PREPAID LEGAL SERVICES

PROCEEDINGS OF A CONFERENCE ON THE DEVELOPMENT
OF PREPAID LEGAL SERVICES
NOVEMBER 12-13, 1971

Institute of Industrial Relations • University of California • Los Angeles
Price: $2.50

THE DEVELOPMENT OF PREPAID LEGAL SERVICES

In November of 1969, the Institute of Industrial Relations and the School of Law, University of California Los Angeles, cosponsored the first labor-management conference in the United States on Group Legal Services. This pioneer effort was intended to analyze and disseminate information on prepaid and group legal service plans to potential clients and client groups as a possible extension of employee fringe benefits.

The Proceedings of that conference were widely distributed and created such interest among members of the legal profession and industrial relations practicioners that the groundwork was laid for a follow-up conference with broader participation. The American Bar Association Committee on Prepaid Legal Services agreed to sponsor this event, together with the Institute, the UCLA School of Law, the American Bar Association, the State Bar of California, and the Industrial Relations Alumni Association, UCLA.

In November of 1971, the second conference on group legal service plans, THE DEVELOPMENT OF PREPAID LEGAL SERVICES, was held in Los Angeles, attracting more than 200 participants from all parts of the United States. It dealt with the position of bar associations toward group legal services and with the various such plans now in use or under consideration.

The Institute received most generous and invaluable assistance from F. William McCalpin and Philip J. Murphy of the American Bar Association and from Dean Murray Schwartz of the UCLA School of Law in planning this effort, which brought together attorneys concerned with the bar associations' positions on ethical restrictions in this field, lawyers familiar with the legal problems of labor union members, and industrial relations experts representing the labor-management relations points of view.

The Proceedings of the Conference on the Development of Prepaid Legal Services, held on November 12-13, 1971, in Los Angeles, California, are now available to participants and to all those interested in this vital new area of bargainable fringe benefits.

Ted Ellsworth
Administrator of Public Programs
Institute of Industrial Relations
University of California, Los Angeles

Published in 1972

Copies of this volume may be purchased
at $2.50 each from the Institute of
Industrial Relations, University of
California, Los Angeles, California 90024

CONTENTS

WELCOMING REMARKS

Dean Murray L. Schwartz--For the University

I'm Murray Schwartz of the UCLA Law School. I have two functions at this moment, one is to deliver some welcoming remarks for the University; the other is to introduce two other welcomers. I'm not sure how successful the conference will be, but I will tell you it will be as extensively welcomed as any I have ever attended.

You might be interested to know that, according to the advance registration, some 40 percent of the over 200 who are coming are from out of state. To those of you from out of state, I would like to recount a story that perhaps would be more appropriate at another season of the year. It has to do with the attitude of visitors to Los Angeles. Some years ago, there were two New England spinsters visiting Los Angeles. After they had been here for a period of time, one turned to the other and said, "Abigail, I don't like this place. I find the buildings very crude, the people very vulgar, and the weather much too dry." Whereupon Abigail responded, Hester, there is much in what you say, but on the other hand, there is another side to the story. While the buildings are very crude, they do seem to fit into the surroundings, and although the people are very vulgar, they do seem very friendly. And, of course, the weather is much too dry. But you must remember that we are 3,000 miles from the ocean."

In representing the University this morning, I really represent two aspects of the University: one is the Law School, and the other is the Institute of Industrial Relations, of which my colleague, Benjamin Aaron, is director. We regard conferences like this one as a major function of the University. Cooperation between the academic and professional sides is fundamental in order to carry out the kinds of programs and accomplish the goals that we all share. It is with great pleasure therefore that I welcome all of you on behalf of the University of California.

The second welcomer is David K. Robinson, who is president of the State Bar of California. Then, Robert W. Meserve, president-elect of the American Bar Association, will greet you on behalf of that organization. Having said that, I need say no more. Mr. Robinson.

WELCOMING REMARKS

David K. Robinson--For the State Bar

Thank you, Murray. The State Bar of California is most delighted to cosponsor this conference along with the American Bar Association, the Institute of Industrial Relations, its Alumni Association, and the School of Law at UCLA. The State Bar of California has long been interested and active in the matter of seeking solutions to the basic problem of making legal services available to all segments of the public. About seven years ago, our standing State Bar committee on group legal services, in its report, highlighted the substantial need of people of moderate means for legal services, both from the standpoint of knowing that they existed and how to obtain them, as well as the economic problem of how they could actually, from a practical point of view, obtain these services.

As all of you know, in the past few years there have been giant steps made in solving the problems of the availability of legal services for the poor.Then, a little over two years ago, the Supreme Court of California approved the adoption of Rules 20 and 21, which set forth the guidelines with regard to the matter of providing legal services on a group basis in the state of California. Today, we have over 200 group legal programs or plans in effect, which are providing legal services for more than 750,000 persons and their families in the state. A few years ago, the State Bar of California, through its board of governors, realizing the importance of the availability of legal services to all segments of the public, established in our staff a Department of Legal Services. And in recent years, this Department has been increasing in size and in scope of its activity. It is now under the able direction of Jay Lutz, who is attending this conference.

Shortly after the first of this year, our board committee on legal services, under the chairmanship of Leonard Janofsky, realized that the matter of making these services available to the people of moderate means could not be fully met by the group plans which were then in existence, and that some additional methods and means should be explored to meet this very trying need. As a result, they recommended to the board of governors that a special committee be appointed to study the matter of prepaid legal services. In April of this year, the board of governors approved that recommendation and appointed a statewide committee

under the outstanding leadership of Charles Scully of San Francisco. We not only asked them to study and report back on this problem to us, but we told them that they had to do this within six months. This committee immediately went to work, and I can assure you, having just read their excellent report, that they have done an outstanding job. They were fortunate in having Phil Murphy, who, as you know, is the staff director for the ABA committee on this subject, attend all their meetings. He is a resident of Santa Barbara, California, and has been of great assistance to our committee in its work.

This committee studied the problem, the need, the various programs which are presently in effect, the various alternatives which have been suggested, and came up with what they thought was the best solution to the problem, and a solution which in essence makes legal services available to the people of moderate means and still permits them to have these services furnished by an attorney of their own choosing. Their report, which is approximately 80 pages long and contains all the details for the program, is now being studied by the board of governors. I hope and anticipate we will have some favorable action on it in the near future.

We on the board of governors are looking forward to participation in this conference and to the results of this conference as being most timely from our point of view. We hope that you will enjoy it and profit by your work here. I can assure you that it is an extremely important field, and one in which we here in California are taking and want to take an active part. Thank you.

WELCOMING REMARKS

Robert W. Meserve--For the American Bar

Dean, Mr. Robinson, ladies and gentlemen. It is my great pleasure today to bring to the participants of this conference the warm greetings of the American Bar Association. The fact that many of you come from out of the state makes it perhaps less remarkable a Bostonian should be welcoming you to Los Angeles, and to a view of that much larger ocean you can see from the general Los Angeles area when the smog lifts, as it seems to have done this morning. I must warn Easterners that the difference in size is not easily seen on first inspection.

The subject of prepaid legal services is, whether they know it or not, of the greatest significance to the American public, particularly to the working man, blue collar or white collar. It is also a subject of vital importance to lawyers, and particularly to those practicing in smaller firms throughout the United States. The board of governors of the American Bar Association is fully aware of the need to focus maximum attention upon developments in this field. We are fortunate to have a hard-working committee, under the able chairmanship of Bill McCalpin, that is carrying out that role.

We are all here to learn and to exchange ideas. Our inquiry and discussion is much needed in this new and rapidly developing field. These discussions may help others within and outside of the legal profession to set an informed course of action in the development of prepaid legal services. The American Bar Association is very happy to join with the University of California and the State Bar of California in cosponsoring this conference. I wish you spirited discussions, and perhaps even some answers.

GROUP LEGAL SERVICE PLANS--THE FIRST SOLUTION

Dean Murray L. Schwartz

One thing is clear from looking at the program we haven't left enough time for anything. So, although the program calls for the first panel to start at 9:45, I'm going to ask the members of the panel to come to the platform now. We'll get started right away.

According to the program, we have about an hour for this panel. Two years ago, the Institute of Industrial Relations and the UCLA School of Law sponsored a similar two-day conference devoted solely to the subject of group legal services. We've now reduced that problem to one hour.

As moderator I shall ask each of the three panelists to confine their remarks to 15 minutes. Then, hopefully, we can have some questions from the audience, deriving from some of the comments made by the discussants and also perhaps concerning some of the things left unsaid.

The title of this particular panel is, "Group Legal Service Plans--The First Solution." There are at least two implications in that title: one is that we know what problem we are talking about; and the second, that group legal service plans have in fact been a solution to that problem. Neither of those two implications is totally clear, to me, at least. I hope that our discussants will enlighten us about the extent to which we know what problem we are talking about, and the extent to which, in fact, group legal service plans have furnished a solution to that problem.

We have, as the program indicates, three discussants who come from different areas of the profession. Our first speaker, Sherman Welpton, is going to discuss the question of the ABA Code of Professional Responsibility and the way in which it has treated the problem of group legal services. Then, Phil Murphy, who is staff director of the ABA's Special Committee on Prepaid Legal Cost Insurance, will tell us about the current status of group legal service plans in California, Florida, and Missouri. Finally, Murray Finley represents a client group, the Amalgamated Clothing Workers of America. He is manager of the Chicago Joint Board of the Clothing Workers and is going to talk about their plan.

PROVISIONS OF THE ABA CODE ON PROFESIONAL RESPONSIBILITY REGARDING GROUP SERVICES

Sherman S. Welpton, Jr.

The subject of my talk for the fifteen minutes is "Provisions of the ABA Code on Professional Responsibility Regarding Group Services." I might explain, by way of background, that I served for five years from 1964 to 1969 under Ed Wright on a committee of twelve that rewrote the Canons of Ethics into the Code of Professional Responsibility, which was finally adopted in August, 1969. When we started out with our work, we had before us all the various provisions of the Canons of Ethics, plus a number of the state bar provisions regarding professional responsibility. We rapidly came to the conclusion that instead of trying to follow the format of the present Canons, we should adopt a wholly new format. We should make them sufficiently specific and uniform so that they were enforceable, and the bar associations and groups of lawyers across the country would know what they should adhere to and what would be subject to discipline if they didn't. Ultimately, as you who have studied the Code of Professional Responsibility know, we divided the Code into three parts: the Canons, the Disciplinary Rules, and the Ethical Considerations. The Canons were the broad sweeping generic statements of what we wished to accomplish. It was a head note for each of the nine categories. The Disciplinary Rules were broken down into heads and subheads and subpoints underneath in an effort to be very definite and very specific. The Ethical Considerations were like commentaries that you have in the Restatements, where we were attempting to outline and state what should be done in regard to compliance with disciplinary rules. Also, hopefully, they would be inspirational to the persons who were reading them so they would know what was intended beyond what would be subject to discipline if they violated a rule.

Now, in regard to group legal services and to prepaid legal services, which is the basis of this panel discussion: we had, as you know, Canon 35, the old Canons, in regard to practicing through intermediaries. That was condemned in the old Canon, which stated that a lawyer should not practice through an intermediary where he would be totally impersonal to his client and where he also might be controlled by the intermediary and, accordingly, not have the best interest of the client at heart. This would be the practice of law by lay agencies. Also, old Canon 27 related to solicitation and advertising and that, of course, was and is contained in all the various state bar regulations which prohibit a lawyer from advertising. Our ABA Committee debated seriously whether or not these rules

should be relaxed in the light of current practices that we understood existed and which were involved in the decisions of the Supreme Court of the United States beginning with NAACP vs. Button in 1963, the Brotherhood of Railroad Trainmen vs. Virginia in 1964, and the United Mine Workers vs. Illinois in 1967. The Supreme Cpurt of the United States, contrary to the prior holdings of courts of the various states that concerned themselves with the problems involved, held that it was proper for lay organizations to recommend and employ lawyers to represent members of these organizations, although they did place limitations on what could be done in very broad general language. They held that there was nothing wrong about these procedures because they are permitted under the constitutional protection of right of assembly and free speech. As a matter of fact, in the course of reading those decisions, you will observe that the practices that were before the court in those cases had long been in existence. For example, in the Brotherhood of Railroad Trainmen case, the procedure relating to Workman's Compensation and other claims of a similar nature had been in existence since 1913 or thereabouts.

Now, to come definitely to what our ABA Committee decided and did: we were guided by the three decisions which had just been handed down by the Supreme Court of the United States. There has been a fourth case handed down in April 1971, which was the case in regard to transportation workers, but we had before us only the 1963, 1964, and 1967 decisions previously referred to. We labored hard in trying to formulate a rule which we thought would satisfy the members of the bar and, at the same time, comply with the mandate of the United States Supreme Court in these three decisions. We finally came out with a draft of the Code dated January 15, 1969, which I am holding up here and which sets forth the rules we had then concluded were best suited to answer the divergent views of the bench and bar relating to group legal services. In that draft, under DR2-101(D), we had promulgated quite a broad, sweeping, permissive rule in regard to group legal services. You can read that; I won't take time to read it because I will run over my time. I want to merely give the broad concept of the rule.

When about 150,000 copies of that draft were published and circulated to various bar groups and lawyers about the country, widespread criticism ensued. Our committee held further meetings and learned first-hand that the vast majority of lawyers throughout the country thought it was far too permissive and totally unacceptable. In seeking a solution to the problem, we finally resolved on the language of the present Code which was then found acceptable to the Bar Association and adopted in 1969. The provision in question now appears under DR2-103(D)(5). That rule says that a non-profit organization

may recommend, furnish, or pay for legal services to its members or beneficiaries, "but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met: . . ." It then enumerates subpoints (a), (b), (c), and (d). In other words, the Code was saying that you can't organize a non-profit organization just for the purpose of providing legal services. It has to be incidental to the main purpose the organization has in accordance with subpoint (b), and, as required by subpoint (c) the organization cannot derive a financial profit from the rendition of legal services by the lawyer. You can readily appreciate that if the intermediary, or lay organization, could retain the financial benefit, it would, in effect, be paid for practicing law and might do so in derogation of the personal rights of the individuals involved. Subpoint (d) then goes on to say that the individual and not the lay agency must be recognized as the client of the lawyer. We were seeking to strike a balance between what was required by the U.S. Supreme Court decisions and the demands of the American Bar, so that lawyers would continue to represent clients and the practice of law would not degenerate into a commercial enterprise with advertising and solicitation running rampant.

Incidentally, I think I should footnote the provision that I read to you with a little personal observation. In the part that reads: "but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities . . ." we had discussed a comparable provision about two years before our January 15, 1969 draft. When we found out how widespread the criticism of the American Bar and the bar associations over the country was of the Button and Brotherhood decisions, we labored to write a rule acceptable to the ABA but, obviously, we couldn't write a rule that was unconstitutional. We happened to be in Houston on one of these weekends and I went to lunch that noon with retired Justice Charles Whittaker of the Supreme Court of the United States, who was also on the committee and a close personal friend of mine. In our discussion of the problem at lunch, Justice Whittaker made the suggestion to use language which was quite close to the rule above quoted.

When we presented this to the committee that afternoon, however, it was overwhelmingly rejected by the committee. The committee ultimately agreed on adopting the other provision

which appeared in the January 15 draft, but when that was overwhelmingly rejected by the members of the American Bar, the committee came back to the provision that had been initially suggested a few years before at the Houston meeting.

There was a recent opinion by the Bar of the State of New York in regard to these provisions which were called to my attention by you, Mr. Murphy. The question presented in that opinion is what was meant by virtue of that language. I have told you the basis on which it was promulgated. I think it is clear from the content of the rule that what is being said is that insofar as the Supreme Court of the United States has prescribed, you can have prepaid legal services under limited circumstances. You can, in effect, have advertising and soliciting with group legal services, but there must be certain conditions and restraints; otherwise, lay agencies could be indiscriminately organized for the purpose of providing legal services and for profit. This, of course, would be in derogation of the rights of individuals. Also, the public, for its own good, is entitled to have state bar associations and the courts of the various states license, supervise, and discipline lawyers in their practice of law.

I think I've used up my time. Thank you.

GROUP LEGAL SERVICE PLANS IN CALIFORNIA, FLORIDA, AND MISSOURI

Philip J. Murphy

California, Florida, and Missouri are the only states in which the state bar requires that a group arrangement for legal services must be registered and made a matter of record with the bar association. The lawyer population in these states is slightly over one-sixth of all individual lawyers in the United States and the client population of these states is roughly parallel. Therefore, we ought to be able to multiply by 6 in order to gain some idea of the total possible activity in the country, assuming that lawyers in these states understand and then follow the reporting requirements, and also that conditions fostering the growth of group plans are the same in big or small states or states with big or large cities.

1. Total number of groups reported in three states.

In toto, there are 232 group arrangements recorded in these three states. If there is reasonable understanding of the rules and honesty in reporting, there then should be at least 1392 such group arrangements nationwide. My own estimate, without explaining whether I question understanding or doubt honesty or believe in "other factors," is that there is a minimum of 3,000 such arrangements, if not more. Part of the uncertain measurement is definitional, of course. A group arrangement need not be evidenced by a 25 page legal-size document. It can be the barest informal understanding--so long as its availability is understood and availed of by the group members. In this sense we would have to count arrangements in which officials of the group were given occasional help on closing real estate transactions or solving domestic problems. In fairness we would then have to count the many arrangements in which house counsel to a corporation gives legal advice to employees on personal problems, even though there is a "five minute rule" on company time.

Back to the recorded facts: California's Rule 20 went into effect in 1970. There have been 227 registrations thus far. Nine have been terminated up to October, 1971; 218 group arrangements are still in effect. Rule 20 is similar to, but not identical with, the ABA Code provisions.

For a similar period of operation, under its integration rule, there has been one group registered in Florida. This solitary unit may be an accurate measurement. Although communication between Florida lawyers and the state bar is well developed and deviations would be reported, the Civil War records regarding the efficacy of reporting on the underground railway system might suggest other possibilities. In blunt point of truth, group systems have been under sustained attack by the organized bar for the past several decades. They have gone underground. Many are still fearful to admit their existence. The braver have come forward, but many do not want to say their arrangement is operating since for many years it was an unethical and leprous thing.

Missouri, with its rule adopted from the ABA code, and a somewhat briefer period of operation, is experiencing a more normal reporting of 13 registrations and 6 inquiries that may ripen into registrations.

In terms of total number of groups reported, it is obvious that California is the unquestioned front runner in recorded group legal activity, although it is true that it has 10 percent of the client and the lawyer population in the United States.

2. What is the structure and what are the group plans doing?

To date the State Bar of California has reported its activity in the annual report of Forrest Plant, the immediate past president of the State Bar.

> Group Legal Services
>
> It has now been about 1½ years since adoption of Rule 20 of the Rules of Professional Conduct permitting and regulating group legal services programs, under which the group is allowed to arrange for legal aid to its members. By adopting that rule the State Bar became the first organized bar in the nation to articulate standards under which attorneys might properly enter into arrangements for the provision of legal services to members of identifiable nonprofit groups.
>
> We have instituted a study and evaluation of the operation of those programs. Rather extensive field work has been completed and the professional staff member involved will

very soon be presenting a report of his findings and tentative conclusions to the Board Committee on Legal Service for its consideration.

In light of a marked interest in this area on the part of many members, it is not premature to share at least some of the basic factual information as follows: Reports filed with the State Bar as of August 15, 1971, pursuant to Rule 20, show that 78 attorneys or firms have arrangements with "groups" for the provision of legal services to group members; in excess of 200 groups are involved, having a combined membership of at least 300,000 (Staff has advised that actual combined membership could be fairly estimated at 750,000.) The types of legal matters and services reportedly covered by these arrangements vary from the narrow to the broad. For example, some arrangements provide only limited representation with regard to problems of common interest to group members, such as the postal workers program which provides services solely with respect to "dog bite" claims of letter carriers. Other arrangements offer full services with respect to virtually all legal problems.

As with the type of services offered, a broad spectrum seems to exist as to provisions for payment. At one end, a few arrangements provide complete payment by the group for services to or including litigation, or up to a specified amount per period of time. At the other extreme, by far the greatest number of arrangements involves an agreement by the attorney or firm to provide "free" initial advice or consultation at the expense of the program, typically including a single telephone call or letter calculated to quickly dispose of the problem. Beyond that, it is up to the individual group member to make financial arrangements with that attorney or another of his own choosing--although it should be noted that many of those agreements include a promise to provide such further services at some "minimal" rate, usually geared to local bar association fee schedules.

> Attorneys participating in these "employment-related" programs feel that representation is now being provided which was previously unavailable for economic or other reasons and that it is now economically feasible for the attorney to develop expertise in the particular fields of law involved. This in turn has resulted in the protection of substantive rights not previously asserted and the establishment of procedural safeguards in forums where the lawyer used to be seen infrequently if ever.
>
> With respect to the "advice-only" arrangements, representatives of the groups have expressed confidence that the arrangements have substantially increased the accessibility of attorneys to their membership and that very real preventive law benefits have been produced. Such "client" acceptance should not be minimized.

To update this report from August to October: there are now 83 lawyers and law firms providing services. The individual membership of the groups has probably increased from the estimated minimum of 300,000 to a maximum of 750,000 to probably figures of 400,000 to 1,000,000 persons--at maximum estimate, 5 percent of the total population of California. Set against the usual estimates of 20 percent of population being eligible to receive free legal aid services through private or governmental sources, this represents a sizable incursion into our average American family above the poverty level. There are undoubtedly some overlappings between poor and middle, but it is a staunch beginning. Group size may also be increasing as we consider the recent additions to registrations under such titles as Orange Coast College Student Body, California State Employees Association, People's Purchasing Power, Inc., all members under California State Grange, Student Community Involvement Program, Inc., Consumer Action League. There are certainly cross-cuttings and cross-group affiliations, but there is an obvious widening to include much broader masses of the total client population.

The newer registrations seem to demonstrate a well known phenomenon of the American scene: those law firms first in the field get more group clients. Of the 218 groups represented, one firm has 33--almost 15 percent--of

such group clientele. The next two firms have 18 and 12 groups while 6 firms have between 6 to 8 group clients. Translated, 9 firms have almost 50 percent of the group clientele in California. Most of the groups represented are trade unions; however, the California Teachers Association comprises 22 of the groups registered. Under their group plan over $70,000 was paid out by CTA in 1970 for help in job-related matters, but there are also other sizable groupings. Teacher organizations, apart from CTA, accounted for 12 of the groups. Associations of municipal employees added another 19 groups.

Besides these non-trade union groups, there are highway patrolmen, police departments, homeowners' associations, students, and other groups. The firms that handle union clients sometimes handle these other groups, but more usually the firms handling public interest groups specialize in that category. Very importantly, we should note that in many instances the firms handling the personal legal problems of individual members are not the firms handling the union corporate affairs.

In Florida, the only group registration is that of the Classroom Teachers Association of Dade County. This is a group of 7,500 and is served by 15 or more lawyers and/or law firms.

Of the 13 groups in Missouri, all except two are trade union locals. The two are Boone County Tenants, where the university is located, and a community group titled "Sandon Members United to Act." Two firms have two groups apiece and the rest are dispersed among the other 7 firms.

Without question, group plans will grow. It is the easiest way to broaden out to full personal legal services by expanding present group arrangements or using the corporate legal firm for the union as the vehicle for such service. Yet the developments of such service in California and reports from other states do not indicate that the union leadership will necessarily choose such a route. They are using firms with developed expertise in the field of personal or individual legal problems rather than the old union firms. The scope of services is beginning to broaden beyond job-related matters but is held back--temporarily--by fears of reprisal by disciplinary bar committees.

Resolution of these impasses will probably be reached in one way or another; unquestionably group plans will continue to grow and at an accelerated pace.

THE AMALGAMATED CLOTHING WORKERS PLAN

Murray Finley

Let me give you a little description of our organization so you'll have a better picture of what we're trying to do and of the plan that we're now on the threshold of introducing. First of all, let me say that we're here, in a sense, representing the practionee of law rather than the practioner. And we got into this spot not from the point of view of the attorney seeking to broaden his services, but from the voices of thousands of people who in our recent experience have great need of legal services which is beyond their ability to attain today.

Our organization in Chicago has 12,000 members, representing people who are engaged in manufacturing in the men's clothing industry, with a few thousand employed in the retail field. About 70 percent are women and about 35 percent are from minority groups, primarily black and Spanish speaking people. We have about 25,000 members in the mid-Western states of this country. We got into this program in the last two years, as a result of the recession that began to hit our members around the middle of 1969. There were extensive layoffs, and we found that many of our people were beginning to experience the problems of the working poor--short hours, unemployment, and so on. And we found also that there were members that did not have enough money for food, they didn't know where to go. So we established what we called at that time a social service department, with a social worker helping these people with the problems that happen to those who don't have the economic wherewithal to take care of themselves. In the cases that came to us, we found that these were non-job-related problems, that a substantial portion needed the benefit of legal counsel in order to adequately help our members. So we finally said, "Fine. If that's all it takes, we'll now go to the next step and arrange for legal representation for these people." And then we found that there was a problem.

In the past, we have pioneered in a couple of other programs. We established an education program as a matter of right about six years ago, which provides that the children of our members of 13 years or more who go to college--we don't care if they're the middle or the bottom of the class--on a full-time basis get $700 a year for four years. Now, we established that out of our funds that we got through

collective bargaining. At the time we did this, the Taft-Hartley Act did not expressly permit that. While bills were introduced to amend the law, we figured on gambling because we knew there were kids who wanted to go to school but didn't have the money. And we figured that we'd take that gamble because who would bring action? The schools wouldn't because they were the beneficiaries. The parents certainly wouldn't because these were their kids, and the kids wouldn't. So we went ahead on that. We did the same thing with the day care center that we opened for the children of our members, and we put that into existence while the amendatory processes were taking place. So we figured, well, listen, we'll do the same thing with this prepaid legal, you know, we'll...302, we'll start it and we know we got funds. And then suddenly we found that here we're taking on a body that we're not quite ready to--the American Bar Association and two-thirds of the Congress. So we decided that at this point we had to go a different route; besides we couldn't find any attorneys that were willing to gamble with us. And this created a real problem.

So we had this great need and we began to say, "How can we get above it; how can we overcome it?" 302 says that if we ask employers to provide funds for the purposes of providing legal services, that is a criminal offense. This became quite frightening, you know. I wasn't as worried about the employers as I was about ourselves. Also, the Internal Revenue Service says that such contributions, besides being a criminal offense under the Taft-Hartley Act, are not tax-deductible, which can hurt very badly. And in addition, you have the canon of ethics which says that the attorney who receives his fees from a trust fund or from a source other than his client can also be disbarred. The power of society was really descending upon us.

So we decided to try a different route, and this is what we would have put into effect except for the unforeseen freezes that took place in the last few months: we have a great insurance program through collective bargaining, which provides hospital insurance, and all these things. But like every other one, it was not complete. There were gaps. So we established--we have our own insurance company in Chicago--we established what we called a supplemental program that we make available to our members. At this point, it's $1 per month for an individual, and $3 if he wants to cover his family. It also picks up the difference between the collective bargaining health insurance program and full 365-day coverage, full incidentals, $600 surgical, and all those things. We have this

plan on a voluntary basis, with payroll deduction, and I should have pointed out we not only have our 12,000 active members, we have 3,000 retired members as well.

When we put this plan in effect, we had tremendous response because for such a small cost per month our people could get the difference between what we were able to bargain collectively on a national basis and real total economic reimbursement for hospitalization and surgical costs, weekly sick and accident benefits, and so on. It's done through payroll deductions and our employers agreed. So we figured, fine, we'll use this vehicle. We'll work out some modest fee, charge our people so much a month as a payroll deduction in addition to the other one, on voluntary basis, and they will have now paid for a retainer for attorneys.

Now, to do this we got to talk about costs, because our people are not ready to pay even the 2¢ an hour that the labor has planned, at least we don't think so; $40 a year, it may be the cheapest bargain, but right now they're not at that stage of understanding where they realize its value. So we wanted the cost where we thought it could work, and we set a cost which is literally a negligible one, 50¢ a month. Now, obviously, you can't take 50¢ a month and knock on some LaSalle Street law firm and say, "Look, I have a legal problem. I'd like to sit down and discuss it. Here's my retainer." You could do it, but I'm not quite sure. So we had to figure out where do we go from here.

Well, the nature of the problems that our people have are the ones that I'm sure you're aware of. You got the three broad categories: commercial transactions (when I say commercial I mean the credit-buying kinds of problems, where they're being hounded for unwise purchases, service charges that they didn't realize, etc.), the landlord-tenant problem, and then the family problem, divorce, adoptions, and so on. Then, in addition, you have the matter of wills, the buying of a home or a co-op apartment and so on. This was the nature of the problems and we had to have somebody who had experience with these, garnishments, bankruptcies, and so on.

The corporate law firm, as we use the expression, the firm that represents us as our counsel, has great expertise and great wisdom. But this is not the area that they're basically involved in, personal bankruptcies, for example, garnishments, divorce, and so forth. And so we had to find a firm that had expertise in such

matters and a sympathetic understanding of the kind of people who would be coming to them, the category of people making $5,000 to $12,000 a year or so, or maybe $14,000, and that would be able to handle their problems. So we had to work this out with one firm because obviously it would have been totally impossible to do otherwise, and we were all ready to put our plan into effect. And then came the freeze.

Now, the reason the freeze came into this was a little bit peculiar. The insurance program at $1 and $3 a month is great for our members, but in the last year we lost $100,000 on it because the hospital costs have been jumping up, and the actuary said that we would have to raise that by another dollar a month and a couple of dollars for the family. But we couldn't, because the freeze came in August, and we couldn't go to our members and ask them to increase their payment by this amount so we can cover the costs. And we didn't want to go in with a legal program at a different time, we don't want to go in in one month with one program and a couple months later with another one. So now that the freeze is lifted and as we read Phase Two, that is, the insurance being a service and showing a relationship to cost, we're now able to open the program up to our members. And we are going to combine this with the legal insurance as an additional voluntary benefit if they want to subscribe to it. We're holding off till after December for a different reason. We run for election and there's no sense in bothering our people with increased costs just before election. Election is the 6th, 7th, and 8th of December, I think, so the 9th of December we'll make this available to them, assuming we're still the ones who will be making this available.

Let me say that this has been discussed at our delegate bodies and has been discussed with our locals, and the interest certainly is growing. It's an educational process. A lot of people don't have the kind of feeling for the attorney that they might for the doctor--that kind of thing, you know. We will approach our members by the middle of December, and I am confident that we will have at least 7,000 or 8,000 people who will enroll, if not more. We will begin payroll deduction in January, and starting with the first of February we'll have the program in effect. Until then we thought we would see where we're going with the social service department.

This we established, as I told you, and we made a little check in the last ten months or so. And we played that down because we had a little problem with it. You

know, you can only ask so much pro bona publica. We had about 360 people who came in to see our social worker in the ten last months prior to now, about a third of which needed legal help--a substantial percentage in our judgment. We have obviously not been pushing it until the plan gets going, because just the economics of handling it aren't there until the time comes for the actual implementation of the plan. But our testing, as it's worked out, has shown us that there is no question in our judgment that there is great need for this. We also are confident, based upon our experience to date of the easy testing we've done, that there will be growing utilization. The one thing that scares me, frankly, is that 8,000 people sign up on January 1st and on February 1st they all want to have their wills made out. The plan may fall almost short if this happens all at once.

We're going to have to make an improvisation. We're going to use a social worker because the first impact of the person in trouble will be through our social service department; we'll have to add social workers to the department. It is not all necessary to spend the time with the attorney in consultation when it's very possible that two-thirds of the matter could become non-legal issues or such that a social worker, in terms of guiding the client to whatever agencies and so on, can help him, can do the non-legal work and save the cost of the attorney in doing so. Then, after this "screening" process, if the matter involves a legal issue, then our member will go to the attorneys.

We are handling this in the nature of a consultation. The member will be covered so far as his problems are concerned on all matters except jury trials or contested divorces, problems like that. We're not able to handle that because we don't know the economic boundaries of that. We won't be able to handle criminal matters for the obvious reason that the practice of criminal law and the jurisdiction of my union present both legal and practical problems. We can't get involved in this matter because of this common protection of our organization and our members. We don't yet see our way clear, even though there is a tremendous need. We're not going to handle traffic tickets; we don't want to go to the U. S. Supreme Court when there are other rules that people follow; and we don't want to advise people in our area in these matters. So we're going to leave these things out. We have to. Out-of-pocket costs will have to be paid by our members, filing fees, and so on; they'll have to pay for this.

If it comes to a contested action, they'll have a freedom of choice; they can use the attorney or go elsewhere. They will be not charged at all for any consultation, preliminary work, up until that point. If they wish to use the law firm under our plan, they'll be free to do it. If they don't, they'll have to work out their own arrangements. If they don't, they're totally free to go elsewhere in this obviously.

Now, I point out this is a technique that we're devising. We have the draft of the brochure that is being prepared for our members, the cards for payroll deduction. And it will go into effect, as I said, almost a month from today. I'm not sure this is the best method because, obviously, there are great limitations, costs and so forth, in the type of things that we can do. But while the Taft-Hartley Act remains unchanged--the Hart-Magnuson bill, of course, will correct that if it's amended and goes through Congress--the Internal Revenue Service will have to broaden its views a little, and the bar association, I think, is going to have to change somewhat in its concepts. In the final analysis, if you want to get the great mass of workers who need legal help but who are not eligible for legal aid on the one hand and do not understand the need for going to an attorney on the other, it is going to be through collective bargaining. And if you're going to do it successfully through collective bargaining, it means you're going to have the fees paid in some form, in my judgment, through collective bargained trusts that are established by collective bargaining, similar to the insurance, education, and the other kind of programs that have become so extensive in this country.

I only hope after the deliberations today that you will speed up, that this conference will help speed up this process of making available competent legal service to the millions of Americans who need it. This will not take away the attorney-client relationship. Our insurance programs have shown us that the doctor is still the doctor when he treats the client. He is not working for the union or for the trust fund; we've had the greatest of experience on this. It will not hurt the relationship that you're so properly concerned about. But the longer it takes--you're literally chaining, you're keeping millions of Americans from having the opportunity to be protected in their time of need. Thank you.

GROUP LEGAL SERVICE PLANS--THE FIRST SOLUTION

DISCUSSION

Dean Murray L. Schwartz, Moderator

At the price of having our three discussants truncate their remarks unreasonably, we have adhered to the schedule so that we now have fifteen minutes left in which to receive questions from the floor. If you have a question, I would ask you first to identify yourself, and second to identify the member of the panel you would like to respond, and third to confine your question to about 30 seconds, if that's possible. First Questioner right here.

My name is Julius Topol. I'm an attorney for District Council No. 37 AFSCME, in New York. I'd like to ask Mr. Welpton and Mr. Murphy with regard to the decision of the New York State Bar Association which was referred to by Mr. Welpton. So that the other men may understand it, may I take a second: a law firm on the staff representing meat cutters actually asked whether it would be permitted by this new rule for them to supply legal services to their members on matters which were both job-related and non-job-related, the wide spectrum. And the New York State Bar Association in interpreting this new rule said that the dividing line for the attorney, whether on the staff or office staff, the dividing line was between job-related and non-job-related. I wonder whether Mr. Welpton would say that they are too restrictive or that the intention of the draftor, if that were the intention of the draftor, would satisfy it if you had, let's say, a choice of 10 to 15 attorneys to whom they could go and get this free legal service.

Sherman Welpton:

As I read this opinion of the New York State Bar, which was handed down in August, 1971, they referred to our ethical consideration, EC2-7, as relevant. I'll just read that, because I think it's material. EC2-7 writes "changed conditions, however, have seriously restricted the effectiveness of the traditional selective process. Often the reputations of lawyers are not especially known to enable laymen to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter. And many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for

transients, persons moving in the new areas, persons of limited education or means, and others who may have little or no contact with lawyers."

We recognized that and so we wrote it. Now, we did, however, consistent with the concept that practice of law is individual (and I have previously read from DR2-103) provide and restrict that the primary purposes of such organizations do not include the rendition of legal services. I think the majority opinion complies with the concepts that we had in mind in writing the DR2-103 rules. And this opinion of the New York State Bar, incidentally, I'm sure you are aware that there was a dissent by two academicians--it was a professor and one other--who were at variance with the practicing lawyers, but I think that the majority opinion represents the view of lawyers throughout the country and represents the view that we sought to incorporate into the Code of Professional Responsibility on what's required. As they point out, and I'll read only from that because I think it's a good statement of what we had in mind, they're referring now to the Brotherhood of Railroad Trainmen decision: "Every court opinion should be construed in the light of the facts before it. The broad language of the Supreme Court cited above should not be construed so broadly as to destroy the fundamental freedom inherent in the right of the members of the public to have independent counsel whose loyalty is wholly to the client and not to an intermediary whose economic power permits it to control or strongly influence the judgment of the lawyer. Labor unions, trade associations, stock exchanges and other concentrations of economic power if permitted to supply free legal services to their members in every area in interest of their members could conceivably control the economic life of large numbers of lawyers who become puppets of their employers to whom they would owe primary allegiance rather than servants of their clients. It is doubtful that the Supreme Court in spite of the breadth of the language it used in connection with the Railroad Trainmen's legal referral service intended to abolish the right of states and the bar to preserve the public's right to the loyalty of independent counsel." Does that answer your question or is there something more?

Julius Topol:

Let's suppose you give the fellow a closed panel of 10 to 15 choices, people who have agreed to take the schedule of payments. You say, if you go to these people, then your payments will be made by the organization. Would that satisfy the canon?

Mr. Welpton:

Well, we have something of that nature in the Lawyers' Referral Service by the organized bar and we have provided for that in connection with the disciplinary rules. We said again where it's under control, but not merely if you permit an organization unrelated to any enterprise. Now Mr. Finley has referred to his organization which, of course, is the clothing group, the manufacturers and retailers, so that's business related. Then the law problems are incidental to that. Fundamentally, where the law problems are incidental to the business, we permitted that. But if you merely permit an organization to be incorporated or organized so it can go out into all the various fields of law, that is prohibited.

Mr. Topol:

A union like this--if you go to any one of the following fifteen people, we will pay your legal services for you, because they've agreed to accept our schedule of payments. If you're a labor union and you say to a member, if you go to any one of the following fifteen people, they have agreed to accept our schedule of payments, we will pay your full legal services if you go to them, can that be done under the Code of Professional Responsibility?

Mr. Welpton:

I'm going to give you, of course, my interpretation, which, I'm sure, you'll recognize as not binding on the American Bar Association Committee on Professional Ethics. Now, under our DR2-103, subdivision D and point 5, which I have read, I've already read the A, "The primary purpose of such organizations do not include,"then B, "the recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization," which I think Mr. Finley said it was. In other words, the primary purpose of the organization does not include the rendition of legal services. Then C, "such organization does not derive a financial benefit from the rendition of legal services by the lawyer." And D, "the member or beneficiary for whom the legal services are rendered and not such organization is recognized as the client of the lawyer in that matter." Now, those are the four conditions that we impose as a part of complying with that. If those conditions are met, then I can see no legal objection to the type of organization that he visualizes. I'd like to ask Mr. Murphy to comment on that.

