

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

June 13, 1989
Commences at 11:00 a.m.

Hyatt Regency Woodfield Hotel
Regency Ballroom
1800 E. Golf Road
Schaumburg, Illinois 60173

Present:

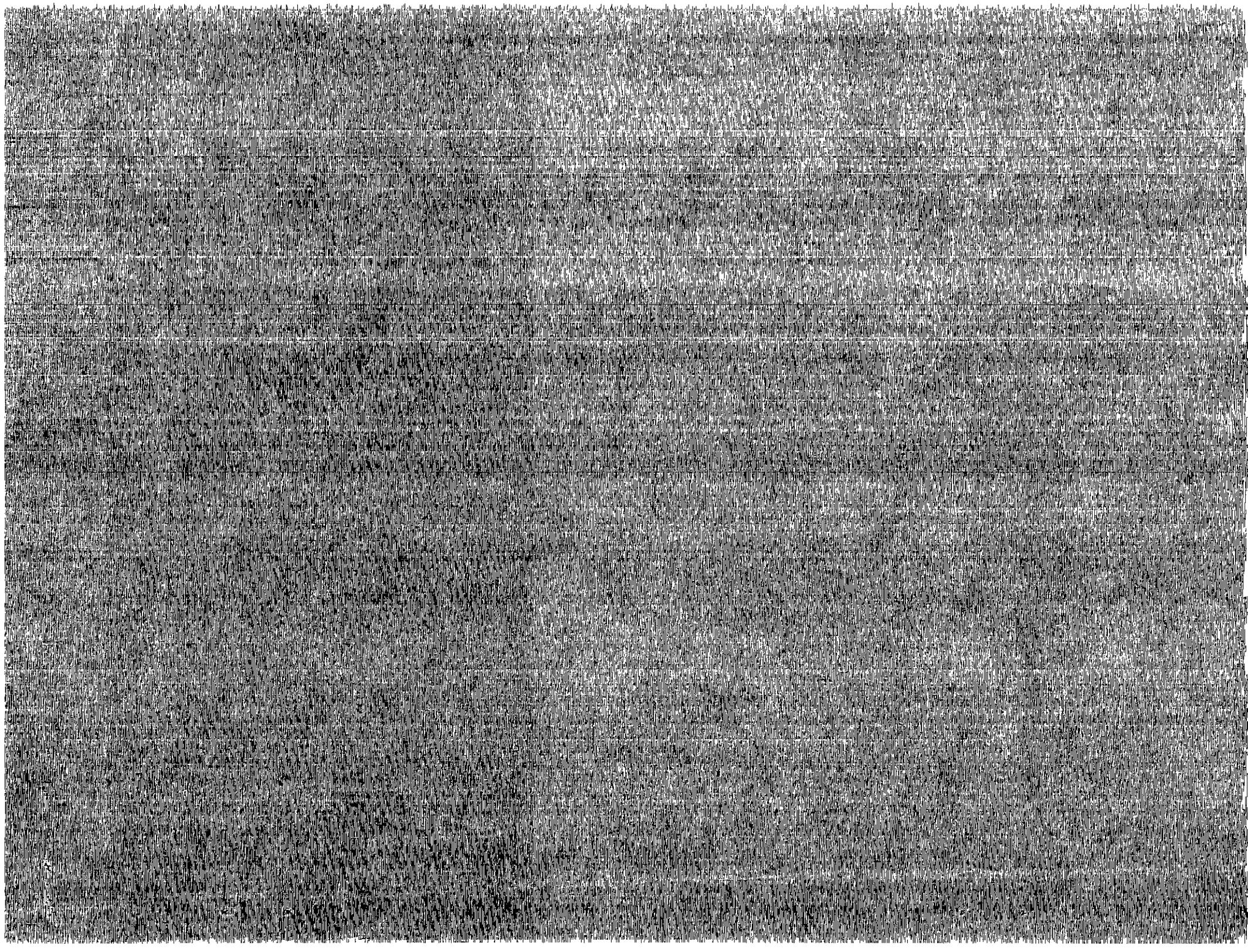
- J. Blakeley Hall, Chairman
- Hortencia Benavidez
- Paul Eaglin
- Lorain Miller
- Thomas Smegal
- Claude Swafford
- Basile Uddo
- Robert Valois
- Michael Wallace

Staff present:

- Maureen Bozell, Secretary
- David Richardson, Comptroller
- Timothy Shea, General Counsel & Vice President
- Terrance Wear, President

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P R O C E E D I N G S

(11:10 a.m.)

1
2
3 CHAIRMAN HALL: We are going to reconvene the meeting
4 of the Committee on Provisions of Delivery of the Legal Services
5 and start where we left off yesterday. I think today we have
6 Linda Perle who is going to speak to us. I will ask her to come
7 forward.

8 Ms. Perle, we all know you but for the record would
9 you tell us your name again and who you work for?

PRESENTATION OF MS. PERLE

10
11 MS. PERLE: My name is Linda Perle. I am with the
12 Center for Law and Social Policy. We represent PAG and NLADA.
13 Mr. Houseman couldn't be with us today and I hope you will give
14 me your ear.

15 Some of you may not know this so I'd like to give you
16 a little bit of my background. I worked at the Legal Services
17 Corporation from 1975 to 1983 in a variety of capacities. I was
18 on the staff of the delivery system study from 1976 to 1977.

19 I worked in the General Counsel's office from 1979 to
20 1983. I worked with various boards of directors over the course
21 of those seven years on a number of specific projects in a
22 variety of capacities. So I'm fairly familiar with this

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1 corporation.

2 You received or preliminary comments. Many of the
3 points that were made in those comments were made yesterday
4 either by Mr. Shea or by a number of witnesses. I will try not
5 to belabor them. I do think many of them bear some reemphasis.

6 At the outset, I would like to state for the record
7 that in our view, Public Law 100-459 does not require or grant
8 authority to this board to do anything about competitive bidding
9 as Professor Uddo said yesterday.

10 We don't believe that it gives the LSC staff under the
11 direction of this board authority to propose the kind of
12 regulations that are outlined in this proposal or in the
13 competition manual that threatened to undermine the existing
14 legal services delivery system.

15 In our view, it conflicts with the legislative scheme
16 for legal services that has been carefully crafted by the
17 Congress over the last 15 years. However, because we don't want
18 silence to be misinterpreted as acquiescence we have made some
19 comments on the specifics of the proposal.

20 In general, I'd first like to say that this proposal
21 in the manual raises many more questions than they answer.
22 There's nothing in these documents that will allay the fears of

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1 legal services programs that it's LSC's intent to do away with
2 the current system of high quality delivery of legal services
3 with no justification, no protection for the clients now served
4 by the programs and nothing to ensure that the current service
5 providers will be treated fairly.

6 Also, there is no guarantee that what will be
7 instituted in place of the current system will provide high
8 quality legal services. The regs are devoid of any detail that
9 would enable us to really divine the true intent, LSC's true
10 intent.

11 At the outset, I want to say that competition for it's
12 own sake, which I think is what is demonstrated by this
13 proposal, has no place in the ongoing delivery of legal
14 services.

15 As has been mentioned numerous times, these proposals
16 completely do away with any notion of local control. That's a
17 critical element of the current delivery system and one that LSC
18 itself has reinforced time again by its emphasis in monitoring
19 grant conditions on compliance with the board composition
20 regulations and the priority setting rules.

21 This proposal appears to contemplate slitting current
22 service areas allowing for the bulkanization of services,

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1 ignoring any idea of efficiency or economy of scale,
2 coordination of efforts in a myriad of areas such as training,
3 recruiting, litigation strategies, et cetera.

4 I might note that small programs are probably a lot
5 easier to control and to intimidate. Clearly, it's
6 fragmentation of services. There is nothing that is going to
7 ensure that there will be general service providers.

8 It permits LSC to use its discretion to identify those
9 areas of substantive law that it considers to be important or
10 appropriate for eligible clients, family law, landlord/tenant,
11 consumer law and make numerous small and perhaps competing
12 contracts for these services.

13 It does not require you to set aside any funds to
14 ensure that the cases that the LSC has not specifically deemed
15 to be appropriate are handled even if they are priorities of the
16 local community.

17 There is also nothing in this proposal -- and this was
18 discussed yesterday -- to suggest that current LSC grantees will
19 get any credit for the years of experience that they've put in
20 in providing legal services.

21 LSC is free to contract with new untried providers,
22 maybe those that have promised some fancy innovation over the

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1 long term providers of high quality services. As Mr. Cox stated
2 yesterday, there are no performance standards to judge current
3 providers or even people who are not current legal service
4 providers but who may have been providing similar services.
5 There's no standards to judge those.

6 There's no provision made for handling pending cases
7 when the current contracts end, which could raise serious
8 ethical problems. There's no indication how any of this will
9 mesh with the provisions of the LSC act and regulations on
10 things like board composition, priorities, client grievance
11 procedures, private funds restrictions, et cetera.

12 Overall, there's enormous discretion in the LSC staff
13 and particularly the president who is able to control the
14 process and manipulate the final outcome. There are some
15 specific points.

16 There's a complete lack of definition of key points.
17 For example, the use of the word expert or programmatic merit.
18 Nobody really knows what these things mean. There are no
19 criteria at all for making the vital decisions about things such
20 as the boundaries of the service areas, the order in which the
21 competition will be conducted.

22 It seems like this is a wonderful opportunity for the

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1 corporation to punish and reward disfavored or favored programs.
2 There's no guidance as to whether to award multiple grants in a
3 particular service area or for what services.

