we know
8 there are other places around the country that have done it,
9 we can probably get something going.

10 I have a question, though, that relates to Wayne
11 County. Are we talking here in terms of core city or are you
12 spread all over the county?

13 MS. BERNARD: No. The service area for Wayne
14 County Neighborhood Legal Services is the entire county,
15 which includes the city of Detroit. The mediation project is
16 funded mostly by a city of Detroit grant, and now by a state
17 court grant. Our service area for purposes of mediation is
18 now the entire county as well, although previous to this,
19 previous until the time we got state court funding, our
20 service area for purposes of mediation was only the city of
21 Detroit because of the nature of our funding.

22 MR. O'HARA: Right. Have you -- how best to phrase

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1 this? Have you noticed or observed any increase in housing
2 dispute cases because of the economic climate? Are they
3 increasing? What is happening there?

4 MS. BERNARD: Well, because so many -- because
5 almost 60,000 people just in my service area have been cut
6 off of general assistance and so forth, there has been a
7 dramatic increase in housing related activity, so dramatic,
8 in fact, that the Department of Fiscal Services came to us a
9 couple of weeks ago and said, Linda, will you try to vendor
10 some of these payments, and so forth, to landlords?

11 Our people are being put out on the street just
12 sort of wholesale, and is there anything that you can do to
13 mediate these disputes between landlords and tenants so that
14 all of these people will not become homeless?

15 It costs us more to keep them in shelters than it
16 does to keep them in this particular department, and if you
17 can convince the landlord to take \$300 of the \$600 in rent
18 that he is owed and maybe reduce his rent to \$175 a month,
19 then this person can continue to live there, if you can do
20 that through the mediation process.

21 So, we have started that, as a matter of fact.
22 Those contracts are on my desk now. And we also have the

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1 ability now even to pay the landlord at that particular point
2 to act as the direct vendoring agent if you go to cut a deal,
3 to say, if you will agree to let him stay there we can take
4 care of this right now for you, and we can resolve the
5 disputes where the issue is nonpayment as opposed to repairs,
6 and things like that, for former GA and AFDC receipts. It is
7 all DSS recipients.

8 MR. MURRAY: And we have also been able to
9 negotiate some pretty interesting solutions. Take, for
10 example, in one instance we had a multiple unit property
11 owner who was in the process of evicting wholesale a large
12 group of people from her units, and we were able during the
13 course of the mediation to develop an interest on her part in
14 not having these units remain vacant and thus subject to
15 vandalism.

16 And what she eventually came up with was, well, I
17 will put these people to work for me doing maintenance and
18 the rest of that and forego some of the delinquent back rent,
19 and perhaps adjust the amount of rent expected per month
20 based on their working with her, and this is a person who had
21 something like 80 or 90 units.

22 So there is a lot of creativity involved. There is

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1 increased demand, as she indicated, because they cut off all
2 the shelter allowance, the shelter grants for almost 60,000
3 people in Detroit. There are some people we absolutely can't
4 help, but we are only limited by our lack of creativity.

5 MR. O'HARA: If the chairman will indulge me one
6 more comment.

7 CHAIRMAN HALL: We probably need to get out of here
8 in the next 10 or 15 minutes if at all possible.

9 MR. O'HARA: Okay. I have one other, just one
10 other point. You mentioned that you had obtained or had
11 gotten the services of a number of clients who now act as
12 mediators. What do you look for in that?

13 MS. BERNARD: Actually, they start as volunteers,
14 Jack, and then they become so good, and as we sort of develop
15 a relationship, or I am able to increase funding for the
16 project, we hire them as full-time employees of the agency
17 with benefits and everything else and then of course, we have
18 some that are independent contractors.

19 What do I look for? People who have the ability to
20 communicate well, sensitivity, listening, and all the
21 training and so forth that they do actually enhances that. A
22 real interest. If you volunteered 160 hours with an

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1 organization, for example, and you come to work, as do many
2 of our volunteers, from 9:00 to 5:00 every day -- I mean,
3 shirt and tie. This is serious business. I mean, there
4 isn't any fluff involved in it.

5 And the only thing that I give them, is \$5 a day
6 for transportation. And I must have about 25 or 30 of them
7 now. And if they are that dedicated and that interested in
8 doing this service, then ultimately I try to look to that
9 pool first.