Philip Murphy:

Just very briefly, for those of you who would like to write down a citation of this particular opinion. This is the opinion of a committee on professional ethics of the

New York State Bar Association and is to be found at page 357 of the New York State Bar Journal, issue for August, 1971. This just recently came to the attention of the ABA, courtesy of Mr. Topol. And I asked our staff on professional ethics and unauthorized practice to advise me whether they were aware of any other opinion in the United States dealing with the group legal provisions of the Code. To our knowledge at ABA, there are no other opinions. This is the only one. It is the opinion of the New York State Bar. There is no opinion of the American Bar Association written by its Committee on Professional Ethics construing the group legal provisions that Mr. Welpton has discussed. There could be easily a difference of opinion among other persons looking at the same language.

Dean Murray Schwartz:

As I listen to the comments, I think the answer is a resounding, "We don't know."

Right here, sir--I'll repeat the questions so the ones in the back can hear it. The question is whether there have as yet been any actuarial studies which have analyzed the costs of the programs in relationship to the lawyer's services and traditional fee? Mr. Finley, did your organization undertake any kind of cost benefit analysis when you undertook this plan?

Murray Finley:

No. We didn't because there wasn't any that we knew of, but we took a simple mathematics, 50 cents a month or $6.00 a year, $48,000 a year, x numbers of hours of service, and we kind of figured that by the time that $48,000 is used that the Taft-Hartley will probably be amended. And we'll go on from there. But in terms of actual guesswork, we're going to try control, we don't have any, but we are going to try to control the utilization. Candidly, at the very beginning, we're not going to push it to the extreme until we sort of work our way up to it, because we found nowhere that we knew of where there was any real yardstick upon which we could make a judgment.

Dean Murray Schwartz:

Mr. Murphy, who is our expert on what's going on, would like to say a word.

Mr. Murphy:

There will be some discussion later this afternoon as to the absolute and total lack of any actuarial base. There are no studies and what Murray is saying about his plan in Chicago is that you just have to jump in the water. That's it.

Dean Murray Schwartz:

The gentleman over there, on that side of the room. The question is, in some plans there are certain criteria for eligibility such as being a member in good standing of the organization and a local resident or whatever. Now, in order to find out whether those criteria are met, there are organizations or perhaps the parent organization which maintains records.

Would the compensation of the administrators of the trust funds for the cost of administration, in a sense, be in violation of the current Code of Professional Responsibility, because there would be payments which would mean profit to those who are receiving the payments? Is that correct?

Mr. Welpton:

As I understand your question, it's whether or not on the basis that deduction of dues from a member of an organization, of a labor union, whatever it may be, and a certain amount is deducted, 50 cents or $1.00 a month, and if a portion of that is used by a lay organization in screening the eligibility of the person who asked for legal aid, whether that would be a violation of the disciplinary rule? Is that your question? Very well. I wanted to make sure I understood the question, after it had been worked over. You know, as Voltaire said, "If you'll converse with me, you'll need to define your terms." So we're back to that.

Now, as I understood that question, I don't think it would be because you're using it for purposes which are incidental to legal services. But you're only paying the lay organization for the purposes of determining whether or not the individual may be entitled to it, whether or not he is in good standing, whether or not he's complied with the other things. That isn't being used for legal services, it's being used for the determination of eligibility of the recipient.

Dean Murray Schwartz:

Ladies and gentlemen, as Phil Murphy pointed out, some of the questions which you have will be addressed in later sessions today. I'd also point out that on Saturday morning we are going to have workshops in which there will be an opportunity to raise a number of these problems once again. We have reached the time for the coffee break. Let me point out to you that there is a message board in the foyer.

THE NEW ALTERNATIVES--FREE CHOICE PREPAID PLANS

Charles J. Scully

Ladies and gentlemen, it's a pleasure on my part to act as your moderator on the next portion of the program. My name is Charles Scully. I'm general counsel of the California Labor Federation AFL-CIO. I suspect the reason I'm a moderator is that at the time the program was being planned, I was the chairman of the State Bar of California ad hoc committee on prepaid legal insurance. I understand that the president of the association this morning advised you that our committee completed its work. We were appointed in May and we filed our report last month. However, the board of governors has not acted upon the report, and so I have a very simple role today--to advise you that it is confidential and I can discuss it not at all. You will have a moderator who will be silent.

This portion of the program is intended to give you some of the background and some of the experience on the two pilot programs with which the American Bar Association has been involved. One of those programs has been in effect for a reasonable period of time. The second, I understand, will start in approximately a month, somewhere around January. The first two speakers will address themselves to the program that is in operation, the Shreveport Plan. The first speaker is Mr. Henry A. Politz, who is an outstanding attorney in the state of Louisiana and has been honored there specifically as such. He is a graduate of Louisiana State University, both undergraduate and law school, and he will give you the background activity of the bar association in working to formulate the program and some experience as to how the program has been operating now that it has been placed into existence. After Mr. Politz, Ray Marks, Jr., who is a senior research attorney of the American Bar Foundation and a lecturer at the University of Chicago, will present his views on the Shreveport Plan. He's had a direct relationship to that program in his capacity as project director. Finally, John Kehoe, who is chairman of the Los Angeles committee that is concerned with the second pilot program, will discuss the details of that plan.

THE SHREVEPORT EXPERIMENTAL PROGRAM

Henry A. Politz

Thank you, Mr. Scully. Good morning. Let me set a brief historical perspective of how we came to be, and then a brief analysis of what we are and what has happened in our first nine months of operation. For many years attorneys throughout the United States have been concerned, individually and collectively, with the overall problem of making lawyer services more readily available to lower- and middle-income groups. It is believed by many, and I certainly share this belief, that these economic segments have failed appropriately to utilize professional assistance in understanding, solving, and otherwise coping with the increasingly complex legal socio-economic problems manifest in our society. It is reasonable to believe that this failure has all too often worked to their distinct disadvantage.

In recent years, the American Bar Association has undertaken to do something about this problem. The special committee on the availability of legal services was appointed and acted under the vigorous leadership of F. William McCalpin of St. Louis. This committee was charged with the responsibility for making an in-depth analysis of the problem. The committee's study focused on the novel concept of prepaid legal-cost insurance and similar prepaid legal plans. The committee commissioned Professor Preble Stolz, whom you will hear later today (Professor Stolz is on the faculty of the School of Law at the University of California) and asked him to determine the feasibility of this funding concept. His careful examination and review, in abbreviated form, was published by the American Bar Foundation in 1968; you may find it in the University of Chicago Law Review, volume 35, page 417, et seq.

After receipt of Professor Stolz's report, the McCalpin committee secured a review of it by actuarial consultants with long experience in medical insurance plans. They confirmed his conclusion that the prepaid legal concept held promise of substantial value and that sufficient expectation of feasibility existed to warrant carefully controlled experimentation. In February, 1968, the McCalpin committee recommended to the board of governors and the house of delegates of the ABA that

the Association engage in an experimental program with one or more prepaid legal-cost insurance plans. The envisioned plans, subject to review by teams of experts, were to include groups of insureds and cooperating units of state and local bar associations. This recommendation was adopted, and in pursuit of the implementing resolution a sub-committee of the board of governors was appointed under the creative and imaginative leadership of Charles Goldberg of Milwaukee.

The Goldberg committee contacted the insurance commissioners in all 50 states and inquired as to their attitude toward such an experimental program in their state. Favorable responses were received from a number of states, including Louisiana and California. Simultaneously inquiries were directed to 88 preselected bar associations, including the Shreveport Bar and the Los Angeles County Bar. The Shreveport Bar and the Los Angeles County Bar, as did a number of other bar associations, volunteered to undertake this pilot project. Ultimately, in May of 1969, the Shreveport Bar was authorized by the ABA to proceed with structuring and operating a program under the ABA's auspices and with its financial assistance. The Los Angeles County Bar was also authorized to proceed with the ABA assisting in securing needed funds.

Upon our selection as the primary test situs, the Shreveport Bar executive council charged the bar activities committee, which I chair, with the responsibility for establishing and operating the program. We secured the participation of Local 229 of the International Labors Union, with approximately 500 to 600 members; the number fluctuates. We secured the assistance of Southwest Administrators, Inc., a firm with broad experience in the field of managing union fringe benefit funds. We had no kit to work from. We were seeking to put together that for which there was no form in the form book, not even the best Louisiana formularies. Southwest Administrators, Inc., primarily through its president, Ralph Jackson, whom you will hear later today, made an actuarial and on-site study and drafted a "benefits package." Thereafter, numerous conferences were held between the bar activities committee, the administrator, and representatives of the union. The purpose of these meetings was to determine the legal needs of this particular group and to determine, as best we could, how to serve these needs within the group funding parameters. Essential to the planning was an approach which preserved to each insured the right to retain the attorney of his or her own choosing.

It was ultimately agreed that the union would contribute 2¢ per hour work for each of its members out of a working dues check-off. The ABA appropriated a substantial sum, and reserve funding was sought and secured from the Ford Foundation. The program commenced in January of this year, and we are to operate for a 2-year period.

Prior to starting the program and prior to advising the union membership of the details of the plan--they knew only there was to be a prepaid legal plan--the American Bar Foundation team of experts under Ray Marks, who will be addressing you in a moment, interviewed every member of the union and approximately one-third of the members of the bar. This survey, as a layman understands it, sought to capture the pre-program attitudes of both attorneys and prospective clients, and also to determine and discover the prior level of use and, parenthetically, of non-use of legal services by this group. Follow-up surveys will be done, not only to discover the feasibility of this concept for delivery of legal services but also to evaluate any change in attitudes toward the administration of justice, toward attorneys and toward the law, occasioned by increasing the availability of the legal services by easing the cost thereof. Ray will tell us something about that.

It is generally conceded that fear of the cost of legal services has acted as a very real deterrent to a fuller use of these services by a large segment of the public. In this day of full utilization of income with little, if any, financial reserve, the average wage earner has great difficulty handling unanticipated expenses. All too often, a person is driven into the office of an attorney too late for any meaningful assistance. All of the attorneys here have seen, over and over again, proof of the adage "a stitch in time saves nine." Many times this delayed action is unfortunately accompanied by grave financial loss or by equally grave personal loss. It is not suggested that persons fail to see an attorney because the cost is actually prohibitive. It is suggested that many persons believe that the cost will be more than they can afford. This belief, albeit false in most instances, may serve as a sufficient deterrent to prevent or delay the securing of legal assistance. This fear must be reckoned with.

It is submitted that the potential client who is armed with an "insurance policy" to cover all or a substantial part of his legal costs will seek legal services

far more readily. And he will seek such services before the crisis stage is reached. More importantly, he will utilize legal services to his advantage before encountering difficulty. The law will prove to be more of his friend than his foe. And inherent in this will be a humanizing of the face of the bar to the mutual advantage of both client and counsel.

Obviously, many questions remain to be answered. Definitive actuarial data is essentially non-existent. Research efforts by the McCalpin committee disclosed that neither the legal profession nor any known agency is aware of the frequency of such occurrences as, inter alia, adoptions, successions, real estate transactions, domestic relation matters, consumer matters, repossessions, and on and on. And it is certain that no one can do more than speculate on the frequency of failure to use legal services in such instances, and the effects of that failure.

The purpose of the experimental project at Shreveport is two-fold, and each is important: One is to develop specific actuarial data as to the feasibility of such a concept; can the prepaid approach serve as an effective method of funding adequate legal services for the great body of middle Americans? The other is to determine the cause and consequences of people failing to make timely use of legal services. What legal ills could have been avoided by a proper use of legal services? It is believed that the experiment undertaken by the combined efforts of the American Bar and the Louisiana State Bar and the Shreveport Bar can serve as a useful testing ground for development of valid answers to some of these inquiries.

Now to the Shreveport Plan itself. We have predicated our plan on our understanding of what attorneys do and how we do it. We devised our benefit packages accordingly. The Shreveport plan for prepaid legal provides four major benefits: the first is advice and consultation; the second, office work; the third, judicial and administrative proceedings; and the fourth, major legal. All benefits are geared to a per year, per family basis.

First, advice and consultation. The basic coverage provided is $100 for consultative services not to exceed $25 per visit. The client may seek advice of counsel on any problem, any problem at all, which he believes to be a legal problem or to be of a legal nature. We use the

broadest possible scope of the availability of this particular benefit. The plan will pay the indicated benefit without any deductible by the client.

The second benefit is office work. In the event the preliminary consultation leads to other legal work (besides minor office work) such as investigation and research, conferences and negotiation, document drafting and review, the plan provides up to $250 for legal services. In such instances it is programmed that no payment be made under the consultation benefit, but that the payment be for the specific services performed. This benefit is subject to a $10 deductible to be paid by the client. This is a control factor that Ralph Jackson will be discussing this afternoon.

The third benefit is judicial and administrative proceedings. Should representation be required in judicial and administrative proceedings, the plan provides $325 for legal fees, $40 for court costs, and $150 for out-of-pocket expenses preparatory to such proceedings: depositions, investigations, photographs, map surveys, whatever is needed in the trial itself. If the insured is a moving party in litigation, this benefit is conditioned on his prepayment of a $25 deductible. This, again, is a control factor that Ralph will speak of this afternoon.

The fourth benefit is major legal. If the insured is named as a defendant in a civil suit or if he is charged with a criminal offense by indictment or bill of information, or if he is named respondent in an action before an administrative agency of the city, parish (county), state, or federal government, the insured shall be entitled to the litigation benefits and in addition major legal benefits. These benefits provide 80 percent of the next $1,000 of such expenses. Thus, the insured may receive the applicable benefits and up to $800 for his expenses in excess thereof. The major legal benefit is on an 80-20 coinsurance basis. Conceivably, an insured could receive $1,665 in a year in benefits.

The plan excludes legal fees incurred in connection with certain business expenses. It excludes controversies involving immediate parties to the plan. This is handled by arbitration. It excludes contingent fee cases, fines and penalties or amounts for which the insured may be cast in judgment, class actions, interventions, amicus curiae filings, and certain other minor matters.

We have learned several things since we began operation. One major lesson dealt with the exposure and the number of insureds. By definition, an insured in our program is the union member, the spouse of the union member, and the dependents living in the household. Overlaying this to the people covered would reflect a group fluctuating anywhere between 1,800 and 2,000 "insureds." But we quickly learned that legal services are quite different from medical services plans. Whereas small children have medical problems and have a need to see the doctor, this is not so for legal problems--3 or 4 or 5 or 6-year-old children seldom have legal problems. Legal problems are essentially head-of-the-household problems. Legal problems are essentially family problems. So we had to reset our sights in terms of the exposure.

At this point we would like to review our experience in the first 9 months. We have found our percentage of usage, using the family basis, is about 20 percent. This is just a little bit lower than we actuarially had projected it. We had at the beginning a sharp surge in use. These were the pre-existing matters that were concerning them. After the first few weeks there was a marked drop in use. Then in the next 6 or 7 months, the pattern reflects increasingly greater utilization. Of the matters which have been opened, about 25 or so percent have been closed and billed. We have learned another lesson here. The average time between use of medical services and billing is about 90 days. We don't know what it's going to be like in legal plans; we don't know, because we do not yet know how long it will be before legal matters are usually closed. This is something else that we hope to learn in the course of the Shreveport experiment. The average claim payment thus far has been $200, 93 percent of which has been paid by the plan, and 7 percent by the client.

The categories of cases reflect this: 20 percent of our matters have been domestic relations. This in the broad sense includes separations, divorces, adoptions, legitimations, alimony and custody. Automobiles, the broad range of matters arising out of automobiles--accidents, licenses, insurance, accounted for 19 percent. Retail credit and consumer problems other than auto have accounted for 10 percent, repossession, bad merchandise, etc. Bankruptcies, 1 percent. Successions (that's probate descent and distribution matters) accounted for 3 percent. Unemployment comp and workmen's comp, 27 percent; we have a bit of distortion here because we had

a strike, a number of the participants made claims for unemployment compensation. Torts other than auto have accounted for 1 percent. Real property matters, deeds, mortgages, have accounted for 12 percent. Criminal other than auto, 6 percent; and juvenile, 1 percent. Thus far, in payment of benefits, we have paid under benefit 1, advice and consultation, 1 percent of the total monies paid; 22 percent has been paid for office work; and 77 percent has been paid for judicial and administrative proceedings.

Many questions are obviously posed. Is this funding concept feasible? Is this plan which reserves to the individual participant the right to secure counsel of his own choosing a viable approach to providing legal services by the group method? Have people, in fact, failed to make timely use of legal services to their detriment? Was the anticipated cost a serious, deterring factor? Have such experiences adversely affected their attitude toward law and lawyers and the administration of justice? These and many other questions have as of today not even been articulated. This experimental program has been approached with great expectation. Its results are likewise awaited. Hopefully, the Shreveport prepaid plan will provide some of the answers or the beginnings of answers to these many questions. Thank you very much.

THE SHREVEPORT EXPERIMENTAL PROGRAM

F. Raymond Marks

One of the difficulties in talking about an experimental program and a study of that program is that we do not have as yet any results; our data about the effect of the plan will not be gathered until January. Let me tell you a little about how we've gone about the study and then raise some of the issues which are troubling us and for which we hope we will be able to get some answers.

We, as Henry said, interviewed all of the members of the covered group--before the insurance experiment went into effect--in three basic areas: (1) their past use pattern with respect to legal services; (2) their attitudes about the legal system and lawyers; (these, of course, are not exclusive areas, because frequently you can infer from use or non-use patterns attitudes about the law and the legal profession); and, (3) the group's level of legal sophistication. "Legal sophistication" is a term which we think goes beyond Jerome Carlin's concept of "legal competence." It includes what people call legal problems and how they relate their problem-solving patterns to the legal process.

Unfortunately, when you're talking about the delivery of legal services, some of these issues are frequently omitted. When you ask the question, "Is a legal service plan, prepaid insurance, an effective way of delivering legal services," as you have today, it almost sounds like you're talking about a lawyer's having an inventory of hours, a fungible inventory, and that there is a set of buyers demanding these services. Generally, we fail to see that the way people define legal problems--what they say is a legal problem--is a definition of the kind of service that they are going to be demanding from a lawyer. A legal problem, itself, is impossible to define. I think the closest you can get to it is a paraphrase of what Mr. Justice Stewart said in the Jacobelis case: Legal problems like pornography are impossible to define, but everybody knows one when he sees one, at least for himself. What we are after, in our study, is a view as to what kinds of things people relate to the legal process and what kinds of things they do not relate to that process.

We found that this group was essentially a group of non-users or infrequent users of legal services. This did not surprise us. From some of the studies we've done at the Foundation, we suspect that the non-use or alienation factor with respect to people taking their problems to law goes very well up into the socio-economic scale. The upper-middle class may well be non-users, alienated from the use of lawyers. Lawyers are costly. One of the things we are clear about, from studies of poverty programs and our study of this program, is that even if you dropped the dollar costs of lawyer services to zero, the use of a lawyer is not a cost-free transaction. There are heavy psychological costs of talking to somebody else about your problem. There are heavy costs of dislocation involved in placing your ability to control your world and solve your own problems in the hands of somebody else. We don't think in those terms when we talk about the use of medical services. But, I suggest that we must think in those terms when we talk about legal services.

We found, in terms of attitudes of people towards the lawyers in Shreveport, that one-half of the group distrusted lawyers. We found that three-fourths of the group felt that lawyers cost too much. One of the things we can hope to measure here is: If the entry-cost factor was dropped, would attitudes about law and lawyers change?

One very advantageous thing about the Shreveport experiment is that the initial consultation would have no exclusions; this would seem to encourage people to come to a lawyer and talk about their problems. Would this change the kind of things that people brought to lawyers? Would this change the awareness of what the lawyer was doing? One of the things that we asked in our pre-survey was, "When you went to a lawyer, what did the lawyer do for you?" We asked them in terms of a detailed check list. And, we found that frequently when people had placed their problems in the hands of a lawyer, they had little idea of what the lawyer was doing. They showed evidence of a lack of communication between themselves and the lawyer. One of our central issues is: "Would bringing the initial costs of legal services down, or providing for them in advance, change this? Would the quality of use change?"

We suspect it will. We found that before the plan went into effect there was only one person who had ever sought only the advice of a lawyer and no more, i.e.,

he had not sought the advice of a lawyer in connection with being a defendant or being in an extreme situation where he needed a lawyer to help him either in an adversary process or in the acquisition of property or what have you. So far in the plan, from the claim experience, we can say that there's been some shift, some seeking of lawyers to talk about problems, some feeling that the client remains in control of his problem, even after he's gone to a lawyer.

Let me say something more about our study design before I get to the main questions that trouble us. We are going back to Shreveport in January. We will ask all the attitude questions again. For the people who have used the program in the experimental year, we will ask if they knew what the lawyer did for them. We will, of course, ask the batteries of questions dealing with how problems are defined. We have been following both the lawyers and the clients who have filed claims. And there will be separate questions for both groups. We think that not only will the behavior of the client group change as a result of the legal service plan, but also the behavior of the lawyer group will change. One of the crucial questions is: Will lawyers change their economic behavior as a result of a now available fund? Will the costs of legal services go up? In talking to the lawyers, we found a pattern which would not surprise you. About 50 percent of the lawyers said they charged for consultation hours; about 50 percent of the lawyers said they did not generally charge for the first consultation. Thus far in the claim experience, we are finding that frequently lawyers do not charge the legal service plan for a 15-minute or a half-hour conference. There seems here, at least, to be no marked shift in lawyer behavior. But will the pattern persist for more lengthy uses of lawyer time? The failure to bill for an interview may be because filling out forms is not a cost-free transaction for the lawyer. In any event, we have not analyzed our data here.

I'm told that I have five minutes. I'm sure I have not enlightened you. Principally, I've let you know that we are not yet enlightened ourselves. There are two main points: I have only touched on the first. To summarize: Is Preble Stolz correct in his thesis that paying for a lawyer in advance will change the way that the clients behave? Even if dollars are not the only factor that inhibits the use of legal services, if something is paid for already, will that fact change the

other factors that inhibit use? If you paid for a dentist or a doctor in advance, will you, even though you're afraid of the pain in the case of the dentist or somewhat distant from the doctor, make use of that service? We hope our study will shed some light on this issue and develop some hard data.

The second main point is: How important is, and what is the meaning of, free choice of lawyers? It is deemed important in the inner-bar rhetoric, but in reality I suspect we have much to learn still about that problem. Murray Finley referred to it this morning. How can we expect a client to make an intelligent informed choice of a lawyer in the open market unless the profession itself goes somewhat further in defining competence and specialization--in even defining the criteria by which we in the profession could determine a skillful lawyer, a competent lawyer? One of the questions that we asked the Shreveport people before the plan went into effect--where they had used legal services--was, how did they choose the lawyer? It won't surprise you that the client group chose lawyers essentially on the basis of word-of-mouth, from friends and relatives. It might, however, surprise you to find out that in some of our other studies we find that that's precisely the way that lawyers choose other lawyers, in terms of where they went to school, friendships, and so on. I think that before we can really close in on the issue of free-choice plans we have to ask ourselves the more troublesome question about what kind of guidance we can give ourselves and the client world about selecting lawyers in the market place. I think that we will learn something from the Shreveport program because we have a battery of questions aimed at how people got to lawyers and what criteria they used.

I want to emphasize that this is not an isolated issue, because the terms of how a relationship is formed, how one gets to a lawyer, may also determine what kinds of problems are brought to lawyers and what kinds of relationships are continued once they are in the hands of lawyers. If the choice of lawyers is essentially made by random walking through the telephone book, then the kinds of problems that are taken to lawyers may not change markedly. And, the free choice of lawyers may be a myth. We do not have enough evidence, yet, to determine whether or not the choice that comes with the plan has indeed been fully informed free-market choice or something else. We need to know the meaning of that choice to the client. Thank you very much.

THE LOS ANGELES TEACHERS PROGRAM

John E. Kehoe

With respect to the historical background of the Los Angeles program, I am somewhat at a disadvantage by reason of the fact that while the committee has been in existence for approximately four years, I have been the chairman and a member for only the past four or five months. We're not as far along by any means as the Shreveport program, and the historical background is best set forth in the report by the former chairman of the committee, Mr. Brown, which is contained in your handbook.

The most significant thing we have accomplished to date is to complete a plan which has been approved by the Board of Trustees of the Los Angeles County Bar Association. The purpose of this plan, as in the case of other plans which have been considered and because this is a pilot program, is to provide benefits which would encourage people to utilize the services of a lawyer. This is particularly of importance in this plan because of the voluntary nature and the fact that our target group is all of the teachers in Los Angeles County, numbering approximately 50,000. As we cannot require all 50,000 to participate and must solicit these teachers to participate through the aid of the California Teachers Association, we have to offer them an attractive benefit package. But at the same time, we tried to set the premiums as low as possible. The plan provides that for the first or basic benefit, which we refer to as the "prepaid benefit," the premium be $3 per month or $30 a year, based on a 10-month pay period during which deductions would be made from the teachers' salaries. For an additional $6 the teacher can obtain what we call the comprehensive benefit, which is similar to "major medical" type coverage.

The plan, developed as I indicated, covers the entire family rather than just the individual for the reasons stated earlier by Mr. Politz. The initial or prepaid benefit consists of the following: a legal check list or checkup, a list of questions developed by Mr. Brown, which the teacher fills out and sends in to the appropriate attorney who may then contact the individual or may have some comment on what is contained in the check list. The second benefit is two hours of consultation and advice on almost any subject, the only requirement that the two hours of consultation be in minimum segments of half an

hour each. The third benefit is any simple document, such as a simple will, deed, something of that nature. The fourth benefit is a schedule of services which is attached to the plan, for which a stated dollar amount is set forth, the idea being that for each of those stated services the individual is guaranteed that the fee he will have to pay will be as stated in the schedule.

The second or comprehensive benefit for which the individual must pay an additional $6 per month, or a total of $9 per month, consists of the following: (1) two hours of legal research; (2) document preparation based on the same fee schedule that I referred to earlier, but not exceeding $40. Both of these benefits are subject to $10 deductible. The third benefit is negotiation on behalf of the covered family, again limited to two hours. The next benefit is legal defense, an 8-hour maximum in this particular case, and again restricted by the fact that the individual not be the plaintiff or a moving party; again, the emphasis is on the defense feature. The last two benefits which get into the completely comprehensive area are services based on the attached schedule but not exceeding $750 worth of those services, and services to continue representation begun under the plan but not in excess of $1250, based on an assumed rate of $30 per hour. These two benefits, the $750 limited services per the schedule and the continuing services up to $1250 have a 20 percent deductible feature.

The plan itself, as do most plans, excludes the type of services that could be obtained elsewhere, such as arrangements that would normally be handled by a contingent fee arrangement. So, we have the plan at this point in time and we are in the process of putting it in the hands of the CTA to present it to the teachers in Los Angeles County. At the same time, one of the critical issues that we are considering is exactly how the panel of attorneys should be made up. Because of the fact that it's a pilot program and because we feel that the success of the program lies not only in the benefits that are offered but also in the satisfaction of the teachers with the attorney that they visit, serious consideration must be given to the possibility of a semi-limited panel. While there may be ethical problems involved, we, for example, could make some effort to determine the relative competency of attorneys comprising the panel in order to further assure the teacher satisfaction with the representation he received.

We have one basic problem that recently occurred as far as implementing the program is concerned. We felt that one of the key features, administratively, was that we would be able to use a payroll-deduction plan. Unfortunately, we recently received an opinion of counsel to the school districts that they did not feel that existing legislation in the state of California permitted the district to do this. We have two choices now. We could attempt to convince the county counsel's office that the districts do, in fact, have this power under existing legislation, or we could seek immediate legislation to permit the districts to do this.

One other, I think, interesting feature of our plan which we felt was absolutely necessary because of the actuarial problems involved is the panel lawyers are the insurers. The services which they render are not paid for immediately, but they basically accrue points for which a portion is paid initially and then the remainder held back for a certain period so we can see how the plan works and whether the actuarial figures turn out to be equal to the actual usage. The attorneys will then be paid the remainder of the fees that they have accrued on the point system if there is sufficient money. If not, the amount each attorney receives will be reduced on a pro-rata basis.

This then is the point where we are now. We have this obstacle in front of us as far as the deduction situation is concerned, but hopefully that can be solved within the very near future. And while the date of January 1st, as Mr. Scully explained, is perhaps somewhat optimistic, we would hope to be able to implement the plan when the second semester of school begins.

THE NEW ALTERNATIVES--FREE CHOICE PREPAID PLANS

DISCUSSION

Charles J. Scully, Moderator

Thank you very much. I believe that without getting in the bad graces of the bartenders' union we can field a few questions. I would suggest that if you have a question you identify yourself, the individual to whom you wish the question to be presented, and I will attempt to repeat the question as best I can so that you can hear it. Are there any questions? Yes, the gentleman standing. The question that's being posed to Mr. Kehoe is, "What percent of the teachers have signed up to participate in the plan"?

John Kehoe:

At this time, none. We have not actually solicited the teachers through the CTA as yet. We are in the process of completing explanatory materials. There is the survey in the handbook in the L.A. section which indicates the reactions of the teachers, and perhaps that might give you some ideas as to what the teachers' response may be.

Mr. Scully:

I'm sorry, the gentleman behind the post whom I could not see. If I summarize the question as best I can, the question is posed if there's a pre-existing condition that would be legal in nature, is it precluded from being covered if he enters the plan after that condition comes into being? You want to try to answer that for us?

Henry Politz:

Not in our plan. If you have a problem, regardless of the time the cause of action may have arisen, if you have a problem now and are eligible now, to wit, you're a member of the union in good standing, you may bring it in into a lawyer's office.

Mr. Scully: Mr. Kehoe, I wonder if you would respond.

Mr. Kehoe: Our plan has the same feature.

Mr. Scully:

The answer that Mr. Kehoe gives is, the teachers' plan has the same lack of any exclusion.

Yes, the next gentleman, way in the back. The question is, who does the administration and how much does it cost?

Mr. Politz:

I don't believe that our figures would be meaningful because of the nature of our plan, and the administrator was also the one who created the package. And we have the multiplicity of forms in the requirements for development of research data, basic actuarial and other research data, requirements that other plans would not have that result in an obvious distortion in our plan. We have a contract with Southwest Administrators, and they are performing all of the services necessary for $5,000 per year and are taking a "licking" in doing so. But even so, we can't really give you meaningful figures on that. While I'm at the mike, let me just mention this, in case I'm not here again. I spoke of the statistics. We have a limited number of statistical sheets up here in case any of you are interested.

Mr. Scully:

Thank you very much. I think the gentleman in the first row. The question is, do they have any data as to the usage by teenage members who are covered under the program.

Mr. Politz: 13 percent.

Mr. Scully:

The answer was 13 percent. The gentleman here, and then I'll get you in the back. Mr. Kehoe, I believe the question is addressed to you, as to whether or not there is anything in the plan in dealing with your point system where at some particular stage, based upon the experience, there will be a review? Is that reasonably accurate?

Mr. Kehoe:

There's nothing in our plan per se. We felt at this time that we would sign them up on a one-year basis as far as the deduction from the paycheck provision is concerned. We feel that one year to two years would be the appropriate cut-off time as far as reviewing the usage is concerned and whether the premium structure should be revised. I really don't think of this so much in terms of a cut-off date as a continuing review, much as they are doing in Shreveport. We hope to experience and observe changing usage patterns and one thing or another as we go along, rather than getting up to a date and having a single review to find out what has happened in the past two years.

Mr. Scully:

Thank you. The gentleman in the last row on the left side please. The question posed to Mr. Kehoe is, in view

of the geographical area and the number covered, how is he going to handle the lawyer supply?

Mr. Kehoe:

Well, I alluded to this earlier when I said that one of the matters which we have under final consideration at this point in time is exactly how to set up the panel of lawyers. We also must consider the geographical allocation of this panel throughout the county, so that in any given instance a particular teacher will have ready access in his community to one of the lawyers who is a member of the panel.

Mr. Scully:

The gentleman who was caught up in the pass on the back row on that last speaker. The question posed is, is the payment made to the lawyer made directly by the plan, and if the full amount is not made by the plan, is there a cause of action with respect to the client-attorney relationship? Do you want to answer that first Mr. Politz?

Mr. Politz:

The Shreveport plan does not interfere at all with the attorney-client relationship and the responsibility of the client for the payment of the fee. The fee is set by the attorney in consultation with the client, the way you would do it absent a plan. With respect to payment you may do it in either of two ways in our plan, much like in medical practice: the client may pay the attorney and submit the claim form to the fund and be reimbursed, or the client may assign the benefits in the plan and the attorney will mail it in and be paid by the fund, either way. We're doing it both ways.

Mr. Scully: Mr. Kehoe will respond.

Mr. Kehoe:

As briefly as possible, the attorney, particularly due to our insurance feature, is in our case paid in all instances directly by the plan. However, the individual teachers pay their deductible directly to the lawyer. We feel that this has some advantage in getting the idea into the mind of the teacher that fees are being paid to the lawyer and there's something coming out of his pocket.

Mr. Scully:

This will have to be the last question, if we may. As I understand the question, she would like to know the number of Shreveport lawyers that participate in the plan out of the total percentage of lawyers that would be eligible to participate.

Mr. Politz:

Well, with this warning that the figures to date are still small figures, there have been about 18 separate lawyers participating so far, about half the cases have been handled by about 4 lawyers, and then the balance is one shot for one lawyer; there are 270 practicing lawyers in Shreveport. But I don't really think that we have a definite answer to the question yet. Let me footnote that by saying Ray's report is based on the final reports received from only 24 matters. In these 24 matters, 18 attorneys were involved.

Mr. Scully:

I'm sure that we have very many more and interesting questions proposed. I imagine that that is one of the purposes of the conference. Unfortunately, we are under time restrictions. I want to thank the panelists and suggest that you may question them at their individual time.

THE ABC's OF A FREE CHOICE PREPAID PLAN

F. William McCalpin

In the kits which you got this morning, the blue and white UCLA kits, you will find in there a questionnaire. This single sheet of paper labelled questionnaire says there will be workshops on the following three subjects: one, two, and three. In order that we may make adequate preparations for you in the morning both in terms of meeting space and in terms of chairmen and reporters for the various sections, I wish you would please indicate for us now on this questionnaire your area of interest and expected participation tomorrow morning. If you will then hand those questionnaires into the center here, the ends of the tables here in the center and on the sides, Ted Ellsworth and his good ladies and other staff help that we have will pick those up so that those questionnaires can be tabulated this afternoon. And we can have adequate space for you in the morning.

Basically, each of these groups will be dealing with the methods, the problems, the hopes and the aspirations of the particular clientele that they represent, whether it be a labor group or a bar association or the insurance industry or management, exactly where they see the problem. We felt that by breaking it into those areas it would be more manageable. It would give you more opportunity to put your problems and your ideas into it. And then we will come back together at the end of that period tomorrow morning and see if we can exchange ideas between the groups. Hopefully, it will be a discussion within your own area of identification of the ideas and subjects which have been exposed here today. That was the thought of it. We hope that it will work in that way. So if you will please fill out these questionnaires right now, pass them to the ends of your table on the center aisle here, and the aisle ends on either side, we will see that they are picked up in the next few moments as our program goes along.

One other thing, if I may have your attention for just a moment. A very serious concern of the American Bar Association's Special Committee on Prepaid Legal Services has been to have as much knowledge as possible of those programs which either are operating or are on

the drawing boards or are in prospect anywhere in the United States. We have, of course, through the services of Phil Murphy traveling back and forth across the country over the last year, developed a good deal of information. We, however, know just on the basis of the few hours that we've been together today that there are many such programs of which we were not previously aware. We would hope that you would take the trouble to write down on a piece of paper any plan of which you are aware. Indicate to us the nature of the plan, where it's in operation, something about it so that perhaps we can follow up with you and refine our knowledge on the subject. We hope we can become a warehouse, a storehouse, if you will, of prepaid legal cost programs of all natures and variety so that we can then disseminate that information to you. We hope and expect that will be one of the things we'll do in the days ahead. If you write it on these papers or any other paper, it doesn't make any difference, it'll all come to the same place. I hope you will do that.

Now, let me welcome you on behalf of the Prepaid Legal Services Committee of the American Bar Association and introduce you to our segment of the program. As you will have seen from this morning, there are various ways of going about structuring and providing prepaid legal service programs. You heard from Murray Finley the kind of program that the Amalgamated Clothing Workers have in Chicago; and, of course, many of you knew already of the additional 230-odd of those programs, close-paneled programs, pre-selected lawyer programs, the Button, Brotherhood, Mine Worker, UTU, type programs around the country. Then, we wanted you to hear from Hank Politz about the Shreveport program and from Ed Kehoe about the Los Angeles program, the essential variable being in those programs there is a free choice of attorney. We wanted to make sure that we gave you a reasonable amount of information about those different kinds of programs, how they operate, how prevalent they may be, and something about them. It is, of course, the charge and responsibility of the American Bar Association's Special Committee to pay particular attention to the free choice of lawyer type program, the Shreveport, Los Angeles County type program. These are new. Shreveport is the only operating one, as you know. Many people have expressed great interest in it.

One of the early decisions of the committee was to assist people in trying to put together programs of that sort. One of the ways we did that was by putting together the booklet which came to us yesterday. It's

almost as new to us as it is to you, because they were delivered from the printer to us here in Los Angeles yesterday. In that booklet we have gathered together all of the relevant materials of which we had any knowledge. But beyond that, we tried to put together in the second portion of it, the Roman numeral two portion, a checklist of basic considerations for developing a prepaid legal services open-panel type program.

I am happy to be flanked here this afternoon by experts, including the members of the American Bar Association's Special Committee who have been working on this for more than a year now. What we would like to do is to develop for you in a little more depth some of the considerations involved in this checklist which begins at page 7 of the booklet that was given to you this morning.

That section begins with an introduction. Then, moving over to items 1, 2, and 3, I think that I need not spend very much time discussing these with you. The purposes and objectives of such a program are reasonably evident to you or you would not be here. And they certainly have become more so as a result of the discussions which you heard this morning.

Who will receive the programs--largely groups, as you know, because of the present, unrefined state of the data. I was asked on T.V. this morning on one of those open-panel programs: "When will an individual policy be available?" And I was forced to say, "I think it may be a very long time indeed." But group participation and group coverage, we know, are reasonable presently on the basis of this report program.

Who will provide the services? Here, of course, is the essential difference between the open-panel and the closed-panel type of program. In Shreveport you heard from Hank Politz that the benefit is available to a client to go to any lawyer, not even necessarily a Shreveport lawyer. Shreveport, as you know, is tucked up in the northwest corner of Louisiana, 60 miles from Arkansas and 20 miles from Texas. If a Shreveport insured has a legal problem in one of those other states, the benefit is available to him to retain a lawyer in those other states as well as a Shreveport lawyer. So that the breadth of the provider of the service, the breadth of coverage, participation in terms of lawyers who may be involved in such a program as this type,

runs all the way from closed-panel, a single lawyer or a law firm on the one end of the spectrum, to whatever lawyer situated anywhere to whom a client may go. Much more important, of course, though, are the concepts in items 4 and 5 of the checklist, and on these we want to spend somewhat more time.

We have asked Frederick W. Kilbourne of Los Angeles, a fellow of the American Society of Actuaries, a fellow of the Casualty Actuarial Society, a member of the firm of Milliman & Robertson, Inc., a nationwide firm of consulting actuaries, whose office, Mr. Kilbourne's, is here in the Los Angeles area, to talk to you first. He is the actuary who has been actively involved in the structuring and the preparation of the Los Angeles program. I have asked him to tell us something about his involvement in that with particular reference to the subjects covered in item 4 of the checklist which appears on page 12 of your books.

