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LEGAL SERVICES CORPORATION
COMMITTEE ON THE PROVISIONS FOR THE
DELIVERY OF LEGAL SERVICES

September 5, 1985

Commencing at 9:00 a.m.

Twin Bridges Marriott
333 Jefferson Davis Highway
Arlington, Virginia 22202

Committee Members Present:

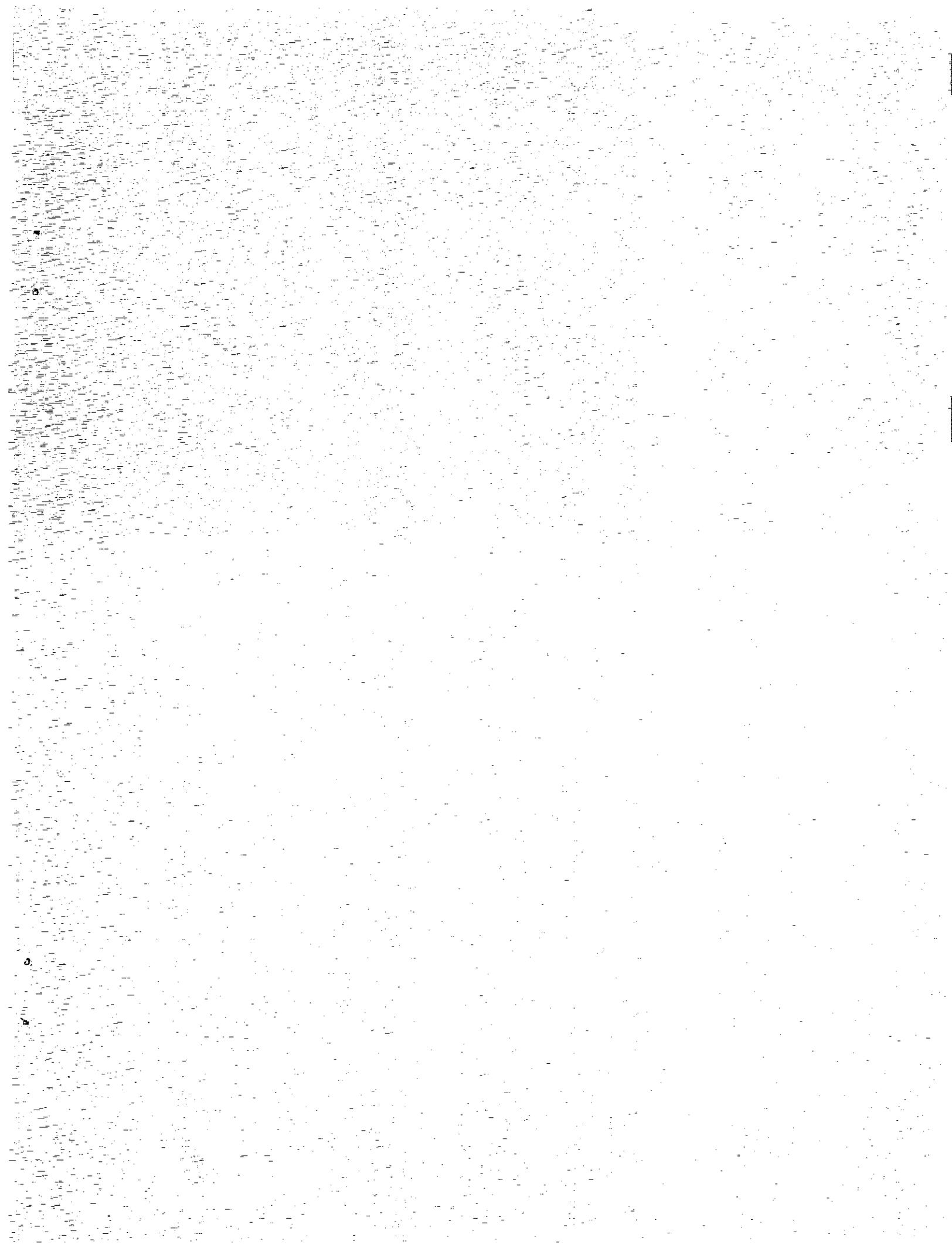
Robert A. Valois, Chairman
Hortenciz Benavidez
LeaAnne Bernstein
Claude G. Swafford
Basile Uddo

Board Members Present:

Lorain Miller
Thomas Smegal
Pepe Mendez

Reported by:

Christina A. Carter



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I N D E X

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SPEAKER

PAGE

Keith Osterhage	7
Terry Roche	21
Gerry Singsen	49
Marjorie McDiarmid	67
Eric Sirulnik	87
Charles Moses	95
John Mola	107
Sam Milkus	122
Dan Rathbun	128
Raymond English	132
Eleanor Eisenberg	153
Bob Rhudy	154

P R O C E E D I N G S

1
2 THE CHAIRMAN: This is a meeting of the Committee
3 on the Provisions for the Delivery of Legal Services,
4 September 5, 1985, 9:10. We're meeting in the Twin Bridges
5 Marriott. All of the members of the Committee are present,
6 and other members of the Board are also present.

7 The agenda is in order. Do we have a motion with
8 respect to the agenda?

9 MS. SWAFFORD: Move the agenda be adopted.

10 THE CHAIRMAN: Hear a second that it be adopted?

11 MS. BERNSTEIN: I second it.

12 THE CHAIRMAN: All in favor of adoption of the
13 agenda?

14 (Committee voted in the affirmative.)

15 THE CHAIRMAN: Ayes have it. Have everybody had
16 time to read the minutes?

17 MR. UDDO: I'm reading them now.

18 THE CHAIRMAN: Dan, while Basile is finishing the
19 minutes, you wanted a minute for an announcement?

20 MR. RATHBUN: I just wanted to introduce to the
21 Committee the national training coordinator, who will be
22 hosting a display in the adjacent room. If she might have a
23 minute or two to speak to the Committee.

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1 MS. HEINY: My name is Cynthia Heiny. I'm the
2 national training coordinator for Legal Services Corporation,
3 and I'm very pleased and excited to be able to ask you to join
4 us at any time that's convenient during the day until about
5 2:30 next door. We have a demonstration of four systems of
6 interactive videodisks.

7 Each of them is a separate system that has some
8 special training merit, and I think you may find them quite
9 interesting. One of them I believe you will be interested in
10 particularly relates to legal services kinds of work. It is
11 the New York University experiment with interactive video.
12 And it is designed to teach the Federal Rules of Evidence for
13 people in the legal services clinics so that you can come
14 over, and there will be three specific demonstrations at
15 various times. Mr. Frank Gross will be demonstrating this.

16 Another system deals with medical technology.
17 It's rather a breakthrough system because it uses voice-
18 activated technology. You just simply talk to it and respond
19 to it and it responds back. It's like controlling your
20 television by talking to it. And it's designed through the
21 National Library of Medicine to help third-year medical
22 students learn to interview patients and take care of their
23 entrance into the hospital and control their case. I think

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1 there is a direct application to legal interviews. The
2 demonstration there will not be held in the morning, but
3 around 11:30 to 12:00 we will have one demonstration. So you
4 might be interested in catching that.

5 The other one that is listed on your invitation
6 is Dr. Nat Canaan from INTELMAC. INTELMAC stands for
7 Intelligent Machines Corporation. It's basically an
8 artificial intelligence company that makes systems work.

9 They are also used in voice-recognition technology
10 so that you can see how that works to control your PC or other
11 technology. I have not seen the program. It's designed
12 especially for you today.

13 The fourth one, which is not on your program, is
14 a system from Digital Controls, and it is an interactive disk
15 player that is to plug in beside your personal computer to
16 teach applications packages. And it's my understanding that
17 you can learn Lotus 1-2-3, d Base II, something like seven
18 programs. It will walk you through the applications packages.

19 All four systems will be demonstrated in the room
20 next door, and their designers will be there to answer your
21 questions. Thank you.

22 THE CHAIRMAN: Thank you.

23 MR. UDDO: I would move the adoption of the minutes.

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1 MR. DAUGHERTY: Do you have a new set of minutes?

2 MR. UDDO: Not the one in the Board book, but the
3 recent copy.

4 MR. DAUGHERTY: Unfortunately, there was a
5 substantial delay in the arrival of the transcript from your
6 meeting in Detroit. The court reporter who covered that
7 session did not return her transcript to us until approximately
8 two weeks ago. The minutes that you have in the Board books
9 were published from notes and recollections of staff members.

10 The loose copy that you have today, the last
11 several pages in particular differ because it was prepared
12 from that transcript.

13 MR. UDDO: It's those minutes that I move the
14 adoption of.

15 MR. MENDEZ: Mr. Chairman?

16 THE CHAIRMAN: Yes, sir. Mr. Mendez.

17 MR. MENDEZ: Some of the last few pages don't jibe
18 with my recollection and are not really in close correspondence
19 with the transcript. I've been reading the transcripts of the
20 hearing over. And I would ask -- I'm not a member of your
21 Committee, but I would ask that this be deferred for a couple
22 of hours so that I can make my notes about how I think they
23 most appropriately ought to read.

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1 THE CHAIRMAN: That's suitable to me. Fine.

2 MS. BERNSTEIN: I've got some problems with it,
3 too. But I hadn't read all the way through it.

4 THE CHAIRMAN: All right. We'll postpone adoption
5 of the minutes. Mr. Roche?

6 MR. ROCHE: Mr. Chairman, may we ask that whatever
7 comes out in the way of revised minutes be published in the
8 next Board book that's distributed to the field, please?

9 THE CHAIRMAN: We'll at least read the corrections
10 into the record and make copies available to anybody who
11 requests them.

12 We'll delay the minutes until later.

13 The next item is Case Service Reporting System. I
14 think that's Mr. Osterhage.

15 MS. OSTERHAGE: My name is Keith Osterhage. I'm
16 the manager in the Program Development and Substantive Support
17 Unit in the Office of Field Services for the Corporation.

18 I've appeared before the Board on a number of
19 occasions discussing the issue of CSR, and incident to that
20 the issue of performance measures or addressing performance
21 issues.

22 On June the 7th, a group of field program met
23 with the Corporation to discuss their involvement in a pretest

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1 activity for a revised CSR system, in an attempt to improve
2 the system they had with better definition and a little bit
3 different format of reporting.

4 On July 1, a newly formed CSR Advisory Panel,
5 consisting of staff personnel, regional directors, and field
6 program representatives, convened at the Corporation, and they
7 too addressed the issue of CSR; what it served to do for us;
8 what potential problems were; what we could do to address
9 those problems and improve the system.

10 The materials and minutes from the meetings of the
11 Pretest Committee and the Advisory Group have been forwarded
12 to the Board on August 1st. Attached to those materials and
13 subsequent to that meeting, I've also forwarded all comments
14 and correspondence and letters received from the various
15 participants of those meetings.

16 I think both of those meetings were very, very
17 constructive and, as a staff person working with those groups,
18 I want to commend them and thank them for the time that they
19 expended and the effort that they have spent, and the valuable
20 contributions they have made in helping frame the problems
21 and the situations and the options.

22 At the same time, as we begin our discussion today,
23 and as you have reviewed those materials, there is not clear

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1 unanimous agreement among all parties as to which options,
2 which directions, we should move.

3 I want to go over it very briefly for you this
4 morning, in addition to the materials you've already
5 received, six points or six options for discussion. And
6 then we've also assembled for you a group of speakers to
7 highlight certain points and concerns.

8 Beyond that, you may also wish to entertain
9 additional comments, for I would stress once more, there is
10 a wide range of opinions on these issues.

11 As we began this task, and as we had several
12 meetings, it became very apparent to both staff and to field
13 representatives, that one of the fundamental problem -- in
14 fact, probably the clearest level of agreement that we all
15 have -- one of the fundamental problems is that it's been a
16 number of years since clear instructions and since adequate
17 training have been provided to field programs to ensure that
18 we're all reading the instructions and interpreting the
19 definitions and codes in a uniform fashion.

20 This is due to staff turnover or lack of frequent
21 training. We have very much a problem in this regard. And
22 our very first option is the task before us of attempting to
23 improve a set of definitions; working with the field to

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1 improve those definitions; and then making sure that we get
2 uniformity in terms of interpretations of those definitions.

3 As an example, when our field group met together,
4 even among the people in that group, we realized that different
5 program directors counted different types of activities, and
6 other program directors would not count the same activities.

7 This leads very much to discrepancies in reporting;
8 some programs getting credit for virtually everything; other
9 programs who didn't think they should report that are not
10 getting their fair share of credit.

11 So the historical data base that we have since
12 time has elapsed, training has waned, we are increasing the
13 errors we show, I would think, in terms of the data base.

14 One of the very first options we're requesting is
15 that we go forward with some way of improving and attaining
16 uniform definitions for our existing or any revised CSR.

17 The second problem that has been addressed from
18 time to time is the frequency of turn-around in CSR reports,
19 the errors in CSR reporting both by field programs and by
20 the Corporation, due to entry error, the loss of paper, the
21 loss of reports, or human error when the data is entered at
22 the field program level or when the program materials are
23 forwarded to the Corporation, and there again the option for

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1 human error at the Corporation.

2 In order to address this situation, we have
3 considered the option of providing a minimum level of
4 automation for all field programs that the Corporation would
5 work to ensure that this would be accomplished, and those
6 programs who currently do not have a minimal capability, we
7 would make arrangements to provide for that.

8 The advantage would be to put all programs on a
9 minimum footing in terms of automation capability. Moreover,
10 this equipment could be useful to the program beyond use of
11 the system by CSR network.

12 We would like you very much to consider that. We
13 also think such a system would speed the timeliness of
14 reporting of CSR to the extent that if electronic transfer
15 mechanisms were used, such as a telephone modem, local
16 programs would store their data with appropriate software
17 and summary or cluster reports of that data directly to the
18 Corporation's computer, thereby eliminating the human error
19 or the loss of paper when all those materials are normally
20 forwarded to the Corporation and reentered in the
21 Corporation's computer.

22 A third point that we would request of this
23 Committee as a Board would consider is the issue of giving

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1 credit to field programs for the other activities that
2 they're engaged in. To the extent that we have examined
3 potential rankings of programs in terms of outcome measures;
4 what are they producing; what are they doing; our CSR
5 program gives credit to programs for cases closed.

6 Programs, we're all aware, are engaged in numerous
7 other activities. And many of the programs have come forward
8 and called my office, as have many of the people on the
9 advisory panel, and said let's develop some sort of way of
10 measuring or producing activity codes whereby we can also
11 give credit to programs for those other activities besides
12 just a closed case type of measure.

13 The fourth option that we have discussed has
14 been a fairly controversial one, both for staff and for
15 field programs. This is the issue of disaggregate data
16 collection versus aggregate data collection.

17 Aggregate data collection as it stands now
18 simply means that the Corporation receives summary totals.
19 The program will report to us that they did 100 cases; that
20 of those cases, 25 were this type or 32 were this type or 47
21 were this type. They also report demographic data in that
22 fashion and the reason for closure.

23 In turn, the Corporation tabulates all the

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1 programs together so that we can produce a practical or a
2 summary total. What does Legal Services nationwide produce
3 in summary fashion.

4 That data, beyond macro-sense, a summary aggregate
5 sense, is not as rich or as useful, we don't feel, either to
6 the Corporation or to programs.

7 In order to achieve a more useful data base, a
8 richer data base, we have considered the idea of requesting
9 disaggregate data. That simply means that for each activity
10 and each closed case, a line of information is recorded and
11 stored by the program. And to the extent that it's stored
12 case by case or activity by activity, that information can
13 be arranged by the software on the computer to make more
14 useful and meaningful reports, rather than just saying you
15 did a hundred programs, we can group programs by case item
16 closure. And potentially by any weighting scale, in the
17 event we move toward the weighting option.

18 The issue of where disaggregate data should be
19 located or reported is another difficult aspect of this
20 option. If all programs were automated to a minimal level,
21 we do not feel that it would be necessary for a lot of
22 paper to be generated, nor do we feel that that information
23 either on paper or electronically, would all have to be passed

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1 over to the Corporation in Washington.

2 Local programs would maintain control of their
3 disaggregate data on their own personal computer data base.
4 The software package we would like to construct would enable
5 them to store that data, and the software package would also
6 enable the data to be transmitted to us in summary fashion
7 and possibly in a reporting fashion, which would cluster
8 and group data in closure codes, not demographically, which
9 would make it more useful.

10 The fifth option, which we have for consideration,
11 and which was discussed in the materials we've earlier
12 presented, is the idea of weighting cases and activities,
13 if in fact we're going to give credit for other activities.

14 This is an attempt to address the problem of
15 when we do make a comparison of a program to itself or a
16 program to other similar programs, or to the extent a
17 program is beyond a wide range of norms for a given
18 activity or case, we have no way of weighting.

19 Three programs, all producing a hundred cases,
20 even if they're the same case type, but with different
21 closure codes, we have no way of examining and saying that
22 those programs are the same or different.

23 Field programs, once again, have contacted my

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office and said the staff, to the extent that staff of the Corporation has attempted to rank order programs or look at how good, that sometimes those methodologies were unfair because it ignores that fact.

Among the weighting options to be considered are three or four basic concepts. One is a purchase of service type of arrangement. I recently worked with United Way of America and had several meetings with them, at their headquarters here in Alexandria, Virginia.

They, too, as a funding source and in conjunction with local entities, have attempted to address this problem. In a number of locales, although a limited number around the country, where they have funded legal service, legal aid type organizations, they have entered into purchase of service agreements where they have actually tied funding to some sort of output measure.

Such as, they would negotiate with the provider to provide X number of these case types, Y number of those case types, for an agreed-to, fixed price. And they would budget that across the year and provide funds on a pro rata or per monthly basis.

That ties output directly to funding. It is not widely used. It could be somewhat awkward in terms of

1 negotiating all case types and activities. But it is an
2 option some organizations consider.

