

THE LEGAL SERVICES CORPORATION

THE LEGAL SERVICES PROGRAM: 1965-1990

A TWENTY-FIFTH ANNIVERSARY CONFERENCE

AND

AWARDS CELEBRATION

December 10, 1990

The Madison Hotel
Fifteenth & M Streets, N.W.
Washington, D.C.

Diversified Reporting Services, Inc.

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WELCOME AND INTRODUCTIONS

CHAIRMAN WITTGRAF: Good morning. My name is George Wittgraf. I'm from Cherokee, Iowa. And as I've said to many of you before, any and all of you are welcome to come to Cherokee, Iowa. I can't get anybody to come to Cherokee, Iowa, yet, but you are all very welcome to come, and it would be my pleasure to have you there. On the other hand, perhaps, there's some benefit to being in Cherokee, Iowa. So it is possible to be insulated a little bit.

It's my pleasure on behalf of the Board of Directors, our late Board of Directors of the Legal Services Corporation-- and I guess I should aptly say that I'm the immediate past chairman of the Board of Directors. On behalf of the Board, it's a pleasure to welcome you here today. We thank you very much for your attendance.

Let me take just a moment before we begin, because none of us, as members of the Board, will be speaking today, let me take a moment to introduce the members of the immediate past Board. I believe that eight of us will be able to be here today, and three of us will not.

First of all, seated in front is John Collins from the

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1 State of Massachusetts; Howard Dana from the State of Maine;
2 Blakeley Hall from the State of Texas; Jo Betts Love from the
3 State of Mississippi. Guy Molinari, the burrow president from
4 Staten Island will be here with us in just a little bit; he's
5 not here yet; Tom Rath from the great State of New Hampshire;
6 and Jeanine Wolbeck from the State of Minnesota.

7 We have three other Board members, as you may know,
8 Luis Guinot from the Washington area, Penny Pullen from
9 Illinois, and Xavier Suarez from Florida who will not be able to
10 be with us today.

11 If you haven't had an opportunity previously to meet
12 the members of our Board, or I should say the members of our
13 immediate past Board, we encourage you to take that opportunity
14 today. It will be our pleasure.

15 I should say, too, that we have three other former
16 chairmen of the Board of Directors of the Legal Services
17 Corporation, each of whom will be visiting with you today; Roger
18 Cramton, Bill McAlpin, and Mike Wallace. And you will hear from
19 each of them over the course of today.

20 Let me say, first of all, on behalf of the Board, that
21 we owe, as we do in many things, a great deal of thanks and a
22 debt of gratitude to the Corporation's officers and to the

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1 Corporation's staff and, particularly in this instance, to the
2 Corporation's Secretary, Maureen Bozell, for making this
3 conference possible.

4 We, as Board members, oftentimes have ideas about
5 things, but were it not for the officers and the staff of the
6 Corporation, our ideas could not become reality. And while this
7 may have been our idea, it's the officers and the staff who have
8 turned this into reality.

9 Even though we don't exist as a Board, and I suppose
10 some of you might say that what more apt situation could there
11 be on the 25th anniversary of the Legal Services Corporation
12 than for there not to be a Board on the occasion of a 25th
13 anniversary conference. That may be a statement in and of
14 itself, however unintended.

15 We realize the significance of the passage of 25 years
16 in the history of federally-funded legal services. We also
17 recognize that 1990 is a very different year from 1965. One of
18 our staff members had pulled from the library at the Legal
19 Services Corporation an August 27, 1965, Life magazine cover.
20 It was a cover that was chronicling the most destructive riot in
21 U.S. history, the Watch Riot.

22 For those of you who -- I look to Mike Wallace in

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1 particular -- who had the occasion to be appointed to the Board
2 as did Blakeley Hall by Ronald Reagan, we saw in January of 1966
3 in Life magazine a picture of a former actor and a headline,
4 "The Real Ronald Reagan Stands Up." And certainly a lot changed
5 in the life of Ronald Reagan from and after 1965 and 1966.

6 Clearly, whether we're talking about our economy, our
7 means and modes of communication, our social and cultural
8 habits, the makeup and the structure of our families or, in
9 particular and significantly for our purposes, our legal system
10 and the legal needs of our poorest citizens, there have been
11 many, many changes during the last 25 years.

12 As within most things in our lives, and I guess I
13 think particularly of marriage, comes to mind first, when we get
14 to 25 years, when we pass a quarter century, it is a time for
15 commemoration, a time for looking back, and a time for looking
16 ahead.

17 I think you will all agree with me that the legal
18 services program and federally-funded legal services never will
19 be without controversy. We look to other initiatives from the
20 war on poverty, I think particularly the Head Start Program
21 which has come to enjoy such wide acceptance and such wide
22 acclaim.

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1 We who are involved with the legal services program
2 know that that is not the case for the program and, in fact,
3 probably never will be the case. When you have an adversarial
4 situation, when you have legal confrontation involving rights
5 and benefits, controversy is, by nature, part of the legal
6 services program.

7 It always has been, and it always will be, and I think
8 it's probably a tribute to the success of the legal services
9 attorneys over the last 25 years, that that controversy exists.
10 It seems to me on reflection that if the controversy didn't
11 exist, that the legal services attorneys probably would not have
12 been doing their jobs so successfully.

13 With or without controversy, though, the turning of a
14 quarter century is a time for us to reflect and also a time for
15 us to recognize. We're very fortunate as far as reflecting is
16 concerned because we happen to have today many people who have
17 been the major players on the national legal services stage
18 since 1965. We will have the benefit, as the day goes on, of
19 their analyses and of their ideas. And Dave Martin is going to
20 introduce each one of them.

21 But at this time let me say that we particularly thank
22 all of our speakers and all of our panelists who have taken time

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1 from their busy schedules to be here on this occasion.

2 It's also a day for recognition. We're delighted that
3 we have with us, and we will be recognizing at the end of the
4 day, several people who are true veterans of the legal services
5 program; in fact, 25 year veterans of the legal services
6 program.

7 If nothing else, one of the key developments of the
8 last 25 years is a whole new area of the law. We have an area
9 of the law that exists today that simply did not exist 25 years
10 ago, and that is, of course, poverty law. And these individuals
11 whom we will pay tribute to later in the day personify the
12 evolution of that new area of the law.

13 I think it's fair to say that all of us who are
14 involved with the legal services program will not see eye to eye
15 on every issue on every occasion. But I think it's also fair to
16 say that we can accomplish a lot more working together, the
17 Legal Services Corporation, the legal services programs in the
18 field, as we move into the second quarter century if we work
19 hand in hand rather than fist to fist.

20 It's my hope on behalf of our Board that today and
21 this 25th anniversary conference is one more step in the
22 direction of working hand in hand into the second quarter

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1 century.

2 Certainly, 1990 already has been a year of change for
3 the legal services program. We have a new Board of Directors,
4 or at least we did until October 28th when the Congress
5 adjourned. We have a new Board of Directors and, equally
6 significantly, we have a new president of the Legal Services
7 Corporation.

8 And at this time, to continue with our day's program,
9 it's my pleasure to introduce to you a man whom many of you have
10 met already. If you haven't, we hope you'll take the
11 opportunity today. He's the new president of the Legal Services
12 Corporation, David H. Martin. Dave?

13 MR. MARTIN: Thank you very much, George. You're
14 going to hear a lot from me today. I'm going to be moderating
15 and maybe refereeing before the day is over, but I hope not. It
16 is exciting for me to become the new president of the Legal
17 Services Corporation. It's also exciting to have this event
18 today.

19 It gives me a real perspective, I think, or I hope it
20 will, to learn a lot about what the past has been like and also
21 to find out what some of our speakers and panelists think the
22 future holds. So it is a good opportunity for me. And having

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1 been president for about eight weeks, I think I have an idea of
2 what I need to do. But as Will Rogers says, "Even if you're on
3 the right track, if you stand still, you may get run over."

4 I think I want to echo what George said and that is
5 the theme of unity. And I think one of the themes of unity that
6 I have perceived since I have been president is that there is a
7 significant lack of trust in all areas of the Legal Services
8 Corporation, especially on certain issues.

9 Some of you may know of my background, but I was
10 director of the Office of Government Ethics for four years in
11 the Reagan Administration. I learned a lesson there. That is
12 that there is a close connection between ethics and trust and
13 integrity. Those within whom you trust and who have ethics, you
14 tend to give that trust to. Those whom you don't feel have
15 ethics and integrity, you withdraw that trust.

16 And if you look at the relationship between our
17 congressional branch and the executive branch of government,
18 you'll see how that has worked. Congress has chose to mistrust
19 the Executive Branch in many instances and has sought to then
20 pass laws, rules, regulations, one on top of the other that kind
21 of micromanages. They have withdrawn their trust.

22 I see a big part of my job to restore the trust

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1 between the Corporation, the people, the grantees who receive
2 the money that Congress appropriates, and also to restore
3 confidence and integrity between my office, field programs and
4 also Congress. I think it's essential, as George said, that we
5 work together in order to restore that trust.

6 A long time executive of the administration of
7 Franklin Delano Roosevelt said something about trust, and I ran
8 across it over the weekend. I wanted to quote it for you. It's
9 this by Henry Stimson, "The only way to make a man trustworthy
10 is to trust him. And the surest way to make him untrustworthy
11 is to distrust him and to show that distrust." I hope that we
12 can all demonstrate a little trust among ourselves as we go
13 forward for the next 25 years.

14 Also, there is something else to be said about trust
15 and confidence, and that's the matter of funding. Voltaire
16 said, "When it comes to money, we all have the same religion."
17 As I've traveled about, I've spoken with the program directors
18 in New York, out in Minnesota, in Virginia, my own state, and
19 I've had calls from a number of other state program directors
20 and city directors.

21 A common theme seems to be that we need more money.
22 In New York, they tell me that 8 out of 10 applicants are turned

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1 away. And I get similar statistics from -- for lack of funding
2 -- from across the country. Now, I don't know if those
3 statistics are accurate, but I want to find out. But if they
4 are, more funding will be necessary to provide the legal
5 services that are unmet.

6 If that's the case, a lot of togetherness is going to
7 be required to demonstrate to Congress not only our own
8 integrity and our own credibility, but also our ability to use
9 the funds they appropriate for us in an efficient, economic
10 matter to meet the legal needs of the poor.

11 So those are just my few remarks, only being president
12 for eight weeks. I have to say to you that those of you who
13 have met George Wittgraf know he's a terrific fellow. He's done
14 a good job under difficult conditions as chairman for the last
15 year. But I have to tell you one thing, you may not have to go
16 to Cherokee, Iowa, but I do. A condition of becoming president
17 was I'll have to visit a lot of places, and Cherokee, Iowa, is
18 one of them.

19 I also told Joe Betsaleva I was coming down to
20 Mississippi. As a matter of fact, I intend to get to as many
21 states and visit the programs as I can in the next year. And
22 I'm going to set off a program of visitation. And hopefully I'm

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1 going to drag some Board directors with me and maybe even have
2 some meetings in various cities. We've already met in Denver
3 and been in Minnesota to visit Jeanine.

4 So I will be traveling and hoping to meet all of you
5 and get your ideas. So please feel free to come up to me, I'm
6 easy to talk to, and give me your ideas.

7 Well, with that, I want to describe to you what
8 today's format will be like. It is a speaking program with
9 panelists. We will have morning speakers who will speak for
10 about 15 minutes each. And then we have a distinguished group
11 of panelists who will then get five minutes approximately to ask
12 questions or maybe make a five-minute speech, however they want
13 to use their time. We're not going to monitor them on that.
14 And if we have more time, then we'll go around again.

15 We have a luncheon speaker, and then we have the same
16 format this afternoon. Then, this evening, there is a reception
17 for those who we are honoring who have had 25 years of service
18 in the legal services programs. We will have a fixed time for
19 breaks. Of course, if you have to leave us, please feel free to
20 do so, but we will be giving you ample opportunity for break
21 time.

22 So with that behind me, let me introduce the

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1 distinguished group of panelists who will be the panelists for
2 the morning as well as the afternoon session. To my immediate
3 left is Dr. Steven R. Cox. He is an economist, a prolific
4 writer on matters of poverty and law.

5 I was so impressed by what he had written, I want to
6 just say a few of the titles of articles that he has written on
7 eradicating urban poverty: "Legal Service Pricing and
8 Advertising," "Pricing of Legal Services," "Advertising and
9 Competition in Routine Legal Service Matters," "The Effect of
10 the Advent of Self-Help Law on Legal Services Markets." Dr. Cox
11 is an economist and a distinguished writer on poverty law and
12 legal matters.

13 Next is Catherine Elias-Jermyan seated next to Dr.
14 Cox. She is the grand order of Kally Jackson, the first known
15 independent paralegal in the United States. She is a specialist
16 in business development and marketing. From 1974 to 1980, Ms.
17 Jermyan was director of the Paralegal Training and Career
18 Development for the Legal Services Corporation. She is
19 currently executive director for the National Association of
20 Independent Paralegals and an associate director of the National
21 Paralegal Institute.

22 Seated next to her is a distinguished gentleman,

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1 athlete, scholar and lawyer, William Reece Smith, Jr. I was so
2 impressed, Mr. Smith, by your bio that I can't read it all here.
3 I'll just say that he is a successful lawyer and just a -- we
4 are so fortunate to have a man like him to join us today. I
5 think he'll bring to us a wealth of experience and knowledge.
6 And he just shared with me last night that he is either
7 president or past president of the International Bar Association
8 in addition to all the bar activities he's done in the United
9 States.

10 Seated next to Mr. Smith is Kent R. Spuhler, executive
11 director of the Jacksonville area legal aid, been active in
12 legal aid programs throughout his professional career. Since
13 1990, Mr. Spuhler has been a member of the Florida Bar-Florida
14 Bar Foundation Joint Commission on the delivery of legal
15 services to the poor in the 1990s and vice chairperson of the
16 delivery systems committee. He is a Harvard Law graduate cum
17 laude.

18 On the end, last but not least, is Leona Vogt. From
19 1970 to 1980 Leona Vogt directed the Legal Services
20 Corporation's delivery systems study, a congressionally ordered
21 investigation into the feasibility of various alternative modes
22 of supplying legal services to the poor. She is currently the

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1 principal in Vogt and Associates.

2 I have to say that one of my staffers handed me that
3 study, and it's about an inch-and-a-half or an inch thick, and I
4 have not read it yet, Leona. But I hope to get to it.

5 This morning our speakers are Earl Johnson, Jr., a
6 judge on the circuit court of appeals in California. He has
7 been intimately connected with the delivery of legal services
8 all of his career. He was the deputy director of the legal
9 services program in 1966 at OEO, and he succeeded Clint
10 Bamberger as director.

11 He was appointed a visiting scholar at the University
12 of California Center for the Study of Law and Society in 1968,
13 and he was a member of the University of southern California's
14 School of Law. In 1989, the California Bar named a fellowship
15 in Justice Johnson's honor.

16 If you will, please make welcome Justice Johnson.

17 LEGAL AID & OEO: A SECOND LOOK BACK

18 JUSTICE JOHNSON: Good morning. Thank you very much,
19 President Martin, members of the past and future Boards of the
20 Legal Services Corporation. I've had a little bit more success
21 than George Wittgraf in inviting people to my home town of Los
22 Angeles to the tune of about four million extra people in the

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1 last two decades. I think we'd like to slow it down a little
2 bit here.

3 You know, it's not very often that someone has the
4 opportunity of living through something, then 10 years later
5 publishing a book talking about what he lived through, and then
6 25 years later getting a chance to take a second look at what he
7 lived through 25 years before.

8 And perhaps not surprisingly, I find the view from 25
9 years later quite a bit different from the view I took a decade
10 after the event in my book, "Justice in Reform." For one thing,
11 I'm a great deal older, if not wiser, and see what we did then
12 in a much longer time perspective.

13 I don't know how many of you realize it, but 1990 is
14 not just the 25th anniversary of the founding of the OEO legal
15 services program; it is also the 70th anniversary of another
16 landmark event in the history of legal representation of the
17 poor in this country.

18 For, you see, it was 70 years ago this past summer in
19 the year 1920 that Charles Evans Hughes and Reginald Heber Smith
20 created the National Legal Aid Movement. Charles Evans Hughes,
21 later to be the chief justice of the Supreme Court, was then the
22 president of the American Bar Association.

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1 Reginald Heber Smith, a Boston Brahman later to be the
2 leading figure in that city's largest law firm, then headed that
3 city's legal aid program and had written an influential book,
4 "Justice and the Poor." Now, true, there had been a smattering
5 of the legal aid societies around the country dating back as far
6 as the 1870s, but it was not until that ABA conference in 1920
7 that Hughes and Smith managed to make it a declared goal and
8 endearing national priority of the American legal profession.

9 In quick order, Charles Evans Hughes made legal aid
10 the theme of the 1920 ABA convention. He created a special
11 committee on legal aid and personally assumed the chairmanship
12 of that committee. And in his presidential address, Hughes laid
13 down the challenge to the rest of the nation's legal profession
14 in these ringing words, "The legal profession owes it to itself
15 that wrongs do not go without a remedy, because the injured has
16 no advocate. Does the lawyer ask, 'Who is my neighbor?' I
17 answer, 'The poor man deprived of his just dues.'"

18 Now from its inception, the ideology of the legal aid
19 movement Hughes and Smith created embraced a surprisingly far-
20 sighted and expansive view of what legal aid lawyers should
21 indeed must do if they are to do the job for their clients. As
22 Reginald Heber Smith wrote in his book, "Justice and the Poor,"

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1 in 1919, a book that became the veritable manual of the legal
2 aid movement, "In cases wherein new important points of law and
3 matters of general legal or social interests are involved, it is
4 essential" -- and I underscore the word essential -- "that legal
5 aid organizations should be able to carry the issue through to
6 the highest court for its decision.

7 "This is more," as he said, "than a question of
8 individual justice. On it may depend the right to protection
9 and redress of countless other persons similarly situated." So
10 the notion of test cases, class actions and concern for how
11 those kinds of legal strategies might contribute to the overall
12 benefit of poor people, not just the client in the individual
13 case, was not something created out of whole cloth by Clint
14 Bamberger or Edgar and Jean Kahn or Ed Spare or any of the other
15 people involved in legal services a quarter century ago.

16 It was expressed as an essential element of legal aid
17 ideology over 70 years ago. Nor was the ideology of the legal
18 aid movement silent on legislative advocacy. Once again,
19 Reginald Heber Smith spoke out in "Justice and the Poor," "It
20 early became apparent that if legal aid societies were to be
21 effective in their fight against injustice, they must" -- and I
22 again underscore the word must -- "they must take a part in the

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1 formulation of remedial legislation. They see cases of
2 injustice which the law is powerless to redress because of the
3 inadequacy of certain provisions, and have taken up the burden
4 of trying through remedial legislation to keep the law equal."

5 Now that is the architect of traditional conservative,
6 pre-OEO legal aid movement speaking, recognizing as any good
7 lawyer would that clients rich or poor need help in the
8 legislative arena as well as in the courts. But that was the
9 ideology of the legal aid movement as expressed by its revered
10 co-founder Reginald Heber Smith.

11 The performance of that movement was something else
12 again, especially as the 20th century wore on. Indeed, to my
13 mind, the vast gap between legal aid ideology and legal aid
14 performance in the mid-1960s explains much of the early history
15 of the OEO legal services program.

16 To explain what I mean, let me tell you what legal aid
17 looked like to someone who came upon the scene for the first
18 time 26 years ago this November, that is November of 1964,
19 having never before been exposed to legal aid and never before
20 having represented a poor person in any sort of case. If you
21 haven't guessed, that someone was me.

22 When I arrived for my first day of work to represent

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1 poor people, it was as the deputy director and second employee
2 of the newly created Neighborhood Legal Services Project here in
3 Washington, D.C. NLSP, as it was known, was a Ford Foundation-
4 funded program to put 10 neighborhood law offices staffed by a
5 total of 24 lawyers in the low income areas of Washington.

6 I had myself just left Las Vegas, Nevada, not exactly
7 like Washington, D.C., where I was a federal prosecutor heading
8 the organized crime section strike force in that city. I knew I
9 was entering a different world when on December 7th I reported
10 to NLSP's temporary headquarters at the Masonic lodge on 10th
11 and U. Wiping the sand out of my suit, I sat down and went to
12 work.

13 A legal aid society already existed in Washington, of
14 course. It had been in operation for nearly four decades. What
15 I learned about that society and its lawyers and their kin
16 around the country at that time during the next few months was
17 not encouraging.

18 At that point, the combined budgets of all the legal
19 aid societies in this entire country totaled less than \$5
20 million. Now, in present day dollars, I guess that would be \$15
21 or \$20 million. But, you know, compared to the present Legal
22 Services Corporation budget, it's obviously a pittance.

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1 The lawyers, in turn, were paid a pittance and, not
2 surprisingly, were, on the whole, marginal in ability and
3 commitment, lacking the talent to make it elsewhere in the
4 profession. No legal aid lawyer in the Washington legal aid
5 society and, indeed, no legal aid lawyer anywhere in the country
6 had ever brought a case to the United States Supreme Court.

7 They were simply living with legal interpretations
8 unfavorable to their clients rather than appealing those cases.
9 In fact, early on, I had a client who had just arrived in the
10 District a couple months before. She was a young black woman
11 about 20 years old. Her husband had deserted her, leaving her
12 with two infant children.

13 But when she applied for welfare, she was told D.C.
14 had a residency law. It denied welfare to anyone, including
15 mothers with two infant children who had been abandoned by their
16 husbands, who had not resided in the District for at least a
17 year.

18 She had been to the legal aid society already. They
19 told her they couldn't help her. I soon learned scores of
20 people like her came to the society every year, and the legal
21 aid lawyers told all of them the same thing, "Sorry, but that's
22 the law. There's nothing we can do for you."

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1 We took that woman's case and started the first in a
2 series of legal challenges mounted by legal services lawyers
3 which, three years later, culminated in the United States
4 Supreme Court where the high court, as most of you know, struck
5 down those welfare residency laws as unconstitutional.

6 I mention this because it is typical of legal aid
7 societies and the state of the legal aid movement in the mid-
8 1960s. Performance fell far short of the ideology, the
9 aspirations and goals of the movement. Legal aid ideology would
10 say, paraphrasing the words of Reginald Heber Smith, that in
11 cases like these involving matters of general social interest
12 and the right to protection redress of countless other persons
13 similarly situated, that legal aid society lawyers should carry
14 the issue to the highest court for its decision.

15 By the mid-1960s, however, legal aid performance said
16 there wasn't the time, and often I fear there wasn't the
17 inclination, to do that and, thereby, live up to the goals of
18 the founders of the legal aid movement.

19 There was more than one reason that legal aid
20 performance fell so far short of its ideology. One key, of
21 course, was the relatively marginal quality of most of the
22 lawyers it was able to attract. Another may have been its

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1 leadership's preoccupation with geographic expansion.

2 Let's get legal aid societies established in every
3 city and hamlet in the country. Then we'll have time to worry
4 about how good they are and what they're doing for their
5 clients. That was more or less the prevailing notion. But
6 there is another, possibly more important and more sinister
7 reason. Legal aid was supported by charitable contributions not
8 general tax revenues.

9 A lot of those contributions came from the very
10 business interests who stood across the courtroom from legal
11 aids clients or potential clients in many of their cases. And,
12 indeed, an in-depth study of legal aid societies in the early
13 1960s concluded, "The effectiveness of legal aid is limited by
14 its vulnerability to pressure from local business interests who
15 are its principal financial supporters. Pressure for local
16 businessmen has resulted in a reluctance to pursue claims
17 against local merchants, landlords and others whose interests
18 would be threatened by more vigorous representation."

19 In any event, that's how things stood in 1963 and 1964
20 when people like Edgar and Jean Kahn, Ed Spare, Garry Bellow and
21 others began thinking about and writing about the possible role
22 of lawyers in the forthcoming war on poverty. These thinkers

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1 and strategists were, in effect, the theorists for the legal
2 services program, just as Reginald Heber Smith had been for the
3 legal aid movement some four decades earlier.

4 Focusing on legal aids performance and assuming that
5 performance reflected legal aid movements ideology, it was easy
6 for them to conclude it was essential to find a brand new
7 ideology for the legal services program. And that's what they
8 did, brilliantly I might add.

9 In their seminal article in the Yale Law Journal, the
10 Kahns emphasized how lawyers could help poor people to make
11 those government programs designed to help the poor accountable
12 to the poor. In effect, to provide a civilian perspective for
13 those civilians those programs were expected to serve.

14 In the meantime, Ed Spare was speaking and writing
15 about how lawyers could use test cases and the like to help poor
16 people make the legal structure more favorable to their
17 interests. And Gary Bellow was stressing the role of lawyers
18 and helping community organizations of poor people to become
19 effective voices for their members' interest in the larger
20 society.

21 Now all of this sounded new and to some people, I'm
22 sure, a bit radical. And what the Kahns and Spare and Bellow

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1 were saying and writing indeed did represent new ways of talking
2 about what lawyers could do and should do for poor people. At
3 the same time, however, nothing they were saying was
4 inconsistent with or outside the boundaries of the ideology of
5 the traditional, conservative legal aid movement as laid down by
6 Reginald Heber Smith over 40 years earlier.

7 Just as significantly, what these legal services
8 theorists were saying was fully consistent with the ideology of
9 a legal profession. What they said legal services lawyers
10 should do for poor people was no more and no less than what
11 hundreds of thousands of other lawyers have been doing for their
12 clients for a century and more.

13 Now while all this theorizing was going on, I was back
14 in the Washington ghettos helping run a neighborhood law office
15 program and trying to figure out from that perspective what
16 lawyers serving poor people should be doing. I learned those
17 hard practical lessons not at the knee of the Kahns or Spare or
18 Bellow or any of the rest, nor at the knee of some civil rights
19 lawyer.

20 No, I learned at the knee of Howard Westwood, a senior
21 partner at Covington and Burling, at that time -- and I don't
22 know if it's still true -- the largest law firm in Washington

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1 and the leading figure on the Board, the Neighborhood Legal
2 Services Program I was working for.

3 Westwood knew what he and other law firm lawyers did
4 for their paying clients and couldn't see why legal services
5 lawyers shouldn't do the same for their clients. Time and
6 again, when issues came up about whether we should be doing test
7 cases or advocating legislation or representing groups and
8 organizations of poor people, he saw the answer as simple and
9 fully supported by precedent.

10 Those things were an accepted part of his practice and
11 the practice of nearly every lawyer he knew. Indeed, these
12 sorts of activities formed the bulk of his personal work and
13 many others in the legal profession. So why should the poor be
14 denied what his clients had? For Howard Westwood, there was
15 only one correct answer to that question.

16 I learned that lesson from him, and it carried with me
17 when, in November 1965, I moved over to be deputy director and
18 eight months later the director of the OEO legal services
19 program. Before I leave the matter of the new legal services
20 ideology, let me make a couple of observations.

21 True, it may have had the downside of sounding more
22 different and more radical than it need have, given its

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1 consistency with both the ideology of the legal aid movement and
2 of the American legal profession itself. Nonetheless, it had
3 some important crucial virtues.

4 For one thing, the new ideology of the Kahns, the
5 Spares, the Bellows and the rest, convinced OEO that legal
6 services was something worthwhile investing in as part of the
7 war on poverty. There is no chance whatsoever that anyone
8 involved in the war on poverty would have considered to voting
9 any of OEO's budget to a legal services program they viewed as
10 merely an expansion of what they perceived the legal aid
11 movement to be on the basis of the performance of the typical
12 legal aid society at that time.

13 The new ideology also served to underscore for the
14 scores of legal aid societies that ultimately receive grants
15 from OEO that they couldn't just doing things as they had in the
16 past. They were going to have to live up to the ideals of the
17 legal aid movement.

18 Third, and perhaps most importantly, this new ideology
19 excited young lawyers and helped recruit into legal services a
20 superior breed of attorney. Ironically, as a result, the old
21 legal aid societies as well as the new grantees that sprang into
22 existence in some places were, for the first time, able to

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1 employ lawyers talented enough to realize the full aspirations
2 Reginald Heber Smith had announced for the legal aid movement
3 many years earlier.

4 But that puts me a bit ahead of the story. After
5 ideology comes performance, and they aren't necessarily
6 connected as the history of the legal aid movement amply
7 documented. In the eight months from November 1965 through June
8 1966, Clint Bamberger and our tiny staff wage a monumental
9 struggle to, in a single year, quintuple the nation's investment
10 in legal services for the poor and to bring lawyers to hundreds
11 of low-income areas around the country.

12 Once that was achieved, however, there was the matter
13 of making the whole thing work, to give more people the kind of
14 representation they deserved instead of the legal representation
15 they had been getting. When I transferred from the local
16 neighborhood legal services project to the leadership of the OEO
17 legal services program, I came to the job, fortunately not only
18 with the lessons I picked up from Howard Westwood about what
19 legal services lawyers should do, I also came with some notion
20 of how to structure and support a nationwide network of law
21 offices, because this lesson I had picked up while working at
22 the Justice Department.

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1 How do you enable a bunch of lawyers scattered around
2 the country in small neighborhood offices to do sophisticated
3 legal work? The Justice Department provided a model. As I
4 well knew, the Justice Department in Washington acts as a huge
5 backup center for the scores of U.S. attorneys' offices
6 scattered around the country.

7 The Department gives them training, advises them on
8 difficult questions, support up to and including specialist
9 lawyers to work with them on complex cases and the like. This
10 relationship was the prototype for the legal services program
11 system of backup centers.

12 Another big problem, how do you attract the elite
13 lawyers into this field where no elite lawyers have trod before?
14 Well, once again, I had learned a lesson about that at the
15 Justice Department. There, for the very same reason the
16 Department had instituted an honor graduate program which gave
17 special status and a better rate of pay to a select cadre
18 recruited from the top strata of law graduates.

19 This honor graduate program was the prototype for the
20 original Reginald Heber Smith program, a blatantly elitist
21 endeavor to enlist the top strata of law graduates and young
22 lawyers into the field of representation of the nation's poorest

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1 citizens.

2 That first class of 50 Reggies included a dozen young
3 lawyers who crossed over from Wall Street law firms to serve the
4 poor, law graduates who stood first in their class as the
5 University of Chicago, third in their class at the University of
6 Pennsylvania, seventh in their class at Harvard, et cetera, et
7 cetera, et cetera.

8 As many of you know, that first Reggie class also
9 included Dan Bradley, later to serve as president of the Legal
10 Services Corporation. I am sometimes asked what I believe to be
11 the major legacies of the OEO legal services program. Some of
12 my answers may have been different at an earlier time, but now,
13 25 years later, I would say the five most important legacies
14 are, first and foremost, the high quality lawyers it enlisted in
15 service of the poor.

16 A surprising number of them are still in the field,
17 and they also have set a high standard for those who have joined
18 legal services since so that the caliber of attorneys remains
19 extraordinarily high, despite enough financial insecurity and
20 bureaucratic buffeting to drive away any but the most committed.

21 Second, the involvement of low income clients in the
22 policymaking and management of agencies. Having sat on many a

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1 board of many a legal services agency before assuming the bench,
2 I have come to appreciate what this means to the soul as well as
3 the performance of those agencies.

4 Third, the network of support centers and services
5 that enable a collection of mostly quite small law offices to
6 offer their clients high quality, sophisticated representation.
7 Without that support, it would be difficult for even the best of
8 the neighborhood lawyers to give their clients the kind of
9 representation they need in their most difficult and important
10 cases.

11 Fourth, a knowledge gained early on that lawyers
12 indeed can make a difference in the everyday lives of poor
13 people. They could give them more money, more opportunity and
14 more hope.