Next, we have a real live professional administrator to discuss with you item 5A on page 14 of the booklet. He is Ralph Jackson, of New Orleans, who is both a practicing lawyer and the president of Southwest Administrators, Inc., the firm that provides professional administrative services for the Shreveport plan.

The third speaker is Bob Segal, a practicing lawyer in Boston who represents among others a good many labor clients, and a very dedicated and hard-working member of the American Bar Association's Special Committee on Prepaid Legal Service Plans. He will look at item 5B on the checklist in your booklet and will discuss various methods of financing a prepaid legal services plan.

To conclude the formal part of the panel presentation, involving a little more development of the checklist in your booklet, I have asked our own in-house expert, Hank Politz, to come back and tell you something about the organizational structure which they have and variations on that theme.

THE ABC's OF A FREE CHOICE PREPAID PLAN

Frederick Kilbourne

Thank you, Mr. McCalpin. I had a long speech ready that dealt with a variety of matters involving legal services and actuarial work and so forth, but I learned this morning from Bill that I was going to be talking exclusively about item 4. My original speech will be delivered here at midnight, but in the meantime, I'll talk about item 4.

The topic is, "Expert Services Needed in Order to Have a Prepaid Legal Service Program Get Off the Ground and Operate Properly." Who are these experts; why do you need their services? "A" is legal counsel; I will leave the role of this expert to your imagination. "B" leads off with the actuarial consultant; I won't leave this role to your imagination because, in looking out over the sea of sleepy faces I realize that it isn't really boredom I see, but rather that you were awake all night wondering what an actuary is and what he claims to do. There are several reasons that an actuarial consultant is useful in the development of an employee benefit program such as a prepaid legal service plan.

First of all, there is the matter of plan solvency. No plan is going to persist long if it is persistently a loser. Nobody will long support an insolvent plan, or one that is becoming insolvent. So solvency is a critical factor, and it's difficult to tell in a plan such as this whether or not you are solvent. It is my job to determine the necessary reserve level in a program, and also to set up projections based on evaluation of the various contingencies affecting the program.

A second actuarial function of importance is benefit design, which must of necessity be based on the amount of money available to work with. Sometime ago, I set up a rule that, given the current status of prepaid legal services, the public is not going to pay more than, say, $10 a month for this benefit, whether their employer pays for it or whether they pay for it directly. You're not going to find $30 a month paid for prepaid legal services now. You do with health insurance, but it's been a long time building to that. Conversely, if you don't get, say, at least $5 a month, you don't have enough to

work with to cover your overhead expenses. My approach is to start out with the money available and then design your benefits as best you can. Although services must be modest to start off with, it is of course essential to provide services that are meaningful to the consumer.

A third reason for the use of an actuarial consultant in the development of a plan such as this is his background in general employee benefit plans and insurance. Most actuaries work full-time in one or the other of these areas, or both.

Finally, of course, there is the question of statistical data and its use. Many people assume that actuaries have drawers filled with statistics of perfect applicability to the plan being designed. When they find the drawer is more nearly empty than full they presume that there is no actuarial basis on which to build the plan. The truth of the matter is that even an ongoing plan with ample statistics requires continuing evaluation as to the credibility of the data for projection purposes. In developing a new plan in particular it becomes very important to draw upon various sources of data and use all of it to the extent that the actuary decides it is credible. Emerging experience from an operational plan is useful, of course, but I would certainly not apply anything like full credibility to the experience with Shreveport laborers for predicting the experience of Los Angeles teachers. I would also draw upon other sources, including earlier data with legal plans, the results of questionnaires, discussions with lawyers and prospective consumers, and analogies with health insurance and other employee benefit programs. In that way it is possible to structure a plan that has a good chance of being sound, and you can set forth with trepidation to see what happens. But you should do one thing beforehand; design a proper data base and collection system so that returns on actual experience will be available as soon as possible. This is important both for renewal purposes and also as an aid to evaluation of prospective new groups.

Number two, under "B," is the administrator, probably the second most critical person on this team (don't draw any conclusions yet). The administrator is essential if you're going to get the job done. He has to be there to put it together. An in-house salaried administrator is probably the ideal with a program large enough to be able to support this much overhead. Probably most of the plans that are going to get started within the next

few years will need to use outside professional administrators on some basis in order that they may actually get going. The administrative function is, to me, one of the most critical functions and yet one that is too often underestimated, the tendency being to think that the job can be done somehow out of a hip pocket. Great problems inevitably result when people try to run an operation that requires professional administration without having the time or expertise to get it done.

But I said the administrative function was second most important, and I submit that we have a change to make on page 12 of your Handbook. I'd suggest adding expert service "C" and labelling it "salesman." Then, after you've done that, I'd like you to go up to "A" and cross it out and relabel it "C." Then, go down to "C" and cross it out and relabel it "A." "Salesman" can mean a lot of different things, of course. It doesn't necessarily mean a commissioned salesman or broker, but somebody has got to sell the public on prepaid legal services, whether the public is the labor union, the employer, the employee, or the individual buyer of the legal service plan. Somebody has to convince that person that he needs these services. The public is not convinced right now that they do. I think that is clear from the way things have been developing, with the impetus from people in this room and not from the grassroots demand for prepaid legal services.

My opinion is that this entire new field is extremely important to the legal profession for a number of reasons. One of them is the advent of no-fault auto insurance, for a little actuarial work shows that the legal profession potentially has a great deal of business to replace. Prepaid legal services are very important to the public, I submit, even though they don't know it. The middle-income people that are primarily being talked about here don't think they need legal services, but the chances are that they do. There is a great deal that the legal profession can do to help these people realize this need, to the mutual benefit of all concerned. Thank you.

THE ABC's OF A FREE CHOICE PREPAID PLAN

Ralph Jackson

My company in New Orleans is named Pension Services Inc., and we acquired a firm in Shreveport, named Southwest Administrators a few years ago. I didn't know at that time that there was another company of that name in Los Angeles also. I don't know how it happened, perhaps some typist misunderstanding the abbreviation "N.O. LA," but we received a letter the other day addressed to Southwest Administrators, New Orleans, comma, Los Angeles. Our secretary brought it in and said, "I knew it would happen. Los Angeles has crossed the Mississippi River and is slopping over into New Orleans." So I was very happy to come out here and take a look at the situation. After flying in, I can go back and report that the blob hasn't grown much past Phoenix as yet. We perhaps have a few more months grace.

We were employed in 1970 by the Shreveport Bar Association to suggest to them ways and means of structuring a plan of benefits for a prepaid legal program, after Shreveport was selected by the American Bar Association as a test area to put such a program into effect. We went to the literature on the subject and, as many of you who have worked in this field know, we found practically nothing upon which we could base any kind of decent actuarial assumptions about what would happen if a group of people were exposed for the first time to prepaid legal services. There were, however, a few studies available. For example, in Missouri a survey of about 2,000 people was conducted by the Missouri Bar Association about ten years ago. Professor Stolz of the University of California, who's here today, conducted an in-depth study for the American Bar Association in about 1968. We had the experience of the Legal Aid Societies in the United States, the experience of the Armed Forces Legal Assistance offices, and a brief paper by Professor Koos of Yale, published about 1949. Other than that, there was practically nothing on which to base any kind of thinking about prepaid legal care.

But it was quite evident, we thought, that there are only three basic approaches to structuring the benefits of a prepaid legal plan. First, you can base it on providing access to a lawyer's time, in the sense

that you will try to fix a value, on an hourly basis perhaps, for the time a lawyer works and gives the clients access to that under some kind of prepaid arrangement.

Second, you can list a schedule of types of cases that lawyers handle and fix minimums, maximums, or standards in terms of dollars and cents for doing that, such as $250 for divorce, $375 for bankruptcy, $300 for an adoption, and so on. You have in your conference materials a couple of plans like that.

And third, you can do what we did in Shreveport, and that is to structure a plan based upon what lawyers actually do from day to day in terms of work tasks.

We considered all three approaches and held several meetings with the Bar Activities Committee of the Shreveport Bar Association. All three approaches are probably valid and workable; they may well be combined, and, of course, there are innumerable variations of each. You will see before you in the Los Angeles Bar Association plan that was suggested by Mr. Kilbourne, who just spoke with you, a combination of numbers one and two, that is, they provide access to a lawyer's time on an hourly basis as the principal benefit. And then you have an additional benefit providing scheduled payments for certain specific types of cases. The Shreveport group considered both these approaches and did not reject either of them, but favored the third approach. I'd like to mention just some of the considerations that went into that decision.

The Shreveport Bar and our firm felt that lawyers, for the most part, really don't charge for their services on the basis of time, in the same way that perhaps actuaries do. Many of you in the administrative business know that you can get some pretty heavy but nevertheless well supported bills from actuaries on an hourly basis. But it was our feeling that lawyers don't do that as a general rule. They charge in various other ways for what they do, sometimes based on the importance of the case to the client, its interest to the lawyer, and the ability of the client to pay, as well as the amount of time spent. Time is perhaps one criterion, but not the only one because all of you know that an almost indefinite amount of a lawyer's time can be spent in perfecting almost any legal position in any kind of case. And most of you are well aware also that often the smaller the case and the less it involves, the harder it is to find out what

the law is or to get something done about it. We felt also that the billing practices in many law offices are simply not geared to the billing and the claiming of fees on an hourly basis.

So that concept was laid aside, and we went on to consider the matter of developing a schedule of cases. The principal consideration against this was that we thought, in a bar association-sponsored program of this type, a schedule in which you put any kind of value on a type of case would tend to become in effect a collaterally adopted minimum fee schedule for the bar. There was no such effect as that intended in this program. And, of course, there was the secondary consideration that all cases are not alike. Some divorce cases are harder than others. You have to spend more time on some bankruptcies, some adoptions, than you do with others. Another factor was that we were doing this without any reference whatever to dollar-and-cent considerations.

Most people developing programs now will have to start out worrying about how much money they have to spend and structure their program around that, which is, I think, what happened in the Los Angeles plan. But in Shreveport, we first tried to get a workable kind of program and then put the values on it. And so we opted in favor of the third alternative and that is a program based on what lawyers in fact do from day to day in their offices and in the courts. This was suggested to us by some of the recent lay literature on the legal profession and the practice of law. Martin Mayer, in a book called "The Lawyers," has described lawyers' principal functions as "fighting, negotiating and securing." And so we determined upon three principal areas of benefit coverage to take into account lawyers' work tasks.

We made consulting or advising people the number one benefit. The work that could be done in a lawyer's office, we described as "conferences and negotiation," "investigation and research," and "document drafting and review" and made it a second benefit. And third, we made litigation or going into court the third major category of benefits. Then on top of that, we adopted a concept from medical insurance and installed what we call a "major" legal benefit, to the effect that if you get sued and are a defendant and use up the benefits in the other categories we'll give you an extra added benefit under an 80-20 coinsurance provision.

This then was finally adopted as the structure for the plan. We don't say to you today that that structure is good for all situations. I think it may well be inappropriate for some places or groups. Each plan, each place, would probably need a different kind of approach based upon its own needs. But we felt that for the purposes of the experimental project in Shreveport this plan would give us a good insight into what happens, both to the clients and to the lawyers, when they are exposed to this kind of program for the first time. And it would give the American Bar Association research team, headed by Mr. Marks who spoke to you this morning, as much data as we could possibly hope to get out of a small group like the Shreveport laborers' union.

I am very happy to report to you that, from an administrative standpoint, the Shreveport program has worked very smoothly. I had expected that we would be on the telephone constantly, answering questions from lawyers and users and from the general public about this new and untried concept. Mr. Politz and his colleagues in the Shreveport Bar Association have undoubtedly answered many inquiries and complaints and have done an excellent public relations and communications job with the Bar and with the members. In our own office, insofar as the claims and paperwork are concerned, we have had amazingly little difficulty in administering the plan. There has been practically no feedback to us from the organized bar or from users about the plan. They have simply accepted it and are going about using it. It is working in fairly close conformity with the findings that Mr. Marks made about what the group needed in the way of legal services before the plan went into effect, and also in conformity with our own projections as to what would happen when we offered a plan like this to the group. The figures we have at this time as to claims experience and usage are, of course, vestigal, representing only ten months experience with a very small and perhaps unrepresentative group.

Also, in plans like this, you have a lag period in which usage commences but you don't hear from it for quite some time. About 50 percent of the people that we have referred from our offices under this plan have not filed claims as yet. We feel that many of them have gone to lawyers, have used the consultation and advice and lawyers have not billed us. We have not tried to follow this up ourselves for fear of distorting what normally happens in those situations. We're going to

depend on Mr. Marks' team from the ABF to go back and tell us what has really happened, but we are reasonably sure that many of these cases are pending and that we will get claims on them at a later date. The figures that we have now are possibly like the top of an iceberg, and we will see and understand much more about them as we continue to examine them. I'm very pleased to report to you now that this program has been placed into effect without any great technical difficulty and apparently is working to accomplish the admittedly modest but nevertheless important objectives that we had in mind in Shreveport--the gathering of at least some data as to the practicality, workability, and need for "open-end" prepaid legal plans patterned roughly after similar health plans.

THE ABC's OF A FREE CHOICE PREPAID PLAN

Robert M. Segal

I'm not sure why a lawyer from Boston representing labor unions was asked to talk about financing of prepaid legal costs. One reason may be that because Massachusetts developed a no-fault insurance program, and we better find a new way to put lawyers back in business. Then I remembered that the investor trust was started in Massachusetts and turned out to be a good source of funds. Possibly that's the way we ought to finance prepaid legal costs and that is why I was asked to talk on this topic. There are various methods to finance prepaid legal costs described in your booklet, but there are other sources available and I thought I'd better tell you about them.

First, there is, of course, the government, which is already in the business of financing prepaid legal costs. OEO is one good example; the military assistance program is another. In the medical field, of course, they have Medicare and Medicaid, and many people have advocated that these methods should be extended to cover prepaid legal costs. There is a second method, again not mentioned in the booklet, which has been used in part by our committee. Foundation grants have been available for various legal programs including a recent grant to help the Indians in their legal rights. The ABA and your committee has taken advantage of various grants in the two pilot programs which are being undertaken by the American Bar Association. Apart from these two proposals, there are other methods of financing. I suggest that a good deal of what I might say applies not only to the open-panel but to the closed-panel as well.

First, there is a direct payment by the individual member who belongs to a prepaid legal costs system. The difficulties with this method are spelled out in detail by Mr. Murphy in the article which you'll find in your handbook on Prepaid Legal Services. He correctly points out that a plan which depends purely on direct payments by the individual could well go bankrupt in a short period of time. A second and more important method of financing is used in the Shreveport and California teacher plans which have been described today. This includes a third party intervening and obtaining the money from the members of the group. For instance, the proposed

teachers' plan in California presupposes that the teachers will pay $30 a year under a check-off system and the money will be used to prepay legal costs. If they want a comprehensive plan, it will cost them $60 additional and that too will be checked-off from the teacher's pay. The Shreveport plan calls for 2¢ an hour contribution on checked-off dues, paid for by the individual; this money is funneled, as you heard, through the group plan into payments to the lawyers. The Amalgamated Clothing Workers plan, which you heard about this morning, calls for a voluntary contribution of 50¢ per month, I presume, on a check-off basis. The same thing is being done in some schools, where they are charging students a dollar a semester or a dollar a year or some other figure to pay for legal services which are carried on by the school for the students.

A third possible method is a plan whereby a third party pays on behalf of the member. We start with a group of some kind, e.g., a labor organization, a trade association, or some other group. The payments are made not by the member himself but rather out of the treasury of the organization. This type of plan has been used in many job-related programs throughout the United States. For instance, the Firemen's Association in New York, the Policemen's Association in New York, and the United Mine Workers' Union have paid lawyers directly for job-related injuries only or job-related employment legal problems. Another phase of this payment directly by the group may be subsidization of the individual's payments; for instance, the Amalgamated Clothing Workers Union in Chicago may have to pay out of its treasury for any deficits if the voluntary plan is not self-sufficient. The union, as I understand it, had such an experience under its medical plan. If the Amalgamated finds the $48,000 that it is planning to take in by voluntary contributions doesn't produce enough to pay the lawyers, I suspect the union will have to dip into its treasury for a short time to make up the deficit.

There is still another type of group payments out of treasury. That is the plan being used by the Automobile Legal Association. If you're a member of the AAA or ALA, you receive some limited legal benefits which are paid for out of the dues you pay to the AAA or ALA.

The final and most important financing plan for prepaid legal costs consists of payments directly to a plan under joint administration with an open panel of lawyers in most cases. These would be contributions by employers as part of fringe benefits which are jointly negotiated by labor and management, whereby the money is then used for a prepaid legal service plan. This type of plan will become more prevalent in the labor field. Many unions today are asking for contributions for a prepaid legal service plan as one of the new fringe benefits, and many union people are interested in this field, as you heard this morning. For instance, a survey made in 1971 of a teachers' group showed that 42 percent of the teachers were willing to pay anywhere from $1 to $3 a month for prepaid legal costs, 23 percent didn't want to pay anything, and the remainder wanted to pay more. We are convinced therefore that there is a need for developing plans to finance prepaid legal services as soon as possible.

The whole problem of financing and payment through an intermediary raises some legal problems which I want to bring to your attention without trying to answer them. In the field of collective bargaining, there is a question whether Sections 8(a)(5) and 8 (d) of the Taft-Hartley law make contributions for a prepaid legal service plan a mandatory subject of bargaining in light of the Borg-Warner case (356 U.S. 342 (1958)). The Supreme Court in that case defined mandatory subjects and in turn the NLRB over the years has continued to elaborate on mandatory subjects of collective bargaining. The question is whether prepaid legal costs or group legal service is a fringe benefit within the terms "wages, hours and other conditions of employment" under the Taft-Hartley law and whether an employer must bargain about this subject. In addition, Section 302 of the Taft-Hartley law raises some serious questions about the financing, because this section flatly prohibits payments by an employer to a union except for certain stated exceptions and under a jointly administered fund. Insofar as employer funding of prepaid legal services by collective bargaining may not meet the requirements of Section 302, we may have problems in collective bargaining in this area. That is why Senate Bill 948, which was introduced this year, calls for an amendment to Section 302 to allow financing of prepaid legal services through employer contributions developed by collective bargaining.

A third legal problem involves Section 501(c) of the Internal Revenue Code dealing with tax-exempt groups. When you set up a plan, you may find that the prepaid legal services plan does not meet the requirements for tax exempt status under the Internal Revenue Code. In fact, even the administration of the Shreveport plan, which was described to you today by Mr. Jackson, is before the Treasury and has not yet been approved as a tax-exempt organization. The failure to obtain tax relief may be serious, for the contributions made by the employer in the financing of this type of plan may be income to the individual beneficiary covered by the prepaid legal service plan: he may have to pay taxes on the contributions paid for him, and he may even have to pay for the actual $500 legal benefit he receives. Thus far the IRS has merely said that medical benefits are excluded from the gross income under Section 105 of the Code, but the IRS has said nothing about benefits under prepaid legal service plans.

There is, of course, the other problem created by the current wage freeze, which will interfere with the financing by employer contributions. Furthermore here in California we've run into another problem, as you heard earlier, whereby the county attorney has ruled that contributions for a prepaid legal service plan cannot be checked off from the school districts' budgets or payrolls in spite of the individual authorizations from the employees.

In spite of all these legal difficulties, the prepaid legal service plans can be financed. There are several methods of financing these plans as outlined on page 16 of your Handbook. Many plans are already in operation and will be discussed at this meeting. The real problem is putting together a suitable plan whereby the benefits and the costs are related and adequately financed. For that, you don't need a lawyer; you need an actuary.

Thank you very much.

THE ABC's OF A FREE CHOICE PREPAID PLAN

Henry A. Politz

In-house expert? Despite the fact that I practice in north Louisiana, I'm really from south Louisiana. You couldn't tell that, I know. And people from south Louisiana are often accused of being avid story tellers. Now, all of my stories are not fit for mixed company, so would you gentlemen leave for a moment? But I can't resist telling one, since I'm following an actuary and a vestigial actuary to the microphone. I'll tell you my favorite story about actuaries.

Three of them were hunting rabbits up in northwest Louisiana. A rabbit broke out of the brush and ran across this opening. The first actuary fired and kicked up dust about 3 feet in front of the running rabbit. The second actuary immediately fired and kicked up dust about 3 feet behind the running rabbit. The third actuary exclaimed: "We got him."

It has fallen to me to speak about structuring. We structured this way, there were some options, but we took this approach: The Shreveport Bar formed a not-for-profit corporation called Shreveport Legal Services Corporation. A copy of the articles of incorporation is included in the ABA compilation you were given. The board of directors of the not-for-profit corporation is under the direct control of the Shreveport Bar. They are appointed by the Shreveport Bar executive council. Four are our members, two members are representatives of the union, one is a representative of management. We chose those numbers very carefully to avoid IRS problems and Taft-Hartley problems to which you've just heard references. This includes the question of paying monies into a union-dominated trust fund. We just avoided all of that by setting it up in such a way that no one could say these funds could be so classified. As our funding finally developed the monies were not paid by the employers, so the problem of the employer being prohibited from contributing to a fund which is under the administration of the union did not exist for us. But we took one extra precaution: the board of directors is controlled by the bar.

The corporation, then, entered into a contract with the administrator. And the corporation entered into the "trust agreement," really a contract, with the participating union group. Copies of both of these instruments are found in the ABA compilation. The contract with the administrative firm and the agreement with the participating group set out what would be furnished and how and under what circumstances. We could have, and at one time had, prepared drafts of a trust arrangement between the bar--the Shreveport Bar--and the participating union. We thought better of this and decided to establish a non-profit corporation as the actual entity responsible for the various administrative and operational tasks.

Now, in the structuring the book says you need a bar association. I agree. If you have a bar association immediately involved, it makes it very much easier when you run into a problem with finances as you get off the ground with these programs. During the formative stages, until sufficient data has been developed so that the actuaries (after they've finished their rabbit supper) can look at the data and determine what the dollar input should be in order to provide a certain level of benefits with a probable level of use for a particular group, bar association involvement is vital. If in the formative stages, in the early years, you run out of money, a plan can take a black eye and the bar can take a black eye. More importantly, the attitude of the people involved, the recipients of the services, could be so adverse as to kill the infant child. In such an instance the bar might be called upon to--we heard of the point system in the Los Angeles plan--work for "script" for a while until things get back on an even keel. We had planned and were prepared to do that in Shreveport if it became necessary.

This is one reason for the involvement of the bar association, but there are other reasons. Bar associations should be involved in these plans. It's inconceivable to me how bar associations and lawyers individually can stand by idly and permit the growth of prepaid legal in this country without having an active, immediate, total involvement in it. I think we abdicate our responsibility if we do otherwise. I'm speaking to you gentlemen, my fellow members of the bar. I believe we have a responsibility that cannot be avoided, to see to it that the cost of services, the level of competence of those serving, all of this, meet with the standards that we do and should impose on ourselves and increasingly impose on ourselves.

Now, the fourth thing noted here is an insurance company. Obviously so. One would think that once the risks had been ironed out and sufficient data has been developed, then the insurance companies will take an interest in it and that there will be an insurance policy or policies or many different kinds of policies available for prepaid legal, simply funded by insurance, by insurance companies writing the policies, be it group policies or individual policies sold to the man on the corner. And, ultimately, it may come to that for a large segment of our society. I think that if the plans that are in operation today, the Shreveport plan, and, hopefully, the Los Angeles plan pretty quickly, and other such plans as they develop reflect the feasibility, the economic feasibility, and reflect that there is money to be made (and the profit motive is a totally valid motive and a proper one) that the insurance companies would be interested and step in with plans which one might buy. So when the union group, for example, secures the 2¢, 4¢, 6¢ per hour, they might go both routes, self-insure for a bit and then insure with an insurance company for the big claims, or simply take the money and secure the policies. Or groups might just buy the policies for themselves. Thank you very much.

THE ABC's OF A FREE CHOICE PREPAID PLAN

DISCUSSION

F. William McCalpin, Moderator

Thank you very much, Henry. It's too bad that our other in-house comic made his remarks in such a low voice that only the first two or three rows were able to hear him say that it's better to be an in-house expert than an outhouse expert.

We have come to the end of what we planned as the formal presentation of this portion. Obviously, we have not begun to exhaust all of the considerations which must pass through your mind as you tackle the job of putting together a prepaid legal services program of the type which we have explained here.

We'll be glad to entertain your questions. Fortunately, in spite of the late start, we still have some time available. Before I do that, however, I would like you to meet my whole group of in-house experts, the other members of the committee who are working in this field. Phil Murphy, our active and very effective staff director, you heard from this morning is on my far right. Next to him is John Arnold of St. Louis, the young member of our committee who brings the youthful point of view to us. Bob Segal you heard from a moment ago. Charlie Goldberg, the grand ol' man of this enterprise, who was the chairman of the American Bar Association Board of Governors' sub-committee on the subject, which selected Shreveport and Los Angeles and gave them to us when we came into existence. Next to him, Beverly Moore, of North Carolina, who is a member of the Board of Governors of the American Bar Association, and an effective working member of our committee. Henry Politz, you have heard from twice today. And finally, on the far left end of the table, Bob Connerton, of Washington, D.C., the general counsel of the International Laborers Union of North America. That's the panel with which I have to answer all your questions.

Floor:

I'm an attorney, Gordon Wood, from Detroit. In some of the talk among the attorneys at lunch, we were quite concerned about the picking of Shreveport as a test city and also this particular labor union because of such a small sample size. The results, so far, I think, show that they only took a small group of 400 or 500 people, and in ten months experience, your first big rush of people that had

legal problems they had to get off their chests, you had only 24 in ten months. I don't know what these figures would prove when you get them five years from now.

Mr. McCalpin:

Well, in the first place we had slightly more than a hundred people use the program in nine months, not 24. It's slightly more than a hundred people that have used the program. For the legal services 24 have been completed. A number of others are open and pending and not yet completed, but perhaps Charlie Goldberg would like to say why and how Shreveport was selected.

Mr. Goldberg:

It's a long story, and I'm not sure that it's going to be helpful in the final analysis. Let me give just a little history about how this matter came about. You heard some history this morning, but initially the Board subcommittee made inquiry in every state in the union as to where this could be done, so far as the insurance commissioners were concerned. We made inquiry of, I think, 85 or 100 bar associations because we needed lawyers to provide the services. The first choice and the first designation was at Clackamus County in Oregon. There we had a group of about several thousand employees in the lumber field, with a comparatively small bar who felt that they could put that thing together on an open panel. All was well until it came down to the proposition as to who was going to finance it. There was an unwillingness on the part of the insured group to contribute anything into it, at which point the American Bar Association said, "No, thank you, we'll not pay lawyers to do this sort of thing."

In the meantime, Shreveport had asked to be designated as a pilot program. And it met all of the requirements. It had a group. It had an insurance commission that was willing to permit an experiment. And it had a bar that was willing to cooperate and experiment. It had the kinds of things that hopefully we could start off with a pilot program. Los Angeles, obviously, is the other end of the spectrum. Detroit would be wonderful. Come on in. We'll take you, we'll help you. We need areas like that. We would need to know more about this whole situation. And obviously if we've learned anything about this, we've learned that we don't know anything about the statistics, about what people need lawyers for. We don't know how to finance them. We don't know how it's going to come out. And Detroit would be a great place because you've got a great bar association in Michigan. And I think they could take it on. Why don't you help?

Floor:
This is a short question. Will there be foundation money to help put this on, if we should do that in New York?

Mr. McCalpin:
Obviously, I'm not able to speak on behalf of foundations. I can say to you that Shreveport made an approach to foundations, Los Angeles made an approach to foundations. They were successful. I do not know whether any such doors are still open. But you'll never know until you try.

Floor:
Yes, George Turner, with Communication Workers of America, of Riverside, California. My question: if the bar association is involved, who would the laborers in Shreveport, for instance, have to go to for recourse? Normally, if you feel you've been done an injustice by a lawyer, you would go to the bar association and ask them to review the problem. Now, is there an alternative group they can turn to or are they instructed as a client this is a pilot program and you take your lump.

Mr. McCalpin:
Well, I was going to let Bob Connerton and Henry Politz sing a duet but Ralph Jackson is on his feet. All three of you, come ahead.

Mr. Jackson:
The laborers may take any complaint of that nature that they have to the corporation, the oversight corporation described by Mr. Politz which was formed by the Shreveport Bar Association. The association itself will regulate and undertake to arbitrate any kind of difficulty of that nature. If it cannot be done in that way, the plan itself provides for compulsory arbitration under the rules of the American Arbitration Association governing the arbitration of fringe benefit plans. And that's written into the plan itself. We do think that we have a very complete system of oversight corporation, the bar association, with prestige behind that also, and compulsory arbitration under the provisions of the plan itself.

Mr. Politz:
If his complaint is that he's been overcharged, he really doesn't have to make that complaint because when that claim comes to the board, we're not going to pay it. The plan provides for payment of a reasonable fee, and built into that is the shotgun behind the door. If some attorney charged $750 for an uncontested divorce that may be the going fee in some areas--it's not quite that level in Shreveport--we won't pay it. And that individual knows

that if the attorney has the audacity to file suit for the difference, you've got four attorneys who have voted No on the board who are prepared to go into court and testify it's an unreasonable fee.

Now if this complaint is an ethical complaint, that the attorney has been guilty of some unethical conduct, he simply reports him to the Committee on Professional Responsibility, the grievance committee. And, finally, if the complaint is one subject to arbitration and he can't arbitrate it, he can back away and file a suit. He has lost no rights by virtue of this. As a matter of fact, he has gained substantially.

Mr. McCalpin: Yes, all the way back, yes sir.

Floor:

Gordon Rubin from Community Legal Services. I'd like to direct this question to either Mr. Kilbourne or Mr. Jackson. Mr. Kilbourne made a statement earlier that the salesman is, if not one of the most important, certainly important to an organization of this type. Mr. Murphy had earlier mentioned some of the ethical considerations, that is to say, that according to the ABA rules of professional responsibility, the organization must conform to certain criteria. Among those criteria are, as I recall, no direct solicitation and advertisement and that the group must be formed for other purposes than primarily the rendering of legal services. Now, is it true then that only the subgroups or union clients will have to conform to this? Or does the corporation itself have to in fact conform to this? And if so, how can you send the salesman out and how can you form a corporation for specifically getting legal services and still conform to the ethical standards that are set up by the bar?

Mr. McCalpin:

Fred Kilbourne, do you want to try? Maybe I'll have Phil Murphy as backstop here.

Mr. Kilbourne:

No new employee benefit plan can hope to be successful without a substantial sales effort being made, whether by a commissioned salesman or otherwise. Someone must sell the idea of prepaid legal services to the person who will be picking up the tab. This is a critical point that is often overlooked, but not for long, by those who would provide a new benefit. When it comes to the legal and ethical problems of the sales effort I defer, of course, to Phil Murphy and others in your profession.

Mr. Murphy:

I don't think it was part of my discussion this morning. I think perhaps you were referring to Mr. Welpton's remarks on the Code of Professional Responsibility, some of the ethical problems there. Just answering your question in terms of California: Under California's Rule 20, any solicitation or notoriety or publicity in regard to the availability that such service has to be conducted, and I think this is the same language as the ABA code is to be in a dignified manner. And California imposes the further specific requirement that the name of the attorney or attorneys that are available to members of the group cannot be printed or indicated upon the initial mailing which might go out to the union or group or cooperative members. But it goes on further to indicate that the member is certainly free to call the group which is the organizer and the beneficiary of the services and ask them which attorney to go to. I know this problem has been faced by some of the plan develcpers in California. And there is certainly some ethical implication about the way in which legal services are sold and offered to the public and to the groups that would use these services, but I certainly don't think they are insurmountable or would pose that much difficulty. It is obvious that if you have a new benefit or program that is of value to your members, you have to tell them about it. I don't think that that would infringe or offend any ethical canons that I am aware of.

Gordon Rubin:

I still don't think that is the answer to my question, if you will. Under the California Rule, Rule 20, one of the subsections specifically states that the organization must be formed for other than the rendering of legal services as their primary service. Now, if you're forming an organization, and you're calling it, well, some of the names that directly imply that you would be getting legal services, and then you print a brochure which specifically states that you'll be getting legal services as a member of this organization, I don't understand how that can even possibly conform.

Mr. Murphy:

I think there was some discussion or an attempt to more or less answer part of that question this morning. But in brief, I think the meaning of that is that you cannot form a corporation simply for the purpose of developing a group or selling legal services from that corporation. But the corporation can be formed as an administrative channel through which a plan is operated, but which is availed of by groups having other than the primary purpose of providing legal services, such as trade unions, professional associations, and so on.

Mr. McCaplin:

I regret to say that it is now time for a break and we will reconvene at 3:15.

FUTURE GROWTH AND DIRECTION OF PREPAID LEGAL SERVICES

COLLECTIVE BARGAINING AND THE ROLE OF LABOR

Jules Bernstein

Let me begin by making a confession. Being a rather typical lawyer, that is to say, being basically lazy, I had originally thought I would do a repeat performance of a paper I delivered at the 1969 UCLA Conference on Legal Services. But, Phil Murphy, who is the impresario of this affair, played a mean trick on me. He went ahead and reprinted my earlier paper in what he has entitled "A Preliminary Handbook on Prepaid Legal Services," which has been distributed to you at this conference. Therefore, rather than doing an encore on 1969, I propose instead to outline for you what I believe to be some of the attitudes, limitations, and strengths that the American trade union movement can reasonably be expected to bring to legal services.

That there is an awakening interest in legal services within the trade union movement is by now well-established. You have already heard a great deal about the Shreveport Plan and about the Amalgamated Clothing Workers Plan in Chicago. In addition, a large number of other unions have expressed a keen interest in legal services.

Another significant development arises from the fact that during the course of the federal government's first effort at comprehensive labor negotiations engaged in through its newly created Postal Service, the four unions representing approximately 600,000 postal workers proposed prepaid legal services as a sorely needed employee fringe benefit. Although agreement to institute a legal service program was not reached in those negotiations, the parties agreed to establish a joint labor-management committee to study the matter. The committee is scheduled to report at the time of the commencement of the next series of negotiations, which are scheduled to commence in April or May of 1973. And it is likely that some members of the study committee will seek the advice and counsel of the ABA Special Committee regarding the feasibility of establishing a nationwide legal service program for postal workers.

Another indication of labor's interest can be found in the fact that Bob Connerton, who is the general counsel of the Laborers' International Union as well as a member of the McCalpin Committee, and who is with us today, has been invited to speak on legal services before the biennial

meeting of labor lawyers representing the more than 100 national and international unions which make up the AFL-CIO. That meeting is to be held simultaneously with the AFL-CIO Convention next week in Miami. Similarly, the American Federationist, which is the official organ of the AFL-CIO, will soon be featuring a comprehensive article on legal service developments.

That there is a growing interest on the part of labor is not surprising. Indeed, trade unionists take pride in the fact that they have been pioneers in the legal service movement and that on a number of occasions they have successfully locked horns with the organized bar over the legality of union-sponsored legal service programs. As a matter of fact, until that New York Bar opinion we heard about this morning from Mr. Welpton, the labor movement has been batting a thousand in its conflicts with the bar over legal services. And I will have something more to say about the validity of that New York opinion in a while.

But while labor's enthusiasm for legal services exists, there have and will continue to be problems. For example, in both of the Trainmen[1] cases and in the Mine Workers[2] case, the unions involved were required to go all the way to the United States Supreme Court in order to overcome bar opposition to their legal service programs. Objections had been interposed by the Michigan State Bar in one case, the Virginia State Bar in the second, and the Illinois State Bar in the third.

Bar objections are not the sole inhibiting factor as far as union involvement in legal services is concerned. For one thing, union leaders are subject to the same pressures and concerns as are other political leaders who must periodically run for office. Hence, they are keenly aware that their decisions must continue to find favor with the union's rank-and-file or they will soon find themselves unseated. Accordingly, movement in the direction of legal services financed either through union dues or through collective bargaining requires, as Bob Leventhal said earlier, that the need be understood and expressed by the union member. Therefore, before legal services becomes a serious subject of collective bargaining the rank-and-file will have to be sold on it.

---

1. Virginia State Bar v. The Brotherhood of Railroad Trainmen, 337 U.S. 1 (1964); Michigan State Bar v. United Transportation Union, 401 U.S. 576 (1971).

2. Illinois State Bar v. United Mine Workers, 389 U.S. 217 (1967).

In addition, the trade union movement has tended to be cauticus with regard to new fringe benefits, and on the basis of past experience there is good reason for the exercise of such caution. Throughout the labor movement's history, there have been many occasions when unions have become involved with "fringe benefit" programs that failed, such as banking and insurance ventures and retirement and recreation facilities. So, that there will be some union skepticism about legal services on this basis is understandable.

In addition, for better or worse, the attitude of the labor movement toward the legal profession will undoubtedly have an impact upon its involvement in legal services. On the one hand, the labor movement understands very well the value of effective legal representation, having been both its victim and beneficiary over the years. It also knows firsthand the problems its members and their families face regarding their ability to obtain quality legal services when they need them at a price they can afford. As a matter of fact, to bridge the gap between need and availability of counsel, union representatives are constantly engaged in quasi-legal representation before such bodies as arbitration boards, workmen's compensation panels, and before federal and state labor relations agencies. And, such representation has occasionally been a source of antagonism between unions and the legal profession since the bar has tended to try and preempt the field by driving the union people out as being unqualified lay competitors.

Similarly, management's resolve to resist union bargaining demands has often been encouraged by attorneys. And, after all, it was lawyers who drafted those "yellow dog" contracts and who made the labor injunction a potent managerial weapon against labor. Indeed, union attorneys could endlessly recount the friendly abuse we receive from our clients because of our chosen calling. To further complicate matters in connection with legal services, union officials have frequently commented that "first we made the doctors rich and now we're being asked to do the same for lawyers."

Another inhibiting consideration is that legal services is not one of those specifically enumerated fringe benefits which may be made the subject of a jointly administered labor-management trust fund pursuant to Section 302 of the Taft-Hartley Act. In my 1969 paper, I outlined the possibility of avoidance of the Section 302 problem through the use of a neutral trustee or a board of trustees that is weighted in favor of management. But, as Bob Segal and Murray Finley

have both indicated, Section 302 is a criminal statute so that union leaders understandably will be hesitant about adopting such schemes for circumvention. They would prefer instead that remedial legislation be enacted. And, such legislation has already been introduced by Senators Hart and Magnuson and Congressman Moss.

A problem is also presented by Section 501(c)(9) of the Internal Revenue Code since legal service trust funds have yet to be declared exempt from federal income taxation. Section 501(c)(9) declares that certain specified fringe benefit programs, such as health, accident, and "other benefits," are tax exempt. But the Internal Revenue Service has never defined "other benefits." In 1968, it published proposed regulations which would specifically define "other benefits." In doing so it excluded many well-established existing benefits, such as child day care centers. On behalf of its affiliates, the AFL-CIO has filed detailed comments with the IRS over this matter and the proposed regulations have yet to be made final. The AFL-CIO has taken the position with the Service that legal services, as well as other fringe benefit subjects, should be exempted as "other benefits." A ruling from the IRS is expected within the near future.