10 I also have indicated to them, as you probably know
11 in Working Woman Magazine last year they indicated that
12 mediation was one of the top careers for the '90s. It is a
13 good, long-term career opportunity for people just in
14 general, in terms of being able to develop a skill even as a
15 volunteer, and then later perhaps be able to market yourself
16 with that skill in a different context.

17 MR. MURRAY: I might point out that I started as a
18 volunteer two years ago. I had a full-time job working in
19 the emergency room of a hospital. But I began doing
20 volunteer work with Wayne County Neighborhood Legal Services,
21 and here I am, two years later, directing the program, and
22 also soliciting the support and being pretty successful,

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1 because I can identify with what it takes to volunteer.

2 And that screening process is particularly
3 important, not only in terms of volunteers, but also who you
4 have acting as mediators, and training is fine, but the
5 person has to have some degree of sensitivity or empathy
6 towards the people that they are serving, and my volunteer
7 activity was very rewarding, so much so I walked away from my
8 job at Detroit River View Hospital and am here now.

9 MR. O'HARA: Thank you very much. very
10 informative. Thank you, Mr. Chairman.

11 CHAIRMAN HALL: Thank you, Greg. Thank you, Linda.

12 MS. BERNARD: Thanks, Blakeley.

13 CHAIRMAN HALL: I am going to try to squeeze in two
14 more speakers, Mike Snyder and Lynette Braxton. We probably
15 absolutely must go by -- in another probably 15 minutes. Mr.
16 Snyder, if you can come forward, please.

17 STATEMENT OF MICHAEL SNYDER

18 MR SNYDER: Thank you. My presentation will
19 certainly be short. I apologize for going out of order on
20 the agenda. I was caught in fog for three hours between
21 Oklahoma City and Dallas, which is a half-hour flight
22 normally.

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1 However, during that time it did give me -- you
2 tend to read everything that is anywhere around you, and I
3 happened to find an article in the airline magazine that I
4 think is relevant, and it is concerning Columbus finding the
5 United States, or, as we in Indian law programs like to
6 think, Indians finding Columbus.

7 And in there, it mentions that discoveries mark a
8 distinct separation between the middle ages and the modern
9 age, and it seems to me that we are on the average of a new
10 discovery, something that some people have already
11 acknowledged and are using successfully but certainly the
12 mass legal field has not accepted. That discovery is a gift
13 from Indian people to the American legal society

14 The reason I felt it was important for me to show
15 up today was because as a representative of an Indian law
16 program we put much emphasis on traditions and cultures.
17 When we go back to the traditions and cultures in mediation,
18 we find that mediation and arbitration is nothing new.
19 Indian people and tribes were doing this when Columbus
20 landed.

21 They were successful at it. As a matter of fact,
22 the settlers were most surprised. That was probably the

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1 genius that they was among Indian people, was the way that
2 they are able to settle disputes, not through coercion but by
3 agreement. They would enter a room and they would come out
4 friends.

5 Now, to change gears, how does that apply to us
6 today? I looked first to Indian models, and I have found
7 two. There is the peacemaker court among the Navajos, which
8 was formalized -- I say formalized because it had always
9 existed even among their tribal court. It was still an
10 informal procedure but has always been used. It was
11 formalized in 1982. It has been very successful, and as a
12 matter of fact the Navajos are very proud of an example that
13 they repeat every time we discuss mediation, and that is,
14 taking a criminal Anglo American case and through mediation
15 it really is, in fact, a Navajo civil case.

16 Let me give the example. That is, there is an
17 assault, a criminal assault. Family members and the person
18 who was responsible for the assault enter into mediation.
19 When they come out of that mediation, in fact, they really
20 agree that there was no criminal activity and they settle
21 cases and they leave friends. What has this accomplished?
22 It has accomplished all of the ideals that I believe you

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1 probably had testimony on earlier today in that it was a
2 speedy remedy, there was participation among the parties, it
3 is not prolonged litigation, the cost is a lot less.

4 I would add that there is another angle that
5 probably wasn't addressed that is particular to Indian
6 people, and that is tradition and culture. The president
7 court system, whether that be district court, state court,
8 special court, or even tribal courts, which have been
9 typically patterned after Anglo courts, do not meet the
10 cultural need among Indian people. We have found that return
11 to culture is not a concept that is abstract to Indian
12 people.

13 It is not something that in the '80s and '90s we
14 are returning to our roots. That has not been the case at
15 all. In fact, these cultural standards and traditions have
16 continued since the beginning of their time. So we are not
17 resurrecting anything. We are simply giving a form for those
18 traditions and cultures to be used.