15 Fifth and finally, a harder lesson which has become
16 more apparent as time gone by, a recognition that lawyers cannot
17 by themselves overcome poverty. Legal services and their poor
18 clients are all hostages to macroeconomic factors and political
19 forces which are largely beyond the influence of the law.

20 The past eight years have also added yet another
21 perspective as I look back to the early period of the OEO legal
22 services program. Since joining the appellate bench, I've had

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1 the opportunity to see legal services lawyers in action in my
2 court.

3 I am pleased to report that 25 years later, long after
4 the excitement of the pioneering era was over, long after the
5 Reginald Heber Smith program was closed down, and despite a
6 harrowing decade of official hostility to their efforts, the
7 performance of legal services lawyers remains at the highest
8 level.

9 The briefs legal services lawyers have submitted to
10 the court on which I sit and the arguments they have made are
11 far above those I see from the average private lawyer. Indeed,
12 they are easily within the top 10 or 15 percent. What a scandal
13 it would be if our government did anything to break up such a
14 superb cadre of lawyers.

15 What a scandal it is that the government, in general,
16 and the Legal Services Corporation, in particular, isn't doing
17 everything possible to encourage these lawyers to continue their
18 exemplary advocacy on behalf of the poor people of this country.
19 At this point in our history, we should be talking about how to
20 expand the legal services program in order to realize our
21 nation's promise of equal justice for all.

22 Instead, I'm afraid for the past decade we have been

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1 mired in debates about how much and in what ways to cut back on
2 that promise. I fervently hope that this conference will mark a
3 shift, a return to a funding agency which attempts to nurture
4 rather than neuter the local legal services agencies and their
5 staffs of committed capable lawyers.

6 It is time for everyone to recognize the goals that
7 motivated the OEO legal services program, and legal services
8 today are not the goals that will go away. They are not goals
9 that started with the OEO legal services program or with the
10 Legal Services Corporation or even with the legal aid movement.

11 They didn't originate with Edgar and Jean Kahn nor
12 even with Reginald Heber Smith. And most certainly, they are
13 not something that can be dismissed as one of those radical 60s
14 kinds of things. No, the goals that motivated the OEO legal
15 services program are the same ones that motivated Reginald Heber
16 Smith, the same yearning for equal justice, true equal justice,
17 that bound expression in the equality before the law provisions
18 of most European constitutions as well as the preamble, due
19 process and equal protection clauses of our own Constitution.

20 Equal justice in the true sense of that word for all
21 remains a fundamental goal of the American Constitution, the
22 American government and the American people. We had a long way

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1 to go to reach that goal 25 years ago. We still have a long way
2 to go today, a lot further than most industrial democracies and
3 a whole lot further than we would if we hadn't suffered the
4 setbacks of the 1980s.

5 It is time, ladies and gentlemen, to renew our
6 commitment and resume our march toward that goal. Thank you.

7 (Applause)

8 MR. MARTIN: Thank you very much, Justice Johnson.
9 The next speaker, our second speaker for the day, is a man who
10 needs no introduction to this audience. He is Alan W. Houseman,
11 Director of the Center for Law and Social Policy, CLASP. I have
12 to get used to a lot of acronyms that are new to me, but I think
13 I'm learning.

14 He has been, for years, an ardent advocate of legal
15 services for the poor and has held many positions in the legal
16 services and poverty law programs, including the Michigan
17 Welfare Rights Organization, the National Welfare Rights Legal
18 Committee and the Michigan Legal Services.

19 From 1976 to 1981, he was head of LSC's research
20 institute. In addition to his current position as director of
21 the Center for Law and Social Policy, Mr. Houseman is intimately
22 associated with the National Legal Aid and Defender Association

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1 and the Project Advisory Group.

2 With John Duley, he is the author of "Legal Services
3 History," and he has also published numerous articles on the
4 theory and practice of legal services for the poor. This
5 morning his speech is on "A Record of Effective Services to the
6 Poor." Please welcome Mr. Alan Houseman.

7 A RECORD OF EFFECTIVE SERVICES TO THE POOR

8 MR. HOUSEMAN: Thank you, President Martin. I
9 appreciate the opportunity to come down from my mountain retreat
10 in Marble, Colorado, which may be the only place less accessible
11 than Cherokee, Iowa, and talk to you. I'm going to talk about,
12 for a few minutes, an almost impossible task of reviewing the
13 accomplishments and the failures of the legal services movement
14 through the LSC era, and putting into perspective the
15 suggestions that will be made this afternoon on our future.

16 Given the limited time and my ability to write
17 quickly, I have, as one might expect, prepared a paper, copies
18 of which will be available whenever my office runs them off.
19 I've handed out copies to most of the Board members and to some
20 of you which is a much more detailed discussion of the few
21 points that I'm going to talk about here.

22 Also, at the back table there is the publication of

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1 the legal services movement, NLADA and PAG called "Future
2 Challenges" which sets out their views of where we should go in
3 the future. But I'm not speaking today for PAG or NLADA. These
4 are my own thoughts and my own views, and they may not be shared
5 by either the national organizations or my colleagues in the
6 room.

7 Any institution, of course, is not perfect, and legal
8 services is not exception. But if we're going to look at how to
9 improve legal services, how to make it better, I think we have
10 to start from an accurate understanding of the past. In this
11 brief time, that's what I'm going to try to do.

12 In summary, I believe an objective review of the
13 record would draw the following conclusions. First and
14 foremost, the system of legal services in the United States
15 under OEO and LSC, even though operating under severe resource
16 limitations, has effectively and efficiently carried out the
17 goals established by Congress in the LSC Act.

18 Unlike the legal aid programs which Earl described,
19 the legal services program's performance has not fallen short of
20 those goals. Those goals are equal access to our system of
21 justice, not just the courts, high quality legal assistance to
22 those who would otherwise been able to afford adequate legal

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1 assistance, improving opportunities for low income, providing
2 economical and effective delivery of legal services, and
3 assuring the full freedom, the full freedom, of attorneys to
4 protect the best interest of their clients, and insulating the
5 program from the influence of or use via political pressures.

6 Those are the goals explicitly set out in the LSC Act.
7 I think if we look at those goals and we look at the record of
8 accomplishment, we will see that we have, in legal services,
9 reasonably met them. We have provided high quality
10 representation to competent, committed and effective advocates
11 in both routine and complex cases and in both acceptable cases
12 and, yes, controversial cases.

13 We've engaged in appeals effectively. Our record of
14 appellate review is extraordinary. Very few law firms can match
15 it. We have engaged on occasion and when necessary in class
16 actions. We've been effective at group representation. The
17 quality of representation has been high by any standard one
18 wants to use.

19 I appreciated what Earl said about the court of
20 appeals, because it reflects the reality that most of us know
21 and live with. In addition, legal services has maximized scarce
22 resources to achieve concrete benefits for individual clients

1 and has improved opportunities and achieved significant benefits
2 for the poor, including alleviating many recurrent problems that
3 large numbers of the poor have.

4 Legal services has opened up forums for the poor to
5 enforce rights and protect and advance their interests, forums
6 which the poor were previously unable to effectively participate
7 in. Legal services has provided access to clients in virtually
8 every county in the country and to those who face severe access
9 barriers, whether they be rural residents, racial, cultural and
10 language minorities or the elderly.

11 The system, in addition, has been very accountable to
12 the local community, both to the bar and to clients who are to
13 be served. Resources have been allocated according to local
14 needs and priorities. Legal services has also been extremely
15 innovative. We led the development of paralegalism in the
16 United States.

17 In the 60s and early 70s, legal services fought the
18 battles at HEW, state after state, to permit paralegals to
19 participate in advocacy on behalf of clients. We have, in fact,
20 been on the forefront historically of developing self-help
21 materials. And recently, without much help from the Corporation
22 unfortunately, we've been on the forefront of technological

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1 innovation.

2 Programs and program staff have kept out of partisan
3 and nonpartisan electoral politics and other political activity
4 unrelated to the representation of clients. Finally, and maybe
5 most important, clients have been very satisfied with the
6 results and have in many communities a sense of ownership of the
7 program.

8 The fact that legal services has been highly
9 successful is reflected in congressional support, the virtually
10 universal support of state and local and national bar
11 associations and the support of client and client organizations.
12 That, to me, summarizes the record of achievement that the legal
13 services program has accomplished.

14 I want to talk about, in a little greater detail, a
15 few of these issues. I want to start with full representation
16 in all forums. Earl has laid out the early history of full
17 representation, the goals of Reginald Heber Smith and the views
18 of people like Howard Westwood.

19 Legal services has, it seems to me, recognized and
20 been involved in full representation. Legal services has, from
21 the beginning, recognized that the problems of the poor are
22 specialized and unique. We need, in order to address those

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1 specialized and unique problems, advocates who are specialized
2 and have knowledge and capacity to provide representation to the
3 problems that the poor have.

4 In addition, as Earl has mentioned, legislative
5 advocacy and administrative advocacy are necessary to provide
6 effective professional representation to the poor. Now, it
7 would be no surprise to any of us to know and to talk about the
8 fact that Congress, the LSC Board, as well as many local program
9 boards has struggled over the extent of legislative advocacy;
10 how much to permit, how much capacity programs should have to
11 engage in such advocacy, how much effort programs should have to
12 participate in administrative rulemaking, and what procedures
13 should be used for class actions and appeals.

14 Although we could talk at length about the history of
15 this and the struggles in Congress and LSC, I think it's fair to
16 say now that there are four established principles that we are
17 working from. First, class actions against government and
18 private parties are an accepted part of poverty law practice.

19 Second, administrative advocacy, including
20 participation in rulemaking, has been fully recognized as
21 essential to effective client representation. Third,
22 legislative advocacy on behalf of clients with problems that are

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1 best solved by legislative change has been recognized. Finally,
2 legislators and administrators have a right to obtaining
3 information from legal services programs on issues affecting the
4 poor.

5 I think those are recognized by Congress. I think
6 that's the framework we're not in. Although these struggles
7 have been long and hard, I think we have reached some
8 conclusions on this. Overall, if we're looking at full
9 representation, I think we can fairly conclude that legal
10 services has provided effective representation in all forms and
11 achieved, in most states, effective administrative rulemaking
12 and legislative advocacy.

13 Legal services has been reasonably responsive to the
14 most significant legal problems of the poor, provided enormous
15 service to clients and clients groups. The primary role of
16 advocates in legal services is what John Orango has called
17 hands-on helpers, that is, staff attorneys, paralegals and
18 volunteers.

19 Regardless of all the rhetoric from critics of legal
20 services or even those like myself that urge greater impact
21 work, 95 percent are more of the staff engaged in advocacy
22 focused on direct, immediate one-on-one service, advice or

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1 representation to clients.

2 Legal services continues to have the highest
3 utilization of paralegals and lay advocates of any institution
4 within the legal profession. It utilizes a range of volunteers
5 and has been in the forefront, as I mentioned earlier, of
6 developing and utilizing self-help materials. That, it seems to
7 me, reflects -- that is, this analysis and this history,
8 reflects how effective we've been in providing for
9 representation of the poor.

10 Next, I want to say a few words about the delivery
11 system. The delivery system was initially developed during the
12 OEO era and became fully institutionalized during the 70s and
13 early 80s and has remained in place since then. And as you all
14 know, there are five major components to that system:
15 geographic-based, full service providers; migrant and native
16 American programs; state support entities; national support
17 programs; and another level of programs of infrastructure
18 including the Clearinghouse, five regional training centers, et
19 cetera.

20 When LSC took over the existing programs from OEO, it
21 made two interrelated proposals to Congress to expand the
22 program into every geographic area and to establish a census-

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1 based funding formula so that some level of minimum access was
2 accorded to poor persons in each geographic area.

3 LSC encouraged but did not mandate the primary use of
4 the staff attorney model because, as Earl pointed out, it was
5 consistent with the system developed in the United States since
6 1876. It has proven to be cost effective, assured the poor some
7 access to lawyers with expertise on poverty law, provided a
8 mechanism for allocating scarce resources effectively and
9 efficiently, and provided a role for clients and the local bar
10 in determining priorities.

11 The decision proved to be correct, and I think the
12 delivery systems study demonstrated that. As a result of the
13 delivery system study and the political need for increased
14 private bar involvement, LSC also moved to specifically
15 encourage and then require programs to utilize private lawyers
16 in the delivery of legal services.

17 This decision, although initially controversial in
18 some segments of our community, has also proven to be correct.
19 As a result, over 100,000 lawyers are participating in pro bono
20 programs, increased services have been provided in a highly
21 effective matter, and in a few areas where program and bar
22 relationships were not good, these relationships have now been

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1 solidified and the private bar is overwhelmingly supportive of
2 the legal services program.

3 In short, this highly integrated and coordinated
4 system of delivery has helped, first, to assure that the poor
5 have access to an appropriate legal services provider with
6 expertise on poverty law problems; that direct providers at the
7 state, local and national levels have access to all of the legal
8 developments, specialized knowledge and information assistance
9 they need to provide high quality legal services; and third,
10 that scarce resources could be allocated to locally determine
11 areas of greatest need in community-wide planning.

12 This is not to say that the delivery system could not
13 be improved, because it can. There are a number of problems
14 that exist that we need to address. I just want to touch on a
15 few. There remain considerable problems of access by particular
16 client groups such as the institutionalized, disabled and
17 elderly, nursing home residents.

18 There remain considerable problems with the way we use
19 private attorneys. We may not be utilizing them as effectively
20 on all of the legal problems as we could. Staff salaries remain
21 far too low, and well below comparable salaries of other public
22 sector lawyers and paralegals.

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1 Training and professional development remain
2 inadequate. Cultural and gender diversity of staff at all
3 levels has not been fully achieved. Neither programs or LSC
4 have developed an effective evaluation system to review the
5 quality of representation provided by attorneys and paralegals
6 or to measure the overall program performance and whether legal
7 services programs are achieving concrete results for the poor.

8 Moreover, programs need to be given a green light to
9 experiment with a variety of new approaches and improved
10 delivery. This is going to require seed money. It's also going
11 to require that LSC relax for the purposes of experiment, some
12 of the restrictive regulations and interpretation that have
13 blocked experimentation during the 80s.

14 Next, I want to talk briefly about setting local
15 priorities and local community accountability. In large part,
16 the key to survival of the legal services program and to its
17 strong support within local communities across the country has
18 been its accountability to those communities, including the
19 poor.

20 Besides participating on governing bodies, priority
21 setting is the primary mechanism that is used to assure
22 accountability. Formal priority setting was not a primary means

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1 of resource allocation during the OEO era or previously.
2 Indeed, priorities were set on a first-come, first-serve basis
3 or by staffing and program structural decisions made by program
4 legal staff and boards in response to pressure from a variety of
5 client groups as well as local and state bars, local courts, et
6 cetera.

7 Early on, many of the leaders of legal services
8 recognized the problems created by a system that did not
9 formally set priorities, so that scarce resources would be
10 allocated to locally determined areas of greatest need.
11 Beginning in the early 70s, under the leadership of NLADA and
12 its civil committee, legal services began to develop mechanisms
13 of setting priorities.

14 When LSC came in to existence in 1975 and early 1976,
15 the Regulations Committee, headed by Bob Cutak, and the Board,
16 chaired by Roger Cramton, agreed that there should be a
17 requirement on legal services programs that they allocate
18 resources based on a formal process of priority setting.

19 The 1977 amendments to the LSC Act adopted and
20 incorporated and institutionalized the LSC and NLADA efforts.
21 Subsequently, of course, legal services has adopted a variety of
22 approaches to deal with priority setting, none of which are

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1 mandated, by they way, by the regulation.

2 While programs have made significant efforts in
3 allocating resources based on locally determined needs and
4 priorities, it is fair to say that these efforts have not been
5 fully successful. Many programs have not engaged in systematic
6 periodic process, staff allocation, and program structure do not
7 always respond to the priorities that have been set. Staff has
8 sometimes been reluctant to change their work in specialization
9 or to develop new knowledge in specialization in response to
10 priorities.

11 To acknowledge these and other problems is not to
12 suggest, however, that the priority setting process should be
13 thrown out and replaced with some new, untried approach,
14 particularly if that approach does not involve a community-wide
15 planning effort to allocate resources to the most pressing local
16 needs.

17 For example, Doug Besharov, this afternoon, will
18 discuss a proposed study on the use of copayments as a primary
19 means of setting client priorities. There is, in my view, merit
20 to a study of copayments in the context of legal services
21 because copayments seem to be a useful device if done in the
22 context of the existing delivery system and in conjunction with

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1 priority setting to enhance client control over priorities and
2 controlled utilization.

3 However, the use of copayments as the sole or primary
4 means of client control suffers from some very basic practical
5 problems such as the fact that most clients we serve are poor,
6 on welfare, live below the poverty line, can't afford it.
7 Copayments will also likely create an obstacle to the use of the
8 legal system by people who are often alienated from that system,
9 and there are administrative costs that might well exceed
10 whatever benefits copayments have.

11 That is not to say, of course, that we don't need to
12 make significant improvements in priority setting. There are a
13 number of ideas, the future challenges that myself and all of
14 you have, and I think it's essential we begin to focus to make
15 those improvements.

16 Fourth, a few words about client involvement and
17 empowerment. Since the inception of federally-funded legal
18 services, the program has sought to significantly involve
19 clients and government structures through group representation
20 and priority setting in its advocates and staff.

21 The appropriate role of client has turned out to be a
22 very difficult issue for LSC and local programs. The National

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1 Clients Council was funded as the national advocate for clients
2 and remain in existence until 1984. It sought to spawn local
3 client councils.

4 These councils sought a broad role for clients and
5 poor people as advocates and they sought money for direct
6 advocacy and related activities from local programs and from the
7 corporation. In many areas, client councils, however, were not
8 the primary client groups represented by the programs.

9 When I began to work in legal services as a law
10 student in the fall of 1965, I worked for the Welfare Rights
11 Organization and a great leader of poor people, George Wiley.
12 Later I had the opportunity of working for Catherine Jernany
13 when she was active in the Welfare Rights Organization.

14 Many of the groups with whom we worked were not that
15 involved related to the clients council. So the issue of client
16 involvement has not always been a question of client involvement
17 in the program but a more complicated issue of which client or
18 poor people's groups to include, at what level of program
19 activity, and on what types of activities.

20 The Corporation has no clear answer to this problem
21 and was often unaware of the competing client groups involved in
22 an area. While it resisted demands for money, it also set up a

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1 regulatory structure requiring client groups to select client
2 board members and requiring clients to participate in priority
3 setting.

4 However, the Corporation failed to come to grips with
5 the reality of client group activity and never clarified the
6 role of clients in priority setting other than including them
7 among the groups that must be consulted. This ambivalence and
8 confusion over client role has not only caused considerable
9 problems for program management and staff, more importantly, it
10 has created unrealistic expectations or resulted in complete
11 cynicism for clients and client groups over what the appropriate
12 role of involvement and participation should be.

13 Today the situation is even more complex. There are
14 fewer substantive groups made up primarily of poor people. There
15 is no national NCC, and in many areas no real client councils at
16 all. Moreover, there are serious and important questions about
17 the appropriate roles of clients and client groups as advocates
18 for themselves or others and as advisors to program advocates.

19 In short, client involvement and participation is at a
20 critical crossroads. There needs to be renewed commitment to
21 clients and their effective involvement in program governance.
22 This commitment must come from the programs, the national legal

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1 services organizations and from LSC.

2 If we are serious, this will require changing some of
3 the LSC regulations which can be changed through interpretive
4 decisions, providing funding for support and providing real
5 training, and encouraging programs to experiment with new
6 approaches and mechanisms to improve client involvement and
7 participation.

8 While client involvement and participation and
9 programmatic activities are important, client empowerment may be
10 even more critical. From the inception of legal services,
11 client empowerment has been an explicit goal. This has been
12 carried out in a number of levels, including assisting welfare
13 rights and tenants groups, helping tenants to take control or
14 run private and public housing, engaging in economic
15 development, helping run recipient control, helping to set up
16 and support recipient-controlled institutions like Operation
17 Life and EPST client in Las Vegas, training lay advocates for
18 clients organizations, and engaging in representation and
19 lawsuits to break down barriers to client independence and self-
20 sufficiency.

21 More recently, legal services has been in the
22 forefront of efforts to enforce the Family Support Act and is

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1 representing many tenant groups who are interested in
2 controlling and running public housing and, of course, actively
3 involved in economic development.

4 While these activities should surely increase, legal
5 services has been a legal force in helping clients achieve
6 independence, self-sufficiency and control over their own lives.
7 In short, legal services can and must be improved to provide
8 more effective services, concrete benefits, improved
9 opportunities for the poor.

10 However, the history of legal services programs that
11 I've talked about suggest an improvement is best accomplished
12 through utilizing and making more effective the current system
13 of delivery, strengthening local control and assuring that
14 client-driven priorities form the basis of the allocation of
15 scarce resources.

16 Improvement will not come from efforts, however
17 disguised, to destroy the program or to micromanage it from
18 Washington, nor will improvement come from attempting to impose
19 mechanisms that are fundamentally at odds with a system that is
20 designed to plan and allocate resources deliberately to the most
21 pressing problems and legal needs of the poor in any particular
22 geographic area.

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1 True reform, if one dares use that word, would
2 accomplish four objectives in my view. First, assure that the
3 poor have access to all forms which directly affect their lives
4 or in which they can achieve justice and are offered a range of
5 advocates to help them resolve their most pressing legal
6 programs and improve their opportunities.

7 Second, increase staff salaries and benefits and
8 improve staff effectiveness and productivity. Third, increase
9 client involvement in accountability so that the programs
10 allocation of resources is consistent with the legal needs of
11 the local community. Fourth, redirect the Corporation away from
12 ideological and ill-conceived efforts to restrict advocacy and
13 toward evaluating quality, helping programs to improve and
14 encouraging innovation in improved systems of delivery.

15 If we take those steps and if we work together, as
16 George suggested, I think we can improve the legal services
17 program. Thank you.

18 (Applause)

19 MR. MARTIN: Thank you very much, Alan. I have to say
20 that your use of the word "empowerment," you better watch it.
21 You'll be accused of supporting the Bush administration's new
22 paradigm.

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1 I have to comment on one thing also. I've told my
2 staff consistently, we have to look at what we do and measure
3 our performance and also, hopefully, measure the performance of
4 the various programs if we can. They are getting sick of me
5 saying in staff meetings, if we can't measure it, we can't
6 manage it. So I take to heart your comments in that arena.

7 I want to recognize one of the former Board members
8 who has just come in. It's former Congressman Guy Molinari who
9 was seated here in the front.

10 We're going to have one more speaker than I promise
11 you you'll get a break. Our next speaker is Michael B. Wallace,
12 a member of the Board of Directors of the Legal Services
13 Corporation from 1984 to 1989. He was chairman of the
14 Operations and Regulations Committee. And from 1984 to 1988,
15 presided over the development of the regulatory structure which
16 now governs the Corporation.

17 From 1989 to 1989, he was, of course, chairman of the
18 Board. Michael was a clerk to the Mississippi Supreme Court
19 from 1976 to 1977. And in 1977, he became a clerk to then-
20 associate Justice William Renquist of the Supreme Court. He
21 became an assistant to Congressman Trent Lott. In 1981, was
22 council to the minority Whip of the House of Representatives.

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1 Since 1984, Mr. Wallace has been a member of the
2 administrative conference, and he now practices law in Jackson,
3 Mississippi. He is a partner in the law firm of Phelps, Dunbar,
4 Marks, Clavery and Simms. Please make welcome Mr. Wallace.

5 THE REVOLUTION THAT NEVER WAS

6 MR. WALLACE: Thank you, President Martin, and thank
7 all of you. I think my nine-year-old has been watching too many
8 award shows on television. When I told her that I was coming up
9 to the program this week, she said, "Yes, and I suppose you're
10 going to get up there and tell everybody how honored you were to
11 have had this job and thank everybody who made it possible."

12 And she's absolutely right. That's what I'm going to
13 do before I get into the substance of my speech. It was a great
14 honor for me to have the opportunity to serve on this Board and
15 to serve as chairman of it for my last year. It's a great honor
16 to have the opportunity to do something that I believe in very
17 deeply, that I've been raised to believe in very deeply.

18 I have a son and a grandson who are Mississippi
19 lawyers. We have practiced in the poorest state in this
20 country. We have some sense, I think, of what the objectives,
21 at least, of all the people in this room are. I was delighted
22 to hear Justice Johnson quoting Chief Justice Hughes because

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1 although I had not heard the words before, they rang through,
2 and I wrote them down.

3 I think I've got them accurately. "Who is my
4 neighbor? The poor man deprived of his just due." Not in those
5 words, but that is the sense of duty that was instilled into me
6 by my father. It was instilled into him by his father. Barbara
7 and I hope to install it in our nine-year-old and her sisters no
8 matter what life's work they wind up in.

9 I do want to thank people that made it possible for me
10 to have this opportunity: President Reagan for having the
11 confidence to appoint me; the members of the Senate who took a
12 gamble and confirmed me, not without some opposition; to my
13 fellow directors, including Blakeley Hall, who I guess is the
14 grand old man of this Board by now, for being foolhardy enough
15 to ask me to serve as chairman; and to all the many staff people
16 who work hard to accomplish the goals we tried to accomplish.

17 I would be remiss if I didn't express my appreciation
18 to some people on the other side of the battles we fought. Alan
19 Houseman taught me everything I know about the history of legal
20 services. I read his book. He appeared before my committee and
21 our Board many times. I found I could always believe what he
22 said to me.

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1 And we worked very hard together and against each
2 other for a long number of years. Alan, I guess, is the
3 historian. I'm not a historian. I guess I'm more of a war
4 correspondent. That's the role in which I appear before you
5 this morning.

6 I was there for the better part of 10 years, and I
7 know what I saw. And whether I'm able to put that in historical
8 perspective or not remains to be seen. I will say that working
9 with legal services has not been an unmixed blessing. As
10 President Martin says, there is a certain amount of distrust,
11 and it causes a certain amount of anxiety.

12 I will tell you I have been sleeping much better for
13 the past year since President Bush was kind enough to let this
14 cup pass from me, until this morning when I woke up at 5:00 a.m.
15 and started staring at the ceiling again, just like the old
16 days.

17 Lawsuits don't do that to me, but legal services
18 always has and I guess still does. I've been asked to offer a
19 few thoughts on the Reagan revolution at the Legal Services
20 Corporation. The principle thought that comes to my mind is
21 that there was no Reagan revolution at the Legal Services
22 Corporation.

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1 There was a Reagan revolution in this country's tax
2 code. There was a Reagan revolution in the defense of this
3 country and the liberty around the world. To a lesser extent,
4 there was a Reagan revolution on the federal bench. But I saw
5 no Reagan revolution at the Legal Services Corporation.

6 What I did see could probably be better described as a
7 police action. Like most police actions around the world, Korea
8 to Cyprus to Lebanon, things sometimes settle down a little, but
9 nothing changes very much, and a lot of people get hurt. The
10 Legal Services Corporation was very much like that during the
11 years that I served here, notwithstanding the battles and the
12 confusion that rained on both sides of those battles.

13 I think at the end of it all, the Legal Service
14 Corporation still exists in much the same form that it did in
15 1980. The programs, for the most part, that received funding in
16 1980 are still receiving funding 10 years later. I do think,
17 though given the limited information available to directors and
18 especially former directors, I may be wrong, I do think that
19 programs are somewhat less involved in the new ideology that
20 Justice Johnson described and a little more involved in the day-
21 to-day services to ordinary poor people.

22 That is a small change, and I'm under an illusion that

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1 it's a permanent change. At the heart of the legal services
2 problem, it seems to me, is a compromise so uneasy as to amount
3 almost to a contradiction. From the outset during the war on
4 poverty, there were many who saw the role of the federal
5 government and the provision of legal services to the poor
6 primarily as one of supplementing and extending the traditional
7 efforts of the organized bar to provide pro bono service to
8 needy individuals.

9 There was another group, however, who saw the courts
10 as a potential engine of political change to benefit large
11 groups of poor people generally called the client community.
12 Whether you call that the new ideology or reform or whatever you
13 like, I think it was pretty clearly out there.

14 This group soon generated its own antithesis. By
15 bringing impact suits against governments and businesses around
16 the country, they created a backlash against the very existence
17 of the federal legal services program. And not surprisingly,
18 when these forces clashed, Congress chose, in my view, not to
19 decide what sort of legal services program it wanted.

20 The 1974 Act kept the local independent corporations
21 in place, but put them under the nominal jurisdiction of a
22 federal corporation with its Board of Directors appointed by the

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1 president but supposedly independent from him and from Congress.
2 After prohibiting political activity in a few politically
3 sensitive areas, Congress wished everyone luck and walked away
4 from the mess.

5 They changed it a little bit in 1987 in the last
6 period of undivided government that this country has known, but
7 in the ensuing 13 years, Congress has been utterly unable to
8 agree on another authorization bill for this Corporation. Now
9 the chief affect of the 1984 Act was to give members of Congress
10 an almost infinite number of places to assign the blame for any
11 complaint any constituent might have about legal services.

12 I don't want to talk today about the inefficiencies of
13 the system. I had an opportunity to do so a couple years ago in
14 a program put on by the American Enterprise Institute. And my
15 chapter in their book, "The Fettered Presidency," goes through
16 that.

17 I don't want to talk about the constitutionality of
18 the system that denies the President of the United States
19 executive control over an agency spending \$300 million in
20 taxpayer's money every year. Chuck Cooper's opinion on that
21 subject has become a matter of public record.

22 Instead, as a war correspondent, I want to talk about

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1 the shifting alliances I saw among the three groups I've already
2 identified; the traditional bar, the political activists and
3 what I would call the anti-Federalists. The traditional bar, I
4 think, is motivated by its intimate knowledge of the high and
5 increasing cost of justice.

6 They know that the law affecting the poor have gotten
7 ever more complicated in that the poor have little hope of
8 navigating their way through that system without expensive
9 professional help. I think their goal is not to change the
10 judicial or administrative system, much less the political
11 system, but simply to see to it that the poor find the help they
12 need.

13 For most of the traditional bars, support for the
14 Legal Services Corporation is an honestly altruistic help to
15 provide help to the needy. I think there's also a sense in the
16 traditional bar that taxpayers as a whole should assist in
17 providing access to justice, rather than expecting the bar to
18 carry the whole burden through pro bono programs.

19 The political activists do not simply want to help the
20 poor cope with the system, rather they want to change the system
21 in fundamental ways. In a technical sense, not a derogatory
22 sense, they are radicals because they want to go to what they

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1 regard as the route to the problem. That's what radicals mean.

2 They believe that the poor are entitled, free of
3 charge, to any service that someone with unlimited funds might
4 provide, the sort of people who hire Covington and Burling.
5 Most people out there can't hire Covington and Burling. Indeed,
6 one of the few local programs that was disciplined by the
7 Corporation during the Carter administration was criticized
8 because it was not engaging enough impact litigation.

9 Today, as the 1990 census nears completion, they are
10 preparing to litigate the redistricting and indeed the
11 reconstruction of state and local governments all over the
12 country. Just this past month in Jackson, there was an entire
13 legal service conflict on the subject of redistricting.

14 Now, finally, the anti-Federalists are something of a
15 mixed group. They include strict constructionists who cannot
16 find the subsidization of lawyers among the powers delegated to
17 Congress in the Constitution, libertarians who regard all
18 taxation as theft, and free marketeers who have enumerable plans
19 to empower the poor through private choice.

20 Some of them are as radical as the activists.
21 However, they follow Theodore Roosevelt rather than Clement
22 Atley. They want the federal government to police-the market

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1 for legal services not to nationalize it. Mostly, however, the
2 anti-Federalists are simply people who scratch where they itch.

3 Somewhere legal services lawyers have rubbed them the
4 wrong way. Every time a legal services lawyer files a lawsuit,
5 he makes a new enemy for the program. Indeed, this is the
6 primary difference between federal legal services and federal
7 medical services. Germs don't vote.