Bob Segal made reference to the taxability to an employee of his employer's contributions to a legal service fund as well as the taxability of the benefits themselves when received. Imagine the worker who might receive a $2,000 or $3,000 legal service benefit, who would then be faced with a $400 to $700 income tax liability on the basis of the value of the benefit. Medical benefits received are exempt under Section 105 of the Internal Revenue Code, and I am certain that lawyers would maintain that legal services ought to receive similar treatment.

Other, related problems include the possible applicability of state insurance laws and the Federal Welfare and Pension Plans Disclosure Act.

While these problems are troublesome, they are far from insurmountable. Indeed, I believe that in the area of encouraging appropriate remedial legislation, the bar and the trade union movement might find a common basis for cooperation, notwithstanding past antagonisms.

Having set forth some of the considerations which may serve to dampen labor's enthusiasm for legal services, let me dwell briefly on some of the resources that the labor movement has to offer the legal services movement.

First, there is the availability of funds derived through the collective bargaining process. In occupational groups in which wage settlements have brought wages beyond subsistence levels and welfare and pension plans have been established, it can be expected that legal services will be given consideration as a possible subject of fringe benefit negotiations.

In the immediate future, it is possible that the Phase II controls will have a dual impact. Those of you who have had any past experience with controls will know that fringe benefit improvements have tended to receive approval more readily from regulatory boards than do straight wage increases. If this happens during Phase II, it may be that the Pay Board will give contracts containing legal service and other fringe benefit programs favorable consideration which would undoubtedly encourage their development. On the other hand, the downward movement of wage settlements which can be expected during Phase II may serve to inhibit movement toward the establishment of legal service fringe benefit programs. One other consideration may be the enactment of some form of national health insurance which might result in the freeing of existing employer health benefit contributions to be used for legal services and other new fringe benefits such as group auto insurance, etc.

In addition to the financial support to be derived from the collective bargaining process, the labor movement has an extraordinary amount of expertise and hardware which is presently employed in the administration of existing fringe benefit programs which could be put to use in support of legal services. There is a virtual army of administrators, actuaries, consultants, lawyers, and the like who have acquired a substantial amount of expertise regarding the collection and disbursement of employer contributions to welfare, pension, training, scholarship, and other fringe benefit funds. And this fringe benefit "establishment" can be adapted very easily to the task of administering legal service programs and paying lawyers' claims, just as it now pays the claims of doctors.

As is the case with other groups of specialists, there is a trade association known as the National Foundation of Health, Welfare, and Pension Plans, made up of fringe benefit trustees, consultants, etc. This organization will be holding a meeting in Miami Beach, Florida, in mid-December, and it is my understanding that Ralph Jackson has been asked to moderate a program at the meeting designed to impart information on legal services. Since union officials can be expected to turn to this group of specialists in seeking advice on legal services, it is important that it be fully informed.

The labor movement will also contribute to the dialogue over open- versus closed-panels. But it is quite difficult to predict in which direction it will go. Indeed, it may very well be that, as has been the case with health insurance, there will be a simultaneous development of alternative programs. I understand, for example, that with regard to their health benefits, federal employees in California have the option of choosing Kaiser-Permanente, which is closed-panel, or an insured open-panel plan. Hence, the trade union movement may ultimately adopt a position in favor of providing free choice between open- and closed-panels.

Let me conclude by returning to New York Bar Opinion Number 163, which was decided in October of 1970 and was discussed this morning by Mr. Welpton. What is most significant about the Opinion is that it was rendered prior to the Supreme Court's decision in United Transportation Union v. Michigan State Bar, 401 U.S. 567 (1971). The Michigan State Bar case involved the Trainmen's Union which, as a result of a merger, is now known as the United Transportation Union. The case involved the Union's plan for representation of members in cases arising under the Federal Employers Liability Act, which established the right of railroad workers to sue their employer for damages in connection with job-related injuries. The Union operated a program for many years in which it had carefully chosen attorneys around the country who were highly competent in the FELA field. And it entered into an agreement with those attorneys, which provided that the attorneys could not ask for more than 25 percent as a contingent fee in connection with a member's claim. The same program was opposed in the Virginia Bar case which reached the United States Supreme Court in 1967, in which the legality of the plan was upheld. As you heard earlier today, the Supreme Court sustained the Union's program again in 1971 over the objections of the Michigan State Bar. What was most significant about the 1971 decision was its explication of the breadth of the First Amendment protection afforded unions in the field of providing legal services. I think it might be useful for me to read to you a couple of paragraphs, as a matter of fact, practically the first and last paragraphs of the Court's opinion, which was written by Mr. Justice Black. The first paragraph of the opinion is probably more revealing of the outcome of the case than any I've ever read. Let me read it to you:

> "The Michigan State Bar brought this action...to enjoin the members of the Brotherhood of Railroad Trainmen from engaging in activities undertaken

> for the stated purpose of assisting their fellow workers, their widows and families, to protect themselves from excessive fees at the hands of incompetent attorneys in suits for damages under the Federal Employers Liability Act." (emphasis added)

Mr. Justice Black concluded as follows:

> "...[W]e deal with a cooperative union of workers seeking to assist its members in effectively asserting claims under the FELA. But the principle here involved cannot be limited to the facts of this case. At issue is the basic right to group legal action, a right first asserted in this Court by an association of Negroes seeking the protection of freedoms guaranteed by the Constitution. The common thread running through our decisions...is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment. However that right would be a hollow promise if courts could deny associations of workers or others the means of enabling their members to meet the cost of legal representation.... The injunction in the present case cannot stand...."

I read the decision as saying that the New York State Bar Committee was wrong and that "job-related" limitations cannot be imposed on group legal service plans. It remains to be seen as to whether the matter will be reopened before the New York Committee, since it seems clear that the Michigan State Bar case throws serious doubt on the efficacy of New York Opinion Number 163. Thank you.

BARGAINING PROBLEMS TO THE ESTABLISHMENT OF PREPAID LEGAL SERVICES

Robert M. Leventhal

About once a month I am visited by well-intentioned persons who have "new" benefits they feel should be a part of a collective bargaining agreement. The range of these "new" benefits is staggering. In addition to the expected variations on insurance programs, mutual funds and annuities, in the past few years I have had seriously suggested that we negotiate on such matters as prepaid income tax preparation, frozen meat delivery to members' homes, and pet insurance.

This interest on the part of potential vendors is not surprising. The major emphasis on most new fringe benefit programs that have been accepted came about through their adoption in collective bargaining agreements. The advantages are self-evident. All marketing problems are solved, payment of premiums is guaranteed. There is close administrative control so bad debts as a factor in doing business are essentially eliminated. These elements make capitation under collective bargaining agreements attractive in general, and in particular for those who have a service concept such as medicine or law to sell.

Since the collective bargaining agreement is such a natural tool for marketing services, I feel it worthwhile to comment on why so few new concepts have emerged in the past 20 years. There seems to be a feeling among many potential vendors of these services that if only somehow their program would get to the bargaining table, the employer would agree and the employees, since they don't pay for the benefit, will be pleased with the actions of their representatives.

It is not as simple as many would believe to obtain acceptance of new benefit concepts. The reluctance is not that of management alone, but significant obstacles exist within the labor organization itself.

Based on my experiences with a number of groups, it is my opinion that for a new benefit, such as prepaid legal services, to become a reality through collective bargaining, the following elements must be present:

1. A realization on the part of the union leadership of need. This may come about through the exercise of leadership responsibility, or by membership pressure.

2. The extent of the problem must be determined; determination as to how many within the group face the problem. Are there resources available to solve the problem? What will the cost be?

3. Those who are presently or potentially affected must be made aware of the problem, and that a potential solution exists.

4. A program must be developed that will meet the needs commensurate with cost considerations that appear realistic in light of current bargaining patterns.

5. The negotiating committee of the union must be shown that the proposed benefit will affect a large enough percentage of the membership, so if won at the bargaining table, it will not become a liability to contract ratification.

6. The proposal must be considered in light of potential management objections, and be prepared in such a manner as to meet those objections.

7. A priority determination must be made, and funds must be available after the necessary adjustments to higher priority items have been accommodated.

Unless these seven concepts are at work, I doubt we will see the emergence of many prepaid legal problems through collective bargaining. In general, I feel we are still in the first three stages. Union leadership is now becoming aware of the need. Some initial efforts have been made to determine the extent of the need, and some efforts made to develop programs and communicate with the potential consumers.

My work in this area has been primarily with the Southern California Professional Engineering Association - the SCPEA. This group represents the engineers, scientists, and related technicians at the West Coast and Tulsa facilities of the McDonnel Douglas Corporation. The engineers have a favorable attitude toward the concept of prepaid legal. As a result they were willing participants in 1969 when the first conference on this subject was organized by UCLA. A part of that conference was development of a questionnaire which was intended to determine attitudes of some divergent union groups toward legal services, attorneys, and whether legal services should be prepaid through the unions. That initial study covered laundry workers, the engineers, and a film industry local whose membership ranged from semiskilled apprentices to highly skilled and paid journeymen.

From the 1969 survey, some knowledge as to incidence of legal services and attitudes toward the legal profession were learned. I regret to report that the attitude of most of the union members surveyed toward the legal profession were less than favorable. Much more disquieting was that significant numbers admitted they had not seen an attorney due to cost considerations, but acknowledged they suffered financial harm as a result. I cannot speak with any direct knowledge as to the current attitudes of the other groups surveyed in 1969, but since I work closely with the engineers, I can report to you on their progress.

In addition to participating in the first UCLA conference and survey on prepaid legal services, the engineers have continued their interest and explored alternative programs. Articles have been included in the "house" publications, and the need for legal services discussed at meetings.

During the past two years, several groups have emerged indicating an interest and willingness to develop prepaid legal programs that could be proposed in collective bargaining.

During preparation for negotiations this year, SCPEA circulated a questionnaire designed to determine membership attitudes on a variety of subjects. Included in that questionnaire was a series of questions about prepaid legal care. The results of this recent questionnaire are confidential at this time, as the SCPEA is just now commencing negotiations. I can report, however, that the 1971 questionnaires show the engineers as a group now strongly endorse establishment of prepaid legal programs. In fact, when asked if they were willing to contribute to such plans, a significant number answered in the affirmative.

Based on the 1971 survey, the SCPEA negotiating committee reviewed available programs and elected to include a proposal for prepaid legal care in the package for this year's negotiations with McDonnel Douglas. Prior to approving the proposal, many factors were given consideration by the negotiating committee. The plan under consideration was originally designed as only a service plan. This was considered unacceptable by the committee, as the SCPEA represents a multiplant unit. Limiting the plan to only one group of attorneys would be discriminatory against those who worked at plants distant from the service area.

In the past, management had indicated opposition to plans that did not allow participants some choice of practitioners. For these reasons, the plan under consideration was modified to provide for a reimbursement schedule for those who participate but do not wish to use the service firm. We also had reason to believe the employer would insist, as a condition of any plan adopted, on provisions whereby the plan, funded by the employer, would not be used to bring suit against the employer in certain defined areas. While this poses no real problem in the aerospace industry, it could become a vital issue in the negotiation of such plans in industries where major consumer items are produced.

In addition to the plan itself, two other factors had to be determined. A question existed as to how employer contributions to such plans, if obtained, would be treated. We are now satisfied that by proper organization such plans will qualify for the necessary tax exemptions.

Of great importance is the willingness of the legal profession, through the organized bar, to allow such programs. While questions have been raised about the propriety of such plans, we feel the organized bar will recognize that programs of this type must be made available in order to bring legal services to major segments of the population.

Under present governmental programs, legal care is now available for the disadvantaged. The upper strata of our society has always been able to afford good legal services. It is groups like the engineers, who fall in the middle income range, that are in effect legally disenfranchised. I feel that only through programs such as prepaid legal can this regrettable situation be rectified to the benefit of the consumers and dispensers of legal services. For these reasons, I am convinced, from the standpoint of a practitioner in the labor relations field, that any questions that may remain in the minds of the organized bar will soon be resolved in favor of implementing prepaid legal programs.

The status of the SCPEA proposal in light of the current governmental controls is uncertain. I cannot at this time comment on the relative priority of prepaid legal within the negotiating package, as that package has not yet been formally submitted and discussed. One cannot

avoid reflecting on the potential impact of the contemplated maximum from the wage board and its effect on the establishment of new benefits requiring employer contributions at this time.

I do feel that if for any reason prepaid legal plans are not brought to fruition during this round of bargaining, the questions is not one of if, but only when, such plans will become reality.

THE ROLE OF MANAGEMENT IN THE DEVELOPMENT OF PREPAID LEGAL SERVICES

Thomas P. Burke

So that I may at least establish a minimal creditability with my fellow discussants, I am not one of those referred to by an earlier speaker as drafter of yellow-dog contracts. I trust that this disclosure will render more current my subject, which is the role of management in the future development of prepaid legal services.

I think, as a preliminary observation, that it should be understood that at this stage of the development of prepaid legal services management is probably not very aware of that concept, let alone aware of a management role in its development. The need to adopt a role will become more apparent as the interest of labor organizations in this subject increases. The initial reaction of management will be somewhat varied, from outright hostility to acceptance. With so many different types of employers and so many different types of bargaining postures, it is almost impossible to draw any broad generalization. I might say, however, that I think before long management will realize that the potential costs of a prepaid program may be extensive, and that through collective bargaining management will be asked to shoulder a substantial portion of the costs, if not all. In fact, many speakers here today, especially those with labor organization ties, are clearly indicating their plans that this will be a bargained-for subject.

With that background, we can now turn to speculation as to the role of management in the future development of prepaid legal services. I believe there are three categories, all relating to cost, with which management will be initially concerned: (1) priority of costs; (2) immediate additional costs; and (3) long-range future costs. I list costs as the first consideration, as these are of prime importance to any manager.

First, look at priority of costs. The manager must realize that he has so many dollars to put into wages and benefits within the economic reality of his company; not only the employer, but undoubtedly his employees are aware of the need. The employer must take care not to spend money which will detract from a benefit of more interest and need to his employees. Consider the company without a union: This employer is going to look very carefully at the needs and the reactions of his employees, and he is not going to divert money that would be earmarked for programs more popular with his employees. Because of this, I would not expect

this type of company to be aggressive in the development of any such program, but priority of cost must also be considered in the company which has a collective bargaining relationship. This will arise partly because many labor organizations have little or no interest in such services, perhaps reflecting their membership more than anything else. As a result, prepaid legal services may not be a bargain priority of either party.

This priority of costs could cause problems in the bargaining context, that is, the possibility that a negotiated contract could be rejected by employees who feel that money has been diverted to prepaid legal services away from a benefit more familiar to them. Of course, if the contract is turned down, the end result can well mean an increased cost package to settle. But I do not think that the inquiry of the employer is going to stop with a question of priority of costs, because I think it is unrealistic to take the position that the manager has so many dollars to spend on labor costs and therefore money spent for legal services will be diverted from other benefits. While within some contexts this may be the case, as a general proposition it is an unrealistic view of collective bargaining. An employer begins bargaining, knowing that he wants to end up at a certain maximum cost increase. He may set himself a maximum, but that does not mean it is what he wants to achieve. That is what bargaining is all about. Maybe the employer will obtain a concession and end up short of where he thought his maximum was. Also, he may go beyond his maximum, simply because of the economic realities of his company. For example, the employer may not be able to prolong economic sanctions. And so he may, under the threat of strike, go beyond his maximum.

Because of some of the factors of economic reality, the employer may look to the question of prepaid legal services as an immediate additional cost to his wage and benefit package. Thus, those employers who view negotiated prepaid legal services as an additional cost may well inhibit the development of such programs.

The third category that the employer will undoubtedly look at involves the future costs of such a program. If it is an open-panel plan and the cost factors are not controllable, it is going to be a substantial additional cost just to maintain existing benefits. After all, we are talking about a program where we are trying to encourage employees to utilize it. Surely, it is toward a long-range goal of preventing the catastrophic lawsuit, but still, we are trying to encourage the usage, which may guarantee a higher cost factor. Of course, the encouragement of use is just the opposite

of most protective benefits. Medical insurance is based on a group which the insurer hopes will have experiences the cost of which can be spread throughout the group. Even then, medical benefits have been rising at an alarming rate. What, then, is the future cost of a program in which the individual is encouraged to participate?

I think that these are the three areas that the manager, the employer, will first approach when considering prepaid legal services. I think the next major area, assuming that he has made these inquiries into costs and agrees pursuant to a collective agreement to provide the benefit, the employer will have to decide what kind of plan he intends to negotiate. A reference was made to the current state of the law in terms of mandatory subject of bargaining. Would prepaid legal insurance ba a mandatory subject of bargaining? In other words, may a labor organization insist to impasse on the inclusion of prepaid legal services in a contract? Or may the employer take the position that it is not a mandatory subject of bargaining and therefore the union's impasse unlawful? I don't really think there is an issue.

However, the issue will undoubtedly be raised and litigated. While I think that the question of legal service is a mandatory subject of bargaining, there may be certain benefits which will not be a mandatory subject for bargaining. Suppose an employer takes the position, "I do not want to negotiate a prepaid legal service plan which provides the employee with an ability to sue me, or the company, whether it grew out of the employment relationship, whether it be a class action involving consumer problems, environmental problems, or whether it be used as a strike tool to collect benefits for employees, or any number of like issues." Now, I think that a manager can be expected perhaps to take a position that he does not have to underwrite potential lawsuits against himself. This will pose a very big problem, because I suspect that in the growing use of legal services this is going to be one of the big interests of employees. Certainly, we have seen a growth in what we would call a Vaca v. Sipes type of lawsuit, in other words, a lawsuit in which the employee alleges that the union has failed to represent him properly and therefore the grievance against the employer does not have to be handled through the existing arbitration structure of the contract, but the employee can go directly into a court and demand redress of the grievance against both the union and the employer.

This kind of lawsuit is becoming more common and in many respects hampers free collective bargaining. We have in many of our contracts grievance procedures which are composed of panels, eventually leading to arbitration. The panels, at various levels, depending on how much area the contract covers, are composed of equal numbers of employer and union representatives. The potential for conflict of interest in this kind of a grievance panel is great, and there may be at times a tendency of some to trade grievances off where they are very important. But suppose an employee comes before a panel and a majority decision issues against him. That is the end of the line in the contract. He has had his "day in court." The business agent then tells him, "You just simply got taken. And, sorry we can't represent you any further, because our attorney tells us there would be a conflict of interests." The employee, acting on this statement, then seeks an attorney to file a lawsuit which will in effect attack the very base of the contractual grievance procedure. I think an employer is going to say, "I don't want to pay for a legal service plan that is going to create this kind of lawsuit against me." Thus, an employer may well refuse to bargain over any plan that does not exclude any lawsuit brought directly and indirectly against him.

The last area that will be of consideration is the question of whether Section 302 will be amended to allow for the joint employer-union trust. It was presented in the 91st Congress. The bill has opposition and its eventual passage may well involve the employer's position, whether he will be interested in the jointly administered trust fund. My opinion is that jointly administered trust funds often have the propensity to get away from an individual employer as far as any real effect that he might have on the trust is concerned, especially in a very large multinational, multi-employer contract. The trust may act on a continuing basis in ways that an employer considers to be detrimental. The very fact that this does happen may give rise to the increasing use of the interest in private plans proposed by the employer outside of the joint trust.

Now, there are two considerations: One, the employer says, "Well, okay, I'll get away from those trustees who are continuously raising the costs, and always doing things that I don't understand. So I have this outside plan which I will contribute to. It has an open panel, etc." Well, he may find that the open panel and the outside plan soon become a cost item that he doesn't want to undertake either. So there is a give and take here that may go into a number of channels. Two, if the trust chooses to have a closed panel, he may find that, as some have found in the health field, there are elements of cost-saving factors. But there is also the

possibility, in the mind of the more suspicious employer, that a closed panel may be subject to influence, either by a labor organization or by a group of employers, which raises certain nasty concepts of conflicts etc. So, I really can't say at this stage what, in the long run, I think the development of prepaid legal services on some sort of a scale will be. I think it is inevitable that labor organizations will present the concept on the bargaining table, and I think that in some cases it is inevitable that it will become part of a bargaining contract. In what form, in what cost area, that remains to be seen.

I think that initially there will be a substantial amount of resistance and at least a demand from management that the plans be tailored to avoid conflicts and to avoid putting the employer in a position of having to underwrite lawsuits which he will have to defend.

Thank you.

THE ROLE OF THE INSURANCE INDUSTRY IN THE DEVELOPMENT OF PREPAID LEGAL SERVICES

Darwin S. Liggett

The development of prepaid legal services programs for availability to the general public, in my view, is a socially desirable objective. This opinion is based on the premise that, although we are a free society, we have agreed to abide by laws which govern our personal conduct and our personal responsibilities.

Over the years, our governing bodies have created a stratified series of laws which, when considered together, present a most complex--and therefore frequently misunderstood or unknown--consequence of certain actions which may be taken by members of our society from time to time. It would not be prudent for our legislators at the federal, state, county, or city level of government to presume general public knowledge and comprehension of all laws and regulations which may have some pertinence to their day-to-day actions. Nor would it be prudent for our government administrative bodies, charged with the responsibility for implementation and operation of these laws, to presume that any successful campaign could be conducted to educate the general public to a desirable level of competence and understanding.

It would appear, therefore, that a program of prepaid legal services is the most efficient and effective process that can be made available to the public, as a preventive to possible violation of law, as a resource for guidance and education with respect to specific lawful actions that a person may initiate to assure protection from an invasion of his rights and best interests (whether personal or contractual) by another party, and on a basis of cost to the individual for these services that would be funded on a monthly prepaid basis.

I have had the privilege of personally working with the evolution and development of employee benefit programs over a span of some thirty-four years, and within this span the evolution and development of health care coverage involving a variety of services available only through licensed, professional persons. I believe there is some analogy in the lessons learned from health care, which, if observed, can successfully avoid undue waste of time

and effort in the development of prepaid legal services programs. However, I feel that the relative demand for prepaid legal services programs will emerge at a slower pace than that experienced with health care, for the obvious reason that it is less personal to the individual and, by comparative relationship, will have a lower priority. Prepaid legal services, therefore, can only achieve a proper level of public demand through what I will call "central source communication." Central source communication means communication with and through employers to employees, and with and through labor union leadership to members of their respective unions.

I envision the ultimate role of the insurance industry with respect to prepaid legal services concerning itself with three major subjects. Simply stated, these include: first, the assumption of an insurable risk; second, the marketing of such plan in concert with employee benefit package programs; and third, the administration of prepaid legal services programs.

This industry role would be implemented and operated through the group mechanism, which has proven itself to be such an excellent solution of benefit to employer and employees in providing: (a) the greatest amount of benefit value per dollar of cost, and (b) efficient distribution and administration processes that can be consolidated to serve the needs of both the employee and his immediate family, as well as the professionals providing the services.

Before the insurance industry can assume any risk with relation to prepaid legal services programs, it must have the capability of analyzing a precise definition of the services to be provided, their interrelationship one to another (if any), the relative cost of such services, and the potential frequency of their utilization among an exposure of several thousand individuals. Such utilization should be developed in a manner which enables identification of any unusual characteristics related to age, sex, compensation, type of employment or industry, and residency in metropolitan or rural areas. I am under the impression that within the recorded experience of the law profession, there is currently no information available, other than theoretical models based upon very meager or limited studies, with respect to the ingredients of underwriting analysis I have just identified.

While I am aware that certain pilot projects have been in planning stages for some time, and that there is one such plan currently operational in Shreveport, Louisiana, I am not aware of any significant undertaking of this type that has the characteristics of scope of public exposure, length of operational time, or recorded statistics, necessary for proper evaluation.

Once the definition of services has been fully developed, it will then become necessary to develop a model law to provide the terms and conditions under which such prepaid legal services programs may be offered to the general public in each state. The terms and conditions of such legislative authority must be carefully drafted and take into account the critical consideration as to how such programs may be marketed to the general public. It should clearly provide for utilization of the existing group-employee-benefit-marketing system in order that it may capture the economies and efficiencies for wrapping in prepaid legal services as another element of a consolidated employee benefit program. This would mean that the marketing effort must include provision for insurance companies which are authorized to offer life, disability, health care, and pension programs,also to market and assume risk with respect to prepaid legal services programs.

Finally, within the role of the insurance industry, I would suggest serious consideration be given to its expertise and capability to complement the end objective of economies necessary with respect to the administration of such programs. Regardless of the type of formation of group prepaid legal programs--that is, whether such programs are offered under the organizational structure of a non-profit corporation on a county-by-county basis or some other form of entity--there will be a requirement with respect to the day-to-day administration of affairs of the prepaid legal services program identified with: (a) the flow of funds representing the collective prepaid amounts due monthly, (b) establishing the eligibility of persons as valid participants in such program, and therefore entitled to its services and payment of the claims for services rendered.

It is important that the legal services portion of any employee benefit program be administered along with other benefits provided, rather than fracturing it out as a separate element for administrative purposes. The added expense of such a fractured posture (as to administration costs) would be significantly in excess of what it

should be. Whether the claims administration of an employee benefit program is housed with a major corporate entity under the supervision and direction of its own employee benefits department or directly with the insurer of the risk, the efficiencies and economies of central source communication are a most important ingredient. This is true whether we are talking about communication with the insured employee or with the provider of services.

In the administration effort, I feel that insurers who are heavily involved in the employee benefit field would encounter little difficulty in adapting their administrative processes to make adequate provision for prepaid legal services programs.

I should like to close with one additional and final thought for your consideration. In some of the reading that I have done on the subject of prepaid legal services, I have come across a statement to the effect that there is no direct evidence that the middle-class needs more legal service than it is presently getting. I would like to challenge that statement with the experience of the life insurance industry in its development of group life insurance. Life insurance of all employee benefit coverages is perhaps the most intangible product in terms of benefit and, therefore, generally considered of least importance by many people. It requires either a one-on-one, person-to-person presentation properly to educate the employee as to how it relates to his needs and requirements, or it requires responsible sponsorship by the employer and the union through the structure of an employee benefit program to convey that necessary element of confidence and acceptability to him. The group marketing and administration methodology has clearly proven that the middle-class of our society had little, if any, life insurance coverage, and I believe I can state that, as of this moment, there remains inadequate provision in most employee benefit plans for the minimal life insurance needs of the average family identified with this category of our society. This experience of the system of marketing products and services through employee benefit plans, I believe, draws a direct corollary with what may be expected from group plans involving prepaid legal services.

In summary, then, I should like to repeat my own personal conviction that the general public has a need for legal services resource to provide guidance, as well as representation, with respect to the individual's day-to-day actions, to help assure prevention of violation

of law, to assure his protection of the law with respect to possible violation of his rights by others, and on a basis by which he can properly budget the cost thereof.

Further, the provision of prepaid legal services must have a commitment for participation of a substantial percentage of the professionals practicing law within a specified area to guarantee the public the available services of qualified persons on a timely basis. In this connection, I would suggest that the formation of any plan be set up so that services provided, as well as the professionals participating, are organized on some form of specialty basis to assure that quality, necessity, and costs associated with such services are in the best interests of the public, as well as the provider of services.

Next, the definition of a legal services plan should be thoroughly thought out from the point of view of providing reimbursement for costs associated with an insurable risk. Insured individuals should pay out-of-pocket 25 to 50 percent of any fee for general consultation, this to avoid the potential of excessive utilization of the program by the participants and thus inflating the costs to all other participants. "General consultation" in the sense used here is defined as a consultation not involving an act which has occurred that is potentially involving of litigation process.

Legislation will be required in all states authorizing the operation of such prepaid legal services programs, and such legislation should make provision for marketing of such programs by insurers who are licensed to market other employee benefits, so as to take advantage of the most efficient marketing method available to get these programs wrapped in with existing employee benefit plans. The role of the insurance industry, as I see it, involves assumption of the insurable risk, the marketing effort, and a major assist in the administration of prepaid legal services.

THE ROLE OF THE LEGAL PROFESSION REGARDING PREPAID LEGAL SERVICES

Robert W. Meserve

It has been a long day. Therefore, I will try to make my remarks short so that we may have some opportunity for questions and still get to the cocktail hour on time, having in mind Oscar Wilde's statement that work is the curse of our drinking classes.

We have now heard from spokesmen for labor, for management, and for the insurance industry on what they consider are possible roles for their groups in relation to prepaid legal services. But what about the ones who must provide those services--the lawyers and the legal profession? What is their role? What has been their response thus far, and what should it be in the future?

In answering these questions I would hope to avoid the problem of the client who says: "I'm going to hire a one-armed lawyer to get rid of these attorneys who say: 'On the one hand, this; but on the other hand, that!'" I shall try to be direct.

I think we must first note that there are some 350,000 lawyers in the United States, practicing alone or in law firms, small and large. These individuals are also often members of state and local bar associations (in some states they must be). These associations are often termed "the organized bar." It is this grouping that I wish to emphasize here.

There has been a great deal of activity and interest by individual lawyers in the subject of prepaid legal services during the past year. Most of the 500 inquiries to the ABA, and to those concerned with its two projects, have been from individual lawyers, as contrasted with those representing associations or a committee thereof. A great number of inquirers were union lawyers whose union client had asked for information or for the development of a plan. Others did not have a client at hand, but were interested in developing a plan that could be offered to groups, not excluding union possibilities. A far lesser number of inquiries were from lawyers who indicated that an organized association wanted to explore and possibly develop a prepaid plan of legal service. All were concerned with

ethical problems resulting from limitation of panels of lawyers available or from the formation of the group and the scope of services to be rendered.

All were cognizant of the obvious fact, too, that the non-availability of a prepayment plan loses lawyers many clients because fear of cost would appear to be one of the chief reasons that the public does not use the services of a lawyer. The fear of cost may demonstrate itself in many ways, including consideration of alternative means. My friend, Walter Powers, tells me of an interview between a prospective lady client--well dressed and well mannered--and one of his partners. She discussed the cost of her obtaining an uncontested divorce from her husband, who had deserted her. She pressed the lawyer for a reasonably definite figure. He finally told her that court costs and his fee, her expenses in such a proceeding, would approximate $350.00. "Oh, Mr. Sullivan," she said, "you'll have to do better than that. I can get him bumped off for $75.00."

The organized bar has, I think, tried to respond to the need for better delivery systems of legal service to the public. But, like the car rental agencies, they must "try harder." I am pleased to report that 1971 has been a year of considerable awakening among state and local associations. In 1970 only four state associations were seriously planning on this front. Seven other state bars joined ranks in 1971, including California and New York. The last two represent some 25 percent of our country's lawyer population. The American Bar Association, with its membership of 152,000, has been working seriously in this field since 1968. (And I call upon my good friend Charlie Goldberg here to attest to that!)

It is hard to represent a constituency of 152,000 persons, let alone that number of lawyers. We do not always know whether those who protest the loudest at or about insurance plans and group legal services are those whose answers should be accepted. We know this court room technique of shouting down, or closing off, your opponent is not infrequently employed at the trial court levels, although seldom in the Supreme Court--and considering the immediate past, I do not want to discuss that august body at all. We are also not unaware of silent majorities, and know the possible catastrophic impact that a full development of absolutely closed panels could have upon 50 percent of our lawyer population.

Therefore, the question is, what should the organized bar do? The role of the individual lawyer is clear enough. He should do, within the proper professional and ethical limits, whatever his group client requests him to do. He must, however, undertake the task of participating in the development of any group plan with the full realization of the resources and expert administration needed to serve the full demand of what will hopefully be a constantly increasing use of service by the now unserved clientele.

California seems to be the epicenter of group legal service activities. Over 200 such arrangements are registered with your State Bar. It is interesting to observe that some of the lawyers now serving these groups think there may well be a need to broaden out the group of lawyers who provide such services. Some of the closed panel plans might progress into more open arrangements because of increasing need and demand for legal service, particularly in new legal areas where no member of the present panel may be expert. The State Bar of California has had an exceptionally hard-working committee that has made a recent report on the role which should be taken by the State Bar and its members in this state. This sensitivity to the pressures of time, and to the need for leadership, is not always possessed by other state bar associations.

The American Bar Association has not yet adopted a formal position on the development of prepaid legal services. Yet its future position may possibly be inferred from the following facts: (1) It has invested its hard pressed funds, and convinced the American Bar Endowment and the Ford Foundation to invest further substantial amounts, in the two experiments at Shreveport and Los Angeles to test the feasibility of a delivery system of prepaid legal services that allows the free choice of lawyer to the group client; (2) since mid-1970 it has had a special committee to watch over these projects and over other developments in the field, and it has furnished full-time staff to assist the work of that committee; (3) its presidents, past, present, and future (possibly) have been deluged with questions on this subject wherever they have gone and, I am sure, excluding myself, have a firsthand understanding of the importance and meaning of this change in the manner of law practice.

We have no prototype plans nor specific guidelines to offer. In our previous panel this afternoon, the speakers discussed the way in which a state or local association might construct and develop a plan which allowed free choice of a lawyer. Before it reaches such a planning stage, the

first question might be: Should we do anything at all? The answer must be obvious. We must, if as an organized profession we are thought to move with the times. Should we just observe, weigh, and regulate via ethical proscriptions? That answer is also obvious. Guidelines and regulations are needful in the public and professional interest. They are, however, likely to be the passive response of "watching the world go by."

We must do something more affirmative. If lawyers are the great architects of social change, we had best develop additions to our own building to accord with the changing needs of society. Therefore, we must be busily at work within our state and local associations to formulate plans which will both protect the public interest and preserve the values of our professional tradition--to serve the individual client with loyalty, without outside interference, and with the best professional skill.

Affirmative action is always hard. In our organized, and sometimes partly disorganized, associations, the effort to plan a program of prepaid legal services may seem a task beyond reasonable expectation. However, unless this hard work is forthcoming now, we may anticipate that the average American client will pass by the average American lawyer on his way to the specialized group that is available to him. When this happens, the cry of outrage by the lawyer will be lost upon the inaccessible ear of the vanished possible client.

THE ROLE OF THE PROFESSIONAL ASSOCIATION IN THE DEVELOPMENT OF PREPAID SERVICES

Peter Sloss

I had a nightmare last night in which I was standing right here, announcing to all of you that my topic was the role of the professional association in the development of prepaid services. And that the professional association of which I speak is the dental association and the prepaid services with which I am primarily familiar are dentists' services. And then everyone burst out laughing.

Most of you are understandably thinking at this point, "What on earth are we doing talking about dentists at this conference?"

At first blush, lawyers and dentists seem to have little in common. Certainly, the public image of the two professions is entirely different. Few of us enjoy a visit to the dentist, whom we tend to associate with pain and unpleasantness. Lawyers, of course, are universally beloved and associated in the public mind only with pleasant things. Perhaps it is therefore necessary, before talking about the role of professional dental associations in the development of prepaid dental services, to explain why I think the subject is relevant to this conference. Let me tell you briefly some of the problems of major concern to those involved in the development of prepaid dental services, which at one time caused some knowledgeable people to doubt that dental prepayment was really feasible at all.

The most reliable data indicate that only about 40 percent of the people in the country visit a dentist in a given year. As we all know, the dental profession is of the opinion that everybody should visit the dentist at least once a year, and that such regular professional care is essential to good oral health. What this means is that the dental profession is a strong advocate of prevention. Most dentists believe that regular visits to the dentist, combined with a proper program of home care, could save the natural teeth of many people who now are losing their teeth in middle age or sometimes younger. Interestingly enough, one of the by-products of prepayment is a lot of new statistical data, and some of this may confirm the theory that prevention will indeed accomplish this result.

Another related characteristic of dental care which is significant in terms of prepayment is the elective nature of many dental services. Some people elect to have the type of regular preventive care which dentists advocate. Others wait until their teeth are beyond repair, and usually until the advanced state of decay makes itself known by acute pain, and then go to the dentist for relief from pain, which usually means they have their teeth extracted and articicial replacements made. Once a person goes to a dentist, there are various treatment options which involve choice on the part of the patient. In some cases a patient may choose between different types of false teeth. In part, at least, the choice involves a subjective decision by the patient. There are similar choices between types of restorative material, such as silver, amalgam, gold, plastic, etc.

These characteristics of dental care illustrate that most dental care is not insurable in the usual sense. California law defines insurance as "a contract whereby one undertakes to idemnify another against loss, damage, or liability arising from a contingent or unknown event." This definition does not fit prepaid dental care. Any group of people, such as members of a given union or employees of a given employer, who may become eligible for prepaid dental care, will almost all need some dental care at the time of selection. It is a rare group where a majority have not neglected their oral health. To provide care on a prepaid basis for such a group is hardly providing against loss arising from a contingent or unknown event. The very existence of the prepaid benefit is likely to provide a major stimulus to the utilization of dental services--a situation which is anathema to any insurance underwriter. But the profession wants to encourage utilization of certain services. The fact of neglect also results in very heavy utilization of care provided by the prepaid program soon after the program goes into effect. After a year or so that heavy utilization tapers off, or at least the underwriter hopes so.

Furthermore, because of the elective nature of many of the services, if individuals are given the choice of receiving and paying for--or not receiving and not having to pay for--dental care, for the most part those who need dental care, which if individually financed would cost more than the prepayment cost, will choose prepayment and those who do not want or need the care will elect against prepayment. Also, if they are permitted to do so many people would remain in the program just long enough to get the major needed care performed and then drop out. Whatever price is established for a group dental care program is

made purely voluntary. While there have been efforts made to put together voluntary programs of this sort, I cannot say that I know of one which has yet been successful.

Another characteristic of dental prepayment which may be significant is that purchasers have shown a marked preference for administration of a dental program by agencies which have a close affiliation with the organized dental profession. While insurance companies are handling a significant proportion of the dental prepayment business, this proportion is considerably smaller than is true in the case of hospital or medical prepayment. Partly this may reflect the relative newness of dental prepayment and the fact that the professionally sponsored organizations were the first in the field. However, I believe that there are two other factors which contribute significantly to this result. One is that sophisticated purchasers are aware of some of the peculiarities of dental prepayment which I just mentioned and which make it quite different from the usual insurance program. They recognize that a dental prepayment program requires unusual expertise to administer properly. The second reason is that there is a pronounced fear and distrust of the dental profession Many purchasers believe that dentists will abuse the program unless they are subject to tight controls. Only organizations which are affiliated with the dental profession and have a legal relationship of some sort with dentists are equipped to exercise such controls. I believe that the extent of abuse of prepayment programs is not great and that dentistry's record in this regard probably compares favorably with other professions and occupations. However, because of the elective choices of treatment which do exist and because of other factors which distinguish dental care, the need for a close working relationship between those who administer a prepaid program and the dental profession does appear to be highly desirable so that the bias in favor of professionally affiliated organizations certainly is not unwarranted.

In describing some of the characteristics of prepaid dental care, I have tried not to belabor any supposed similarities--or dissimilarities--to legal services. One similarity which I will suggest, however, is that when dentistry began to confront prepayment not so many years ago, they found that a number of the problems were novel. Another fact which may not be a similarity is that the dental profession did not initially promote prepayment. Rather, public demand for prepayment arose on its own and surprised the dental profession.