4 There's no indication of what the corporation
5 considers to be appropriate cases, although they do use that
6 language. It lodges total discretion over these matters with
7 the LSC staff with no mechanism for review or scrutiny of those
8 decisions.

9 It invites abuse. It invites subjectivity. It
10 invites political judgments. With respect to your plan for the
11 funding cycle, you have a three year funding cycle with one-
12 third of the grants up for rebidding each month. That invites
13 administrative chaos as far as I can see.

14 LSC will be constantly in the process of rebidding,
15 selecting new grantees or contractors and negotiating grants.
16 It seems designed to ensure that there will be no resources
17 available to monitor or to review the quality of services
18 provided or to do anything else for that matter.

19 Alternatively, it anticipates that LSC will
20 tremendously expand its bureaucracy beyond anything that's been
21 contemplated in the past or certainly anything that Congress has
22 contemplated.

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1 As was mentioned yesterday, the criteria that are
2 stated for selection are totally inadequate. There is no
3 mention of quality. There is no mention of effectiveness in
4 meeting the goals that are established by the client community
5 or by the local priority setting process.

6 There are no consideration of the specific statutory
7 standards or of past performance except for those things that
8 are identified in the monitoring process. In our view,
9 monitoring has not looked over the last several years beyond the
10 narrow confines of compliance with an ever increasing system of
11 requirements.

12 It doesn't look at all at quality of representation.
13 There's no mention of the professional reputations or
14 qualifications or experience of the providers. It's filled with
15 undefined terms. These criteria that are indicated are totally
16 unclear.

17 It just completely ignores a number of other criteria
18 that are very important. Some of them are listed on page 6 of
19 our comment. These are criteria that have to be considered for
20 every contract.

21 It's not simply that they are peculiar to any
22 particular service area or specific solicitation. They should

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1 be there for every contract and they are things that need to be
2 considered.

3 There's no reason to leave these to the discretion of
4 the staff that's putting together a particular proposal. They
5 should be stated at the outset. This proposal gives unfettered
6 discretion to the LSC president who may reject a proposal "for
7 any other reason that the president determines adversely impacts
8 upon the applicant's capability to successfully carry out the
9 tasks stipulated in the competitive solicitation." Very broad.

10 Many of the people that spoke yesterday had not had an
11 opportunity to review the competition manual which is an
12 integral part of the peer review process that's outlined. So a
13 number of the points that we made in our comments, other people
14 did not make only because they hadn't really seen them.

15 I will try to address some of these in the rest of my
16 comments. Much space is devoted in the regulation and in the
17 competition manual to the notion of peer review. When you clear
18 away the smoke and the mirrors, peer review is really not what
19 it's cracked up to be.

20 You need to read the manual to really understand what
21 is contemplated by this peer review process. It is only an
22 advisory process. It may be ignored by the LSC president. Even

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1 with that, it can be manipulated.

2 When you read the manual, it can be hidden from view,
3 secreted away from the public view and scrutiny if it doesn't
4 produce the recommendations that are sought by the LSC staff.
5 Those things are in the manual.

6 Those things are not in a document that I assume is
7 subject to the same kind of comment and review process the
8 regulation anticipates. The peer review procedures can change a
9 discretion of the LSC staff from solicitation to solicitation.

10 The process itself is under control of the LSC staff.
11 It's not an independent process. The peer reviewers are
12 instructed. They are given guidance. Their review is
13 controlled because most of it is conducted during the course of
14 a meeting which is being controlled by the LSC staff.

15 There's also a provision in the regulation for
16 additional review by appropriate specialists and consultants.
17 These are outside of the peer review process, if I understand
18 this correctly.

19 There's no indication about how these people are to be
20 selected, how the review is to be conducted, or how it is to be
21 utilized. The qualifications of the peer reviewers are very
22 general.

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1 There's no requirement of experience with poverty law
2 or any kind of related practice. There is a provision on the
3 negotiation of contracts. These are all still in the
4 regulation.

5 It's not clear whether this negotiation process is to
6 be conducted with all high ranking applicants or only with those
7 that have been somehow preselected. I think that was mentioned
8 yesterday.

9 These negotiations could produce what really,
10 essentially is a completely new application or proposal and
11 change the bidding process. It really would require a new
12 bidding.

13 If it's done the way it's anticipated or appears to be
14 anticipated, it would really let LSC just choose applicants that
15 it likes and then tailor their proposals to what LSC wants to
16 produce.

17 With respect to the manual, it reiterates a lot of the
18 things that are in the regulation. I won't go over those
19 things. There are certain peculiarities. It mentions a process
20 at the outset of technical review and this is defined to give
21 the LSC staff the authority to determine whether an applicant
22 has the requisite capability to provide economic and effective

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1 delivery of legal services to eligible clients.

2 I don't understand how this could be determined to be
3 a technical review. This is the crux of any review of any of
4 these proposals. It is the most important decision about a
5 particular applicant.

6 It should be the primary goal of any process of
7 selecting new applicants. It shouldn't be relegated to the
8 technical review status with no standards, no criteria, nothing
9 to indicate what that really means.

10 Again, with respect to the qualifications of peer
11 reviewers, there's no requirement of legal services experience
12 to be in this pool. With respect to the particular panel,
13 there's a very peculiar criteria.

14 It talks about the selection of the panel in terms of
15 its public impact and it refers to regions, organizations, or
16 the public directly effected by the issues to be considered.
17 This could be anything, even representatives of government
18 agencies or business interests that are the frequent adversaries
19 of legal services clients or the legal services program
20 providers.

21 It could, of course, include client community or local
22 bar members or others that are in a position to evaluate local

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1 needs, but there's no suggestion that they are necessarily to be
2 included in the process of peer review.

3 In my view, those people are essential. They are the
4 ones that understand what these proposals are really intended to
5 address. There is a very elaborate system for dealing with
6 conflicts of interest.

7 It's very broad. Regardless of what it's intended to
8 do, it can be used to exclude virtually any individual who has
9 had involvement in the delivery of legal services by current
10 providers either national or locally.

11 In contrast, there's no provision whatsoever that
12 would take care of the question of institutional conflicts.
13 Unless you are an open antagonist -- and that's the word that's
14 used -- of an applicant, you could be included.

15 These can include people with interests, adverse to
16 the client communities, specific adversaries of current legal
17 services providers or a whole range of people whose interests--
18 whom, in my view, would not have the interest of the client
19 community highest up on their interests

20 There's elaborate system scoring that is sort of
21 outlined, but it's subject to change with each solicitation so
22 it really doesn't give anybody any guidance as to what is really

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1 going to be used.

2 There's no provision for peer reviewers to evaluate
3 community needs and recommend any overall or coordinated plan
4 for the service area to ensure that proposals submitted can meet
5 those needs.

6 There's no provision for peer reviewers to recommend,
7 for example, or resubmission of resolicitation because none of
8 the proposals meet the needs of the community. It anticipates
9 that proposals are going to be reviewed in a vacuum.

10 The funding decision process is at the complete
11 discretion of the LSC president. He's free to ignore the peer
12 review process and he need only justify when funding a low rated
13 proposal not when he's rejected a highly rated one.

14 Yesterday, Ms. Benavidez and Mr. Wooten had a little
15 discussion about the appearance of fairness versus actual
16 fairness. Well, there's a provision in this manual that ensures
17 no one can tell whether it's fair or unfair or appears or not
18 appears because the confidentiality provision places a wall of
19 secrecy around the peer review process.

20 The identity of all of the panels are confidential.
21 The peer reviewers may not disclose anything about the process
22 or anything about their own determinations or recommendations.

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1 Applications and information about the recommendations must not
2 be disclosed.

3 Any information -- any requests for information must
4 be forwarded to LSC and that presumably the LSC staff or the
5 president makes the determination about whether to release that
6 information.

7 Peer reviewers will not even receive notice of what
8 action LSC takes on the proposals that they review. They can
9 acquire of LSC, but there's no indication of whether LSC is
10 required to reveal to the peer reviewers what happened to the
11 proposals that they looked at.

12 Unsuccessful applicants may get a summary of the
13 deficiencies that were noted in their application or a copy of
14 rating sheets with no identification of reviewers but there's no
15 provision to indicate why they were rejected if they got high
16 scores. They have no way of knowing.

17 There's no justification for this secrecy. There may
18 be business interests that need to be protected, things that are
19 revealed in these applications and the corporation, I am sure,
20 can devise some way to protect these things or the identity of
21 applicants if that's appropriate.

22 There's no justification for this. LSC can hide all

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1 manner of arbitrary action or subjectivity or political or
2 ideological considerations through these confidentiality
3 provisions.

4 It gives LSC staff even more control over the process.
5 It makes it clear that peer review is anticipated to be a system
6 of expensive window addressing. There's no effective input from
7 the peer reviewers because if they don't come up with what LSC
8 wants, they can be manipulated, ignored, or hidden from view.

9 This proposal should not be before this board. This
10 is not simply an effort to collect background information on
11 competitive bidding. It is an attempt to set up for the new
12 board a system that they will adopt wholesale, a system that
13 represents the views of the majority of the current board and
14 administration and it should not proceed.

15 NLADA and PAG and the programs we represent do not
16 eject competition as having no place in the delivery of legal
17 services. We do not fear competition when it is used
18 appropriately and when it is based on fair and fully articulated
19 performance standards and evaluation criteria.

20 We do not accept, however, the notion that competition
21 per se is a goal to strive for or that has a place in the
22 regular ongoing delivery of legal services. Competition should

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1 never be used to justify supplanting of a program that has a
2 history and demonstrated capacity to provide high quality legal
3 assistance in an effective and efficient manner, especially in
4 favor of some untried and untested theoretical model. Thank
5 you.