3 A second type of weighting would be a unit of
4 service. And that would simply be to devise a weighting
5 scheme which, although it could be viewed as artificial,
6 would simply identify for all programs the weights we would
7 attach to different case types or closure codes or
8 activities, so they would know that doing such an activity
9 would have a multiplier factor, depending on the size of
10 the weight, whether it would be one point or two points or
11 six points.

12 That system would have to be agreed upon.
13 Everyone would have to know the rules of the game in
14 advance. But it would be a mechanism whereby we could
15 differentiate between different types of activities and
16 weight accordingly.

17 A third type of weighting option would be to use
18 time data. Time data would not be predicated on any kind
19 of artificial weighting scheme. Rather it would reflect
20 the amount of resource, time resource, employed by the
21 program to complete a given case or to complete a given
22 activity.

23 Time data is probably relevant as a weighting

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1 option, to the extent that lawyers in private practice
2 would use time mechanisms, time log keeping, as a mechanism
3 of running their practice and billing.

4 Finally, I have submitted on a previous occasion
5 to the Board an example by one program that has contracted
6 with a big eight accounting firm to provide software on
7 functional accounting, whereby the local program can deter-
8 mine from each of its satellite offices a cost for each of
9 its case types within each satellite office. So that Office
10 A can be doing a consumer case for \$180 per case; satellite
11 Office B for 185; satellite Office C may be 250; at which
12 point the local program director can say, "What's going on
13 at satellite Office C that their cost is higher?"

14 That's a much more complex routine than time unit,
15 because it ties all activities to expenditures, and
16 requires additional accounting type mechanisms. But that,
17 too, is a weighting mechanism for activities.

18 Point Number Six that we provided on the outline
19 for you is simply a suggestion that if we can get uniform
20 case definitions, rules of the game for everyone; if we can
21 provide automation to eliminate human error and speedier
22 turn-around on reports; if we can provide credit for other
23 activities in field programs; if we can get better types of

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1 reporting information by way of software techniques and
2 disaggregate information which is put into more useful
3 report formats; and then if we can weight activities and
4 cases, we should be able to use that information for a
5 variety of purposes. There are definite linkages that we
6 get out of the CSR.

7 One important factor is it should help monitoring
8 activity, in addition to the field data. Monitors should be
9 able to review these program activities, and to the extent
10 are given the case or activity type, the program's
11 activities are beyond a standard deviation, a wide range of
12 norm for programs at large, monitors can then focus their
13 questions on why the efficiencies are so great or so weak
14 for a given program.

15 It becomes a more objective basis for what staff
16 feels could possibly be a more fair approach, a more
17 systematic, organized approach to many aspects of monitoring.
18 That ties in with the range of efficiency, which I mentioned,
19 in terms of standard deviations.

20 To the extent that CSR measures are more accurate
21 and are weighted, it may be possible to develop rough
22 measures or improved measures of efficiency, as distinguished
23 from other factors, but better measures of efficiency.

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1 Finally, in the priority setting process, to the
2 extent that we weight activities and bases by either dollar
3 allocations or functional accounting or resource allocations
4 such as time, we should be able to link that type of
5 information to the priority setting process of programs, to
6 the extent they too would make an allocation when they
7 determine their priorities and how much time and how much
8 dollar resource they want to allocate to various priorities,
9 as a way of seeing how successful a program is in addressing
10 those priorities which that local option may feel are
11 important.

12 Beyond the materials I've presented and my comments
13 today on these options which are for your consideration, we
14 have a number of speakers which I'd like to introduce to
15 you, and then you can address questions to any or all of
16 us.

17 We are really looking for some guidance and
18 direction as to where to proceed and which options this
19 committee and Board wants us to go. I think it's fair to
20 report that both the Pretest Panel and the Advisory Panel
21 have requested through staff some guidance so that our
22 future meetings can be more productive.

23 Making presentations this morning, as part of this

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1 agenda item will be Mr. Terry Roche. He will be speaking
2 about goals, performance measures, and the relationships
3 with CSR.

4 Marjorie McDiarmid, who is part of the advisory
5 panel for CSR will be talking about the data base we have
6 and historical use of that information; how it can be used
7 or possibly better used.

8 Mr. Brendan Gill, who is a program director from
9 San Antonio, will be talking. He will be focusing on other
10 types of activities that programs do and should be given
11 credit for.

12 THE CHAIRMAN: What was that name, please?

13 MR. OSTERHAGE: Mr. Brendan Gill.

14 THE CHAIRMAN: Last name is Gill?

15 MR. OSTERHAGE: Gill.

16 Mr. Chuck Vasaly, he's the program director for
17 Legal Services of Northern Virginia. I've been talking to
18 him over the last few weeks and he's going to address some
19 of the issues such as what do other funding sources require,
20 what kind of reporting burdens, what kind of measures of
21 efficiency or other reporting functions are required by
22 other funding sources.

23 And Mr. Greg Noel, program director for San Diego

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1 is here, and he's going to be addressing some of these
2 Options. Mr. Noel has a program which collects time data
3 and is very highly automated, and he might be able to
4 discuss with you some of his feelings on that type of
5 approach in terms of internal program management and how
6 it would be used.

7 Finally, Mr. Bernie Frey, who is director of our
8 Office of Information Management here, and he will be able
9 to provide you a better cost estimate in terms of automation
10 software, and some timing in terms of going forward with
11 the options.

12 So I'd like to continue with those speakers.

13 THE CHAIRMAN: Okay. Mr. Roche?

14 MR. ROCHE: Thank you, Mr. Chairman. It's nice to
15 be back.

16 THE CHAIRMAN: Nice to have you.

17 MR. ROCHE: I'm Terry Roche, executive director
18 of Legal Service of Southern Piedmont, and co-chair of the
19 project advisory group's funding criteria panel.

20 I'd like to introduce Mr. Gerry Singen of
21 Harvard's program on the legal profession. Gerry, as you
22 may know, has been an officer of the Corporation, and has
23 been a long-time local program manager.

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1 You, Mr. Chairman, or perhaps Mr. Uddo, asked me
2 to try to enlist the help of experts in the field of
3 program performance measurement. Gerry has written and
4 spoken and thought more than anybody I know about the
5 variables that drive program productivity, and consequently
6 can give you, I think, some good insight as to how, what the
7 limitations of the CSR system are, particularly as they
8 measure costs.

9 I understand that today you wish to answer the
10 question: What if any help will the current case service
11 reporting system provide in measuring program performance
12 in a fair and workable manner.

13 Therefore, I'll focus on the relevance of the CSR
14 to the criteria which the Legal Services Corporation Act
15 provides for the performance of local Legal Services
16 programs.

17 Gerry and I may not have any more or better
18 answers to the host of very difficult questions in how to
19 design a program performance measurement system than you
20 yourselves do. But I'm hoping that our combined 30 years
21 of experience in running legal services programs will give
22 you some insight, some idea of the most important questions
23 that you need to pursue and that we need to pursue in our

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1 coming work together in the coming months.

2 As I wrote all of you several months ago, it's
3 obvious to me that the Legal Services Corporation Act
4 requires that the Corporation assure that your grantees
5 do four things.

6 One, provide, quote, high quality legal
7 assistance while maintaining the highest quality of
8 services and professional standards.

9 Two, improve opportunities for low-income persons.

10 Three, set local priorities and serve clients
11 according to them.

12 Four, provide services in the most economical and
13 effective manner possible.

14 The first logical next question, therefore, is:
15 What can our in-place data collection system do to give us
16 any useable information about how programs' actual
17 performances meet these criteria.

18 And my answer is that the CSR can do so only to a
19 very limited extent. The present system tells you basically
20 only three things: How many clients a particular program
21 served during a particular time period. In such a way that
22 those programs define as a, quote, case. And Brendan Gill
23 will tell you later what programs do that generally don't

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fall in that definition.

It tells you what kind of legally termed problem, such as "torts" and legally termed solutions, such as, "name changes," or "divorces" some of those cases that were closed might have resulted in.

And it gives you a numbers mix of those solutions and problems for any particular program.

What it doesn't tell you is what problems the client actually presented. Whether the local program accurately perceived the clients' real problems. Whether the local program chose the right strategy to solve the problems. Or whether the solutions chosen were the most efficient or effective ones for that particular client and that particular problem.

Finally, the data tells you in relative terms very generally how much effort a program chose to put into the various problems presented by a great number of clients.

It tells you whether they tended to give those clients only advice and counseling, or whether they referred to other service providers many of them presenting certain kinds of problems; and for those whom they chose to represent, whether they tended to arrive at solutions with or without litigation; whether they tended to pursue

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1 administrative decisions into court, and the like.

2 They don't tell you whether any of these choices
3 resulted in the clients' objectives being achieved; being
4 modified and achieved; or not being achieved at all.

5 They tell you nothing about the relative resources
6 actually expended according to what they chose to do. And
7 they don't tell you whether the -- whether a large amount
8 of resources in these cases were devoted to the prosecution
9 of unmeritorious claims or whether the programs' legal
10 workers were not sufficiently aggressive, to use the
11 ethical term, whether those lawyers represented their
12 clients, "zealously within the bounds of the law."

13 Does this mean that the CSR system is totally
14 useless in measuring program performance? No.

15 I think that as Keith has suggested, with some
16 additional analytical work, with some training, some better
17 understanding of what the numbers actually mean, that the
18 CSR will give us some useful conclusion about probable
19 cost ranges for providing certain solutions to certain
20 fairly simple and repetitive problems. And Marjorie
21 McDiarmid is going to tell you a bit more about that later.

22 This will require more attention, including
23 massive training, to the way in which these numbers are

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1 produced, as Keith has suggested. But with a reasonable
2 use of LSC resources on the current system, it can be made
3 more useful.

4 Moreover, I agree with Keith when he said to me
5 that the major, probably the major importance of CSR is as
6 a point of departure to ask further questions about
7 Program performance.

8 As long as we realize that CSR information
9 provides points of departure, rather than conclusions, and
10 relates only to the cost ranges of providing certain kinds
11 of services, rather than to all of the performance criteria
12 which the LSC Act probably mandates, the current system is
13 useful.

14 Moreover, as Keith suggested, local programs have
15 devised means of using current CSR systems in combination
16 with other observations to obtain useful information for
17 management of their own programs.

18 I myself, for example, like to look at the
19 information the CSR data provides in combination with data
20 that we collect about the relative degree to which we have
21 achieved clients' objectives, with the experience level of
22 each legal services worker handling a case, and whether or
23 not they specialize in a particular area, with the period of

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1 time it took a worker to close a particular case, and with
2 our local priorities. All those various insights give me
3 a sense, as Keith suggested, in another example, of where
4 to look to deal with problems or to find strengths.

5 This might not be useful to any other local
6 program manager, and it might not be relevant on a
7 national level. But if the CSR system were eliminated or
8 even modified or substantially changed, I'd miss it
9 because I'm using it for something.

10 Indeed, are there any modifications which might
11 result in CSR data being any more sophisticated or useful?
12 There may be some, but I haven't figured them out, to be
13 honest with you.

14 The only modification of which I'm currently
15 aware is the disaggregated data one, and after reading the
16 material that Keith sent me and I guess you all, too, I
17 couldn't see that any of the unanswered questions which I
18 just listed a few minutes ago would be answered by collec-
19 tion in a disaggregated manner.

20 It would just be a simple -- a different way of
21 gathering the same information we now get. Moreover, as
22 the programs which tested the proposed revision suggested,
23 disaggregated collection would risk violating client

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1 confidentiality, and I refer you particularly to Mr.
2 Helwig's letter and materials that are in your Board
3 book.

4 MR. MENDEZ: Mr. Chairman, may I ask Terry a
5 question?

6 THE CHAIRMAN: Certainly.

7 MR. MENDEZ: Terry, if we left the disaggregated
8 information in the local programs that should answer all of
9 the difficulties that these programs listed in their
10 comments with Mr. Osterhage?

11 MR. ROCHE: Sure. And I'm not particularly
12 dwelling on that confidentiality problem. I think more to
13 the point is the question of cost of going this direction.

14 I think what Bernie Frey is going to tell you is
15 that in order to get the computerization, a PC in every
16 program for example -- which of course I would love, as you
17 all know --

18 MR. MENDEZ: We'll see if we can arrange to have
19 you have one.

20 MR. ROCHE: Can I have the first one?

21 MR. MENDEZ: I'll tell you what, we'll make sure
22 that if we do this you're the first one on the list.

23 MR. ROCHE: Good, good. Then the next thing I

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1 need is a display writer. Can I have one of those, too?

2 THE CHAIRMAN: Pencils, yes. Display writer --

3 (Laughter.)

4 MR. ROCHE: I think what Bernie is going to tell
5 you is that the cost estimate is something around 1.4
6 million dollars. And my sense, based on the last time I
7 looked at some of these broad statistics in the fact book
8 that he referred to, is that that would serve about 6,000
9 clients.

10 So what you're going to need to decide is whether
11 that cost is reasonable to pay in search of data which
12 frankly would only address one portion of one of the four
13 criteria, which I think the Act probably mandates, in terms
14 of measuring performance. And that's a decision obviously
15 you have to make.

16 MR. MENDEZ: Can I follow this up with just a
17 moment?

18 If we gave you a computer and you had to use it
19 to do this, would you also use it to run your accounting
20 functions? Assuming there was enough time?

21 MR. ROCHE: The obvious answer is yes.

22 MR. MENDEZ: Would you use it as a word processor?

23 MR. ROCHE: No. Because of the problems that if

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1 you're going to use a word processor, they need to be
2 dedicated to that particular effort.

3 I would love to have a computer. Computers would
4 do a lot for our program. But the reason we don't have
5 one -- and they've obviously gotten cheaper and cheaper --
6 the reason we don't have one is that trade-off, as against
7 the ability to do further legal work. I've never been able
8 to come to the point of making.

9 MR. MENDEZ: If I make that determination for you,
10 you'll be satisfied with it, though?

11 MR. ROCHE: Obviously I'll be satisfied with it.
12 What I'm talking about is 1.4 million dollars which could
13 be in the basic field pot to serve clients. I mean, that's
14 your choice, and that's fine.

15 I'm frankly going to be personally happy with
16 either one. It's a question of what happens to clients as a
17 result.

18 MR. MENDEZ: What else would you use -- in your
19 thought process, what else have you thought about using a
20 computer for, besides accounting functions and maybe
21 reporting functions? Would you use it for training
22 functions?

23 MR. ROCHE: Probably not. I haven't thought a

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1 great deal about it. Greg Noel, my good friend from
2 California, who runs the biggest Star Wars operation I
3 know west of the Corporation, will give you some I think
4 very good ideas as to how computers can be used. I
5 frankly haven't thought much about it.

6 MR. MENDEZ: Have you seen the --

7 MR. ROCHE: I haven't seen that yet. I'm
8 intrigued with it. I think -- I'm planning on going to
9 that presentation, because it's got some fascinating ideas.
10 But of course, we would have to have the hardware and
11 software capability of using that stuff.

12 MR. MENDEZ: I just have one more question, and
13 then I'll let you go on.

14 How long does it take you to aggregate your CSR
15 data now?

16 MR. ROCHE: Roughly a half-person day, I would
17 think.

18 MR. MENDEZ: Half-person day --

19 MR. ROCHE: Half-person day per report.

20 MR. MENDEZ: And you're reporting four times a
21 year?

22 MR. ROCHE: Right.

23 MR. MENDEZ: So it's two days for a secretary, I

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1 suppose?

2 MR. ROCHE: That's right. Yes. And that may be
3 even high. I may be high because obviously she's interrupted.
4 She's not concentrating on it.

5 MR. MENDEZ: We have some statistics that reflect
6 that it's between 35 and 40 minutes.

7 MR. ROCHE: I'd love to get it down to that. But
8 we work it through -- we are at the point of being able to
9 automate, and it would be great. But hand-sorting all of
10 that particular information takes time.

11 MS. SWAFFORD: Well, in line with Mr. Mendez --
12 and I appreciate your concern about spending 1.4 million
13 dollars on this equipment -- wouldn't this ultimately free
14 your people up though to have more time to devote to
15 individual clients?

16 MR. ROCHE: Well, ultimately the question is what
17 personnel savings do you get out of doing anything with
18 hardware, and there has got to be some, some place,
19 obviously.

20 If we could eliminate a staff position, that now
21 is substantially spent on data collection and physical
22 operations, that would be great. I'd love to do it. That
23 would give me some money toward hiring another lawyer.

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1 Remember ours is a relatively small program.

2 But the problem is that everybody I've talked
3 with about computers and about dealing with them tells
4 you that what you get out of computerization is really
5 somewhat faster, but more information in depth. What you
6 really don't get is any savings in personnel. And that's
7 what folks tell me. That's why I've dragged my feet on it.
8 Because I can't save the personnel budget that I would need
9 to save in order to justify the expense.

10 MS. SWAFFORD: Are you saying that the reports
11 as they are now are fine, that we don't need to change?

12 MR. ROCHE: What I'm saying is that they are
13 fine for the limited purpose that they serve. Which is to
14 show you some stuff that ultimately will provide you some
15 cost measures. And I'm going to leave to Gerry, who can
16 give you a more sophisticated idea of what needs to be put
17 into that mix, and to Marjorie McDiarmid, who can give you
18 a better idea of the potential of the current CSR system
19 that simply hasn't been met yet, to really answer your
20 question more knowledgeably.

21 So what I'm really saying, I think, is that this
22 CSR system for measuring a portion of the things against
23 which performances ought to be measured, as it stands now,

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1 and without modification, probably is useful once it's
2 thoroughly explored, all its potential is thoroughly
3 explored, and the kinds of training that Keith is talking
4 about goes on.

5 What I'm suggesting is that with that in hand,
6 and revised as well, and with everybody understanding what
7 it's supposed to do, then we can get on to try to figure
8 out how to devise the other performance measurements that
9 would be needed.