Demand first surfaced in 1954 when the Pacific Maritime Asoociation approached the California Dental Association, requesting advice from the Dental Association as to the feasibility of a prepaid dental care program and an estimate of what it would cost. Almost simultaneously the International Longshoremen's and Warehousemen's Union was making similar inquiries of the American Dental Association. At that time very little was known as to the feasibility of such a program and the information as to costs was simply not available. Nevertheless, these discussions stimulated some very intensive thought on the problem, and as a result the Maritime Association and the Union agreed to devote the sum of $750,000, which existed as a surplus in their health and welfare funds, to finance a one-year pilot program of dental benefits for children of longshoremen. Thus, the very first prepaid dental care program in the United States started on July 1, 1954 with approximately 2,100 children as the beneficiaries. This same program has continued virtually unchanged to 1971. It was recently suspended, temporarily we hope, due to the current Maritime strike. It was an ideal program because children usually are considered low-risk beneficiaries. However, it is not typical of the problems ahead.

Initially the California Dental Association administered this program literally in a corner of its office, using existing personnel on a part-time basis. I should add, for clarification, that the California Dental Association covers only Northern California and there is a separate association in Southern California, although the two are now in the process of working toward unification. The leaders of the association recognized that prepaid care probably had a future beyond this one small program, and they decided that an appropriate entity was needed as the association's instrumentality for playing a major role in that future. Fortunately, the legal means already existed. The original California enabling legislation for the Blue Shield Plan, which was enacted in 1941, was not limited to physicians. It enabled any group of professional persons licensed under the division of the California Business and Professions Code dealing with the healing arts to form a similar type of corporation. The Dental Association formed such a corporation in 1955. It was originally known as California Dental Association Service, but the name was subsequently changed to California Dental Service, and it is usually spoken of by its acronym - CDS.

Although the separate entity was formed, this did not lead to any immediate expansion of prepayment, and for several years it continued to operate out of a corner

of the association's office with the Longshoremen's program as its sole prepaid care program. Starting in 1961, however, demand for dental prepayment in California began to snowball and the growth of the service corporation has been spectacular since then. If I may be forgiven a few statistics, let me tell you that prior to 1961 with just the Longshoremen's children's program, there were about 2,100 people eligible. By the end of 1961, the number of eligible individuals was 9,300. By the end of 1962 the number of eligibles was approximately 70,000 and the annual volume of payments by CDS was in excess of $2 million. Currently there are about 1,700,000 individuals eligible under CDS administered group dental prepaid programs, and the annual volume is currently running at the rate of about $50 million. Nationally about 10 million people are eligible for some form of prepaid dental care, and in California prepaid dental is established as a major benefit.

Since it involves a large, complex organization, you can see that the first major function of the dental association was to establish the mechanism for dental prepayment. In order to form the service corporation, the statute required that 25 percent of the dentists in the state of California become members. This could never have been accomplished without the very active support of the association. The two California associations also gave the service corporation modest financial assistance to start it on its road.

The next important role played by the professional association is in the area of what could be described as policy guidance. That deceptively simple phrase covers a multitude of very thorny problems. When I knew I was going to have to address this meeting on this subject, I asked Dr. Gene Dixon, who is the vice president and managing director of California Dental Service, to let me borrow some papers that he had given on similar topics. I found one that he had delivered a few years ago, in which he said:"The relationship of the association to the corporation after the corporation is formed might best be found in the word recommend."

While it might seem to be almost a truism, believe me, that statement was and is a highly controversial one. You might think that since the service corporation is a membership corporation to which most of the dentists in the state belong and therefore has a membership which substantially overlaps that of the two state dental associations, relationship problems would be minimal. To add to the factor of membership overlap, the board of directors of the service corporation consists of 15 dentists,

most of whom have occupied important policy-making positions in the dental associations and some of whom currently serve on committees of the associations which formulate policy recommendations in the field of prepayment. In spite of these close ties the views of the governing bodies of the different organizations are not always identical, and while agreement has always been reached on major issues the road to such agreement is sometimes bumpy.

I am sure I could go on for the rest of the evening describing some of the problems inherent in policy guidance, but I am not sure that these would prove too germane to the area of interest of this conference. An even more important reason for passing from this subject to another is that if I say more I am likely to become involved in some of the controversial subjects of dental association politics and would probably slip off the fence, which, as legal counsel, I am required to straddle.

In referring to policy guidance I had mainly in mind the policy-making function of a state professional association in attempting to guide the course of payment within its own state. There is another, related area where the professional association should have a major role, and that is in the coordination of state policies on a nationwide level. The dental profession is very much in the throes of this problem right now, and I have no doubt that the legal profession will have to face it soon too. Any type of employee benefit which enjoys popular success is sooner or later going to attract the attention of the large national bargaining units which encompass employees across the country. Both employer and union representatives of these units are usually looking for a means of delivering benefits which will be uniform throughout the United States. When the benefit involves professional services, what is required, in order to have a uniform benefit throughout the country, is not only an organization capable of administering and underwriting the benefit in all areas where there are eligible employees, but members of the profession in all such areas who are willing to cooperate in delivering the services on a reasonably uniform basis. If the attitudes of the profession, as reflected in the policies espoused by its professional associations, differ in the various states, the prepayment groups have a real problem. This is a problem which has been an acute one for the dental profession. There are already prepaid dental programs in operation covering employees of a number of large national corporations, especially several of the big aerospace companies which have operations in many states. Some of the major national industry bargaining groups are knocking

on the right door now. As a matter of fact, the automobile industry came quite close to getting prepaid dental care as a benefit earlier this year.

You may think that it is premature to consider this problem area now since prepaid legal services are in their infancy. However, prepaid dental care is not very old either, and we were confronted with problems of multistate groups very early in the game. I can tell you from some bitter experience that the professional associations involved at the national level cannot begin too soon to plan and establish the necessary mechanisms and instrumentalities in order to be able to deliver a uniform benefit nationwide.

The final area of professional-association involvement with prepayment which I would like to touch upon is what has come to be known as "peer review ". In the health care field, peer review is probably the hot topic today. Whole conferences are devoted to the subject, but the most I can hope to do at this time is to mention some of the highlights.

All professions have always had some form of peer review. To a greater or lesser degree, professional bodies control their own acceptance of members into the profession and provide some form of disciplinary sanctions against members who deviate from established rules of conduct. However, in the health care field the rapid expansion in recent years of systems of delivering care in which the government or non-governmental third-party groups become involved as purchasers has led to the demand for new types of peer review. Organized group purchasers are increasingly demanding that providers of services such as physicians and dentists be subject to controls as to the reasonableness of their charges and the adequacy of services provided. The desire of most professionals to be free from outside lay control of their professional life has led to their demand that the control be by "peer review," which is to say that if they must have controls they want the profession itself to do the controlling.

I think most responsible and well-informed leaders in the health professions today recognize that their success in remaining free from unacceptable forms of outside controls will be in direct proportion to the ability of the profession to create and administer effective mechanism for peer review. However, recognizing this fact does not make the process easy. Most professional men do not

enjoy having to sit in judgment on the reasonableness of the fees or the quality of the services performed by their peers. Most of us can undoubtedly understand these feelings. It is probably even more difficult to be a professional man whose fees or services are being judged by his peers. Nevertheless, an effective peer review system cannot exist unless there are sufficient numbers of members of the profession willing to devote the time and effort required to serve as judges, and unless most of the professionals are willing to accept the judgments of their peers and cooperate voluntarily with the peer-review system.

The role of the professional association here is obviously a very large one. It must convince members of the profession that peer review is necessary and desirable. It must convince those outside the profession who demand controls over costs and quality of service that the profession is prepared to provide the type of review which is demanded. Finally, if it can achieve these difficult tasks of persuasion, then it must play a major role in establishing the review mechanisms themselves. These mechanisms must satisfy purchaser demands for adequate control and the demands of the profession for freedom from outside interference, and they must provide for at least a minimum level of procedural due process.

In the health care field the whole technique of peer review seems to be still evolving. As far as the dental profession is concerned, considerable progress has been made toward establishing satisfactory peer review mechanisms, although efforts to perfect the system still continue. The system involves several levels of review. Most carriers employ professional consultants who screen a large number of claims, select out questionable ones, and resolve the geeat bulk of them by discussion and agreement with the dentist who is providing the service. California Dental Service, for example, has full-time and part-time consultants who work in its offices examining claims, and also regional consultants in all areas of the state who examine patients. Since the success of consultants can be measured by their ability to secure voluntary agreement settling the bulk of problems which are presented to them, it is important that they be men who are respected by their peers in the profession. The professional association can have an important role to play in recommending and/or approving the qualifications of those selected as consultants.

Problems which cannot be resolved by the consultant are referred to review committees. These are committees of the local professional society serving on a voluntary basis without compensation. For the most part these committees have been

used to resolve questions as to the reasonableness of fees. Recently to an increasing extent they are also considering questions as to the quality of service.

The system established by the dental profession permits an appeal from the local review committees to a committee of the state dental association. The state committee also has developed a set of guidelines which all the regional committees are supposed to follow. These committees function not only for California Dental Service but for a number of insurance carriers and trust funds with self-administered programs which choose to avail themselves of the committee's services.

Impressive accomplishments have been made in the past few years toward achieving an effective peer review system. However, the long-run ability of the healing arts professions to sustain a level of self-regulation sufficient to forestall outside regulation certainly remains in doubt. I do think that the medical profession and the dental profession went through too long a period of time when they talked a lot about peer review but failed to implement the concept with an effective program. This appears to be another area where the professional association which wishes to develop a prepayment system cannot begin soon enough to establish policies and create the necessary instrumentalities.

I believe that the dental profession in California is probably as far advanced as any professional group in the country in the development of meaningful peer review. I have been privileged to sit in on quite a lot of the process by which the profession has advanced to this point. I know it wasn't easy and I know of some of the long hours and hard work that a number of very dedicated dentists devoted--and are continuing to devote--to peer review. Frequently it is a thankless task, unappreciated by those within the profession who resist <u>any</u> controls, even from their peers, and by those outside the profession who don't believe the peer review is stringent enough. Those who are willing to serve in such a capacity deserve far more than they usually get.

I don't know that it is possible to give any neat closing summary of what has been an overview of a very broad subject, but there is one personal observation about the effect of prepayment on a profession that I would like to leave you with. Experience has shown us that the advent of prepayment has an impact on a profession which goes considerably beyond the obvious one of providing a new way for people to pay for the professional man's services. Many members of the profession may embrace prepayment enthusiastically at first because it seems to promise a new source of revenue, without realizing what its full impact is likely to be.

Prepayment brings the profession into direct dealings with organized mass purchasers of services. In a sense, with prepayment the profession engages in collective bargaining with representatives of purchasers. Collective bargaining with powerful and frequently highly sophisticated purchasers of services results in new demands being made on the profession. These demands may challenge some long-cherished illusions of professional life. I have mentioned two areas in which this has happened to the health professions: first, in the need to submerge some of the local autonomy of policy which had prevailed among fifty states in order to deal with the national market, and, second, in the need to reexamine long-cherished ideas of independence of private practice in order to accommodate the demands for control of fees and quality of service.

If more of the members of the profession knew in advance all the changes that prepayment can bring they might not embrace it quite so enthusiastically, but then their ability to hold back the development of prepayment may be rather limited. After all, there is no stopping an idea whose time has arrived.

I have no crystal ball which tells me that the impact of prepayment on the legal profession will be similar, but it seems to me that some of the same pressures for change must exist any time a profession confronts organized purchasers. If I am right, then our professional lawyers' associations have a very big job ahead of them in attempting to assist and guide the process of change. I think we will find the task a difficult one at times, but also a very challenging and stimulating endeavor.

WORKSHOP NO. 1

LABOR, MANAGEMENT, AND CONSUMER GROUPS

Robert J. Connerton, Chairman
Robert M. Leventhal, Reporter

Gentlemen and ladies, could everybody be seated so that we can convene our little group this morning and turn it over to you as quickly as possible. Let me introduce myself. My name is Bob Connerton. I am the general counsel of the Laborers International Union. In addition, I serve as a member of the American Bar Association's Prepaid Legal Services Committee, and in that latter role I'm moderating the meeting this morning.

I'd first like to fill you in very briefly on what I regard as the background of legal service plans, and then indicate to you my general ideas on where I believe we're heading at the present time. In my mind, a legal service plan at the moment fits into the concept of an idea whose time has come. I think we've seen over the past five to ten years the acceptance of a principle in this country, consistent with the expansion of civil rights, that all citizens in this land have a right to counsel. We've seen the federal government move actively to expand that right, one, through putting up the money under the poverty programs, through the neighborhood legal services and other related legal plans. Two, we have seen the United States Supreme Court come down in the so-called "defender" decisions and declare that every indigent citizen of this land has a right to government-provided counsel in criminal cases. Three, we've also seen the Supreme Court, contrary to the remarks of my learned brother from the Bar Association yesterday, clear away the thicket of bar association opposition to groups providing legal services for their members by declaring very firmly that the First Amendment protections of the United States Constitution apply to unions, to civil rights groups, to consumers, to students, to people concerned with our environment, etc., as they commence to develop legal service plans for their membership.

We have a great concept, it seems to me, in this kind of legal involvement as a means for plugging people into our system and achieving progress. Without going into any great detail, I think most of you are also familiar with the rules and legislation involving expansion of class actions and so forth. But what is perhaps more important to me is that we've seen a growing recognition and acceptance by the trade union leadership that legal services should be provided for their membership. And just the notion, for example, at the AFL-CIO lawyers conference next week, in Miami, that I will

be speaking on group legal service plans is in itself clear recognition that this concept has now been accepted by the trade union leadership. And as Jules Bernstein has indicated previously, last week he addressed the Central Conference of Teamsters Lawyers' meeting, which just happens to contain about half of the able trade union lawyers in this country who represent most trade unions. And there's been a great move for reform, coming from public-interest law firms, and from organizations such as Ralph Nader's various groups, which have exerted a very profound impact on our judicial system.

Where are we heading? Well, you know, at the present time, between trade unions and the employers, there are well over fifteen billion dollars set aside in collectively bargained welfare plans to provide health benefits for their membership. You and I both know that in the next few years, as a result of the failure of the medical industry to provide meaningful medical services for all the people in this country, the Congress of the United States will pass a national health insurance law. It may happen next year, it may happen in 1973, but if it doesn't, it will come to pass in 1974. So, employers and trade unions will be sitting on these massive funds that will either have to be diverted into other benefit areas or be dissolved. I think you know the lesson of life far better than I do--they're not going to dissolve these funds. They'll be looking for other areas into which to divert the income from these funds. Also, the composition of legal services is changing in this country. For example, in the past year no-fault insurance in one form or another has been passed by a number of state legislatures. And there exists a class of trial lawyers in this country who will have to find another area where they can continue to represent the members of the public.

Well, let's talk for a moment about groups that are involved and become very specific. The groups include trade unions, property owners, consumers, campus legal services, law schools, new towns with new methods for providing total comprehensive services, employers, cooperatives, churches, minorities, and many other kinds of groups. The unions involved include the laborers, teamsters, clothing workers, steel workers, municipal employees, policemen, firemen, meat cutters, retail clerks. It's now beginning to read like a list of who's who in unions in the United States. The way we contemplate the status of legal service plans at this time is by drawing an analog to the field of medical services. Legal service plans are following precisely the same natural lines of development that medical, pension, and vacation plans did when they originated in this country.

Let me review for you very briefly what the obstacles are. Of course, one of the obstacles has been bar association rules; we have had a long discussion about that. But it seems to me that opposition can't stand in the face of the clear First Amendment decisions by the United States Supreme Court. The second obstacle is section 302 of the Taft-Hartley Act. Section 302 is written as a criminal section. It's written in a prohibitory manner with specific exclusions from criminal penalties. Legal services at the present time is not one of those exclusions. What we need to do is to take the bill which is pending in the Senate--S948--at the present time, amend that bill to eliminate any reference to any subject other than legal service plans, then draw up a clean bill and introduce it simultaneously in the House and Senate. And with the support of the American Bar Association and the trade union movement, the insurance industry and other interested groups, it seems to me we'll have very little difficulty in passing that bill in this session of the United States Congress. When you move over into the tax area, the problem becomes much more complicated. The Internal Revenue Service rules are now in the process of being revised. But they're not being revised, nor can they be revised, to the extent where services provided under employer-contributed plans will not become income to the recipient. To amend the tax law, as you know, is much more difficult than to amend some minor section of the labor laws.

Now, ladies and gentlemen, with that general background I'd like to turn the matter over to the audience for whatever questions they might have or whatever comments they might care to make.

Floor:

Bob, would you say that the current opinion is that services rendered by the lawyer to the beneficiary might be considered income?

Mr. Connerton:

The question concerns the current interpretation of the law that services rendered by a lawyer under an employer-financed plan is income for Internal Revenue pruposes. My answer to that question is, probably yes.

Floor:

A follow-up question: what if the services are rendered without any regard to any kind of a price or schedule, simply as a benefit to the membership in the plan. Would it then be valued and taxed?

Mr. Connerton:

I'm really not certain of that. I would think that in all likelihood, at the present time, the Internal Revenue Service would claim that if there was a value that could be attached to that service, it would be income so far as the recipient is concerned.

But the fact of the matter is--and I think we need to recognize it--that regardless of how you try to get around the problem, there appears to be no way at the present moment under the Internal Revenue Code that legal services rendered to employees are not taxable. It's income and it's taxable.

Jules Bernstein:

On precisely that point, Shreveport does present an exception because the employees have been making their contribution to the fund directly through their union dues. Under these circumstances, the legal service benefits are not income to the employee. But the fact of the matter is that the problem of taxability must be faced. Individual employee contributions or payments out of union dues may be a temporary solution, but in the long run the tax questions will have to be resolved. The only solution that seems equitable would be to treat legal service benefits in the same manner as health benefits presently are treated.

Mr. Connerton:

Let me make one comment on working dues. Working dues are taken from income; the man is paying tax on his income.

Floor:

You mentioned that legal service plans are now in the same stage of development and they follow closely with medical service plans of, let's say, fifteen years ago. Can you anticipate by following the national trend here that when the insurance companies become involved, when the plan is fully acceptable, that eventually the government will probably have to step into this as well and provide a national legal plan?

Mr. Connerton:

I think the question was basically, is a government national legal plan inevitable? I don't think we need face that problem at this particular moment. It's a long way down the road. Let me ask some of the union representatives here, what are they looking for in terms of a legal service plan. Julius?

Julius Topol:
You're asking about optimum or asking me about what I would like to do now?

Mr. Connerton: Both.

Mr. Topol:
Well, first a couple words about optimum. Of course, let me say whom I represent. I'm on the staff of District Counsel 37, State County Municipal Employees of New York City. We represent 120,000 employees; we have 100,000 members; we have a right-to-work situation. I have, what some people call, an already existing group-legal service in that I set up a law firm, four lawyers, on the staff to take care of all job-connected legal matters, except workmen's compensation. Some of you, of course, do that, because if you have arbitrations of a grievance, if you have disciplines, these are all job-connected matters. But we want to go beyond that now. We would like as an optimum to expand the law office to handle all matters which our members have, all legal matters, those which they recognize and those which they don't. And, of course, the whole aspect of preventive law which was discussed here would be part of it to educate people as to their needs. But that isn't the need, right down the road. That's a long way off.

What I'm thinking of, is a modified plan, and therefore the decision of the New York State Bar Association looms as a potential problem for me. New York City, being what is is with its thousands of lawyers, if we use the Shreveport method and say, "Go out and get your own lawyer," I would say that we had failed in a most significant portion of duty to our members. Regardless of how much money we give a member in reimbursement, I would say that we have failed him in this most significant matter. Conversely, if I were to set up a system with the help of the bar association and any other people in New York to identify the lawyers who have the specialty and the reputation and commitment and list them in their specialties, at the same time get some kind of an understanding with these lawyers--as we've done with our dentists under our dental plan--that they will adhere to a set of fees, if I do that, even if we paid nothing towards that, I think we would make a good contribution.

To make it brief, I would like that plus more. I think I'm going to recommend to our leadership that first we make this very important effort with the assistance of the bar associations, if they will, to identify the panel; it's an open panel, but in a sense that it's an open qualified panel of lawyers in New York City for our 100,000 members. And to use existing funds--we do not see negotiations as being open now on this, we haven't educated our own members or even

requested it, let alone the city of New York, to give the money--to use existing funds, a benefit fund that has been lying there ever since we've done so much with welfare, as a starting point of actual benefit to members, but a very limited one. I've learned from you people yesterday that in terms of preventive law, in terms of making a real contribution, there's a very significant contribution to be made in advice and consultation free to the member out of this fund and some office work which is a suggestion that Bob mentioned which would also be a controllable item. In summary, 100,000 people X panel of identifiable lawyers in their specialty, committed both as to concept and as to the kinds of fees they will accept and also a limited benefit as of the moment based on our own money rather than any money contributed by the employer. Is that what you had in mind, Bob?

Mr. Connerton: Yes, thank you. Question in the back.

Floor: What do you see as preventive work? What types of things do you see in preventive work?

Mr. Topol:

Let me make clear, I'm just talking about the fact that everybody here yesterday agreed that a great deal of law trouble for people results from the fact that they don't see a lawyer early enough. They don't see a lawyer early enough because they have the idea it costs money, and they're absolutely right, $40 or $50 an hour in New York is the low. And if we make it available or even encourage them to come in and see a lawyer as to the all-existing problems or those which they anticipate, then, I had to learn, this is part of what I learned here from this group, this is a significant contribution toward preventive law. Sophisticated people stay out of trouble, probably have less of a legal problem than the nonsophisticated, because they know just not what to get into, or having got into part of the way how to get out pretty early. That's what I meant by preventive, most of it coming from advice and consultation and some office work, or a telephone call from the office by the lawyer to a certain collection agency or to some other people may make a significant contribution toward stopping it in its tracks. That's all I meant.

Mr. Connerton: Does anyone have another question?

Floor:

I was going to ask you what you in part spoke of as the real lesson here. The question is, first, how do you sell the program to a union leader who at the present time doesn't see the priority. And secondly, I think the lawyers who

have dealt with this know that any individual member on a voluntary basis doesn't go over very good. I'd like to hear some ideas on how this could be marketed.

Mr. Connerton:

Well, let me give you the benefit of my own experience. My own experience is that obviously anyone who's interested in selling an idea has a real job of promoting that idea. I don't see any possible way in which you can sell it to the union member until such time as you sell it to the union leadership. This has been the history with welfare funds, with pension funds, and all the other funds that have developed. And ordinarily, what happens when a man begins to sell an idea to a trade union, a new idea to a trade union leader, like any other group in our society, there's resistance. So the first thing you have to do is to sell it to the trade union leader, and over a period of time, if your idea has merit, he will accept it.

Now, once he's accepted your idea, he in turn has the problem of selling it to his membership. In the welfare field, for example, there was a great struggle with the local union leadership in most cases and indeed in many cases with international union leadership in promoting welfare plans. Finally, the leadership was sufficiently sold so they begin to get themselves involved in the same way they're now getting involved in the legal service field. And then the issue was put to the membership, and in most cases the membership rejected welfare plans and they rejected pension plans because they wanted the money in their pocketbook. So it took the union leadership a fair period of time to convince the membership that they should have welfare plans and pension plans, and in some parts of the country and in some unions the people were still not convinced they should have welfare plans or pension plans. But what I am saying is that once it becomes fairly common knowledge that a legal service plan has been established by the Amalgamated in Chicago, by the Laborers in Ohio, by the Teamsters in other areas, and by the Firemen here, then the union leadership at that point becomes interested. Then, at that particular point, if you have a plan in mind, then it's your job to sell your particular plan to the union leadership. Obviously they're just not going to automatically buy any plan that some lawyer proposed to them. You are going to have to sell the plan on the merits.

Do we have any further questions? Mr. Ray and then Mr. Richman.

Charles Ray:

I work for a union that specializes in having a national bargaining pact. I wonder which plan would be the best plan for a group legal services to cut across not only county lines, but state lines.

Mr. Connerton:

The question was, Mr. Ray works for a union that has a national agreement; he is asking, what plan could be developed to fit that need.

We recently had that problem in the postal area. And frankly, we don't know the answer to your question. During the course of the postal negotiations, we made a demand for a national legal service plan to cover 750,000 employees of the Post Office Department. Unfortunately, at the last moment, the unions were required to drop all their demands for new fringe benefits. But it was agreed that the Post Office Department and the unions would appoint a committee for the purpose of studying a national legal service plan for these employees. No such plan has been developed. It would be my own guess that a modified free-choice plan would probably be the only type of plan that would work throughout the country because you're talking about small towns and running across state lines and so forth. So the best model that I think exists at the present time is the Shreveport plan.

Lionel Richman:

Is it possible or even desirable to limit the services that are to be rendered to services which are not antagonistic to the interests of the union on one hand or the employer in a negotiated plan on the other?

Mr. Connerton:

Yes, well, that's why I was so pleased with the comment of the employer representative at the conference yesterday. In Shreveport the first question that arose was whether or not we should have the right to sue the employer under the plan. Just plain common sense dictates that if you do that, you'll never get the employer to agree to it. So we answered that question, No. Then the local bar association wanted to know if they would be free to sue the trade union. I think you know the answer to that question. So the Shreveport plan specifically prohibits the employees involved from bringing suits against either the employer or the trade union. And obviously, any plan should be designed to overcome that sort of a practical barrier. Mrs. Kramer, you're recognized for 5 minutes.

Mrs. Kramer: What we are discussing is occuring now.

Mr. Connerton: Could you use a microphone so we could hear you?

Mrs. Kramer:

I'm Ann Kramer. I'm a practicing attorney in Baltimore, and after a full day in a zoning hearing on Thursday, I

couldn't imagine why I had to fly for 5 hours to California for a meeting of this scope. Why couldn't you have it in Washington where all the action is? Except that I apologize because the action is in California. The East is literally frozen in many ways, especially in prepaid. I can tell you from our experience in Maryland when my law partner and I began to work on a prepaid concept statewide, I believe we're probably the first doing that in the United States. We began last January, and our first approach was to the Maryland State Bar and the Baltimore City Bar. There are only two jurisdictions in Maryland--Baltimore and the rest of the state. Those two bodies had no knowledge, no committee, had never had any conversation on the matter at all, never discussed it at all, and were totally unaware of what was taking place in the United States. We began to educate them. They appointed a committee and since that time we've formulated plans, have spoken to and are now in active negotiations with very large union groups. For example, the Maryland Teachers Association has 30,000 members, Maryland Classified Employees, 23,000 members, the Retail Clerks and Meat Cutters together comprising 11,000 members, the steel workers unions, 19,000 members, and then some other smaller unions as well and a number of others who are smaller still.

Now, this is a considerable jump as you will recognize--from nothing last January to something supposedly starting July 1 and September 1 of 1972.

I would like to give youa little bit of our experience. Digesting and listening to all the comments yesterday, let me first tell you where we are. We're at the marketing stage. I think nationally this is where everybody is. You're at the marketing stage. You may believe that there is no market and that people are unaware. It's not true. Let me tell you the two reactions we've had from labor: the first is, "Where have you been? We've been looking for you." And the second reaction is, "We already have a lawyer, thank you very much. We don't need any."

Now, let me explain the first one. It is really attributable to those labor leaders who are in the forefront of leadership and that we described yesterday, those people who know that they have a certain direction for their unions, who are looking for additional benefits and have the pulse of their own membership very close and understand that legal services are a necessity and desirable for their own people. Those people have already engineered job-related programs or representation for their membership. And the best example of

that would be the Maryland State Teachers and other teachers' groups who have already achieved that. Now, they were looking for something beyond that. So their comment to us was, "We've been looking for that for about three years. How come no one came to us with a plan?" All right, we've given them a plan and they're interested. Now, on the other side of the coin were labor leaders who said to us, "Why do we need you? Why do we need a plan? We already have a union attorney." We said, "This is not quite the same. We're not interested in your corporate representation. We've interest in your membership representation." They said, "Oh well, that's no problem either. All we do is bring up our attorney and he refers the man now or talks to him a little bit and that's all we need."

So you have those two sides of the coin. I will tell you that the second response was in the minority, that most of the response has been favorable. The question, of course, is how we are going to pay for it, who is going to pay for it? And they do not believe at this point in time that management will pay. This is where we are. There are only two unions in Maryland who really expect management to pay, beginning next September. They are the Meat Cutters and the Retail Clerks. And both are very, very aggressive, and they truly believe that they will never get their membership. In fact, that's not their problem. They do not wish their membership to pay for this benefit. They are committed to the idea that only management is going to pay for this fringe benefit and perhaps they'll achieve it, who knows?

Floor: What plan did you propose to the labor organizers in your particular area?

Mrs. Kramer: All right, you want me to get to the basics?

Mr. Connerton: You have about two minutes.

Mrs. Kramer:

Well, the basics of four hours of consultation per year, which includes almost anything. It includes document preparation, it includes telephone consultation. We've done that based on the six minute system, you know, in dividing an hour into six minute components as you do in major law firms, keeping count for that and using a point system of the California Teachers, which I don't want to go into. We also have administrative and judicial representation as well. But basically, the plan is simple. It calls for four hours per year and is pegged roughly for a covered family at $3 per month. For the teachers, it's somewhat less. For students, it's half. For the 12-month basis, it's about $36 a year.

Floor: I didn't understand your reference to what you give as judicial administrative.

Mrs. Kramer:
The four hours. In other words, in those four hours you can have judicial administrative representation, almost any kind of legal representation, but the basic idea is four hours per year per covered family or an individual.

Floor: In other words, what you're saying is you're charging them $36 a year for four hours of your time.

Mrs. Kramer: Correct, roughly this is it, with very few exclusions.

Floor: What is your expectation?

Mrs. Kramer: Actuarially? We're at the same place that Henry Politz is.

Floor: Actuarially in the same place; and realistically, what have you found to be the usage of the program right now?

Mrs. Kramer: We talked to Ralph Jackson and he thinks we're correct in our estimates, extrapolating from Shreveport's experience. That's the best I can do.

Floor: 20 percent like Shreveport?

Mrs. Kramer: Yes, that's true. We don't know, really.

Mr. Connerton:
All right. Thanks very much, Mrs. Kramer. We appreciate it. Let me make one little comment. With respect to the position that's taken by the employers during the course of collective bargaining, I'm obviously in no position to speak for employers but we've had some little experience in bargaining with employers throughout the country and particularly on such matters as legal service funds. By and large, with certain rare exceptions, during the course of negotiations the employers arrived at a monetary figure that they're willing to give to the union on behalf of the employees. And they frankly tell us in most cases, "we don't care how you take it." They say,"We'll give you 45¢ and let the union decide which way they want to take it." If they want to take it in legal service plans, additional welfare contributions, additional pension contributions, or in straight wages, this is the union's decision to make. Occasionally you run into an employer who will oppose you on philosophical grounds, but

he'll oppose anything the union wants on philosophical grounds. So I don't think there's such widespread employer opposition as the employer representative speaker was hinting at yesterday.

John McCarthy, lawyer from Southern California:

I'd like to hear from a lawyer representing a labor organization about the experience they've already had in dealing with group legal or something they've experimented with in terms of usage on unions representing their members on this?

Mr. Connerton:

I believe the question was that the gentleman would like to hear from any trade union representative or lawyer who's familiar with trade unions legal service plans using outside lawyers on a free-choice basis. For non-job-related matters? Yes?

Marvin Marshall, St. Louis:

I represent the St. Louis building trades along with the carpenters and machinists, some 150,000 members in that area. At this particular stage, everyone is questioning us as to what we can do and we don't know. My point is this: We don't want to do anything at this stage. We don't know what we can do. In St. Louis the carpenters' union that represented us or hired us sent out a little brochure with Fred Sales name on it, whereby he was going to do the services for the union membership at less than what the going rate was. The bar association has taken him up and disciplinary proceedings are pending. Now, with Mrs. Kramer's statements, this is one of my questions: we're going to give the membership four hours of time at $36 a year. That comes down to approximately $9 an hour. Our minimum rate in Missouri is $30 plus an hour. How's that going to jibe? What's the bar association going to say about that? In answer to your question, in St. Louis no one's going anywhere yet.

Mr. Connerton: I'd like Mr. Leventhal to answer Mr. McCarthy's question further.

Robert Leventhal:

I think the question that is raised is valid and it hits not only on the point that he's asking about, "What has been the experience? How does it work where you have a labor organization that has a labor law firm on retainer to handle its corporate affairs but refers to other attorneys for the nonjob-related matters," and in many cases, even some job-related problems to other attorneys. This greatly increases the complications. I think this also gets spooled up in my

opinion in the marketing problem and what the lady from Maryland commented on, "We've got our own attorney, go away." I've had occasion to talk with a number of labor groups in this area, because I've been very interested in the prepaid legal and the idea of getting some regulation on what's going on. I don't think anybody wants to really come out and say it. I don't know what goes on in the rest of the country, but I think we have to be very honest as to some of the practices that go on in Southern California. You're going to find serious resistance problems in marketing, because in many instances business agents in effect are runners for PI and Workmen's Comp firms; they are making referrals. I will not make an allegation as to what happens, but the cases of booze that flow at the end of the year sometimes are substantial. As soon as there is a viable prepaid program with an administrator with authority control, and accountability, such arrangements will no longer be as readily worked out. Until then you're going to run into some resistance.

Now, where legal referral has been monitored by the top leadership of the labor organizations and where referrals are made for these areas nonrelated to the unions corporate affairs, my experience is that it has worked reasonably well. If you have a union that has leadership that recognizes the need for these services for their members, bar aside about not recognizing specialties, they find out in a big hurry who's good in various fields. They have a list of these attorneys and they make referrals, and they have worked out arrangements with these attorneys whereby they have the right to review if there's a dispute.

I guess I'm describing pretty much the arrangements that I have worked out for three different groups I've advised. I guess after today the California Bar may be asking what are you doing, but I get away with it because I'm not an attorney. When a member comes to me and I have made the referral, and he is dissatisfied, I take it up with that attorney. We go over the matter in depth. We go over the charge, we go over what was rendered in the way of service. If we're dissatisfied after this review, we get another attorney to look at it. Then if we're right, and the matter is not rectified, we'll remove that attorney from our referral panel. So these referrals can work. They solve a very important problem in the Los Angeles area. I think a similar problem would exist for any metropolitan area. The man from New York put his finger on it. God help the union member who goes to the yellow pages for an attorney.

Mr. Connerton:

Let me make a little comment regarding St. Louis and Marvin's previous remarks. My comment has no bearing on either Marshall or his law firm. We really have some other labor attorneys there. A few years ago a very fine labor attorney from St. Louis was commissioned by a very fine union to submit a report on the practicality of a prepaid legal service program. He submitted a report which said in effect it's not feasible, it's no good, and so forth and so on. But Marvin's comments tend to underscore what is the fact now, that all the trade unions are turning to their counsel and asking their counsel for information on establishing a prepaid legal service plan as soon as practical. Murray, you're recognized.

Murray Finley, Clothing Workers:

We're setting ours up, which will go into effect right after the first of the year. We assume about 8,000 enrollment now of our members, a potential, I suppose, and about 15,000 if you add up our retired members. Now, let me give you the union's point of view. There is no overwhelming cry from our membership for prepaid legal. In fact, not only is there no overwhelming cry, there's not even a noisy ripple. I want to give you a little experience in terms of the worries about whether we're going to get swamped, you know, with $36 and we're going to get $9 an hour. We have medical centers that are just full of dental, the whole diagnostic business of patient service and free drugs with a tremendous panel of the finest specialists in Chicago. And you've got to fight like everything to get as many as 30 percent of your members to use it a year. It isn't that they go elsewhere. They just don't go to doctors for a check-up.

Here it's available, and you're not going to get this overwhelming swamping and hundreds of thousands of people walking to your doors to learn that inward need. So, our problem is and I mentioned it yesterday, we can't look from the back door. We've established a total social service department to take care of the non-job-related needs in view of the recession of the last couple of years. We have, as I said yesterday, some working poor, some laid-off members, some on short hours, and the rest. So we established a social organization to see what the need was, and out of this experience we began to realize that a great portion of their problems requires the benefit of legal counsel. And so we began to fumble around. How do we go about this? We've got large funds accumulated as to the

pre-packaged fund, we we're very fortunate. We can set up benefits and then we can negotiate moneys later. We don't have to argue with employers on the appropriateness of benefits, but we can't use the funds because of the 302 proscriptions. In terms of the bar associations' limitations, that's another problem.

We have a great, fine, corporate law firm. Mr. Goldberg is our director, the word corporate used to bother me--for a union. Someone else started it. We had a member who needed a divorce; they don't handle it. We have a poor member who was so in hock that the only advice I could give him was to go into bankruptcy; the best thing they could do for us was to refer us to a fine firm who will do it with favors for a $250 fee. Now, the guy hasn't got $250 for drawing up papers. Then we had garnishments; they don't touch garnishments, they only handle trust funds, and so on. So then we said, "Where can we go? What can we do?"

There we sold our members very simply, and I'll tell you why. We have house counsels. One of our older guys died and didn't have a will, so every house counsel is drawing up wills. So then I had a staff meeting and we had to decide how we would go about doing it in a good practical way. The whole concept of bargaining for prepaid legal we had to forget because we wanted money for day-care centers. So for the moment we left out the aspect of collective bargaining, because if we did bargain collectively we didn't know where to put the money if we got it because we can't put it in our trust fund. That's illegal.

So we finally had to start it. How do you sell it to your people? First we had to sit down and work out a program, and we found a firm. It's a closed one-firm deal because there's no other way we know of how to work it. To discuss open-panel, it's a great philosophical discussion at this point, but we've got members today who need legal services. They can't wait until such time as the whole bar association has moved, the laws have been amended, the Internal Revenue Code has changed, and the canon of ethics is clear. We would be in such trouble by the time this happens that it would be academic. So, we had to decide what's the minimum plan, and we have it here and we'll send it to you if you want it. It's a comprehensive plan; there's no four-hour deal; it goes into almost total representation except in jury cases. It handles wills, it handles purchases of realty, noncommercial; if the member has the money and he wants to buy a street plan, we figure if he can pay his fee he doesn't have a problem.

Now, how do you sell the program? You go to a member who can figure out actuarially whether $36 will do it or $40. Our members aren't going to give $40. They are not going to say, "We will deduct from our pay $3 or $4 a month." They are just not going to do that; they are at that stage. But some, the ones who have the immediate problem and go right to the lawyer, they'll pay the $3 for a lawyer. So, how are we going to sell the plan? It will be on a voluntary basis, tentatively, but I expect we'll have 99 9/10 percent volunteers; otherwise it won't work. So we set up a token figure of 50¢ a month. Never mind it's $6 a year, don't worry about it, it won't come out. The figures don't come out, the figures will not work. But it's very simple, at 50¢ we can voluntarily get them all to sign up and that's where you've got the boot.

I am looking at this from a practical point of view; do you want to do this? Now, our thinking is this: once we get 90 percent of the enrollment--which we soon will have--we're going to have to control the flood. They're going to have to come to our social worker first, who will screen all the problems before they go to the attorney. Half of them, or two-thirds, may be solved in terms of working with agencies and in terms of a phone call to the attorney. So you pre-screen a substantial portion before they get to the attorney's office, and this will keep the economics down. The second thing is that we all know that if the plan gets used and the union members as such find that it is a meaningful thing, somewhere or other the funds will rise out of the air, somehow, to take care of any overutilization. And maybe the law will be amended by that time, or maybe there will be some other imaginative ways to overcome the economic problem.