6 CHAIRMAN HALL: Ms. Perle, I just want to make a
7 comment. In the first of your comments, you did mention that
8 you all reserve the rights to make further comments. I know
9 that you were here yesterday and you heard us say that this was
10 a draft proposal.

11 MS. PERLE: Right.

12 CHAIRMAN HALL: In my mind, you pointed out a lot of
13 things that needed to be in there. You and all of the speakers
14 point out a lot of problems. I just want it understood that at
15 least in my mind, I agree those things should be addressed in
16 here.

17 A lot of the complaints you have with it seem to be
18 with the nature that could be addressed in here. In other
19 words, this proposed draft seemed to leave out a lot of steps
20 that should be taken before you choose who should get the bid,
21 before you choose who should be the people who choose who gets
22 the bid.

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1 It seems to me those steps could be put in there to
2 where the procedure could be done properly. In other words, I
3 don't see those as the major problems as much as what would you
4 do with the pro bono; would it keep coming in or would it not
5 and things of that nature. Those are the comments I'm really
6 interested in.

7 MS. PERLE: I'm not sure whether you're asking a
8 question. I think that assuming that a situation where
9 competition is appropriate -- and I'm not suggesting that this
10 is an appropriate way to approach the general funding of legal
11 services programs. I think that's what I stated at the end.

12 Assuming that there were appropriate situations under
13 which we would agree that competition could be used, I think
14 that you could redraft a proposal to take into account those
15 considerations.

16 That's a major assumption as far as I'm concerned and
17 one that has to be considered at the outset.

18 CHAIRMAN HALL: I agree with you. There are no
19 studies that have been done that say definitely that competition
20 should be on the scene, but there's none that say there
21 shouldn't .

22 I do get the feeling from a lot of speakers -- well, I

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1 think you said you feel like the board is doing competition for
2 the sake of getting rid of the current system. I hope that the
3 board members don't feel that way. I don't feel that way.
4 That's not my intention.

5 The only reason I would ever want to do it is because
6 it would provide the same quality that is provided now or higher
7 and do it at a lower cost and be more efficient. Hopefully,
8 someone will prove to me -- not hopefully, but if they want
9 competition and they want me to vote on it, they'll prove to me
10 that those things will be done.

11 I guess I wasn't asking you a question. I was just
12 trying to get an acknowledgement from you that you understood
13 that as your comments were a draft, our proposal was a draft. I
14 know that these guys worked on it for a long time and it had a
15 lot of good ideas in it and a lot of the good groundwork in it,
16 but there were a lot of technical things.

17 Does anyone have any questions for Ms. Perle, anyone
18 on the board?

19 MR. SMEGAL: My question is of Mr. Wear if he is able
20 to respond. I don't have any questions for Linda. I'm looking
21 at some material that I received -- I don't know when I received
22 it but it's got a date of May 25 and from Ms. Bozell to the

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1 board.

2 The subject is competitive bidding grants. It is 18
3 pages in length, the last page of which is what I would call a
4 flow chart of a competitive award system. I understand and I
5 think I saw a piece of correspondence Mr. wear sent to all of
6 our existing grantees to the effect that their funding ends as
7 of the 30th, the last day of September.

8 I have taken and I have written in at the bottom right
9 hand corner of this page 18 the date of 10/1/89, opposite the
10 box that says grant or contract awarded. I would like to have
11 Mr. Wear take me back through this process to get me back to his
12 first box which is LSC issues solicitations. Tell me when it is
13 we start the process of box 1 -- and there are 11 boxes -- to
14 get to the point where as of October 1 of this year clients who
15 are represented as of September 30 of this year by existing
16 programs will somehow continue to have representation and new
17 clients who come along as of October 1, 1989 will have
18 representation.

19 I'd like Mr. Wear to give me the benefit of his
20 thoughts. I assume it's his flow sheet or a flow sheet that has
21 been prepared at his direction and give me a date for each of
22 these boxes so that I can get back to the beginning, a date when

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1 all this is supposed to start.

2 MR. WEAR: Mr. Smegal, I think the correspondence to
3 which you refer was sent out in March or April. At that time,
4 it was impossible to predict when the board was going to be
5 nominated and confirmed.

6 I had a concern that we not make grants that were
7 going to impinge upon what I will call the prerogatives of the
8 board. I know that prerogatives are important to a lot of
9 people.

10 I was not interested in trying to cut anybody's
11 prerogatives off. It appears to me now that it's unlikely that
12 a new board is going to be nominated and confirmed in time to
13 initiate the competitive process.

14 It has been pointed out by a number of speakers during
15 the course of this two day hearing. There are a number of
16 technical issues and other issues that need to be dealt with on
17 this.

18 It would be my intent absent a new board being
19 nominated and confirmed prior to the Senate's August recess to
20 continue all the existing grantees until the end of the year.
21 With regard to the amount of time that an application would take
22 to work its way through the process, we did use some preliminary

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1 numbers on that.

2 I think it would take approximately 120 days. So I
3 don't envision that even if a new board were able to be seated
4 prior to the August recess that we would really be able to do
5 this, because there are a number of problems with the proposal
6 that have been pointed out here over the last two days.

7 Secondly, a new board may not be ready to move that
8 fast. I had the concern that we not cut their prerogatives off
9 one way or the other. So that was the reason for making that
10 statement in the letter about the grants.

11 I would also say to you that in the event we get into
12 a competitive bidding situation and we do it through this grant
13 proposal -- and there are changes from a current grantee to a
14 different grantee -- that there would be time to phase that
15 existing grantee out in terms of the cases that they are
16 handling.

17 It has never been the intent of the staff or myself to
18 try to move on day one from one program to another. We have in
19 our current system when we defund a program, we have a phase
20 down period.

21 I would anticipate we would use the same sort of phase
22 down period. I think that Alan Houseman and Linda Perle

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1 correctly pointed out that that is not staying in there. I
2 think that is one of the modifications that need to be made in
3 this proposal.

4 MR. SMEGAL: That was very helpful, Mr. Wear. I
5 appreciate knowing all that. I don't think it answered my
6 question, though. Maybe I can restate it. What I've heard you
7 say so far is that you anticipate this involves a 120 day
8 period, counting 31 days in August and 31 days in July.

9 Box 1, in order to be effective as of October 1, would
10 have had to start, as I calculate it, on June 3. This is now
11 June 13. I read your letter which I understand went out in
12 March.

13 I sat with you at a hearing and participated with you
14 before Senator Rudman on May 2nd when you and Mr. Wallace
15 reaffirmed your letter. It seems to me that now that June 3rd
16 has come and gone that maybe you owe it to the programs at least
17 to clarify the record as to what is going on.

18 The only thing they have heard from you is that the
19 letter of March whatever plus your testimony on May 2nd before a
20 Senate Appropriations Subcommittee. You now acknowledge that
21 this process involves 120 days which I believe, if my math is
22 correct, would had to have started on June 3.

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1 There is no board confirmed. There is no board
2 nominated. I seems to me that you, not me, owe it to the
3 programs to get some further information out to them as to what
4 you think you're doing.

5 MR. WEAR: Indeed. In fact, Mr. Smegal, any program
6 that is asked over the last three weeks has gotten that letter
7 stating that. We sent letters to a number of the national
8 support centers recently.

9 MR. SMEGAL: What does that letter say, Mr. Wear?

10 MR. WEAR: It says that absent the confirmation of the
11 board by the August recess or if the corporation is otherwise
12 unable to conduct the competition on October 1, it is my intent
13 to extend the grants until the end of the year.

14 MR. SMEGAL: Don't you have to tell them more than
15 that? If I understand the conversation you and I are now
16 having, it is impossible for there to be grant or contracts
17 awarded on October 1, 1989 as we sit here today on June 13,
18 1989.

19 It seems to me that you've got to acknowledge the
20 realities of where we are and what is going on. I think you owe
21 it to 326 programs to give them the benefit of this
22 conversation; to tell them that their funding does not end on

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1 September 31 as your letter of March 18 or whatever it is
2 suggested.

3 There is absolutely no realistic way you can continue
4 that fantasy. I think it's appropriate and I'm asking you--
5 I'll bring it to a board vote if necessary when the board meets
6 -- that we clarify the record to our programs; that their
7 funding does not end on September 31 as your only publication to
8 them suggests and as you assured Mr. Rudman on May 2nd.

9 CHAIRMAN HALL: Tom, this has gotten a little far
10 filled of our hearing. I'm under a time contract here.

11 MR. SMEGAL: I understand and I think I'm through, but
12 I just want to point out again, I'm referring to what I think is
13 the subject of this hearing lately which is this document I got
14 from the corporation. I'm referring to page 18 --

15 CHAIRMAN HALL: I had called for questions for Ms.
16 Perle.

17 MR. SMEGAL: I understand that and I believe you
18 recognized me to ask a question of Mr. Wear. I thank you for
19 that.

20 CHAIRMAN HALL: Are there any other questions for Ms.
21 Perle?

22 MS. BENAVIDEZ: I have something to say. I want to go

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1 on record that I am against this competitive bidding for grants.
2 There is nothing there that will benefit the clients. Thank
3 you.

4 CHAIRMAN HALL: Thank you, Ms. Benavidez. Any others?

5 (No response)

6 CHAIRMAN HALL: Thank you, Ms. Perle. David Dessen,
7 how are you today, sir?

8 MR. DESSEN: I'm fine.

9 CHAIRMAN HALL: Would you tell us your name for the
10 record and tell us who you are with?

11 PRESENTATION OF DAVID DESSEN

12 MR. DESSEN: My name is David Dessen. I don't think
13 I'm well known to any of you. I am a private attorney. I
14 practice in Philadelphia. I am a partner in a law firm called
15 Dessen, Moses and Sheinoff.