8 If germs had a political action committee, the
9 National Institute of Health would be every bit as controversial
10 as Legal Service Corporation. People do find it hard to
11 understand why their own tax money should be used by private
12 litigants to haul them into court. That's especially true where
13 the defendant is as poor as the plaintiff.

14 In a world of limited funds, the decision of who gets
15 sued and who doesn't is unavoidably arbitrary and
16 notwithstanding the efforts that have been made in the setting
17 priorities, the decision is still not in the hands of the poor
18 plaintiffs but in the boards, mostly made up by law, middle
19 class lawyers.

20 Now there is no shortage of ideas for increasing the
21 availability of funds and for vesting true decisionmaking in the
22 hands of the poor. If I were the ideolog that I am accused of

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1 being, or perhaps if I were just a little bit smarter, maybe I
2 would know which of these programs would work. But I'm not, and
3 I don't.

4 I've watched these groups, however, for the last 10
5 years, and I may have some perspective on where we're going.
6 When Ronald Reagan came to Washington in 1981, the activists had
7 been in control of LSC for four years. A series of GAO reports
8 clearly document the political activities that were undertaken
9 with LSC funds.

10 There's not really much dispute over that. There's a
11 substantial dispute over the law. I know many people involve.
12 I'm sure all the people involved are completely convinced that
13 those activities were completely legal. But I don't think
14 anybody bothers to deny that they were highly political.

15 The Carter administration not only antagonized the
16 anti-Federalists, but they did make some enemies in the
17 traditional bar. The general practice section of the ABA was
18 demanding funds for private attorney involvement. The political
19 activists then, it seems to me, did not have a lot of allies
20 when the 96th Congress convened.

21 They were, however, fortunate in their choice of
22 enemies. President Reagan, instead of trying to reform the

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1 Legal Services Corporation proposed to abolish it. To be fair,
2 he did not propose the abolition of legal services to the poor.
3 He proposed to include it in block grants to the states that
4 could be used for federal aid.

5 Despite the fine print of the plan, most people
6 perceive that the Reagan administration wanted the federal
7 government to wash its hands of legal aid. Carter holdovers
8 still in charge at legal services shrewdly capitalized on the
9 overconfidence of the White House, organized a survival
10 campaign, the most important of which was rebuilding the
11 alliance with the traditional bar.

12 The Carter board adopted a private attorney
13 involvement plan as the general practice section had been
14 urging. Having met the ABA half way, they could enlist its
15 insistence in lobbying Congress for the survival of the
16 corporation.

17 Though funds were substantially cut in 1981, the
18 Corporation survived with the traditional bar as its strongest
19 defender. The Board on which I served was nominated in '83,
20 appointed in '84 and finally confirmed in '85. We all testified
21 under oath that we supported the continued existence of federal
22 aid, and I believe that every one of us did.

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1 While individual directors may have had an agenda for
2 change, the Board as a whole did not. The closest thing we had
3 to a common position was a desire to save money, which is hardly
4 surprising in officials of a Republican administration. Our
5 efforts to learn the system and to formulate a plan immediately
6 wallowed in a bureaucratic morass when we arrived.

7 We had to redo five separate sets of regulations. We
8 had to go out and hire ourselves a new president. It certainly
9 took us well over a year just to find where we were. And it's
10 not surprising there was no revolution then. But we did begin
11 to develop policies to redirect the Corporation to which most of
12 us regarded as its mission, direct delivery of legal services
13 for the poor.

14 Most of us regarded it as its mission, direct delivery
15 of legal services for the poor. We realized early on that we
16 would have to work within existing budget constraints, so we
17 tried to direct available funds to direct delivery. We did
18 abolish the National Clients Council, the Reginald Heber Smith
19 fellowship, and cut back where we could on support centers.

20 We diverted those funds to local programs. The
21 numbers, as I figured them when I testified in the Senate last
22 year, is that our appropriation in 1985 had \$265 million for

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1 direct delivery; basic supplemental field, Native American
2 programs and migrant programs.

3 Our final budget that we proposed for 1990 had \$282
4 million for direct delivery, an increase of 9.4 percent over
5 four years. It's not a lot, but in those days it's better than
6 a lot of programs were doing. That's what we were trying to do,
7 to take what we had and put it into direct delivery.

8 If we had been better politicians, we might have been
9 able to convince the traditional bar of our good faith. We
10 think they should have been our natural allies. Our goal was to
11 cut back on political activities and to increase funds for
12 direct delivery, the sort of thing that I always understood the
13 bar had supported.

14 But there was very little difficulty in maligning our
15 motives. Any reference to our Board was invariably prefaced by
16 the words "hostile" and "Reagan." One of the problems that we
17 had was that our refusal to ask for money was seen as a sign of
18 bad faith.

19 It seemed to me and it seemed to our Board as a whole
20 that there was not going to be any substantial increase from
21 Congress. We saw no point in asking for it. I never put it as
22 eloquently as Senator Moynihan did in the Post a few weeks ago,

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1 but I think this is what we faced.

2 He said the budget of the United States is not going
3 to be a source of any significant new spending initiatives for
4 the rest of this century. We went broke in the last decade and
5 we are going to stay broke. That was the perspective, at least
6 as I saw it, at legal services, and my job was to manage a broke
7 agency in the best way that we could.

8 We also did, I think, a bad job of selling ourselves
9 to the traditional bar. To a certain extent, this was
10 unavoidable. I was 31 when I was nominated for this job. I had
11 just become the fifth lawyer as an associate in a small firm in
12 Jackson. I had no weight with the traditional bar and neither
13 did my employers. Most of us on the Board were on the same
14 boat; we just didn't have the connections.

15 But I can't accept all the blame for our failure to
16 communicate with the bar. When I became chairman in late 1988,
17 one of the first things I did was to go with my fellow director
18 Pepe Mendez to a meeting of the ABA SCLADE Committee. As soon
19 as we got in the room, people started accusing us and our staff
20 of lies and bad faith.

21 For the rest of that year, the ABA president made the
22 circuit of congressional hearings accusing us of attempting to

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1 destroy the corporation. We had a hard time finding an audience
2 that was willing to listen to us, to what we thought we were
3 trying to do.

4 What I primarily regret is that that does not seem to
5 have changed under the new Board. I read the other day that the
6 new president elect of the ABA had gone to Florida to attack the
7 reform bill that Congressman McCollum had sponsored for many
8 years, describing it as having a very special malice towards the
9 rights of farm workers.

10 That, to me, is the sort of reckless rhetoric that has
11 poisoned this debate for the 10 years that I've been involved in
12 it. I hope it will change. We have convinced with Congressman
13 McCollum's help and the help of Congressman Stenholm many
14 members of Congress of the need of change.

15 We tried to concentrate funds in direct delivery. We
16 tried competitive bidding. We wanted timekeeping and accounting
17 reform so that local boards and the national boards would know
18 what the lawyers were up to. We did want to require local
19 boards to make policies about politically sensitive litigation
20 and to stay out of redistricting altogether.

21 We've done very well in Congress. A year ago in 1989,
22 the reform amendment came within six votes of passing. Indeed,

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1 it passed when time expired. The speaker raised the gavel long
2 enough to change the votes. But I think there is a tremendous
3 pressure in Congress to have an opportunity to address the
4 subject of reform rather than having it done by appropriations
5 committees as it has been done for 13 years.

6 Now, as I say, I've been out for a year. I don't know
7 what has happened in the 101st Congress in the second session,
8 but I haven't seen anything from long distance that leads me to
9 believe anything has changed very much since we left in 1989.

10 Finally, I want to address just a few words to all of
11 the contending groups. I say to the anti-Federalists what I've
12 said to them before. Federal legal services is here to stay,
13 and it should be. Federal legal services must be reformed, and
14 it can be.

15 The anti-Federalists can find allies in the
16 traditional bar. And I think they can find common ground with
17 staff members on local programs who want to reach some
18 compromise, who want to put this matter to bed so we can get on
19 to the work we've provided. The anti-Federalists should not be
20 afraid to try to find compromise as they sometimes have been.

21 Second, I encourage the leaders of the traditional
22 bar, the local level, to consider the possibility that if two

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1 boards chosen by two different presidents have reached the same
2 conclusions about legal services reform, they might possibly be
3 at least partially right.

4 This matter should not be left solely in the hands of
5 the national bar leadership. Several events in the past year or
6 so have shown that that leadership is sometimes out of touch
7 with its rank and file. I know that the rank and file of the
8 bar do support legal services. I doubt if most of them think it
9 would be the end of the world to require legal services lawyers
10 to keep timesheets. It certainly seems like a reasonable matter
11 to me. It always has.

12 Finally, I encourage those of you who provide legal
13 services to the poor to give this Board the benefit of the
14 doubt. After 10 years, it should be readily apparent to all of
15 us that there's not going to be a revolution in this country
16 either from the right or the left.

17 Most of us are fairly happy with that. Most of you
18 who provide legal services, like most lawyers, simply want to
19 provide quality legal services to your clients, and you want a
20 little appreciation for doing that. I know that whatever you
21 think about reform, you are not spending all of your time on law
22 reform.

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1 I imagine most of my successors know that, too. But
2 you also know that there are political activists still on the
3 payroll out there. In private moments, some of you have told me
4 that everyone knows who they are. They are there, and they are
5 causing unnecessary problems for you and your clients.

6 Now, I don't think we'll ever succeed in ridding the
7 legal services program of politics, and I'm not sure we should.
8 Because there is not going to be any new money for the rest of t
9 he century, I think we should try to concentrate on the places
10 we can agree. Most of us, at least, agree that we can provide
11 ordinary legal services to ordinary people.

12 The attempt to go beyond that has brought stalemate in
13 Congress for 13 years. I think we can maximize available funds
14 in our assistance to the poor by concentrating on traditional
15 services. All I ask for is an uneasy truce. Traditional bar,
16 the political activists and the anti-Federalists will probably
17 never completely agree, but I hope we can learn to live with
18 each other.

19 After 10 years of war and strife, I hope we can lay
20 down our arms. Let's see if we can get through the next 10
21 years without throwing any more bombs at each other. Thank you.

22 (Applause)

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1 MR. MARTIN: Well, I certainly have been stimulated by
2 three outstanding speakers. We're going to take a break now for
3 15 minutes. Come back at 11:15 sharp, and we'll have our
4 distinguished panelists ask their questions. Thank you.

5 (A brief recess was taken.)

6 MR. MARTIN: We are now reaching the portion of our
7 program where our speakers have the opportunity to defend
8 themselves or to maybe expound further. But we have a
9 distinguished group of panelists who have so willingly agreed to
10 participate in a limited role. They only get five minutes each.

11 We're going to go from the left, nearest to farthest,
12 this morning in that order. This afternoon, the panelists get
13 another opportunity. We'll start with Ms. Vogt and go to Mr.
14 Cox. So with that, we will now start. Professor Cox, you have
15 five minutes, and I'm keeping time.

16 DR. COX: As I understand our role, it's simply to ask
17 questions. It seems to me I can ask a question in five minutes.
18 Let me give just a short preface to my question. Before I came
19 here, I suspected that the major issue was going to be what
20 economists would call size of the pie versus distribution of the
21 pie. My expectation has been fulfilled.

22 It seems to me that Justice Johnson calls for more

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1 resources or a bigger pie. Professor Houseman assures us that
2 the way in which the pie was distributed and used in the past
3 was highly efficient. Some change, some experimentation in the
4 future may be necessary to maintain that efficiency, but he
5 calls for making changes under very severe constraints. Then
6 finally, Mr. Wallace calls for reform or change and says we all
7 should go hand in hand towards that reform.

8 In any case, I gave that preface because my question
9 comes in two parts. How do we increase the pie? How do we get
10 more resources for legal services to the poor? Secondly, once
11 we have any given pie, how do we use the resources we have most
12 efficiently? In other words, what kind of reform would the
13 speakers advocate to maximize efficiency and the use of the
14 resources that legal services has? It's quite simple: how to
15 get more and how do we use it.

16 MR. MARTIN: Why don't we take the answers in order?
17 Justice Johnson, would you like to respond?

18 JUSTICE JOHNSON: How do we get a bigger pie? Is that
19 my assignment? There is a small piece of the speech, which in
20 trying to cut it down to 15 minutes only succeeded in cutting it
21 down to a half hour, that I left out which had to do with what I
22 have learned while I was in academia about other countries and

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1 what they have been doing in the legal services field.

2 One thing that I've learned is that essentially we are
3 considerably far behind a good deal of the industrial
4 democracies in the size of the pie that we devote on legal
5 services to the poor. Sweden, for instance, invests about four
6 times as much per capita on legal services to the poor than we
7 do in the United States; Quebec Province, Canada about five
8 times as much; the Netherlands about five times as much.

9 So I don't think when we look at the current pie in
10 the United States we are looking at some kind of either optimum
11 level or the highest level that an industrial democracy can
12 support, and indeed, going on the example of a number of other
13 countries, a substantially greater proportion.

14 In most European countries at this time, legal
15 services for the poor is an entitlement program not a fixed
16 resource; the pie is this size and how ever many you can serve
17 with that size of pie is all you have. It is an entitlement
18 program either by statute or, in Switzerland, by constitutional
19 interpretation of the Supreme Court of Switzerland.

20 The very quality before the law provision of the
21 constitution means that you have to have a lawyer in all civil
22 cases. So what I'm saying is merely because we have arrived at

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1 a certain level in this country as of this moment doesn't seem
2 to me to mean that we can never in the future hope to do as much
3 as what a great many other comparable societies have done, which
4 is go far beyond what our current investment is.

5 MR. MARTIN: Mike or Alan, in two minutes, can you add
6 or subtract? Please, go ahead.

7 MR. HOUSEMAN: I think Bill is going to address some
8 of this this afternoon. I don't think there's any question that
9 there has to be an increased commitment from government at all
10 levels in order to increase the pie. I think it will be
11 difficult to obtain that increased commitment.

12 But I think there is some silver lining in some of the
13 dark clouds that suggest that it's going to be possible
14 incrementally over the next four or five years to slowly develop
15 increased federal support and increase state and local support.

16 Secondly, I think there's a real opportunity for
17 fundraising at the state and local level that is only now
18 beginning to be realized. I think that offers a tremendous
19 opportunity to increase the pie.

20 MR. MARTIN: Mike?

21 MR. WALLACE: Very briefly. I think the size of the
22 pie depends on the distribution of the pie. Legal Services

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1 suffered cuts in the early 1980s when it was at its most
2 activists stage. I think it alienated a lot of people. In the
3 later 80s, the funds built back. I think they built back
4 because the new ideology laid low.

5 I think Congress is perfectly willing to come up with
6 some increases in funding if its not going into political
7 matters, if it's going into what I think most of Congress
8 understands to be the function of the program. So by focusing
9 on distribution of funds, you have an opportunity to increase
10 the size of the pie.

11 I think the history of the last 10 years shows that.
12 That was what I was trying to call for at the end of my speech;
13 let's focus on what we can agree on, and that will increase the
14 size of the pie.

15 MR. MARTIN: Thank you all. The next panelist to
16 raise a question is Catherine Jermany.

17 MS. JERMANY: For those of you out there who know me
18 know I can't do anything in five minutes. I talk much longer
19 than Alan. He's really learned from me. I'd like to preface my
20 question with the following. We have looked at, over the last 5
21 of the 10 years, the problems that legal services clients are
22 having, not with just the programs but within services in

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1 general, and we have made some attempts to do something about
2 that in our own little nice way.

3 If anyone is interested in talking about that or
4 finding out more about what that is, I have put material out
5 there on the back table, two pieces in particular. One is a
6 little form -- I'll show it to you. I'm used to doing training,
7 so I'm used to holding things up. It says providing legal help
8 for the poor. It's one of our proposed solutions for enhancing
9 the service delivered to legal services clients.

10 Secondly, there is a little bit of information back
11 there about the independent paralegal movement which is now
12 3,482 people, half of which are legal service eligible clients
13 with the exception that they are now in business operating and
14 providing services for clients for themselves.

15 My question is addressed to all of them, to anybody or
16 everybody. Could you please describe how you would propose to
17 increase client involvement and accountability so that the legal
18 services programs allocation of resources is consistent with the
19 legal needs of the community without increasing the funding?

20 MR. MARTIN: Do any of our speakers want to address
21 that or volunteer?

22 JUSTICE JOHNSON: Sounds like a Houseman question to

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1 me.

2 MR. MARTIN: Alan, why don't you take a shot at it
3 first?

4 MR. HOUSEMAN: Well, I think when you talk about
5 client involvement and client accountability, you are talking
6 about two interrelated sets of issues. The first is, how do we
7 improve priority setting to make it more client driven? The
8 second is, how do we involve clients more effectively in
9 governance as well as in priority setting and in other aspects
10 of our work.

11 With regard to priority setting, the paper, if it ever
12 arrives, which it may not, listed several thoughts that I think
13 make sense that could be more effectively utilized than we're
14 now doing, at least in some programs. I think it's very
15 important for programs to develop effective methods of
16 evaluating demographic trends in their service area as well as
17 legal trends and developments for all subgroups.

18 I think it's critical that programs constantly
19 interact with client groups and other community organizations
20 about community concerns. That means getting out in the
21 community, working with client groups and client organizations
22 and community organizations, constantly and making sure we're

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1 not just sitting in our offices.

2 Third, I think we have to develop more effective
3 methods of obtaining and classifying and reviewing information
4 obtained during initial client intake. I also think some of the
5 experiments that are going on -- for example, there's a hotline
6 experiment going on in a number of cities that Wayne Moore at
7 the American Association of Retired Persons has been pushing and
8 helped funding.

9 That experiment is both an experiment in improved
10 delivery and an experiment that is an effort, at least, to have
11 much more immediate client interrelationships between lawyers
12 and clients, looking at that kind of information. What is
13 obtained from that will help. What that does is put lawyers and
14 paralegals in direct contact with clients immediately.

15 I think local and statewide legal needs assessments
16 can help. Finally, I think it's very important to undertake
17 outreach efforts to clients that suffer access problems, whether
18 they be institutionalized clients, particularly in nursing
19 homes, the largest group of the institutionalized, whether they
20 be migrant farm workers, whether they be rural residents,
21 whether they be language or ethnic or cultural, minorities, I
22 think it's critical to have an effective outreach program that

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1 reaches those.

2 Those kinds of approaches, I think, coupled with our
3 existing system of priority setting, can make a big difference.
4 But the key to it all, it seems to me, is to involve clients
5 more effectively in the process of formally setting priorities
6 both at the Board level and in terms of the outreach and contact
7 that we make with them.

8 In terms of client involvement, we are, as I said, at
9 political crossroads. This is not a simple issue, and I don't
10 have many real prescriptions on where and how we can improve
11 what we're trying to do, other than it's very essential that we
12 review where are.

13 More importantly, we've got to address the fact, and
14 this may come from LSC, that there are serious barriers today
15 created by some of the regulations and some of the
16 interpretations on our efforts to represent a range of groups.
17 For example, we could not do, under the LSC regulation, training
18 of clients on substantive issues.

19 That's a barrier to interaction with clients. We
20 cannot represent organizations of clients unless they are
21 primarily made up of poor people. Many client organizations,
22 community organizations today that are involved in work and the

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1 poor are not primarily made up of poor people. And there's an
2 absolute barrier to our representation of them because of that.

3 There are also barriers to working with client groups
4 that have been informally or formally created. Those can be
5 broken down, it seems to me, and that will remove some of the
6 barriers that are today standing in the way of the kind of
7 client interaction that I'm talking about.

8 MR. MARTIN: Thank you. Mike, do you have anything to
9 add on that?

10 MR. WALLACE: Very quickly. I'm skeptical of the
11 ability to set priorities by committee. We worked very hard on
12 that regulation back in '85 and '86. I think we corrected some
13 problems that had existed. We did the best we could. Maybe
14 experience now is showing there is a better way to set
15 priorities by committee.

16 But I think the one thing we all learned in eastern
17 Europe in 1989, which had been setting priorities by committee
18 for 44 years, is it doesn't work very well. The alternative, of
19 course, is to go to a free market and to turn it into an
20 entitlement program, as Justice Johnson suggests.

21 Now that will certainly increase client involvement.
22 It will also increase costs. I don't see that as a starter in

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1 the modern era. I guess if the question is, what would I do to
2 increase client involvement, I don't know.

3 MS. JERMANY: That was a good answer.

4 MR. MARTIN: I don't think you're alone in that. Mr.
5 Smith?

6 MR. SMITH: Can I make a speech in my five minutes?

7 MR. MARTIN: It's your five minutes. Do with it as
8 you wish.

9 MR. SMITH: I want to make a speech for the reason
10 that very few of you in the room will ever address the subject
11 that I think is so important, which is the voluntary
12 contribution of the private bar to the legal services movement.
13 I offer to you a little bit of history, of perspective, and some
14 very biased opinion.

15 It surprises me that at meetings like this, and
16 historically in my experience, so little is said about pro bono
17 and the private bar. It surprises me for the reason that there
18 will never be enough money fully to meet the legal needs of the
19 poor.

20 The services of the private bar, in my opinion, must
21 always be available to supplement whatever system is in place
22 through governmental initiative. In the summer of 1979 Hilary

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1 Rodem and others from Legal Services Corporation were saying the
2 Corporation's programs met only 15 percent of the needs of the
3 poor in this country.

4 Therefore, it seemed to me a good idea coming in as
5 president of the American Bar Association that we try to
6 stimulate private bar involvement. I asked my dear friend Dan
7 Bradley, whom I've worked with for many years in the State of
8 Florida, to bring together people and talk about this in Chicago
9 in the summer of '79.

10 They all came. Johnny Dorsey was then head of the
11 project directors group, and they all said, "No way we want you
12 to get involved in stimulating pro bono. It will adversely
13 affect our opportunity for federal funding." We went ahead
14 anyway with five pilot projects, and this was the beginning of
15 the American Bar Association's involvement, private bar
16 involvement, a program which it's had going for a number of
17 years now, to which it now addresses over a half a million
18 dollars a year from its general revenues.

19 In the summer of 1980, Wisconsin, and the general
20 practice section of the ABA has already been mentioned, came up
21 and said the private bar was not getting enough of the LSC
22 money, that there should be significant allocations to the

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1 private bar.

2 In November, I went to the NLADA meeting in Puerto
3 Rico to make the speech about please work with me in the pro
4 bono movement. Don't reject it out of hand. And when I
5 arrived, I found there was a great fear that the Reagan
6 administration would do away with the Legal Services
7 Corporation, so I made a speech instead that said the organized
8 bar will defend the Corporation if need be.

9 The response was one of great doubt. In December of
10 1980 or 1981 -- and Bill and I have been struggling with this
11 one -- the Corporation came forward with its 10 percent
12 initiative, which was then criticized. But now today, earlier,
13 we hear it was the correct move, and I quite agree.

14 In the spring of '81, the ABA, the organized bar,
15 thought to save the Legal Services Corporation from defunding.
16 Perhaps it was not Mr. Wallace's revolution, but if it wasn't,
17 it was only because we quelled the revolution. This had a
18 salutary affect because it brought together the private bar and
19 the legal service lawyers for the first time.

20 Before that time, one said the other was not
21 competent. And the other said that you all were a bunch of
22 social engineers. Since the development of the 10 percent

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1 initiative and the ABA's private bar involvement, the pro bono
2 programs in this country, the volunteer programs, at the local
3 level have moved from less than 50 to over 650.

4 Today, about 130,000 lawyers practicing privately in
5 this country are engaged in organized pro bono. That's 18
6 percent of all the lawyer's licensed in this country, not
7 enough. It's 30 percent of the private practitioners in this
8 country. I'd say it's quite admirable.

9 Mr. Wallace in his remarks said the traditional bar
10 was not receptive to the overtures for Legal Service Corporation
11 in the 80s. Perhaps that was so when you were chair in 1988.
12 It was not so in the period of '81 and thereafter for a number
13 of years when I chaired the consortium on legal service in the
14 public in the ABA.

15 Indeed, we invited the then chairs of the Board and
16 the president of the Legal Services Corporation to come to our
17 meetings. They did. We offered cooperation. They audited what
18 we were saying. They expressed accord and then they came back
19 to Washington and acted entirely differently from that which had
20 been said at the local level.

21 Somewhere in there, the Corporation Board tried to
22 advance the private bar percentage up to 17 percent. And we

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1 said, no way. That's senseless. We can't possibly make use of
2 it. And somewhere in there Mr. Durant made a speech before the
3 ABA's Board of Governors saying we ought to deregulate the legal
4 profession. And so by 1988, there was sort of a credibility gap.

5 Nevertheless, I have little patience with extremes in
6 this. I have had little patience for the 25 years or so I've
7 been involved in it. I worked in the International Bar
8 Association for the last 7 years, have been exposed to legal aid
9 systems throughout the world.

10 I stand here and say to you, knowing a fair amount
11 about them throughout the world, that the program that we have
12 in this country, the staff model, supplemented by the pro bono
13 efforts of the private bar is by far the best system throughout
14 the world.

15 Don't worship the foreign systems. They are
16 collapsing. In the U.K. where they have vouchers past part
17 payments, *judicare*, if you wish, they are not doing the job.
18 There is no pro bono support in the U.K. of delivery of legal
19 services for the poor because the system discourages it.

20 Thus, I say to you, we must support the staff model
21 which we have in this country, but we must not ignore the
22 contribution which the private bar makes to the successful

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1 delivery of legal services to the poor in this country. I ask
2 you to keep in mind, I don't think we would be celebrating the
3 25th anniversary of the Legal Services Corporation today but for
4 the organized bar.

5 Dan Bradley, if he were here, would say, "Amen."
6 Remember that we developed IOLTA, and remember that we're
7 essential to the proper and full delivery of legal services to
8 the poor in this country. Thank you.

9 (Applause)

10 MR. MARTIN: If my memory serves me correctly, IOLTA
11 was started in Florida, is that correct, under your direction,
12 Mr. Smith?

13 MR. SMITH: I appointed the first committee to study
14 it in 1970. It took us from that time until Art England came
15 along to get it to the Florida legislature and get rid of some
16 problems.

17 MR. MARTIN: Thank you very much. Our next panelist
18 is Mr. Kent Spuhler.

19 MR. SPUHLER: Thank you. With a good deal of
20 trepidation, I follow Reed Smith who is, in my state, the tower
21 of dealing with this whole area of delivery of legal services to
22 the poor. It's also with some trepidation that I'm here in some

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1 role as speaking from the trenches in Florida as the director of
2 a program and as a laborer in the trenches since 1972.

3 I do want to give a short reaction to the
4 presentations, but I do have a question that I hope will get a
5 response from all three of the presenters. I was impressed and
6 reminded by Justice Johnson, going back to the basic ideology of
7 delivery of legal services to the poor, in terms of the
8 traditional role of the lawyer.

9 The selection of that ideology included delivery of
10 legal services to the poor which was the full range of service
11 available to the poor, the quality and ability to take those
12 ranges of service to wherever the needs of that poor and the
13 poor community needed, and, you know, the willingness to balance
14 and take on the responsibility of challenging systems that were
15 adversely affecting the poor.

16 I must say in my tenure, I have seen that ideology
17 while maintaining vitality having ownership claimed by various
18 factors who have, I think, led to our dispute. I have seen
19 legal services attorneys claim it was their ideology and solely
20 their ideology and forgetting the routes of it that did not come
21 from us.

22 I have seen clients and client groups claim that that

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1 was their ideology and right, and that's caused disputes. In
2 some context, particularly my program, I have actually even seen
3 the private bar claim it was their ideology and, in fact, move
4 out some staff attorneys that they did not think were fulfilling
5 that role as described.

6 I think in the context of that, Alan has correctly
7 kind of described that within that shared ideology, there is
8 wide range of disputes and how to deal with the problem that is,
9 at its core, an overwhelming need for legal assistance and
10 inadequate resources.

11 If you maintain the view of that ideology, then you
12 come into a range of issues and questions that none of us have
13 found the answer. How do you strike a balance among all the
14 responsibilities that that ideology gives you in the context of
15 tremendous need and inadequate service?

16 Particularly on the civil side, I can tell you in my
17 local area, when I first joined legal services in 1972, the
18 public defenders office and the legal services program in my
19 area had about the same number of lawyers, and we paid about the
20 same salaries.

21 We're now in a situation in the same jurisdiction
22 serving "the same population." Our salaries are a good \$10,000

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1 behind the salaries, and they have 53 lawyers, and I have 18. I
2 clearly selected civil legal services over criminal and a big
3 mistake. But I think it demonstrates that whatever the factors
4 over these years, in reality, our resources have become less to
5 meet the challenge.

6 Unfortunately, I hear in Mr. Wallace's presentation a
7 view that there was not a shared ideology, a concept that within
8 the ranks of the legal services programs there was almost a
9 conspiracy or commonality of some group to use the legal
10 services programs to meet their own ends and not the ends of
11 clients.

12 I must confess that from the field, it has been our
13 view that the Corporation in the last several years has not
14 shared the general ideology with us; that, in fact, they had a
15 different core agenda and ideology. And from my point of view,
16 that's probably at the core of a lot of our problems.

17 I can tell you within the community, we are used to
18 disagreeing. The concept of a unified position in conspiracy to
19 us is, frankly, fairly laughable. And if you came to any of our
20 project directors meetings, you would understand that. Within
21 that ideology, there is probably as wide a range of response to
22 the problem as you can get.

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1 But I think we all have been able to hold together in
2 our traditional long links with the private bar have been out of
3 that basic ideology. After that kind of long-winded
4 presentation, my question to the panel is, how do you see the
5 current status of the sharing of the ideology among all the
6 parties involved?

7 Do you really think that there is a possibility of us
8 achieving some broad concurrence on the ideology? In my
9 perspective, if we could achieve that, the disputes with regard
10 to how to carry that out will be much easier for all of us.

11 MR. JOHNSON: I guess I have a fundamental problem. I
12 think when someone says that what we should be doing is focusing
13 our resources on the delivery of routine legal services to poor
14 people, I don't know what they mean by that. Does that mean
15 that if somebody, a client, comes to you with a problem that can
16 only be resolved by taking an appeal or can only be resolved by
17 some new legislation, that you should say, sorry, we don't do
18 that. We only do routine legal services.

19 So like the actual case I gave you in my speech of the
20 woman who came to our office who had been denied welfare and was
21 told by the Legal Aid Society, along with everybody else that
22 came in with that same problem, sorry, the law is against you.

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1 We're not going to do anything to try to change the law.

2 Is that what is meant by the delivery of routine legal
3 services? If so, it is to say that we are not to do what is
4 ethically required of a lawyer, that is to use his best
5 resources, his best abilities to try to deal with the problem
6 with his clients. It means turning away clients who come in
7 with problems.

8 If it means something else, then I say fine. If it
9 means what Reginald Heber Smith said was what lawyers should do
10 in terms of legislative advocacy and in terms of taking cases,
11 if necessary, to challenge existing laws, then he's not talking
12 about anything differently than what --

13 So I think there's some semantics problems in some of
14 the disputes that go on. Is what's being said is that we should
15 go back to the weak performance that was typical of legal aid
16 societies as lawyers? If so, I say a plague on your house. On
17 the other hand, if it's saying that you should do what other
18 lawyers do for people, then I say fine.

19 So I have a hard time dealing with what is phrased as
20 the alternative to what I think is required by the legal
21 profession and is certainly required by the ideology of the
22 legal aid movement and of the legal profession.

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1 MR. MARTIN: Alan, real quick.

2 MR. HOUSEMAN: Well, the only comment I would make is
3 I think all of us in this room want to find common ground, but
4 it's very hard to find common ground when the facts of what we
5 do are ignored and when people have their own particular views
6 of what we should do and try to impose them from Washington.