10 Does that answer your question?

11 MS. SWAFFORD: One more question, and I guess this
12 would be between you and Mr. Osterhage.

13 As I understood Mr. Osterhage to say that the
14 present reporting system, we don't have any differentiation
15 as to the type of things that are done, that everybody just
16 puts in -- some people put in one thing and some other
17 project directors do not count those contacts.

18 Is this what you mean by disaggregated information?

19 MR. OSTERHAGE: Well, that's more the issue, I
20 believe, of the uniform information, reporting uniformly.

21 Disaggregate information is more useful to the
22 extent that we ever weight that information to allow for
23 complexities --

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1 MS. SWAFFORD: Okay. Define "disaggregate"

2 MR. OSTERHAGE: "Disaggregate?" Right now,
3 disaggregate information is essentially maintained in some
4 fashion or another by a local program, to the extent that
5 they report to the Corporation in an aggregate, in a
6 summary total fashion, demographic data for their clients,
7 and case type and closure codes for their clients.

8 But it's presented to the Corporation in the form
9 of a summary total so we know 100 cases, we know 47
10 bankruptcies, 32 consumer law cases, that type of reporting.

11 If we were to differentiate among case types and
12 closure codes by some level of effort, either unit of
13 service, a purchase of services, or the amount of time
14 expended, we could cluster all similar case types, all
15 consumer cases or the landlord-tenant cases, along with that
16 weight or the time data to come up with an average to have
17 more meaningful data within case type or to break out in
18 a summary form the different areas.

19 MR. MENDEZ: By the way, I called and complained
20 to him about not putting "disaggregate" and "aggregate" in
21 the front of his report, and there is a definitional
22 section, and I'll see if I can find it for you, where they
23 make a very good statement of that.

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1 THE CHAIRMAN: Claude, did you get an answer?

2 MS. SWAFFORD: As far as the definition of
3 "disaggregate?"

4 THE CHAIRMAN: Yes.

5 MS. SWAFFORD: Well, if he's got --

6 MR. MENDEZ: It's on Page 58 of our Board book.

7 MS. SWAFFORD: You mean I missed it?

8 MR. ROCHE: While you're looking for that, can I
9 take another crack at the question of uniformity that --

10 THE CHAIRMAN: Yes. Go ahead.

11 MR. ROCHE: -- Keith raised? I think that he and
12 I would both agree that the uniformity question where you've
13 got Program X reporting entirely differently from Program A,
14 is one that at the extremes, at the ranges, there is enough
15 of it to make it difficult to use past data as a basis for
16 measuring anything like current performance.

17 But it's at the ranges -- Keith used the term
18 "clusters," and I think Marjorie and some others will give
19 you their sense of that -- within the middle there is a fair
20 amount of uniformity that probably does not suggest we need
21 to throw out the whole system right now.

22 But do let me get on to a couple of other points,
23 because, as I said, CSR and measuring ranges of costs, I

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1 think, is only one portion of the problem.

2 The big problem, of course, is measuring quality.
3 People might argue that data such as that provided by the
4 CSR provides sufficient indirect measures of quality.
5 Apparently other organizations use statistics as indirect
6 measures of quality in housing construction and rehab
7 programs, and in the delivery of social services.

8 I've got to say parenthetically that many legal
9 services organizations nationwide would question whether
10 most of these programs ever attain any minimal level of
11 quality, but that's another debate.

12 My sense is that the lawyers among you would
13 recognize quickly that there are too many human factors:
14 a client, his or her lawyer, case handler, the opponent,
15 and his or her lawyer, the Court, and occasionally the 12
16 jurors, involved in any single case, to enable us to have
17 any confidence at all in indirect statistical data to
18 determine whether or not a lawyer provided high or low
19 quality service to any individual client.

20 And like Keith, I also talked with the United
21 Way --they're a fairly obvious crowd to check with -- in
22 Mecklenberg County. And I checked with their planners and
23 family counselors, and found them, as Keith said, struggling

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1 with the same idea of trying to figure out how you measure
2 what you get for your buck. And found them similarly
3 frustrated, particularly in the family counseling area,
4 with those very human factors that are equally applicable
5 to that range of human services.

6 Moreover, for us as lawyers, there is an additional
7 risk with the quantitative sort of approach, the sort of
8 performance measure approach that was proposed to you in
9 Detroit.

10 Statistically those indirect measures tend in a
11 somewhat question-begging fashion to substitute quantity for
12 quality. We obviously can't risk that result.

13 Any criteria or measurement which might influence
14 local lawyers to truncate their representation of a
15 client would be unethical.

16 As previously mentioned, our Code of Professional
17 Responsibility requires is to "represent a client zealously
18 within the bounds of the law." Once we undertake to
19 represent, we can't consciously choose to make any effort
20 less than those reasonably necessary to obtain that client's
21 objectives.

22 So any influence to do other than that would have
23 a significant risk at that ethical plane.

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1 Let me close by giving a personal example of the
2 sort of quality effectiveness and efficiency which I think
3 the Corporation should encourage consistent with the Act.

4 This case, with which Mr. Valois is probably
5 familiar, is Hyatt v. Heckman. A social security disability
6 case which had some prominence in North Carolina.

7 The case involved several issues, but primarily
8 it involved the Social Security Administration's decision
9 to quote, nonacquiesce in a decisions of Federal Circuit
10 Courts. Simply put, Mr. Hyatt's case, Social Security cut
11 off his disability payments even though his condition was
12 one which the Fourth Circuit had previously said was
13 disabling under the Act.

14 Shortly after the Western District of North
15 Carolina's rather blistering decision enjoining the
16 Secretary to cease their policy of nonacquiescence and to
17 give Mr. Hyatt and class members and other class members
18 with other different disabling conditions their benefits,
19 Congress voted something like 410 to one to amend the
20 Social Security Act to ensure in the future that people
21 like Mr. Hyatt didn't get terminated from the rolls.

22 Ultimately on appeal, the Fourth Circuit decided
23 the case in a manner which will provide rehearings to almost

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1 12,000 North Carolinians whom Social Security had
2 previously found ineligible for disability benefits -- and
3 that's HHS's numbers, not ours.

4 Assuming that on rehearing each of these claimants
5 has at least a 50-50 chance of having the previous denials
6 reversed, this decision will put over 43 million dollars per
7 year into the pockets of poor, disabled North Carolina
8 residents. In fact, the final total probably will exceed
9 that.

10 Certainly this case, quote, improved opportunities,
11 unquote, for the poor people which my program serves.
12 Additionally, within recent months the Secretary announced
13 formally the Administration's abandonment of its, quote,
14 nonacquiescence policy, unquote.

15 Thus the lawsuit led to administrative,
16 congressional, and court decisions which have benefitted
17 and which will benefit in the future, literally millions of
18 people whom Legal Services programs serve. I'd say this
19 was a pretty effective use of program resources.

20 And by the way, our program's second highest
21 priority was, quote, prevent arbitrary elimination of
22 social security disability recipients from the disability
23 program.

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1 Equally remarkable was the way in which we used
2 resources to pursue this case. Knowing that the adminis-
3 tration had virtually unlimited legal resources to throw
4 at us, and would use, we asked one of Charlotte's largest
5 law firms to be lead counsel with us as co-counsel.

6 So far that firm, Robinson, Bradshaw, & Hinson,
7 has provided over 1800 pro bono hours to this single case.
8 Our staff has logged about 900 hours.

9 Consequently our total out-of-pocket cost so far
10 in two years for this case is slightly lower than \$32,000.
11 If we tried to do the case using only our staff, we'd now
12 have a cost of slightly over \$77,000. If we tried to do it
13 using only private attorneys on a partially compensated
14 basis, the cost would be \$94,500.

15 Consequently, our total cost so far is two and a
16 half to three times lower than the other obvious resource
17 alternatives.

18 Further, assuming that our estimate of 43 million
19 dollar benefit to clients is effective -- and by the way,
20 that's not just our estimate. The HHS attorney gave the
21 Western District an estimate of 50 million dollars in a
22 recent hearing. -- our cost benefit ratio would be about
23 1,344 to one. For every one dollar we spent we got \$1,344

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1 back.

2 The benefit to each member of the class would be
3 \$3,583. I doubt that we could have pursued this important
4 case in any more economical manner. And we've provided a
5 very substantial opportunity for involvement of private
6 lawyers in the delivery of legal services to poor people.

7 What about quality? That's always tricky to
8 measure, but in this particular instance, the HHS lawyer
9 complimented the private firm's lawyers and ours as having
10 done the best work of any similar cases in which he had
11 represented HHS around the country. And the North Carolina
12 Bar Association and the American Bar Association gave the
13 firm, both gave the firm their first annual pro bono award.

14 We began preparing the suit in the middle of 1983.
15 Because it's still open for monitoring Social Security's
16 compliance with various court orders, and the possibility of
17 certiorari to the Supreme Court, it's appeared nowhere in
18 our CSR reports.

19 And yet 18 percent of the total available private
20 lawyer resources we've had in the last two years and 2.5
21 percent of our staff attorney resources are expended on the
22 case.

23 Additionally if we were to close the case tomorrow,

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I've said earlier basically what my conclusion is, which is the CSR system as it now is designed with better training and implementation, can serve some uses, and can serve some uses in the measuring of performance by local programs.

But that it is by no means extensive enough to get us all the way to creating a fair and workable program measurement system.

Now I'll turn you to Gerry to give you some --

MR. UDDO: Terry, let me ask you a question before you do that.

It seems to me that your example sort of supports the argument that we need to make some of these changes and develop a system that would give you more credit for that kind of a case. And it seems to me that in things like credit for other activities, we would have to factor in a fairly significant reward for the use of private counsel, pro bono assistance in a case like that, in that we would also have to give in the weighting, number five there, some special weight to the amount of effort that has to go into that kind of case.

So it sounds to me like that kind of case is an example of why we need to change the system to something

1 like this and get more refined data, and get data that
2 won't make that case appear like one case among all of your
3 social security cases.

4 MR. ROCHE: To the extent we confine ourselves to
5 simply tinkering with the CSR system, I would probably agree
6 with you. But what I'm suggesting to you is that tinkering
7 with the CSR system is not going to answer enough of the
8 questions which the current system doesn't answer; that we
9 ought not be looking at other measures of program performance
10 to supplement the CSR system.

11 I think the value of the current CSR system is
12 that it is known; it can be cleaned up; we know sort of
13 what it will produce now, and with some minimal effort, I
14 think we can get it to produce even more.

15 But that has to do only with cost. For example,
16 rather than give credit for larger, quote non-case, unquote,
17 activity levels, although this was a case activity, I
18 think we ought to be looking at how many dollars has -- of
19 benefit -- has a local program created for its clients in
20 any particular situation.

21 MR. UDDO: Well, I have some problems with that,
22 too, because sometimes the benefit is that you have one
23 individual client that walks out very satisfied, happy, and

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1 better off for the work that the program did for them.

2 If we start looking at dollars of benefit, then
3 I think we're really going to neglect the major thrust of
4 what Legal Services is about, and that's the individual
5 client who, for that client, that consumer case who may
6 affect no one but that client, is the most important case
7 in the world.

8 And I think the ethical responsibility is to
9 individual clients. And when you can generate greater
10 benefit from a case, that's great. But the ethical
11 responsibility to that individual client -- when you've
12 got a single individual client who walks away well served,
13 it may be a \$50 case, that's still important. And I
14 wouldn't want to give --

15 MR. ROCHE: I'm not going to disagree with you.
16 That's part of it. But what I'm saying is -- I'm sorry.

17 MR. UDDO: The other thing I was going to say --
18 you made me forget.

19 THE CHAIRMAN: You're both right. What Basile
20 says is what's the dollar benefit of a divorce avoided?

21 MR. ROCHE: Right. And I'm not suggesting that
22 that's an exclusive measure either. What I'm saying is
23 that we've got four things. And I think basically is you

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1 have to figure out what it is the Act mandates.

2 MR. UDDO: What I wanted to say is the reason
3 that we're looking at this and looking at this so
4 carefully, and the reason why I asked to have this on the
5 agenda today, is because in Detroit when the idea of
6 performance standards came up, the first thing we heard
7 was that it would be laughable to make those decisions
8 based on the current CSR data.

9 So we're in the process of trying to satisfy the
10 concerns that the data is not helpful to make those kinds
11 of decisions, and this is a first step in trying to refine
12 the data.

13 And I think in your letter you referred to the
14 inaccuracies of the data or the insufficiency of the data
15 to make these kinds of decisions.

16 So now I'm hearing you say that we really
17 shouldn't be tinkering with CSR data. That's not what we
18 need to do. And I thought that that was one of your
19 principal concerns.

20 MR. ROCHE: Let me try again and see if I can do
21 it as clearly as possible.

22 MR. UDDO: All right.

23 MR. ROCHE: I agree that if we were to use the

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1 current CSR data, even one that is modified and somewhat
2 changed by some of the things they suggested, that it would
3 in fact be laughable if we thought it was a sole measure
4 of performance --

5 MR. UDDO: All right. Then we agree. This is
6 just a step, a step --

7 MR. ROCHE: One portion.

8 MR. UDDO: -- to improving the data, and we may
9 never get to the point where we can say that even the
10 improved data gives us enough to base a performance
11 standard criteria system on. But we've got to do this
12 first one way or the other.

13 MR. ROCHE: The second point I'm making, and
14 people who have really worked with the CSR data like
15 Marjorie and some of the other ones coming behind me can
16 really I think do this better for you. The second point
17 I'm making is that given the limited purpose that CSR is
18 always -- the purpose that it's always going to be limited
19 to, that it can't do more than certain things, then the
20 energy and expense of making it more sophisticated is in my
21 mind questionable because that energy and expense won't get
22 us any better performance measurement than the current one
23 does.

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1 MR. UDDO: I see your point. And we don't know
2 what the expense is yet.

3 THE CHAIRMAN: We are going to soon run into a
4 time squeeze, and I'm going to ask the succeeding speakers
5 to limit themselves to ten minutes flat. Does that concern
6 anybody?

7 MR. ROCHE: Let me get out of here. He really
8 has done a lot of work on figuring out what the variables
9 are that really do drive program productivity, and I think
10 you need to hear from him.

11 THE CHAIRMAN: Mr. Singesen.

12 MR. SINGSEN: I will do everything that I can --

13 THE CHAIRMAN: I'm sure you will.

14 MR. SINGSEN: -- to stick to your ten minutes.
15 I'm going to move this over here if I can, because I think
16 it will be a little easier to see than off to the side.

17 THE CHAIRMAN: The Chair observes that walking in
18 front of the table here is similar to walking through a
19 mine field with all the wires and bombs.

20 MR. SINGSEN: I will try not to talk so fast that
21 it's impossible to understand anything that I'm saying. But
22 Terry told me that I should keep my remarks brief. I've
23 actually cut them quite a bit and I'll try to cut them more

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1 as I go along.

2 I'd like to get to a couple of fundamental
3 points which I'd then be glad to explore if you want to
4 spend more time and ask questions.

5 Essentially, my conclusion about the CSR, to
6 start with where I end up, is that meaningful comparisons
7 based on the CSR are pretty limited in scope comparisons
8 between programs. That they deal with relatively small
9 portions of total program performance. And that they
10 probably would be pretty misleading if they were applied
11 as measures of total program performance.

12 Instead, what I would come to -- although not
13 in this presentation, because it's not the point of today's
14 discussions -- is probably the meaningful program measurement
15 performance measurement, ultimately has to be done program
16 by program through some kind of local priority base,
17 performance improvement methodology, using peer review
18 techniques to obtain replicable results in assessing
19 individual performances of the people in the program.

20 That's a big mouthful and I'm going to leave that
21 for now and come back to it if you want to explore it.

22 Today what I want to look at is why I think CSR
23 data has such a limited application. Basically what CSR

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1 data does is report case statistics using generalized
2 case type and case service definitions.

3 These case statistics are what you might call
4 dependent variables. That is, they result from the
5 operation of the real behavior of the program which turns
6 them out. The real behavior is the performance. And it's
7 that behavior that we're interested in if we want to
8 understand what's going on in a program.

9 The problem with CSR statistics is that we know
10 for a certainty that many critical aspects of real program
11 behavior aren't captured by statistics; that these aspects
12 of real program behavior are pretty critical because, for
13 example, the LSC Act requires that they be considered as
14 standard program performance, or because they're matters
15 that really lie beyond the program's ability to control.
16 So we need to take them into account.

17 Or because they reflect the local priority
18 judgments that are committed to the local program by the
19 Act. And if the use of CSR statistics ignores these aspects
20 of real program behavior, then differences in the case
21 statistics that result won't provide good measure of that
22 behavior.

23 So what are the critical --

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1 MR. MENDEZ: Tell me why CSR was created in the
2 first place?

3 MR. SINGSEN: Well, it was an --

4 MR. MENDEZ: You were involved in that?

5 MR. SINGSEN: Well, actually yes and no, because
6 the -- oh, the old program, well before, I was involved in
7 anything that had to do with generating national policy.

8 It had a case service reporting system of its own.
9 And indeed, it was used in the first couple of years of the
10 Corporation's existence.

11 But with the delivery system study underway, the
12 sophistication of the Corporation in terms of trying to
13 generate a more effective reporting system grew. And in
14 '77 and '78, there were a series of meetings to try to
15 create a better case reporting system.

16 The CSR is the system that resulted. There was
17 an earlier version of the system that --

18 MR. MENDEZ: Wasn't part of the reason and
19 rationale for that to count cases and --

20 MR. SINGSEN: Oh, absolutely.

21 MR. MENDEZ: -- make a determination of
22 performance?

23 MR. SINGSEN: Well, I think that's a harder

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1 question. I think that there were many different reasons
2 that different people wanted a better case service reporting
3 system.