16 We have 23 attorneys in Philadelphia. I think that
17 you all are entitled to know something of my background so you
18 can define whatever prejudice or biases I might have. I've been
19 practicing law for 16 years.

20 I started my career with the public defender's office
21 in Philadelphia when I got out of law school. I worked there
22 for about five years. With a short hiatus on my own, I began in

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1 1979 working for the law firm that was formed at that time to
2 provide legal services to the Philadelphia school teachers pre-
3 paid legal service plan.

4 School teachers had negotiated as part of their
5 collective bargaining agreement in 1978 a pre-paid legal service
6 plan to service their some 22,000 members. I was hired as staff
7 attorney by the attorney who had the contract to do that.

8 I worked there until 1984 when, with a couple other
9 lawyers who worked there, we formed the partnership Dessen,
10 Moses and Sheinoff. Our purpose in doing that was to obviously
11 go out on our own but also to look to continue work in the pre-
12 paid legal service area.

13 Currently, our firm has the contract to provide legal
14 services to the Philadelphia school teachers who now number
15 about 20,000 members along with approximately 20 or 25 other
16 pre-paid legal service plans that we provide legal services to.

17 So I've been in the business for about 10 years. I
18 speak only for myself and for my firm today. I am active in the
19 pre-paid legal service community. I am a member of the Board of
20 Directors of the American Pre-Paid Legal Service Institute.

21 I do not speak for the institute. I do not speak for
22 anyone else in the pre-paid legal service area. I speak only

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1 for myself and my firm.

2 It occurred to us about a year ago that the work being
3 done by the field offices that are funded by the Legal Service
4 Corporation were similar to the work that we did on behalf of
5 the various pre-paid plans that we provide legal services for.

6 It specifically seemed to us that community legal
7 services in Philadelphia, your grantee in Philadelphia, was
8 doing things similar to what we were doing; that is, providing
9 high quality, volume legal services to a fixed client
10 population, if you will.

11 Theirs is much larger than ours. It seemed to us, my
12 partners and I, that we were doing similar kinds of things.
13 Then it occurred to us that maybe we could do those things as
14 well or better than the staff attorneys at Community Legal
15 Services.

16 Not knowing very much about the Legal Service
17 Corporation at that point in time or how the funding mechanism
18 worked or too many of the ins and outs of anything else, we
19 wrote the corporation and obtained a substantial amount of data
20 from the corporation on the Freedom of Information Act.

21 We obtained the original, I guess, delivery system
22 study that Congress mandated when the corporation was formed.

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1 We obtained monitoring reports that were done on community legal
2 services and the legal service programs operating in surrounding
3 counties in southeastern Pennsylvania.

4 We obtained a variety of other information about the
5 plans that were operating. My partners and I reviewed it and
6 discussed it. We had occasion to talk with Mr. Shea and some
7 other staff members at LSC just seeking more additional
8 information, I guess, last year.

9 I also spoke with, on an informal basis, the president
10 of Community Legal Services and one of the board members of
11 Community Legal Service. Our idea at that time was to consider
12 the idea of submitting a bid to CLS to actually do the technical
13 legal work that CLS employees were doing at the time; that CLS
14 would in fact remain in place and simply we would be
15 subcontracted or they would hire us to do certain or all of the
16 work that staff attorneys were doing.

17 I will tell you, quite frankly, when I approached the
18 subject with people from CLS, they were not at all interested in
19 pursuing it and thought our ideas were destructive or could be
20 destructive.

21 For a variety of reasons, we didn't pursue it much
22 further at that time. I did have occasion to have a

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1 conversation with Mr. Shea, I guess, around the beginning of
2 this year when he advised me that Congress had included some
3 language in LSC's most recent appropriation talking about
4 competitive bidding.

5 I then got, I guess, Mr. Wear's letter of a couple
6 weeks ago with the enclosed card asking if we were interested in
7 being kept abreast of that matter. I sent it back and then got
8 the proposed regulations, this little packet of information that
9 was sent out.

10 I did not have an opportunity to supply written
11 comments. It was not initially my intention to appear here at
12 all. I was at the American Bar Association Conference in New
13 Orleans this past weekend on the Access for Justice in the 90s
14 and for some things that occurred there is the reason that I'm
15 here now.

16 I believe that certainly the idea of competition in
17 and of itself is a good idea. There are a lot of -- well, some
18 people anyway who are assigning to certain people ulterior or
19 bad motives, I guess, as to why this has been floated now.

20 I don't want to address those. I don't think I'm in a
21 position to address those. I will, however, state I have no
22 intention of being part of that if that's involved. I'm here

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1 because I've had an interest during the entire course of my
2 professional career in providing quality legal services to low
3 and moderate income people.

4 I believe that the private bar has a place in doing
5 that beyond simply pro bono work or other ways that the private
6 bar has been used to date. I believe that the private bar in
7 appropriate circumstances can provide a service as good as or
8 better than that of the staff offices.

9 I don't mean to say that in all contexts and in all
10 places. The private bar can be as efficient as the staff
11 offices are, but I believe that there are certainly situations
12 where the private bar can be as efficient or more efficient.

13 By using private attorneys, we may very well be able
14 to reach more of the people that the corporation has been
15 charged with serving. I think that the comments that I heard
16 just this morning and apparently the comments that were made
17 yesterday concerning the draft regulations are correct.

18 There is no way that I, as a private attorney, could
19 submit any kind of proposal to anybody with any rationality
20 based on what is contained in the draft proposals. There are
21 too many things missing.

22 I've had no prior dealings with the Legal Services

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1 Corporation. The witness who testified before me obviously has
2 and obviously has concerns about the way the Legal Services
3 Corporation makes use to deal with people.

4 I will say only that I assume and that other members
5 of the bar would assume that if a proposal was submitted, it
6 would be dealt with fairly upon its merits and not because of
7 the people who submitted it or for other reasons.

8 My comments are premised on that assumption, an
9 assumption I hope is correct. I believe that there are
10 substantial numbers of attorneys in private practice across the
11 country who have as much of a commitment to this concept as do I
12 and see it as an opportunity as do I.

13 Certainly, other lawyers and law firms involved in
14 delivery of pre-paid legal services to other groups around the
15 country, I am sure, have an interest in it as do I. I think,
16 however, that the private bar as opposed to possibly captive
17 staff offices, while having an interest and certainly being
18 willing to participate in the program initially, could easily be
19 turned off to the program if it does not appear that it is
20 fairly and justly administered.

21 I assume the point of all of this and the whole
22 concept behind the competitive bidding idea is to have the

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1 private bar participate in this, not simply to have existing
2 grantees bid on their existing programs.

3 That hardly seems to be of much use to anybody. If
4 you are looking for the private bar to participate in this, then
5 I think you need to deal with the private bar fairly and
6 rationally because we all obviously have other practices to go
7 back to and are getting into this because we think it is an
8 opportunity for us and that we can be of some service to the
9 client community.

10 I don't think that you can clobber or coerce the bar
11 to continue to do that if they feel that they are just being
12 manipulated. I think that the only couple maybe questions about
13 the technical terms of the proposal as it now exists that I
14 would comment on is that it seems to me that at least initially
15 the three year funding cycle may be a little short.

16 Again, the proposals don't talk about the facilities
17 and what happens to the facilities of the existing grantees.
18 Community Legal Services in Philadelphia operates, I think, four
19 or five different offices around the city and obviously has a
20 substantial amount of equipment that they have purchased over
21 the course of the years to do that.

22 If the county of Philadelphia is an appropriate

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1 geographic region for an award -- and we use that for the minute
2 because I'm familiar with that and I suppose that would be what
3 I would submit a proposal on if we got that far -- am I going to
4 have to go out and rent or buy five or six different buildings
5 around the city of Philadelphia and buy equipment to fund or to
6 staff those buildings or is Community Legal Services a private,
7 obviously, entity going to sell me their equipment or assign me
8 their leases if they rent the place?

9 Obviously, that has a lot to do with the bottom line
10 cost of my proposal. If, in fact, I have to go out and buy
11 those things, I'm not sure that I would be willing to do that
12 with a three year commitment, irrespective of the question of
13 having to worry about what money Congress would appropriate in
14 each one of those three years.

15 My thought might be that at least the initial
16 commitment or the initial grant period -- five years may be more
17 appropriate than three. I'm here, really I guess, in summation
18 to say to you that I think private bar would be interested in
19 your concept.

20 I don't think that in and of itself the concept is bad
21 or the concept is inherently destructive of the purposes that
22 Congress created the Legal Services Corporation to advance. I

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1 think, however, that the corporation needs to be very careful in
2 the transition from the one to the other.

3 There is obviously a great opportunity to create a
4 great deal of harm if it is not done correctly. Anecdotally,
5 when I was down in New Orleans and this subject came up in a
6 small working group that I was attending, a couple people there
7 made a great deal of -- rephrase that -- a couple of
8 participants were quite outraged and referred to a series of
9 competitive biddings in criminal area in a variety of states
10 around the country where public defender type contracts were put
11 out for competitive bids.

12 The attorneys who were selected, apparently having no
13 interest in providing any kind of good service, hired a couple
14 of kids just out of law school and then pled all of their
15 clients guilty, creating a major to do in the local community.

16 I think this corporation would have to be very careful
17 about the people who are selected are not going to do something
18 like that and that the people who are selected have the
19 knowledge and dedication to make a fair effort at providing high
20 quality legal services.