7 I think that unless and until we can deal with the
8 reality of what goes on and unless and until this effort to
9 impose particular ideological views of Washington stops, we're
10 not going to get anywhere.

11 MR. MARTIN: Mike?

12 MR. WALLACE: Some of the people in Washington who are
13 imposing ideological views are Congress. I mean, there is a
14 distinction here. There is a very great difference in
15 philosophy between the ideology that Justice Johnson and Alan
16 Houseman have described and what I believe and what I think a
17 lot of other people believe too.

18 People who share an ideology can have disputes. I
19 don't doubt that there are plenty of disputes at project
20 director meetings. But I think there is a large sense of
21 concurrence that you ought to be able to do anything that
22 anybody who can pay for it could do.

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1 The problem is that most people who hire lawyers don't
2 choose to pay for the sort of things that legal services lawyers
3 want to be able to do for their clients. Nobody has ever hired
4 me to bring a test case. Nobody has ever hired me to lobby the
5 legislature. Nobody has ever hired me to try to change the law.

6 At Covington and Burling, that happens. There are
7 people spending lots of tax deductible dollars who consider the
8 legal system to be an instrument to their ends. I think the new
9 ideology wants to follow that model, to use the legal system as
10 an instrument to ends.

11 Most people regard the legal system as a curse. Once
12 they get into it, they want to get out of it as soon as they
13 possibly can. They come to me and ask me what their chances are
14 and what can be done for them, and I tell them the various
15 options. And I tell them what they will cost.

16 And usually they tell me to do the simplest thing I
17 possibly can, the cheapest way I possibly can, and if we lose,
18 we lose. But we're not trying to change the world around for
19 somebody else's benefit. We can't do that. That is the way
20 legal services worked in the real market for real people
21 spending their own money for what most lawyers are hired to do.

22 The problem with legal services is we haven't found a

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1 way to simulate that market because the real clients are not
2 investing their own money in these choices. They are put in a
3 position if they're lucky enough to get there more like the
4 clients at Covington and Burling who are playing games with
5 other people's tax deductible money.

6 I think what Congress wanted to do and what I want to
7 do is find some way to simulate the market forces that most
8 middle class people have to deal with. Usually you're going to
9 wind up taking a fairly simple approach to get out of a problem
10 the fastest way you can.

11 I don't know how to do that. I came here five years
12 and never did figure out how to do that. But that's what I
13 think we ought to be trying to do.

14 MR. JOHNSON: I just wanted to add one brief comment.

15 MR. MARTIN: Very brief.

16 JUSTICE JOHNSON: I just wanted to say that I sat on
17 appellate court. And if his description of what happens in the
18 legal world was true, I wouldn't have anything to do. In point
19 of fact, my little staff and myself will this year file 125
20 opinions. That's because of a lot of very, very ordinary people
21 file appeals.

22 MR. MARTIN: Thank you. Our final panelist is Leona

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1 Vogt. Thank you for being so patient over there.

2 MS. VOGT: No problem. I would like to address my
3 question to Alan Houseman and specifically follow up on a
4 comment he made on evaluating programs and lawyers. What Alan
5 said was that neither programs no LSC have developed an
6 effective evaluation system to review the quality of
7 representation provided by attorneys and paralegals to measure
8 overall program performance and whether the program is achieving
9 concrete results of the poor.

10 Before I ask Alan my question, I would like to share
11 with you my background. I come out of a program evaluation
12 background. I worked at the Urban Institute here in Washington
13 for 15 years evaluating federal programs and designing
14 experiments in evaluation systems to measure performance of
15 social services programs.

16 My first experience with legal services was in 1970
17 when I worked with a team of attorneys and clients and a team of
18 analysts from the Urban Institute to design the monitoring
19 system for the legal services program. In the mid-70s, I
20 directed the delivery system study that was mandated by Congress
21 through the Legal Services Corporation Act.

22 As a part of that study, we had to face the tough

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1 question of what criteria could be used to measure performance
2 and then how to measure that performance. We developed two
3 different types of care review systems, one to measure quality
4 of legal work, one to measure impact of the program on the
5 community.

6 We used attorneys of very different political
7 persuasions in the design of the system and attorneys from
8 outside the programs to go in and look at the quality of legal
9 work and the results of the program. Since my departure from
10 the legal services world, I know that the ABA develops standards
11 for legal services programs, I guess the mid 1980s.

12 My question to Alan is two-fold. One, Alan, do you
13 think that performance standards exist that could be used as the
14 basis of evaluating legal services programs and attorneys?
15 Secondly, how would you assess quality of legal work and quality
16 of legal services programs? Do you see peer review as a part of
17 that process?

18 MR. HOUSEMAN: I don't think the civil standards of
19 the American Bar Association are performance standards. They
20 are goals. They are aspirational standards. They provide an
21 overall framework by which to look at legal services work. But
22 I think neither the reporter, John Tull of the SCLADE Committee,

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1 or anyone else who is familiar with the standards would claim
2 that they are performance standards.

3 I think one of the major steps that we need to take in
4 the community -- and some local programs, for example, in North
5 Carolina, have already started down this road -- is to develop a
6 set of performance operational standards against which program
7 activities, program quality, program impact can be measured.

8 I think it's doable. It's not an easy task. I think
9 until we have performance standards, it will be very difficult
10 to evaluate the claims of critics that we are not effective and
11 efficient. And it will also be very difficult to truly
12 determine whether a program is performing to the capabilities
13 that it can and should.

14 So I think the answer is I don't think we have them
15 now. I think we need them. I think there's some work going on
16 to try to develop those. But we have to work much harder and
17 come up with a set of performance standards if we're going to
18 truly be involved in reviewing quality.

19 Secondly, in terms of quality of the legal work,
20 unfortunately we have not had monitoring and evaluation on
21 quality of the legal work in the last eight or nine years.
22 Maybe we never had much of it before. At least there was an

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1 articulated purpose and attempt to evaluate programs on quality.

2 I think the delivery system study did develop some
3 very good ideas about how to evaluate quality. I think peer
4 review is a critical component of any effort to evaluate
5 quality. I think that we ought to develop, test, experiment
6 with, and design some peer review systems and use them and see
7 what the results are and refine them as part of monitoring and
8 evaluation.

9 So I think there are two. Besides developing a set of
10 performance standards, I think we should begin the work of
11 taking the work that you did, Leona, and others and expanding
12 that and experimenting with it. Thank you.

13 MR. MARTIN: Justice Johnson?

14 JUSTICE JOHNSON: No, I have nothing.

15 MR. MARTIN: Mike?

16 MR. WALLACE: No.

17 MR. MARTIN: Now to the important things, lunch.
18 Thank you all for your patience. We are going to break for
19 lunch and come back at 1:30 sharp. Lunch is in the Dolly
20 Madison Room. Thank you all for your patience. It's on this
21 floor next door.

22 (Whereupon, at 12:05 p.m., a luncheon recess was

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1 taken.)

2 * * * * *

3 L U N C H E O N S P E A K E R

4 (1:05 p.m.)

5 MR. MARTIN: If I could have your attention, please,
6 we'll start the luncheon program. Before I introduce the man
7 who is going to introduce the luncheon speaker, I want to
8 recognize a couple of our distinguished guests. Mark Payaletta,
9 Assistant White House Council, has joined us. He's sitting over
10 here with the former Board of Directors.

11 Over to my right is the Honorable John Bayly, a judge
12 in the Superior Court of the District of Columbia. And also to
13 my right is the Honorable John Dunne, assistant attorney general
14 for the Civil Rights Division at the Department of Justice.

15 Now to introduce our luncheon speaker is a man who has
16 the distinction, Howard Dana, of being on the first Board of
17 Directors of the Legal Services Corporation appointed by the
18 Reagan administration, and also of being on the first Board of
19 Directors appointed by the Bush administration. Howard, thank
20 you.

21 MR. DANA: Thank you, David. I could include you all
22 by saying welcome. You're all either executive directors,

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1 leaders of the bar, judges, directors of one kind or another,
2 past, present and hopefully future. Welcome.

3 It's a great honor to introduce our speaker today.
4 Roger Cramton is the Robert S. Stevens Professor of Law and the
5 former dean of the law school. That's what Cornellians call it.
6 He was born when this country went into its great depression.
7 His youth is lost in antiquity.

8 In 1950, he graduated from Harvard College. In 1955,
9 he got a J. D. degree from the University of Chicago. He spent
10 the next two years clerking for two distinguished jurists, one
11 of whom was on the Supreme Court, Justice Burton. He then spent
12 most of the 33 years thereafter teaching many of the people in
13 this room, I would gather, in one way or another how, to be good
14 lawyers.

15 He wrote the definitive work on conflicts of law. In
16 addition to conflicts, he's taught tortes, professional ethics
17 and a letter of responsibility. He has taught at Michigan.
18 He's taught at Chicago. He's spent the last 17 or 18 years at
19 my alma mater.

20 In addition to all of that, the presidents of the
21 United States have called on him four times. Between 1970 and
22 1972, he was chairman of the Administrative Conference of the

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1 United States. From '72 to '74, he was an assistant attorney
2 general in charge of the Office of Legal Council.

3 In 1975, President Ford appointed him to the first
4 board of the Legal Services Corporation and also, by statute,
5 appointed him its first chairman. I hope that he talks about
6 those years, in particular the summer of 1975.

7 Roger is a member of the American Bar Association,
8 American Law Institute. He has taught at various places
9 including Berkeley and Oxford and all over the world. He has
10 been the president of the Law School Association of this country
11 and the editor of its publications. He is a member of Phi Beta
12 Kappa, Order of the Coif, Aba Daba Daba. And within recent
13 memory, he has been seen on a small island off the coast of
14 Maine.

15 Roger Cramton.

16 VOICE FROM THE PAST: A REMINISCENCE OF THE LSC MOVEMENT

17 MR. CRAMTON: Well, that was all very good, Howard,
18 except you made it painfully clear that I've had difficulty
19 holding jobs. Now there's a well-known story that may say
20 something both to a former Board member, such as myself, and the
21 non-Board members that are with us today.

22 It's the story about the man who is charged with being

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1 drunk and disorderly and also with arson, setting fire to a bed.
2 And when he appeared before the judge, he said, "Your Honor, I
3 admit I was drunk and disorderly. I really laid one on. But I
4 didn't set fire to that bed. It was on fire when I laid down in
5 it."

6 Well, legal services may have something of that
7 quality. One fine spring day in 1975, when I was attending a
8 meeting here in Washington, I was walking across Lafayette
9 Square, and I ran into an acquaintance from my years in the
10 Nixon administration who was then working on personnel matters
11 in the Ford White House.

12 We had some friendly chat, and then he said, "Well,
13 I've got something I really want to get your advice and help
14 on." He said, "We have this terrible problem about the Legal
15 Services Corporation Board of Directors." The statute, the last
16 bill, substantial piece of legislation signed by Nixon before
17 his resignation, is almost a year old at that point.

18 The deferred efforts to appoint a new Board had run
19 into tremendous political difficulties on the Hill and in the
20 press. And they started all over again with trying to get the
21 Corporation started with a Board of Directors that wouldn't be a
22 political embarrassment for the administration.

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1 Well, I was asked for suggestions. We had a long
2 conversation. I recommended a number of people whom I thought
3 would meet the criteria that he mentioned; that they be
4 acceptable to the liberal senators, that they not be actively
5 opposed or too strongly opposed by members of the Legal Services
6 Community, that they be acceptable to the organized bar, and
7 that they also be acceptable to conservative Republicans
8 supporting the administration.

9 Several weeks after that conversation, my friend
10 called me and said he had some good news for me. Several of the
11 people I had suggested were going to be named to the new Board.
12 But he said the one that I had strongly pushed as the initial
13 chairman had refused to accept that assignment and had, in turn,
14 suggested that I be included in the Board and be named chairman.
15 President Ford had acceded to that suggestion, and would I
16 serve?

17 Well, that began, that surprise invitation, my
18 involvement in legal services. It took a great deal of time
19 during the next four years. Now why was I chosen? Well,
20 clearly one criterion, I'm sure applicable to most subsequent
21 Board members, was my lack of prior participation and knowledge
22 about the legal services movement.

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1 As a Republican who had served in the Nixon
2 administration, I was known by Ford and members of his staff.
3 Yet, I was well regarded on Capitol Hill, strangely enough,
4 because of the circumstances of my departure from government. I
5 had been fired by President Nixon for my unwillingness to argue
6 that the president had totally unlimited inherent powers to
7 impound appropriated funds.

8 That had rehabilitated my credentials, both among
9 liberals and also for a return to academic life. I was totally
10 untated by any involvement in OEO law reform activities and, at
11 the same time, since I hadn't written about legal services, I
12 certainly had not expressed any public criticisms of it.

13 In conclusion, my noninvolvement, dare I say
14 ignorance, was viewed as a tremendous advantage. And it was
15 hoped that I would approach this reincarnation of legal services
16 under the new corporate forum with an open mind. Shortly
17 thereafter, Senate hearings were held on the group of nominees.

18 The legal services community was deeply suspicious of
19 this new group of largely Republican conservatives,
20 nonparticipants in legal services, who were being nominated by
21 Ford. Two of them had publicly expressed criticism of public
22 funded legal services, they attacked very strongly.

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1 And those two were not appointed, former
2 Representative Edith Green and a California farm bureau lawyer.
3 I gather the Farm Bureau still has the same friendliness for
4 legal services that it had back in 1975. One nominee, a former
5 state governor, disappeared into thin air.

6 We were waiting for the nomination hearings to begin,
7 in which we were all going to be gathered at a table and
8 responding individually to questions from the senators, when,
9 before that happened, he was told by one senate aid that he
10 would be questioned at the nomination about charges of an
11 alleged motorcycle rumble some years before, a high speed ride
12 to an Indian reservation with an Indian girl on his lap while
13 firing a rifle into the air. Upon hearing that news, the
14 nominee departed for National Airport and home and was never
15 heard from again.

16 The initial meeting of the Board was held in May,
17 1975. Now in those days, unlike today, legal services was a
18 highly visible political issue. Hundreds of people showed up
19 for our Board meetings. And I have to say they were not as
20 conservatively and drably dressed as this business-suited
21 aggregation.

22 We had people in saris, Indian costumes, everything.

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1 It was a very, very live group. And because the meetings were
2 thought to present so much potential for riot, the Corporation
3 had to employ armed guards and security forces at each meeting
4 of the Board. Hundreds of people showed up in large meeting
5 rooms.

6 The Board was then in an unusual position at our first
7 meeting. It had emerged from its chrysalis with its own
8 appointment and the holding of the initial meeting, but it had
9 no employees and no physical facilities. It didn't even have a
10 typewriter or a copy machine.

11 The OEO office of legal services, which would continue
12 to administer the program day by day during a transition period,
13 had been in disarray for some time, you know, the Howard
14 Phillips days and the like. In fighting between its employees
15 and the Nixon administration, had led to a collective bargaining
16 agreement, including all the lawyers and professionals, which
17 required union approval of all promotions or changes in job
18 assignment.

19 The Corporation's Board was in agreement that the new
20 organization should not begin its life thus encumbered. So one
21 of our initial decisions was that and also to hire a labor
22 lawyer to represent us in what turned out to be a protracted

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1 fight with all the OEO existing legal staff I think, with the
2 except of Ralph Corbett, who is not here today, but who was
3 immensely helpful.

4 Well, in the meantime, we had no staff. The major
5 business at the first Board meeting was the equivalent of an
6 appropriation request for the Corporation. The OEO legal
7 services had been frozen at \$71 million for five years. The
8 programs out there were suffering.

9 Well, we took out our hat and pulled out the rabbit,
10 and it turned out to be \$91 million. That was the appropriation
11 request. That night I and a small band of volunteers from local
12 legal services programs around the country spent the entire
13 night in borrowed offices in Washington, D.C., first writing,
14 then typing, and then photocopying the 75 copies of this first
15 appropriation request which I then presented to the House
16 Appropriations Committee the following day.

17 It was greeted very favorably. The process was
18 repeated and sent the following week. And we got our \$91
19 million appropriation, a \$20 million increase. Well, that began
20 a four-year period of tremendous expansion of the program.
21 During the four years that I was on the Board it went from the
22 \$71 million to the \$321 million, which was its height.

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1 The program grew to more than 6,000 lawyers
2 nationwide. I have to tell you, ever since I left the Board,
3 things have been going downhill. The major initial problems
4 facing the Corporation were: first, finding a staff, beginning
5 with a selection of president; second, the vexing, political and
6 practice issues presented by the somewhat delphic language of
7 the act relating to the so-called backup centers; and third, the
8 establishment of practical goals that would influence the
9 character of the program and inspire its national development.

10 The first problem was happily resolved six months
11 later by the appointment of Tom Erlich, then dean of the
12 Stanford Law School, as the Corporation's initial president. I
13 regret that Tom is not here today. He brought great
14 intelligence, tremendous energy, deep compassion, and very good
15 practical judgment to the formative years of the Corporation.
16 Now, all the successors, I believe, have brought to that office
17 the same degree of ability, integrity and distinction.

18 The second problem, the legality and functioning of
19 support centers, was solved by the Board with the assistance of
20 two brilliant and public spirited lawyers to whom the legal
21 services movement is deeply indebted. Unfortunately, they are
22 not here today either.

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1 As I've said, we had no staff during the first 12
2 months until Tom Erlich showed up. The Board prevailed upon Lou
3 Oberdorfer, now our federal judge, to take a leave from his
4 Washington law firm to work full time as head of the transition
5 staff. Lou sought and obtained the assistance of David Tattle, a
6 lawyer in another Washington firm, then and now.

7 Oberdorfer and Tattle approached a highly controversial
8 backup center issue as good lawyers approach every problem.
9 First, they investigated the facts. They really looked at what
10 these backup centers were doing. What services were they
11 performing; how did they operate; saw the detailed reports,
12 factual reports on each one; and they researched the law and its
13 legislative history.

14 What did the law say? What guidance did we have?
15 Their masterful reports revealed that most of the activities of
16 the support centers grew out of the representation of individual
17 eligible clients. The essential activities of the centers in
18 support of cases being handled by local programs, could be
19 retasked or reconstituted in a way consistent with the letter
20 and spirit of the act.

21 With their mission as defined, the support centers
22 continued to be a central part of the national program and of

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1 controversy concerning it. I think Earl Johnson's explanation
2 of the philosophy behind that was very, very sound.

3 The third issue, problem, raises issues that are still
4 with us today; the nature and objectives of the national legal
5 services program. The first Board, usually unanimous on these
6 issues, developed a rationale for the program, access to
7 justice, an operating principle, high quality lawyering, and a
8 goal, two legal services lawyers for every 10,000 eligible poor
9 people.

10 I kept asking Tom Erlich, why isn't it 1 to 5,000?
11 Why do you have to say 2 to 10,000? But anyway, we required the
12 citizenry to do the long division. This approach provided the
13 program with a politically neutral posture, the strong support
14 of the legal profession, and a practical goal for its growth
15 into a substantial national program.

16 These actions also continued with less unanimity on
17 the part of the Board, the exclusive reliance on a form of
18 delivery developed during the OEO years, the staff attorney
19 system. The visionaries and activists who started the legal
20 services movement in the turbulent 1960s had three missions in
21 mind.

22 First, there was the individual client surface mission

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1 of traditional legal aid, helping poor people to deal with
2 problems that stood in the way of their helping themselves,
3 whether it's legal aspect related to consumer data or housing or
4 education or family problem.

5 Now radical lawyers in the movement ridiculed this
6 activity as band-aid assistance that didn't get at fundamental
7 problems. Wiser heads in the movement viewed it as an essential
8 way to stay in contact with clients who were poor and to learn
9 about problems on which legal action might have broader
10 implications. Then there were others who, like St. Theresa,
11 really cared about people and believed that nothing was more
12 important than helping individuals reshape their own lives.

13 The movement's second mission, of course, was law
14 reform and institutional change. Modifying lawyer institutional
15 behavior so that large groups of poor people got a better shake
16 in the distribution of public benefits or in the handling of
17 repetitive transactions involving private interests such as
18 landlords or finance companies or the like.

19 The third mission was that of organizing poor people
20 into groups that could engage in activities, boycotts,
21 demonstrations, political activity and the like. Highly visible
22 group action puts pressure on opposing interests. It publicizes

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1 grievances and it provides political muscle for more fundamental
2 changes and social arrangements.

3 I don't think that can be disputed. The civil rights
4 movement, it also provided the object lesson that entrenched
5 interest in our society will not give up their power or
6 privileges unless confronted by persistent, aggressive group
7 action.

8 I don't have to tell this group that political
9 opposition, the publicly funded legal services, is directly
10 related to these missions. Individual client service, at least
11 in the abstract, receives almost universal acceptance. Law
12 reform, especially if it grows out of individual client service,
13 has substantial support.

14 But as it gets or moves into larger scale
15 institutional reform in which clients become nominal plaintiffs
16 selected and controlled by staff lawyers, it is viewed with a
17 considerable hostility and a suspicion, not only by those on the
18 right, but many in the center.

19 Political organization and direct action are viewed
20 with the utmost hostility and opposition. Now the Board, during
21 its initial years, crafted a program that was designed to
22 increase political support for the program, provide a steady

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1. infusion of additional funds, and result, it was hoped, in a
2 stable national program of civil legal assistance for the poor.

3 Now in doing this, we were not acting in a vacuum.
4 The legislation, both in its general statement of objectives and
5 in the specifics of its provisions and limitations, seems to me
6 to mandate this approach. The actual call starts with the high
7 principal of equal access to justice, emphasizes the
8 professional character of the service, high quality legal
9 assistance, and requires independence from political use or from
10 political pressure.

11 During my tenure on the Board, as I've already stated,
12 the approach was highly successful. Later on, some said because
13 of its very success in growth, it encountered opposition. But
14 the banner under which these successes were accomplished, was on
15 that was politically neutral, equal access to justice, high
16 quality lawyering, efficiency in delivering legal services.

17 The great bulk of resources, I believe, in those early
18 years were devoted to individual client service. But modest and
19 increasing amounts of time and energy were committed to reform
20 litigation largely in the form of test cases that raised
21 questions of law, taking an appeal, the kind of thing that Earl
22 Johnson was talking about.

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1 Now the Board's approach was criticized by many
2 knowledgeable and important figures. Gary Bellow, for example,
3 argued, and his views were heard by people out there in the
4 legal services movement, that the Corporation's strategy of
5 staking its funding case on maximizing the number of clients
6 under the access slogan was an unsatisfactory one.

7 It made legal services less controversial but
8 resulted, he believed, in approaches and funding that produced
9 minimal services and inadequate results, poorly trained and
10 inexperienced lawyers, he said, were thrown into frustrating and
11 tension-laden situations that resulted in minimal service.

12 He also argued that very little energy was directed
13 under the Corporation plan to establishing meaningful priorities
14 and developing a reform strategy consistent with those
15 priorities. "Programs," he said, "are being asked to make
16 essentially political decisions within the framework of a
17 political ideology."

18 In Bellows' view, the Corporation's effort to
19 establish the legitimacy of the program and secure its
20 congressional and professional moorings came at a heavy cost in
21 terms of both the quality of services rendered and the programs
22 potential for significant social change.

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1 Bellow argued for reversal of the Corporation's
2 priorities so that a political organization of the poor would
3 come first followed by aggressive pursuit of strategic
4 priorities in a way that would apply maximum pressure in favor
5 of institution and legal changes that affect large numbers of
6 poor people.

7 I have no problem with the vision that Bellow
8 expressed. I do have problems in that it is not found in the
9 legislation that the Legal Services Corporation Board was asked
10 to pursue and implement. If Congress wants to appropriate
11 taxpayers' monies for the purposes Bellow had in mind, fine, but
12 he had not done so, and I believe the situation remains today.
13 It has still not done so.

14 The critical fact is that organizing otherwise
15 unrepresented groups of poor people for political action or to
16 support the larger institutional kind of reform in which lawyers
17 are their own clients or that are nominally amorphous groups of
18 poor people where the lawyers are constructing the issues,
19 creating a claim, making decisions about how far to pursue it
20 and whether and when to settle, and so on, as is true in a lot
21 of representative litigations such as shareholders derivative
22 actions.

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1 I think the Act either prohibits such activity
2 expressly or inclines against it. And I've already cited the
3 relevant language of the statute, except I haven't gone into all
4 the specific restrictions and the procedural restraints on class
5 actions, which it seems to me carry important implications.

6 Now Earl Johnson's emphasis on the performance aspects
7 of good lawyering is supported by the Act. That's the good
8 lawyering part of the total message. The ideological message of
9 Bellow and others is specifically rejected. High quality
10 lawyering, as Johnson argues, includes full service lawyering;
11 that is what a private lawyer would do for a similarly situated
12 private client.

13 But that requires consideration of a number of serious
14 questions which the speakers this morning have not addressed.
15 One is, who is the client? They have addressed this enormous
16 difficulty of client priorities and getting any effective client
17 participation in the program, which means it is a lawyer's
18 program controlled by lawyers and sometimes one and so on with
19 the lawyer's interest in mind.

20 I was talking the other day to judges and lawyers
21 dealing with the problem of shareholders derivative suits, class
22 actions, in which everyone in the room conceded that any nation

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1 that clients, individual shareholders, had any effective
2 participation of those suits or what's done on them is living in
3 a fictitious world.

4 There are lawyers creations, lawyers actions. The
5 lawyer, plaintiff, shareholder's lawyer is serving as his or her
6 own client. The only restraint on that is the judge has to
7 approve the settlement.

8 Second problem, proportionality. I think that was
9 implicit in some of the things that Mike Wallace was saying.
10 Lawyers who represent private people are always restrained by a
11 principal of proportionality. Claims are only worth so much.
12 So you're only willing to put in one-third or one-half, some
13 proportion of the value of the amount at stake.

14 Publicly-funded lawyers have no such restraint.
15 Occasionally, at least, many have operated not in accordance
16 with the principle of proportionality.

17 Finally, the efficiency, low-cost handling of routine
18 matters doesn't always require seven years of legal education.
19 The movement has, I think, innovated in the use of paralegals,
20 but it can do a lot with more. Now maybe in this point, it's
21 going to start really running up against the interest of the
22 organized bar, because on this issue --

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1 Durant was crazy on most things, but on this issue he
2 was right, wasn't he, in that you don't need seven years of
3 higher education and admission to the bar to perform a lot of
4 routine services that ordinary Americans need and need at low
5 cost, because that's the only way that they're going to be
6 available.

7 Law students today entering into the profession
8 require a human capital investment of a quarter million dollars
9 or so if we take the foregone income. Have to have a return on
10 that in order to -- for any service that's offered. But the
11 professional restraints on unauthorized practice, I think, are
12 inconsistent with the broad availability and delivery of low-
13 cost service which lawyers will participate but they won't
14 exclusively monopolize to poor people.

15 Well, I've said enough, so I'll stop there with a
16 couple final comments. I think the history of the past 10 years
17 demonstrates the soundness of the Corporation's initial
18 commitment to access quality and efficiency, politically neutral
19 terms that command widespread support.

20 I would urge the Board, if there is a Board, to hue to
21 them as their late star. You'll have lots of difficult problems
22 even if you take those as the starting point. Now, anything

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1 else, the ideological approach, the Bellow approach, if Congress
2 would ever appropriate money for it, which I am very dubious,
3 inevitably results in political retaliation.

4 Political retaliation is going to cripple a program
5 and make it permanently unstable. So I think the interest of
6 the people in the legal services community really ought to be
7 along the lines marked out by the first Board, and that the
8 Corporation should return to them, try to build some trust
9 between the Corporation and the people in the field, and get on
10 with the job that's very much needed of giving poor Americans a
11 decent, readily available, expanded provision of legal services.
12 Thank you.

13 (Applause)

14 MR. MARTIN: We are running late. It's now 25 minutes
15 to 2:00. Let's convene back in the conference room at 10
16 minutes to 2:00, and we'll get started promptly. Thank you all.

17 (A brief recess was taken.)

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A F T E R N O O N S E S S I O N

(1:53 p.m.)

1
2
3 MR. MARTIN: We'd like to get started. One of our
4 speakers has to leave early and will not be able to stay with us
5 the entire time. So, if you could in the back, come on in, have
6 a seat, and let's get started.

7 This afternoon, as your program indicates, is a
8 perspective look at the legal services program. We have the
9 same panel of distinguished panelists. I see one of them has
10 put a coat on. I don't know whether that is from the
11 temperature up here or what's happening up front. But I assume
12 it's the temperature.

13 This afternoon we have four distinguished speakers.
14 Again, we'll follow the same format. They will each speak
15 approximately 15 minutes, give or take a few. I've already told
16 them to take liberty with that. Then each of our panelists will
17 have another five minutes with which to stir up the process.

18 Our first speaker is Bill McCalpin who has been a
19 supporter of legal services throughout his entire professional
20 career. He was a member of the National Advisory Committee of
21 the Office of Legal Services under the OEO. He has served
22 locally as the director of the Missouri Legal Aid Society and

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1 the Legal Aid Society of the City and County of St. Louis.

2 In 1978, he became a member of t he Board of Directors
3 of the Legal Services Corporation and served as chairman from
4 1980 to 1981. He is active in the organized bar supporting
5 legal services. He is currently president of the National Legal
6 Aid and Defender Association.

7 He has been chairman of the American Bar Association's
8 Standing Committee on Legal Aid and Indigent Defendants. He is
9 a member of the ABA's consortium on legal services and the
10 public. He currently practices law in St. Louis as a partner
11 with the law firm of Lewis and Rice. Would you please make
12 welcome Bill McCalpin?

13 MATCHING SUPPLY AND DEMAND IN LEGAL SERVICES

14 MR. MCCALPIN: Thank you very much, Mr. Martin, for
15 that generous introduction. It is a pleasure to be here today
16 before this distinguished group. I thought this morning when
17 George Wittgraf made the comment to the effect we do not know
18 exist as a Board that I could reflect on that and demonstrate
19 that unit and rapprochement is possible, because no longer would
20 I take issue with Howard Dana about whether there ever was a
21 recess-appointed Board or not.

22 We have composed all our litigation and arguments and

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1 differences in the past and have come together in the interest
2 of moving forward constructively with a legal services program
3 in the United States.

4 Let me begin by making it clear that although I am
5 privileged to serve as the president of the National Legal Aid
6 and Defender Association, I do not appear here today in that
7 capacity. Similarly, while I have in the past held positions of
8 responsibility in the American Bar Association and continue to
9 serve there in some such capacities, neither do I speak here for
10 that association.

11 I suspect that some of my friends in NLADA and the
12 American Bar Association will not agree with some of the things
13 that I say this afternoon. I prefer to think that I come here
14 in somewhat the same capacity as Mike Wallace and Roger Cramton
15 with both of whom I share the honor of having been a past
16 chairman of the Board of the Legal Services Corporation. Of
17 course, obviously, neither do I speak for it.

18 I prefer to believe that I should be understood as
19 speaking my own thoughts based upon 26 years of association with
20 the legal services program in one capacity or another. In fact,
21 it was a matter of considerable interest to me this morning to
22 hear Earl Johnson say that his association began on December 7,

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1 1964, and to reflect that my own association began about three
2 weeks before that with the HEW conference on legal services, the
3 week following the 1964 presidential election.

4 When I was approached about participating in this
5 program, I was told that the morning would be given over to a
6 retrospective and that the afternoon program was designed to
7 look ahead. Specifically, it was suggested that I delve into
8 the future challenges of expanding the delivery of legal
9 services to the indigent citizens of this country.

10 I believe that I can best do that in terms of
11 evaluating the demand for legal services and the supply of
12 resources available to meet that demand. The morning speakers
13 dealing with past history had the advantage of being able to
14 base their remarks on facts as they had encountered and
15 experienced them.