19 The other example that -- the model, Indian model
20 that is in the process of operating is with the Omaha tribe
21 in Nebraska. Unfortunately, I haven't had an opportunity to
22 talk about and discuss with the result of their model

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1 program. But looking at the Navajo peacemaker court there
2 does seem to be a real need and significant use for that
3 court.

4 How does that affect Oklahoma, and why, as an
5 Oklahoma attorney and interim director of Oklahoma Indian
6 Legal Services, am I concerned? I am concerned because in
7 Oklahoma we have 36 federally recognized tribes. We have
8 252,000 Indian people. That is the highest Indian population
9 of any state in the United States. We have surpassed the
10 State of California since the last -- with this new Census.

11 Having 36 independent native nations can be a
12 difficult thing. Coordination can be difficult. Cultures
13 may clash. We find that there are many individuals who have
14 conflicts between two different tribes. Typically, the more
15 powerful economically tribe wins the case, whether that be a
16 housing case, whether that be a child custody case. That
17 more powerful tribe intervenes and takes control of the case
18 throughout their court system.

19 Mediation offers an opportunity to meld those
20 cultures, to acknowledge them, and to bring unity to those 36
21 tribes. At the same time we are emphasizing a culture that
22 should not be extinguished.

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1 You will find among Indian people that they are
2 willing to accept those cultural standards. Even to their
3 disadvantage, they will accept them, partially because of
4 their upbringing and their traditions.

5 How does our office and the State of Oklahoma and
6 Legal Services fit into this picture? We are in the process
7 of coordinating efforts to establish a model program. We
8 would like to. We have discussed the concept of a
9 mediational arbitration program with the tribal courts in
10 Oklahoma.

11 They are very interested. The same with both of
12 the major universities in the State of Oklahoma. Their law
13 schools have Indian law projects. Those projects are also
14 interested. We have the support of Legal Aid Offices. There
15 are two that handle the state. And our office is also
16 interested in providing support for that program.

17 Our office, Oklahoma Indian Legal Services, is a
18 statewide program. I think that puts us in a unique position
19 to be able to be of assistance to all tribes and all Indian
20 people in Oklahoma.

21 Earlier you had heard the issue of a conflict of
22 interest raised. We are in a very good position, I believe,

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1 because our office handles only Indian law issues. That is
2 what we were established to do, and those are the cases that
3 we handle.

4 The rationale for that is, there are other Legal
5 Aid or Legal Services offices to handle the non-Indian
6 issues. Mediation could be done through our office, and in
7 the event that litigation is pursued, the other Legal Aid
8 offices could handle that overflow if they are not already
9 doing that currently.

10 There is a genuine interest among Indian people to
11 return to a better way of decision-making. That is the first
12 that Indian people would like you -- well, the Anglo
13 population, I should say, to acknowledge, and they reap the
14 benefits as well as the state.

15 If you have any questions -- by the way, I have
16 prepared a short summary of historical analysis, and
17 comparison of the peacemaker report. That has been provided
18 to you. If anyone has questions now or later feel free to
19 get in contact with me.

20 CHAIRMAN HALL: We do have that, Mr. Snyder, and I
21 will read it later on and perhaps have some questions on it.
22 Time limitations are probably going to foreclose any

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1 questions being asked to you now, but we are glad that you
2 came out of the fog and got here safely, and we do appreciate
3 your coming with your views.

4 MR. SNYDER: Thank you.

5 CHAIRMAN HALL: Thank you. We have one more
6 witness. I think, Mrs. Braxton, is it not? I know it always
7 seems unfair to be hurried along when you are toward the end.

8 STATEMENT OF LYNETTE BRAXTON

9 MS. BRAXTON: That's okay. I am going to be real
10 short.

11 CHAIRMAN HALL: Thank you very much.

12 MS. BRAXTON: Good afternoon, Mr. Chairman and
13 Committee members. Thank you for this opportunity to speak
14 to you. At first I was just going to observe, but the topics
15 were so important and so intriguing that I felt that I just
16 had to say something.

17 CHAIRMAN HALL: You are?

18 MS. BRAXTON: Lynette Braxton, State President of
19 the Louisiana Clients Council in West Lake, Louisiana.

20 CHAIRMAN HALL: Thank you.

21 MS. BRAXTON; I will be very, very brief. The
22 history of the Louisiana Clients Council is a non-profit

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1 organization made up of volunteers who are eligible clients
2 or representatives from the state to have been on Legal
3 Services assistance.