21 I can tell you as a practicing attorney doing the work
22 that I do, this is not an easy business. It's not an easy

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1 business to be successful at. It's not a business I've become
2 successful overnight.

3 Lots of times lawyers don't look much beyond the gross
4 dollar figure that they think they're going to get from
5 something. There's always a cost side to the income side.
6 Unless you're very careful in this kind of business, that can
7 eat you up. That won't do anybody any good.

8 CHAIRMAN HALL: Mr. Dessen, can I ask you a question?

9 MR. DESSEN: Sure.

10 CHAIRMAN HALL: You do some type of pre-paid legal
11 service; is that true or not?

12 MR. DESSEN: We do -- our firm is a service provider
13 for about different pre-paid plans.

14 CHAIRMAN HALL: How does that work exactly?

15 MR. DESSEN: All right, there are a couple of
16 different kinds of plans.

17 CHAIRMAN HALL: I mean the ones that you all are
18 involved in, how does it work?

19 MR. DESSEN: That's what I'm saying. We're involved
20 in a variety of different plans. The largest plan that we are
21 involved in is a plan for the Philadelphia school teachers.
22 That plan is funded by the Philadelphia school board. I would

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1 analogize them to you, the Legal Services Corporation, they're
2 the people with the dollars.

3 It is funded on a per capita basis; that is, the
4 school district contributes X amount of dollars for each
5 employee. The money is contributed into a trust fund that is
6 administered by a majority of trustees.

7 The majority of the trustees come from the
8 Philadelphia Federation of Teachers' Union. Our firm has a
9 contract with the Legal Services trust fund to provide benefits
10 according to schedule that they promulgate and at a fee that we
11 can truly agree upon.

12 We've had a series of three year contracts with them.
13 We are now in the middle of a four year contract with them.

14 CHAIRMAN HALL: If one comes to you with a legal
15 problem --

16 MR. DESSEN: There is no charge to them. We get paid
17 from the Legal Services trust fund.

18 CHAIRMAN HALL: Is it a reduced type of rate?

19 MR. DESSEN: Yes. It's done on -- it's obviously
20 computed on an insurance concept that not all members of the
21 union are going to use the service.

22 CHAIRMAN HALL: I guess that could be considered

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1 quasi-pro bono type of practice in a way, depending on how much
2 lower it is. Do you do any pro bono work in addition to that,
3 any work for free?

4 MR. DESSEN: Some of the attorneys in our office do,
5 yes. We don't do it as an institutionally, if you will, but our
6 office --

7 CHAIRMAN HALL: You don't so it as a public service
8 type thing?

9 MR. DESSEN: We participate in the VIP program which
10 is, I guess, a sort of joint effort of both Community Legal
11 Services and the Philadelphia Bar Association. We participate
12 in that. They've assigned some cases to us, to lawyers in
13 whatever area the case is about.

14 There is another group in Philadelphia who does some
15 legal work, a sort of community activist kind of group who we
16 provide support services to. We don't provide direct legal work
17 but we let them use our facilities and telephone and stuff like
18 that.

19 CHAIRMAN HALL: Mr. Loines, did you have a question?

20 MR. LOINES: Yes. I didn't get the gentleman's name
21 from Philadelphia, but he spoke about -- these are my words not
22 his -- sort of inheriting equipment, et cetera, from the

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1 Community Legal Services program in Philadelphia which,
2 incidentally, NASDA recognizes as one of the best programs in
3 Legal Services.

4 My question to the gentleman is, would he be willing
5 to also inherit the collective bargaining agreement that exists
6 between the local --

7 MR. VALOIS: I now must advise you to seek counsel.
8 (laughter) Mr. Loines is a representative of a very fine union
9 and I'm the labor lawyer representing --

10 MR. DESSEN: When I was talking about the inheriting,
11 I was talking about -- I assumed that Community Legal Services
12 would not give us for free their equipment. They, however,
13 might sell it to us.

14 As to the question of their employees, when we
15 considered this issue last year, my partners and I were of the
16 opinion that initially they would be the most logical people to
17 approach about coming to work for us if we were going to take
18 over or submit a proposal for the legal service contract.

19 Obviously, our firm would need to expand to do the
20 work. We couldn't continue to do the work in Philadelphia with
21 our present 23 attorneys. I'm well aware that both the
22 attorneys and staff have union contracts.

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1 I don't know where that would go and maybe I will take
2 the fifth on that. I suppose that would have to be something
3 that would have to be dealt with.

4 CHAIRMAN HALL: Mr. Desson, my question to you is
5 going to be, if you all took on an award from the Legal Services
6 Corporation in a competitive bidding type of arena, would that
7 fill you up? Would you quit doing your pro bono work?

8 MR. DESSEN: No.

9 CHAIRMAN HALL: Would the attorneys in your firm that
10 do that quit or have you not discussed that or thought about
11 that?

12 MR. DESSEN: I have not discussed it or thought about
13 it but it is clear to me that we could not take on the Legal
14 Services work with the complement of attorneys that we now have.
15 That would seem to be an impossible thing to do.

16 We are not going to service however many hundreds of
17 thousand of poor people there are in Philadelphia with the same
18 number of lawyers that we currently have. We would staff it to
19 the point that we would need to staff it to service that client
20 based on the amount of money we had available, but I don't know
21 that one has to stop the other.

22 CHAIRMAN HALL: I believe you're telling me you don't

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1 think you'd do as much pro bono anymore because you wouldn't
2 have the attorneys or the time if you took on --

3 MR. DESSEN: No, I'm not telling you that at all, Mr.
4 Wallace. I'm telling you that we would hire a sufficient number
5 of attorneys based on the amount of the award of the --

6 Have I got them confused? Oh, I'm sorry. As I say, I
7 don't know any of you -- Mr. Hall, okay. That's an occupational
8 hazard of having not met any of you before.

9 No, I'm not telling you that at all. I'm telling you
10 that we would need, obviously, to hire more attorneys to do the
11 increased workload but I see no reason why we as a firm would
12 not continue to do some amount of pro bono work.

13 I don't consider the contract from the Legal Services
14 Corporation as pro bono; I mean, if you're looking at pro bono
15 as free.

16 CHAIRMAN HALL: I am. My second question to you, you
17 said you do -- who is the recipient there in your area?

18 MR. DESSEN: Community Legal Services.

19 CHAIRMAN HALL: Community Legal Services, you said you
20 did a lot of the same type suits they do. Are you familiar with
21 the types of suits they do?

22 MR. DESSEN: I'm familiar in general with what a field

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1 office does.

2 CHAIRMAN HALL: Do they do any type of suit you don't
3 do and would you be willing to take those on a contract type of
4 basis?

5 MR. DESSEN: Are we talking lawyer? What are we
6 talking? Can we do landlord/tenant work? Sure. Can we do
7 entitlement work? Sure. Can we do utility cutoff work? Sure.

8 CHAIRMAN HALL: You wouldn't want to limit your
9 contract then to just waiver divorces or uncontested divorces or
10 things of that nature?

11 MR. DESSEN: No.

12 CHAIRMAN HALL: You feel like you've been things they
13 could do?

14 MR. DESSEN: Yes.

15 CHAIRMAN HALL: What do you do to let the folks that
16 you do some pro bono for -- what do you do -- let me rephrase
17 that whole thing. If you got a contracting award, how would you
18 go about letting the poor folks in the client community know
19 where you were and the services you provided?

20 MR. DESSEN: Well, I think we would first have to
21 decide where we're going to -- I think what would need to be
22 decided is what the current community input apparatus that

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1 presently exists with CLS, what happens to it.

2 Obviously, CLS does outreach work and has the
3 community organizations and groups that they deal with. The
4 proposal doesn't at all address what happens to that apparatus
5 and what is to be done with that apparatus.

6 So I think before I could intelligently answer your
7 question, I need some idea as to what is going on with that
8 apparatus, whether that's something that would be conceived of
9 staying in place, that we could use that apparatus that is being
10 conceived as being dismantled and we would have to set up some
11 other apparatus.

12 CHAIRMAN HALL: My last question to you is, if you
13 took on a contested bid award from the Legal Services
14 Corporation and you engaged in a suit where, say, punitive
15 damages or some type of attorneys fee award is made to you, say,
16 in the amount of \$10,000 just to use a figure, would you or your
17 firm be willing to turn that \$10,000 back over to the Legal
18 Services Corporation?

19 Would you be willing to sink it back in to helping the
20 poor in the community? What would you do with that?

21 MR. DESSEN: We would certainly be willing to sink it
22 back into helping the poor in the community -- my best analogy

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1 here that I might give to you about that.

2 CHAIRMAN HALL: Do you all make any money like that
3 now in the pro bono that you do do?

4 MR. DESSEN: No. If you let me finish answering your
5 question, the amount of money that we -- the teachers are our
6 single largest client. They account for probably 60 percent of
7 our revenue.

8 However, the amount of money that we earn from the
9 teachers would not in and of itself permit us to deliver at a
10 level of service to the members of the teacher's union that we
11 do.

12 We're able to do that because we take some of the
13 money that we earn from our private type clients and are willing
14 to invest it in providing service to the teachers. Our contract
15 with the teachers, for example, requires that we make available
16 to them 14 attorneys.

17 We have 23 attorneys in the firm. Our contract with
18 the teachers is basically the dollar amount of it is predicated
19 on 14 attorneys. However, the members of the union have access
20 to all 23 attorneys. We don't create X number of only teacher
21 attorneys.

22 If a teacher calls up with an emergency, for example a

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1 woman who's been abused or battered or something like that, we
2 will find any attorney in the office who is free and competent
3 to handle that to handle that case, not whether that attorney is
4 one of the 14 teacher attorneys.