4 MR. MENDEZ: Isn't that part of the reason?

5 MR. SINGSEN: People wanted to be able to count
6 cases, and clearly the present problems of uniformity
7 have predecessors all the way back. I don't think that
8 there's ever been a reporting system that was effective at
9 giving uniform data for programs regarding their actual
10 activities, even to the limited degree that the case
11 service reporting system covers.

12 In other words, there are stories about programs
13 making up data in the sixties.

14 MR. MENDEZ: And if we want to improve the
15 collection system and see if we can improve the
16 nonverifiable data that some programs allegedly are sending
17 in, you would agree with that?

18 MR. SINGSEN: Oh, absolutely. I don't think
19 there's any question that the current system doesn't work,
20 partly because of nonuniformity in what people are
21 collecting.

22 MR. MENDEZ: All right. And if we standardize
23 this and probably if we put it on, computerized it, and

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1 asked them to do it in a disaggregate form, and maintain
2 disaggregate form, that would ensure, help ensure that we
3 would have a more verifiable --

4 MR. SINGSEN: Absolutely.

5 MR. MENDEZ: -- and truthful collection of data.

6 MR. SINGSEN: But not a better measure of program
7 performance.

8 MR. MENDEZ: Is that true or not, though?

9 MR. SINGSEN: I think it is true.

10 MR. MENDEZ: All right. Now, the question that
11 you're asking is whether we verify program performance.
12 That's basically what you're coming to.

13 Now, in order for us to do this, you're then
14 telling me that we should ask to have the disaggregate data
15 back here so that we can examine each program?

16 MR. SINGSEN: No. That's not actually where I
17 come out. But -- and you'll see why --

18 MR. UDDO: Mr. Valois asked me to take over.
19 Could I ask you to just let him finish? I think that's
20 where he was going with his presentation anyway, and then
21 we'll go to questions at the end.

22 MR. SINGSEN: Just a one-sentence response to
23 that, which you'll see played out here in a minute. Many

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1 of the pieces of information about real program behavior
2 that are independent variables and drive the case
3 statistics wouldn't come in in a disaggregated form any
4 better than they come in in an aggregated, because they're
5 not explicitly pieces of case data.

6 So let me talk about those for a minute and try
7 to indicate what I'm talking about.

8 Basically, what I want to do is to talk very
9 quickly because there is a time limit about a series of
10 what I perceive to be as independent variables. Real
11 program behavior measures. Which drive the case statistics
12 that you get.

13 The first one Terry's already talked about. It's
14 quality. And obviously programs can range from relatively
15 minimal definitions of quality -- and that's a very complex
16 idea -- to very high quality in the way that they try to
17 deal with each client.

18 The second is case types. Some programs
19 emphasize routine case types. Some emphasize nonroutine.
20 I give you as an example of what I'm talking about Hyatt
21 Legal Services, the legal clinic, which turns away any
22 nonroutine matter, because of the time requirements to
23 learn what's going to be required to do the new case. They

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1 use a flat-fee system. They don't want any nonroutine
2 cases.

3 The third is the nonlitigated case. Advice is
4 basically what we're talking about here. And a program
5 can very narrowly define the kind of advice, the kind of
6 depth it's going to go into in providing advice, or very
7 broadly define it.

8 In the litigated case area again, we've heard
9 Terry talking about the relatively simple possibilities on
10 one end and in the Hyatt case -- his Hyatt case, not Hyatt
11 Legal Services -- a very complex case.

12 Noncase work isn't in the case service
13 statistics at all. The proposal, of course, is to include
14 it, and I think that's a good proposal.

15 But you still have the problem that the programs
16 do very extensive or very nonextensive, and like the simple
17 and complex litigated matters, will need a measure in some
18 way that takes account of the great differences in the
19 types of work.

20 Client satisfaction. Obviously programs vary
21 some in terms of how much effort they put into making
22 sure of the client satisfaction.

23 And finally, impact. Coming again to Terry's

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1 case, some programs have a relatively low impact profile,
2 if you will, and some have a very high impact profile.

3 All of these factors affect the legal work that's
4 done in the program.

5 There is a second set of variables which aren't
6 legal work variables. The first is the one you're really
7 trying to measure, which is the efficiency of the program.
8 Some programs are very inefficient, and others are very
9 efficient.

10 The second is staff experience. Some programs
11 have very experienced attorneys, very experienced paralegals.
12 Others don't.

13 The third is salary. And now I'm talking about
14 compared to other legal services programs, whether this
15 one is paying high salaries or low salaries relative to
16 national averages.

17 The fourth is salary comparability, whether the
18 program is paying salaries that are comparable to the going
19 rate in the community or lower than the going rate in the
20 community.

21 The next is the use of paralegals. Some programs
22 use many paralegals. As many as one paralegal for every
23 attorney. Others use none. There is a very broad spectrum

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1 in paralegals utilization.

2 Next would be the area cost of business, the cost
3 variation study, which you've heard about before. Which
4 found very big discrepancies between the cost of running a
5 legal operation in some parts of the country, and in some city
6 sizes, compared to other parts of the country and other
7 city sizes.

8 The next is the coverage distance, the classic
9 urban-rural problem. If you've got to go 400 miles to get
10 to some of your clients, you have a significant cost
11 factor, which of course is not captured at all, in case
12 service reports.

13 And finally client characteristics. Some clients
14 communities are relatively homogeneous. Other client
15 communities are extremely heterogeneous. For example,
16 language differences. In some cities in this country, you
17 will have clients speaking six different languages. That
18 places special demands on a program.

19 Now, when you look at this range of factors, there
20 are three what I think are important similarities among all
21 of these aspects of real program behavior.

22 The first is that each of these independent
23 variables that drive the case service reports to this involve

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1 choices made by the Board or the local program in the
2 priority setting process.

3 These are choices that are committed to that Board
4 by the Corporation Act. And except for efficiency itself,
5 which of course is what we want to measure here, a program
6 could choose either end of either of these spectrums, any
7 of them, and be within the proper bounds of its authority.

8 Second, each of these independent variables is
9 ignored by the case service reports. Even on those for
10 which some data is collected, like case types, nonlitigated
11 cases and litigated cases, CSR doesn't record the variation.
12 Although we're hearing some discussion about trying to get
13 through the disaggregated or through some other methods,
14 a better look at the variation on those three of these,
15 I don't know, 15 or 16 different variables.

16 For example, you can't tell from CSR whether a
17 divorce was routine or not. Or whether advice was given in
18 a narrow or broad fashion. And so on.

19 Third, each of these variables is an obvious and
20 predictable source of variation in the case service report
21 statistics. As you can see, this end of the spectrum over
22 here is the low cost end of the spectrum. The high cases
23 end of the spectrum.

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1 This end of the variables produces higher costs
2 and lower case statistics. So that a program that made all
3 these choices would produce very much lower case statistics
4 than a program that was in that column (indicating). And
5 that's, of course, the problem. Since none of it's
6 captured in CSR, these independent variables are driving
7 dramatically different case statistics for programs that
8 are equally efficient.

9 Now, because all of this is a little hypothetical,
10 a little theoretical, I created two hypothetical programs
11 for you. And I'll just do this very quickly, because I
12 know my time's up.

13 These are two programs, A and B, both funded at
14 \$400,000 a year. Both serving 50,000 poor people. That's
15 \$8 a poor person. They have basically the same case type
16 priority. Their case statistics come out with the same
17 percentage of cases in each of the major case type areas.
18 They're both doing high quality work. That's something
19 that's part of the built in this model.

20 They're both giving high client satisfaction. And
21 most important, they're both highly efficient programs.
22 They do what they do very efficiently. But there the
23 comparison stops. There the similarities end.

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1 Because Program A has an inexperienced staff,
2 while B is experienced. Program A is using a lot of
3 paralegals relative to Program B. Program A's clients see
4 a paralegal primarily. Program B's clients all see an
5 attorney.

6 Program A does no community legal education. B
7 does substantial. A has a major telephone advice practice.
8 B believes people ought to come into the office and
9 actually sit down and be seen before they're given advice.

10 A does mostly routine cases while B does many
11 nonroutine. A has to turn away some complex problems
12 because its inexperienced staff isn't able to handle them.
13 B does some very complex matters.

14 A has a PAI program in telephone advice and
15 advice clinics. B uses a compensated representation on its
16 highest priority cases -- again like the Hyatt case Terry
17 described -- and has pro bono uncontested divorces. A does
18 very few class actions. B does a few more. A has a very
19 few group clients. B has a few more.

20 A is a rural Midwestern program, serving a
21 series of Midwestern towns. It's a low-cost area. B is a
22 large Northeastern city. It's a high cost of business area.
23 A pays somewhat below comparability. B pays comparable.

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A's clients are relatively homogeneous and B's aren't. That's all those variables played out in a set of possibilities.

What are the consequences of these variations? Well, the first you may not have thought about. Because of all those characteristics in A, the low cost characteristics, A has ten case handlers, while B can only afford six on the same budget. Those are cost characteristics where you obviously have a major difference in the case statistics that result.

MR. UDDO: But doesn't A have greater costs associated with being a rural program?

MR. SINGSEN: It's a relatively small program, and I made it a bunch of towns. I didn't make it a huge area.

MR. UDDO: But my point is, don't a lot of those variables sometimes cancel each other out, and do we really have to account for every one of them to have some kind of data that we can act on?

MR. SINGSEN: I think those are very good questions and --

MR. MENDEZ: You're making an assumption that his variables are appropriate.

MR. UDDO: Well, if you accept that they are.

1 MR. SINGSEN: I think the answer to those two
2 questions first is that some of them undoubtedly cancel
3 out others, and I've drawn you a hypothetical here which
4 is extreme, in order to make the point that we need to know
5 something.

6 I don't think it's so extreme that these varia-
7 tions, and this degree of variation, is unrealistic. I
8 think I've given you two programs that exist in the real
9 world.

10 Second, I don't think we know whether they cancel
11 out. And I think the kind of performance measures, for
12 example, that you looked at in June doesn't begin to think
13 about whether they cancel out. And that before you start
14 basing funding, for example, on CSR data, you need to have
15 a fairly good idea of whether you've got a routine
16 cancelling or whether you've got exaggerations happening
17 from the operation of some or all of these variables.

18 As to the second, if this was a very large area
19 rural program, it would be funded at two million dollars,
20 rather than 400,000. When you look, for example, at the
21 ranking in June, I think you'll find that the very large
22 area rural programs, the large ones around the country,
23 finished at the bottom of your rankings. And I think that's

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1 why.

2 Case statistics here obviously are tremendously
3 different. This program, A, with all of its low-cost,
4 high-case producing approaches, came up with 8400 total
5 cases. This program with its higher costs, more complex
6 area, produced 2,300 cases. But remember, that both of
7 these programs are very efficient programs. And both of
8 them are high quality programs.

9 So if what you're interested in is measuring
10 quality of performance, effective use of resources,
11 getting the job done, because of all the operation
12 variables you've got two programs that are doing it. How
13 would they do on that ranking you had in June?

14 MR. UDDO: Well, you don't have to convince me
15 that case closures is not a good way to do that. If
16 that's what the point of your --

17 MR. SINGSEN: It's not just that --

18 MR. UDDO: -- presentation is.

19 MR. MENDEZ: What you're doing though, the data
20 there shows that we're handling under A 8,400 people and
21 under B we're handling 2,300 people. To me A is much
22 more effective and efficient in the delivery of legal
23 services.

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1 MR. SINGSEN: I think it has a lot to do with
2 those variables.

3 MR. MENDEZ: Given your hypothetical, they're
4 both efficient.

5 MR. SINGSEN: In A you're dealing with two-thirds
6 of the cases being 15-minute advice components. And in B
7 you're dealing with --

8 MR. MENDEZ: You're giving all the clients are
9 highly satisfied?

10 MR. SINGSEN: With what they got.

11 MR. MENDEZ: I'm sorry?

12 MR. SINGSEN: With what they got. I mean, you've
13 looked at the client satisfaction material on the Bar in
14 general. You know what the major predictor of client
15 satisfaction is.

16 MR. MENDEZ: However, we took your assumption.

17 MR. SINGSEN: No, no. Listen to what I'm saying.
18 The major predictor of client satisfaction in private
19 practice is whether you're friendly to the client. And
20 whether you provide information to the client.

21 It is not the quality of your work. It is not
22 the outcome of the case. And that's true in advice practice
23 as well as full representation. So client satisfaction as a

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1 measure probably doesn't get at issues of quality very
2 well.

3 MS. BERNSTEIN: But, Gerry, you just said that it
4 was quality service. And if advice was quality, then we
5 served more clients and maybe the other program also
6 provided quality service, but they spent more time doing it
7 than they needed.

8 MR. SINGSEN: But I gave you as a definitional
9 matter here that neither of them was spending more time than
10 they needed. And you find that out, of course, you'd have
11 to go into the program and examine what they actually did.

12 But in terms of advice, quality --

13 MR. MENDEZ: In terms of the statute, though, A
14 would be better, more efficient, and be a better program --

15 MR. SINGSEN: No, I disagree. The statute calls
16 for high quality. It calls for following local priorities.
17 Both programs are fully following local priorities, and are
18 serving the highest priority needs in their communities.
19 They happen to have different needs.

20 THE CHAIRMAN: I'm going to exercise my
21 prerogative to ask Mr. Singesen if you would submit your
22 presentation in writing and attach these charts as
23 exhibits.

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MR. SINGSEN: I'd be glad to.

THE CHAIRMAN: Or resemblances of them. I know you don't want to deprive other speakers of precious time. Marjorie?

MR. SINGSEN: Thank you.

MS. MCDIARMID: Thank you. I'm not completely sure the Board is going to be able to easily see this. We might try to move the angle of the screen to see if --

THE CHAIRMAN: Why don't you light it and let's see what happens? I can see it fine.

MS. MCDIARMID: How about down at the end? Miss Benavidez?

MS. BENAVIDEZ: That's fine.

MS. MCDIARMID: Okay. I've prepared for the Board copies of the slides that I intend to use, and there are also copies over there on the table for anybody who wants one.

What I'm proposing to discuss this morning is, I think, a narrower area than what Mr. Roche and Mr. Singesen have discussed. And it's the area of what do we know now and what can we discover from the information that we currently have available?

Because we of some of the Board's questions that have come up, if I have time I'll try to address whether some additions to data are materially going to aid in the process, at least in my view.

Having set that as the agenda, the conclusion I think one draws is that what CSR probably can tell us is more than we currently know about relative costs of providing varying types of services.

To do that, it seems to me, we first have to clean up what we know are some problems in the CSR data. To this extent, I agree with Keith. I think some of the cleanup problems may be a little easier than what the Board may envision.

First, if we're going to get to -- well, let me give the three areas and then talk specifically about each one.

If we're going to do costs, we've got to have a funding base that enables us to accurately compare programs.

Second, we've got to clean up a problem that we know exists in the CSR data in terms of uniformity of filling out two of our major report forms.

Three, we've got to clean up what I've called math errors, but probably on second thought would best be called math and data errors.

Let me talk about the first one. That, by the way, was referring you to Chart A in the materials that I've handed out.

Referring you now to Chart B. The data that you were looking at in Detroit was based solely on LSC funding. CSR under our directions to programs is not based solely on LSC funding. The programs are asked to report cases regardless of funding source, if the client is LSC eligible.

What that means is in looking and using a funding base which is solely LSC, and using cases that are generated by dollars other than LSC as well as LSC dollars, you have -- using that model -- discriminated against every program that does not have funding other than LSC.

This plays it out. Program A gets 100,000 LSC funding, as does Program B. Program A has 500 cases. B has 600. You simply use LSC dollars, cost per case is 200 and 166.

But we discovered that Program B in fact has \$50,000 worth of money that goes into CSR reported cases. Therefore, in fact, their true cost is 250.

This creates a slight technical glitch, because CSR is computed annually. Approximately one-third of our programs do not do their audits on an annualized cycle. They do them on a -- that is, a calendar year cycle. Everybody does it annually. But don't do them on a calendar year cycle.

You have to do some adjusting to make sure that your CSR reports are mirroring the same time period as your audited financial reports are.

There is also a smaller technical glitch which is that I said programs are only to report data on LSC eligible clients. Therefore, you can't take a program's entire funding base. Title 3, for example, Older Americans Act, may well involve some LSC eligible clients who are reported and some non-LSC eligible clients that meet Title 3 eligibility criteria, but are not reported.

You have to essentially go program by program by program to find out what funding counts and what funding doesn't count.

Now, looking at Slide Number 3, this has to do with the problem of basic field staff PAI reports. Our current direction to programs is that they report, give us two reports on their basic field work.

One of them, the basic field report, is to include both PAI cases and staff cases. The other, the PAI report, is to include only PAI cases.

This instruction by the way is different from the instruction we give them with respect to migrant, Native American funding.

Those we tell them don't include that in your basic field. Give us a totally separate report on that.

Because of that confusion, a fair number of programs -- and exactly how large that number is, I can't tell you right now because we need to do a check, or you need to do a check. I need to stop talking about "we."

But a fair number of programs are in fact giving you a -- referring to Chart B -- a basic field report which is staff only cases, and a PAI report which is PAI only.

The problem with that -- and I'm going to flip back here to C for a minute -- is that when the Corporation computes costs for various kinds of cases, the Corporation is assuming that programs are following the instructions.

And the result is that to compute staff cases, what the Corporation is doing is taking the basic field reports, subtracting out the PAI report, and giving them the staff report.

Going back to C --

MR. MENDEZ: Let me ask a question. The easy way to resolve this then is just to separate PAI out from the normal reports?

MS. MCDIARMID: I believe that that's the appropriate --

MR. MENDEZ: You're telling us that the field programs aren't intelligent enough to do it themselves, so that we might as well just do it the other way.

MS. MCDIARMID: I don't think --

MR. MENDEZ: Is that what you're saying?