16 Since I will be dealing with the future, my comments,
17 I believe, will perhaps be somewhat more subjective. It is my
18 view that in the foreseeable future, the problems confronting
19 the poor are not likely to diminish either in number or
20 severity. I believe this is particularly true as we stand at
21 the threshold of what most economists in this country regard as
22 a recession.

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1 As we know from the recent and long returned past,
2 recessionary times impose a disproportionate burden on the poor.
3 Hard times mean unemployment. Unemployment means loss of jobs.
4 Loss of jobs eliminates family income. As a result, we may
5 expect greater incidence of recourse to public benefit programs
6 such as food stamps, AFDC, unemployment compensation and the
7 like.

8 We may expect deterioration in health, problems with
9 landlords, with tenants struggling to pay the rent, and all the
10 manifold problems which we were just beginning to appreciate of
11 those on the streets or in shelters without any home at all.
12 With the decline in public financial support of programs
13 designed to alleviate these problems, we can expect increased
14 confrontation between administrators of such programs and the
15 poor seeking merely to survive.

16 As one person put it in a meeting that I attended at
17 HEW a good many years ago, in these circumstances,
18 administrators of welfare programs are apt to act like the
19 claims vice president of the casualty insurance company denying
20 all claims, or perhaps at this season of the year the analogy to
21 Scrooge would be more appropriate.

22 Other problems of the poor which have engaged a large

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1 share of our attention and resources over these past 25 years
2 are likely to remain at least constant. These include family
3 and domestic relations problems, consumer problems, problems
4 with educational institutions and the like.

5 The prevalence of drugs and the displacements caused
6 by the current military buildup are likely further to exacerbate
7 the problems. All of this presupposes that we as a nation are
8 not ready to follow the lead of other countries and espouse the
9 entitlement concept which Earl Johnson referred to this morning
10 and which is sometimes referred to as a civil Gideon.

11 If we were to do that, the need of all citizens,
12 including the poor, for greater access to justice would be
13 significantly increased. In 1980, our civil legal services
14 program served approximately one-and-a-half million clients. At
15 that time, we said we were meeting about 20 percent of the need.

16 The other day I was told that the Corporation fact
17 sheet which is now at the printer will disclose that in 1989,
18 the civil legal services program served just over 1.4 million
19 citizens, again approximating, it is said, 20 percent of the
20 need.

21 Given the rise in poverty population in the last 10
22 years, the American Lawyer Pro Bono Survey, published this last

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1 summer, cited census bureau statistics as indicating that the
2 poverty population in New York State alone had risen by 13
3 percent in that period. It may well be doubted whether our
4 current efforts do indeed meet as much as 20 percent of the
5 demand.

6 If we are to meet our proclaimed goal of equal justice
7 for all, then access to the justice system must be as available
8 to the poor as it is to the rich. This means, of course, that
9 we must find a way to increase the supply of resources to meet
10 the demand.

11 Over the past 25 years, there has evolved an
12 integrated delivery system encompassing full-time compensated
13 staff attorneys, hard-time compensated private attorneys and
14 part-time private attorneys acting pro bono together with
15 support staff to serve the civil legal needs of the indigent
16 citizens of this country.

17 As was noted earlier this morning, 10 years ago there
18 were 6200 full-time attorneys and 3,000 paralegals on the staff
19 of the legal aid program serving those million and a half
20 clients whom I mentioned a moment ago. Today there are
21 approximately 4,100 attorneys and 1930 paralegals to serve the
22 1.4 million citizens who received service in 1989.

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1 Obviously, if we are to increase the supply of those
2 full-time, compensated staff personnel, we will need more funds.
3 I understand that Bob Rhudy, who will speak later, will talk
4 about non-federal sources of funding. But I think nobody kids
5 himself that it will be possible significantly to increase the
6 available supply of professional personnel to serve the needs of
7 the poor without very substantial increases in public, including
8 federal funding.

9 The reason that 4,100 attorneys and 1,900 paralegals
10 can now serve as many as 1.4 million clients is that the gap is
11 significantly covered by the involvement of private attorneys.
12 Grantees, as you heard, were initially required to devote 10
13 percent of their basic grant to private bar involvement, and
14 that was increased to 12.5 percent, where it now stands.

15 From the tiny acorn of private bar involvement that
16 existed in 1980, Reece Smith's efforts have produced the mighty
17 oak of 136,260 attorneys, almost 20 percent of the total bar of
18 this country now serving in one way or another. Of that number,
19 8,860 are listed as serving in Judicare or partially compensated
20 programs.

21 Obviously, that number will increase only as funding
22 becomes available to pay for it. The remaining 127,400 serve

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1 pro bono without any compensation at all. Recently, avowed
2 opponents and some supporters of legal services programs have
3 espoused the notion of competitive as a way of increasing or
4 expanding the delivery of legal services.

5 It seems clear to me that to the extent that
6 competitive bids go to private law firms like my own or to
7 entrepreneurial enterprises, the very substantial pro bono
8 complement to the staff legal services program is apt to be lost
9 entirely.

10 On the other hand, I must confess to you that in my
11 judgment, a significant increase in the volume of pro bono
12 representation by the private bar may be difficult to achieve,
13 at least in the near term. This can be ascribed in large part
14 to the same recession which is likely to increase the problems
15 of the poor.

16 A recently published report of the Washington Council
17 of Lawyers, which conducted the survey here in the District in
18 the last few months, finds, "In recent years, increased pressure
19 on firms to maintain profitability and on individual attorneys
20 to build more hours to obtain advancement has made it difficult
21 to do pro bono work well where it will do the most good.

22 "Competition has increased significantly in Washington

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1 with the influx of out-of-town firms, the growth of megafirms
2 and the merger and disappearance of several prominent firms."
3 That same report concludes that the pro bono goals set by the
4 judicial conferences here in the District of Columbia 10 years
5 ago have not been met.

6 Fifty-five percent of the respondents in that survey
7 reported that they were not providing the goal of 40 hours of
8 pro bono per year. Almost a third reported performing 10 or
9 fewer, even zero hours, of pro bono in the past. Those surveys
10 covered the full spectrum of the bar.

11 The situation at the extremes of ages within the bar
12 is not much more promising. Last spring, 53.6 percent of
13 students at Harvard Law School said that they were willing to do
14 pro bono provided they got course credit for doing so. But by a
15 vote of 69 to 31 percent, they opposed the concept if credit
16 were not given.

17 In another survey, only 21 percent of fully retired
18 lawyers indicated an interest in doing pro bono in their
19 retirement years. It may be easy to say, as Judge Wackner did
20 in his response of the report of the Morero Committee, that if
21 the bar doesn't measure up in two years, it will be mandated to
22 do pro bono. I suggest that is not an appropriate response.

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1 Rule 6.1 of the model rules of professional conduct do state, "a
2 lawyer should render public interest legal service." The rule
3 in the comment, however, made clear that public interest legal
4 service includes not just poverty law but also civil rights law,
5 public rights law, charitable organization representation and
6 the administration of justice broadly.

7 The comment also says specifically and significantly
8 this rule expresses that policy but is not intended to be
9 enforced through disciplinary process. The most that can be
10 said is that under the present rules, lawyers may have a
11 responsibility, but not an enforceable obligation, to do pro
12 bono. A very great many, for various reasons, are declining to
13 do so.

14 I suggest that providing citizen access to justice is,
15 in any event, a public responsibility. The Preamble to the
16 Constitution makes clear that a primary purpose of our
17 government was to establish justice. Article 3 of that
18 Constitution is the basis where a system reports to make that
19 establishment possible.

20 Every state has a comparable system for the
21 establishment of justice. There is no real disagreement that in
22 the vast majority of instances citizens do not have realistic

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1 access to the instrumentalities of justice without
2 representation ordinarily by lawyers.

3 Since access to justice is a public responsibility, it
4 requires a public response. I perceive no reason why lawyers
5 should be mandated to meet this public responsibility while
6 other public responsibilities require no such sacrifice on the
7 point of others who can alleviate them.

8 Although we as a nation have initiated public programs
9 to alleviate hunger, homelessness and ill health, I hear no one
10 suggesting that farmers should be mandated to donate two, four
11 or five percent of their crops, livestock or produce to feed the
12 poor, or that manufacturers of building materials and labor
13 should give their services to erect housing, or even that
14 doctors and dentists should be required to provide their
15 services pro bono to meet the health needs of the poor.

16 The Constitution requires our government to provide
17 justice. It makes no mention of food, housing or health. The
18 bar has responded far beyond any other professional or business
19 in meeting the public responsibility to provide access to
20 justice.

21 With proper encouragement, support and leadership, I
22 believe that it can and will do more. It should not, in my

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1 judgment, alone among the professions be constricted to meet
2 what is a public responsibility. With the problems of the poor
3 at least constant, if not rising, it appears to me that there
4 are basically only two ways to meet the need.

5 One is to increase the available financial resources
6 by a factor approximating five. On a strictly arithmetical
7 basis, that would permit us to meet the presently unserved legal
8 needs of the poor for civil legal services. The alternative is
9 to reduce the demand for or the cost of representation in
10 supplying those legal services.

11 One way to reduce the demand for legal services is by
12 increasing the availability of the poor to represent themselves
13 pro se. Many legal services programs are doing this right now
14 by holding pro se clinics and offering advice and assistance in
15 divorce, landlord and tenant, small claims, bankruptcy, and
16 other types of problems or proceedings confronting the poor.

17 Obviously, to the extent that the poor are unable to
18 handle their own problems, the demand for representation by
19 others is reduced. The cost of providing representation and
20 thereby expanding its reach may be reduced in a number of
21 ways.

22 One is to permit nonlawyer representation in certain

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1 specific types of problems. The California State Bar has
2 circulated for comment a report which would authorize such
3 nonlawyer representation in that state in family, landlord and
4 tenant and bankruptcy matters. Legislation to the same end has
5 been introduced in California, Illinois and other states.

6 Unless, however, we are to have two classes of
7 justice, such nonlawyer representation should be tolerated only
8 to the extent that it is permitted for all classes of citizens.
9 There should not be a two-tier system of justice in which the
10 rich get lawyers and the poor get somebody else.

11 Another way to reduce the cost of representation is to
12 invest in greater utilization of class actions, legislative and
13 administrative advocacy. Each of these approaches offers the
14 possibility of resolving a multitude of problems to a single
15 course of action.

16 The cost of that single course may be higher than an
17 instance of single representation, but the prospect that the
18 class action, legislative or administrative advocacy might solve
19 the problems of hundreds or thousands of individual clients
20 makes these devices the very essence of economy.

21 Some propose, but I doubt, that alternate dispute
22 resolution systems offer the prospect of significantly enhancing

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1 the availability of representation by lowering costs. In the
2 first place, court and administrative agency appearances, which
3 are those that are amenable to the alternate dispute resolution
4 process, involve only a small portion of the representation of
5 indigent citizens, probably not more than 10 to 20 percent at
6 most.

7 Representation in such alternate dispute processes
8 require preparation and appearance costs which begin to approach
9 those for court appearances. If, as is true in many instances,
10 the alternate dispute resolution processes are nonbinding, then
11 the cost may actually be increased by successive appearances in
12 the alternate dispute resolution process and in subsequent court
13 proceedings.

14 In summary, the problems of the poor which are
15 amenable to resolution through recourse to the instrumentalities
16 of the justice system are not likely to evaporate or even
17 significantly to decline in number. Eight percent, at least, of
18 these problems are not presently being addressed by our system.

19 Let me suggest that there are five ways in which we
20 may reduce that 80 percent figure and begin to match the supply
21 to demand. First, by increased public funding. As I indicated
22 before, to the extent that services are provided by partly or

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1 fully compensated staff and other support personnel, obviously
2 it takes more funding to increase that source of supply.

3 Second, by encouraging greater voluntary pro bono
4 participation of the private bar. We have, as indicated, made
5 great strides in that direction. But the last 10 years has seen
6 beyond anyone's imagination an enormous increase in the
7 participation of the private bar.

8 Yet, it is only a relatively small percentage now
9 participating. We have some ideas of what it takes to increase
10 that level of participation. I think it is our business to be
11 about engaging those ways to increase that voluntary
12 participation.

13 Third, by educating indigent citizens to handle some
14 of their problems themselves on a pro bono basis. As I
15 indicated, that is being done in many programs around the
16 country. I think it can be done to a greater degree and with
17 greater efficiency that it has been done. To the extent that it
18 is done, it reduces the demand on the system to supply third
19 party representation.

20 Fourth, by a recognition of nonlawyer representation
21 in some problem areas for all citizens not just the poor, but
22 including the poor. As we know, there are many areas of what

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1 many have thought of as traditional law practice which are
2 amenable to representation by nonlawyers, the assistance of
3 nonlawyers. We certainly, even in some of the courts nowadays,
4 have nonlawyer representation of persons involved in litigation.

5 Finally, fifth, we can, I think, improve the ability
6 of the supply of resources to meet the demands of the problems
7 by working with legal services programs constructively to
8 improve efficiency in their operations to make their funding and
9 their other resources reach as many poor clients as possible.

10 As has been indicated this morning, that has not been
11 the thrust of monitoring and evaluation by the Corporation in
12 the last 10 years. I'd prefer to think that in a slightly
13 earlier time, the monitoring process was more nurturing, as was
14 indicated this morning, more supportive, less adversarial. I
15 think we need a return to those days when monitoring becomes
16 helpful and not the basis of an indictment.

17 No one of these approaches by itself is likely to
18 bring supply and demand in balance. The combination of some or
19 all of them will advance us to that end. In employing them, we
20 must recognize that the goal of equal justice is difficult and
21 elusive but certainly worth striving for. Thank you.

22 (Applause)

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1 president and directed the White House Office of Policy
2 Development and developed the president up from dependency
3 program to reorient welfare to the goal of reducing dependency.
4 From '87 to '89, he organized and chaired the president's low
5 income opportunity board.

6 He also was a Reagan administration's negotiator and a
7 principal architect of the Family Support Act of 1988, the most
8 far reaching welfare reform legislation in 25 years. He's now
9 available to speak to us on poverty, dependence and welfare.
10 Please make welcome Mr. Charlie Hobbs.

11 POVERTY, DEPENDENCE AND WELFARE

12 MR. HOBBS: I have to admit some timidity in
13 addressing this audience, but I have a son who is a practicing
14 attorney. Knowing how much trouble I've had with him, the
15 thought of trying to address 100 or more of you is troubling.

16 Also, I'd like to address an issue that Mr. Cramton
17 mentioned at lunch. He had a sense of wonder at why the
18 government was defining attorneys as 2 for every 10,000 people
19 and why not 1 for 5,000. In my experience with attorneys, they
20 seldom come in ones.

21 Every time I have sought legal advice, invariably
22 someone else has sought legal advice to oppose it. Even when

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1 I've sought legal advice from a member of a firm, that member of
2 the firm always seemed to want to bring in another member of the
3 firm who had a different kind of experience so that we'd have
4 some opposition.

5 I'd like to talk today about a little more theoretical
6 talk than I've heard so far related to where I think legal
7 services need to go in the future in order to serve what I
8 consider on my experience to be a need to the poor. As I'm sure
9 all of you realize from that short biography, I'm not a fan of
10 the welfare system at all, even though I've been involved with
11 this so-called war on poverty for quite awhile.

12 But I'd like to make, really, three points about legal
13 services and other services for the poor. The first is that, in
14 my opinion, to say that we're going to fight a war on poverty or
15 that we have fought and are continuing to fight a war on poverty
16 is simply irrational.

17 I'll tell you why. Along with that point, I'd like to
18 make the point that the war we should be fighting is a way on
19 government induced dependency not on an idea of poverty that's
20 promulgated by the federal government.

21 Secondly, I'd like to defend of all people Dick Darman

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1 Government. I think he made some very good points. And at the
2 risk of sacrificing my conservative credentials, I'd like to
3 spend a few moments on the points that he had to make about
4 where we need to go in the future in dealing with the problems
5 of people we define as poor.

6 Third, I'd like to use my experience to tell you what
7 kinds of legal services I see that are going to be required, or
8 at least beneficial, in the next 10 to 15 years for people who
9 we have characterized as poor. First of all, the war on
10 poverty, the main point I'd like to make is that poverty is
11 really a defining characteristic of our society.

12 It is not a condition that people have. It is a
13 defining characteristic of our society. In the same sense
14 almost as sin is the defining characteristic of a religion.
15 Without poverty, there would be no wealth. Without poverty and
16 wealth, there would be no middle class. It seems to be our
17 great contribution to western civilization.

18 Until we begin to understand that we have defined
19 poverty in a certain way because we want to offset other
20 elements of definition in our society and we get to deal with
21 poverty in that way, to talk about a war on poverty is simply
22 ridiculous.

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1 Poverty is a line that was drawn by a woman in HHS in
2 1962, Molly Ershanski. In order to define poverty, what she did
3 was to take the amount of money that she thought people would
4 need to buy food and multiplied it by three and said that's how
5 much a family needs every month to live.

6 The only change that's been made to that poverty line
7 since has been to adjust it for inflation. Now, to say that
8 everybody who falls below that poverty line is poor, or to say
9 that people who fall above that poverty line are not poor, it
10 seems to me, is patently ridiculous, at least in terms of my
11 experience with people.

12 As I deal, as I do for about half of my time these
13 days, with groups of people who have been defined as poor in our
14 society, the one thing I find almost universal is that they
15 don't even think in those terms. That's not a matter of great
16 interest to them, whether they are defined as poor or not.

17 What is of interest to them is where they are going to
18 go in the future and what sorts of goals they are going to be
19 able to set and meet realistically for themselves and for their
20 families. So I would say that the first thing we need to do is
21 to understand that this war on poverty is really a war that we
22 create in Washington, that we create in our own intellectual

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1 circles and that we foist off on people as some sort of
2 condition that we're going to be able to change.

3 In order to try to let you think about that a little
4 more, I would suggest a thought experiment. What do you suppose
5 would happen in this welfare system of ours if next week an
6 epidemic struck the people we define as poor, that is everybody
7 living below the poverty level?

8 Suppose that over the next three or four months they
9 all die of some mysterious disease. What would happen to the
10 \$200 billion welfare industry that we've created in the United
11 States? What would happen to the roughly 10 million people who
12 I can define as gaining most of their employment and most of
13 their income from providing services and benefits to the poor?

14 Who would we define next as being poor? How far above
15 the current poverty level would we go in order to create another
16 poverty condition that we could apply these same benefits to?
17 You might think about that for awhile.

18 The reason I saw we shouldn't be fighting a war on
19 poverty is because there is legitimate war to be fought out
20 there. It's a war to be fought on what I call government-
21 induced dependency. My favorite quote of all time in this
22 regard comes from Kimi Gray, who I'm sure most of you have heard

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1 of, who has just, with her fellow residents at a public housing
2 project here in Washington, D.C., purchased their public housing
3 development and are now going into private ownership of it.

4 When asked what she thought about the welfare system
5 and her relationship to it, what she said was, "We were
6 programmed to be dependent." I think that that is really the
7 heart of the defect in the welfare system. These days the fad
8 has been reinstalled a phrase for the welfare system because
9 some of us have criticized it for so long.

10 I don't mind people who say that certain programs have
11 done good things for people. But what all of those programs
12 have done together for people or to people, really, is to make
13 them feel dependent. As long as people feel dependent, they
14 will be dependent.

15 And as long as they are dependent, we'll look at them
16 and say, "You're dependent. You're poor. You can't do it.
17 We've got to do it for you." My whole theme in this human
18 assistance area is to say that we must let go. We must divorce
19 ourselves from making policy and program solutions at the
20 federal level and even at the state level and even begin to
21 listen to the people who are in the positions that we call poor
22 but who have the same dreams, the same aspirations, the same

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1 capabilities, the same standards, and the same potential for the
2 future as any of the rest of us has.

3 We have made ourselves into a class society. Yet, we
4 sit here and talk about what we're going to do for the poor.
5 What we really need to do is ask them, what it is they need to
6 do for themselves. Empowerment is only a valid term, in my
7 opinion, if we're talking about people empowering themselves and
8 us getting out of the way and providing things that are
9 necessary for people to empower themselves.

10 There has long been a fallacy that it's okay to be on
11 welfare. My experience in the welfare system started a few
12 years before I went to California to work with Ronald Reagan.
13 But one thing I found as I went through the welfare reform in
14 California in those days, the early 1970s, was that as soon as
15 people understood it was not okay to live on welfare, they began
16 to do things for themselves.

17 We had a welfare reform that started with a Reagan
18 speech. What Reagan said, in effect, was, it's not a good thing
19 to live the rest of your life on welfare. You'd be a lot better
20 off to try to begin to do things for yourself to the extent
21 you're able.

22 From that day, literally from that day, the welfare

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1 roles went down in California. And they kept going down for
2 four years. I wrote an article for the National Review in which
3 I pointed this out and also pointed out that many of these
4 administrative and law changes that we had made to the welfare
5 system really relied for their impact on that psychological
6 impact that Ronald Reagan had and really weren't worth much by
7 themselves.

8 I lost a lot of old friends that way among the people
9 who had worked to develop the welfare reform system in
10 California. But I really think it's true. It was the
11 psychological impact of changing the attitude toward welfare on
12 the part of a distinguished public official that really began to
13 have the effect, and all we did was to add to that effect with
14 whatever we did beyond that point.

15 I have a hypothesis that people will help themselves
16 as long as they are provided with the opportunity, with the
17 information and with the inspiration to do so. That's what we
18 should be doing. We should be providing opportunity. We should
19 be providing particularly information. I think this is
20 particularly true in the legal services area.

21 We should be providing the inspiration, that is the
22 expectation, with support that people are going to be able to do

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1 for themselves what the government can't do for them and what we
2 have not expected them to do for themselves before. I don't
3 mean to say in this that every quadriplegic is going to be up
4 doing manual labor.

5 That's not the sort of thing I'm talking about at all.
6 I'm talking about a generation of as much independence and
7 interdependence among people at family, neighborhood, community
8 levels as they can possibly do. I'm talking about relieving the
9 people we categorized as poor from being a separate class of
10 people, something called an underclass.

11 I'm talking about providing the same expectations and
12 the same opportunities for them that we provide for anybody. It
13 shouldn't be measured by whether or not somebody falls above or
14 below a certain poverty line. Now to Dick Darman, before Dick
15 suffered from the fact that his language is usually Sardonic,
16 he's usually cynical. He usually is trying to trigger people's
17 negative reactions.

18 But let me tell you what he said in a speech to this
19 council last month on the excellence of government for which he
20 got a lot of criticism because he dwelled on the subject of what
21 he called neo-neoism. In fact, he even, I think at one point in
22 the speech, expanded that to call it neo-newtism which triggered

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1 a specific response from a certain congressman.

2 But what Dick said was, we can get the best of both
3 romantic rush of neoism, that is these new paradigms, new ideas,
4 and the rational interest in systematic progress if we combine
5 the following five elements. One, active encouragement of
6 creative ideas seriously oriented towards problem solving.

7 Two, use of states as laboratories. This is one of
8 the great undeveloped virtues of federalism. Many of America's
9 states are now the size of significant countries. They are as
10 close as democracies can come to realistic laboratories for
11 natural experimentation.

12 Three, extensive evaluation of both federal programs
13 and natural. That is not in federal experiments. Four, orderly
14 evolution from idea through pilot to intermediate scale to full
15 scale. Five, competition for resource allocation based on the
16 merits of actual performance.

17 Now, Dick didn't invent this little scheme. That's
18 what most of us go through when we set out to create a policy
19 that is going to work for a lot of people. Unfortunately,
20 particularly in the subject of poverty and welfare and the
21 politics that have become so heated in Washington and in state
22 capitals as well, we tend to overlook this systematic approach

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1 to the development of reasonable policy.

2 So what we substitute in exchange for that is every
3 new idea that comes along with a slogan attached, with a small
4 pot of money, which gradually grows to become very large, and
5 with inadequate evaluation. So I think all Dick was doing was
6 trying to bring us back to the realization that we must take a
7 systematic approach to the idea of antipoverty or antigovernment
8 dependency programs.

9 I would only add to that one thing. That is, we must
10 reverse the decisionmaking process. We must begin to make the
11 decisions as to what's going to work or not work from the bottom
12 up rather than from the top down. We must let the dynamics of
13 each individual situation in each neighborhood and community
14 dictate what the policies and programs are going to be for that
15 area.

16 We must be willing up here to allow that great
17 latitude of program and policy which will enable those dynamics
18 to take over and to move forward. What can legal services do in
19 this new mission? First of all, while I've said that there's no
20 difference between people we call poor and people who are not
21 called poor, there is, I think, one general tendency among
22 people who live at lower income levels which has been really

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1 forced upon them by a system of paternalism and elitism on our
2 part.

3 That is, they are legally quite naive and also
4 financially quite naive. They've never been expected to know,
5 for instance, how to form a corporation or a partnership or how
6 to meet the Byzantine tax laws of our society. So one of the
7 first things I think is necessary for legal services to provide
8 in the future is the development of appropriate legal structures
9 by which these embryonic organizations and resident management-
10 - for instance, mentoring, nationwide mentoring, between welfare
11 recipients and ex-recipients that I've been involved with, legal
12 structures that can be used to facilitate those kinds of
13 programs.

14 For instance, a resident management entity can be
15 anything from a cooperative corporation to a profit-making
16 corporation to nonprofit corporation to a partnership, general
17 or limited, if you will have it that way. Which of those
18 structures is going to be the most effective for that particular
19 public housing development?

20 Howard Hughes, as I recall, was -- whoever the
21 attorneys that worked for him back in the 50s and 60s managed to
22 develop a wonderful structure of profit-nonprofit-profit-

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1 nonprofit corporations. I see opportunities for that sort of
2 thing in the resident management movement where, for instance, a
3 resident association may well be a nonprofit corporation with a
4 profit-making corporation working for it to actually do the
5 management of a given project.

6 So I think we need to concentrate on the legal
7 structures and the development of legal structures. I happen
8 right now to be looking for legal help in one of the communities
9 that I work with, and it's awfully hard to find. It isn't that
10 there are no legal services provided there; it's that the idea
11 of trying to develop a corporation just doesn't seem to cross
12 the mind of people who work for the poor.

13 So what I have to do is go to top legal firms I can
14 find in the city that do corporate work and say, hey, how about
15 one of you guys coming over and helping out in this situation.
16 Now the second thing I think we need help in dealing with these
17 embryonic groups with is in contracts.

18 Let me go back to my resident association again.
19 Let's say that the resident association becomes the contractor
20 to provide case management services under the Family Support
21 Act, which is certainly within the Family Support Act, as I
22 understand it at least, and is certainly something that quite

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1 often a resident association will have the natural talent and
2 experience to be able to do.

3 How does that kind of a contract get consummated? We
4 need to look at contracts in two directions; contracts that are
5 going to provide services to the people we're dealing with and
6 contracts by which they are going to provide services to other
7 people.

8 For instance, what kind of legal help are we going to
9 be able to get? When a resident association that's put together
10 its own clean-up teams for rehab housing finds that it's got the
11 kind of team, the kind of equipment, that can be used to do
12 clean up on new housing developments that are within 10 or 12
13 miles of it.

14 There's going to be a contract necessary there. The
15 people in this resident association are not experienced in that
16 sort of contract, and they need help. We also need to keep
17 working on the reduction of public and private barriers to
18 productivity and accomplishment.

19 It's not so much of whether somebody gets their AFDC
20 grant or was taken off wrongfully or not, it is what can these
21 individual families and the neighborhoods they live in do
22 together to further their own cause? How can they further that

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1 independence of an individual and interdependence of the group
2 in order to become a productive and economically progressive
3 organization?

4 So we need to be looking at the public and private
5 barriers to that. Right now, I have at home and I'm working on
6 about a 200 page document that describes what has to be changed
7 in existing human assistance law through the whole spectrum of
8 health and welfare, food, housing kinds of programs in order for
9 us to do a radical restructuring in one city of the human
10 assistance system.

11 There's 200 pages of packed detail, what I wouldn't
12 expect anybody to understand, including myself. But there's a
13 lot of welfare law. And if any of you have read welfare law,
14 you know how Byzantine it can get. It's worse than, in many
15 ways, the revenue codes because there are so many different
16 programs, each of which has its own law.

17 When those begin to interact with each other, the
18 perverted incentive structure that's built in leads to one, a
19 disincentive for anybody to want to work; two, a disincentive to
20 form and maintain a family. And unless we can get these laws
21 undone in some way, we're not going to make any progress in this
22 area.

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1 How do we get them undone? We can change the law in
2 Congress, which is a difficult thing to do. We can explore the
3 wayward capability of the Executive Branch to the utmost. I
4 started trying to do that in the Reagan administration. The
5 Bush administration has continued that effort.

6 Now, under Jack Kemp and his economic empowerment task
7 force, it's going to be looking more and more toward innovative
8 experimental programs being brought forward seeking the waivers
9 the federal government can provide. Then there's another way to
10 do it. That is, you don't have to pass a law that affects the
11 whole system.

12 Given congressman, encouraged by his constituency, can
13 come forward with a demonstration law so that in a given
14 community a program can be operated as a demonstration without
15 changing all the rest of the laws for the rest of the United
16 States.

17 Tax advice, a little resident group that started a
18 store in their development. When they started the store, they
19 didn't know anything about sales tax. They didn't know anything
20 about how to keep books. They didn't know what kind of tax
21 liabilities they were going to build up. They didn't know
22 whether they needed to keep an inventory and why.

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1 All of that involves both financial and legal
2 assistance. Each one of these little enterprises requires that
3 kind of financial and legal assistance. Now, while it may seem
4 to you who are dealing at the national level as being awfully
5 small peanuts, believe me it is these small peanuts one at a
6 time that make a difference over time.

7 Finally, I would say that what legal services, in
8 fact, all services dealing with people we've categorized as poor
9 must do is to promote the sense of independence that's worked
10 for the rest of us. Again, we must stop talking about
11 underclass and stop talking about poverty as being some
12 condition that only certain people fit and other people don't.

13 Otherwise, we're going to leave those people there
14 forever. There was an old Bob Dylan song, as I recall, one of
15 the first things he produced back in the 60s, about the times
16 they are changing. One of his lines was that the old road is
17 rapidly fading, and you should get out of the new one if you
18 can't lend a hand because the times are changing.

19 I think that this really has to apply to all the
20 people who work on these kinds of programs. That is, despite
21 all the rhetoric that I hear, and particularly the rhetoric that
22 comes from the academic community that is constantly talking

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1 about things that happened 30 years ago instead of things that
2 are going to happen 10 or 15 years ago, what I miss in all that
3 rhetoric is the understanding that this world of poverty and the
4 world of government dependency is changing all over the United
5 States.

6 There are hundreds of groups around the United States
7 who are taking charge of their own case. We're going to become
8 mainstream in this society of ours whether we like it or not,
9 whether we are willing to make way for it or not. They are going
10 to get there.

11 They are going to get there, not through
12 confrontation, not through marching and picketing and signs and
13 shooting at people. They are going to get there by developing
14 in their own self-interest those mechanisms which will work to
15 make them more satisfied with their own existence, better off
16 financially, better off spiritually.

17 John McKnight who is my favorite theoretician on this
18 whole subject of decentralization has characterized it as
19 America is changing little by little in all the little places.
20 Our job, in my opinion, is to nurture that change without trying
21 to control it. Thank you.

22 (Applause)

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1 MR. MARTIN: Thank you very much. Unfortunately,
2 Charlie has to leave at 3 o'clock, and it's now 10 minutes to
3 3:00. So we'll excuse him at 3:00. Our next speaker is Robert
4 J. Rhudy who has long been associated with the legal services
5 for the poor.

6 He is currently the executive director of the Maryland
7 Legal Services Corporation and president of the National
8 Association of IOLTA programs. Prior to his present position,
9 Mr. Rhudy was in private practice representing, among others,
10 the national social science and law center, the Micronesian
11 Legal Services Corporation, the National Legal Aid and Defender
12 Association, the Farm Worker Justice Fund, and the National
13 Clients Council, all grantees of the Legal Services Corporation.