But the other problem is very simple. If it has a great impact on our membership and I were so concerned, I could go back and say, "Look, for 50¢ a month, it's wonderful. You're all using it. But it's going to fall on its face. You'll have to give a dollar for it, or you'll have to give two dollars a month." And we'll build up to it. We did this with our insurance programs. We went in the early days and said, "We give 10 percent of payroll for our various welfare problems. We're negotiating 10 percent, getting $4 an hour. Forty cents an hour--you can say, hell, you have a nickel, give us 35 cents in the pocket." But you did it in small pieces at a time, and benefits went up. Each year you add another percent and over a period of years you get the co-acceptance of the membership. You're not diverting in any one negotiation big bites out of their pockets. You're diverting pennies out of their pocket gain. And you finally have total acceptance, but you never want to take away a big

hunk in one negotiation. You're not going to put into effect a fully actuarially sound plan, in my judgment, and get key acceptance by the membership at the beginning, because they're going to say, "It's too much money to put into that fringe. Give it to us in our pocket." They will accept small bites at a time.

Mr. Connerton:

Well, Murray's remarks are well taken. But let me make some additional comments. Out in Columbus, Ohio, about four months ago, the members of a laborers local unanimously voted to divert 10¢ per hour per man out of their salary and put it into a group legal service plan. The condition varies depending upon the class of worker, what they're getting, what are the benefits they've received up to this particular point, and how high their rates are. If a man is making $6 or $7 an hour, diverting 5¢ of that or 10¢ of that into a legal service plan is not an undue burden. But if, on the other hand, a person is making a fairly low salary, it's very, very difficult and particularly in those cases where other fringe benefits have not yet been negotiated. It's very difficult in those circumstances to convince that member to take some part of his money and place it into legal service program. Any questions?

Pete Cornell:

This discussion this morning will underscore the fact that the labor movement has thought of primarily in working through either a single firm or a closed panel, which seems to be moving in a completely opposite direction from the American Bar Association's experimental effort. I'd like to hear some discussion as to whether or not there is any means whereby labor's desire for these kinds of services can be accommodated to the American Bar approach, or whether or not you feel the development in this field is going to follow the single-firm, closed-panel approach and if there's going to be a polygamy in the experience.

Mr. Connerton: I'd like to recognize Bob Segal on that question.

Mr. Segal:

Sorry I didn't hear it. You want to restate it Mr. Chairman?

Mr. Connerton:

Mr. Cornell wanted to know if there is any room for a free choice plan for trade union pruposes.

Mr. Segal:

Yes, there is. If the bar association does its homework and does the work it's supposed to do, an open-panel system can work. There is Shreveport. The entire matter is the ready supply of services by the lawyer. The individual union member has in fact the choice of any lawyer in the entire

Shreveport Bar. And if his case is not in Shreveport, he can go to any Louisiana lawyer in the area where he happens to be. Here in Los Angeles they're still working on the open-panel setup and hopefully they will develop it, and it will be interesting to see whether the open panel can work as well here as it has in Shreveport.

There is also a variation in the complete open-panel system. Under this variation the user of the service, whether it be a union or another group, works with the lawyers' reference service in the bar association, and that becomes not quite a completely open panel but is limited to these lawyers in the lawyers' reference service along with specialists. The user of services uses the lawyer's referral, and he does have a choice in terms of those lawyers registered under the lawyers' reference service.

The reason that the open panel has not been used too extensively thus far is due in part to the fact that the bar associations in some areas have not been too interested, nor have they done enough work in this important field. They have been bypassed in some areas by some of the group legal plans which have arisen, 219 of them located right here in California. Some of us think that California is really sui generis, and maybe that's why there have been such developments here.

The direct answer to your question is that a prepaid legal services plan for a labor union can work with an open panel, provided you have the right parties. It isn't that unions have any prejudice against the open panel. It is the fact that the open panel has not worked in some places, and there haven't been enough attempts to make it work. In addition, some of the people who should be working for the open panel have not done so in the various associations where the open-panel situation might be promoted. I admit that it's a little more difficult to work out an open-panel system, I suppose, in a city like New York, where you have thousands upon thousands of lawyers as compared to a place like Shreveport, where you have only approximately 200 lawyers.

Mr. Connerton:

Yes, I'd like to comment on that just for a moment. We feel that what's happening in the country and particularly out here in California is that closed panels are prevailing. And it is a very serious question as to whether or not a free-choice panel can work under these circumstances. It's one of the principal functions of the ABA prepaid legal services committee to help establish some free-choice panels, to encourage local bar associations to establish free-choice

panels so that trade unions can actually have a choice between the free-choice panel on the one hand and the closed-panel system. The trade union movement has no position on closed panel versus open panel. We're sitting back and we're keeping our eyes open, and eventually I think we'll take whatever we feel is in the best interest of our membership. But it is quite true that the bar associations have been sitting back; they really have been doing very little to establish a free-choice panel. Some think that the trade union movement is coming to them with their hat in their hand, but I can assure you simply it isn't going to be so.

Mr. Topol:

You talk about New York and the problem, as I can see from what I described before, is totally consistent with the open panel. Open panel does not mean you can throw the people out into the world and say, "Hey, you've got the X-thousand lawyers. Pick one." Open panel does not include saying, "Sure, you have the pick of any lawyer you want. We've made up this panel of lawyers, and as you can see from this list they're listed by specialties . You have to take our word that we have done a good screening job, and on the basis of our investigation these people are competent. We have a commitment from them that they'll take a schedule of fees." That is not a closed panel. That's an open panel with recommendations. The Supreme Court has said and even the New York State Bar decision has said that nothing is preventing the labor union or anyone else to make recommendations to its members. And if in this system that I described it turns out the member is not only going to get a good lawyer, but a clear-cut financial arrangement which he can live with, that's very much consistent with the open-panel system of the bar association, as I see it. I'd like somebody else to tell me what I'm wrong on.

Alan Nobler, attorney, San Jose:

I'd just like to toss out a couple of ideas concerning where this may be headed for us now. One of the things that draws together with the concept of group legal is a way to educate large numbers of persons to the use of legal services and provide it to them at a cost that they can reasonably expect to be able to cover. The way we try to do it in a conference is by having a prepaid or some kind of an insurance concept, where everybody is not going to be rushed into doing it. There are a couple of key concepts that we spend a lot of time with. The first is the publicity in getting people involved in that. I operate a group in San Jose that puts out publicity on a referral, closed-panel basis. The members of the group are informed that they are entitled to

certain types of legal services at certain fees, and as they have become educated the use has grown slowly. There has not been the super rush that you're talking about.

Now, this particular type of publication and closed-panel use has been going on for some time since the bar association changed its rule to allow publicity of group plans. And as an example of the type of user, there have been roughly 160 persons so far this year who have used the service out of a total group membership of 7,000 persons. The thing that we're concerned with in an open-panel situation is how do you get persons to a competent attorney? The Santa Clara County Bar Association is also concerned with that particular problem. Toward that end they have established a current referral program on a specialty-panel basis, which they expect to be publicizing quite heavily through television and other media. They have set up qualifications to become a member of the panel in order to get referrals from the public. And this is a concept that I think all the bar associations are going to have to go to in order to really establish, to really commit themselves to the group concept. I think the Santa Clara Bar Association has the most extensive such specialty-panel basis of any bar association in the state and probably in the nation. They have a chairman who was unable to attend the conference but is very much committed to that. If anybody is interested in getting any of the materials from the Santa Clara County experience, I can put you in touch with the person you would want to talk to.

Mr. Connerton:

Thanks very much. I'd like to recognize Hugh Slate and ask him if he has any comments to make as to the type of plan he thinks can work in the state of California.

Mr. Slate:

Well, I didn't expect to be called on this morning. It's lucky I have material here for a two-hour speech. There is one system here in operation in Los Angeles County that is a hybrid and it is working beautifully. It might be of interest to Julius, Mrs. Kramer, and other people. Unfortunately, Mr. Danny Jones, who started this, is running the show next door, so he can't be in here. But I'll tell you a little bit about it. Inasmuch as I did not start it, I'm not responsible. But it's great, it has nothing to do with the prepaid feature. It has to do with getting the lawyer and the client together, and it works this way: Danny Jones and his partner went to Norwalk, right across from the courthouse, and they got a great big building there, two stories. They broke it up into a series of law offices, and then they looked around to see who they wanted

in there. Danny and his partner are personal-injury specialists and in my book they are tops. They do Workmen's Compensation also. I know of no firm better than they are. Of course, there are others that are as good. Danny and his partner then went and picked a firm that does nothing but family law, they had been doing it for about twenty years, and they put them in there. Then they went to get some criminal attorneys that do nothing but that and have done that for years. Then they went to another firm that does debt relief and does nothing else and put them in there. And there are also a patent lawyer and a probate lawyer and then two general practitioners. So, when you get through, you have a series of firms that are specialists. Everybody does one thing and only one thing, except the general practice and they do what they want to.

Now, word of this got around and this has been going now for about two years. During this period of time, various groups including labor unions have approached the Southeast Law Center and have asked, "Can we come in?" In fact one union with 4,000 to 5,000 members even set up headquarters down there. It works this way: There is no charge to the group for the affiliation. Some of the labor unions say, "We want to pay you one dollar a year." I know what that's for. They can tell their members, "Look what the union is doing for you. Re-elect us next time." Well, that's their business. We don't care. If an organization is affiliated with the Southeast Law Center, any individual member of that group has the right to get free advice. I say free, it's without charge to him. He can telephone or he can come in in person. If he telephones, there is no charge for the call inasmuch as it comes in on a Zenith line and it is in effect a collect call and is paid for by the group. There is no charge to the man for the advice. He knows two things: First, he's talking to somebody that knows what they're doing in that field. And second, he knows he's not going to receive a bill for $30 or $40 for the advice. Now, beyond that, if he wants criminal representation, whatever he wants in the way of legal representation or services, he will be quoted a fee in advance. He can say yes or he can go down the street to someone else. No obligation whatsoever.

In essence, that's it. In not quite two years, there are roughly 60,000 to 70,000 individual members of groups that have approached the Southeast Law Center and have asked to join and have joined. And they range all up and down the state. Some of the calls you get are nuisance calls, but look at it this way. If you have a splinter in your finger and you go to your doctor, he either takes care of it properly or he doesn't. If he doesn't, when you have that appendicitis

attack, you're not going back to the same doctor. So our theory is, you better take care of the little problems of the man, and he'll come to you with his big problems. Anyone interested in the Southeast Law Center, Danny Jones is listed in the program. He is a speaker, and he can give you full information.

Mr. Leventhal:

Before you get away, you oversimplified. There's a very important element that we've looked at in the Southeast Law Center: the use of the central switchboard where the union member who calls in is identified as a member of a given union, and where a short notation as to the nature of his problem and to whom he was referred is made. The attorneys that are participating in that plan also keep records and these records are turned in monthly. Now, it happens that the engineers' group that I work with, we are referring into that center and we also have some other referral attorneys because of the wide geographic dispersion. I haven't the foggiest notion of the utilization of the engineers in the Hollywood and the San Fernando area, but I'm able to obtain--and have been able to obtain from the last 18 months reports--the number of individuals who have called in, the categories of calls, those which actually went to the attorney, those that became cases, and the approximate number of cases and what these involved. From this, we are able to at least take a look and make a wild guess. At least now, there exists some hard information on diverse labor groups from a highly sophisticated group of attorneys. And we probably don't have, oh, I would say maybe 2,000 members living in proximity where they would make these calls. They're calling in on the average of well over a hundred a month for consultation, as opposed to I think, Hugh, you've got some groups calling down there where they have 30 or 40,000 people in the immediate area. They're not calling as much as the engineers, and this is now known. Of course, I'm afraid of what the cost consideration will look like when we try and prepay for the attorneys.

Willard Converse, St. Paul:

Yesterday we heard from some California lawyers the question of when some report from some California ethical bar committee was going to be made public. Has what they're considering anything to do with this Danny Jones' plan as to the ethics?

Mr. Slate:

The representatives from the state bar including Jay Lutz who is here at this convention have been to Norwalk several times and all statistics have been made available to them. Literally hundreds of inquiries and cases come in,

ranging from a dog bite to a good accident case. I don't want to overrun the time.

Mr. Connerton: Does anyone have any further questions?

Mr. Rubin, attorney, San Diego:
In dealing with a small local union that doesn't have union representation but is interested in prepaid legal insurance, do you see any particular problems that would result if you also offered to the closed-panel setup to handle the union legal affairs as well as the affairs of the members at the same prepaid cost that the individual members would be paying? I see the potential conflict of interest from the members of the unions, since it's not coming out of the employers by way of collective bargaining agreements. You wouldn't have those problems. But other than those, do you see any particular problems about that type of approach as an inducement?

Mr. Connerton: Jules, you want to say something on that?

Mr. Bernstein: Is the question addressed to the conflict?

Mr. Rubin:
Yes, in other words, what you're saying is here's a prepaid legal service plan for your members. Then they said, "Yeah, we don't even have an attorney for the union." So the comeback was, "Well, if maybe a majority of the members enroll on a voluntary basis, we'll throw in the representation for the union at the same rate."

Mr. Bernstein:
Well, you have something like that system in operation right now on an informal basis. And that's one of the problems we have with the profession, even in the practice of labor law. A very strange method of distribution and production of legal services exists. As a matter of fact, some day the ABA ought to call in some specialists who know something about the economics of distribution and say, "Take a look at the legal profession." And they'd probably come up with some very startling results.

What I was getting at a moment ago is that I have heard it said that there are some unions around the country that have an arrangement with lawyers whereby the lawyers receive all of the referrals of personal injury cases that members bring to the union and at the same time the lawyers represent the unions for a relatively nominal fee. Well, my general attitude about legal representation is that you get what you pay for. In the situation I mentioned, the unions' representation must take second place to the PI work. But the better

union firms in this country are fairly compensated for their labor work.

The free market system is a very stern disciplinarian. I attended the University of Chicago Law School, and anyone who knows anything about it is aware that the U. of C. campus is dominated by a group of Adam Smith-type economists, such as Milton Friedman. But on some things, I think they make sense. We've got to give credit where it's due. Now, one of the cardinal rules of the free market is that the inefficient producer must fall by the wayside. But for many reasons, as far as the legal profession is concerned, this simply does not happen. And why not? Because there is no efficient market mechanism functioning. The producers and consumers are just not engaged in any kind of real commercial interchange. There is no true shopping or competition. So we wind up with a very inefficient situation in which the marginal producer remains in business forever. Indeed, if we produced automobiles in the same way we produce legal services, a Chevrolet would cost $30,000 and one out of two wouldn't run. In fact, this is the dirty little secret of the legal profession.

Too often, when a summons and complaint have been served on a union I have represented, the only conclusion that I have been able to come to is that it's been prepared by the village idiot. Bob connerton and I have been defending a suit against the Union in which the plaintiffs have a claim which is at least worthy of being litigated, but we have had the complaint dismissed four times over the past two and one half years on procedural motions. We think we are providing our client with the kind of representation that it is entitled to in an adversary system. But insofar as counsel for plaintiffs is concerned, he ought to be driven out of the profession, since he can't even find his way to the courthouse. Now the market, if it's functioning properly, will do something about situations like that. The charlatans and incompetents will be driven out.

Let's take the minimum-fee problem raised earlier in connection with Anne Kramer's presentation. It may very well be that actuarally each member will use up only one of his four hours of entitled benefits, so that at $9.00 an hour you get up over the $35.00 minimum-fee schedule problem. But where does the $35.00 figure come from anyhow? What economic facts were relied upon to establish it? How much inefficiency goes into its calculation? It may be that with group legal services the minimum-fee schedule will go by the wayside and the legal profession will have to face up to the pressures of a true market mechanism at work. In the

background of the issue of providing legal services to those who presently cannot afford them is the equally pervasive issue of how legal services are presently produced and distributed. I am afraid that that question has not received as much consideration at this conference as it deserves.

Mr. Connerton:

Well, unfortunately, Jules, we can't cover all that in about an hour and a half. So, to answer your question directly, I don't believe there's any conflict of interest between a law firm representing a union and at the same time representing any members. I think that was basically what you're asking. I don't see any conflict of interest at all. It goes on every day that I know of and the people who are involved get quite satisfactory representation. With respect to some of the other matters that Jules was mentioning, we're talking about subjects which we could discuss for years, such as the use of paraprofessionals, the use of law clerks, the use of students for delivery of legal services, and the whole matter of using either union representatives or social workers for screening persons as they come in for service. I think what we see going on here in the state of California, if my sense is correct, is that a number of Mom and Pop law firms are going out of business. And the law firms are restructuring themselves in much the same way the medical profession restructured itself to provide the type of services that are necessary to keep up with the times. Any further questions?

Floor:

This may be the wrong rule, but from what I've heard, apparently no one seems to worry about minimum-fee schedules any more. And I'd like to have some comments as to whether they are now a thing of the past or only to be worried about in small communities.

Mr. Connerton:

You know, this raises another extensive subject. But I would say, looking at it from a standpoint of a trade union group that's interested in providing legal services for its members, one of the matters upon which it wants to bargain with the bar association of any particular group of lawyers is fees. We're concerned with two things: 1) quality of services and 2) reasonable fees. And I don't think you'll find any trade union group prepared automatically to accept any fee schedule that any bar association sets on its own without reference to the group involved. Any further questions?

Stephen Davis, New York:

Manhattan Island of New York County has no fee schedule and the lawyers are not starving to death. I don't think minimum fees is a necessary item. There are prohibitions against advertising. I'm not quite sure if this isn't one of the problems to overcome with the bar association as opposed to the item of minimum fee. Should there be advertising, and what kind? It appears that here in California you're allowed to advertise a group now. I'm not quite sure where it's leading to.

Mr. Connerton: Would someone care to comment upon what that situation is in California?

Emil Berger, Sacramento, attorney: Rule 20 prohibits advertising. It simply permits the setting up of group legal services or prepaid legal services, as I understand it.

Floor:

As far as Rule 20 and advertising group legal services is concerned, the group can advertise the fact that it does provide a legal service. It cannot advertise the name of the attorney who is providing the service, and all work that comes through that basis has to come through the group and not from the attorney. And they can't advertise to the group members by their own publications or whatever; they can't put it in your public.

Mr. Connerton: I was reminded that Rule 20 has been considerably elasticized and it's under study by a committee of the California Bar Association at this time.

Bob Segal:

I understand here in Los Angeles there is no minimum-fee schedule. But I think the problem that has been raised touches another area that I don't like this conference to go away from. We've been emphasizing the delivery of the services, the idea of how we protect the lawyer. I think it would be better to make sure and talk about the user, the kind of thing that Jules is raising, because that's where the emphasis should be from now on, rather than just on the delivery of the services. Unless the user is protected, we'll find all these pressures and the delivery will completely change the legal profession. I'm not saying that's wrong or right. I'm simply suggesting that unless we recognize the user with far more credit than we've given him in the past--and the patterns of the user should be studied--I think we're missing the boat with this panel as well.

Mr. Connerton:
Any further questions?

Art Reinhart, consultant in the health field, now in the legal profession:

My associates think that I should see a psychiatrist. I'd like to make a comment. When any group regardless of whether it's a closed- or an open-paneled group goes to a union to present a legal program, very sophisticated people are going to look at all the costs of that program. And unless the cost is itemized precisely and makes actuarial sense, you're not going to get your foot into the door. Now, I have considerable experience both in the health field and subsequently in the legal field. I just want to comment that in spite of all the conversations that go on, the lack of actuarial data and the proper underwriting of the program, you're not going to get very far until you have something concrete financially that the unions can depend on. And I think that the union attorneys will concur with my comment.

Mr. Connerton:
One final question. The question was, do we come back here for the workshop reports? I don't think so. Thank you very, very much.

WORKSHOP NO. 2

THE INSURANCE INDUSTRY AND SERVICE PLANS

Ralph Jackson, Chairman
Charles Goldberg, Reporter

Good morning, ladies and gentlemen. Let us focus once again on some of the financing and funding aspects of the Shreveport plan. Upwards of $14,000 was put into the plan by virtue of a 2¢ per hour contribution, which amounts to approximately $40 a year. I really think that the average would be closer to $32 in a building trades local such as this. Now, that in my opinion will pay for the program, but the American Bar Association has paid all the administrative expenses and the Ford Foundation stands ready to pick up any overrun at the end. But apparently that money won't be needed, and the Shreveport plan may be self-sustaining. We didn't want to go in it without these extra guarantees, but I would say it's self-sustaining because we have $5,000 in claims against $14,000 income. I think the administrative costs will not be any more than in health care programs. I can't see any additional work from an administrative standpoint. That would mean that an insurance company would not have to have a much greater retention for handling this kind of work than it does for the normal medical program at this time.

Would you please state your name and the organization you represent if you ask a question or make a remark?

Bob Franklin, Occidental Life:

Mr. Jackson, two things. First, you speak about so many claims as of today. My impression is that what you normally have is a curve of claims unreported, representing a very substantial liability to the fund provided the individual started a legal process and is entitled to finish that legal process and have it covered by this fund. Second, if the so-called annual premium is about $14,000, under normal circumstances $5000 administrative costs would be very high; do you anticipate a beginning, get-ready cost and less in the future? What do you anticipate as probable?

Ralph Jackson.

The administrative cost that I'm charging is simply because it's a brand new venture. I had to devise all the forms, the claim procedures, the bookeeping practices and all the other administrative processes. It had never been done before, and so I think the charge is low for doing all that. But from the way the program is developing, I don't

anticipate any greater administrative overhead for legal plans than is necessary in the present case of welfare plans and other insurance company overhead. I think 10 percent would be high. For a big plan I think it would be about 3 to 5 percent. My experience has indicated that there are no unusual kinds of administrative costs attributable to the day-to-day working of these kinds of plans that are not present in other group insurance programs. Now, as to the reserve for an incurred but unreported claim, we're trying to find out how this curve will develop, that, of course, is the purpose of the experimental program. What kind of lag do you have and what kind of buildup? We all suspect that it will be far greater than that which we have in medical programs in which you run perhaps a third of premium and have a 90 to 120 day lag that you have to account for. We have every reason to believe that in legal cases that extend over a long period of time (in Chicago it takes 5 years to get to trial) you will have some longer factor there and we're trying to find out what it consists of.

So any statement that I might make about the $14,000, annually or 2¢ per hour handling the costs of Shreveport is subject to this and many, many other variables that we don't know about. These are only the first hard figures that have ever come out of any kind of working program of this type. As was pointed out, this is certainly not a typical kind of group either. It's not a very representative group, but it's the only one we have. We have the cooperation of the bar association, a management association, a labor organization that wants the plan, and is willing to pay at least some of the costs, and other money is available. You have to have a state insurance commissioner who is willing to allow such a plan to operate. In Shreveport we have a group of about 600 laborers that meet these conditions. They are about 90 percent black, have a high rate of illiteracy, a past history of very low usage of legal services, a median income of about $4500 a year. So, it's far from being a typical group, but put together with other groups the figures they produce could be meaningful.

George Denney, Washington D.C.:

You have said, and Mr. Liggett said, that it's just a question of time until the insurance industry comes into this in a large way. What puzzles me and what I'd like to hear from someone is this: of all the institutions in this field that have the necessary financial resources to fund a pilot program or do some experimentation, it ought to be the insurance industry. The puzzle is why some big insurance company hasn't put together a small pilot program, and then get the data that it needs to go on and get into it in a big way.

Mr. Jackson:

That's the question that I intended to ask this group. Why isn't the industry willing to put a little money into research and development in this field?

Floor:

I'd like to back up a little to the last question and lead into this. Of course, I know in Shreveport this is a little different: you have a plan that has pre-authorization; you would have no life reserves; you would, of course, have a reported reserve that could make quite a bit of difference from a liability point of view. I don't want to pin that down, but you could control it at the other end by your provision as far as what you mean by extended coverage. The main problem there is the ethics in the legal profession. Once you have a client-attorney relationship, are you going to work for the rest of the life of the case, for instance? With regard to expenses, in the development of the preliminary plan in Los Angeles, we used 50¢ per employee to cover the family, regardless of whether one-half of the program or the full program was approved.

Now, this was another extreme, but I think it illustrates that really what it revolves on is a certain level of overhead expenses that are pretty well fixed regardless of the group, and an additional amount, I think a minimal expense, for each covered member. And then beyond that, the actual volume that is involved doesn't increase proportionately at all. Now, how could we know that it's going to cost 50¢ per month? It would depend on how many there are. A great deal can be done not only in expense data but also in the basic risk of coverage by more or less model building, using other data that is available by analogy from some other plan, putting things together that can give you a range of certainty that is in my opinion acceptable. The opinion of insurance companies today has been that it is unacceptably broad. I think that there is a substantial interest in a number of companies who are going to take the next step which presumably would include a pilot program on their own.

Mr. Jackson:

Is there anyone here who may want to go further now and answer Mr. Denney's question for the insurance industry? Why we have not had a pilot program started earlier?

Floor:

Well, I'm not speaking for the industry. But as far as I can see, and from past inquiries we've had from occasional brokers and trustees, there's a complete lack of data. But there also seems to be to a large extent a complete lack of interest from the grass roots, you might say. From what I've heard discussed here today, not necessarily by the speakers, but by other people who are here, it appears to me that these plans were put together many times merely in order to increase the practice of the participants. And so many of them obviously are trying to get the individual into the door, so to speak.

Mr. Jackson:

Do you know of any insurance company that has thought about or tried to take a marketing survey in this field? To endeavor to determine the real or grass roots demand of the consumer group?

Floor:

No, I don't know of any. The thing that is really disturbing me is that, for example, the Los Angeles plan is equivalent to writing a dental plan that provides office examinations or mouth examinations and cleaning the teeth, period, unless you take the second step. And I wonder if it gets started that way, are we going to make the same mistakes we made in dental and also in medical care? In protecting the future, it seems to me that the man who is going to need insurance and buy the plan is the man who is going to be involved in the long-term legal case.

Mr. Jackson:

You mention early mistakes in dental care; I wonder if we might elaborate on some of these mistakes.

Floor:

I'm just stating a point of view, but from the standpoint of a profession, the profession doesn't necessarily feel that it's a mistake to try to provide the maximum coverage for the preventive type of service, which is what I think this gentleman is talking about. It does not necessarily cover the catastrophic event, the major operation or the major lawsuit. From an insurance standpoint, of course, you can say that it's the catastrophic event which we should be covering, because that is the one that is really going to wipe a person out economically. But this is not necessarily true, and I don't feel that it's necessarily a mistake from the professional standpoint to sway your coverage toward the preventive type of service, with the hope (which is not too well documented yet either in medicine or dentistry and certainly not in law) that in the long run these plans are going to have an impact and benefit people by encouraging them to come in and get preventive service. They will not need the catastrophic client, they could care less.

This is a theory. In the dental field, there are some data now that indicate that there is validity to this theory, although I don't think there's enough data yet to satisfy everybody. But this is the approach that has been made to some extent in some types of plans. And it is the approach which has obviously been taken in this Los Angeles legal plan. I don't think it's a mistake. I think it's a valid approach, but it's not necessarily the only one.

Fred Kilbourne:

I believe that it is going to be essential that early plans be modest, because the public doesn't care about legal services yet and they're not going to pay, nor are employers going to pay on their behalf, as much as would be required for across-the-board coverage. You could spend a limited amount of money and have very high deductibles with catastrophe coverage, but legal services are particularly ill-suited to this because costs are often highly predictable. Basic legal services are needed by the middle-income population, but the impetus for the program is going to have to come from the professional bar organizations or from groups of lawyers, because, as was pointed out, they are the ones who have the interest right now. And they can provide the risk assumption that is critical for an insurance company to get the feeling that the lawyers are involved. Bar associations, in common with all professional organizations, don't have very much money. Insurance companies do have money, and they will invest it in a profitable venture. So, perhaps a reasonable approach would be an 80/20 split with the insurer taking the larger share of the risk and the bar association the smaller share.

Mr. Jackson:

Fred, in your statement about the lack of interest, does it mean that you think there is no need or that there is no knowledge or appreciation of need?

Mr. Kilbourne:

I think that it is very definitely the lack of knowledge, rather than the lack of need, that causes public apathy with regard to legal services. The CTA questionnaire in the Handbook shows that the people who responded had had problems that fell into areas where lawyers profess expertise, that these people recognized that lawyers could have helped them, and that they would have been willing to pay a dollar or two monthly for prepaid legal services. So you have to start off by saying, "Well, let's make it $5," and then you have a program which, hopefully, will later grow.

Mr. Jackson:

Is there any representative of any other insurance company here other than Occidental? (About eight hands) Does anybody want to speak further on the question of why the industry has not gotten into the field as yet?

Anthony A. Kjellgren, Firemen's Fund Insurance Company:

I am in no position to answer that question. But I would like to ask another question.

Mr. Jackson:

Is there anybody who would like to answer? We don't want to put anybody on the grill, but if there's an answer let's have it. Yes sir.

Richard Block, Pacific Employers Insurance Company:

I can only add to the gentleman from Occidental. Perhaps with a little more enthusiasm for the program I think that an insurance company, any insurance company, could have a demonstrated interest in a new program, even though it's untried, if there is something to indicate that it might have some chance of success and contribute to the profitability of the insurance company or the insurance industry, and that company might participate or have a piece of the action, if you will. But I, like the gentleman from Occidental, am impressed by two significant things that have come out of this conference. One is the substantial lack of any kind of meaningful actuarial indications as to what would happen with such a program, when you get into a program of somewhat larger size than the Shreveport program. Secondly, there seems to be a lack of real definition of what the need is. And I think it comes from the fact that contrary to medical and dental programs which may have been initiated certainly with the blessing of the respective professions, they probably had their genesis in a little more enthusiasm from the group benefiting. As I recall, Mr. Sloss last night indicated that there were groups, longshoremen, who badly wanted to have some dental care. I think if a group were to stand up and say, "Our members want legal services and are fishing to find it", it's a little different kind of a thing than lawyers trying to generate a plan without knowing whether there is a group that really needs it. So, with these two unknowns, I would imagine that you would find the insurance industry standing in the wings watching very closely, taking a keen interest, but not yet ready to perhaps invest its own funds until it has a little more of this information. That is not entirely, I think, a fair generalization of all the insurance industry, because I'm sure there are those in the industry that will utilize some of their facility, even though they are not underwriting the risk itself. It can aid, guide, direct some of the experiments that are going forward to resolve the necessary data.

I will amplify on Mr. Kilbourne's remarks by saying that I think maybe some form of experimentation is desirable, and maybe the participation of the insurance industry would tend to validate or add credence to that already developed and maybe some of the insurance expertise could add the refinement that is necessary to make it usable to the industry-such things as emergency IDR, the method of actuarially calculating how the reserve is going to be established and what reasonable administrative expenses should be incurred. I would suggest that one of

the things that encouraged me was that Mr. Kilbourne suggested a modest program in terms of the individual's contribution that may be necessary. But it seems to me that you need a somewhat broader group of people, a larger experiment if you will, in order to make it creditable. I think the Shreveport plan is certainly an excellent beginning, but whether it's large enough to do anything further is another question.

There is one other comment that I would like to make, which perhaps does not answer the question directly. But I will have to say that of all the conferences that I've gone to, bar-related conferences, that this has got to be one of the most stimulating and interesting and well-prepared conferences I've attended. I really think that whoever planned it deserves a great deal of credit, because it's one of the first ones where I went home lastnight and was arguing with myself all the way home about the merit of the whole thing. And I lay awake fighting with myself on a lot of the very initiatives that were raised. Let me take off my insurance related hat for a moment, and throw on my lawyer hat and just ask some questions that may or may not be related to the subject matter.

Mr. Jackson:

I wonder if we might finish with the insurance, and I'll be glad to come back on it. Does anyone want to speak on that? The sponsors of the conference would particularly like to know how they might interest the insurance industry in coming in and helping with pilot projects.

David Feintuch, League Life Insurance Co. in Detroit:

I think we might draw some parallels between the problems of watching this program and the attitute of the insurance industry in perhaps a separate field, and that is Directors' and Officers' liability insurance. In the last few years, there has been the cost of defending the claims, defending lawsuits against the officers, and the companies are being hit hard by their demand for the insurance. Yet no insurance company wants to get into the field. There are two reasons for this. First, there are no actuarial data available or not enough upon which to commit a company as to the possible loss that it might be assuming. Secondly, and more important in one way is that the companies don't know how to go about making underwriting decisions as to who is a good risk and as to who is not a good risk. The only way they can break the vicious circle is to insure people and find out the hard way; every company will be delighted to watch another company's experience and learn from it.

Mr. Jackson:

The buyers are paying mostly for a feeling of security and the question is how much is this worth.

Floor:

You're going to find one or two leaders who may be loss leaders who are going to commit themselves first to various types of programs, probably with very little coverage, and the rest of the industry will begin to draw conclusions from their experience. And if it is successful, then you will see an increasing momentum of the industry toward that field. Really, the task is not to interest the insurance industry as such in this project because they will not come in before they have data, but 50 interest one or two companies in order to start the industry moving.

Mr. Jackson:

Yes sir. Anyone else?

Steve Gilbert, Motor Club of America Co:

I agree with Mr. Feintuch with great hope, and I agree with the last gentleman. I heard that some companies are devising insurance policies and are going to market them in the near future. So therefore I think that there will be some insurance companies going in, but the great bulk of insurance will tend to back off until the data come in and see what they want to do about it. One other problem, just a legal problem, as to why the insurance industry hasn't gone into this before is the pure fact that it is legal and it is most dangerous to the insurance industry. I'm very curious about California, and among the materials is this prepaid legal service going out from Nationwide Coordinators Inc. There are others, but this is a brochure on an insurance policy, and I'm wondering what the California insurance commissioner has done. I know that I've spoken to Kehoe and he informed me that the commissioner had discussions with them on the LA plan and that they're sitting on the background. I'm wondering what the California insurance department says about it.

Mr. Jackson: Would any California lawyer like to give a quick answer to that, or anyone else who is familiar with California insurance laws.

Floor:

There is a specific law with respect to health services, and it provides for a degree of regulation for the service corporations by the attorney general. But there is nothing similar for legal that I know of. Just before I left from Milwaukee, the Wisconsin legislature amended its insurance act

to permit companies to write prepaid legal insurance.

Floor: What category does this fall under then?

Mr. Goldberg:

The answer to that question is that the insurance commissioner, of other states take the position that it doesn't fall into any category and therefore insurance companies do not have the right to write such insurance.

Floor: Unless it is authorized.

Floor:

Unless it is authorized, with Congress amending a statute to permit it. In New Jersey, I know it is our feeling that this would be written. We have yet to enact enabling legislation to permit an insurance company or any other type of legal prepaid company to write it. So, I'm questioning really how California can allow this one I've mentioned, and perhpas others, to issue these policies, whether insurance or not.

Mr. Jackson:

We're going to move on, I think, from this question to some of the others. This has never been stated at this conference to my knowledge, but I think it should be made part of the record that there exists another special committee of the American Bar Association that is doing work very closely related to this field. It's the Committee on Legal Needs, and it has been formed for the specific purpose of conducting a national survey to determine whether there does in fact exist a large demand for legal services, a large unmet need that is not being taken care of through present methods of delivery. Mr. Randolph Thrower, who recently resigned as Commissioner of Internal Revenue, is chairman of the committee. It has held two meetings since it was formed in September, and in due course they expect to publish the first comprehensive national survey that was ever made on whether there does in fact exist these needs and what the attitudes of the people are about them. Hopefully that and the other developments in progress will encourage the insurance industry to get in and help us develop some data to test the prepaid concept.

Now, there was one question that I promised to come back to.

Floor:

Mr. Kilbourne, you mentioned that in the California plan 50¢ was allocated for the insurance risk.

Kilbourne: For the expenses.

Floor: I turn it around, 50¢ of the three-dollar basic plan is for expenses. The $2.50 is for the prepaid legal. Is that correct?

Kilbourne: Yes.

Floor: Could we ask how this was developed?

Kilbourne:

Well, it was developed in a series of actuarial ways closely akin to those underlying the $2.50; in other words, by drawing on the experience of other types of plans, recognizing the shortcomings in applicability to the proposed plan; by model-building which, in the case of the basic $2.50, means breaking down cost into utilization rate and average claim components, using analogous data and other information such as questionnaire results. The problems are less severe than in insurance lines such as medical malpractice insurance, for the average claim under a modest program of prepaid legal services such as the Los Angeles plan is predictable with a reasonable degree of accuracy. This leaves the utilization rate to worry about, and, if the preventive law aspect is to be emphasized, an assumption of high utilization can be made with margins used to build a contingency reserve. Accrued surplus could be used to expand the program. Any accrued loss, of course, would be borne by the participating lawyers.

Mr. Jackson:

I might point out some interesting figures on utilization of legal services. Some minor surveys have been made over the years. Professor Coos surveyed some 2,000 lower-middle income families in Akron, Nashville, Oakland, Worcester, and Seattle. He found that 36 percent of the families had legal problems, 30 percent could recognize the need for legal services, and 15 percent had contacted an attorney. The culinary workers had a short-lived plan here in Los Angeles. Twenty-five percent of these workers thought they had some legal problems. Emery Brownell, of the Legal Aid Association says that the need for legal services among the poor is at the rate of 20 percent of the total population. The Navy recorded 20 percent usage of legal assistance by its personnel at the height of wartime enlistment. In Shreveport the usage of our program has been exactly 20 percent. The people who did use lawyers in the year immediately proceeding the program amounted to 10 percent. Many of us in this field have the notion, not yet verified in figures, that we will eventually find that the availability of group services of this kind will increase the usage of legal services among the people by 100 percent. If 10 percent are using lawyers now, the figures perhaps show that 20 percent will use a prepaid program when it becomes

available. Incidentally, the OEO figures are very close to 20 percent, too, I think. Does anyone have another problem they'd like to broach?

Floor:

I would like to comment on the figures of the California teachers, whether or not they merely demonstrate a need or a willingness to pay. As I looked at those figures, the response of some 65 percent of those surveyed shows that either they weren't interested at all or that all they would be willing to deduct for a premium was $1 to $3 of their income. That doesn't show a great deal of a margin for a reasonable premium from what I've heard so far. I'm glad you got some financial backing in your Shreveport plan, because I don't think you've really gotten to the point where you've seen a lawsuit yet. But really, I haven't heard it demonstrated yet that there is a market, and if there is a reluctance on the part of the insurance industry it may very well stem from the fact that a market has not yet been established. It costs a lot of money to even inaugurate a plan, let alone put it into effect. And if there isn't a market, I think you've been wise in waiting to see how many participants you pick up at $3 a month, starting January 1st or as soon as your solicitation gets going. But how would insurors feel about a group of 10,000 employees?

Mr. Jackson:

I think a group of 10,000 employees would be a pretty good test. Now, tell us how much they're going to pay? How much do you want them to pay?

Floor: Substantially more than $3 a month in our book.

Floor:

I would like to distinguish the two things you were talking about, the actual need and the demand and desire. A lot of us can talk about an unfulfilled and unrecognized need, and the questionnaire does demonstrate, I think, a need. You don't have to have a 100 percent utilization of a benefit or anything like that in order to still have a substantial need. The need for appendectomies is low, but it still represents an insurable need. As for the premiums that are involved, I was somewhat concerned about having in the questionnaire selections of one to three, and four to six, and so forth, because, you know, I'm going to give you something, so how much do you think you ought to pay for it, $50, $20, $2, $10, or $20? You know, people, I think, are actually going to say, "Well, maybe you ought to put the lower one down and skip the higher one because you're going to take it, because we're dealing with lawyers and you can be sure they're going to take it, the higher one." So, again, on the other hand, if it had been omitted

entirely, do you want a plan, are you willing to pay anything for it? You might even have had less of a decision.