MS. MCDIARMID: I don't think, Mr. Mendez, that it's a matter of intelligence. I think it's a matter of us having given contradictory instructions. And yes, I think that's the probable solution of this problem.

MR. MENDEZ: Okay. Well, that should be easy.

MS. MCDIARMID: That's right. My point precisely.

MR. MENDEZ: Can you do that?

MR. OSTERHAGE: Sure. Marjorie and I have talked about this, and a lot of this is part of that cleanup activity, along with uniform definitions and instructions.

MS. MCDIARMID: And that's what I'm addressing at this point.

MR. MENDEZ: You're in fact resolving this now?

MR. OSTERHAGE: We're working on it. Right.

MR. MENDEZ: Okay.

MR. MCDIARMID: The result of what's currently going on is what you saw in the Board book at the Detroit meeting, where we have PAI percentages that exceed 100 percent. Because when you do the subtraction you get the wrong numbers. That was Chart E.

And as Mr. Mendez suggests, in Chart F, I suggest the way to solve this is to split them out.

MR. MENDEZ: I don't think we have any problem with that.

MR. MCDIARMID: I wasn't suggesting that you did.

Moving to G, this gets to the math and reporting error issue. I have chosen what is essentially a fairly mundane example. Which is simply a failure to add correctly. It can either come in at the program reporting to the Corporation level, or through a data entry problem at the Corporation, turning out reports.

THE CHAIRMAN: That bothers me, too. But the fact of the matter is at some point that's going to average out.

MS. MCDIARMID: That's correct. You can, however, do some things about it. You can build in what in computerese is called an error checking program.

To some extent, OIM is already doing that. The suggestion that I would make to them, beyond what they're doing right now, is they're catching the errors. They have a protocol for how to resolve them, which assumes that certain figures are accurate. And Mr. Frey and folks can talk to you about that.

I would suggest that a better way of handling that is probably a contact back to the program at that point, saying what's the glitch? Where's the problem?

MR. OSTERHAGE: To the extent that we get everyone automated, that error check in the software at the local level, the local program will have the responsibility of accurate data in it and they're probably in the position to know if there is a glitch. It would show up immediately to them.

We also lose in the translation when we ask and it's retransposed to us and we have to go back and dig it out. Automation, software, locally resolves that.

THE CHAIRMAN: Partially.

MR. OSTERHAGE: Yes.

MS. MCDIARMID: I'm going to come back to G, if I have time at the end, because I think it illustrates something along the issue of aggregated and disaggregated data which may be useful to the Board to know. We'll leave that aside for the moment.

MR. MENDEZ: Well, let me just ask you: You think all of this -- let's talk a little bit about aggregated data right now.

MS. MCDIARMID: Okay. Fine.

MR. MENDEZ: That's one of the key issues that I want to address.

MS. MCDIARMID: Fine.

MR. MENDEZ: What issue do you want to address about aggregated and disaggregated data?

MS. MCDIARMID: The point that I want to make is that the Corporation already gets a high level of disaggregation in the data that we process. And I can illustrate it here.

We not only get information about type of case, but we get it matrixed with case resolution. To my mind -- and I've discussed this with Keith -- the only thing that

disaggregation adds is it tells you how many of the bankruptcies that ended in court decisions were females; how many of them were black; how many of them were over 60.

Because that's -- we matrix that information separately.

It does not tell you whether -- it doesn't tell you anything more than what we already know, unless you add it --

THE CHAIRMAN: You can't tell that from this illustration, though can you?

MR. MENDEZ: No.

MS. MCDIARMID: Well, what you do know from this illustration is that, for example, this program -- and this is purely hypothetical data that I threw up on an old CSR chart -- this program gave brief service to seven people in the area of bankruptcies.

THE CHAIRMAN: But it doesn't tell you whether four of them were Hispanic or --

MS. MCDIARMID: That's correct.

THE CHAIRMAN: -- Native American.

MS. MCDIARMID: That's exactly my point. But that's all the disaggregated data adds to it.

THE CHAIRMAN: Well, it does --

MR. OSTERHAGE: Unless we have --

THE CHAIRMAN: Even if this were filled out, to me it would be absolutely useless. All you'd know is that you -- I mean, if it were filled out, you'd know you served five, if that were filled in with five, you'd know you served five Hispanic clients. But what the case was, you wouldn't have any idea.

So what does -- all you -- I mean, what are you -- if you're trying to tie it, marry the information it's useless.

MS. MCDIARMID: You're absolutely correct. You cannot marry that information on the report. My question is for what -- how much does it gain us to know --

THE CHAIRMAN: Yeah. Why do we want to know how many black people we divorced or what?

MS. MCDIARMID: Right.

MS. BERNSTEIN: It may be useful in terms of demographic needs, though.

MS. MCDIARMID: But we have the demographic data. Unless one assumes that black clients have markedly different subject matter needs --

MS. BERNSTEIN: But there are other disaggregated areas --

MS. OSTERHAGE: If I could interject, there is a distinction of whether the demographics need to be disaggregated along with case type and enclosure codes. We would welcome your thoughts.

I don't think necessarily they would have to be. In the overall demographic picture, what is important to us is the weighting of a case. So that if we look at this example Marjorie has provided, we would know that under bankruptcy debtor relief, the counsel advised they report ten cases. Case type and closure code.

There is a third dimension there, and that's this weighting. Either what is the cost or what is the amount of average time or the average cost, some sort of weight to give that specific case.

MS. MCDIARMID: Let me explain to you, as the rest of my presentation will, how I think you get there from what we've got right now.

MR. MENDEZ: But it seems to me -- let's talk a little bit about the various types of programs. It seems to me that we, some of the programs -- and I'd really like to ask some of the programs this -- it would be helpful for them to know the number of blacks or Hispanics that are

going through bankruptcies as compared to everybody else.
So they know --

MS. MCDIARMID: But, Mr. Mendez, they already know that. The fact is --

MR. MENDEZ: How do they know that?

MS. MCDIARMID: Because the way these forms get filled out is the programs have a case closure form for a particular client that they add up all the data.

MR. MENDEZ: I understand that. But they don't -- when they're doing that, they don't have an overall statistical guide to say that they have X number of Hispanics that are going through bankruptcy and they have Y numbers of black that are going through divorces and --

MS. MCDIARMID: Some of them do and some of them don't. The point is that the people who feel that that's an important piece of information have the capacity right now to generate it.

MR. MENDEZ: It seems to me though that if you're a program and you're setting your priorities, that that would appear to be helpful to know.

MR. MCDIARMID: And for that reason, I suspect that a fair number of programs do it.

MR. OSTERHAGE: To a great extent, this matrix grid which is filled out by programs is based on some other paper forms information or system they have in place. Part of the staff suggestion in terms of an automated screening is to basically eliminate this where the storage of that line of information is all on that machine.

MR. MENDEZ: I just want to ask Terry. Terry, would it be helpful for you to know the number of blacks or Hispanics going through different areas in terms of your program?

MR. ROCHE: The latter part of that question is real easy. I come from Charlotte, North Carolina. We have blacks, whites, and no Hispanics.

But in terms of blacks, I've looked at that --

MR. MENDEZ: In terms of priorities.

MR. ROCHE: Yeah, I've looked at that on occasion, and what's interesting, as Mr. Valois knows, our service area has an extraordinary difference in population county to county.

I've not yet been able to figure out in terms of case handling how that is likely to affect our case handling. Where it can become an effect is in the priority setting process. And consequently --

MR. MENDEZ: That's what I'm talking about.

MR. ROCHE: -- when you come back to priority, and try to track priorities, maybe it's some help. Frankly, I haven't thought that one through. I'll be happy to do so.

MR. MENDEZ: That's the issue I was thinking of, because it might really affect your priority setting if you knew which areas were doing that. I don't think that you're getting that information now.

THE CHAIRMAN: Marjorie, would you take about two minutes?

MS. MCDIARMID: Okay.

THE CHAIRMAN: Talk fast.

MS. MCDIARMID: Let me run through, very quickly -- I'm going to drop one and two and concentrate on three since I've got two minutes left.

Under advice service referrals, I think you will find, my experience in legal services programs is that people are not going to count certain kinds of cases. The ones they won't count are the ones they spend the less time on.

I think that a fair amount of what we're seeing in terms of the spread nationally on this issue is a result

of undercounting. I think we can clean that up by encouraging the counting to take place.

Physical overhead and costs differences, a little bit of this has been discussed. I can't give this one up.

Dayton, Ohio has 135 -- this is Chart H. Dayton, Ohio has 135 poor people per square mile. Idaho has 2.59 poor people per square mile. We give Idaho slightly less than twice as much money as we give Dayton, Ohio.

You can't tell me that there aren't built-in costs having to do with simple office location that affect those two programs differently.

Let me move finally -- I'm sorry. That was I. And coming back to H. Case weighting. This is what everybody, to some extent, is talking around.

THE CHAIRMAN: I've envisioned a formula which is longer than this table --

MS. MCDIARMID: Precisely.

THE CHAIRMAN: -- if you try to weight geographic dispersion and the height of the mountains in Idaho versus the height of the hills in Asheville.

MS. MCDIARMID: We've done some studies along that line. It's not quite that tough. I think if what you did was you took audited data and you looked at the portion

of our audit report form that asks for physical overhead as opposed to the portion that asks for staffing, I think you can come up with a ratio.

What I used to do when I was making these comparisons -- and this was '70 data, so I'm not proposing it as the rule of thumb today because I think it's different. But I used to assume an 80/20 for an urban program, 80 percent staff, 20 percent physical overhead; and a 70/30 rural. That's a very rough rule of thumb. It's easy to compute.

THE CHAIRMAN: That may be all you can say for it.

MS. MCDIARMID: Well, but it's an important point. You've told people -- and I think properly -- in your priority regulation that they've got to reach out to clients.

If you adopt a funding formula that doesn't take those costs into account, you have on the one hand said you have to reach out; and on the other hand, but you're going to lose money if you do. It seems to me that's incorrect.

Moving back to G for a moment. What we now have in the computer at the Corporation is national data going back for three or four years on every program in the country

that gives us this matrix. That tells us result versus nature of case.

Some of that data is weak. I've told you where I think the weaknesses are. It can be cleaned up. Those weaknesses are not that overwhelming.

From that data -- and we're looking here at Exhibit K -- it is possible to do an analysis which, except for this example, we have not yet even begun to do, of type of results by subject matter area, and comparing that analysis to cost.

What this chart K shows you is the percentage of cases in administrative decision, court decision, negotiation with litigation, for all subject matter areas and charts, plots that out against cost per case as figured as I have suggested it be figured.

THE CHAIRMAN: Marjorie, I'm going to ask you to do the same thing I've asked Mr. Singen to do, because we are flat out of time, and we're going to be in serious trouble here immediately. If you would just submit to us your presentation in writing, and use these charts as attachments.

MS. MCDIARMID: One minute.

THE CHAIRMAN: Okay.

MR. MENDEZ: What is the value of this other one?
I don't understand.

MS. MCDIARMID: What the value is is comparative purposes. What I'm now showing you, what I'm overlaying on it is Chart L, which does that same kind of analysis excluding divorces, name changes, and bankruptcies.

You see two things which statistically are extremely interesting. You see a dropout, a significant change at this end of the spectrum (indicating).

A large number of the programs that showed high litigation percentages and low costs are, as anyone practicing in the field could have told you, running exclusively divorce operations. They fall out of this.

That doesn't meant divorces aren't important. But what it means is that when you're weighting cases, divorces don't carry the weight that other kinds of cases do. We're talking about case weighting. You know this off of our current system, CSR data.

The other thing that happens is that the cases bunch along the line. You get a better predictability. It's not a very good predictability, but it's a better predictability.

What I'm suggesting in essence is that from the data we currently have, you can do this kind of case weighting without additional measure for all of the kinds of cases that we report on CSR at this time.

Without losing your existing data base, which is what a change in the system will do, and without the delay inherent in changing the CSR. Thank you.

THE CHAIRMAN: Thank you very much. I'm going to interrupt the agenda and take up items four and five, and then come back to three, because we have asked people to come here on the expectation they'd be able to leave and go back to their other professions, and I'm going to interrupt at this time. We'll come back to three. And Pepe has promised me some of his time.

Item four I think we'll take up at this time, Report on the Office of Field Services Law School Clinical Project.

Please give us your names for the record.

MR. MOSES: I'm Charles Moses, the coordinator of Delivery Research for the Corporation, and this is Eric Sirulnik, professor of law and Director of Clinical Education at George Washington University.

THE CHAIRMAN: Professor, spell your last name for us?

MR. SIRULNIK: It's S-i-r-u-l-n-i-k, Sirulnik.

MR. MOSES: Professor Sirulnik will begin. We've asked him to come here to give a brief overview of a program which is one that the Corporation is funding.

MR. SIRULNIK: I thank you very much for accommodating my own schedule in your agenda. I've left 120 first-year law students somewhere between mens rea and actus reus in the first week of law school, and if I don't get back, I think the damage will be uncontrollable.

I've been engaged in the practice of clinical education for 15 years at the National Law Center, which is the law school of George Washington University. We currently have a program which includes nine supervising attorneys, plus myself, and approximately 300 students per year.

We handle a variety of civil representational cases, including both administrative and litigational forums. Each year we have approximately 3,000 client contacts, 2,000 of whom we end up representing either in the administrative capacity or in litigation.

I'd like to give you a quick overview of what my own program contains; my thoughts on the importance of clinical education in terms of what I feel is the mandate of Legal Services Corporation; and I'd be very happy to answer any questions.

The program is divided into two sections, second and third-year programs. The second-year students are limited by virtue of not only their scope of knowledge in terms of the curriculum they've had in traditional law school courses, but by the student practice rules, which cover most clinical programs throughout the United States.

The second-year students represent individuals in administrative forums. This made possible by virtue of the fact that individuals do not have to be members of the bar to act as personal representatives in the largest majority of administrative hearings, both on the state and federal level.

Pursuant to that, each year we have about 30 students who participate in something called the Administrative Advocacy Program. That program is largely devoted to serving older Americans in a variety of administrative forums. Benefits, procedures before the Social Security Administration, supplemental income

proceedings, Medicare, Medicaid, Veterans benefits, unemployment compensation, workmens' compensation, a variety of programs which provide individuals who suffer from age-related legal problems.

Concomitant with that, we are receiving funding for the first time from the Legal Services Corporation under the Elderlaw Project, to expand service and representation of these individuals in the area of protective services, which would allow us to put on an attorney whose full-time duty would be in the area of guardianships and conservatorships for individuals who are incapable of taking care of their daily affairs.

When a student graduates from the second year program, and wishes to continue in the clinical area, many of the students end up in our litigation program. The student practice rule in the District of Columbia is an old one, and it's an excellent one in that it allows not only practice before the D.C. Superior Court, which is the court of general jurisdiction here, where students represent individuals in landlord-tenants, small claims, domestic matters, defense of civil actions, or where they cannot obtain a paid attorney, but also the civil practice rules here provide through the federal court system, the ability

to practice before the United States District Court and the United States Court of Appeals.

So oftentimes individuals who have exhausted their administrative remedies with their cases in their second year, actually represent clients in the third year in the United States District Court, which is the court of appeals, as you know, for administrative forums.

In addition to the general civil litigation clinic, we have a bankruptcy clinic which allows individuals to practice under the federal court rules, doing largely Chapter 11's, but are beginning to do some other types of corporate reorganization as well.

We have a clinic which serves Spanish-speaking individuals in all of these areas, by virtue of the fact that we have a Spanish-speaking attorney. So Spanish-speaking clients and Spanish-speaking students can plug into the various clinics, depending on the student's areas of expertise.

We have another clinic which involves small businesses, helping small businesses get started, doing Articles of Incorporation, bylaws. Many of these businesses are minority-owned. Many of them are nonprofit.

We have a series of programs involving individuals working for nonprofit organizations, working for government agencies under an externship program. And in all it's a very well-rounded program, which as I said, each year exposes about 300 students to the practice of legal service law.

I think the benefits that I've seen over these past 15 years are fairly clear. First of all, and perhaps most important, there is the delivery of direct legal services.

We are seeing cases which really reflect an overflow of the Legal Service Corporation offices here that have a backlog or don't have time for instance, considering their heavy caseload, to do something like a will, a simple will for an older poor person. It may not seem like an important factor, but when someone is getting older and doesn't have much money, where that money goes becomes increasingly important.

The Legal Service Corporation offices have other pressing needs, and oftentimes a second-year student with a little training and supervision is capable of providing that service.

The other variety of cases, landlord-tenant, small claims, our students can be very effective in serving low-income clients in the Superior Court forum.

Besides the delivery of legal services, and perhaps something that I think is equally important, what we're doing I think is providing individuals who normally would not get any exposure whatsoever, and perhaps because of that no inclination to get into legal services, with an opportunity to work with poor people, to work with members of minorities, to work in the area of law which poverty law or urban law, or whatever you wish to call it, really deals with.

So that a student might find out, say, this is something I'm very much interested in. Ten years ago the students coming into my clinic were those, I think, who had a predilection to go into public interest law. There was a groundswell of interest in serving the poor. Programs like this and the Peace Corps and things I think may be responsible for that.

But now the large majority of students that come into my program are interested in benefiting themselves in terms of substantive knowledge in the clinic. They're good teaching techniques. The teacher-student ratio is very low.

The hands-on experience is an excellent motivator for learning, as well as an excellent facilitator of learning. And students who come in to learn something, say bankruptcy law, or commercial law in terms of small businesses, being exposed to low-income clients say to themselves, hey, this is something I'd like to do.

And we find that with each graduating class, somewhere between 10 and 15 percent of those individuals go into public interest law, which is a very high percentage. It's much, much higher than the normal percentage of a graduating class.

Thirdly, the skills that these individuals learn and the skills in terms of interpersonal relationships with low-income clients, I think provide another resource when these individuals get out in terms of them being, one, equipped and, two, motivated to in fact volunteer, whether they're doing full-time legal services or not.