4 The Clients Council was born from the welfare
5 rights of the sixties, and these people are advocates on all
6 administrative levels. We help the clients go to the
7 administrative hearings, and help to advocate their cases.
8 Some of the advocates have education levels from third grade
9 and eighth grade and higher. We also have senior citizens
10 who are involved with Clients Council, handicapped who are
11 involved with Clients Council.

12 Our goal is the support mechanism designed to
13 promote, train, and I stress train, and educate poor people
14 affecting their everyday lives. Some of the trainings we
15 have addressed have been negotiation skill for advocates, the
16 role of the client negotiator, the development of a
17 bargaining range, and developing a strategy and others, and
18 we are still searching for ways to better ourselves and
19 empower the community.

20 I am in agreement with most of the speakers who
21 spoke today about supporting the training, but some of them
22 seemed to have left out the community, the client community

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1 organizations for these trainings. We are the ones that are
2 going through the problems that the mediators want to seem to
3 help, but they were not addressed today as far as their
4 participation in the training.

5 And we feel that this is very important, that you
6 have someone who can say, I am the one that is being hurt.

7 I mean, a professional, yes, he can get up there
8 with all the legal terms and everything, but you need someone
9 who knows what it is to be in those trenches and I was a
10 little disappointed with that, that they were not directing
11 that training for these particular people.

12 As Mr. Murray and Ms. Linda said -- I agree with
13 them -- we have to be very sensitive to the clients. You
14 asked the question, who can LSC help? And Clients Council is
15 one of those community organizations, and any community legal
16 organization that is trying to help people to empower
17 themselves.

18 You also asked, how do you let them know? In our
19 area we let them know by knocking on doors, letting them know
20 that we have workshops addressing different issues on
21 welfare, foodstamps, social security, whatever they are
22 hurting in, this is what we try to address. We also do it

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1 through newspaper, radio, television, and we get these people
2 into our workshops and we try to train them during our
3 monthly meetings on how to be empowered to go and help to
4 mediate, to be an advocate for the low income community.

5 In closing, I would like to say my recommendation
6 is that LSC considering putting a line item in the national
7 budget for training specifically for the mediation, to
8 empower the clients and to help the poor to help themselves
9 and possibly becoming accredited, as they were speaking about
10 today, so that they can help the LSC attorneys with the large
11 work load that they have, and also possibly long-term job
12 opportunities.

13 The whole thing that the nation is talking about
14 is, get the people off of welfare. Well, give them something
15 that they can do. I don't want to work at McDonald's for the
16 rest of my life, or Burger King is something that they say.
17 Give the people something that they are good at.

18 Now, as I said, some of these people have third
19 grade and eighth grade educations, but they can go and
20 mediate on just about anything, because they have the
21 practical experience, but we do need more funds for training,
22 so, please consider that into your line item budget for the

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1 training of the clients Council's across the nation.

2 And also, I would like to say thank you for
3 reconsidering the option for the competition for the Tri-
4 State Legal Services. I am from that area, and our clients
5 have been very upset about it. They have been very confused
6 about who is going to be in charge of their Legal Services,
7 so we do thank you for reconsidering and adopting Option 2.
8 Thank you.

9 CHAIRMAN HALL: Thank you very much. With that, I
10 will entertain a motion to adjourn.

11 MR. DANA: Mr. Chairman.

12 CHAIRMAN HALL: Mr. Dana.

13 MR. DANA: Before you adjourn, I just wanted to
14 indicate that Basile Uddo had to leave, and he was sorry that
15 he was called back on business, and I want to apologize on
16 his behalf as he requested, and I also want to apologize on
17 my behalf. I have been out tending to matters back home as
18 well, but I appreciate being here as much as I could.

19 CHAIRMAN HALL: Well, it is certainly not your
20 assigned duty to come to these, Howard. Both you and Basile
21 and the Chairman are all very helpful, and we always
22 appreciate you coming. Thank you very much.

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1 With that, a motion to adjourn?

2 M O T I O N

3 MR. WITTGRAF: So moved.

4 CHAIRMAN HALL: Second?

5 MS. LOVE: Seconded.

6 CHAIRMAN HALL: All in favor, say aye.

7 (A chorus of aye.)

8 CHAIRMAN HALL: Opposed, any.

9 (No response.)

10 CHAIRMAN HALL: We are adjourned.

11 (Whereupon, at 2:15, the meeting was adjourned.)

12 * * * * *

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