14 From 1979 to 1983, he served as chief attorney for the
15 Legal Aid Bureau of Baltimore, a Maryland grantee. Please make
16 welcome Mr. Rhudy.

17 IOLTA AND OTHER NON-FEDERAL RESOURCES

18 MR. RHUDY: Thank you, David. Anybody who wants to
19 stand up and stretch for just a minute, feel free. I've gotten
20 a little bit stiff sitting there. George, as you know, I lived
21 in Iowa during 1970 to 1977. I went to law school at the
22 University of Iowa and practiced law out there for a period of

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1 time.

2 Iowa is a wonderful place. It's 943 small towns
3 averaging about 3,000 population, going down and going up from
4 there. It's 99 county seats where the lawyers live. David,
5 I've got to warn you, I've never been to Cherokee. You better
6 get a map before you go out.

7 I prepared a written statement which has been
8 distributed to the panelists and the other presenters, and I'll
9 welcome questions and comments on anything contained in that.
10 Because of time, I'm going to highlight some topics addressed
11 more fully in that statement.

12 My presentation will focus on resource development to
13 the poorest for legal services since 1981, and especially the
14 consequences of shifts and relative federal and other resources
15 nationally and in many states. I'll attempt in some instances
16 to evaluate and comment on possible future trends of resource
17 development, particularly as regards the potential continuing
18 role of IOLTA programs in developing legal services delivery
19 systems for the poor.

20 I want to make clear that I don't see any of these
21 activities, pro bono, state and local developments, IOLTA, and
22 others, as replacements for the legal services Corporation and

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1 other funds, but rather as examples of the developing essential
2 partnership of the bar, government and others to insure that all
3 our poor citizens receive legal assistance.

4 When we talk about trends, as we all know, crystal
5 balls don't always work. Trends are subject to change. So
6 please view my efforts accordingly. I'll also add, I should
7 now, that some of the views I'll be presenting are my own and
8 don't necessarily reflect the view of other IOLTA leaders or the
9 National Association of IOLTA programs.

10 Let me start with a very brief background, and it's
11 been talked about previously today. Before the 1960s, a very
12 limited provision of civil legal assistance to the poor was
13 primarily provided by the private bar. There were some legal
14 aid societies around the country.

15 By 1965, 157 legal aid offices with a total budget of
16 \$4.5 million employed about 200 full-time lawyers, private
17 attorneys, in small offices that have now contributed by
18 providing some services pro bono or at reduced fees. As
19 commendable as these efforts were, they were grossly inadequate.

20 Further such activities were directed almost entirely
21 at routine individual legal matters without consideration of the
22 particular unique problems confronting large numbers of the

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1 poor. Whole classes of poor persons and legal problems were
2 simply not addressed.

3 With a few model programs staffed by poverty law
4 attorneys and funded by the Ford Foundation in the early 1960s,
5 we began to see the creation of the new jurisprudence of poverty
6 law for the first time in this nation. With the development of
7 the OEO legal services program launched in 1965, neighborhood
8 legal services offices began to be established around the
9 country. By 1971, OEO's budget had grown to \$71.5 million and
10 stayed there for some period of time.

11 The Legal Services Corporation was created in 1974,
12 drawing back somewhat from the earlier law reform emphasis of
13 the Ford and the OEO programs but stressing instead expanded
14 access to justice for the poor. In 1976, LSC adopted the
15 minimum access goal, providing 1 attorney for 5,000 poor people
16 in the United States.

17 By 1981, with the congressional appropriation of \$321
18 million, LSC had substantially achieved this goal funding 6,200
19 attorneys in 1,450 offices, working for 323 programs, serving
20 poor persons in every jurisdiction in the United States and
21 Puerto Rico, the Virgin Islands, Micronesia and Guam.

22 The essential point of this brief history up until

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1 1981 is that the driving force for legal services development
2 until that time was federal dollars funded through OEO and the
3 Legal Services Corporation. In 1981, federal funding
4 represented over 95 percent of the budgets for these legal
5 services programs, supplemented by approximately \$5 million in
6 state and local government funds and approximately \$11 million
7 in private, primarily United Way or other contributions.

8 As we all know, in 1981, LSC's funding was cut by 25
9 percent and has continued to erode further throughout the decade
10 by inflation. The decline in federal funding was met by a range
11 of responses by the leadership of the American bar and concerned
12 persons in state government.

13 As an early response, actually beginning prior to
14 1981, was a renewed emphasis on private attorney pro bono
15 service. In 1981, the LSC Board, under Chairman McCalpin,
16 adopted the requirement that grantees allocate 10 percent, later
17 expanded to 12 1/2 percent, of their field grants to stimulate
18 private attorney involvement.

19 ABA President Reece Smith, while leading the national
20 support by the bar leaders to preserve LSC, also expanded ABA
21 activities to increase the pro bono services by the private bar.
22 Unquestionably, these services have expanded substantially under

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1 continuing national, state and local bar leadership.

2 It's been estimated today as previously mentioned,
3 that nearly 130,000 attorneys are participating in organized
4 programs providing civil legal services to the poor by pro bono
5 efforts throughout the United States. Their services are
6 unmatched by any other profession in striving to serve an
7 essential public need.

8 These attorneys, however, represent less than 18
9 percent of the 750,000 lawyers admitted to practice in the
10 United States, compared to the 5,000 attorneys now who are
11 employed full time by LSC grantee programs. During the 1980s,
12 while the number of attorneys and the total income received by
13 the legal profession grew at an unprecedented rate in the United
14 States, legal assistance to the nation's poor actually declined.

15 Law is the most public of professions, and courts may
16 resume their past practice of mandating some public service as a
17 condition of licensure. Reflecting the historic responsibility
18 of those admitted to the bar, current rules of professional
19 conduct urge all lawyers to render service to those unable to
20 otherwise obtain legal assistance.

21 If one percent of all attorney hours were donated to
22 pro bono legal services to the poor, which comprised nearly 15

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1 percent of our national population, that would exceed all the
2 time spent by legal services attorneys today. On the other
3 hand, if one percent of the gross revenues received by all
4 attorneys were provided for legal services to the poor, those
5 proceeds would substantially exceed the current levels of
6 federal and state appropriations for legal services.

7 There's been serious consideration given recently in
8 several states, including New York, Maryland, Florida, North
9 Dakota, Hawaii and others, to revising the rules of professional
10 conduct to require pro bono service or financial contributions
11 from all attorneys for these purposes.

12 New York and Maryland are currently engaged in
13 extensive experiments to determine if voluntary pro bono can be
14 expanded or if mandatory contributions should be required. The
15 ABA has continued to lead state and local bar activities through
16 a variety of approaches to expand private attorney services to
17 the poor.

18 However produced, we should expect to see some
19 continued expansion of pro bono services in many states during
20 the coming decade. Another response has been an expansion of
21 state and local funds. In 1981, such state and local government
22 funding to Legal Service Corporation grantees totalled

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1 approximately \$5 million.

2 This has increased to approximately \$43 million by
3 1989. Many of these grants are to particular services rather
4 than to general legal services for the poor such as social
5 security claims, unemployment compensation and other areas.
6 Another weakness is that LSC grantees in over a fourth of the
7 states currently receive very little or no state or local public
8 assistance whatsoever.

9 Private contributions have expanded somewhat during
10 the 1980s as well. These totaled approximately \$10,800,000 in
11 1981 out of the total LSC grantee funding of approximately \$348
12 million, or it was about 1.4 percent of the total funding at
13 that time, and had increased by 1989 to approximately \$28.5
14 million or 6.5 percent of the total allocation to LSC grantees.

15 Many state programs, however, have been unsuccessful
16 in attracting virtually any such revenues. It's difficult to
17 project the future development of these funding sources for
18 legal services activities as many needs compete for their
19 attention in America today.

20 A new organization fundraiser for legal services
21 created in 1988 and recently receiving a grant from the Ford
22 Foundation is working with legal services programs to increase

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1 private and other fundraising activities.

2 Let me now turn to IOLTA, the interest on lawyer trust
3 account program, which I think has been perhaps the most
4 successful development since 1981 in providing legal services.
5 IOLTA is a relatively new concept to the legal profession in the
6 United States, although it existed in Canada and other
7 commonwealth countries since 1972.

8 Introduced first in Florida by Chief Justice Arthur
9 England in 1978 and implemented there by the Florida Supreme
10 Court in 1981 following IRS approval, IOLTA has now been adopted
11 in 49 states and the District of Columbia. It was briefly
12 adopted by the legislature in Indiana and struck down by the
13 Supreme Court there because they felt the legislature infringed
14 on their responsibilities. I expect Indiana, hopefully, to come
15 back in the fold shortly.

16 As implemented by state court rule or legislation,
17 IOLTA allows attorneys to place nominal or short-term trust
18 funds which previously would be comingled in a noninterest
19 bearing account into accounts bearing interest. This interest
20 generated by these funds is remitted by the financial
21 institutions to a designated administrative body which may be
22 the Bar Foundation or other entity whichever receives the

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1 collection and use of IOLTA.

2 The crisis initiated by severe federal funding cuts to
3 legal services in 1981 was a major impetus to the adoption of
4 U.S. IOLTA programs. The organized bar led the creation of
5 IOLTA in virtually every jurisdiction. In 1983 and 1984, the
6 Legal Services Corporation made several state grants to help
7 stimulate IOLTA, including a \$200,000 grant to the National
8 IOLTA Clearinghouse which was a subproject to the Florida
9 Justice Institute to provide technical assistance nationwide to
10 the development of IOLTA programs.

11 In February 1988, the American Bar Association passed
12 Resolution 101 encouraging all IOLTA programs to consider
13 conversion from voluntary to mandatory systems. Today, 19 states
14 require all practitioners with client trust accounts to
15 participate in IOLTA. Seventeen of the original thirty-two
16 voluntary IOLTA programs have recently converted.

17 As a result of the conversion, IOLTA revenues are
18 raising significantly. IOLTA is projected nationally this year
19 to generate \$143 million. That compares with nearly \$90 million
20 in 1989. All IOLTA programs are pursuant to IRS approval, which
21 approved four purposes for use of the funds; legal services to
22 the poor, law school scholarship programs, administration of

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1 justice and law-related education.

2 Between 1981 and 1989, IOLTA programs nationally had
3 contributed over \$200 million in grants for these activities.
4 Concurrent with the development of the IOLTA funding mechanisms
5 has been the creation in each state of an organization
6 responsible for collecting IOLTA and, in some instances, other
7 funds, and making grants pursuant to the enabling court rule or
8 statute.

9 The 50 IOLTA programs are entirely independent
10 entities directed by state boards of lawyers and others
11 appointed by Supreme Court justices, governors, legislatures and
12 bar associations. Priority and funding decisions are made by
13 each IOLTA program governing board.

14 The state programs have been assisted in their
15 creation and development, however, by several national
16 organizations, including the National IOLTA Clearinghouse which
17 operated from 1982 to '86, was followed by the American Bar
18 Association's IOLTA Commission, the American Bar Association's
19 IOLTA Clearinghouse, and the National Association of IOLTA
20 programs.

21 These groups provide training, consultation, research
22 and policy development on common issues encountered by IOLTA

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1 operations. The establishment in each state of a specialized
2 program which participates in the review, funding and
3 development of that state's legal services system will be one of
4 the major contributions of the national IOLTA movement.

5 Approximately 90 percent of IOLTA grants have been
6 made to provide civil legal services to indigents. Of this
7 amount, approximately 85 percent or over \$50 million were grants
8 to LSC grantees in 1989. Total IOLTA legal services grants
9 could amount to as much as \$100 million in 1990, including
10 approximately \$85 million to LSC grantees.

11 It's important to note also that whereas LSC grantees
12 have received the lion's share of IOLTA legal services grants
13 nationally, reflecting in part the initial emphasis by most
14 IOLTA programs and providing funds to reduce loss of their
15 essential services following the 1981 federal cutbacks, IOLTA
16 programs also allocated an additional estimated \$15 million in
17 1989 to other legal services providers.

18 These grants may be for purposes identified as
19 priorities by the IOLTA organization but not priorities of the
20 local LSC grantees or otherwise reflecting the IOLTA grantors
21 service assessments. I believe this a potentially healthy
22 trend, stimulating more diversity of services and opportunities

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1 for comparing efficiency, quality, effectiveness and various
2 modes of delivery.

3 IOLTA grants in the majority of states are normally
4 made for general civil legal assistance without restrictions on
5 the forms of representation provided or the class of clients in
6 cases served. The authorizing body could, of course, create
7 such restrictions as deemed necessary and appropriate, and
8 they've done so in a few states.

9 The overwhelming majority of IOLTA programs opposed
10 the recently discussed Stenholm-McCollum-Staggers amendments to
11 the FY 1991 LSC appropriation bill which included restrictions
12 on the use of IOLTA funds by LSC grantees, believing that such
13 restrictions infringed on their rights to make grant decisions
14 regarding legal services within their states.

15 IOLTA programs in numerous states were taking
16 increasingly active and innovative roles in evaluating the legal
17 needs of the poor and developing legal services delivery systems
18 in their states. Let me give you a few examples. In several
19 states, IOLTA programs have directly developed or helped fund
20 legal needs studies to evaluate the needs of the poor in their
21 states, to evaluate the current delivery system, and make a wide
22 range of recommendations to better serve those needs.

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1 The studies that were completed in Massachusetts and
2 Maryland in 1988 have already resulted in increased resources
3 and services in those states. IOLTA programs in other states
4 have substantially increased funding for computerization by
5 legal services programs.

6 Between 1981 and 1989, IOLTA programs have made grants
7 exceeding \$10 million to support the development and operation
8 of pro bono legal service activities. IOLTA programs in a
9 number of states have conducted or helped fund special studies
10 on expanding access in family and domestic cases.

11 The Massachusetts IOLTA program is currently doing a
12 special conference and research project on legal services and
13 the role of the courts to consider how changes in court
14 practices can expand access to justice for the poor. IOLTA
15 programs have made special grants for the homeless, AIDS
16 victims, aliens, farm workers, non-English speaking populations,
17 native Americans, and persons displaced by hurricanes and
18 earthquakes.

19 They've made grants to CASA programs and other
20 programs which use paralegals, expanding the use of paralegals
21 and other nonattorney advocates. They've funded state support
22 centers and clearinghouses to coordinate legal services

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1 statewide. They've funded pro se projects and other community
2 legal education guides.

3 They've funded internships for law students entering
4 legal services projects during the school year and law school
5 loan forgiveness programs to assist persons entering low paid
6 legal services activities. They've increased salaries for
7 attorneys in legal services and paralegals in legal services
8 programs to help and recruit and maintain qualified staff.

9 In some jurisdictions, IOLTA grants are being made to
10 programs requiring copayments on sliding fee scales for legal
11 services to the poor and the near poor. Virtually all IOLTA
12 programs use some form of monitoring and evaluation to determine
13 how grant funds are being used and as a basis for further grant
14 decisions.

15 IOLTA programs in a few states have also funded
16 further management and technical assistance services to assess
17 program operations and improve delivery efficiency and
18 effectiveness. In summary, in addition to their roles of simply
19 adding resources, IOLTA programs in many states are developing
20 their capabilities to review and improve the legal services
21 system to better meet their states needs.

22 I believe that this decade will be a period of

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1 continuing emphasis on reviewing the service quality,
2 effectiveness and efficiency of all grantees to assure that all
3 resources are used productively to serve the greatest number of
4 poor persons.

5 It should be a time to determine what works and what
6 needs to be changed. IOLTA programs in some states will also
7 take the lead in advocating for other funding sources to more
8 adequately fulfill their mission of expanding access to justice.
9 It's difficult at this point to project whether IOLTA resources
10 will continue to increase substantially over the next few years.

11 If all states converted to mandatory programs, which
12 is unlikely in the near future, and if other revenue producing
13 factors remain relatively stable, which is also unlikely, total
14 national IOLTA revenues could perhaps increase another \$50
15 million to \$100 million over its current levels.

16 Conversely, and this is a weakness of IOLTA, IOLTA
17 income could decline in the future. The amount of money
18 maintained in the trust accounts nationally is a function of
19 economic activity, particularly the level of residential real
20 estate transactions.

21 IOLTA income has dipped recently in a few states,
22 particularly in the northeast, as a result of a decline in real

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1 estate and economic conditions generally. IOLTA income could
2 also be reduced as a result of changes in banking practices,
3 increases in banking fees, or the use of technology to expand
4 subaccounting for small accounts, for interest on small
5 accounts.

6 A further weakness of IOLTA currently is a substantial
7 diversity of relative revenue productivity state by state which
8 is a function of several conditions. As a consequence, whereas
9 IOLTA revenues are projected for 1990 to be from \$5 million to
10 over \$20 million in each of nine states this year, 13 states
11 with operational IOLTA programs -- Alaska, Arkansas, Idaho,
12 Kansas, Louisiana, Mississippi, Montana, Nebraska, Nevada, North
13 Dakota, South Dakota, Utah, Wyoming -- will each generate less
14 than \$300,000 this year in gross IOLTA revenues and grants will
15 be substantially below that level.

16 These variations do not necessarily correspond to the
17 location of poor populations or the levels of legal need.
18 Possible state actions could also reduce IOLTA funding available
19 for general civil legal assistance. Legislatures or supreme
20 courts in five states recently have considered, or have done so
21 in two or three states, appropriating IOLTA funds for public
22 defender purposes or other areas in which there is a state

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1 responsibility under the Constitution or statutes to provide
2 legal assistance.

3 The American Bar Association's IOLTA Commission has
4 prepared a resolution for action by the ABA House of Delegates
5 in February 1991 opposing the appropriation of IOLTA funds for
6 criminal defense or other purposes where there's a clear
7 existing state responsibility to provide that service.

8 We hope that bar leaders and others will preserve the
9 use of IOLTA funds for their primary intended purposes. By
10 fostering the creation of IOLTA systems throughout the United
11 States in the 1980s, bar leaders have demonstrated outstanding
12 leadership in helping provide access to justice for our nation's
13 poor.

14 IOLTA programs are using their resources to maintain
15 and develop improved delivery systems in their states. While
16 the future expansion of IOLTA's legal services funding source is
17 somewhat hard to predict at this point, it will continue making
18 major contributions. We hope that these resources will continue
19 to grow and will be used productively during the coming decade.

20 Now let me conclude with a little overview. Much has
21 been accomplished during the 25 year history of the federal
22 legal services program. All Americans should honor many of you

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1 here today and many, many others not here who have contributed
2 so much to provide access to justice in our land.

3 While we reflect on what has been accomplished,
4 however, we must also be mindful of what remains to be done.
5 The decade of the 1980s has witnessed a decline in the federal
6 role for funding federal legal services to the poor but also a
7 continuing development of the bar, state, local and private
8 contributions to providing essential legal services.

9 In 1981, federal funding represented more than 95
10 percent of the total revenues for LSC grantees throughout the
11 United States compared to only 68 percent today. Because of the
12 declining federal role, the level of access to justice for our
13 nation's poor is still lower today than in 1981, despite the
14 state bar and other responses which I've discussed.

15 Where there were over 6,200 attorneys in legal
16 services offices in 1981, there are perhaps 5,000 today.
17 Despite the unprecedented growth of other resources during this
18 period, one very negative result of the declining federal role
19 has been a substantial increase in the disparities of legal
20 services available to poor persons state by state.

21 While some states have been very successful in
22 generating nonfederal resources, including 10 states where the

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1 non-LSC resources exceed the LSC funds at this point, other
2 states such as Alabama, Louisiana, Mississippi and New Mexico,
3 have developed very little other resources.

4 It is essential that federal funding again be
5 substantially expanded as it was during the first 15 years of
6 the legal services program to assure that poor persons be
7 afforded a minimum access to justice wherever they live. We
8 have entered a new decade.

9 One potentially favorable result of the last 10 years
10 has been the creation of organizations in virtually every state
11 to administer IOLTA and other funds for legal services, and
12 which may take increasing responsibilities to advocate for
13 increased funding, to direct funds for local priorities, and to
14 require that resources be managed effectively and efficiently
15 for their states needs.

16 The American Bar will continue its leadership. The
17 ABA's Access to Justice Conference, conducted by the consortium
18 on legal services in the public in 1989, demonstrated a renewed
19 interest by bar leaders and others in exploring new ways not
20 talked about before, to provide access to justice for all
21 Americans.

22 The system of services that can develop from these

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1 trends can become more healthy, vibrant and productive than any
2 we have ever seen before in this country. While it is a time
3 for examination and innovation, it is also a time for action, a
4 time to move forward again.

5 It's shocking to realize that all resources, public,
6 private, all resources, donated allocated currently to civil
7 legal service programs for this nation's 34 million poor are
8 less than the funding that Montgomery County, Maryland, provides
9 for the public education of its 100,000 school children.

10 We must do more. We can. While the national debate
11 has raged on legal services, justice has been denied. Public
12 policy goes unenforced. Civil wrongs are not corrected. Family
13 crisis are unresolved. Our poor are denied their rights as
14 citizens of this great nation.

15 We should resolve together that by the end of this
16 decade, we can look back and truly say that this has been a time
17 when we have come together to ensure that our nation is a place
18 on this earth where all persons are accorded equal access to
19 justice under the law. Thank you.

20 (Applause)

21 MR. MARTIN: Did you say there are 750,000 lawyers in
22 the United States? Gee, if that's true, what are 1,000 lawyers

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1 at the bottom of the Potomac River? A good start. We have been
2 at it about an hour and 20 minutes, and we have one speaker
3 left, and then we're going to have our panelists ask questions.

4 It may be a good idea to break now then hear Mr.
5 Besharov and then wrap it up then. Is that a good idea? Let's
6 take a break now for 10 minutes only and come right back. Thank
7 you.

8 (A brief recess was taken.)

9 MR. MARTIN: If you'll come in and take a seat, we'll
10 get started with the final segment of the program. Our final
11 speaker for today is Doug Besharov, a resident scholar at the
12 American Enterprise Institute. He chaired the conference that
13 resulted in his book, "Legal Services for the Poor: Time for
14 Reform."

15 Other books that Mr. Besharov has authored including,
16 "Recognizing Child Abuse: A Guide for the Concerned," "The
17 Vulnerable Social Worker," "Liability for Serving Children in
18 Families," and "Juvenile Justice Advocacy." Mr. Besharov, of
19 course, is a lawyer.

20 He's taught at New York University, the University of
21 Maryland and the College of William and Mary. He is currently
22 an adjunct member of the law faculties of American University

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1 and Georgetown University. Would you welcome Doug Besharov?

2 WHO WILL SET PRIORITIES

3 MR. BESHAROV: Well, there's always an advantage of
4 coming last, which is you get the last word until the panel of
5 inteloquators, but there is a disadvantage as well which is
6 about a third of the room.

7 Anyway, I wanted to start by asking a very personal
8 question to all the people in the room. That is, have they ever
9 thought why the legal services budget, the LSC budget for this
10 year, is only \$300 million? Have they ever looked in their
11 heart of hearts and asked that question?

12 Let me put that into some perspective. Between 1979
13 and 1990, federal domestic spending increased unadjusted for
14 inflation by more than 130 percent. If you adjust for inflation
15 in real terms, federal domestic spending, and this is excluding
16 social security pension payments, it increased by 60 percent.

17 So the question is, why hasn't legal services funding
18 at the federal level increased in the last 10 years? I think
19 the answer to that question tells us a great deal about today's
20 program and about the future. What could be the decline? Could
21 it be the affects of Ronald Reagan? Well, he's been gone for
22 two years. Chuck Hobbs, who I was sitting next to at lunch,

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1 said he had seen the president a few months ago, and he was
2 wearing plaid slacks and a nonmatching plaid jacket. So it
3 can't be the president's impact.

4 Could it be that the American people have continuing
5 dislike or hate for the poor and have been parsimonious in their
6 support for poverty programs? Well, to an extent, but remember
7 that domestic spending increase is across all programs. In the
8 last budget agreement, Congress, among other things, increased
9 at an annual level by 1995 the earned income tax credit by \$9
10 billion. Let me repeat that, billion.

11 So how could it be that the legal services program
12 seems to be stuck at \$300 million? Well, maybe it is, as Mike
13 Wallace said, that legal services lawyers don't sue germs; they
14 sue people. This is the affect of the Farm Bureau and bankers
15 and whatever.

16 My own impression is that those groups don't have that
17 much sway on the Hill or with the administration. Perhaps part
18 of it is the fact that the American people don't like lawyers.
19 If it were a little earlier in the afternoon, I might make some
20 jokes about lawyers.

21 But I would remind those of you who live in
22 Washington, D.C., or the environs, that last month's

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1 "Washingtonian" magazine, which is a magazine for the general
2 public, had on its cover first kill all the lawyers. So there
3 is antipathy to lawyers in this country.

4 But I don't think it's just that either. I think it's
5 deeper. So, again go back to that question, why is the legal
6 services appropriation seemingly stuck at \$300 million? Here I
7 think Roger's comments were really quite appropriate. That is
8 the question of what's the product? What are we selling? What
9 are we trying to sell to the American public?

10 If we were in business and we asked saw ourselves that
11 our sales were level or down over a 10 year period of time, we'd
12 say that there's something very wrong with our product. Now it
13 just happens that the Japanese don't specialize in lawyers.
14 Otherwise, we'd probably be importing Japanese lawyers, or at
15 least legal services lawyers.

16 So what's the problem? Well, I would put to you that
17 equal access to justice is an inadequate reason to spend a lot
18 of public funds. I have inadequate access to justice. I can't
19 afford to right half the legal wrongs I face. I'm not alone in
20 that.

21 I can't believe that the American people are that
22 impressed to be told that a foreperson can only have one will

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1 every 10 years since half the American people don't buy one will
2 in their entire life. I can't believe that the American people
3 are going to be that impressed to hear that poor people can't
4 have a lawyer to sue for an automobile accident or whatever,
5 since we know, as a matter of fact, Gary Bellows' research is
6 proving that as a matter of fact.

7 If a legal claim in a products liability is under
8 between \$10,000 and \$15,000, he can't find a lawyer to take it,
9 middle class or not. So I think that the notion of access to
10 justice as the rallying cry or two lawyers per 10,000 poor
11 people is not sufficient to mobilize support for a program like
12 this.

13 It may be in a room full of lawyers, but leave the
14 room full of lawyers, and people look at you. Well, what would
15 be the reason to increase the budget? I think you come down to
16 only one thing and that is if the program did something to
17 alleviate poverty.

18 It is, after all, an outgrowth of the "war on
19 poverty." Some of us thought the program had something to do
20 with fighting poverty. Here today in various forms you heard
21 different versions of that. I was really quite struck to hear
22 Chuck Hobbs from the Reagan White House talking about how you

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1 could use lawyers to fight poverty in an entrepreneurial sense,
2 that use them to empower the poor and so forth.

3 I was struck by Earl Johnson's comments about ideology
4 and so forth. What I'm afraid I was hearing, you see, was the
5 ideology of the 90s versus the ideology of the 60s versus the
6 ideology of the 70s versus the ideology of the 80s. All of that
7 worries me to no end, all of it.

8 What it means is someone else wants to decide what's
9 best for poor people. That shifts with the wind, shifts with
10 the wind. Things have gotten much more complicated since I
11 graduated from law school. I graduated. Gee, I didn't do the
12 math. That's a lot of years ago.

13 Alan, when did we graduate?

14 MR. HOUSEMAN: 1968.

15 MR. BESHAROV: We were in '68 together. Well, in
16 1967, I was in Mississippi with the law students research--
17 civil rights research council. You know, the interesting thing
18 about that summer was that every poor person who we represented
19 had a legitimate grievance, and it was largely against the
20 government or the larger society or the larger economy.

21 So it was pretty easy to talk about the mission of
22 fighting poverty. We gave poor people a lawyer and they tended

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1 to sue non-poor people. That's changing around the country. If
2 I had more time, I would give more examples. But let me just
3 give a few.

4 For example, law abiding tenants in public housing
5 concerned about the drug pushers living next door. For example,
6 students in a public school concerned about their knife-carrying
7 schoolmates. For example, poor people who happen to own a
8 small, two-family home concerned about the poor person, another
9 poor person living in their home not paying their rent. For
10 example, the single mother with children, poor, and the father
11 of those children also poor, not paying child support.

12 In each one of those examples, we're talking about
13 poor person versus poor person's interest. It's no longer so
14 easy to say what's the best way to help the poor because there
15 are two poor people in that equation. Now, some people will
16 answer, ah, that's simple. We'll give both sides a lawyer.
17 Instead of it being two lawyers per 10,000, we'll make it four
18 lawyers per 10,000 poor people.

19 If Bill McCalpin is right and it just takes enough
20 knocking on the doors of Congress that will happen, we'll all go
21 home and be happy. I don't think it will. I think the only way
22 there will be a major increase in legal services for the poor is

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1 if there is a better articulated mission.

2 Here, I think, the cost of the nonarticulated
3 incomplete compromise that Mike Wallace talked about is exactly
4 on point, which is everyone can look at the program and talk
5 about its different mission. Therefore, it has no mission.
6 Therefore, it has limited public support.

7 Well, this is supposed to be a talk about who sets
8 priorities. Why have I come at it in this way? It is because I
9 think the mission should be fighting poverty, alleviating
10 poverty, making poor people more economically, more socially,
11 more whatever, better off.

12 My problem is I'm not really happy with who is
13 deciding how to do that. I've written in this book, and I know
14 that there's some disagreement, that I think the system right
15 now is largely lawyer driven. I don't think lawyers should make
16 those decisions.

17 As I watch what's happening here in Washington, I see
18 the Congress getting quite ready to involve itself in these
19 decisions, first of all, on the cases that will be easy to
20 decide. That is, no legal services money for drug pushers. But
21 recognize what that is. That is a form of priority setting
22 within the program.

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1 I can see it going from there. If we adopt Chuck
2 Hobbs' view about poor people's empowerment, it will be another
3 form of priority setting by nonclients, much necessary given the
4 abuses of the current system, but really not the way we want to
5 go.

6 We don't want the federal Congress setting these
7 priorities. That leaves me with only one group of people. I
8 certainly don't want the Board or the non-Board setting these
9 priorities, nothing personal. That leaves me with only one
10 group of people left, and that is the clients.

11 And I like very much Alan Houseman's phrase, "client
12 driven priorities," because it's very tricky to figure out how
13 to do it. But I think if we're talking about a program that's
14 going to do more than provide a reactive service to people who
15 are being kicked out of their homes or have a consumer problem
16 or whatever, if it is going to be a program that's relevant to
17 fighting poverty, then its priorities have to be set by the
18 people who are poor, not by the lawyers who are supposed to
19 serve them, not by the bureaucrats in Washington, and not by the
20 members of Congress.

21 How do you do that? Well, that's where things get
22 tricky. I have no better authority than that bastion of

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1 conservative journalism, the "Washington Post" this weekend,
2 "Reinventing D.C." I mentioned this -- I want to go through
3 this. It will take a minute, no more than that -- because the
4 concepts that we've been arguing about for really five or seven
5 years are the concepts of how government is changing its legal
6 services or at least the Legal Services Corporation grantees and
7 the Corporation that have not.

8 But let me read the 10 elements of reinventing the
9 District of Columbia that David Osborne listed in the magazine.
10 First, use government more to steer than to mow and then to row.
11 That is set policies in that general direction but let other
12 people operate the program. Whenever possible, inject
13 competition into public service.

14 Number three, tie spending to results not to wing
15 flaps, not to how many times people go into court but what the
16 results are. Let people choose among many different service
17 providers. It sounds like a rephrase of some of the arguments
18 of the last 10 years.