They might be working for a private law firm that has a pro bono section. They might be working for any agency or any law firm which cooperates with a bar volunteer program where an individual in order to continue take courses on a continuing legal education ground, plus pledge to do two or three or four cases.

These individuals have had the skill and the exposure to this type of practice to want to participate. So even if they're not going into the full-time practice of legal aid type of law, what they are doing is volunteering a certain or a larger percentage of their time that they wouldn't had they not had the exposure to the clinical program.

THE CHAIRMAN: How do you know all this, Professor? I mean, do you do this on followups with graduates?

MR. SIRULNIK: We do track our students. As a matter of fact, the law school itself is undergoing a self-study now in preparation for an annual review by the American Bar Association.

One of the things that we did was poll the students that have gone on to public interest -- or any career -- and found out the correlation between those who have gone into public interest who were in clinics and those who have not.

And also I think because of the personal opportunities to meet and know students better than a large class -- ten as opposed to 110 -- you tend to follow the careers of the individual students, which I have done.

I spoke as quickly as I could.

THE CHAIRMAN: You did not exceed your time.

MR. MOSES: Well, what we wanted to do was give you a perspective of one of the clinics that we're actually funding. Now, just so the Board understands, we fund a portion of Eric's clinic only, through the Elderlaw Project, which is just beginning funding this year.

But to put this microcosm into perspective, I also wanted to give you the updates on what our national program is doing.

Just to reiterate, currently through the continuing research project which is now approximately a year old, and the Elderlaw Project, we are funding a total of 34 law school clinics in a total of 33 ABA accredited law schools. That's approximately somewhere between 15 and 20 percent of all ABA accredited law schools.

Basically those clinics are geographically dispersed in 20 different states around the country. And over the three-year period during which these overlapping clinics will function, we are working with estimates right now, even after the first figures have come in, of somewhere between 16 and 18 thousand clients that will be served with

approximately 2,000 students being exposed to the clinical experience.

So if you take Mr. Sirulnik's viewpoint on the individual level, and you expand it across those 34 different clinics, you can see the impact that we're actually having.

And an additional viewpoint to bear in mind is that we are doing all of this leveraging LSC resources. At least, if not more than, 50 percent of all the funds that are being committed to this are being committed by the private universities themselves.

So what we're able to do is leverage use of LSC money, which is in demand right now. And I think that when you consider the private contributions that are being made to these clinics, in addition and because of the LSC money that is going in, we can actually begin to see the benefit of the money itself.

But what we also wanted to do, not that the service delivery is an unimportant area, or the number of students are unimportant, but today what we wanted to focus on was the importance of training and facilitating recruitment which these clinics provide.

As Eric has told you, approximately 15 to 20 percent -- or, no, 10 to 15 percent of the students that come into his clinic as GW has discovered from their own internal sources and reviews, wouldn't normally have gone into a career with legal services. But after having been exposed to the clinic, they not only consider it, but they actually go into public interest law.

And I think that that's a very telling statistic. I think it's something that we're finding out as our student surveys are being tabulated, too. So it's not just an isolated statistic. But it's one that's being provided around the country.

The important thing about that -- actually I think that there are two important things to stress. One is that we are getting people interested in legal services work that are already trained. They already have practical, on-the-job experience working with clinics for approximately a year at least, if not two.

And that means that they know the clients. They know the types of problems that they're working with. And when they go into local legal offices, legal services offices, they already have a large degree of the training that's necessary for them to actually do their job.

I think a second important aspect to consider is we've gone through a weeding-out process. A lot of students will come into a clinic thinking that public interest law and legal services work are what they want to do. And they discover after having gone through the clinic experience that this is not the type of law they want to do for the rest of their lives.

That's important, because then our local offices don't have to go through the weeding-out process. We can get people who are interested, genuinely interested. And they know they're interested because they've dealt with the clients; they've dealt with the problems that these clients have. And they're not shooting in the dark.

I think that possibly a good analogy -- and I know we're coming to the dog days of summer, and the baseball season is winding down. I think frankly a good analogy is to the baseball system itself.

If you look at any good baseball team, they're only as good -- especially in September -- as their farm teams are. Because if you don't have good farm teams that can feed in good qualified people near the end of the season, you're gonna have an awful lot of problems.

Well, I think what we're developing here is basically a farm system for legal services. Because we're finding a way to find those students who are interested in legal services, and train those students while they're still in law school when they are more subject to training. So that they come out knowing that they're interested.

And what we can do and what we are doing now is trying to utilize those students through our national resume' bank to facilitate local recruitment.

THE CHAIRMAN: Does the professor's law school participate in the resume' bank?

MR. MOSES: It will.

THE CHAIRMAN: Professor, would you be willing to cooperate with Legal Services Corporation in helping us to identify people in your program who are interested in serving --

MR. SIRULNIK: Absolutely.

THE CHAIRMAN: -- in legal services?

MR. SIRULNIK: I would be delighted to do that.

MR. MOSES: So I think that when you look at the entire coordinated system, you see that what we're finding is that law school clinics themselves offer an excellent training and recruiting ground so that we can facilitate

local recruitment of well-trained attorneys from law schools.

If there are any further questions --

THE CHAIRMAN: Any members of the Board have any?

MR. SMEGAL: I do. I might suggest your analogy to baseball works everywhere but New York, where Steinbrenner just throws money at them.

(Laughter.)

MR. SMEGAL: Speaking of that, Eric, how much is your budget overall? You get 92,122 from --

MR. SIRULNIK: Almost \$600,000. And over 350,000 comes from the law school every year on a tuition-based income. So that we have money from a number of federal programs, but the heart of the program is coming from the law school itself.

MR. SMEGAL: You mean the law students in effect are subsidizing the program through their tuition?

MR. SIRULNIK: Through their tuition.

MR. SMEGAL: When I was at GWU in 1957, the tuition per hour was -- I think I started out at \$12 an hour. What is it now?

MR. SIRULNIK: Over \$260.

MR. SMEGAL: \$260 an hour?

MR. SIRULNIK: Yes.

MR. SMEGAL: I see.

MR. SIRULNIK: And going up.

MR. SMEGAL: Let me make one other personal comment. I assume your program has been funded before I got on this Board, and it's not because I'm on the Board. You've had an LSC funding --

MR. SIRULNIK: But the new branch in San Francisco --

(Laughter.)

MR. SMEGAL: Eric, I missed one thing. And you may have said it. If you have, please don't say it again, but the training aspect of your program, you work in local lawyers. How do the law students get their training?

MR. SIRULNIK: The law students get the training by virtue of the fact that we have nine full-time faculty members who are purely clinical faculty. They have a student-instructor ratio of between 10 and 15 individual per instructor.

The second-year students in the administrative clinics, we find we can get closer to 15 students. The litigational program are 10 to one, closer to that.

That is not to say that the main line course instructors, the traditional classroom course instructors, are not brought in wherever possible. But in terms of full-time clinical supervision, we have nine full-time instructors, plus myself.

MR. SMEGAL: I see. Thank you.

THE CHAIRMAN: If there are no other questions -- do we have any other speakers on item four. Thank you very much. I appreciate it.

MR. SIRULNIK: Thank you for the opportunity to appear.

MR. MOSES: Mr. Chairman?

THE CHAIRMAN: Yes.

MR. MOSES: If I can have one more minute of your time?

THE CHAIRMAN: Go ahead.

MR. MOSES: Based on what we have found today and what you've heard from talking to Mr. Sirulnik and what you've heard over the past several months, at this time the staff is prepared to make a recommendation to the Board, or to this committee, rather.

What we would recommend is that the allocation of necessary and appropriate funding for further development of

law school clinical programs based on the necessity for training and recruitment at this time, because what we're finding is that training and recruitment is something that is a very important side effect of this particular type of award.

So we would recommend that this committee consider the allocation or recommending the allocation of appropriate and necessary funding

THE CHAIRMAN: Two things. One, I don't think it's a side effect. I think it's an integral part of the whole scheme.

Secondly, some of us, Professor Uddo and I, come to the, this subject with some other knowledge in addition to what we've heard here today and in the past.

And finally, what kind of numbers and dollars are you talking about, because if I don't ask you, Mr. Smegal will.

MR. SMEGAL: In this case, I might ask to double it.

MR. MOSES: All right. The figures that we have worked with in the past -- of course, we are working with demonstration projects -- on a yearly basis, we have worked with in the law school research projects, which was the

original project, an annualized budget of approximately \$707,000.

Under the Elderlaw Clinics -- that particular original project funded 14 schools. The Elderlaw Clinics are working with an annualized budget of approximately \$818,000 to fund 20 programs.

Now, of course, the funding for these programs are in actuality beginning to run out. They were allocated originally in June of 1983 for the first project, for an 18-month period.

What we would recommend, however, is not necessarily annualizing these particular grants. But what we would recommend is putting money into the budget of the Corporation so that what we do is have a yearly competition for grants.

This way we could facilitate across the nation participation by a variety of geographically dispersed law schools and we would also be able to bring in students into the clinics in a wide geographical area, to make maximum benefit for all LSC programs for recruiting purposes.

I would recommend -- if you are asking me what is necessary and appropriate funding, I can tell you that the

out process is done as a part of the clinic itself. So that would be included in the clinic grants itself.

The resume' bank is being done in-house at the Corporation with existing personnel. I think that if we were to break out the administrative costs, it would be miniscule in comparison to the total cost of a coordinated program.

MR. SMEGAL: A couple of comments. The Elderlaw civil clinical grant, it's a two-year commitment. It's eight-eighty per year, I guess?

MR. MOSES: Eight eighteen per year. It's a total of 1,636,000.

MR. SMEGAL: Well, certainly one of the arguments you can make for what you're proposing is that as I see this, where we're going with this is replacement of the mechanism by which the Reggie program found people.

And certainly part of the savings in not expending that Reggie program administrative fund could logically be put into this program where you're developing a resume' data bank from which you can then select appropriate staff people, staff lawyers.

So I mean maybe your argument should be couched in terms of savings on one side and putting it over here to

compensate for that administrative function that's no longer going to be there.

MR. MOSES: No longer going to be in the line-item budget of the Corporation, right.

THE CHAIRMAN: I think that the consensus of those present is that we're in favor of it. We agree with it. It's been excellent.

Do you want to say something before we have a motion?

MR. MOLA: If I may.

THE CHAIRMAN: Sure.

MR. MOLA: I just want to make several comments on the law school clinic projects. And I don't mean to deprecate any of the work that's been going on for the last 15 or so years.

THE CHAIRMAN: Tell the court reporter who you are, please.

MR. MOLA: My name is John Mola, M-o-l-a, and I'm the director of Rhode Island Legal Services and co-chair of the Project Advisory Group's Funding Criteria Committee.

I don't mean these comments to in any way deprecate the very important work that is provided in terms of direct client service through law school clinics, nor the

very important learning experience that is available to law students through the clients.

My comments, however, go to the fact that the law school clinics have a life of their own that is completely unrelated to LSC funding. The George Washington clinic has been in existence for 15 years and clinics throughout the country in law schools have been in existence using either tuition monies or other grant monies from other funding.

For us now to take credit because of a small amount of money that's going out of Legal Services dollars for all of that activity that has gone on over the last 15 years seems to be a little bit overstepping. Even if Legal Services money was not to go to clinics, I think that those clinics would continue to operate and would find other sources of revenue.

The other thing that concerns me is the idea that these clinics are going to help us with recruiting and are going to help us with training legal services attorneys. Again, that is going on and has gone on without specific Legal Services funding of the clinics.

Every program has its own personal contacts with clinics and students who are interested in legal services

programs make contacts with programs in the area in which they wish to practice.

I don't think that the Legal Services money is going to have any impact on the number of people who come into clinics. That is something that we have been enjoying the benefit of for a number of years and will continue to whether Legal Services funds it or not.

THE CHAIRMAN: But, John, if there are more clinics across the country, aren't we really enhancing what we're trying to accomplish?

MR. MOLA: I don't believe that the amount of money you're talking about is going to start up any clinics. I don't think any of the ones that have been funded thus far have been totally new operations. I may be wrong on that --

THE CHAIRMAN: I think you are.

MR. MOLA: -- but from what I understand, it is supplemental funding. For example, in the George Washington situation, it's not 92,000 over --

THE CHAIRMAN: I don't --

MR. MOLA: -- six hundred.

THE CHAIRMAN: -- understand your point. If Campbell University can put in \$40,000 of their money and we can put in \$40,000 of our money, presumably, the program is

twice as big and twice as effective and there's twice as many people working in it.

MR. MOLA: Perhaps.

THE CHAIRMAN: Well, okay. Perhaps.

MR. UDDO: John, it's a fact. Most of the clinics that has LSC money have dramatically increased the number of students that they can put into the clinic, which has the double effect of exposing more law students to that aspects of legal education, and dramatically increasing the number of clients that they can serve.

I mean, I don't think there is any doubt that there is a dramatic increase in the number of students that get brought into clinics because of this funding.

MR. MOLA: My question is, for example, 16 to 18 thousand clients served has been a figure that Mr. Moses stated. My question is: How many of those are clients who were served because of the LSC money or using LSC money.

When he talks about leveraging, is he including 16 to 18 thousand clients that would -- many of whom would have been served with or without the LSC funding?

MR. UDDO: Well, I can only speak from my experiences in New Orleans. In New Orleans, it's no secret that I'm employed by a law school that has a clinic. That

had a clinic before there was LSC funding, but now it has expanded its clinic because of LSC funding.

And they work very closely with NOLAC, the legal services office in New Orleans. And from talking to the people at NOLAC, and in the clinic, there is a unanimity on the conclusion that more clients are served because of that clinic; that NOLAC would not have been able to serve a good number of those clients that the clinic has been able to pick up and serve.

So I mean, I can only tell you from that experience.

MR. MOLA: I have not seen any cost analysis per case or any figures on what the exact payout has been for the LSC clients.

MR. UDDO: We're going to get back where we're talking about before. One of the intangibles that you're not going to be able to put a figure on, 15 percent of the people who go through the GW clinics staying in legal services type work is an astoundingly high figure.

That's a very good figure. And we'd have to go through our whole discussion this morning as to how you quantify that.

And if you were to quantify it, I would think that you would find that it's cost effective, because one of the things the corporation has done with this money is to require that the clinic make it a part of the program that they try to sensitize future lawyers to the needs of the poor and attract them to serving the poor, whether it's full-time commitment to legal services lawyers, or whether it's pro bono commitments, which a lot of students can go through law school without ever being exposed to that dimension of their responsibility. And I think that, to me, has been the most important part of this whole program.

MR. MOLA: I don't disagree with you, but I do disagree with you that that is a product of LSC funding of the clinics.

MR. UDDO: Well, that's where we disagree. I have seen clinics run strictly on the basis of this is a chance at practical experience for the students; it just happens that the poor are the ones that we can get this practical experience through; and there is no particular commitment in the structure of the program to sensitize the students to the poor.

I think the LSC grants have made that a part of clinical education that some schools did on their own; others didn't.

But now, because of that LSC money, those clinics are duty-bound to make that a part of what they do with their clinics. And I think, and the director of our clinic thinks, that that's been the most important contribution.

MR. MOLA: But that is not a national reality. For example, in the law schools in the greater Boston area, provision of legal assistance to indigents has been a tradition within the clinics as long as they have existed.

MR. UDDO: Service to the indigent community has, but educating people to make that a lifetime commitment has not necessarily been.

MR. MOLA: It has been in our experience, and in fact over the last 16, 17 years the majority of the staff attorney that have come to Rhode Island Legal Services -- and I think it's an experience repeated in other programs in New England -- have been students who have participated heavily in the clinical programs at Harvard, at Northeastern, at Boston College and Boston University.

MR. UDDO: Harvard has an abysmal record on the percentage of their graduates that go into public interest law --

MR. MOLA: You're very right.

MR. UDDO: -- I mean, it's probably one percent, if that much.

MR. SINGSEN: Actually, it's about five percent.

MR. UDDO: It's gone that high?

MR. SINGSEN: It's always been that high. It's lower.

MR. UDDO: When I was there, the quoted figure was somewhere between one and two percent.

MR. MOLA: And over the last seven or eight years, we have consistently had a Harvard graduate who's come to work at Rhode Island Legal Services and who has been in the clinic.

My only point is that before any new money is put into the clinics, I think it's incumbent upon the Board to look at the data in terms of what exactly is being bought with Legal Services dollars.

I don't disagree with any of the general comments you make. I just don't believe that clinical experience has much to do with the 1.5 million that's going in.

The second question is, once that data is collected and analyzed, we need to compare with the number

of clients who are going to be served if those dollars went to basic field programs.

And to hear that 16 or 18 thousand clients are being served, I think is not the kind of data that we want, because I'm sure, relatively sure, that the 16 to 18 thousand clients includes all sources of money. And that we're really double-counting the maintenance of effort that has nothing to do with the Legal Services commitment in this area.

MS. BERNSTEIN: You know, I am just a little bit concerned with your almost blatant opposition to the concept that we should try to leverage the money and spread the concern for the poor throughout the legal profession, and not limit it just to the staff attorney model. And that's exactly what I'm hearing.

And I am also concerned with the fact that you want us to be able to quantify every single thing and take data for every single program that we want to get started, but when it comes down to case service reporting, when it comes down to quantifying exactly what the field is doing with the money that we allocate, which is a greater percentage of the money by far, you tell us it's impossible

to measure the performance, and that we shouldn't do it by counting cases.

Your kind of duplicity here reveals, I think, a philosophical preference, rather than an interest in the spreading of resources for the good of the clients.

MR. MOLA: LeaAnne, let me state first that I don't appreciate your allegation that I'm being duplicitious. I am simply making comments about some information that has been presented as a basis for a continuation of the law school clinic program --

MS. BERNSTEIN: But we've been listening to the data for several months now. I don't know whether you've been to all of our meetings.