Mr. Jackson:

The gentleman who was describing his plan. You said you had figures. Would you like to tell us briefly what they indicate to you insofar as need and demand are concerned?

Louis B. Mulvey, Legal Aid Warranty Fund, Santa Ana:

There is indeed a demand. As far as the rates are concerned, we presently operate on a dollar a month, and we're a non-profit corporation. We have twenty persons on the staff now and manage to handle every single call, we have 100 calls a day, sometimes six days a week. We have two years' experience available through the Fund. You can call us and I'll look it up. So far as the ability to pay is concerned, union members go out to the grass roots, three dollars a month is not unusual. However, for a dollar a month, we've managed to take care of the problems in civil and criminal areas of everyone who calls on us. But if you want statistics we have them. (714-825-1644)

Mr. Jackson:

Thank you very much. I would like to bring back into focus, if I may for just a moment, the position of the American Bar Association and the organized bar in general in connection with the whole idea of prepaid legal services. The interest of the organized bar was in trying to make sure that our method of delivery of services was performing the job in society that our citizens have been led to expect. In regard to the availability of legal services to the broad spectrum of the general public, we've always known that the practice of law as it has developed in this country has largely been a function of money. We have begun to realize, lately, that we can not live forever with that concept and that personal problems represent a real legal need as well as money problems. And so the interest of the bar is trying to devise ways and means of making services more readily available. The impetus upon the part of the organized bar has not been to have simply a vehicle by which lawyers could make more money. I can't believe that making available legal services to these large groups is really going to increase to any great extent the amount of money that lawyers make or the total income of lawyers. But I do think that there's a need for research for some better means of organization and delivery. The prepaid area is only one of several approaches that can be used to help do that.

Mr. Goldberg, would like to add anything from the standpoint of the organized bar?

Mr. Goldberg:

Not really, I think you stated it quite well. I think it's most important to understand some of the thinking, and the focus of thinking in the ABA was a series of cases that held group legal practice to be beyond the reach of ethical situations. The group legal practice generally consisted of a group retaining 8 firms or a half dozen firms of lawyers who would take care of the members of that group, whether it was the mineworkers or whoever else it may be. Availability of legal services as suggested by the American Bar Association went to undertaking an experiment on the reverse side of the coin to see whether or not something like the Blue Shield, Blue Cross experiment which worked quite well for medicine would furnish some leads for the bar so that there would be available to the middle-class person--not poverty stricken because OEO, legal aid, is there; not to the affluent, he's never had the problem of getting a lawyer, but to the middle-class person to whom the lawyer was somewhat of a stranger. He was afraid of him, he didn't want to go in, he cost too much, he has a bad image. How do you get that middle class person served?

We're convinved that preventive law is as important as preventive medicine. What few statistics we have been able to develop simply indicate this--that one person of that group before the plan had gone into effect had sought a lawyer's advice before he was dragged into court as a result of a subpoena. In other words, he had to go whether or not he had a lawyer, he had to go there involuntarily. He was being arrested, he was being sued, he was required, he had to, he had no choice. Under the plan, however, there's been a substantial amount of counseling, advice, consultation, teeth cleaning, if you please, medical examinations to catch the cancer before it's too late. This is what we hope to bring to the large majority of middle-class America.

Now, does the insurance profession have a part of that from the social viewpoint? I would think so, wouldn't you? I would think that there's more to it than is it just profitable? I think that's important. I think the insurance industry, if you please, owes some sort of social obligation in its field. There are places in the world in which the business of practicing law is nationalized. We hope that won't happen. Now, let me say, too, in my posture as a past chairman of the board subcommittee on prepaid legal care, we did go to the insurance industry and we got nowhere. At least we made overtures to a number of groups. We got some slight, "we'll look at your plan and give you our opinion on it." But, I lay it to you gentlemen, now. Do you think it is a worthwhile effort to bring to

the kind of people I've talked about the possibility of legal services? Is it worthwhile? Do you have a possibility to participate in it? I would hope so.

David Feintuch:

I have sort of a half-question half-comment, very much related to this that I'd like to hear an explanation for. And that is, we talk about prepaid legal services as a kind of walled-off area in a corner of the legal profession and the insurance business. It's kind of a great wall people are beating their heads against, and that is restraining this thing from getting into circulation. In reality, there are a number of areas in which prepaid legal care already exists, only it isn't called prepaid legal care. I can think of three offhand: I mentioned before Directors' and Officers' liability insurance. The primary benefit of that insurance is prepaid defense. It's a closed panel because the insurance company chooses its lawyers and conducts a defense. Or, take automobile accident cases, where the insurance company conducts a defense. You are buying this coverage in your premium. Third, all across the nation Triple A provides legal services in minor accident cases, or, rather, it provides funding for legal services in open-panel arrangement. Now, why is it that we encounter reluctance by the insurance industry here to get involved in prepaid legal services? Apparently, it can cover all the other areas.

Mr. Jackson:

That may be the heart and crux of what this session is about. It seems to me that the insurance industry is already in the business of prepaid legal care to a very great extent. What we're talking about here is simply a logical extension of what the insurance industry is already doing in the casualty field, which is to a very great extent simply to provide legal services to defend people against a painful lawsuit. That's why I think we have high hopes of getting an internal revenue deduction for legal services, at least to the extent that we can show and define them to represent a kind of casualty loss, like having your automobile stolen or your pocket picked or an accident. And from that standpoint it seems to me that the industry is already in the prepaid legal business to a great degree and logically will get into it to an ever greater extent. Prepaid care does not exist as a separate legal concept in one room and as an insurance concept in the other. I think it is one unified concept.

Floor: You might add to your list malpractice insurance.

Floor:

Presently we have 600 members in our police department. We have a total of $72,000 a year in reserve for legal fees occuring through our problems that we incur civilly, criminally, and interdepartmentally. Last year we spent $45,000. We now have a trial going on that is going to knock us in the hole, at least $40,000 to $50,000 in it. If you want a program and if you want a group that will go on with the program such as it is, come up and see us. We need it and I'm sure that you'll find 100 percent participation. We've already talked with San Francisco and Oakland between our three major departments of Northern California. We have a total approximate membership of 44,000 men . At $10 a month, it cannot be a modest plan, our problems are not modest. So, if you want an experiment or our cooperation, if you want something that you can work on to draw some data, the other side of the coin that would be the most demonstrative, come and see us. We need help.

Mr. Jackson:

Thank you very much. If you will give the name and address of your group to Charlie, and I'm sure that he'll make that part of the record of his committee; they'll be very happy to see you about that. As I've said, the thing that I've seen the least of at this meeting is groups. I've seen lots of plans, but just a very few groups and hardly any actuarial data. Is there anyone else that would like to contribute any idea, amendment or comment?

Mr. Kilbourne:

For over 50 years employers have been paying money for Workmen's Compensation programs that include employer liability coverage. I think there is an analogy there, but I do admit that the subject must be carefully evaluated. No employer wants to provide funds that will encourage his employee to sue him.

Floor:

I'd like to just make one more comment about the difference between prepaid legal and prepaid medical. I hadn't heard it mentioned today and I want to describe it. In prepaid medical illness and disaster is no respector of persons or property; it cuts across everyone. One of the problems in prepaid legal is that legal needs are to a large extent self-triggered. And this is one of the problems that actuaries have, that insurance companies have, in the computing of a rate. We cannot look to the dental or the prepaid health services for anything

in the way of statistics at all, it seems to me, without taking into consideration the possibility of self-triggering. I think it's a very important point that somebody is going to have to consider somewhere.

Ralph Bull, Toronto, Ontario:
You said, sir, that Wisconsin has passed legislation embracing legal...

Floor: ... authorizing companies to incorporate that profession...

Mr. Bull:
Well, can you tell me if this was prompted by a specific group or an insurer?

Floor:
Yes, it was. It was prompted by, I don't know if he's in the room now, but by Mr. Watkins who is considering the formation of corporations for that purpose.

Mr. Bull: So then it was prompted by an insurance company?

Floor: Not his company, the individual...

Mr. Bull:
And did they lay down any ground rules with regard to reserving or funding of the individual state legislature?

Mr. Jackson:
I saw a man yesterday who said he was going to form an insurance company for the purpose of funding prepaid group legal service contracts. If the major insurance carriers do not start thinking about it and setting out among themselves rules and guidelines, you're going to have an outcropping of small insufficiently financed companies that may or may not succeed. But certainly it is predictable that without adequate regulation, many of them are going to go out of business and give a bad image to this whole concept and inhibit the development of prepaid legal care.

Floor:
My question now is addressed to the ABA code of responsibility and how that affects the insurance industry in getting into this. I am not that familiar with it, but should the industry be the financer?

Mr. Jackson:
I'm not familiar with that either, but the question was asked yesterday at the general meeting in the context of the California state law. And I don't think it received a very good answer. I wonder if anyone here might want to address himself to it?

Floor:

I'm certain that it wouldn't apply to the insurance companies as such. The code of professional responsibility, I think all the lawyers will agree with me, relates to the conduct of lawyers. Now, certainly there couldn't be any control of the conduct on the part of the insurance company by codes of professional responsibility. I presume they would act ethically under any circumstances. But we're in an area now of, what shall I say, the growing edge of that problem with some of the recent Supreme Court decisions, with the New York opinion, and so on. I wouldn't undertake that.

Mr. Jackson:

I really don't believe that it presents a serious problem at the present stage for a major insurance company to get into this business under a situation in which the insurance commissioner, the local bar, etc. were involved. But I think it points up the necessity for the bar associations and responsible elements of the financial community to cooperate in trying to develop a viable means of directing and controlling this movement. I really didn't know until I came to Los Angeles and saw this meeting that there was such tremendous and widespread national interest in group legal services. One thing this meeting has done is to point up the fact that this is a tremendously important matter that's generating great interest in many, many segments of our business, legal, and professional life. This conference has indicated the primitive state of our knowledge in this field. While little specific content has been developed, it has let us realize what is happening in this field nationally. Until now, no national clearinghouse of any type existed to bring together the people who are interested in the many facets of this problem, other than the ABA's committee. This institute jointly sponsored by UCLA and the ABA and the Los Angeles Bar has filled that gap very successfully. Our time is 10:45. We'll be happy to hear from anyone else.

Michael Kratchman, attorney, Detroit:

I'd just like to make a comment on and focus on this question of need. I think that maybe the need breaks down into different areas. I'm thinking specifically of a problem such as buying a home, which you could predict would occur less frequently than daily consumer problems. And I think if you start breaking down need into different areas, you can get an approach that is more meaningful.

Mr. Jackson:

That's one of the things that ABA committee on legal needs hopes to do. And one of the principal purposes of the ABA pilot programs is to develop exactly this data. Yes, sir? You had something left over from your prior remarks on a different subject. We'll get back to you now.

Floor:

Well, that's all right because I think you answered it by saying that the bar association is undertaking the study of need. And really, my second question was directed toward that. I guess it's best to wait, and see the results. But I had another comment. If you're talking about providing legal counsel on simple problems to more middle-class income people, the first idea might be that instead of regarding legal service as a separate kind of benefit or separate kind of need, rather tie it to other related needs by subject matter. For example, probably the most that often happens to people is they're involved in auto accidents. With the advent of no-fault insurance, certainly their defense and their right as a plaintiff would be covered through that kind of benefit. And maybe as you go down the list of so-called needs, there are other kinds of mechanisms through which the legal phase of those needs may be handled. Secondly, nothing has been mentioned in any public forum yet in this eminar- but it has been mentioned a couple of times at lunch and dinner to me--and that is the growing development of paralegal services. I, as a lawyer, look at that with some degree of horror, but maybe it's a partial answer or approach to this. There may be kinds of legal problems that people face which may be solved in whole or part by nonlawyers or semilawyers, if you will, at substantially reduced cost to the user of the service, either in connection with the law office or under the guidance of a lawyer, or in some cases, even without the guidance of a lawyer.

Mr. Jackson:

I think that's very definitely true. I taught a course at Tulane University for ten years in Law and Social Work. I was very impressed by the fact that the graduate social workers whom I lectured to and who were out in the field said that about half of the problems that they handled were put to them in the form of legal problems. The people at least thought that they had a legal problem, and they would come to the social worker with it. In our actuarial report to the Shreveport Bar, we quoted Elihu Root who once said that half the practice of any decent lawyer consisted of telling his clients that they were damn fools and ought to stop. And certainly, screening services and the use of

paralegal services would help in these situations. I think that such screening of those 50 percent that we're talking about could help them to places where they can get help or get them into the hands of a competent attorney if they do have a legal problem. If it worked that way, it would certainly save money and lawyers time, and help overcome some of the problems we would have in operating a plan for very large groups, covering a wide spectrum of the socio-economic position.

Floor:

I'm curious as to your 20 percent of usage at Shreveport. What was done prior to initiating the plan with respect to educating these individuals, who apparently have a very low incidence or usage prior to the plan, and what programs have been conducted during the time that you had it?

Mr. Jackson:

There were a number of meetings held at which we had close to 80 percent attendance of the membership of the union, with wives and dependents. There were three programs sponsored by the Shreveport Bar Association, including meetings at which they explained the program. Whenever a new person comes into the union he gets a booklet of explanation. The wives of the members have had a meeting. Often they know about the legal problem and the husbands don't. There has been quite an extensive amount of publicity in the Shreveport press about this matter. I don't think there's anyone in the union who doesn't know about it. But no effort has been made to go out and say, "Look, why aren't you using it any more?" We've been rather disappointed in the volume of use, but we haven't done anything to urge greater use. Another thing that we haven't done is to go out and try to follow-up cases in which we've referred or certified people for use of the program, but have never heard from later. We don't want to try to distort what's happening and say, "Look, you came in and asked for referral, now what happened? Did you go to the lawyer? Did they tell you what they think you ought to do?" We're going to wait for some time to analyze that. There's nothing wrong with the Shreveport program except that it just doesn't include enough people and a sufficiently diverse kind of group to give us very much useful data, unless we can look at it in conjunction with a lot of other plans.

Floor:

I don't know if this is always true. In some of the cases that I've been involved with other benefits, laborers tend to be low in utilization range.

Mr. Jackson:

It may be interesting for you to know that at the same time that Shreveport instituted its legal program we started a new welfare plan for the same group, and usage of the new welfare plan in the ten month period coinciding with the legal program has been 10 percent. So, insurance companies who are looking at 190 percent loss ratios would love this group.

Floor:

Conversely, teachers are probably at the other end of the extreme. I think that's one good thing about the two pilot programs. The range would probably cover everybody, as far as utilization is concerned. Of course, the utilization varies with the benefit in the model that we build--this would be the preliminary plan not the one that's in here--but our utilization rates' assumption varies from 10 all the way to 90 percent. Nonetheless, it's valid, and this reflects the fact that the benefits, especially the consultation benefits and so forth, are modest.

Mr. Jackson:

Thank you very much. I have not taken any time to try and sum up, which will be done by our very competent and able reporter Charlie Goldberg in the luncheon session. We certainly appreciate your coming into this meeting and sharing your views with the other participants here.

WORKSHOP NO. 3

THE LEGAL PROFESSION

Stuart L. Kadison, Chairman
Danny Jones, Reporter

Good morning, ladies and gentlemen. The hour is 9:15, and with the structures of time under which we are working I think it important that we begin promptly. We have now reached the point in conferences of this kind in which experience tells me that the whole thing is likely to fall apart. Yesterday, the focus of the meeting was, through the medium of the speakers, to give the participants an overview of the problem that we have come to discuss as the development of prepaid legal services. Between now and 10:45 this morning, our role is to attempt to ascertain the input, the questions, and the problem areas identified by you, ladies and gentlemen, who were present yesterday and have been thinking of the problem of prepaid legal services.

It seems to me the only prophylaxis that is apt to work in these workshop sessions is an utter absence of democracy; otherwise we will get hung up on one point and time will leave us behind. The format that Mr. Jones, our reporter, has devised for this aspect of the conference is a brief presentation by him, again a summary overview of the problem. He will conclude by 9:45, and we will then focus on three specific problems which he and I have identified, taking approximately ten minutes for each, which would bring us to 10:15. In the remaining 30 minutes left to us, we will ask each of you to identify the problems which are troubling you or which you see as troublesome in the program. The next item on the agenda will be the plenary session at which Mr. McCalpin will preside. Mr. Jones and I will attempt to communicate to the plenary session the problems and the matters identified here. Then, hopefully, a consensus approach will eventuate.

I am now presenting to you Danny Jones, chairman of the committee on group representation of the American Trial Lawyers Association. Mr. Jones is a 1949 graduate of the University of Southern California Law School. He is a founder and past president of the Compton Lawyers Association; the chairman of the Crime Commission pilot program which we here think of as the Watts Riots program; he has served as judge pro tempore in the superior court of the state of California in the county of Los Angeles. He will present an overview in order to set a context for the discussion that will follow.

PREPAID LEGAL SERVICES
A BOOM OR A BUST FOR THE LAWYER

Danny Jones

Prepaid Legal Services are a Reality

The United States Supreme Court has said so. Indeed, the U. S. Supreme Court has so held four times.[1] The American Bar Association says so.[2] The California State Bar recognized the principle of prepaid legal services under Rule 20 of its Professional Rules of Ethics.[3]

---

1. NAACP v Button, 371 US 415, 9 L. Ed 2d 405, 83 S. Ct. 328 (1963). This case held that activity of the NAACP which provided services of staff lawyers to its members in cases involving racial discrimination could not be prohibited by state law.

Brotherhood of Railroad Trainmen v Virginia Ex. Rel. Virginia State Bar, 377 US 1, 12 L. Ed 2d 89 S. Ct1113 (1964). The Brotherhood decision upheld a union activity in which injured members of the union were advised of their need for legal counsel and referred to lawyers selected by the union. Both activities were sustained on the ground that the statutes prohibiting them violated rights guaranteed under the First and Fourteenth Amendments to the Constitution of the United States.

United Mine Workers v Illinois Bar Association, 389 US 217, 19 L. Ed 2d 426, 88 S. Ct 353 (1967). The Supreme Court held that constitutional protection also extended to an arrangement by which a labor union provided the services of a salaried lawyer to assist individual members in workmen's compensation matters.

United Transportation Union v The State Bar of Michigan, __US__, 28 L. Ed 2d 339, 91 S. Ct (1971). The US Supreme Court in reversing the Michigan Supreme Court held that the State Bar could not bar the union from controlling legal fees or preclude the union from stating that a recommended lawyer would defray expenses or make advances. The Court also held that the provision forbidding sharing fees or recoveries was unjustified as not being supported by the complaint or the records. The above prohibitions were held to violate the First Amendment right to act collectively to obtain affordable and effective legal representation.

And, the consumer-client says so. No less than 200 groups such as unions, consumer groups and credit groups in California have registered under the Group Practice Plan.[4]

In essence prepaid legal services have become the law of the land simply because the people need it. In the last fifty years, law has reached the point where it touches all Americans on a daily basis and in a multitude of ways.

Experience of the Medical Profession

The Medical profession forty or fifty years ago had an experience similar to that now challenging the legal profession.

During the last century which witnessed the country doctor with his "little black bag" containing all of the medical tools of his day, with a paucity of hospitals, and a high, accepted death rate, nobody gave serious thought or attention to the idea of prepaid medical care. A few clinics appeared, and some corporations, among them the Southern Pacific Railroad working in isolated regions, set up simple, prepaid, medical services. They did so not because they thought it was good for the worker or for the medical profession, but because there was absolutely no choice. To function, a crew laying track in the depths of the Mojave Desert had to have some rudimentary medical attention. Thus, ironically, in secluded areas such as deserts, the seeds of the prepaid concept for providing benefits for the professional needs of the people were planted and nurtured.

However, the ground swell for prepaid medical care began to rise when the medical profession itself surged into action in medical technology. This phenomenal life-saving revolution started in earnest at the beginning of the twentieth century and is still increasing in geometric proportions.

---

2. 93 A.B.A. Rep. (1968)

3. State Bar of California, Rules of Professional Ethics, Rule 20.

4. Journal of the State Bar of California, Sept/Oct. V46, No. 5 (1971).

The medical profession realized that thousands could be saved by specialization, research, use of paraprofessionals, and streamlining office and hospital procedures, while keeping current in its field.

All of this magnificent progress has saved lives, but it was costly. The specialist could no longer serve on the meager fees of the country doctor who often as not was paid by the patient in goods rather than money.

The "money class Americans" could afford the luxury of the wonderful and fantastic progress of medicine. At the other end of the pole, the medical profession rose to the occasion at least to some degree by providing free or low priced clinics for those unfortunate Americans living in poverty. The politician also aided the poor through various governmental medical facilities. Hordes of charity groups moved in to rescue the helpless.

While the rich and the poverty stricken were benefiting from the superb care and fantastically effective medical teams, millions of middle-class Americans were still isolated from the then modern medical care. These Americans either could not qualify for poverty level services or were too proud to accept it. They could not afford to compete in the marketplace with those having higher incomes.

Generally, the doctors were not overcharging, but the complex treatment was so expensive that "Mr. Middle-class American" could not afford it. The consumer-patient could purchase only a fraction of available services. For example, thousands of American males who were going around with abdominal trusses could not afford corrective surgery. With the progress of prepaid medical care during the last forty years, trusses have almost disappeared, but surgical repairs have become common.

How and why did this happen? The root of the progress which allowed the benefits of medical technology to be visited upon more Americans germinated in 1927. In that year a group of public-minded leaders including teachers and doctors formed the Committee on the Costs of Medical Care. In 1932, this group proposed *inter alia* that costs of medical care be met through group prepayment and group practice. Soon after, prepaid and group medical practice services began to appear around the nation.

The medical societies and the American Medical Association (AMA) initially reacted against the consumer-patient movement. The medical profession blindly defended the position that any practice, save the fee-for-service solo practice, was contrary to the best interests of medicine. All departures from that at one time or another have been labeled by that association as unethical. The Association even expelled physicians who were connected with group practice.[5] The actions of the AMA culminated in its being indicted by a Washington, D. C. Grand Jury for violating the Sherman Anti-Trust Act. In 1940, after a month long trial, the AMA was convicted and fined $2,5000. This conviction was duly affirmed by the U. S. Supreme Court.[6]

Other legal battles have raged between the medical profession and consumer-sponsored plans with the consumer-patient usually prevailing in the war. Most of these legal actions revolved around the issues of corporate practice and freedom of choice of the doctor by the patient. Ironically, when the consumer wins, the professional provider of service also wins.

Today, over 150,000,000 Americans have some prepaid medical care. One-third of all doctor bills and two-thirds of all hospital bills are paid on a prepaid basis.[7]

The private non-government medical services industry is a twenty billion dollar a year business. Half of its income is by arrangement where millions of Americans pay a small periodic amount which many could not afford on a lump sum fee-for-service basis.

The Prepaid Legal Picture

Fortunately, for both the consumer-client and the legal profession, it appears that prepaid legal will not be compelled to endure the intensity of the birth pains and the profuse bleeding which plagued the doctor-patient relationship. However, that is not to say that the legal profession or its clients can avail themselves of the medical profession's current posture.

---

5. This happened to doctors who were associated with the Group Health Association in Washington, D. C.

6. United States v American Medical Asso., 60 S. Ct 1096 (1940).

7. U. S. Bureau of the Census, "Statistical Abstract of the United States:" 1970 (91st Ed) Washington, D. C. 1970.

Traditionally, the legal profession was organized to serve the business and property class.[8] Beginning with the twentieth century, more legislators, lawyers, and judges have become socially conscious. Thousands of laws have been passed and court decisions rendered not only to protect the average man's rights, but to increase his security and shelter him from the forces with which he is not equipped to cope. Social Security laws, Workmen's Compensation acts, Small Loans protection, laws to protect wages, homes, and personal property as well as consumer protection acts have passed.

With all the socially desirable progress, an infinite number of newly created complicated friction points between and among people, business and agencies both private and governmental have arisen.[9]

Over 200,000 lawyers are toiling away trying to meet the avalanche of demands suddenly descending upon the profession.

Admirably, the legal profession has sponsored and supported both financially and service-in-kind legal aid societies and legal clinics. These projects have been quickly deluged. Local governments saw the need, set up, financed and staffed public defenders' offices with some of the most skilled criminal lawyers in the country. They represent the underprivileged with the professional proficiency and devotion that only the "money class Americans" could previously afford. In some cities today, the public defender represents as many as 75 percent of all those arrested and charged with crimes. But the needs of the poor people for legal services were still not met.

In the mid 1960's the situation became so acute that the federal government, for diverse social and political purposes, created through the Office of Economic Opportunities a program providing legal services for the poor.[10] Although many lawyers argued that there was no

---

8. Mayhew, L. and Reiss, A. J., Jr., "The Social Organization of Legal Contacts." 34 Am. Soc. Rev. 309 (1969).

9. American Bar Association Journal, October, 1971, "Lawyers and Law Firms Look Ahead--1971-2000" by William J. Fuchs.

10. Office of Economic Opportunities, Neighborhood Legal Services.

need for additional legal services for the poor, one-half million cases were processed by the O.E.O. legal services units in 1968 alone. This demand which produced cases was generally unrecognized by the legal profession.[11]

Nevertheless, this unrealized source of legal matters is probably only a drop in the bucket of the needs of the people at the poverty level. It has been estimated that the O.E.O. legal services program would have to be increased tenfold to provide services for all the poverty level clients who might benefit from them.[12]

Even though service to the poor is still inadequate, some of the poor are being served. The "money class" can fend for itself in the purchase of legal services.

Sliding in between these two extremes is the great mass of the "middle-class American" commonly referred to as "people of moderate means." Those are the Americans who earn between $5,000 and $15,000 per year. Barlow F. Christensen, writing for the American Bar Foundation, reports that although undocumented, relatively few legal services are presently being supplied to those groups unless they are unfortunate enough to get injured by someone who has insurance, get sued by his spouse, thrown in jail, or die and leave an estate. It is arguable whether they are adequately served in real estate matters. Suffice it to say, the vast majority of legal problems other than certain catastrophic ones are not served by the profession primarily because of the lack of budgeted ready cash. It should be noted that some legal writers suggest that this group may now be adequately served because there is no documented proof otherwise.[13]

In a personal check, several lawyers who maintain offices in blue- and white-collar, middle-class areas were called at random. Each of them were asked how often

---

11. "The O.E.O. Legal Services Program," 14 Cath. L. Rev 99 (1968). Christensen, Barlow F., Lawyers for People of Moderate Means, page 21, fn 10.

12. Proceedings of the Harvard Conference on Law and Poverty, March 17-19, 1967, Introductory Address.

13. Fuchs, supra note 9.

they would estimate that their services were not retained because potential clients could not afford or did not choose to pay the minimum fee recommended by the local bar associations. The average was five matters per week or one case per day for every lawyer. According to the American Bar Foundation[14] one-third or about 70,000 lawyers in the United States are in private practice. If only half of these lawyers have the same experience, there are 30,000 legal matters per working day among the "people of moderate means" which are not processed by the legal profession.

Lee Turner, Chairman of the American Bar Association Committee on Legal Assistants, has expressed the opinion that the Bar is adequately serving not more than fifteen percent of the population.[15] There are 128,000,000 family units which fall in the middle class category. Probably 120,000,000 people in this group are inadequately served by the profession.[16] Lawyers receive their license from the people and are, therefore, ethically duty bound to serve all of them in exchange for that privilege.

This mass of people is not being served--not because they cannot afford the service under the proper arrangement, but they just cannot afford the service at the time the need arises. Common experience indicates that people are more willing and able to buy a service on a pro rata plan than to pay a lump sum.

So, in the past, they simply did not use the service. However, they are not going to do without the services of the legal profession in the future.

Just as the people foresaw the benefits to be reaped from the medical profession forty years ago, so do they envision the fruits to be harvested from the progress and efforts of the legal profession.

---

14. American Bar Foundation, "The Lawyer Statistical Report" (1968).

15. American Bar Association "Conference on Paralegals in the United States," University of Denver College of Law, June 25, 26 & 27, 1971.

16. Supra note 11, page 5 fn 4.

They will proceed with the lawyers if the legal profession gives them that option, or they will do so without the lawyers should the profession fail to meet the challenge. Consumer-clients have not been reluctant in the past to abandon the legal profession when it did not adequately serve them. This is evidenced by title searches being done by title companies, the licensing of escrow companies, and allowing non-attorneys to practice before various administrative boards. The traditional personal injury practice is threatened with no-fault advocates exerting pressure and succeeding in many areas. A variety of "counseling services" are popping up to supply needs traditionally handled only by attorneys.

So, at least 120,000,000 people have the income and can afford attorney services in the quantity they need. But they must be given the opportunity to do so other than on an unpredictable basis.

The Answer is Prepaid Legal Services

These people want to share the risk and benefits with the other members of their class. They want legal services to help them profit from preventive law which the property and business class have long had the opportunity to enjoy. A young associate of mine, Victor Reichman, contends that attorneys in private practice must be more responsive to legal problems arising from classes other than the wealthy or the entire judicial system will be placed in jeopardy. Professor Louis M. Brown, past chairman of the Los Angeles County Bar Association Prepaid Legal Services Committee, in his class lectures at the University of Southern California Law School, maintains that even this wealthy class has not sought preventive legal care to the extent they should.

There are at least three broad theories upon which prepaid legal services may be based.

1. Commercial Insurance Method

Although the concept of commercial insurance was originally designed to cover the loss of assets by reason of certain fortuitous events such as fire and accident, it can be adapted to pay the cost of day-to-day legal care. The use of this method will entail the designing of a myriad of policies which will include the principles of major legal care, deductibles, co-insurance, and numerous rating systems.

The most beneficial asset of this system is that the consumer-client can select his own lawyer. But it has some serious drawbacks when applied to prepaid legal care. In time, insurance would systematically eliminate all bad risks. Also, the insurer would incur expensive administrative costs in attempting to exercise control of the "abuse factor," and monitoring quality of service. There would be little to encourage the practice of preventive legal care, which is most sorely needed by the consumer-client. The price paid for poor quality legal services would be the same as the price paid for high quality specialized services, which the consumer-client expects from the legal profession. Attorneys would be free to charge any amount over the coverage for any particular service. This could have the practical effect of eliminating all benefits of the prepaid program. For instance, an insurance policy could provide $250 coverage for a default dissolution of marriage. Before the insurance policy was written, the attorney could customarily be charging $250 for that service. Under this system nothing is to prevent the attorney from doubling his fee to $500.

Thus, the consumer-client would still pay the out-of-pocket cost for a dissolution of marriage in addition to paying his insurance premiums. The fee would tend to be insurance plus. About the only protection against this would be a closed panel in which the attorneys agree to join with the insurance company to hold to a "relative value fee schedule." But if this is done, then the major advantage of the insurance type coverage is eliminated, i.e., freedom of choice of the attorney by the consumer-client.

Further, experience teaches us that only 50 percent of all premiums collected by the insurance companies actually are paid on claims. The other 50 percent go toward the companies' overhead, commissions, taxes, and profits for the stockholders. Under this program, the attorney receives only half the money paid for his services.

2. Nonprofit Association Plan

A second approach to prepaid legal services could utilize the concept of a nonprofit corporation sponsored by community leaders and the profession. This can be organized by using the experience of the Blue Cross and Blue Shield programs of the medical profession. Such a plan would have similar advantages and disadvantages as commercial insurance company programs with some major

exceptions. If the bar leaders were well represented on the governing boards, there is no reason why the bar associations could not unilaterally define and monitor the fees charged. This could favorably resolve the freedom of choice question. If the "abuse problem" still prevailed, the governing board could then ask the bar association to invite volunteers from the profession who, as a condition to their participation in that program, would agree in advance to comply with a "relative value" fee scale. This would be a modified closed panel approach with some freedom of choice. Under this method, definitive policies for policing of claims, grievance committees, public relations committees and marketing and availability committees could be devised.

Experience in the medical field has shown that the consumer receives a higher value return under this method than commercial insurance companies have been able to provide. If the same holds true in prepaid legal care, the legal profession would also gain. Since this method would be a nonprofit arrangement, a greater percentage of the prepaid contribution would ultimately be paid to the attorney for his services.

3. Direct Service Method

The medical profession successfully utilized the direct-service arrangement. Although some rules and regulations must be reformed to allow the broadest scope of this plan to function, nevertheless, this method can proceed to a certain degree under the present rules. Under this proposal, the consumer-client pays specific dues on a periodic basis. He is prepaying for service which he may use at a later date when the need arises. He is not paying for insurance, he is prepaying for assurance. Fundamentally, this is the same as if he were retaining a lawyer on a monthly basis to handle his legal problems as they arise. The only difference is that he shares the risk of legal need with his fellow dues-paying members. The governing board of this group fund then contracts with various lawyers to provide the services to the dues-paying members as outlined in benefit schedules. The fees paid to the lawyers are in the nature of a monthly retainer to handle all of the specified services which confront the consumer-client member of the group for the period of the retainer.

Under this method, the consumer-client is assured that he will receive the services he needs without paying a deductible or getting service only when he needs major legal care. Both opportunity and motivation are thus presented for the attorneys to practice preventive law by encouraging their clients of "moderate means" to seek their counsel before they become legally ensnarled. Just as the client receives a high value return, it is also highly advantageous to the lawyers because they receive "all" of the dues as fees after deducting reasonable administration expenses and reserves. The experience of the medical profession in this type of prepaid service indicates that as much as 90 percent of all dues paid go to the professional who actually performs the services. Under this arrangement the emphasis is on legal care for the client for which the lawyer is paid in advance before the client arrives in his office. Grievance procedures, public relations committees and the right of the group to cancel the lawyers' contract for proven consistently poor services assure the consumer-client that he will receive a high standard of service. This system could be criticized for lack of freedom of choice. That objection is partially answered because the group fund must as a practical matter have several law firms or law groups under contract from which the consumer-client may choose. Obviously, the consumer-client can always choose not to use the benefits and go to any lawyer of his choice.

Freedom of Choice

Historically, the freedom of choice exercised by consumer-clients is based upon the theory propounded and protected by the profession that competition among lawyers tends to raise the standards of the profession, just as competition in any free enterprise system eventually gives the consumer the best quality product at the lowest possible price.

However, the issue of free choice has not been protected where legal services are delivered to the poor people through legal aid societies and other legal clinics. Neither has it been sustained in the O.E.O. Neighborhood Legal Offices. Nor has it been any impediment to the fast development of the superb legal services found in most public defenders' offices. The average driver pays $10.00 to $15.00 per month for public liability automobile insurance. When sued he must accept

the lawyer assigned by the company to defend him. The American Bar Association Rules of Ethics have sanctioned this practice.[17] A similar exemption from freedom of choice is enjoyed by title companies. Even the lawyer referral systems of the local bar associations seem to skip lightly over the principle of freedom of choice. But all of us must stand steadfastly behind the consumer-client in acknowledging that freedom of choice is his right and not the lawyer's. Recognizing this tenet, the following is earnestly suggested:

(a) That these three methods, and all other feasible methods be recognized as ways to serve the consumer-client on a prepaid basis;

(b) That consumer-clients be given full freedom of choice as to which plan they desire to purchase for their prepaid legal care.

For the legal profession to deny the consumer-client this right would be tantamount to denying him freedom of choice.

Time is exceedingly short. I urge the lawyers to move immediately to encourage the development of the full spectrum of prepaid legal services without delay, for if the lawyers fail to respond to the need of the consumer-client he will proceed to his goals without the lawyer. President Nixon has warned the legal profession of the lack of participation of the masses in the dynamics of the courts of justice. Chief Justice Warren Burger of the U. S. Supreme Court, has also expressed concern about the problem.

If the legal profession fails to come to the aid of the "American of moderate means," the politicians will fill the void--and not necessarily in the interests of the legal profession!

---

17. American Bar Association, Ethical Opinion 282.

DISCUSSION

Stuart Kadison:

Thank you, Mr. Jones. The meeting is now yours. We have approximately one hour left. I would ask only that each participant try to limit his remarks to their core, consuming hopefully not more than 2 minutes of our time. And to suggest an area where one might begin discussion, perhaps we ought to talk to some extent on the probable changes that will be needed on the part of the legal profession in order to accommodate itself to the prepaid legal services concept. Yes sir?

Charles Antis, Van Nuys, California:

I'd like to ask Mr. Jones this question. Everybody is convinced that there is a need for the middle man, but in this seminar it seems the only thing I've noted as an observer is the ethical concept that the attorney is not to solicit and only to offer services in response to someone in need. So just how are you going to try to provide this service to the great bulk of people that really need it and yet satisfy what the bar feels is an ethical consideration?

Mr. Kadison:

The question is addressed to Mr. Jones, but I think perhaps maybe the answer ought to come from somebody in the room. Mr. Jones has made his views known. Does someone have thoughts on the subject that has been raised? Specifically, the ethical problem bearing on the problem of solicitation, and, I take it, an extension of that would be the responsibility of the organized bar as to quality controls in terms of the type of service rendered.

Floor:

I'd like to respond, also going back to something else that Mr. Jones said about plenary conditions. Mr. Jones mentioned earlier that if the bar doesn't do something, the consumers will. I am a consumer, and I am involved in a consumer-run prepaid legal plan that is called a legal patients warranty plan.

The legal aid warranty fund, or the law fund as it's called, is a non-profit corporation that has been operating in California since February of 1969. Gary Bellow who is a Professor of Law at Pepperdine Law School, one of his students,

and the president who founded the organization had in fact been conducting research and studies since 1967; it definitely is a consumer organization. It grew out of a petition from 300 people who are inmates in a jail in Riverside County. The way it works is that it is a membership organization. Consumers come to the organization and join, they pay a membership fee on an annual basis. The fee is what we consider a very nominal fee, $12 a year for an individual, $10 a year for members of organizations who join together or for couples or roommates, and for juveniles, people 17 years of age or under, the fee is only $5 a year. In exchange for this fee, we have a legal clinic in which they can get answers to their legal questions.

As Mr. Jones pointed out, we've already discovered we don't need attorneys all the time to do draft counseling. We don't need attorneys all the time to get people out of jail on their own recognizance. Many of the functions traditionally performed by an attorney are being performed by a para-professional legal staff consisting of law students, sociology students, social ecology students. We have students working for us from three different campuses in the Orange County area, two of which offer credit to their students, the University of California and Cal State Fullerton. The University of California also has a work-study agreement with the legal aid warranty fund, whereby the federal government will pay 80 percent of the students' salary out of the law fund so that they can get practical work experience related to their studies. Legal questions can be answered any time during normal business hours, simply by calling up or by coming in and talking to one of the counselors who can call the attorney if he doesn't have an answer. By legal questions, I don't mean giving legal advice. This is the kind of thing, "My landlord says he's going to evict me. Can he really do that? Do I have to leave tonight?" You don't really need an attorney for that kind of answer. As you know, there are information sheets on it, but people don't have access to them. Again, it's a question of education, as Mr. Jones said. If a person is arrested, he calls the law fund office and we attempt to get him out of jail on his own recognizance. He has already filled out an application containing the information needed to present to the judge or the detention release officer in the event that he should ever be arrested. This is done beforehand. We have found that it often takes two or three days from the time the person is arrested to collect the information, go out and verify that he really lives there, how long he lived there, where is he employed, and whether he is a student here? We do this all ahead of time. Hopefully, the person never will be arrested, it will never be used. But as we all know, you can't depend upon that anymore, especially those of us

with long hair, those of us who are black or brown, those of us who are students. It's very easy to go to class, simply to go in to study and find yourself in the middle of a "disturbance" these days. The membership of the law fund is composed of, I would say, a very broad spectrum of people, originally very low-income people and students.