5 We would certainly do the same thing vis a vis our
6 legal service clients. They would have access to all of our
7 firm's resources. We would not create X number of Legal Service
8 Corporation lawyers and if they were too busy and we had an
9 emergency situation, that was tough and so be it.

10 So, yes, we would use attorney award money if we got
11 it and other money that we might generate or other resources
12 that we would generate from other sources for Legal Service
13 clients as well as other clients. I don't believe we need to
14 create a second class of clients.

15 MR. SMEGAL: David, how long has the Philadelphia
16 school district had a Legal Service?

17 MR. DESSEN: Since January 1, 1979.

18 MR. SMEGAL: How long has your firm been involved in
19 it?

20 MR. DESSEN: Since it began.

21 MR. SMEGAL: So that's for the last 10 years or so.
22 Do you get a lump sum at the beginning of each year to deliver

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1 these services?

2 MR. DESSEN: We get paid monthly.

3 MR. SMEGAL: Your monthly payment is based upon a fee
4 schedule or --

5 MR. DESSEN: When the plan originally began it was
6 based on a negotiated hourly rate and a combination -- and some
7 flat fees, for a will or something like that. We would submit a
8 computerized bill to the Legal Services trust fund each month
9 and we would be paid.

10 About four years ago now, five years ago, the trust
11 fund decided that it was to their interest to turn that into
12 more of a flat fee type payment, so now we're paid on a flat fee
13 basis with an amount negotiated in now a four year contract.
14 We're paid that way servicing anybody who walks in the door.

15 MR. SMEGAL: So they get unlimited legal services for
16 a flat monthly fee?

17 MR. DESSEN: There is a schedule of benefits that's
18 promulgated. That schedule basically says that for everything
19 other than domestic work, a teacher is entitled to -- a teacher,
20 spouse, or a dependent child is entitled up to 100 hours of
21 legal services a year. In domestic cases, it's limited to 50
22 hours a year. So they get those -- the individual member gets

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1 those benefits for free, whoever walks in the door.

2 MR. SMEGAL: Theoretically, you are obligated to
3 deliver 100 hours of non-domestic work per school district
4 employee per year plus 50 hours of domestic?

5 MR. DESSEN: The 50 hours would be included in the 100
6 so that if a member had used up 80 hours during the course of a
7 year on a civil case, they would have only about 20 more hours
8 that year to use towards a domestic case.

9 MR. SMEGAL: Does the school district negotiate with
10 the union with respect to this program on an annual basis?

11 MR. DESSEN: The school district negotiates the
12 contribution rate per member when the collective bargaining
13 agreement is negotiated. Currently, the school district funds
14 the program at \$125.00 per employee per year.

15 MR. SMEGAL: Do you happen to know what that level of
16 funding was on January 1, 1979?

17 MR. DESSEN: \$100.00 per year. It went from \$100.00
18 to \$125.00 in the contract negotiated in September of 1985. It
19 had been at \$100.00 from 1979 to 1985. It was increased from
20 \$100.00 to \$125.00 in the contract negotiated in September of
21 1985. It was not increased in the contract negotiated in June
22 of 1988. So it's still \$125.00.

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1 MR. SMEGAL: You indicated that the way this is
2 administered is a trust fund that has been set up with a group
3 of trustees.

4 MR. DESSEN: That's correct.

5 MR. SMEGAL: They invest the money and then they -- as
6 your bills come in, they draw upon their resources to pay you?

7 MR. DESSEN: That's correct.

8 MR. SMEGAL: Am I correct in assuming that the reason
9 the amount went up in 1985 was that the trust fund was being
10 depleted of its resources?

11 MR. DESSEN: Yes. There had been over the course of
12 time, obviously, inflation and there were also less teachers
13 covered, so a combination of both things. I think when I
14 started there were about 22,000 members of the teacher's union.

15 In the mid '80s it dropped down to about 17,000. It's
16 now back up to about 19,000. So the trust fund had less funds
17 because there less employees plus inflation ate up some of it.

18 MR. SMEGAL: If I understood you correctly, there is a
19 fee schedule that you worked out with this trust fund?

20 MR. DESSEN: There was at the beginning. The fee
21 schedule now is pretty -- although it still exists, it's
22 basically irrelevant because we're paid a flat fee each month

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1 irrespective of the work that we do.

2 Based on their prior experience with the utilization,
3 the teachers had -- both they and we became comfortable in
4 negotiating a flat fee. So if the utilization goes down a
5 little bit, we benefit. If the utilization goes up some, they
6 benefit.

7 MR. SMEGAL: If I tell you that there are 100,000 poor
8 people in Philadelphia and I'm willing to give you \$8.00 per
9 person to deliver legal services to them, do you want the
10 contract?

11 MR. DESSEN: I think that you --

12 MR. SMEGAL: I'm not going to limit it to 100 hours
13 per person.

14 MR. DESSEN: I understand that, but I think the
15 reality of things are that Community Legal Services are not
16 doing that. We'd be willing to bid and deal with it on the
17 terms that anybody else is willing to deal with it.

18 I think it's obvious that Community Legal Services
19 prioritizes and picks which cases it wants to handle and does
20 not have the resources to handle everybody in that pool. We
21 would be willing to compete on the same fair terms.

22 So, no, if you're telling me that there are 100,000

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1 poor people and I'm expected to service 100,000 poor people for
2 \$8.51 and Community Legal Service is only obligated to service
3 30,000 of those 100,000 poor people for the same \$8.51, then I'm
4 not interested.

5 MR. SMEGAL: So you would want a provision in your
6 contract with us that would allow you to pick and choose cases?

7 MR. DESSEN: I don't know whether there is such a
8 provision in your contract with Community Legal Services. If
9 there is, I would at least want the opportunity to, in my
10 proposal, put in a similar kind of restriction.

11 If there is not and it is simply that not everybody is
12 served just simply because of the practicalities of things, then
13 I want the same opportunity.

14 MR. SMEGAL: Have you ever seen a grant application
15 made by one of our grantees?

16 MR. DESSEN: Yes.

17 MR. SMEGAL: Do you understand that to contain a
18 fairly specific budget as to the number of lawyers who are going
19 to be employed, the number of paralegals, their salaries, the
20 amount of overhead involved, the cost of equipment, the lights,
21 postage and so on?

22 MR. DESSEN: It was about a year ago that I saw it. I

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1 remember that it took me about whole fairly thick loose leaf
2 folder to fit it in. I remember a series of sheets with each
3 attorney's name, his salary and all that good stuff in it. If
4 that is the procedure that everybody goes through, we are
5 willing to participate in that procedure.

6 MR. SMEGAL: So you understand then what happens now
7 is a grant application comes in and it calls for an amount of
8 money, a bottom line amount of money as a request and that's
9 based upon a certain number of people whether they are lawyers,
10 paralegals or other staff who will work full time delivering
11 services to these 100,000 people in Philadelphia?

12 MR. DESSEN: Yes.

13 MR. SMEGAL: Would you be willing to do that? Would
14 you be willing to say to us, for X dollars, I will give you 14
15 lawyers and all the staff needed to support their activities
16 full time for the next year and we will deliver as much legal
17 services as our full time activities will allow us to do?

18 MR. DESSEN: Yes.

19 MR. SMEGAL: You'll do that based upon the amount of
20 money that the Philadelphia program now gets?

21 MR. DESSEN: Yes.

22 MR. SMEGAL: You will do that based upon their staff

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1 lawyers receiving salaries in the range of \$20,000 a year?

2 MR. DESSEN: I don't think that their staff lawyers
3 receive salaries in the range of \$20,000, not at least the last
4 time I looked at that information.

5 MR. SMEGAL: Pick your own number.

6 MR. DESSEN: There were a variety of numbers. No, I
7 won't go that far. I think the point of what this is all about
8 is that potentially my firm can do it better than the staff
9 office can do it.

10 I'm not interested in replicating the staff office.
11 If that's all that you're interested in, I'm not. I'm
12 interested in having an opportunity -- and I assume that
13 Congress' wishes and the corporation's views about this is maybe
14 I can bring some more efficiency to the program than staff
15 office can.

16 I would reserve to myself the right to see what
17 efficiencies I can bring along with the promise though that the
18 quality of work that we do will be of that that the staff office
19 is doing and that hopefully the numbers of people serviced will
20 be greater than what the staff office is doing for the same
21 dollars because we can do it more efficiently.

22 So I won't limit myself to being bound to what the

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1 staff office pays or doing things exactly the way the staff
2 office does it. I'm not sure if that was the point of why the
3 hearing is being held.

4 MR. SMEGAL: Have you seen any information that would
5 allow you to judge the efficiencies of the program which, if you
6 made a bid, you would replace the Philadelphia --

7 MR. DESSEN: I've seen what's contained in the
8 monitoring reports. I've talked to some people, so I assume
9 I've seen whatever the corporation -- I had sent a two page
10 letter enunciating 15 or 20 different things that we would have
11 liked to see.

12 We eventually got most of them. We didn't get the
13 union contract. So I've seen what I've been allowed to see.
14 Based on what I've seen is what I know about the staff office.

15 MR. SMEGAL: Did any of that information allow you to
16 form a judgment as to efficiency of that program?

17 MR. DESSEN: Some, yes.

18 MR. SMEGAL: From that judgment, you believe that you
19 and private practice can be more efficient?

20 MR. DESSEN: I believe that there are ways that we can
21 be more efficient, yes.

22 MR. SMEGAL: Can you name several?

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1 MR. DESSEN: That's --

2 MR. SMEGAL: Can you name any?

3 MR. DESSEN: I would suspect from the sense I get from
4 the monitoring report, we are substantially more automated than
5 they are.