But we have looked at the very small percentage of our total budget that has gone into a law school clinic type of approach. It has been an abysmally small number over the history of the Corporation.

And the fact that we are trying to rectify this situation to some extent, and at the same time accomplish several goals which had been previously accomplished by, in not a very efficient manner, through the Reggie program in terms of recruitment, exposure, training, those kinds of things which we have heard testimony on and as far as I'm

concerned is perfectly reasonable -- are perfectly reasonable bases in order to go forward with this.

I don't find your asking us to quantify every single dollar a reasonable position.

MR. MOLA: Let me first of all say that I simply suggested that it would be helpful to know what the increased new activity was as a result of Legal Services funding of the clinics.

Secondly, from the field perspective, the recruitment and training that is being offered as a benefit of this program is not something that's new. It's existed for a long period of time. And I don't think the job bank or the amount of money that's going into it is going to have a significant impact on the number of people who are sensitized and given a legal services experience and make that a career option.

And third, I don't think that this program anywhere meets any of the objectives, especially in terms of minority recruitment that the Reggie program did, and to say that it's going to be a replacement I think is fallacious.

Those are the three points I want to make. I have not seen that data. I have not seen that analysis.

And I have not seen the comparison of that data with provision of services through field programs.

THE CHAIRMAN: I think Mr. Smegal has something to say.

MR. SMEGAL: I think as the pro bono we seek leverages out of the funds of the Legal Services Corporation. I think our public meetings give us the benefit of leveraging out the limited resources of this Board.

And I heard you a little differently, John. I appreciate your comments. I didn't hear the answer to one of his questions, and I'm kind of interested in it because I kind of stumbled into it with my question to Eric about how much other money we had at GW.

How many of these programs, these new 20, for example, actually were startup programs because of the Legal Service Corporation money, as opposed to Eric's program which was supplementing an existing program and, obviously in my view, complementing the effort that was done there.

MR. MOSES: All of the clinics that are currently funded, depending upon how you classify startup programs -- for example, even in Eric's program, there was previously no program dealing with conservatorship. So it's starting a

new branch dealing with a significant segment that could not otherwise have been dealt with.

The majority of the clinics that are funded currently are in that situation. The money has been used to start new focuses on a clinic.

For example, dealing with developmentally disabled, or dealing with the aged. Especially in the Elderlaw area, the majority of the clinics are -- for example, West Virginia University is beginning a new focus in their clinic. Or Campbell, as Chairman Valois mentioned.

Of all of the ones that are currently funded, the University of Virginia, for example, was the initiation of a new civil clinic project. They, for all practical purposes, had none. The local legal aid office was very excited about it, and is very excited about it. And they have designed not only a clinic component, but also a classroom component to go in conjunction with it, and it's working very well.

MR. SMEGAL: Just one further point. It seems to me -- and maybe you already have made the staff work on this -- there should be some mechanism internally the staff to encourage law schools that don't have programs, maybe to get in this grant process or at least get some information to

them, so we might have a broader geographic proliferation of law school clinics.

And I think Eric's program is a wonderful program. I don't know anything about it, but I'm convinced it's wonderful from what he said. And we certainly want to encourage those kinds of programs. Maybe we do need a few more. We've got 34 listed here, as I count them. And if I hear you correctly, they probably all had clinics before Legal Service Corporation --

MR. MOSES: The majority had some kind of clinic, right.

MR. SMEGAL: Let's look at those other hundred accredited ABA law schools that don't have clinics, and maybe somehow we can encourage some of them to give us some help.

MR. MOSES: You're talking a hundred that don't have clinics that receive LSC funding. That does not mean that the rest of the ABA accredited schools do not have clinics.

A lot of them have clinics that are funded from a variety of different methods. But they're not as expansive as they could be.

MS. BERNSTEIN: Could I --

THE CHAIRMAN: Let us take one more comment, if we can, LeaAnne. We really do need to move on.

MS. BERNSTEIN: I just want to ask -- I really have to ask this. When we first put out the request for proposals for the law school clinic project, were there any -- what was the response from the field to the law schools? Was there any encouragement from field programs in general toward establishing or applying for this money?

MR. MOSES: In actuality, when we were first starting the original program, we did a survey of field directors. Now, that survey of course was not necessarily scientific. We just asked for comments.

But of the comments we received, approximately 50 percent of the directors were in favor of the Corporation becoming involved in law school clinics.

And I think as you would note from even from the -- what was in the provisions committee book, not only that source but also when we did some work on the congressional legislative history, we found that Congress originally had anticipated that clinical education could be one component that could be funded under the Corporation Act.

So I think that there obviously are many different avenues that we can peg this on.

MR. SIRULNIK: I'd like to answer that very briefly. Before we entered an application for funding under the Elderlaw Project, I personally consulted with both Chuck Vasaly here in Northern Virginia and Willie Cook, the director of the D.C. program to ask what areas could use service in terms of legal services for the elderly.

And the answer came back in terms of protective services, which is what we tried to fill that gap, both in terms of direct services once the program got going, and this concept of training individuals who would remain in the area both geographically and in terms of the subject matter.

So we made an effort to coordinate it with the local programs.

THE CHAIRMAN: Mr. Milkus?

MR. MILKUS: Thank you. I'm Sam Milkus from Legal Services, Incorporated in the Central Pennsylvania area. I wanted to begin by generally stating that I strongly support clinical programs and I believe it's appropriate for the Corporation to be involved in some funding of clinical programs.

My understanding of the funding stream is that the Elderlaw programs were funded by a supplemental amount from the Congress, and the question in the future becomes if

money is to be directed toward clinical programs, additional amounts to be directed, or even a maintenance if it doesn't continue to be the supplement amount, what is to be cut in order to facilitate those clinical programs.

And I guess I throw in our personal experience in Carlisle where Dickinson School of Law is located and point out that we have a clinical program in this area. We supervise students, many of whom end up being in legal services, and we receive funding from the law school to offer these professional services to students.

I question whether it's appropriate to pour a lot of Legal Services Corporation money in, when that's part of an instruction program at a law school.

THE CHAIRMAN: Thank you. I think Mr. Smegal's already answered your question as to where the funds are coming from. Which pocket do you take it out of, I suppose. I don't know that we're talking about additional funds.

Is there anything further on this, other than your recommendation?

MR. MOSES: If you want me to address all of the points I can, but in the interest of time --

THE CHAIRMAN: No. I think Mr. Mola is one of our strongest supporters, and in due time he will be our

strongest supporter on this. I have great confidence in that. And his skepticism is not necessarily reflective of his final position.

MR. MOLA: Mr. Chairman, to follow that up, is it possible to get any of the data that is segregated as to the Legal Services funds?

THE CHAIRMAN: I don't know how to answer your question. If it's available, you're entitled to it, as far as I'm concerned.

MR. MOLA: To simply state 16 to 18 thousand clients, whether that's attributable to the money that we put in or that includes clients that would have been served because the clinics were operating anyway, I think is a very important fact.

THE CHAIRMAN: I don't much want to debate this thing with you, John. But what you're saying is something equivalent of, we need to reexamine the effectiveness of some of the field programs before we put another nickel in it, and we don't do that. And we're not going to do that here.

MR. MOLA: I'm not saying to stop funding, but just to make that information available so we can have a

better indication of how, of what kind of bang we've been getting for the money that's being put in.

The last thing is, we've got three staff attorneys out of the George Washington clinic, and I'd agree with Tom that it's an excellent one. The first attorney came to us in 1975 and stayed with us for five or six years. And Eric was instrumental I think in steering those people into legal services.

THE CHAIRMAN: Thank you for your endorsement.

MR. SIRULNIK: May I be excused so I can get to my class?

THE CHAIRMAN: Yes. Thank you very much. We appreciate your coming very much.

Do we have a motion or something in order to move this along?

MS. BERNSTEIN: Without making a long-winded recommendation, let me just say that I would move that the Committee on the Provisions for the Delivery of Legal Services recommend to the Board the allocation of all necessary appropriate funding for further development of the law school clinical program.

And I have, in order to facilitate recruitment of trained and qualified law school graduates by local legal

services offices, in addition to developing a national resume' bank, these programs would provide an expanded basic core of talented young attorneys who are exposed to the challenge and benefit of assisting indigent clients.

I think that this program would provide a cost effective method to maximize the number of previously trained students who are recruited.

And I would ask that the Committee make this recommendation to the Board. I don't know whether I should say make this recommendation to the Audit and Appropriations Committee or whether it is --

THE CHAIRMAN: I don't know either.

MR. SMEGAL: I was going to -- as are all of my amendment to LeaAnne's motions friendly, I was going to make that friendly amendment if I could, LeaAnne, that maybe we should take it to Audit and Appropriations.

MS. BERNSTEIN: I didn't know whether one committee can go to another committee. If we can do that, then let's do that.

THE CHAIRMAN: Well, we can do it.

MR. SMEGAL: I'll second it, whether we can do it or not.

THE CHAIRMAN: All right.

MR. UDDO: Before you vote, Mr. Chairman, let me just say for the record that in anticipation of this being on the agenda, I did ask the General Counsel's office for an opinion on whether or not I could vote on this, as I am employed by a university that has a clinic that is, does receive LSC funding.

I have a written opinion to the effect that I can because this is a generic proposal to continue the projects and has no effect on the funding or not funding of a specific clinic.

MS. BERNSTEIN: Okay. I have one other -- I didn't know whether this should be a separate motion or -- do you want to vote on that?

THE CHAIRMAN: I think, yes, before we entertain something else.

All those in favor of the motion as seconded and amended, say aye.

(General affirmation.)

MS. BERNSTEIN: My second motion which I guess I will just make --

THE CHAIRMAN: Motion carries.

MS. BERNSTEIN: -- a discussion here rather than making it as a motion, because I think it's really more

appropriate in the Audit and Appropriations Committee, is that we recommend that the funding be annualized into the LSC budget for fiscal year 1986.

And I throw that out only in terms of what I'm intending to do at the Audit and Appropriations Committee. I think it's more appropriate there than it is here.

THE CHAIRMAN: I agree with you. It's more appropriate there than it is here.

Was that a motion?

MS. BERNSTEIN: No. It was a matter of informational --

THE CHAIRMAN: Okay. I'm going to move on to item five now, discussion of partial fee payment concept. And then we're going to go back to three.

MR. RATHBUN: Mr. Chairman?

THE CHAIRMAN: Yes, sir.

MR. RATHBUN: I'm Dan Rathbun. Pursuant to instruction by Miss Lorain Miller earlier on, the staff has begun to look at the possibility of a co-payment from LSC-eligible clients.

Today we have the manager of the program

development and Mr. Raymond English, who is the vice-president of the Ethics and Public Policies Center here in Washington.

We'll just state a few brief comments on the staff's preliminary review of this concept. Mr. Osterhage.

MR. OSTERHAGE: We have provided to the Committee a simple one-page memorandum.

MR. SMEGAL: Is it here, Keith? Do I have it?

MR. OSTERHAGE: I believe it was provided in the papers.

My comments, I think, capture the three paragraphs in that memorandum. Copies will be forwarded to you if you don't have it.

What the staff is asking, once again, is direction and guidance and support if the Board approves of approaching this concept in a research or experimental capacity.

Program development over the years and its predecessor units within Legal Service Corporation has examined ways and means of delivering legal services. You see this in the law school clinical program. The private attorney program involving competitively bid contracts.

You're going to see more of it in the voucher project which

is underway in conjunction with the American Bar Association. All one-time experimental projects.

The co-payment concept has originated for a number of reasons, but one reason looms largest and outshadows anything else, and is the reason, or the most important reason. And that is the idea of attaching to the delivery of the service, the legal services, the dignity of the client, the investment on the part of the client in their own needs and in their own future, and in their own outcome.

To a great extent, we feel that this is an important issue, an attitude issue, to address. And to a certain extent, as I met with different program directors, I have been given anecdotal information which indicates that many program directors themselves recognize the value of this type of investment on the part of the client.

For example, there are programs who have high needs for certain case types. Divorce may be an example. It may not be a priority or because of limited resources they cannot handle all of the divorces that come into their door.

Many programs will assist that client asking for assistance by first referring them to a mediation type of

situation to resolve the problem. And if the problem requires divorce proceedings, then the legal activity or the program kicks in to provide it.

But the client has made an investment as well, in terms of attempting to resolve the problem through a mediation concept.

To that extent, you have a psychic investment, a time investment, on the part of the client in terms of their own stake in their own future with their own problem.

The co-payment idea is an extension of that, to the extent that the client in a very limited way and probably in a sliding scale type of system has an ability to make a token payment. My memo to you suggests the idea of \$1 to \$10 per case, depending on the nature and complexity of the work.

So the client has the dignity of paying, making a payment towards that service, and making that kind of investment in a case that serves his needs.

The final point is that if there is a co-payment or sliding scale type of scheme, there is a small amount of revenue that is generated by that. But that is not the predominant concern of this model.

As a program development research type project, we are interested in exploring and expanding the concept and testing it in one or two areas across the country, and as such would like to make it one of our project activities in the upcoming fiscal year.

Those are basically the comments I have for you at this time. It's a germ of an idea that we are trying to flesh in and would like to get some feedback in terms of what this concept means and how the Board would like us to address it.

MR. ENGLISH: As Mr. Rathbun said, my name is Raymond English, and I'm vice-president of the Ethics and Public Policies Center here in Washington. I'm really here representing Ernest LaFevre, who is no more of an expert on this point than I am, but is probably a more ethical person.

(Laughter.)

He unfortunately had a prior commitment. And neither of us is an expert on this specific matter.

I might mention, though, that I was once the recipient of free legal aid. Not, I think, because I was indigent, but I somehow got caught in a legal clinic network involving something in a small claims court, and I will say

this, we got a judgment in my favor and in favor of the lady who was a little closer to indigent who was the co-client.

But I don't think either of us have ever seen a penny of the money that the court allocated to us. However, that's the extent of my experience of free legal assistance.

I think I was invited here because our organization is very much concerned with public policy questions that involve very self-conscious ethical and moral considerations.

We've done a great deal of work on all kinds of topics in which the moral argument comes first: nuclear deterrents, various aspects of education, racial quotas, the World Council of Churches and its role in Third World politics, and so on. These are the kinds of topics that we have been dealing with.

And I may mention at the moment I spent the last two months planning a conference very close to the topic we have here, the type of conference is dignity and dependence. And it is concerned with how to get people out of chronic dependence on welfare in order to restore their self-respect and their ability to earn their own living.

It was originally inspired, I guess, by Charles Murray's Losing Ground. But we were especially concerned

with the moral aspects, so it does give me some insight into what you're talking about here.

One confession. I am a conservative. I've been a conservative ever since I began to think about politics. I mean after about six months experimenting with everything: communism, fascism, pacifism, and one or two other things.

Anyway, I'm a conservative. I became a conservative and I've been a conservative ever since. And there's one thing about being a conservative that is a nuisance. And that is that one feels hard-hearted, Scrooge-like compared with one's warm-hearted liberal friends. One never escapes from this feeling of guilt, being a conservative.

Even when you're most convinced that common sense, reason, experience, are all on your side, you still feel the heel because you don't seem to have that warm spot in your heart that your friends tend to have.

There are two aspects of the problem we're talking about today. One is the economic, and I suspect that is rather minimal, although Mr. Osterhage did point out that you've got to have some way of setting priorities for cases such as divorce. And one way of doing it, of course, would be to say to the client, "What's it worth to you? Are

you going to make some small sacrifice in order to get this case before the court?"

And I think as Mr. Osterhage's note says, the problem is to distinguish between client needs and client wants. And this is a problem in all services that are offered on a charitable, non-contributive basis.

In my own country -- my former country -- we ran into all kinds of trouble when the National Health Service was first set up. Because prescriptions were absolutely free. And the cost and the size of prescriptions went up astronomically.

So the government put a small charge on every prescription you had, and it changed the picture very quickly. People no longer decided they needed to go to the doctor in order to get a prescription for a bottle of aspirin. But up to that point, that had been the way it went.

So there is an economic point here. Though, as I say, I don't know how important it is in legal aid. That I think is for you people to decide, how serious the problem of, if you like, abuse or overuse or wasteful use of your services is.

But the moral aspect, I think, is the really important one. And that is that we've found everywhere we look that it's just common sense that people should not be encouraged to be absolutely dependent on outside support for anything.

And this is, of course, very much true of things like welfare, of the condition we call unemployability, of education. One of the problems I think over the last 20 years has been that we've treated education as something you just pump out. And it's not. It's no use at all pumping good education at a kid who is not motivated to try and do anything about it himself.

So this is the moral problem of making people help themselves, as you are helping them. And it's an age-old problem of charity. How do you give to someone without demeaning him or her and making them lose their dignity?

Now, there you are. I think there is the moral question that presumably does apply in the legal area. And it's again up to you who have experience of it. Is the client's self-respect really improved? Can you give him more choice if you are helping -- if you are insisting that he put something of himself, make some effort himself in the aid he's getting.

So unless there is something about legal aid that makes it different from all other forms of charity and health and such, I would come down very strongly in favor of this experimental program that you want to try.

The question, I suppose, really boils down to this: Are you trying to improve the client in any way? Are you trying to help him to get out of poverty? Or are you just preserving the status quo?

And as long as you simply say it's all for free; you don't have to make any effort except appearing in court, or whatever it is, you are not. You're not changing the situation. You're simply accepting it and working with it.

And that I think is where I'd like to end. Except to say this, that in bringing this point up here, I think you are very much in tune with a movement that's going on throughout our society, an awareness of the fact that somehow the programs of the last 20 years haven't quite done the job. In fact, in some ways they've been counter-productive. Thank you.

THE CHAIRMAN: Let's see if we have some questions first. Are there some questions of Mr. English?

MS. SWAFFORD: I wanted to get once again what does he represent? I got Ethics and Public --

MR. ENGLISH: Ethics and Public Policies Center.
It's a so-called think tank.