19 Don't just spend money. Invest it and measure your
20 return. That's monitoring. Use goals not rules and budgets to
21 drive your organization. And the goal, really, again I would
22 say, can't be more lawyers. The goal ought to be more than wing

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1 flaps, that is ducks, something, birds, flap their wings and
2 don't fly.

3 Lawyers do a lot of talking. What's the result?
4 Decentralize authority, and that's a message on the other side.
5 We have a lot of dedicated people out there running programs.
6 It's not all that pleasant to be a legal services lawyer. It is
7 important to recognize dedication to decentralize authority,

8 Push control of services out of the bureaucracy and
9 into the community. Choose prevention over cure. Lastly, and
10 the point that I think is most important, whenever possible, use
11 market mechanisms rather than administrative mechanisms. This
12 is the Washington Post talking, and this really is the
13 developing consensus about how you run government.

14 Well, what does that mean for legal services? What
15 does that mean for my argument that if we're going to have a
16 program that's going to be relevant to a higher objective than
17 merely providing lawyers for poor people, we have to give the
18 poor clients a voice in all this.

19 It means creating some kind of market or quasimarket
20 for legal services to the poor. Very tricky, very tricky
21 business for many reasons. Let me just mention a few. First,
22 think about the national backup centers which provide important

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1 services, many of which provide important services, some of
2 which don't.

3 Basically, I wish I was the director of the national
4 backup center. As far as I can see, as long as you don't put
5 your fingers in the till or your hand or your arm or your elbow,
6 you're guaranteed continuing funding year in and year out. I
7 think that's terrific.

8 I wish the people who gave me money did that year in
9 and year out. Now the old Board proposed the system, a thought
10 of making a market, which was, it said to all the programs,
11 we'll give you a proportional amount of the money that we now
12 give to the national backup centers. You can buy backup center
13 services or you can use the money for anything else.

14 The fallacy with our proposal was that since this
15 isn't a real market, it could be a real danger of free riders.
16 That is the programs would use the money to either raise their
17 salaries, expand their services and so forth. The backup
18 centers would disappear.

19 So what we proposed as a way to create a market
20 mechanism but not destroy the program but to make it more
21 responsive now to the local program managers, not directly to
22 clients but to program managers, we said, create, in effect, a

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1 voucher system in which the programs could only use those
2 vouchers to purchase the services of the national backup
3 centers.

4 That way we'd know from the programs which are the
5 most valuable backup centers. We were worried because, again,
6 you know, you'd have to worry about stability across the period
7 of years. We said, don't make the backup centers dependent on
8 all their funding from the system, because there could be
9 variations and so forth, give them 50 percent of their funding
10 every year.

11 But let's see how the programs vote. So what we were
12 proposing was a form of quasimarket, a limited market just to
13 see which were the most important backup centers where you could
14 try to do similar things for clients. Here the idea that we're
15 all kind of circling around but we're not real sure how to do it
16 is copayments.

17 We know that people who don't pay for something don't
18 value it as highly as people who do pay. That's a reality. For
19 my middle class and upper middle class friends, let me tell you
20 even a dollar is a lot of money. It sends a signal. If you
21 doubt me, go into the Potomac shopping mall, not 15 miles from
22 here, where there are all these middle class and lower middle

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1 class folks, where there is a store and everything in the store
2 is \$1.00.

3 A dollar is still important. So even if we charge
4 people a dollar to come in and ask about something, it would
5 change the tenor of the program. In medicaid, there have been
6 experiments, and medicare, with client copayments. We know that
7 by requiring copayments, we shift client decisionmaking.

8 The big challenge in legal services as in medical
9 services is not to exclude people from needed legal
10 representation simply because they don't have money. That will
11 be very tricky to handle, but it's doable. At least it's worth
12 pursuing.

13 I would put to you that unless we have a system in
14 which it's the clients who choose how we propose to fight
15 poverty, there is no legitimating process by which to justify a
16 class action, by which to justify a change in a law or
17 regulation, which those of you who know me know I think are just
18 part and parcel of being a lawyer.

19 But a lawyer, as Roger Cramton said, needs a client.
20 I need something that legitimates my advocacy. It ought to be a
21 priority setting mechanism that allows us all to say this isn't
22 the lawyers of the local level deciding. This isn't some Board.

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1 I sit on a number of Boards and we rubberstamp what the
2 administrators want.

3 This isn't a bureaucracy in Washington. This isn't
4 the Board in Washington. This isn't the Congress in Washington.
5 This is the people who are most affected by the service. I
6 think, in conclusion, that without services that reflect this
7 kind of market mechanism, that give clients a direct
8 articulation of their interest, that the legal services budget
9 will continue to be \$300 million.

10 The legal services program in this country will
11 continue, in fact, increasingly be irrelevant to the problems of
12 poverty and isolated from the social welfare community which, in
13 my travels, is what's happening. Anyway, it's late. Thank you
14 very much.

15 (Applause)

16 MR. MARTIN: Well, we have certainly had four
17 interesting and thought provoking speakers. They now, at least
18 three of them, get to defend their talks. We're going to
19 reverse the order this afternoon. Again, I remind you,
20 panelists, you have five minutes. Leona, if you would start
21 first?

22 MS. VOGT: I'd like to address my question to Bill

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1 McCalpin, although others certainly can comment if they would
2 like. Bill, you laid out some ideas for the future of possible
3 ways for the program to go to increase access and quality. I
4 felt you dismissed somewhat the potential for alternative
5 dispute resolution, saying that such a small percentage of the
6 cases go to court and alternate dispute resolution works well in
7 such cases.

8 However, if you look at the data over the past 15 or
9 20 years of legal services, between 40 and 50 percent of the
10 cases are in the family law area or in the consumer area,
11 although I understand there's a complexity of problems that
12 would call for different types of resolution of disputes.

13 I guess I would like to know more about why you think
14 ADR is not, and in particular mediation possibly, doesn't have
15 as much potential, or maybe I misrepresented what you said.

16 MR. McCALPIN: Well, I think obviously you have to
17 think of the manifold ADR devices that there are. Mediation, I
18 think, is a potentially more useful than arbitration. But even
19 then, there are a number of issues even in the consumer and
20 family areas which are handled in legal services terms by brief
21 advice by a telephone call, a letter, that sort of thing.

22 I don't think that the formality even of mediation and

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1 especially of arbitration is a particular useful device for
2 that. I think that, you know, we generally think in terms of
3 alternate dispute resolution as alternatives to either formal
4 court adjudication, litigation, or contested matters in the
5 administrative area.

6 Those, by definition, involve a relatively quite small
7 percentage of the representation which is afforded by the legal
8 services programs. I suppose in some respects my views are
9 shaped by my own personal experience in some court and some next
10 alternate dispute resolutions proceedings which are nonbinding
11 and which I think wound up costing the client more money than if
12 we had just gone in and tried the lawsuit to begin with.

13 We had to gear up once to try the arbitration. When
14 that was unavailing, we geared up a second time and tried the
15 lawsuit. The result was a more expensive experience for the
16 client than if we had simply tried the case to begin with. I
17 didn't say no recourse to alternate dispute resolution.

18 I merely said I don't think it's a panacea and I don't
19 think it is a big player in the ability to reduce the cost of
20 representation of poor people.

21 MR. MARTIN: Thank you very much, Bill. Our next
22 panelist is Kent.

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1 MR. SPUHLER: I have to say this afternoon basically
2 translated to me as there is an awful lot of additional work
3 that is coming my way in the rest of the program which always
4 makes me nervous. I guess I want to test if I'm hearing that
5 right.

6 I was somewhat surprised to hear, at least, ultimate
7 orientations of client service to what my understanding has been
8 our orientation for years. That is, having a significant amount
9 of our work at least hopefully contributing to client
10 empowerment and client ability to move out of poverty in a whole
11 variety of shapes and forms.

12 I heard a lot of that we needed to get back to that.
13 But I also heard that there's a wide variety of approaches that
14 people have thought through that may or may not accomplish that.
15 To my knowledge, not many of these have been tried. I guess
16 from the field's point of view in the past is that untried
17 approaches have suddenly risen to level of systemwide policy.

18 I guess what I'm asking is, given all that available,
19 shouldn't really the approach be that it's really a call for a
20 lot more experimentation by all of us and trying a lot of
21 different things before we establish systemwide priorities and
22 systemwide approaches that I don't think any of us know whether

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1 they really achieve what I think is a shared direction of how we
2 best use our talents with limited resources to maximize client
3 empowerment?

4 MR. MARTIN: Doug?

5 MR. BESHAROV: First of all, yes. Let me give you the
6 polite answer and then the impolite answer. Yes, I think it's
7 crucial that we experiment. As I tried to say, we don't know
8 exactly how to do these things, and we have to work on them. In
9 fact, what I would propose is -- thank you for kind of being my
10 straight man on this.

11 I would propose that the Corporation collect a few
12 people, broadly representative of the kinds of folks in this
13 room and the kinds of folks who are not in this room, by the way
14 -- I can say that about 10 times if it's necessary -- to talk
15 about how one would make these changes and then to figure out
16 how to do an experiment, not nationwide but an experiment in
17 some number of jurisdictions with the variations on the theme of
18 client driven -- I'm using Alan Houseman's words because I think
19 it's important not to think of it as purely copayments. It's a
20 mix of different changes -- client driven decisionmaking.

21 I think it would be very interesting to find out after
22 a year or two or three how differently the services are

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1 delivered, what the different outcomes are and so forth. So, my
2 polite answer is yes, you're absolutely right.

3 But, let me give you my impolite answer. There was
4 something in what you said that got my goat. I'm allowed to
5 talk this way because I'm a lawyer. Lawyers are only hired
6 guns. We work for someone. We have no morals. We represent
7 the express desires of our clients.

8 At least that's how I operated when I was in private
9 practice. If I didn't like it, I tried to get away from that
10 client as quickly as I possibly could. There is, to me, a very
11 unhealthy aspect to this discussion when we talk about the
12 field, because the field is just 4,000 hired guns.

13 Now I know we're all dedicated, and we care, and we're
14 in this, and we don't make a lot of money because we care about
15 poor people and so forth. So I am being very unfair to you.
16 I'm sorry, but I wanted to make this point which is we really
17 are only the lawyers. We should remember that there's a whole
18 other group which is the clients.

19 They tend not to have a voice in these kinds of
20 discussions because they don't have those seven years of
21 training in how to be articulate and how to argue, and they
22 don't have a day to take off from work to come to Washington to

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1 hang around and do this stuff.

2 So I agree with you. In fact, I'm sure that we agree
3 on about 99 percent of what we're talking about. But I think it
4 is important that we remember that there is a group here who
5 aren't represented.

6 MR. McCALPIN: Let me disagree with you as strongly as
7 I can. I have practiced law for 42 plus years. I do not regard
8 myself solely as a hired gun to do whatever a client comes in
9 and asks me to do.

10 I believe that it is part of my rule to council and
11 advise with that client, to steer the client away from a result
12 which is inappropriate, which he doesn't want or which the
13 system shouldn't have or which would involve him or me doing
14 something inappropriate.

15 I believe that the lawyers in the field in the legal
16 services programs are at least as principled as I am, and that
17 they are not solely hired guns taking whatever position a client
18 asks, but that they are counseling and advising and helping us
19 to have a better atmosphere, a better civilization than we have
20 had before. I disagree completely with you.

21 (Applause)

22 MR. McCALPIN: Now let me be polite. I agree with you

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1 that experimentation is the way to go. Experimentation will
2 produce knowledge and information. I personally have long
3 believed that we ought to experiment with copayments. I happen
4 to know that they have done that in Canada with very mixed
5 results.

6 I happen to believe that if we are to get into
7 competitive bidding, it must be on an experimental
8 learn-as-we-go basis and not throw out the whole baby with the
9 bath that we have. So to that extent, I'll be polite.

10 MR. MARTIN: In a sense of fairness, Bob, do you want
11 to comment?

12 MR. RHUDY: Yes, just very briefly to respond to Ken's
13 question. I think experimentation is useful. It's necessary at
14 this point, but obviously everybody doesn't have to do
15 everything. We've got over 300 LSC programs across the country.
16 The delivery system is becoming more diverse.

17 You've got other service providers as well. You've
18 got 50 states. You've got different funding sources. You've
19 got different interests. You've got different personalities.
20 You've got different conditions.

21 Let something be tried in one area. Let it be
22 assessed. See if it works in that area. If it does, then

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1 others will try it. If it fails, it's been tried. It's a good
2 time to experiment. I think it's useful. You may not want to
3 do a particular thing in Florida. We may do something else in
4 Maryland. We'll let you know how it works.

5 MR. MARTIN: Thank you all for those remarks. Mr.
6 Smith?

7 MR. SMITH: I might start by saying I practice law
8 only 41 years compared to Mr. McCalpin's 42, but I join him in
9 the reaction to Mr. Besharov's remarks about the role of lawyers
10 in society. I trust he does not teach his students at
11 Georgetown or wherever else that lawyers have no morals. So
12 politely, I'll give you an opportunity to reconsider that
13 statement.

14 I address my question to Mr. Rhudy in the first
15 instance. If I have any left over, I have one that I'll address
16 to Professor Besharov.

17 Mr. Rhudy points out that there's a need to stimulate
18 and expand pro bono beyond the 18 percent or my 30 percent of
19 the lawyers in this country today. I fully agree. That takes
20 money. It takes money to recruit the lawyers into pro bono
21 programs and to sustain the pro bono programs.

22 As we developed IOLTA in Florida, I thought those

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1 monies were going to be used to sustain pro bono programs
2 primarily. Now most of the money goes to supplement LSC field
3 programs in the State of Florida. I asked Mr. Rhudy, what is
4 the justification for using IOLTA monies to support LSC
5 programs? Does not this shift the cost from broad public
6 support to those who are employing lawyers? Does not it inhibit
7 further congressional appropriations on the grounds that, gee,
8 there's this \$140 million out there, we don't need to
9 appropriate more for the legal services?

10 Doesn't it, therefore, overall adversely affect the
11 capacity of the system to grow and to serve poor people? Aren't
12 we going to need these pro bono programs that we would develop
13 with these additional monies when the IOLTA programs go out of
14 existence for a variety of reasons, including the development of
15 technology of which will put them out of business?

16 MR. RHUDY: First, I'm not all sure that IOLTA will go
17 out of existence. They've had subaccounting in Canada for
18 seven, eight years. It has not really affected IOLTA in Canada.
19 They've had subaccounting in New York for quite some time, and
20 we haven't seen that really affect it yet. It could in the
21 future. That's something we're monitoring. I hope IOLTA will
22 be around, and I hope it will continue to develop.

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1 I think a substantial amount of money is going for pro
2 bono development both by ABA resources and the -- if there's
3 about \$300 million, close to it, for field programs right now,
4 10 percent, 12 1/2 percent of that is going to promote pro bono
5 activities.

6 We're looking at a subsidy for pro bono of around \$30
7 million at this point, I would assume, not counting the private
8 attorney contributions. IOLTA programs are also contributing
9 substantially to pro bono activities, I said, about \$10 million
10 between 1981 and 1989.

11 That amount is substantially growing. We're making
12 about 15 percent of our grants in Maryland for pro bono
13 activities. We're trying to stimulate a real expanse of pro
14 bono. The IOLTA programs in New York will be contributing about
15 a million dollars for pro bono expansion over the next years
16 time.

17 So I think it is a very real priority of pro bono.
18 But I think IOLTA programs felt that they had other things that
19 they needed to do also. The initiation of IOLTA in most
20 jurisdictions was in response to the federal cut of LSC grantees
21 to maintain as far as possible some of those resources IOLTA was
22 -- a lot of funds went forward for those purposes.

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1 I think it's a good time to really evaluate on a
2 dollar-for-dollar basis what you get for what kinds of resources
3 public and private you put into different systems and find out
4 how much does it take. Pro bono is not free. People know that.
5 There is administrative costs, support costs, recruitment costs,
6 the callbacks to attorneys when they don't take cases until you
7 can actually place a case.

8 Pro bono cases across the country seem to be
9 averaging, and I'm looking at it, between \$34 and \$400 per case,
10 depending on where you look at, just to administer the program.
11 I don't think that the development of IOLTA should be used to
12 excuse the federal role. There's an unquestioned federal
13 responsibility in providing civil legal services to the poor.

14 That role, I think at this point, is not being met to
15 the level at all where it needs to be. IOLTA has been helpful.
16 Other sources have been helpful. All these resources need to be
17 expanded in the future, and I hope resources for pro bono. I
18 believe pro bono activities will be increased as well.

19 MR. MARTIN: You have another question, Mr. Smith?

20 MR. SMITH: It's an unfriendly question to Mr.
21 Besharov. You asked why the LSC budget is not increased over
22 these periods of time. I think, if I understood you correctly,

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1 you suggested that's because priorities are lawyer driven and
2 because the mission is poorly defined.

3 Was this true in the Reagan years? I guess you would
4 have to say yes. Was it true in the Carter years? I guess you
5 would have to say yes. Then why was there more money in the
6 Carter years than in the Reagan years?

7 MR. BESHAROV: Because about 1980, the American people
8 started redirecting the priorities of government. Many domestic
9 programs changed their emphasis, witnessed welfare reform,
10 witnessed a greater emphasis on assistance to the working poor,
11 such as a major increase in the earned income tax credit.

12 During that period of time, the direction of legal
13 services in this country, its content, did not change with the
14 times. A times, they are a changing. And the content of the
15 program has to change somewhat.

16 While I have the floor, I guess I should apologize.
17 Lord knows, I didn't mean to insult the entire legal profession.
18 What I was trying to say was that we have a tendency to be
19 patronizing about the poor in a way that is inappropriate. I
20 was trying to reflect the kinds of words that nonlawyers in our
21 societies use towards us.

22 So I apologize to the extent that it was taken as

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1 anything personal to anyone in this room or in the profession,
2 but merely to reflect the fact that at some ultimate level, we,
3 in fact, do have clients. Although we can give them advice and
4 so forth, I think they are the ultimate decisionmakers in the
5 case. Otherwise, we leave the case.

6 MR. MARTIN: Thank you. Catherine?

7 MS. JERMANY: Okay, thank you. I've sat here kind of
8 patiently and listened to all of this, and I found it most
9 interesting. I first came to legal services a whole lot of
10 years ago as a client and moved up through the ranks from an
11 ordinary, miscellaneous, at random client who needed services,
12 the one who really kind of wanted something halfway between the
13 hired gun and the savior, to client Board member and so forth,
14 and through the Corporation, to be the director of paralegal
15 training in career development in the Corporation.

16 During that time, and then since then, I have found in
17 my discussions with clients and providers that they view legal
18 services as a means and not an end. And what I have found
19 instead of heard here is sort of an echo that people feel that
20 legal services is the answer or the ending place or somewhere in
21 the middle, but it really is the beginning.

22 It is the beginning place where you can begin to

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1 empower clients to do some of the things for themselves. I have
2 only one little minor suggestion. I've been looking at the
3 programs and looking at services, and I still work with legal
4 services programs in California quite regularly and frequently.

5 And I don't believe that there's going to be a real
6 substantial increase in the amount of money that LSC gets in the
7 near future. I mean, in order to really serve clients at the
8 rate that they need to be served under the lawyer model is going
9 to take billions and billions of dollars, and I don't think
10 that's where we're going. I think we're going someplace else.

11 So we really have to look at the resources that we
12 have available to us at this time to serve the ever-increasing
13 needs and the ever-increasing numbers of people who find
14 themselves in what we call legal illiteracy or their inability
15 to do for themselves what needs to be done legally.

16 We have basically a suggestion that we offer as
17 paralegals and as past legal services eligible clients, we say
18 look at your services somewhat like the medical profession looks
19 at their services. We're talking about doing some legal
20 triaging.

21 We say that we want to keep lawyers because we love
22 them, and I love them, especially since I'm married to one, a

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1 legal services project director of the past who has been very
2 helpful in providing some information and a good person to fight
3 with over these issues.

4 We believe that legal services in meeting its mission
5 has to continue to do impact litigation. We believe that
6 lawyers should be lawyers and not paralegals. We see lawyers
7 and legal services programs carrying out far too many nonlegal
8 tasks.

9 You may not type, but you certainly use your word
10 processors and do a number of things that paralegals and other
11 nonlawyer staffs might be able to do. It is true to some extent
12 that we want to have hired guns. We want to have people who
13 understand what our needs are, and it can be done in a way
14 systematically and increase the number of potential clients
15 served by doing several things.

16 One, you could make yourselves and your staffs
17 available to do form typing for consumers. That is, open your
18 offices to eligible clients who come in with their papers and
19 type them for them. What we have found is there are hundreds of
20 clients throughout the country who go to the courthouses, pick
21 up the papers and don't have a vehicle to type them.

22 They don't have the five dollars to pay at the

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1 library, and they don't have the typing skills to type those
2 forms. So a great part of the service is that many people need
3 is just to have their papers typed. So part of your clerical
4 staff could be able to type forms for eligible legal services
5 clients.

6 The second area is to have self-help law services.
7 More and more of your clients are sophisticated. All the new
8 poor people are not illiterate. They are able to view self-help
9 law materials and participate fully in the resolution of their
10 cases.

11 We say what you should do is encourage that, have your
12 nonlawyer staffs fully participate in helping people help
13 themselves. In California, we run training programs for legal
14 services paralegals called "Helping Your Clients Modify Child
15 Support," "Helping Your Clients Do a Living Trust," "Helping
16 Your Clients Complete a Number of Other Tasks That They Can Do
17 in Total Absence of Attorney Supervision and Support."

18 This would not only help those clients and increase
19 the amount of services that you could deliver, it would also
20 free up the lawyers to be able to do litigation and to litigate
21 the cases that needed to be litigated and do impact litigation
22 when appropriate.

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1 We believe that legal services has to function in a
2 way that increases the number of people that it serves with its
3 limited resources. And we are interested in talking to anybody
4 about that. My general question is, I'd like to know how the
5 speakers feel about that project, about that possibility.

6 MR. MARTIN: Why don't you start? We'll go right down
7 the line.

8 MR. RHUDY: Well, I think a lot of the things that you
9 recommended are very appropriate. I think some of the things
10 are being done. I expect to see, again, more experiments in
11 some of the areas you're talking about. I'd like to see also--
12 and we really haven't talked about it much today, but I'd like
13 your impression on that -- looking to delegalize some procedures
14 that currently require attorneys or others, particularly divorce
15 proceedings, simple divorce proceedings, not cases that are
16 truly contested or where there are children or some sort of
17 special conditions.

18 I think we should place more of a burden to open up
19 public institutions to courts so that we don't have to use some
20 of our more limited resources. I very much agree with you in
21 terms of letting lawyers be lawyers. I've seen too many -- I've
22 been in too many legal services offices where the attorneys go

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1 back at night to type their papers.

2 The ratios of staffs in a legal services office, many
3 private attorneys would be absolutely shocked to go in and see
4 that there is so much emphasis, and appropriately, on trying to
5 fund attorneys. But they aren't resource in a way that you're
6 really using their times as productively as they should be.

7 That's true of paralegals as well. Self-help
8 materials are very useful, need to be expanded, need to be
9 reviewed. I think you'll see some more of that.

10 MR. McCALPIN: I attempted in my remarks to respond, I
11 think, to your question. In my view, it takes a constellation
12 of remedies to improve our ability to resolve the problems of
13 the poor. I do not give up on additional resources. I intend
14 to agree with you that there is not going to be billions of
15 dollars in the foreseeable future on in my lifetime, but I think
16 there can be more hundreds of millions of dollars than we have.

17 I think that we can get more pro bono services from
18 lawyers, but to respond directly to you, I did believe that we
19 should increase and improve on our training of clients to assist
20 themselves pro se. I know that you are doing that in
21 California.

22 I sat in a year ago at the NLADA meeting at a program

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1 presented by a legal services program in Colorado who, one night
2 a week, have training programs for clients to do pro se divorce
3 and other domestic relations work. I think that is certainly a
4 must that we ought to do.

5 I think that we ought to provide the possibility--
6 indeed, there are plenty of possibilities now for representation
7 by other than lawyers. I think we just have to take our heads
8 out of the sand, recognize what's going on, but I caution again
9 no two-tier systems of justice.

10 Don't do like Attorney General Meese did some years
11 ago and say the poor people can get all the service they need
12 from the law students who haven't even graduated from law
13 school. And the rest of the people can have lawyers. I
14 disagree with that concept completely.

15 I think that to the extent that nonlawyer
16 representation is permissible across the broad spectrum of the
17 population, then it will assist the poor. So I certainly agree
18 with you that those are facilities and devices which are
19 available to match supply to demand.

20 MR. BESHAROV: Just to mention a little bit about
21 market mechanisms in this regard, right now the decision to
22 adopt those kinds of innovations are a function of just the

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1 personal or the staff desires or the program, desires and
2 individual programs. Everyone wants to be more efficient. They
3 try to do it.

4 What you'd also want to see in a system that was
5 running at peak efficiency is some incentives for people to do
6 that outside of the individual program. And you would see that
7 two ways if this were a business situation. First, somehow
8 they'd make money out of being more efficient. That would be
9 either from the Corporation or from the client. That's number
10 one.

11 Number two, you would like to see them be penalized
12 for being less efficient, and that means competition. Now, you
13 know, I want to again say on the one hand, and on the other
14 hand, you can't impose these mechanisms too extremely because
15 this is not a total market.

16 But you would like a system that reflects and rewards
17 greater efficiency in one grantee than in another. That would
18 help the adoption of these kinds of ideas.

19 MR. MARTIN: Thank you very much. Steve?

20 MR. COX: I face a difficult choice. Catherine just
21 said do it. Catherine doesn't even know the choice.

22 MS. JERMANY: That's all right. I've got a feeling.

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1 MR. COX: The choice is between serving the purpose
2 that I was brought here for, and that was to raise a question,
3 or to seize as Reece Smith did this morning the opportunity to
4 give a mini talk. I want to finesse that by, in essence, ending
5 with a question, and a question that, in a sense, doesn't really
6 call for any response but hopefully a thought-provoking
7 question.

8 It goes to the issue of client versus attorney driven
9 priorities. I'm an economist by training, but I really first
10 and foremost consider myself an educator. We in the education
11 world, I believe, face the same very difficult situation that
12 you attorneys do in legal services.

13 We, Bill, advise students all the time, advise them as
14 to what courses to take, whether to go to school, how long, so
15 on and so forth. But we're constantly faced with, do the
16 students really want the educational services that are being
17 rendered? If not, what kinds of services do they want? Are we
18 willing and able to deliver those services?

19 Believe me, folks, believe me, I feel so deeply for
20 the situation and the question that you face because I believe
21 we in the education world face exactly the same issue. The
22 question I want to leave you is, if we ever develop some means

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1 by which to reveal client preferences, if we ever do, are you,
2 in the legal profession, willing and able, can you live with the
3 answer? Thank you.

4 (Applause)

5 MR. MARTIN: I assume that last question was
6 rhetorical in nature and not meant for an answer personally by
7 any of the speakers. Well, we have a few minutes before we
8 conclude. I would like to throw it open to any members of the
9 audience who have a question or want to make a statement, short,
10 a principally question, though, to any of the panel members or
11 the speakers.

12 If you do, please raise your hand, stand up and be
13 heard. We've got a few minutes. If not, I have to go back to
14 these guys.

15 QUESTION: It's the general consensus of the group of
16 there, and I'm not sure --

17 MR. MARTIN: Would you state your name and where
18 you're from?

19 MR. JONES: Albert James Jones, Jr., Executive
20 Director of the north Louisiana Legal Assistance Corporation.
21 From a number of people up there, I have heard the importance of
22 the voice of the clients in this entire process. I sort of

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1 agree that the voice of the client is important.

2 If we all agree on that, why isn't it easy then for us
3 to put some money into redeveloping a National Clients Council?
4 Why is that such a political football?

5 MR. MCCALPIN: Amen. You're absolutely right. I
6 think one of the more foolish moves of the Reagan Board was to
7 deestablish the National Clients Council.

8 MR. BESHAROV: I think some of us are talking not
9 about some small group of people who are selected by whatever
10 process, but by a process of client driven decisionmaking that
11 happens in individual cases and individual communities
12 thousands, if not millions, of times a month.

13 I mean that's the notion of a market. Some of us are
14 talking about the idea that the way you legitimize these kinds
15 of decisions is by having as many people as possible
16 participating in them.

17 MR. SMITH: Let me ask a question, and I'm sincere
18 about this after 25 years or 30, whatever it's been, struggling.
19 But in the argument about the client versus attorney choice, the
20 client should pay or the client should choose or what is our
21 reaction going to be when the system reveals the client's
22 preference?

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1 . Is not implicit in all of that the whole argument
2 about whether the legal service program is a social engineering
3 program or not? Aren't these ideological positions you're
4 taking?

5 MR. COX: If you're directing the question to me,
6 Reece, and you looked over here, the answer is no.

7 MR. SMITH: I just looked to my right.

8 MR. COX: In fact, it goes to the matter that was
9 raised there in the back with respect to client councils. I
10 don't want to give a lesson on economics here, but there is a
11 real distinction between what economists call private goods and
12 services, goods and services that flow directly to the
13 individual and, if you will, public goods and services.

14 It's very easy via a market mechanism to reveal
15 preferences with respect to private goods and services. Simply
16 see how much money they are willing to pay for it. If they are
17 willing to pay more, you simply assume that the product is more
18 valuable to them, thus higher in the scheme of priorities, if
19 you will.

20 But with respect to public goods and services, it's
21 much more difficult to do that. In the past, with this legal
22 services for the poor, the bar, Reece and others of you know

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1 that you have talked in terms of legal needs assessment, okay.
2 Economists don't even talk about needs. They only talk about
3 wants as opposed to needs, but legal needs assessment.

4 I'm going to, just for the sake of being brief here,
5 say that that basically boils down to going around surveying and
6 asking people what they want, what kinds of services they want,
7 what kinds of services they think they need. That is quite
8 different from the way in which it takes place in the market
9 place.

10 There is, in a sense, no surveys of what consumers
11 want. It is simply a matter of observing what consumers buy and
12 how much they pay for it. To what extent you can use that
13 market mechanism in a different context, such as legal services,
14 I think, is a real good question. But that's really the guts of
15 the issue and why my question was a serious one. And I know
16 your question, too, was.

17 MR. COPEY: My name is John Copey. I'm a project
18 director for legal services in Pennsylvania.

19 We've had a lot of discussion about where to process
20 market ideas. It's not a free market out there. Our clients,
21 when they have to go for medical service, they don't have the
22 money for that, and they have to use a medical card if, in fact,

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1 it's available. They also have to have a way to get to those
2 medical facilities. Sometimes they are 50 and 60 miles away.
3 The other thing is that if you really asked the clients what
4 they want, it's going to vary. I don't want to be beat by my
5 spouse. I want a divorce. I want a decent place for my
6 children to live in. I want decent schools. This is, in fact,
7 what everybody is balancing when they come in.

8 And I think that, you know, to say that it's lawyer
9 driven or client driven, I think that if we had an unlimited
10 amount of time and resources, we could perhaps deal with it. In
11 legal services, we're asked to deal with not only legal problems
12 but also societal problems that we, in fact, become a dumping
13 ground for.

14 My father says when they hit on your door it's because
15 they're the last chance. They're asking us to do a lot of
16 things that nobody else in the system has wanted to do. So I
17 think that really when it comes down to it, we're asked to do an
18 awful lot, and we're given enough to deal with it.

19 It's always nice to talk about free market. The
20 problem is that it's not a free market. It's not a liberal
21 playing field. We're dealing with -- they don't have any
22 options outside of us. They talk about all these other issues,

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1 but they don't really have any other alternative for us in any
2 of these instances.

3 (Applause)

4 MR. MARTIN: If I heard you correctly, I don't think
5 you're disagreeing with Steve that it's not a free market, it's
6 just a -- Steve, can I ask you a question?