6 MR. SMEGAL: You indicated with respect to the
7 servicing of the school contract, the school teacher's contract,
8 that although they represent 60 percent of your revenue, they in
9 fact represent substantially more of your work?

10 MR. DESSEN: Not particularly. They probably
11 represent a reasonable number of or people we -- probably other
12 than the teachers service groups that maybe in total represent
13 another between 10,000 and 15,000 individuals; some located in
14 Philadelphia, some located throughout Pennsylvania.

15 MR. SMEGAL: Are you prohibited in any way in the
16 representation of these teachers in this pre-paid legal plan?

17 MR. DESSEN: I don't understand the question.

18 MR. SMEGAL: For example, fee generated cases?

19 MR. DESSEN: No.

20 MR. SMEGAL: Do you represent them in fee generated
21 cases?

22 MR. DESSEN: We can represent them in cases that are

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1 not covered by the legal service plan. We can represent them in
2 personal injury cases. We can represent them in worker's
3 compensation cases.

4 We cannot represent them in cases against the school
5 district or against the teacher's union. We cannot represent
6 them in cases that have to do with income producing matters
7 because of what is now expired Section 120 of the Internal
8 Revenue Code and the regulations that IRS promulgated as part of
9 120.

10 MR. SMEGAL: How frequent are your opportunities to
11 engage in fee generating matter for this pre-paid legal group?
12 Is that a common thing?

13 MR. DESSEN: We get some.

14 MR. SMEGAL: How big is the school district staff?

15 MR. DESSEN: There are about 20,000 teachers, 20,000
16 employees.

17 MR. SMEGAL: Do you have any idea how many personal
18 injury cases your firm might have handled for them at any
19 particular year or over a period of time?

20 MR. DESSEN: I would guess over the last couple of
21 years that we've handled 200 or 300, maybe a little more.

22 MR. SMEGAL: Is that a significant part of your

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1 practice?

2 MR. DESSEN: We have basically 1 out of 23 lawyers who
3 does personal injury work.

4 MR. SMEGAL: Does 200 or 300 cases?

5 MR. DESSEN: No, you asked about the teachers. We are
6 not simply -- the teachers are not our sole and exclusive
7 clients.

8 MR. SMEGAL: If our grant to you said you are excluded
9 from doing any fee generating work for any of the people in the
10 group to whom we are directing you to represent, would you be
11 willing to accept that condition?

12 MR. DESSEN: That's one of the things that obviously
13 the proposed regulations don't address. I said at the beginning
14 that based on what's in these regulations, I'm not in a position
15 to submit a proposal.

16 If that was a prohibition, as I understand it is a
17 prohibition with the existing grantees, we would consider that
18 in deciding whether or not we wanted to submit a proposal. I
19 don't have an answer to you for that case.

20 I do have, however, a comment about where you're
21 going. I assume that those prohibitions when they were
22 initially enacted were there to appease the private bar; that

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1 the private bar would certainly, having yelled and screamed that
2 all of a sudden they were now going to have to complete with
3 Legal Service Corporation grantees --

4 So that it was made clear, I assume, at the beginning
5 that the Legal Service Corporation grantees did not take fee
6 generating cases, whether they personal injury cases or other
7 kinds of fee generating cases.

8 That's been, as I understand, the prohibition since
9 the beginning. If you make this program available to the
10 private bar in general, that is anyone who has some interest as
11 do I, to bid on these contracts, I'm not sure that you haven't
12 vitiated to some extent the private bars' objections.

13 They are now getting a shot at doing it. If they don't
14 want to do it, that's their problem or some other lawyer in
15 Philadelphia doesn't want to bid on that, that's his problem.
16 If I do, I do.

17 It seems to me that if the board was considering these
18 things, a more creative kind of approach might be to permit
19 whoever you gave the award to to take these kinds of cases and
20 require them to reinvest part of the fees that they earned off
21 of those into providing legal services.

22 If the point of all of this is to reach as many people

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1 as you can, it seems to me that you want to try and marshall as
2 much resources or as many resources as there are out there.
3 Congress is going to appropriate X number of dollars but there
4 are other numbers of dollars out there in the world that can be
5 raised.

6 You may want to consider using some of those dollars
7 or forcing whoever it is that is getting your money to use some
8 of those dollars and turn them back around to service more
9 people as opposed to just outright prohibiting doing the cases,

10 If that was part of the deal, we would consider it and
11 decide whether to submit a proposal.

12 MR. SMEGAL: Let me ask you a question along those
13 lines. In San Francisco, we have a public golf course called
14 Harding. The way you get a starting time at Harding is you call
15 the starter and he arranges for you to play golf at Harding.

16 The starter is selected by a bidding process by the
17 city and county of San Francisco where the individuals who want
18 to be a starter bid, pay money to be a starter because being a
19 starter allows you to get a lot of other income.

20 How much do you think it would be worth to the private
21 bar to have this captive group of clients -- what would you be
22 willing to pay me, me being the Legal Services Corporation, for

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1 the right to represent all these people in personal injury
2 matters?

3 This is the kind of thing, of course, the private bar
4 -- I'm in it and you're in it and we know what it's all about.
5 One of the things -- you can be the greatest lawyer in the
6 world, but if you don't have any clients, you're not worth a
7 hell of a lot.

8 A lot of people spend a lot of money being rainmakers.
9 Here's an opportunity now. We're going to give you a captive
10 clientele of 100,000 people from the city and county of
11 whatever. It consists of how much you are going to pay us for
12 it.

13 MR. DESSEN: I have no idea.

14 MR. SMEGAL: Would you be willing to consider it?

15 MR. DESSEN: Yes.

16 MR. SMEGAL: Thank you. I have no further questions.

17 MR. WALLACE: Mr. Chairman, I have a request. After
18 two weeks of pneumonia and a day in court, I'm better but not
19 great.

20 The request is that I don't want to take up any time
21 with it now because we are a half hour away for our next meeting
22 as it is.

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1 MR. DESSEN: I apologize.

2 MR. WALLACE: That's all right. I appreciate your
3 testimony and I appreciate your comments that the regulations do
4 not provide you the information that you need to make an
5 intelligible bid. You've got to buy a couple of things.

6 What provisions can be made for the assets and
7 predecessor grantee? Whether or not you would be entitled to
8 get take fee-generating cases, how priorities are set and Mr.
9 Loines I think has identified a good issue about it succeeding
10 to union contracts.

11 There may be an easy answer to it. I'm not a labor
12 lawyer so I'm sure somebody would like to know if they were
13 going to inherit the union contract. I would very much
14 appreciate it if you could, in the next few weeks, give us some
15 more ideas in writing about precisely the things that you would
16 need to know that we would need to put into this regulation for
17 you to give us an intelligent bid.

18 If we are going to do this thing, people like you
19 ought to have the information you need to make a bid. If we are
20 not giving you the information you need, then we're running down
21 a blind alley.

22 MR. DESSEN: I'd be happy to give you whatever

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1 thoughts I have.

2 MR. WALLACE: I appreciate that. That's my only
3 request, Mr. Chairman.

4 CHAIRMAN HALL: Thank you, Mike.

5 MR. SMEGAL: I do have one other comment, David, and
6 that's that you indicated you are not prepared to make a bid
7 right now. I might suggest to you in view of the conversation I
8 had with Mr. Wear a little earlier, you're already ten days
9 late. (laughter)

10 MR. DESSEN: I wasn't even prepared to come here as of
11 last Friday.

12 CHAIRMAN HALL: I think Mr. Valois has something.

13 MR. VALOIS: Most of the questions that I have have
14 been answered by you either in your presentation or in response
15 to questions from other people.

16 When I listened to Ms. Perle this morning, I wrote
17 down about five subjects that are very important to her and also
18 very important to me. High quality of legal services, you've
19 said that you believe you can supply them equal to or better
20 than they are presently being supplied.

21 Another subject which is troubling is local control.
22 I assume from one of your responses that if the present legal

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1 community services priorities were written into the contract and
2 you bid on it, obviously you would follow those.

3 As they change from time to time, my guess is that
4 they'd be changing the bid either modification to a contract or
5 negotiations for a new contract and so forth. You've identified
6 certain areas in which you'd have some problems.

7 Efficiency, you've addressed. Economies of scale is
8 something that has been raised over the last couple of days. I
9 think you've addressed that. I wanted to ask you whether -- if,
10 for instance, we were to say we would like to put out all of one
11 subject area for bid, housing, would that be of any interest to
12 you or would your guesstimate be too small?

13 MR. DESSEN: No.

14 MR. VALOIS: All of the domestic cases or all of the
15 something else.

16 MR. DESSEN: I think that both myself and other
17 lawyers in my position and the corporation are finding their way
18 with this concept. Nobody has done it before. You haven't done
19 it before. We haven't done it before.

20 I'm certainly willing to and my firm is willing to
21 explore whatever concepts and ways you think are appropriate to
22 do something. So, sure, we'd be willing to talk about just

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1 doing housing or just doing domestic cases or just doing
2 landlord/tenant cases.

3 We'd be willing to talk about just doing cases in west
4 Philadelphia or just doing cases in northeast Philadelphia. I
5 don't think anybody at the moment, certainly not myself, have
6 enough information to tell you whether that makes a great deal
7 of sense or that doesn't make a great deal of sense and probably
8 takes a whole lot more thought and looking into it. As a
9 concept, absolutely.

10 MR. VALOIS: We had a Professor testify yesterday and
11 he gave us some ideas about the structure of economic theory
12 that he thought might make some sense in this proposal that
13 we're talking about.