MS. SWAFFORD: And your name is English?

MR. ENGLISH: English, E-n-g-l-i-s-h.

MR. SMEGAL: I'd like to ask some questions, but I'm not sure. I heard a disclaimer at the beginning and I'm not sure what question I would ask you.

You're not coming from a perspective of the delivery of legal services at all, are you? You're coming from the --

MR. ENGLISH: No, no.

MR. SMEGAL: -- English system of --

MR. ENGLISH: The study of public policies, generally.

MR. SMEGAL: I mentioned to Bob, I'm not sure this is relevant, but we've got a checkoff system in our 1040, federal 1040 where you can put a dollar into the presidential election campaign. I wonder how many people check that off. It doesn't cost them anything. But they check off a dollar. That's sort of what we're -- I see an analogy there.

The other thing, Keith, in San Francisco, the public defender, Jeff Brown, a good friend of mine, has a

program where he tries to recover from some of those that the public defender represents, the cost of representing them.

And my recollection -- I haven't talked to Jeff lately, but my recollection is that it's a disaster. He spends more time trying to collect a few bucks than he does getting it.

I'm not sure if I understand the concern we have here. Is the concern that legal service lawyers are unable to turn away clients? They don't have a mechanism for turning away an otherwise eligible client who has a non-meritorious case? Is that what we're concerned about?

We've got too many cases, and we want to limit those cases in some way so that those who are funded by Legal Service Corporation money can focus on those that are meritorious? And if we have some minor charge, that maybe those who really don't have a meritorious case will go away?

I do this in my office, by the way, and I can analogize this. If somebody comes in and I ask for a retainer, and if they don't give me a retainer, I'm not going to do the work.

I make exceptions for that if it's a meritorious situation and I want to do the work anyway, I'm going to do

the work. But I tell 42 other lawyers in my firm, you don't get a retainer, you don't represent that client on firm time. You can do it on your own if you like. If you want to do some pro bono work, fine.

Keith, what are we focusing on? What's the concern?

MR. OSTERHAGE: I think you tapped part of the point. I wouldn't say that's the entire point. And the analogy really, the example I provided was to the extent that programs already are not requiring a financial payment, but some other type of investment on the part of the client.

And I referenced the example of mediation before they accept a divorce case, is an example there of the program recognizing, yes, we have limited resources and a limited amount of time, and we do want to differentiate between a true and genuine need or a want.

Many program directors have indicated that simply that's differentiated sometimes by the length of time a client has to wait. The problem will just disappear or the client finds another mechanism or way of resolving the problem.

But this, too, would be another way of addressing that type of situation. I wanted to say with my remarks,

however, that the primary concern was this issue of client dignity and investment. And to that extent, Mr. English's remarks were what the focus of that other part was.

THE CHAIRMAN: Could I ask one question? You mentioned two points. One is the economic aspect of it and the second the moral aspect of it.

I wonder if in this universe of people in the world, there aren't some people who will absolutely not go to a legal service program because they have to accept it as free? Aren't there some people left who are still just too proud to accept charity? And that's the way they may look at it.

And in connection with that, I guess as lawyers, I realize, or I know that when problems are dealt with in early stages, rather than in later stages, they sometimes are more easily solved. Would you agree with that point, and comment on it if you'd like?

MR. ENGLISH: I think you are right, that there are people who don't want to be the objects of charity. And therefore they just don't do anything at all about it.

But now, the next point you have better judgment on than I. That is that by delaying legal action on a case it may become much worse, and that for that reason again

there should be this option for the person who is extremely sensitive.

I agree, and as you may recall in one or two of Dickens' novels, there is a great play made with this idea that there are some people who just would rather starve to death than go near the workhouse as it was in those days. Or go on the poor rolls as they called it. Obviously there are people like that.

THE CHAIRMAN: Lorain?

MS. MILLER: All right. This is why I -- did you read this?

THE CHAIRMAN: I don't have a copy of it yet.

MS. MILLER: You don't have a copy? This is why we were coming up with the idea of people having self-respect and not just coming up asking for handouts. And these are alternatives to one. Why don't you pass yours up?

THE CHAIRMAN: Keith, do you have copies of this?

MR. SMEGAL: While we're passing this around, I'd like to say that this weighs about as much as the envelope I got empty the other day that would have required it to weigh for the postage it had on it.

MR. UDDO: I got one of those, too.

THE CHAIRMAN: We all got one.

MR. SMEGAL: It came in that empty envelope.

MS. SWAFFORD: I think there needs to be a word of explanation about what Lorain is passing out. She's written an article on alternatives to handouts, and it's a very interesting article.

MS. MILLER: But it's a small article to read, and I agree with you. Some people don't want handouts and they do get dependent on handouts if they start getting handouts and they're not used to them.

So we would like to come up with a couple ideas or have a couple programs going to test this and see if there was a co-payment or some kind of payment, volunteer payment for the services that they receive.

THE CHAIRMAN: I'd like for a copy of this to be appended to the transcript, rather than reading it into it. But it suggests some alternatives to money.

MS. MILLER: Okay. That's the first page. And then the next page tells about the co-payments.

THE CHAIRMAN: I don't know whether Mr. English has seen this or not.

MS. MILLER: Did you have one, Mr. English?

MR. ENGLISH: Yes. I have seen a copy of this.

MR. OSTERHAGE: The point Mr. Smegal made about the public defender, I think that the fact that such attempts have been made and have either succeeded or failed is one of the things that's worthy of investigation on our part in the civil legal services side.

To the extent that our unit is available in the Corporation to test and experiment and report and investigate and discover those things for you or follow up on those things for you, this idea of a project or a topic worthy of investigation is what we're putting before you at this time.

We could follow up with that individual and check that out. We could check with more organizations around the country and determine if any succeeded and which ones failed; why they failed. Is it appropriate for us to provide an action memorandum for you with a plan to act or not to act?

MS. BERNSTEIN: I may be wrong, but I think there are some programs, some legal services programs -- if I'm remembering right there may be one in Wisconsin or Minnesota, if I'm remembering the area -- in which, that uses a sliding scale or a co-payment situation for part of their delivery.

I would like you to -- I personally would like you to follow up on this. The other source of information that I know is beginning to be developed is actuarial tables for prepaid legal insurance on the effect of co-payments in various types of litigation.

Now, I don't want any of this -- I personally don't want any of this discussion to be construed as a mechanism for preventing eligible clients and needy clients to get needed services.

The question really, as I hear Lorain, is that we should not -- we should be as concerned about the clients' personal dignity as we are about their legal problems. And that by providing an opportunity for the client to pay to the extent that they are able -- not to take food out of their mouths or to more severely handicap that individual -- but to the extent that the dignity is worth really more than the solving of that individual problem.

Because, as the literature that is becoming very prolific today is the concept that, as Mr. English pointed out, you don't -- by solving an individual problem, you don't change the person's status.

And you don't change the person's status by winning the lottery. And you don't change the person's

feelings about himself and where he belongs in society by simply providing sustenance for the next day's life.

So the question is, as I see it, as I'm hearing it explained here, and as Lorain and I talked about it some yesterday, the question here is two-fold. One in terms of the delivering of the services to not destroy the dignity by making it strictly a handout.

And, second, to make sure that in the service that is delivered and is controlled by the client, that it's something that the client has made a decision that they actually need.

THE CHAIRMAN: Mr. Roche has been standing there for a long time.

MR. ROCHE: I can wait. Not particularly favoring or opposing the idea of this experiment, I've actually got a little bit of personal experience and can give you some information that might help to shortcut the staff's efforts and which you may want to take into account.

Twelve years ago, as a staff lawyer for Department of Health, Education and Welfare, the project I worked on almost for a full year, fairly close to Secretary Richardson's office, was the California medicaid co-payment program.

And one of the things which came out of that experiment which was demonstrated was the very thing that you, Mr. Valois, raised a little bit earlier. Which was that as a result of co-payment -- which were very minimal, one or two dollars -- poor people particularly forewent any kind of preventive efforts, any seeking of medical treatment for preventive means. They particularly forewent relatively minor or perceived as minor problems, unless and until they became major ones.

And that's their -- HEW did a considerable amount of research on the whole question of co-payment on the medical profession, and that's something that should need to be looked at.

Moreover, both the programs now have various kinds of co-payments. One of them is called a filing fee. Unfortunately, in a lot of jurisdictions, even though there are provisions for filing in forma pauperis, a lot of judges and a lot of magistrates simply will not allow many of our clients to do that. And consequently, there is that co-payment.

And finally, in a lot of programs, mine particularly, that are short of resources and particularly short of paralegals, we ask the clients to put an investment

THE CHAIRMAN: You're asking us to authorize it as an experiment --

MR. OSTERHAGE: -- if you want us to go forward and develop the concept as a stage one where we will have a focus of plan and implementation to find programs that would like to try this approach, and break out the details a plan for you.

And then secondly, to go forward and implement it as a test project.

THE CHAIRMAN: As a test program.

MR. OSTERHAGE: So there's two parts to it. First it's to develop the idea; give you the details and the information, locate the potential sites; then if you approve that, we go forward to the second phase and fund it.

MR. SMEGAL: Two points. From my experience in 20-some years of practicing mostly in San Francisco, I have never had the experience of a client coming in who wasn't willing to take my services without having to pay me. I've never had anyone who came in for a half-hour interview or whatever and said, "I've got to pay you. I've got to pay you for what you've just given me."

Now, maybe I'm just dealing with middle class America. Maybe there is a different philosophy among the

poor. But I have not had that experience in 20 years. So, I would certainly appreciate having that experience.

I've taken Lawyer Referral Service referrals from the Bar Association of San Francisco since there was a program. I continue to do that. Nobody has ever offered to pay me for that program, either, of all those that have come in.

The only other comment I would make is, Mr. English, I -- and Terry Roche said it much more effectively than I said it. I consider myself a conservative member of this Board. I don't consider this program to be a welfare program. I consider this part of our constitutional rights. This is equal justice under the law for people who can't otherwise afford it.

And I don't think, in my view at least at the moment -- but I'm willing to hear what Keith would do, and I'm not going to vote against going ahead and looking at this program further -- but it seems to me that whether someone pays some money or not is not part of what we're talking about here. We're not talking about aspirins. We're talking about equal justice under law.

THE CHAIRMAN: I don't think anybody on the Board considers this agency to be a charity agency as such.

I think what we were talking about was the client who may have some custom of going to agencies which in fact are charitable and which do not rise or fall on the constitutional equal protection or other guarantees under our system.

And that in his mind, this is just another service provided by this great government. So I don't think any of us consider this to be a charity.

MR. SMEGAL: So you're saying, Bob, that this looks like a charity to the recipient?

THE CHAIRMAN: It may.

MR. SMEGAL: It isn't a charity to you. It isn't a charity to the people in this room --

THE CHAIRMAN: I mean, somebody says I'm going to get something for nothing, but I don't like to get things for nothing. To him it's a charity from his perspective, perhaps. And that's the only point that I was trying to raise.

MR. SMEGAL: Well, we could all have, put signs up on all the doors, "This is not a charity." Every Legal Service Corporation office would have that on its door.

THE CHAIRMAN: Unlike you, I don't practice in San Francisco, and I have -- we have received fees in collards and tomatoes and bushels of sweet potatoes.

And I have a partner who is about 75 years old or so who practiced in a place called Warrenton, North Carolina, and Terry knows him very well. And he's been paid off in bushels of corn and tomatoes and whatnot.

And I think that that's part of the same thing.

MS. MILLER: Yes, it is.

THE CHAIRMAN: That we serve poor people and he certainly did in Warrenton, because there are plenty of them up there, who were simply unable to pay for it in money. But they could pay for it in a couple of bushels of corn.

MS. BERNSTEIN: My first legal fee was an old ring which didn't have a lot of intrinsic value, except it had a lot of sentimental value.

MR. SMEGAL: Well, but I think we're all making the same point. I don't think we're disagreeing, Bob. I think those were cases, LeaAnne and Bob, where you felt the client had a meritorious situation; you wanted to represent them, irrespective of what kind of payment you were going to get.

And I think that's the situation here. I think the Legal Service Corporation-funded person or staff or

contract or whatever, somehow should understand that he or she has the discretion to say to that client, "This is not a meritorious case. I'm not going to handle it. I'm not going to do it."

MS. MILLER: Sometimes, Tom, if you haven't been there, you don't know how people feel. So maybe you've never been poor. And this is the reason for this. I would like to see this start with zero funding, no money. Just get it started and don't put any money into it and see how it goes.

MS. SWAFFORD: Well, I'd like to make a motion. But if you want to hear from people --

THE CHAIRMAN: Let us hear from Eleanor and Bob Rhudy.

MS. EISENBERG: Eleanor Eisenberg. I suppose I'm representing the late great Region 8 Project Directors Association, currently California and Nevada.

Terry made most of the remarks I wanted to make, except that I do feel that I should add a caveat, a new wrinkle.

Since LSC and LSC recipients don't operate in a vacuum, one thing I think you need to consider is the impact

of implementing any sort of co-payment system on our elder programs.

I'm not familiar with our elder programs outside of California, but the California program does require, as a qualification for being a recipient of funds, that you provide free civil legal services to indigent clients.

THE CHAIRMAN: Thank you. Bob?

MR. RHUDY: Thank you. I'm Bob Rhudy, private attorney and interested member of the public.

Something I'd recommend, I think that this could be an interesting experiment. I've got mixed feelings about it.

But you should know, if you don't, that Title 3 programs, Title 3 funding that goes to legal services programs provide free legal assistance to senior citizens has regulations that requires us to make seniors aware that they are permitted to make contributions for any services they receive.

I was managing attorney in an office that had Title 3 funding. We had a standard handout that let people know about the service, and when they were served that they could make contributions voluntarily.

We got some contributions that way. Not a large number. Some people you did find felt very good knowing that they could make a contribution to the service.

It was voluntary. It was optional. There was no pressure. In terms of the major justification that I'm hearing, in terms of trying the experiment, the dignity of the client, I think the voluntary system probably answers and addresses that.

So I suggest two things: One, look at the experience that has taken place so far with Title 3 funding to see how that's working; is it producing funds; is it having the effects in terms of giving persons an opportunity to participate and feel dignity from making a contribution to the service; and try it in a voluntary fashion rather than mandatory. Or at least one experiment that way, as opposed to requiring it in the program.

THE CHAIRMAN: Thank you.

MR. RHUDY: Thank you.

THE CHAIRMAN: Mr. Singesen?

MR. SINGSEN: I'll be very brief.

THE CHAIRMAN: Good.

MR. SINGSEN: I have a procedural suggestion. I think that because the ramifications of this issue are

likely to be misunderstood if something goes forth out to the field at large quickly, I would propose that if Mr. Osterhage goes forward, he move forward first with a literature search and prepare some form of report to you about experiences co-payment programs elsewhere, so that you have a little bit better data base and a little clearer idea of what the proposal would be before you decide that you'd like to move forward with the experimental phase.

Secondly, to the degree that the motivation for this is trying to distinguish legal needs and legal wants, I think the only place you'll conceivably see an effect is in the cheapest service you offer; that is, legal advice.

You're not going to see an effect in somebody who's either seeking or being sued for divorce, or an eviction, or somebody whose benefits have been terminated, or children been taken away.

In those cases, the motivation, interest, involvement is a given. So it's really only in the advice area, which may be the most vulnerable area in terms of preventive law, that you're likely to see the real effect on the wants and needs issue.

THE CHAIRMAN: We had a program in North Carolina -- Terry, I'm not even sure if it's still in existence

statewide -- where there was a lawyer referral service and signed up, you get 15 bucks for the first hour or half hour or something, and a lot of lawyers signed up. Is that still in existence as such?

I think it's related to this subject, because we had a lot of people come in our office who I am convinced would not have sought legal advice if they thought it was going to cost \$100 an hour, and I think they probably felt better about getting \$400 worth of advice, because nobody ever spent an hour for \$15. It was usually four hours. For 15 bucks it was a bargain.

MR. ROCHE: The one in Mecklenberg predated me and predated the statewide one. For a whole lot of reasons, the statewide one hasn't been as effective. But they're not worth going into at this point.

But I think you do raise an important point. The ABA has done a whole lot of work around lawyer referral and what happens at various levels of payment. And that ought to be a very significant part of the preliminary literature search.

I'll be happy to tell you, give you a more complete answer to your question later, but it's not germane to this topic.

THE CHAIRMAN: Claude wants to make a motion, which is fine, but I mean, I perceive where we are at this point is that we are -- we should be in the business of considering whether to approve this notion that it goes forward or stops now.

I personally think it ought to go forward. And I think that Mr. Singen is right, and of course we had already planned to do this anyhow -- and that is to, we want a piece of paper that says this is what the model is; this is what we propose to do; and this is the -- these are the two programs that are willing to undertake this experiment.

And then I think Keith is going to come back to us and say approve this or not.

MR. OSTERHAGE: I just wanted to stress that the reason we brought this issue in a very short form was to you was that prior to doing even the first part, that amount of leg work and investigation, we wanted to make sure we were following an appropriate direction.

THE CHAIRMAN: Thank you.

MS. SWAFFORD: I don't even know that we need a motion. What I'm hearing him say is that I heard Mr. Osterhage say that the first stae would be the

developmental stage. And you're going to get it on paper and bring it back and propose it in a more concrete form.

And that's just what I was in favor of, that we ask the staff, Mr. Osterhage, to implement the first stage, which is merely developmental. Is that right?

MR. OSTERHAGE: Right.

THE CHAIRMAN: Without objection, if we don't need a formal motion, why don't we just proceed on that basis. Bring us back some paper. Not too much. Three pages. Double spaced.

We have been asked to take a short break for lunch, and we will do so. We will return at 1:00 o'clock, and we will take up item three.

(Whereupon, the hearing
adjourned at 12:20 p.m.)