7 MR. COX: Certainly.

8 MR. MARTIN: All politics is local, I've heard. Are
9 all markets local? I mean, will each market vary, Louisiana
10 from Pennsylvania?

11 MR. COX: Certainly, by the type of good or the type
12 of service. Automobiles are now an international market. Milk
13 and bread is a highly local market, many groceries right down to
14 what you call a convenience store which is not local but, if you
15 will, neighborhood in geographic scope.

16 So the direct answer to your question is, it will vary
17 by type of products and type of service.

18 MR. SMITH: Well, is the question you asked whether
19 poor people want legal services at all?

20 MR. COX: No. That's what I heard, but he made a
21 statement. So I didn't really feel as if it called for any
22 response on my part. Thanks for giving me the opportunity,

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1 Reece. A very, very important fundamental economic principle is
2 you don't ask people what they want. You give them choices and
3 then observe what they do.

4 If I go around and ask people if they want a good
5 education, they're going to say, yes, we want a good education.
6 But when given the resources, financial via money, vouchers or
7 whatever, will they then spend those vouchers or their money on
8 education?

9 That's why I raised the question. My question came in
10 two parts. If we ever devise the mechanism by which to reveal
11 consumer preferences with respect to legal services -- see, I
12 have it in an "if" clause, but that's a real question. Can we
13 come up with a mechanism by which to reveal consumer preferences
14 for legal services?

15 Then the second part of the question was, are you
16 willing to live with the answer? I strongly suspect -- and, you
17 know, I guess I really don't want to be this revolutionary, but
18 I'll do it -- I strongly suspect, Reece, that if the clients
19 were given a real honest to God choice, they'd choose a bunch of
20 vouchers that they could turn in to some local agency and get
21 the money for as opposed to using it for legal services. That's
22 what I suspect.

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1 MR. SMITH: Assuming that's so, is that a good policy
2 for our government to follow, or are we just responding to an
3 economic theory?

4 MR. COX: No, we're not responding to a theory.

5 MR. SMITH: Well, economic response then. I've argued
6 with my friend here about this for 10 years.

7 MR. SPUHLER: First of all, in some response to the
8 professor, I think the answer to that question is going to
9 depend a lot on what the circumstance of the individual client
10 is. I mean, I know a lot of clients that when they are in the
11 midst of a legal turmoil would spend their voucher or whatever
12 persistence out of that as opposed to just giving them some more
13 money that continues them in their same situation but temporary
14 relief.

15 The second point I would like to raise in
16 consideration of this notion of how do we ever get any sense of
17 "the client market," particularly in a context where our
18 clients, by definition, have very little resources in terms of
19 the traditional sense.

20 I want to say I've spent a lot of time working with
21 clients. The resource that clients have is their time and their
22 energy. I think if you will spend some focus in going to

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1 clients and client groups, and discovering through that process
2 where they are ready to put their time and energy, that that is
3 a level of market analysis that can guide us all in terms of
4 what kinds of our legal services should be provided.

5 I think, from my experience, you will discover a lot
6 of that is empowerment legal assistance. But it is legal
7 assistance. They will combine and put their time and energy
8 into projects that are going to benefit them in the long run and
9 deal with social systems and other systems that they accurately
10 view are part of maintaining their dependency.

11 That's my 18 years of experience of working with
12 client groups. You measure it by where they put their time and
13 energy, because that's what they have.

14 MR. MARTIN: Bob?

15 MR. RHUDY: Kent said part of what I was going to say.
16 I think if a client has a legal problem and they have a voucher,
17 they are going to use it for legal assistance. If they don't,
18 they may use it for some other purpose. I think you've got to
19 ration the distribution of vouchers if you set up a voucher
20 system. How they use it may depend on the nature of the
21 problem.

22 I've been in a state that had a mixed Judicare staff

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1 attorney program for several years. The Judicare program is
2 much diminished now. The private bar provided their services 95
3 percent in family and domestic cases, and clients used them a
4 great deal for that.

5 Private bar referred persons to us if it was a welfare
6 case, if it was a social security case, if it was a landlord
7 tenant case or a whole range of other areas that they really had
8 not developed expertise in. I think there is some value of
9 choice, obviously. But I think the vouchers will be used if a
10 person has a legal problem.

11 MR. CRAMTON: One other market imperfection here that
12 I'm sure Steve would recognize is the free rider problem that
13 Besharov mentioned briefly. If you have a very large group of
14 people who each suffer a loss, but the loss is relatively small,
15 they have no incentive as rational individuals to invest in
16 legal services because the amount that they can possibly recover
17 just doesn't have any relationship to the enormous cost of
18 vindicating their small rights.

19 You have to aggregate them. So you need a
20 representative approach. You need a group. In other parts of
21 the law, we try to do this, try to provide an engine for lawyers
22 to engage in activities that will lead to an optimal enforcement

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1 of law rather than underenforcement by fee shifting, by giving
2 the plaintiffs lawyer, the civil rights lawyer, an incentive to
3 bring a damage action, even though the amount at stake is
4 relatively small.

5 So that's another possible approach here and has a big
6 relationship. The problem is civil rights lawyers are only
7 interested when there's going to be a damage award there. So
8 the injunctive relief and any kind of institutional attack that
9 does not seek money damages has to be left to the legal services
10 program.

11 If you start building in a big damaged pot, then
12 private attorneys will do the job, at least if the claim is
13 large enough and don't need publicly funded legal services.

14 MR. MARTIN: There was a hand in the back, I'm sorry,
15 the lady on the right.

16 MS. BERNARD: Hi, I'm Linda Bernard, Executive
17 Director of White County Legal Services. My question is really
18 for Mr. Smith. Earlier it was stated that approximately 70
19 percent of the law students in Harvard indicated that they would
20 not be interested in doing any pro bono work if in fact they
21 couldn't get credit for it.

22 But my question relates, number one, to the fact, how

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1 do you increase that in terms of getting private lawyers
2 involved in legal services directly? But, more importantly, how
3 do you get private lawyers to accept our clients, if you will,
4 the way they are?

5 I deal with a lot of lawyers from General Motors and
6 Chrysler and Ford Motor Company, and they, of course, are
7 sitting there waiting when, in fact, they have a meeting
8 scheduled at the time, say 4 o'clock in the afternoon. Well,
9 our client may not show up until 4:45. This is at their offices
10 and so forth.

11 There's a general lack of understanding, if you will,
12 of how people operate who are not part of the corporate
13 structure, if you will. I mean, they are not on time. They
14 don't always tell the truth, all these kinds of issues. I don't
15 know how to train them or sensitize them to this reality, the
16 real world sort of reality.

17 I was wondering if you had any suggestions on that,
18 because it creates an antagonistic relationship in some
19 instances of the private bar. They'll turn on me and they'll
20 say the client didn't show up or they did this or they did that,
21 or they came to my office and they looked like this or they
22 smelled like that.

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1 I'm, like, you know, these are our clients and this is
2 the type of service that they need. Every case is not an impact
3 case. They say, well, we want to do appeal, but we want to do
4 really significant things. We don't want to deal with this
5 issue. I say, well, this is the kind of problem that my clients
6 have. I can't change the nature of their problems. I can only
7 give you the problems as they come to us.

8 MR. SMITH: I might say I've had some paying clients
9 who weren't on time and didn't tell the truth. I can only
10 respond to the later part of your question by saying I think it
11 takes education. I think it takes efforts on the part of the
12 legal service program in a given community working with the
13 volunteer component of the program to try to sensitize them to
14 the very points that you raise.

15 I can see that it won't be entirely successful, and
16 there will be some lawyers who will say, hell, I had a 4 o'clock
17 appointment. They didn't show up. I couldn't wait forever, and
18 left. I can see that. I would also suggest, there are some
19 legal service lawyers in the field program with whom I'm
20 familiar that might be equally impatient and are not always
21 understanding as well. It's just part of human frailty. You
22 can only work with it as an imperfection in the system.

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1 In terms of how the Harvard students are reacting at
2 the present time, I guess I would respond to that by saying I'd
3 look to other institutions other than Harvard for the reaction.
4 In part, they are trained there to look to the corporate
5 community more than to the general community at large.

6 In part, I think it's a sign of the times. I do not
7 regard it as a defect in the entire system. I can remember the
8 60s when we recruited my law firm. The first questions were,
9 how many women are you going to hire? How many blacks are you
10 going to hire? How much time are we going to have to do pro
11 bono work? Ten years later they were wanting to know, how much
12 vacation am I going to get and how much was my pay going to be?
13 That's all they cared about.

14 It goes in cycles. But I find the young people in my
15 community and in my law firm, if we don't kill them with bottom
16 line in billable hours, they want to do pro bono and are willing
17 to do so if they're given proper encouragement.

18 Where I think we must lay the emphasis is not on the
19 young people who are coming up, but on those who are employing
20 them and teaching them so that they are sensitized to the need
21 to be supported and encouraging to the young people that come
22 along. I don't despair of them in the least.

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1 MR. MARTIN: Bill, you want to get in on this?

2 MR. McCALPIN: Well, I think the question is an
3 entirely appropriate one. Esther Lardent and I have been
4 traipsing around the country in recent times trying to see what
5 could be done to encourage superinuated little lawyers like me
6 to do pro bono work.

7 We ran in exactly to what you're talking about. I met
8 with a group of lawyers in New York a few weeks ago. It became
9 perfectly clear that those lawyers who had been engaged in their
10 careers in real estate financing, in corporate mergers and
11 acquisitions, and that sort of thing, really wanted no part of a
12 black welfare mother who was about to be thrown out of public
13 housing.

14 They just didn't think that that was what they had to
15 offer. On the other hand, I agree with Reece. It's not an
16 insoluble problem. I don't despair even of the young lawyers at
17 Harvard. I think maybe what we ought to do is send Roger
18 Cramton back up there to give them a little lesson in
19 professional responsibility, which is what he teaches.

20 I think that within the practicing bar, that law
21 school and others, it is possible to sensitize the lawyers to
22 the need to provide precisely the kind of legal services which

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1 clients bring into legal services offices. It's not easy. It
2 will take education. It will take leadership. But it can be
3 done.

4 MR. MARTIN: Doug, do you want to get your two cents
5 in?

6 MR. BESHAROV: Not to disagree at all, but I think
7 what Roger was saying was something more than that, which is,
8 the legal profession today, especially that part of the
9 profession that isn't just for legal services or for the poor,
10 responds to a variety of economic signals right now, whether
11 it's fee shifting, whether it's contingent fee or whatever.

12 My point would be, not to disagree one jot or titter
13 with what you said but to add to that, the notion that we should
14 be recognizing the economic signals that all these rules apply
15 for legal services lawyers as well as for nonlegal services
16 lawyers.

17 If we want to get people involved, we have to think of
18 this as a much broader market for legal services, whether
19 performed by lawyers or not, get the incentives right so that
20 people who don't work in legal services want to do this. Some
21 of it is going to be for money.

22 We don't have to always ask lawyers to do things for

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1 free. We can think of innovative ways to shift fees, to allow
2 for class actions. There are many ways to move this forward.
3 If this program was designed 25 years ago, which I think is
4 basically the case, it hasn't changed much, we've learned a lot
5 in 25 years about the economics of legal practice.

6 We've learned a lot about economics. We've learned a
7 lot about poverty. You might well design this program a little
8 differently with being called an ideolog, without being called a
9 right winger or a left winger. I think if there's anything that
10 kind of goes through much of the comments, it is we could get
11 the signals a little better to the lawyers.

12 MR. MARTIN: Thank you. Yes, sir?

13 QUESTION: Just kind of a rhetorical question. For
14 those that were advocating the voucher system, I want to get
15 over to the larger economy. What if we gave a voucher to the
16 taxpayers to either get a tank of gasoline or buy a foot of
17 interstate highway, how much interstate highway would we have?

18 MR. MARTIN: Less than we can afford. Anybody want to
19 answer that one?

20 (No response)

21 MR. MARTIN: Cowards. Anyone else? Yes, sir?

22 MR. KELLOGG: Fred Kellogg, a volunteer lawyer for

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1 legal councils for the elderly. To what degree would incentives
2 of one kind or another be able to expand our share throughout
3 the country, giving ballpark figures? Would you recommend using
4 any of the federal share to create such a incentive?

5 MR. RHUDY: Give me an example of the kinds of
6 incentives you're talking about, Fred.

7 MR. KELLOGG: I imagine grants would be the most
8 obvious, Rhudy.

9 MR. RHUDY: Yes, I've thought about that. If there
10 were federal dollars tied to -- you've got some states right now
11 that just don't want resources. I mean, one of the reasons I
12 think there is such a great degree of diversity between IOLTA
13 programs and state and local development and other things is
14 that there is not the same degree of support for expanding the
15 resources in those states as there are in some other states for
16 a variety of reasons.

17 If that weren't true, I think it may be -- I'd like to
18 see more states, for instance, develop mandatory IOLTA as an
19 example. If there were a tying of increased federal dollars to
20 a state that did a certain degree of match, I'd like to believe
21 that that would expand that local share.

22 For the reason I indicated, I'm not at all sure that's

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1 true. So I think that would have to be considered. I don't
2 know. You'd have to look at how to design the incentive. You'd
3 have to look at the kind of service to be provided. In some
4 states, there are services that are considered to be legitimate,
5 whereas other services are not.

6 There's a great deal of cultural variation. So
7 throughout the United States, depending on local circumstances,
8 I'd like to look at it. But I can't give you an easy answer at
9 this point for the reasons I've indicated.

10 MR. MARTIN: One more question, if there is another
11 question. I'm reluctant to draw this most interesting -- yes,
12 sir? Have at it again.

13 MR. JONES: This is dealing with the economics. A lot
14 of us -- I won't say a lot. I should say some of us within
15 legal services during the late 70s and the early 80s, before the
16 cutback started, and I assume a lot of other programs, we didn't
17 really have to deal with priorities. We were able to handle
18 everything that came through the door.

19 As I can recall, there was a high point of legal
20 services in most of our programs when they were at their highest
21 point back then. It seems to me that in this whole discretion,
22 there seems to be a foregoing conclusion, because to me that was

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1 equal access.

2 If you came in the door and you had a problem, we
3 handled it. There seems to be a foregone conclusion among all
4 of you, and that troubles me because we'll never get back to
5 that. We started talking about what we're going to do for
6 people when they started cutting the funds. Before they were
7 cutting funds, we weren't talking. We were doing it all.

8 It seems to me that the effort to restrict what we
9 were doing began with the fact that we were offending a lot of
10 people in court. So the effort was how do we restrict what
11 these people were doing? There were two ways to do that;
12 through the regulatory process, regulate what we can do and what
13 we can't do, and through the financial process, cut the funds.

14 If you give them less money, they can do less work.
15 It troubles me that now our whole focus is on how little service
16 we can provide as opposed to how we can maximize the services we
17 can provide. I think you can maximize the services you provide
18 by taking us back to the funding level, at least start taking
19 us back to the real funding level that we would have been on
20 had we maintained the growth that we were doing in the 70s.

21 I don't see anybody discussing how you get back to
22 that financial position. I think the discussion I hear is how

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1 you continue to limit what these people do. A voucher system
2 would be one system of limiting, because then the client would
3 just let the voucher have to decide between education and abuse.
4

5 I don't think a client should have to make that
6 choice. I think a client should be entitled to a good
7 education, but she should also have a right to not be beat up by
8 her husband. That's the kind of discussion I would like to see
9 us having. How do we get back to a full service?

10 (Applause)

11 MR. BESHAROV: Well, I think the mumbling up here at
12 the table is that there is some disagreement about whether in
13 1979 there was full service. I guess we'll have to pass on
14 that.

15 The point I was trying to make, I thought, was
16 directly to the issue that you were raising. I was asking the
17 question, why hasn't funding increased? The answer I was trying
18 to give, whether it's valid or not, but I'll restate it, is
19 because the American people, I think, or at least the Congress,
20 doesn't think the program should have more money.

21 Now, how have other programs to the poor been sold in
22 the last 10 years. I emphasize in the last 10 years because as

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1 I said when I opened, adjusted from inflation, domestic spending
2 is up 60 percent. Spending for the poor is up. Why hasn't
3 legal services increased? Why have other programs increased?

4 Because they've gone to the Congress and they've said
5 this is the impact this program has on poor people. This is the
6 impact this program has on poverty. We have a big program for
7 Work Fare, which is the job training and so forth, sold to the
8 Congress on the grounds that it makes a six percent difference,
9 six percent difference, in welfare roles every year.

10 Head Start sold to the Congress, sold to the
11 president, on the grounds that it makes a teensy little
12 difference in educational capacity for seven-year-olds. That's
13 the basis of the sales job. I put to you, what's the basis of
14 the sales job that you do to Congress to ask for an increase in
15 legal services? If you find it, all power to us all.

16 The question is, where is the argument? I would say
17 that part of the reason why we don't have that is because we did
18 put under the carpet the business of whether this program is to
19 reduce poverty or to provide equal justice under law, again
20 whatever that means.

21 I remember very well, and I'll get off the floor in a
22 minute because I think Bill wants to say something, I constantly

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1 make choices about what cases I can afford to bring. I'm always
2 making those choices.

3 So again, I would go back and say the question
4 shouldn't be how we do this; the question should be why, unlike
5 most other domestic programs, this one hasn't been increased in
6 the last 10 years? I think the answer is partly, partly,
7 because it hasn't changed with the times.

8 MR. MARTIN: Bill?

9 MR. McCALPIN: Let me suggest some other parts. One,
10 we have come back from 240 million to 327 or thereabouts, about
11 a 33 to 35 percent increase over the last few years. A second
12 reason is, as Mike Wallace said this morning, we're not dealing
13 with germs. We're dealing with adversaries.

14 And those of us who have been through the last two
15 sessions of the Congress know something about what has happened
16 to us in dealing with adversaries. We generated the opposition
17 of the American Farm Bureau. They mounted a big legislative
18 campaign to restrict legal services.

19 That's part of the problem why we haven't gotten
20 increased appropriations. We deal in adversarial, contentious
21 issues with somebody on the other side, and they're fighting
22 against us.

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1 MR. MARTIN: Thank you, Bill.

2 MR. RHUDY: Can I take a bit?

3 MR. MARTIN: Two more statements and then we're going
4 to close. Yes, go ahead and then you.

5 MR. RHUDY: Legal services has been subjected during
6 the past 10 years, the past 8 years, to very, very strong
7 attacks led primarily by, I think, a small number of groups who
8 felt their interests were injured in the past. So they attacked
9 the lawyers rather than the law.

10 In Congress, the support for the program, I think, has
11 been eroded over what it was at previous times. That has to be
12 reversed. What also has to be changed is, I think there's
13 substantially less support publicly for poverty programs now
14 than there were several years ago.

15 That does not just affect our program; it affects a
16 whole range of programs. That has to be reversed to put more
17 public funding, as well as other resources, into programs that
18 need it and deserve it. So I think the job is ahead. I think
19 it can be done, but there's going to take some real work before
20 you're going to see substantial increases in public funds for
21 these programs. I think it can be done.

22 MR. MARTIN: In the back, young lady.

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1 MS. GAINES: I have tried to resist, but I can't
2 because I'm hearing a kind of oversimplification that just
3 finally baited me, and I apologize.

4 MR. MARTIN: What is your name?

5 MS. GAINES: My name is Sherry Gaines. I'm the
6 director of the Bedford-Stuyvesant community legal services. We
7 are a black community. I was in legal services representing a
8 black community between 1965 and 1970. I hear discussions about
9 market phenomena, voucher phenomena, this that and the other,
10 and there is, forgive me, an underlying naivety that is very
11 hard to sit through.

12 Our clients come into our doors because they have a
13 crisis. If you start trying to have them engage in abstract
14 thought, you have a problem someone verbalized for you. Am I
15 going to spend my money on the highway or am I going to get gas
16 for my car right now?

17 Yes, with the clients council you can have some of
18 that long-term range thinking. But if you go at it from the
19 mentality that legal services is doing something wrong, then
20 that's why it somehow lost money. You are interpreting the
21 evidence very differently than I have experienced it.

22 I experienced legal services losing money precisely

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1 because legal services was successful. (Applause) I point out
2 that I began in legal services in California because I was in
3 legal services when Ronald Reagan was a governor before he was a
4 president.

5 It is precisely because legal services was able to
6 identify things that would change poverty, the things that would
7 change power, and the things that would change the structure
8 that Ronald Reagan changed the rules. Then he changed the
9 budget.

10 Now, let us not be naive about what happened. Yes, we
11 continue to exist and we have a job to do because we still have
12 clients who are, in fact, suffering from husbands, from each
13 other, from landlords, from an economy that is bigger than
14 everybody in this room.

15 So even the middle class is suffering. I am offended
16 at the notion that the poor should have less because the middle
17 class don't have enough. As far as I am concerned, let us in
18 fact achieve for the middle class and the poor what we achieve
19 for the rich.

20 But in any event, let's not misinterpret history.
21 Let's not misinterpret the evidence before us. Our clients do
22 need some long-range perspective. We have the burden of

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1 figuring out how to provide that for them. When the adversaries
2 respond because they do not enjoy giving up their benefits, let
3 us not panic and let us not misunderstand where we are.

4 If you ask my clients, who are desperately in need of
5 decent housing, how they would best like their lawyers to
6 function, let me tell you. It's in creating their own co-ops,
7 creating their own renovations and doing an entire kind of
8 economic development I'm not funded to do now.

9 Okay, so we will work to keep them from being evicted
10 and we will work to keep them from starving. But let's take the
11 real message to Congress and face the reality that if we are
12 successful, we may lose a few votes. So we have to restore to
13 our constituency and our audience, including Legal Services
14 Corporation, a vision, a morality and a concept of justice and a
15 concept of what we are all about that somehow has gotten eroded
16 when it shouldn't have.

17 (Applause)

18 MR. MARTIN: Thank you. We hate to draw the afternoon
19 to a close. It has been quite interesting and informative for
20 me, and I think the non-Board members, very informative. To
21 give us a few concluding remarks, we have asked a former Board
22 member, former congressman and now current president of the

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1 burrow of Staten Island, the Honorable Guy Molinari, to give us
2 a few concluding remarks. Would you please make welcome Mr. Guy
3 Molinari?

4 CLOSING REMARKS

5 MR. MOLINARI: Thank you very much, David. I came in
6 a little late and I heard Mike Wallace say something to the
7 effect that Congress created the Legal Services Corporation and
8 then walked away from the mess. In my case, I left Congress and
9 walked into the mess.

10 Some three months or so into the new year, I was
11 invited to the White House for a reception. President Bush was
12 there. At the end of the evening, he went through the receiving
13 line, and he had asked me how I like my new job. I told him I
14 liked it very much being burrow president of Staten Island.

15 He asked me if I missed Washington. I answered
16 honestly, no, I don't. Then he said, "No regrets?" I said,
17 "No." Then I caught myself and I said, "Well, wait a second,
18 perhaps one. What did I do wrong in my years in Congress to
19 have put me on the Legal Services Corporation Board of
20 Directors?"

21 I mean, after all, why would any sane person want to
22 sit on a Board where you meet six or eight times a year, you get

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1 \$200-some odd dollars a day, maybe \$2,000 a year? Only then, I
2 guess, I began to understand what the full meaning of the words
3 "pro bono" meant.

4 But to get serious, I find the conference today to be
5 fascinating. I mentioned to George Wittgraf and others that I
6 think it would have been very helpful for those of us that were
7 Board members to have a seminar like this and listen to the
8 experts who may disagree but have some very provocative
9 thoughts. I think it would be very helpful to all of us,
10 particularly to this member.

11 In that almost a year that I've been involved in legal
12 services, I've learned a great deal. I've been very impressed,
13 very impressed by a lot of the providers out there. I've been
14 very impressed by so many individuals who are serving the legal
15 service community who could be working someplace else making a
16 great deal more money but believe strongly in what they are
17 doing. I met some very fine people who had that calling.

18 Some of the speakers today made some remarks that I
19 think are very fitting, appropriate and perhaps set the tone for
20 where we're going, meaning Legal Services Corporation. Bill
21 McCalpin said, "Monitoring should become less adversarial," and
22 I agree with that. I'll talk about that in a moment.

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1 Roger Cramton talked about political retaliation,
2 something that is extremely important to that question that has
3 been raised time and time again today as why is there not as
4 much money as there used to be, or how do we get more money into
5 the pot?

6 Robert Rhudy said there needs to be a substantial
7 expansion of federal funds? How do you do that? One of the
8 biggest problems you have is the very basic question of the
9 controversy that surrounds LSC and has since its formation. It
10 is looked at, and indeed has been, a troubled agency.

11 Congress deals with a lot of issues. This is but one
12 of thousands of issues. We don't know a great deal about Legal
13 Services Corporation except that which we hear during the course
14 of a very limited debate. You may not even be in the room when
15 that debate takes place.

16 I found myself, sometimes as a member of Congress,
17 voting one way based upon what I heard in a debate that day, not
18 hesitating to vote the opposite way based on what I heard at a
19 later date. Let me just relate to you one experience that I was
20 involved in this year to demonstrate to you and to those
21 doubting Thomases that more could be done, that a less
22 controversial attitude could be adopted.

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1 We had problems right from day one with this EVA
2 program. I'm sure most of you in the room are familiar with it.
3 Every single Board meeting we went round and round and round.
4 It was very contentious, defied solution. I sat as a relatively
5 new Board member wondering how in the world do we try to make
6 some sense out of all of this?

7 I don't think there's very many people in this room
8 that really disagree about what should be done in providing
9 legal services to the poor. Oh, we have lots of differences and
10 disagreements about how we get there. But this question of the
11 files that were required by legal services to be created, which
12 had personnel information in it as well as other information,
13 there was competing priorities.

14 When LSC representatives went to see the files to look
15 for the fiscal-related documents and personnel documents that
16 were inside, the question of privacy was raised. In some areas
17 we found in the country, they didn't have that problem. The
18 monitoring division, when they went there, they received all the
19 files.

20 In other areas, they said you can't do it. Maybe it's
21 part of our union contract or whatever. After five or six
22 meetings, I volunteered to bring everybody together, see if we

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1 couldn't resolve that. Our chairman, George Wittgraf, said
2 publicly, you've got to be nuts to try to do something like
3 that.

4 Well, I think I am partially nuts, but it helps in
5 this business of ours. We did, in fact, convene a meeting in
6 Burrow Hall in Staten Island. At that meeting we had Linda
7 Pearl representing Alan Houseman and a center for law and social
8 policy; De Miller, the executive director of the legal services
9 for the State of New Jersey; Tim Shea, the counsel.

10 We had Susan Sparks, who is the manager of the
11 Monitoring Review Committee. We had Emilia Di Santo, who is the
12 director of that agency, that subagency. We had Dale Johnson
13 who is with us over here, the executive director of the legal
14 services of New York City. We had Dwight Loines, who is legal
15 counsel to the unions of legal services workers, and others.

16 I was a participant. I chaired the meeting. But I
17 also was an observer. I watched for hours as they discussed
18 this very basic difference that they had. Then I watched the
19 byplay, as the two ladies representing legal services explained
20 what they were really looking for.

21 I saw a shift in attitude on both sides. For the
22 first time, I think they both came together and understood what

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1 each other was really looking for. You know what? Before the
2 day was over, an agreement was drafted and signed, and both
3 sides were satisfied.

4 Boy, what an object lesson. Talk about
5 experimentation. Now I have to relate a little personal
6 experience before we leave that subject. The day before this
7 happened, I had had some chest pains while I was working in
8 Burrow Hall. Some worried staff members called the doctor in,
9 and he quickly checked me over and said it didn't look like any
10 heart problem, not to worry about it.

11 The very next day when we had all of this taking
12 place, the chest pains were still there, returned, and were a
13 little more pronounced. My worried staffers were saying, you
14 look pale. You're sweating. It doesn't look good. Without my
15 knowing it, they called for an ambulance to have me taken to the
16 hospital for stress tests and all the rest of that stuff.

17 We were making such progress I didn't want to leave.
18 I didn't say anything to anybody in the room. I was feeling a
19 little bit uncomfortable. At a given point, it looked like
20 maybe this whole thing was going to blow up in the air. At that
21 point, I said, hey, look, folks, I've got to tell you something
22 I haven't said before. I am having some chest pains, and I have

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1 for several hours.

2 There's an ambulance waiting outside to take me to the
3 hospital. I don't want to leave unless there's an agreement or
4 I'm sure there's going to be an agreement, so help me God. True
5 story. True story. Everybody was so wonderful. I mean, they
6 really were so wonderful. Who the hell would want my death on
7 their own consciences, really?

8 My friends, I tell you, it taught me a lesson. It
9 taught me a lesson that regardless of what your ideology -- and
10 you've heard a lot about that today -- that when you get
11 reasonable people in a room, and you don't have media there
12 copying down what everybody is saying, and you're people in good
13 faith want to discuss things, you can reach an agreement.

14 Now, having said all of that, if the Board of
15 Directors -- we have a new president who is working very hard
16 and I think is going to do a very good job -- and the new Board
17 of Directors that comes in can work together, can have more
18 meetings like the kind I talked about before, and if we can make
19 progress, if I'm part of it or not, if progress can be made, and
20 the message can get back to Congress -- because I served there
21 nine years, my friends, and it's not what you heard before.

22 If Congress realizes that you have a well-operating

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1 entity that's doing a good job and we can overcome most of that
2 controversy -- we'll never over come it all -- I think it will
3 be a lot easier to get the increase in funding that some people
4 here would like.

5 There's competition there today. There's competition.
6 Everybody has a good program. I tell you, I never saw a program
7 that I didn't like or people weren't able to sell reasons why
8 that program is a good program. Unfortunately, there was not
9 enough pot to go around. That's the time that you have to make
10 your case.

11 So I will conclude by addressing those of you that
12 have spent years in trying to provide this badly needed service
13 to the people that have no place else to go and to those who may
14 be Board members in the future and the leaders that we have
15 assembled here now and before us earlier today, it can be done.

16 It's not easy, but it can be done. I'm convinced of
17 that. I saw it happen. I know enough that there's advocates
18 out there, and you're going to fight forcefully for what you
19 believe in. You should. When you're on the Board of Directors,
20 it's very difficult because you're listening to competing
21 arguments.

22 You do have responsibility to make sure the system is

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1 working well. And maybe if you can improve it, that you should
2 try to do so. When men and women of good faith sit together,
3 I'm confident. I've learned a lot about legal services in this
4 last year.

5 I know now a lot more than before, how important it
6 is. I've enjoyed that working relationship. I wish I had more
7 time. I haven't had enough time -- that's been a problem with
8 me -- to address these problems. But I think we can all leave
9 here today feeling a little better about ourselves and the
10 mission that we have.

11 There's nothing, I think, more compelling than mankind
12 trying to help those among us that need that help. Whether
13 you're a lawyer or a congressman or whatever you're doing in
14 life, I think everybody -- most of us, not everybody, most of us
15 a lot of times are trying to help people that are in need of
16 help, and some of them crying out for help and can't get it
17 anyplace else. You've got to feel good about that when you're
18 finished. Thank you very much.

19 (Applause)

20 MR. MARTIN: Thank you, Guy. Would you please join me
21 in extending a thank you to all the panelists and all the Board
22 members and our luncheon speaker who just went out. Thank you,

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1 ladies and gentlemen.

2 (Applause)

3 We have immediately next door a reception in honor of
4 our awardees. Please join me over there. It's again in the
5 Dolly Madison Room. I'll leave you with a quote of a great man.
6 If anybody tells me who made this statement, you win a prize.
7 "If a free society cannot help the many who are poor, it cannot
8 save the few who are rich." Join me next door. Thank you all.

9 (Whereupon, at 5:15 p.m., the meeting was concluded.)

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