14 One of his ideas was that it would be necessary for
15 the first time that a contract to provide legal services was
16 awarded to award it to at least two bidders so that we, the
17 corporation, would then be able to compare performance and all
18 the rest of it between two bidders in the same service area.

19 Would that be something you would also be willing to
20 take a look at if that came about?

21 MR. DESSEN: Sure. I think that you -- from our point
22 of view, there is some minimum size that you need to have for

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1 this thing to make economic sense. Assuming you're above that
2 minimum size, sure.

3 MR. VALOIS: The last subject I wanted you to tell us
4 whether you've even thought about and if so what your thoughts
5 are is what happens, as Ms. Perle said and as we are all aware-
6 - lawyers have continuing obligation to represent clients in
7 cases beyond some change in the lawyers employment situation.

8 What happens at the end of your five contract, should
9 you get one, with all of the cases that are pending at that
10 time? Have you given any thought to that?

11 MR. DESSEN: Yes. I mean, we have. We've had only
12 one small experience with it. One small union that we provide
13 legal services for now moved their contract from a previous
14 service provider to us.

15 So we're the second. We basically inherited all of
16 those cases. All those ongoing open cases were transferred to
17 us. The other law firm, where appropriate, entered five
18 withdrawals of appearance.

19 We reviewed them and gave them to our lawyers who then
20 picked up the representation. That was a limited number of
21 cases. It seems to me that you have sort of two alternatives.
22 One, either the new grantee takes over all of the existing case

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1 load from the existing provider and starts from there; or the
2 Legal Services Corporation funds the existing provider for some
3 period of time with the view of wrapping up as many of the cases
4 as can be wrapped up.

5 Then we or the new people get what's left. It's
6 obvious that you can't leave a client who is involved in
7 litigation unrepresented. That case has to go someplace and
8 somebody has to go to handle the case.

9 No court is going to let anybody out of it. It would
10 be wrong to simply strand somebody who is in the middle of
11 litigation. So one way or the other, it's got to be handled.

12 MR. VALOIS: There are two more alternatives. One is
13 that you have a mixture of those two things. The other problem,
14 it seems to me, is that somewhere along the line I've always
15 thought it was important to consult the client about who his
16 lawyer was going to be. He may want to stay with the first
17 provider or the second provider or whatever.

18 I just want to thank you for coming. You've obviously
19 studied the subject some. I'm also in private practice. So
20 none of your responses particularly surprised me. I think
21 you've been candid with us an forthright and I appreciate your
22 interest.

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1 MR. DESSEN: Thank you.

2 MR. SMEGAL: Blakely, I apologize. I don't want to
3 belabor this. I have the same problem Mr. Wallace has. I have
4 a plane to catch. We have another meeting. Two things came to
5 mind. One, I'm going to direct to Mr. Wear.

6 With respect to Mr. Valois' comment regarding high
7 quality representation, which we all try to do, in the
8 representation of the school district, is there some evaluation
9 process that the Board of Trustees or the trust fund does with
10 respect to the way you all deliver legal services? How much
11 time do you spend in that process with them?

12 MR. DESSEN: There is an administrator that the
13 trustees appoint to monitor the day to day operation of plan.
14 That person deals with clients who have some problem, brings
15 them to our attention and we work to resolve them.

16 She makes reports to the trustees. She goes out and
17 visits each school pretty much during the course of a year
18 seeking comments and problems. We provide utilization
19 statistics to the Board of Trustees.

20 We do not sit with the Board of Trustees at their
21 meetings so I can't tell you what formal procedures, if any,
22 that they go through. If they request information from us, we

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1 supply it.

2 They do not currently have a formalized type of review
3 procedure. When the plan first started back, I guess, through
4 about '84, the Board of Trustees would randomly select cases and
5 ask us to give them the summaries, obviously without the
6 client's name, as to what we did and that kind of stuff and we'd
7 review those.

8 The Board of Trustees at one point considered a peer
9 review process of finding some lawyers in Philadelphia or lawyer
10 or judge to look through some of the files. They never, after
11 discussing it, implemented that plan.

12 MR. SMEGAL: This woman is a full-time employee?

13 MR. DESSEN: She is a full-time employee of the trust
14 fund, yes.

15 MR. SMEGAL: Thank you. My other question: Mr. Valois
16 raised the comparative bidding aspect. I recall being asked by
17 this corporation to hand out some checks down at Orange County
18 several years ago for the purpose of having that kind of study
19 done, Bob.

20 Unless I have missed a mailing, I am still waiting for
21 the results of it, Mr. Wear.

22 MR. VALOIS: There was a Professor here from --

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1 MR. SMEGAL: No, that's a different one. That's San
2 Antonio. I'm talking about Orange County, California.

3 MR. VALOIS: There was a Professor here from the
4 University of California at Irvine here yesterday who had a few
5 words about that.

6 MR. SMEGAL: On the subject of that particular survey?

7 MR. VALOIS: I think so.

8 MR. SMEGAL: I would very much like to have the report
9 that I have been waiting now for --

10 MR. EAGLIN: He indicated that his comments did not
11 make it into this. He said he sent them, but he did not find
12 them in this collection.

13 MR. SMEGAL: I'm talking about the corporation's
14 evaluation of the checks -- the work that was done, the
15 comparative -- voucher and a contract in the staff attorney
16 program run by Bob Cohen down somewhere in Los Angeles County.

17 I keep thinking Orange County. The reason I think
18 that is because I was standing in Disneyland when I passed out
19 the checks. I am yet to be made aware of the results of any of
20 that, Mr. Wear. Do I ever get a report?

21 MR. WEAR: Mr. Smegal, I'll be glad to take a look at
22 it and see -- the impression I had from the Professor who was

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1 here yesterday was that he was still working on that and trying
2 to gather up some information. I'll be glad to take care of
3 that.

4 MR. SMEGAL: He was the one responsible for that
5 particular program?

6 MR. WEAR: I'm not sure.

7 MR. UDDO: He wasn't responsible for it.

8 MR. VALOIS: His name is Meeker.

9 MR. UDDO: He was hired by some other program there to
10 evaluate the corporation's evaluation as I understand it. I
11 mean, he was a critic of the report, which report Tom is asking
12 for. I don't think we've seen the report yet.

13 MR. WEAR: Let me get it out to you as soon as I'm
14 able to research it and see what our situation is.

15 CHAIRMAN HALL: Tom, will you be willing to take that
16 up with him later?

17 MR. SMEGAL: I don't want to discuss it now. I just
18 wanted to bring it because Bob raised that point with David here
19 about whether he'd be willing to have his work product
20 comparatively bid with others. It just brought to mind the fact
21 that I hadn't see the report on the time we tried to do that.

22 CHAIRMAN HALL: I think I'm going to recognize Mr.

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1 Wear with one question and then we may have a couple super brief
2 comments, but we're not going to be able to do everything fully
3 I'm afraid. We'll have to take it up another day. Go ahead,
4 Mr. Wear.

5 MR. WEAR: Thank you, Mr. Chairman. Mr. Dessen, one
6 of the things that has been considered with regard to this
7 bidding process is a keeping of time in regard to the handling
8 of cases. If that were in the request for proposal or in the
9 regulations, is that something that you could accommodate?

10 MR. DESSEN: We do it now and I see no reason why we
11 wouldn't continue to do it.

12 MR. WEAR: So you do keep time on those cases that you
13 handle?

14 MR. DESSEN: Yes.

15 MR. WEAR: I see. I don't believe I have any other
16 questions. Mr. Chairman, thank you very much.

17 MR. SMEGAL: I missed the beginning. Are you paid
18 based on the time?

19 MR. DESSEN: No.

20 CHAIRMAN HALL: Ms. Shinn, if you will make this in
21 the nature of a comment and not question if possible.

22 MS. SHINN: Whenever and if you go to competitive

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1 bidding, I think there should be some type of a question or
2 something on your request for proposal that indicates or asks
3 the corporation or the law firm that is submitting the
4 application what other types of programs that they administer.

5 According to this book, Philadelphia has 340,517 poor
6 people. You can figure that 75 percent of them are children and
7 at least 1 percent of them are going to have some type of school
8 problem that year. What would he do if he had a child with a
9 problem when he's representing the teachers.

10 CHAIRMAN HALL: I think Ms. Newsome had her hand up
11 that she wanted to make a comment too. Did you want to make a
12 comment?

13 MS. NEWSOME: I'm sorry. I really wanted to make my
14 comment to the attorney, but he left. I don't know how every
15 other client -- I wanted to ask him how much were he getting an
16 hour to represent these teachers and how could he sit here from
17 looking at a refunding application and say he could do much
18 better than the attorneys that are already representing legal
19 services.

20 CHAIRMAN HALL: I think that's a good question. I
21 think that's a lot of my questions too pointing in that
22 direction. I think the majority of Mr. Smegal's questions were

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1 pointing in that direction. We tempted to get some type of
2 answer out of him.

3 If there's no further witnesses at this time, I'm
4 going to ask for a motion to adjourn.

5 M O T I O N

6 MR. VALOIS: So moved.

7 CHAIRMAN HALL: Second?

8 MS. MILLER: Second.

9 CHAIRMAN HALL: All in favor, say aye.

10 (A chorus of ayes)

11 CHAIRMAN HALL: Opposed, no.

12 (No response)

13 CHAIRMAN HALL: The ayes have it and we're adjourned.

14 MR. WALLACE: Let me just announce we were originally
15 planning to get the board back in here for public session at
16 1:30. I consider that to be entirely unrealistic at this point.

17 (Whereupon, the meeting of the Provision for the
18 Delivery of Legal Services was adjourned at 12:45 p.m.)

19 * * * * *

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