To explain our relationship with the attorneys: we have five attorneys on retainer to us for a set retainer fee per month, which is a guaranteed minimum amount to the attorney whether he does any work at all or none. That particular amount also is used to pay for certain number of hours of service for members of the law fund. If the attorney works more than the minimum hours of service, there is another set hourly fee and he bills us per hour for the cases. However, as I said, we have law students working with us, criminology students and investigators. Our staff prepares the attorney's files, does the initial interview, types the interview according to the individual attorney's instructions. We have law students who will do research for the attorney on the cases, who will obtain discovery. We get the police reports. We do a lot of the legwork for the attorney. We charge the members--the members actually retain an attorney through us at approximately half the suggested minimum bar fee in Orange County. That's our relationship with the attorneys. The attorneys don't do any soliciting; they don't do any advertising. We are a service organization, both with the blessing of the insurance commissioner and the IRS and the State Franchise Tax Board. Therefore, we can advertise that we have attorneys available for our members. The type of advertising we try to concentrate on is informative, educational advertising. We don't simply say, "If you're in trouble, call the law fund." We try to include search and seizure rights. We try to say, "It's not expensive to go to an attorney to get a will made up." That's how we do it, and how we can in a sense be soliciting business, and yet the attorney is not directly soliciting business.

Mr. Kadison: Thank you. We have a few minutes more to talk about these ethical and solicitation problems. Yes, Mr. Orliss.

Mr. Orliss:

I think that we have to answer the questions. But I do have some observations. One is that I think the bar ought to get into the business of saying how the public can be solicited for business and to regulate it rather than simply preventing, because it is my impression that what goes on now is very simple. There are two classes of

attorneys, those who solicit business and those who do not. There are those who solicit criminal business through arrangements with the bail bond agencies and there are those who generally go technically as nonprofit. We therefore have unequal service in the bar, whether there are other forms of solicitation, I don't know. I think in many cases for the major law firms, solicitation occurs in a form which is not prohibited technically, because many of the attorneys are members of the same social clubs or social status as corporate executives, and it is possible and proper to do that sort of thing. A bar should recognize that at least in the city of Los Angeles one cannot acquire a reputation in the same way that one might do in an urban or rural community of a few thousand people, and it should deal with the problems so that the public can get full and dignified information that attorneys are available.

Mr. Kadison: In view of the fact that these proceedings are being taped, I will ask each speaker to identify himself, as Mr. Orliss did, before the next presentation.

George Randolph, chairman of the Arizona prepaid committee:

I for one would like to hear Mr. Jones' solution because I am confused by those four cases that we heard about yesterday, the last one being the Michigan case. I understand from talking to participants in those cases that they went up on bad facts. And I'd like to hear Mr. Jones' solution to this.

Mr. Kadison: Mr. Jones, if you can solve this problem briefly, I'll give you two minutes.

Mr. Jones:

This is a problem which I cannot adequately address myself to in two minutes; however, I will give you what information I am able to in that time.

I do not think that doctors are any less ethical than lawyers. I see full page ads in the Los Angeles Times, advertising the Blue Cross medical plan. Life magazine contains double page advertisements on prepaid medical. Almost every magazine I open contains some sort of prepaid medical plan advertised for the medical profession. Let's get one thing clear: <u>When you market a prepaid legal plan, you are not soliciting for lawyers, you are marketing the service of an entire profession--the legal profession</u>.

Mr. Kadison:

I think we have identified a solicitation problem. And our role here this morning is more to try to identify problems, not so much to solve them. Let us move on to something else that perhaps is troubling members of the group. Yes sir.

Robert Hastings, attorney, Louisville, Kentucky:

One thing that has concerned me in this whole conference with regard to particularly the Los Angeles plan proposal is the fact that, as I understand Mr. Kehoe yesterday, he indicated that their fee schedule of this particular plan was a maximum guaranteed fee schedule. In talking at lunch yesterday with various attorneys from this particular area, there was a clear indication that this fee schedule was way out of line. Now, in Kentucky, we have had very strong disciplinary regulations compounded on fee schedule. How do we handle that problem?

Mr. Kadison: Anybody got any ideas? Yes sir.

Dennis Woodman, Redwood City, California:

Now I don't know if this is an answer to the question, but it is an observation. I've seen various fee schedules around; I've had an opportunity to examine the Berkeley Co-Op fee schedule. And frankly, for a prepaid service plan, the fees they are charging their members are higher in some cases than the minimum set by my own bar association without any membership type of organization. The one thing that bothers me about this whole thing is how to set up some sort of a program in which the middle class can participate. I know people who are independent men, maybe an insurance broker, or an independent insurance agent. He doesn't belong to any really big organization. He belongs to an agency that's a loose type of thing or a Kiwanis Club or a Rotary. How do you approach him? If you set up an organization and say, we are going to provide legal service, if you join it'll cost you so much a year, whether it's a dollar a month or $5 a month or $10 a month, then that organization is established specifically for the purpose of providing legal services. And, like the Berkeley Co-Op it's completely separate. What are we going to do about Rule 20 so that we can really put this thing over the way it should go? That's the question I would like to ask.

Floor:

May I respond to that? I'm Harriet Thayer of the Santa Cruz law firm. I'm in a position to explain the fee schedule because my work is involved in writing a book. I certainly agree that certain fee schedules are too high and some have

been too low. However, what we have done is to start from the beginning with the consumers to set up a situation where they can enter as a group, as under plan B. We're also giving them preventive law, education about legal fees, discussing with them at the outset the matter of fees so that they understand what will be provided for the fee.

I myself wanted to ask a question; yesterday I had read of a case decision which had gone up to the Supreme Court. I don't understand why under the liberality of the Supreme Court ruling it is not possible right now for a consumer group to go and have a performance sale and hire an attorney to handle the problems, the legal problems, of its members. Why couldn't a group of consumers organize for no other primary purpose than just to hire themselves a clinical lawyer to treat their problems?

Kadison:

We'll see whether we can find an answer for you. Does anyone care to address himself to that particular question? Yes Sir, may we have your name?

Barney Rothman, attorney, Sherman Oaks:

I think the problem of fees and minimum fees for service has already been solved in many respects by the attorneys themselves. When General Motors or any other corporation has legal problems, they have a staff attorney who in most respects is on annual salary. This salary is negotiated on a periodic basis, and he provides whatever services his employer wants. I think that the type of pay he receives is commensurate with his prestige and his ability to provide the service that is needed by his employer. I think the same thing is true when we see groups like Permanente employing doctors at fixed salaries, rather than on a fee-for-service basis. There are profit-sharing plans; there are any number of other ways so that the quality of care and the amount of service and the degree of service is shared both by those who employ and those who are employed. I think that the consumers, the unions and any other group, can have a paid plan to provide services to the members with the same kind of contractual arrangement or employee arrangement. It is only where there is no arrangement made, where there's no quality control, that the attorney may find himself in such a kind of bundle that he might say, "Am I going to earn a living?" And the total question is, "What kind of a fee will I get?" But if the attorney is prepared to say, "I will use my professional skills to provide the service to the consumer," he will be in a position to receive the kind of income that is commensurate with his service. And I think that this is the general pattern that we must start looking for.

Mr. Kadison: Yes sir.

Gordon Wood, Detroit:

I am of the "then" generation instead of the "now" generation. I am from a stuffy 60-man law firm, but I am telling you something--I want to speak for myself, not my law firm. I think that if we lawyers don't get off our collective butts and do something about this thing, you're going to have groups like this in every darn street corner in this crazy California. It's about time that we as an organized bar got control of the legal profession and render legal services. I've been on this special committee of the ABA for legal assistance, Lee Turner's committee. This paralegal thing is the only answer that can deliver these services in an economical and efficient way to service this so-called middle class of America. And if stuffy law firms sit back on their butts and don't do anything about it, I hope the rest of you go ahead and do it.

My law firm has gone ahead and hired paralegals. You know, our young lawyers, when they interview us, we don't interview them anymore, say, "Well, how much of this no-public bona business, non publica business, can we do?" They don't ask about vacations anymore. So, we of the "then" generation have got to get with the "now" generation and do something about this; I've sat here for two days now and today is another eye-opener. They're already preempting it for you boys out here in California, if you don't know it. And that's because you haven't gone to two things: one is, in my opinion, the concept of group practice. I will say that I know Danny Jones is a controversial figure out here, but I can still say that his concept of getting a group of specialists in one place that can service a group is a hell of a good idea. My father-in-law was a doctor and thought any doctor that ever worked for a medical clinic was a client. Well, he was of the "then" generation too, wasn't he? We must wake up and use extensively paralegal help. These kids are paralegal help, but they weren't trained by a lawyer. Some of them are law students, some are criminologists, I heard, but they weren't trained by a lawyer, and they aren't working under the supervision of a lawyer. That is the definition of a paralegal--he is to work under the direct responsibility of a lawyer. And if we don't do it, they're going to do it.

Mr. Kadison:

I think we are beginning to see some focus here which I think is promising. I think it would be useful to hear from another member of the legal establishment, perhaps not a 60-man law firm, but do we have any other representatives of law firms in the audience that care to be heard on this?

Bob Webber, Burlingame, California:

It seems to me that there have been several questions asked this morning which have not been directly responded to. I share the confusion of the gentleman from Arizona now; I don't think his question was answered, and I simply don't understand it. It seems to me that there's been a lot of talk around it, but I simply don't understand the inhibition of Rule 20 in California--and I'm interested in California primarily--as opposed to the Supreme Court rulings, and exactly where the inhibitions lie and where the freedom lies in this area insofar as actually going out and structuring this program is concerned, go on to get the job. I don't understand how we actually go about structuring it in a truly mechanical way and going about it practically. I would very much appreciate hearing from somebody who feels that he is at least reasonably knowledgeable, although he may be the blind leading the blind in this area.

Mr. Kadison:

My role is to moderate, not to monopolize. Is there anyone else who feels that he is reasonably knowledgeable?

Volney Morin:

I would like to say with regard to Rule 20 that in my own opinion, after a quarter of a century in California, it will be five years before we can further amend Rule 20. And in that five-year period--I'm not going to give you the name of the constitutional lawyer who said this, but he said, "Now, what you have to have is the ability to make a summary that is associated with something else without thinking about what it is associated with."

Now, Rule 20 requires that. You have to think about form, a nonprofit organization to practice law without thinking about what it is formed for. This means in the next five years, I believe, California will see a proliferation of nonprofit corporations, all formed to do a certain amount of that. They will study, they will run pilot programs, they will report to bar associations, they will do all sorts of things, and down at the bottom they are going to have what you are going to call group legal services. Now, I expect that we are going to see more about the fixed fee schedule. At every meeting of the ABA in the last five years, at every meeting here in California, we've been told, "be careful on fixed fee schedules, they may be violative of the anti-trust laws because they are really price fixing." I don't know if that's helpful, but thank you.

Mr. Kadison: Thank you.

James Jackman, attorney, Fullerton, California:

It seems to me that many of us are talking around the same issue and that seems to be that the bar has to take the leadership in defining the ethical problem rather than follow. I don't think the ethical problem is the point of fee setting, price fixing if you will. I don't think it's the point of solicitation. I think the real ethical problem is that we're not providing the services to the public. And as long as we're not doing that, it seems to me we are violating the most important part of the true ethics. We need to have the bar set up an ethical code relating to this legal service that will allow us to do the essential thing, the ethical thing, and that is provide the services and the freedom to provide the services as this can best be done.

Mr. Kadison:

That really is the focus, I think, and that is whether this thing is going to happen, in Mr. Jones' words, "as a grassroots reaction" which some of us may feel is in the category of the inmates taking over the asylum, or whether the profession has not let so much time go by so as to render it impossible for the profession to structure this thing properly in terms of quality controls, in terms of the solution of ethical problems, and the other matters in which we as an organized profession are interested.

Floor:

The question I have is, after we leave this meeting today is it possible for us next week to approach an organization to handle lawyers? I understand there's a great need for prepaid legal services.

Mr. Webber:

Well, that's my question essentially. If I might just elaborate on it. Everybody has been talking about the lawyers taking the initiative. Am I wrong in my impression that if I wanted to form a prepaid legal service at this point, the only way that I can present it to the public is to then go and form an administrative organization, which is an insurance company or something of its equivalent that can then go out and contact people who require the service so that it, as the middleman, can then in turn contact me as a lawyer? If I have to do that, and that's my understanding of the inhibitions that we presently have, if I have to do that, then it seems to me almost by definition that we in California, our state bar, through Rule 20 have taken away the initiative from the lawyer by saying, "You simply can't do this, you've got to go out and be a non-lawyer in order to

solicit so that you can then function as a lawyer." I don't know what the solution is; I'm concerned about my impression that this is correct in the first place.

Mr. Kadison: Well, my sense is that your impression until you began elaborating on it is correct. Yes sir.

David Hodgehead, Campbell, California:

I think I have an answer for Mr. Webber. It is in essence this: Everyone of us as practicing lawyers have clients who are of necessity members of other groups. We may in the confines of our office discuss with any alient of ours any proposal for group legal services, prepaid legal services, or whatever. In that context, we can ask him, as our firm does, whether his group might be interested in a prepaid or group legal service program, and on his recommendation we can go to his group and present a proposal. I think this is within the framework of Rule 20--the answer to your problem.

Mr. Kadison: One thing that I think must be borne in mind is that very few states have gone as far as Rule 20 at this point.

Frederick Conard, Connecticut Bar Association Committee of this subject:

I'm not familiar with your Rule 20, but I'm beginning to get the impression that you people are really saying here that because of Rule 20 the bar associations of California can't do anything on their own.

Mr. Kadison: And I should say nor do we through the bar association. Yes, Mrs. Thayer.

Mrs. Thayer:

Just to give one example, there is a firm in San Francisco right now that is a group legal services firm. That's all they do. They have eight or nine groups and their whole practice is in servicing the members of those groups. So it can be done.

Floor: How do they reach the public?

Mrs. Thayer: Their public is the group. They have eight or nine groups.

Floor: Groups must reach them though.

Mr. Kadison: There's a gentleman back in the corner who has been trying to be heard. Yes sir?

Floor:

I was concerned with the insurance aspect. Maybe I'm under the wrong impression, but I understand that the group practices in existence, in my estimation, really don't affect the insurance problems. But the plans in Los Angeles and Shreveport, in effect, have something to do with the insurance aspect. Do these plans require approval of the insurance commissioner of the state of California or are they exempt from the insurance commissioner? I am talking about prepaid plans as opposed to pure group plans.

Mr. Kadison:

I can answer that. We're proceeding on the assumption that they are exempt with some comfort from the insurance commissioner's office that we're proceeding correctly.

Floor:

Mr. Kadison, could we hear from Danny Jones on this very point, since he's been all through it and he's got all the headaches. Could you take the gag off of him and let him talk?

Mr. Kadison:

All right, Danny, we'll take the gag off for a while.

Danny Jones:

First, if you will check the history of Rule 20 you'll find that there is a slip between the cup and the lip. Between the time Rule 20 was approved by the board of governors of the State Bar and the time it reached the Supreme Court, there were some changes made. The changes, in my opinion, are more restrictive than the original Rule 20 as approved by the State Bar. I'm not going to go into all the ramifications of Rule 20 because to do so would be a book in itself. But check the draft which came out of the Bar and check the draft which went to the Supreme Court, and you'll see that they're different. I'm all in favor of Rule 20 because it at least gives us some semblance of regulation under which we can proceed.

But to answer your question, sir. In my opinion, Rule 20 is more restrictive than United States Supreme Court cases. So, in California, though we have a rule under which we can function, I think some of your states may be in a better situation than we are because you can function directly under those Supreme Court cases and interpret them the way you feel they should be interpreted. Those cases are much broader in some areas than Rule 20. It provides that you can only supply services to a corporation or other group or organization which is not in the business for profit and which has specific purposes other than that of supplying legal

services. Now, I think what they mean is that you can only represent the members of unions and other organizations who have primary purposes other than that of rendering legal services. The rule is worded negatively. We need a positive approach to consumer needs.

Suppose you went into an arrangement with a nonprofit corporation to arrange for legal services to groups. Those groups which are applying for and receiving the legal services have purposes other than the supplying of legal services. A nonprofit corporation which is set up as a vehicle to enter into various contracts with lawyers to supply the services to the group is not in the business of practicing law or supplying legal services. It's an administrative vehicle. Therefore, it seems that the conditions of Rule 20 have been met under this approach. We're trying to operate under rules that were designed for different things. Rule 20 was designed as an ethical rule, to restrict the practice of law. I get the consensus we need a set of rules here to tell us how to do it and how not to do it. I suggested that the bar take a positive approach to prepaid practice. We must design regulations and rules and suggest constructive plans, because if the bar doesn't do so, the layman will take the practice of law to others. I think Rule 20 is too restrictive. I do not think Rule 20 complies with the Supreme Court decisions. Now, you may disagree with me. You can always file the appropriate action in the United States Supreme Court to reconstruct it if you feel strongly about it.

Floor:

Is your understanding of the exemption of the insurance code of the Los Angeles plan because of your status in the Los Angeles Bar Association, or because of a more general position?

Mr. Kadison:

No, my understanding really is that the exemption from the regulation of the department of insurance is because of the manner in which the plan was structured, not as an insurance program, but really, if you go back far enough, as an extension of lawyers' referral.

Floor:

Would the plan you described here earlier come under the insurance code?

Mr. Kadison: That I wouldn't know. I don't know enough about it.

Floor:

John Carter, who is the insurance commissioner in California, has been in correspondence with us--we are not because we don't actually pay anything back to our members at all. Therefore, we provide services not benefits and we are not insurance.

Mr. Kadison: I think that point may be valid, based on my modest knowledge of the insurance code. Yes, sir.

My name is Solomon Lippman, Washington, D.C.:

I am special counsel for one of the House"s Education Committees. I am somewhat disturbed by some of the things I hear taking place in Los Angeles. Some of the programs taking place disturb me because my feeling is they are heading for a fall. There has been no control over them and they are mushrooming all over the state. And, undoubtedly, many will disintegrate and cause difficulty. There seems to be no guidance of a responsible kind. I couldn't understand when Mr. Jones talked about the "grassroots development", but now I understand. This is something new to me.

There is another aspect that I would like to comment about. There seems to be no national direction in this very important burgeoning field. There is need, for example, for a national effort, well directed and well controlled and rationally formed in connection with the Congress in obtaining some legislation amending 302; there is importance that we have some sympathy, directed activities in connecti on with the Internal Revenue Code aspects. It is important that we know what is going on all over the country and have a listing of the various groups and just how they are functioning and with some kind of appraisal. What I am trying to say at the bottom line is, I think there is need for a full-time staff located at some central area, which will be functioning in this area so we can appraise and so we can draw, and so we can pass on the best experience that we have and at the same time try to give this movement some responsible direction and cooperation with the organized bar, to the extant that the organized bar will work toward reaching these objectives. At the moment I am disturbed about the many things that are taking place without some kind of a centralized control, or centralized discipline rather than control. Thank you.

Mr. Kadison:

To supplement Mr. Lippman's comment, one of the things that to me is most distressing about this whole prepaid legal services program, not the concept, but the program that appears

to be evolving, is that the best estimate one can get of the number of prepaid legal-service oriented operations throughout the country is between 1,500 and 4,000 at this time, which would certainly indicate, first, a lack of the discipline of which Mr. Lippman speaks, the direction of which he speaks, and, second, a lack of professionalism in this entire picture which has to be troubling to any lawyer who is concerned about society and concerned about his profession.

Floor:
I would like to inquire of Mr. Lippman whether there has been any Congressional action to assist bars in getting programs instituted.

Mr. Lippman: May I answer that?

Mr. Kadison: Yes, Mr. Lippman.

Mr. Lippman:
There has been no activity of that kind at all. And this also emphasizes the need of national direction. I am sure that you will have or could have very affirmative Congressional response if it were properly structured.

Donald Freeman, San Diego Bar Association:
As you know, lawyers change laws, rules, and regulations, either as individual lawyers or as judges or as a legislature, which is mostly controlled by the lawyers. I am going to go back to my bar association and recommend to them that they form a study group to look into this problem and coordinate with the State Bar of California through the board of governors for rules and regulations covering this field because right now our rules are very small. None of us know exactly what do do.

I think we do need the control that he speaks of, and it should be through our bar associations. I believe the State Bar of California should work next to the American Bar Association, so that lawyers and similar groups will know exactly what the rules and regulations are and how we play the game. It is important enough to have some basic game plan--not just talk about the matter. I think something should be done as soon as possible. You have members from all over the country here today. I think each of them could take back this problem to his own bar association and get the expertise of the lawyers in helping to formulate these rules and regulations and have a coordinated effort throughout the country.

Mr. Kadison: Than you sir. Yes, sir.

Floor:

I would like to give you my observation and impression of this whole meeting. Two months ago I wrote to Mr. McCalpin who gave me the Preble Stolz Study. I was kind of discouraged with that, but I have been noticing that our profession is being socialized, and very rapidly over the last five years have various categories been taken away from us. I am going to go back to our bar association and recommend that we try to form a sort of bar association-oriented "Blue Cross", where we run it. I have been talking to an actuary, and he told me that if they have 1,500 members and if they have a three-month period at $10 per month, they can fund it within this three-month period because their actuarial experience thereafter is that it is five and one-half months from the opening of the case to the close of the case when they actually have to pay the lawyer, unless the lawyer is smart enough to put in for an advance retainer. I figured that quickly in my head, and I noticed that with their particular group they had something like $120,000 to fund this program--and that is with only one group. It is a privately run group that has a panel of lawyers that they refer it to;and it is a small panel. Now, what I am going to recommend is that we run it like we run our lawyers referral system. When he signs up, the lawyer pays a $10 per annum fee for being referred cases and he is put into the categories that he likes to function in. I like to function in the real estate and mortgage banking area, and that's about all I get. Now, I recognize that sometimes you get the windfall of a clear liability tort case, but I have had to give that up, because of thespecialization they are requiring with the lawyers referral service. You can't take on all the categories, but I think it will make us better lawyers, and you may be able to have more categories, which will benefit the small firm where you would like to specialize. But we'll run it, we'll get the profits from it.

Kadison: Yes, sir.

Kneeland Lobner, Chairman of the Prepaid Legal Services Committee, Sacramento, California:

It seems to me generally that things we have been talking about in the last couple of days signify that if it is not handled correctly it can be the death knell of the legal profession. I can see that if prepaid legal service is allowed to function on a panel basis that every lawyer is going to, from the standpoint of self-preservation, seek out some sort of an organization; those who don't, the devil take the hindmost. It seems to me that for that reason we've

got to, as Mr. Lippman said, we've got to find some rules and regulations that are generalized. I think they had this problem when it came to the development of comprehensive workmen's compensation plans that were offered to employers of this state. They had a lot of different plans, and finally the legislature had to take over and had to specify the kind of plan that every company would write. That plan then became the plan, and then many, many companies were in the business to sell this particular service on a competitive basis.

It seems to me that we have a problem not unlike that, and we could very well end up, if we don't have some sort of control, in a jungle of prepaid legal advertising and in a jungle of plans. There could conceivably be 4,000 different plans and 4,000 different advertising schemes to sell the particular plans involved. It seems to me that the State Bar of California has to take the leadership here. It has to prevent the indirect solicitation that is going to be going on and that lawyers are going to start by virtue of the freedom they have at the present time to run without any inhibitions in any direction they want. One of the real problems I see in this is--I saw a little pamphlet that said 3¢ a day will give you the following protections; who is to say where they put the 3¢. So it isn't an insurance plan, so somehow or other it escapes the attention of the insurance commission, and is an uncontrolled insurer in a sense because everybody who puts money into it expects service to come out of it. And yet, there is no regulation at the present time to control what happens to that money, and if that company goes broke there are a lot of people who are going to be taken in with it. Whatever kind of prepaid plan there is is going to have to be regulated from the standpoint of the financial responsibility of the people who are involved. We have to preserve our professional status as lawyers. We are one of the oldest and most honored professions in the world, and this plan is going to tear us apart.

Mrs. Thayer: My question was to the previous speaker. I wonder if he would comment on what his plan offers to the consumer insofar as the consumers rights are concerned.

Mr. Lobner:

Well, all right, I don't claim to have answers. I am just pointing out problems. It just seems to me that all of us here in this meeting have occupied ourselves with the manner in which we can live within Rule 20 and rules of the Supreme Court. I don't think we have occupied ourselves enough with where this is taking us, and where we as a profession are ultimately going to go. And, I think it is all well and good to say that we are concerned for the

consumer. But, there are two facets to this thing--two sides to the coin. One is, we are going to have to preserve an honorable profession, the other, that we are going to have to serve the public well.

Mrs. Thayer: The previous speaker.

Mr. Lobner: To me?

Mrs. Thayer: No, to the previous speaker. Someone proposed a $10 per month plan.

Floor:

I just talked to a number of people here. I don't have a plan or anything, but my first impression of this is that it ought to be controlled by the lawyers. In our referral system they have a long list of tort, personal-injury lawyers. So when they have gone through number 18, number 19 gets the case. It may be a good case or it may not be, but you have got to take whatever comes and in your turn. It is handled by the bar association so that people can be referred if they don't know a lawyer; they can go to the bar association which will honestly refer them; whereas with a panel program, even on the panel lawyer "X" might have an "in" with the administrator a little more than lawyer "Y" and all the juicy cases would go to lawyer "X".

Mr. Kadison:

Well, we have just about reached the end of our time. We are to adjourn in ten minutes. We are then to have coffee, and at 11:15 we will meet in the ballroom. I think this has been useful. I think we have identified a number of problems, my tally indicates nine, with many subproblems. I think that the problem that has been most specifically identified by virtually all of the speakers, which I think ought to be borne in mind by those of you going back to your own bar associations, is the problem of urgency. We don't have very much time as a profession to devise a means of delivering prepaid legal services consistent with what we believe to meet professional standards and the requirements of the profession unless we move quickly. I would now ask you to move quickly to coffee and we will resume in the ballroom at 11:15.

PLENARY SESSION--WORKSHOP REPORTS

F. William McCalpin, Moderator

Will all of the chairmen and reporters from this morning's sessions please join me on the platform? I guess maybe we're going to have to shut off the coffee. The only way to shut a cocktail party is to shut off the bar, maybe we've got to do the same thing with coffee. I'll go ahead as soon as I get Mr. Connerton and Mr. Leventhal in here. Mr. Ellsworth? That's it.

Ladies and gentlemen, even though we are not all gathered here, I do want to make a couple of the inevitable housekeeping announcements. Several times yesterday we told you about this very quick questionnaire that Mr. Ellsworth and his very competent staff have put together to give us the opportunity to find out something about the existence of prepaid legal service plans around the country. We have had about six of those completed forms turned in thus far. Obviously there are more plans. We hope you are not dismayed at the number of questions on the 1&1/8 pages. More forms are just outside the door and will be there on the way into lunch, which will be the concluding portion of this conference. We hope that you will pick them up and leave them with us.

I should say that while there has been a good deal of printed material disseminated at this meeting concerning various prepaid legal service plans, you should understand that none of those plans is sponsored, endorsed, has been created, or is being promoted by UCLA, by the State Bar of California, or by the American Bar Association, any of its committees or sections. It is perfectly proper for those plans to have made you aware of their services. We have not in any way attempted to interfere with the distribution of that material during the course of this conference. But you should understand that the fact that it is being distributed does not mean that we have placed any stamp of approval on it. We express no opinion with respect to those plans, one way or the other.

Finally, at the conclusion of this session, there will be a lunch upstairs in the Venetian Room, where the legal profession's subconference and the labor-management-consumer subconferences took place this morning. The luncheon, as I recall, is scheduled at either 12:15 or 12:30, 12:15 according to your program.

Now, the purpose of this morning's breakdown into separate subsections was to give you an opportunity to participate more fully, to feed in your own experience, your own concerns, your

own questions in the light of the subjects which were discussed yesterday. We rather arbitrarily broke down into the sections that we did. Perhaps they were wise, perhaps not. It was my observation from passing through all three of them on several occasions this morning that there was a good deal of give and take, there was a lot of input. And it is now our pleasure to hear from each, from the leadership of each of those conferences. I have asked them in five or six minutes to report the major items of discussion, concern, and questions which came out of those meetings and then the floor will be open for anybody to come in on those subjects or any others.

The first was the labor management consumer groups. Messrs. Connerton and Leventhal, I would ask one of you please to report that group.

LABOR, MANAGEMENT, AND CONSUMER GROUPS

Robert J. Connerton
Workshop No. 1 Reporter to Plenary Session

Mr. Chairman, it was the consensus of the Labor, Management, and Consumer Groups panel that prepaid legal service plans, as demonstrated by the activity here in the state of California, is an idea whose time has come. While representatives of trade unions and bar associations and lawyers were quite vocal at the meeting, representatives of management were rather restrained; they said nothing. There was general agreement that there is a great potential market for prepaid legal services.

It seems fairly certain that the Congress of the United States, within the next 1 to 3 years, will enact a type of national health insurance. Such legislation would have a profound impact upon current fringe benefit funds. For example, at the present time collectively bargained welfare plans have incomes of approximately 15 billion dollars per year. With the passage of national health legislation, either these welfare funds must be dissolved or contributions to them must be diverted into new types of fringe benefits. We all know that, following the lessons of history, the trade union movement is not about to march backward, that existing funds will be diverted into new areas of potential fringe benefits. Prepaid legal services will be at the top of the list.

I think we were especially impressed by the growing awareness of the need for legal service plans among trade unions, among consumers, and among student groups. Representatives of labor

unions throughout the United States were present. They testified to the pressures that were being placed upon them by their clients to do something in the legal services field to meet their members' legal needs. We agreed that we are now in the marketing stage of selling prepaid legal service plans, and that we are encountering the same problems as when other fringe benefits were first introduced. It was emphasized that--following this historic analogy--the critical issue here is in selling the trade-union and the consumer leadership on the need for providing legal services. First you must sell the trade-union leadership, and then the trade-union leadership will undertake the task of selling its own membership. We agreed also that prepaid legal service plans were most likely to start in those areas where wages were relatively high at the present time, and where other fringe benefits, higher in the order of priority, such as welfare and pension plans, already exist.

Reference was made during our deliberations to a national study group, consisting of postal union and Post Office Department representatives, that has been formed as a result of the recent postal negotiations to study the feasibility of developing a national legal service program for all postal employees. It was believed that data developed by such a study would be of assistance to national unions and national employer groups which were considering the feasibility of establishing a group legal service program at the national level. We all agreed that any collectively bargained legal service plans, in order to obtain the approval of the employers and trade unions involved, must exclude adverse actions against the parties to the agreement. So, in the case of prepaid legal service plans for members of a trade union that are financed by employer contributions, we should resist certain suicidal tendencies of trying to have employers and trade unions agree to being sued. We found that there is a great proliferation of group plans at the present time, of an almost infinite variety, with most calling for legal services through a closed panel of one type or another, and at reduced rates--a phenomenon I would categorize as wholesaling.

The issue was raised that since the American Bar Association is promoting free choice plans--such as the Shreveport plan and the Los Angeles plan--while most of the 200 plans registered to date with the California Bar Association were plans which called for closed-panel arrangements of one kind or another, whether trade unions and other groups were hostile to the concept of free choice

and if the bar association is really marching against the times. We believe that trade unions are not opposed to free-choice plans. We believe that in fact the development of open-panel plans would promote a real free choice for trade unions and other interested groups to determine whether a free-choice or a closed-panel plan would serve their best interest. There appeared to be consensus that perhaps the ultimate result of the experimentation being conducted and the wide variety of plans would be prepaid legal plans that embody some elements of free choice and some of closed panels.

I think, also, it was agreed that prepaid legal service plans would result in a revolution or rapid evolution in the manner in which legal services are dispensed, for if these plans were developed they would include such elements as the wide use of paraprofessionals.

Finally, it was agreed that the bar associations throughout the United States are not moving with undue dispatch to establish free-choice prepaid legal service plans, and, if they wait much longer, the option might not be available. Thank you very much.

F. William McCalpin:

Thank you, Bob. As indicative of some of the hard problems that lie ahead, I was struck while Bob was talking of the perfectly understandable and human reaction that neither unions or employers are likely to want to subsidize a plan which may create the spectre of litigation against them by the fact how quite analogous that feeling is to the position of the governor of California with respect to government-funded legal service plans.

The second group discussion this morning was concerned with the insurance industry, and whether there were representatives of the insurance industry or not, I don't know. Here is a report from the substitute secretary, Mr. Charles Goldberg, of our committee.

THE INSURANCE INDUSTRY AND SERVICE PLANS

Charles L. Goldberg
Workshop No. 2 Reporter to Plenary Session

Mr. Chairman, members of the symposium. The workshop on the Insurance Industry was chaired by Mr. Ralph Jackson. He outlined three basic qualities, or essential ingredients, required in every plan of prepaid legal insurance: a group, a plan of benefits, and a method of financing the costs. The last area, of course, concerns the insurance industry.

I would judge there were 75 to 80 people present at the symposium, and a substantial number of insurance companies and actuaries were represented. It was conceded by all that there are no reliable statistics upon which one could realistically frame a premium, unless, of course, there were a very minor kind of benefit involved. It was conceded also that there was no warehouse of plans which could be used in various situations, but there is a substantial body of statistical material which results from the OEO experience, the National Legal Aid experience, the experience of the Navy Plan, and others. There has been no real attempt made to correlate the information contained in those statistics, except in a very general way.

It was the general consensus that group legal services would emerge in some form or other. It would probably originate with small or limited benefit plans, and the industry would build on the experience which such plans developed similar to that which happened in the medical field. A question was raised rather critically as to why the insurance industry as such had not come forward to participate in the experimentation that had been funded by the American Bar Association, because the whole experiment would involve the insurance industry heavily. Members of the insurance industry answered that basically that was not true; that the industry has to a large extent been involved for some long time in group legal plans, such as automobile insurance which provides defense, directors and officers liability policies which provide defense, malpractice insurance which provides defense, etc. It was the posture of the industry that group legal aid was simply an extension of what had previously been done by the industry.

Perhaps one of the most significant things to come out of the symposium was a feeling on the part of the insurance industry that there was no demonstrable desire for prepaid legal services. As it was put, "it was not demanded by the troops." And as long as it was not demanded by the troops, the question was raised, "Was there a market? Would it sell?" There is no doubt that there is a need for legal services. All American studies that have been made of the subject indicate that at least 20 to 25 percent of the population are in need of some legal services, one-half of which goes unfilled. So that if there is a need, as the studies indicate, perhaps the need has not been recognized. As Bob Connerton's report would indicate, the need is there, but it is a problem of education and a problem of convincing potential insureds that they are legally sick.

It was the consensus of the group that experimentation ought to continue. It was the consensus of the group that it is likely that a portion of the insurance industry would experiment on its own; i.e., one or two companies would write a policy undertaking to insure a group, and others would wait and see the results of the so-called forerunners, or, as the term was used, to see the result of the "loss leaders."

The group likewise discussed the necessity for the need of legislation in many states. Wisconsin has just amended its statutes so as to permit the formation of insurance companies for the purpose of writing group legal insurance. This may have to be done in many states in order to validate the kind of policies we are talking about.

Some concern was voiced by members of the insurance industry, similar to that of the trade unions, and similar to that voiced by employers who might be funding prepaid legal insurance. An employer may say, "I will give you the money to fund the prepaid legal plan, but don't sue me." The union may say, "we will negotiate a plan for our members, but don't sue us," and the insurance industry says, "we will pay your legal costs, but don't sue us." In other words, nobody wants to finance litigation against himself, and this is an understandable concern.

Finally, I undertook to define the position of the American Bar Association and the Bar in the field of group legal services. It is an important point to make.

It is the position of the American Bar Association that delivery of legal services to the great middle class of America is an obligation of our profession. We feel there is a need for the delivery of legal services to that class, which to a large extent is presently unfilled. The focus of the experiment then is to make legal services available to the middle class of America. I personally agree that if the time has come for prepaid legal services, it will change the nature and the manner in which law is practiced, and all of us in this field are riding on the nose of history.

F. William McCalpin:

Thank you very much, Charlie. I think we may really have more out of this than I've bargained for. If I understand what you have said, you have now joined issue with Bob Connerton's group, your group has, on whether there is a demonstrable demand for prepaid legal services.

From some of the things that I heard in the lawyers' group this morning, I think there may also be some issue as to whether all of the positions of the American Bar Association clearly demonstrate its commitment of supplying this need. The reporter for that group is Stuart Kadison, president of the Los Angeles County Bar.

THE LEGAL PROFESSION

Stuart L. Kadison
Workshop No. 3 Reporter to Plenary Session

Thank you Mr. Chairman. The time requires that I be brief, although we did have a very good and, I thought, provocative discussion in the lawyers' panel this morning.

We started with a consensus that may be surprising--I will attempt to minimize my editorializing--surprising to those of you here who are not lawyers. And that was the consensus that prepaid legal services in some form are inevitable, that they are desirable from both professional and societal points of view, and that to a very large extent they are here. There was some discussion of the problems of the poor, although I think there is consensus that what we have thought of as the war on poverty is likely, once it develops a battle plan, to meet that problem. We dismissed the wealthy very quickly because they don't have a problem.

So, the focus really was on the needs of the middle-class consumer of legal services who either does not know that he has a need for the services or believes that he cannot afford them.

The composition of our panel was interesting. There were individual lawyers, there were lawyers from law firms, large law firms among them--what we think of somewhat reluctantly as the legal establishment. There were bar association representatives, there was a fair representation of lawyers already involved with functioning prepaid legal services programs, and there were a number of non-lawyers who are identified with consumer groups that have sensed this need and attempted to meet it.

There was very clear consensus from this entirely disparate group as to the urgent necessity for some kind of structuring delivery of services with respect to quality and professional standards, to which I will address myself in just a moment. Two catalytic areas were identified: The first was termed the grassroots movement, largely consumer oriented, largely consumer activated. It is apparent that it is a dynamic and a vital movement. It is apparent that it will move whether the profession moves or not. I think it was apparent to most of the speakers that in that context it is urgent that the profession begin to move constructively and actively. The second catalytic element is the organized bar. There was a strong sense that the organized bar is not moving with sufficient celerity that we were moving too slowly.

I will permit myself a chauvinistic comment. There was some criticism of California, but in California, at least, we are moving. We do have Rule 20, whatever its imperfections may be. We do have something to build on, and there was some discussion as to how we should address ourselves to improvements of Rule 20 to make it more responsive to the needs. We are moving perhaps too slowly, perhaps too little, and possibly too late, but we are moving a little more and a little sooner than it seems other areas are moving. I think most of the participants from other areas left the meeting with the sense that it was important to get the motion started elsewhere in the country at the level of the organized bar.

There was strong consensus deploring the growth and proliferation of legal services programs without some kind of positive, somewhat uniform direction, and a strong feeling

that a degree of uniformity was essential. There was a suggestion which I thought was well-received by the persons present that there might be a need for national legislation, for national guidelines in the form of Congressional enactment, looking to the development of a kind of uniformity in these plans, both in their concept and in their manner of operation, looking also to the provision of safeguards in two areas: first, for the consumer, in terms of quality control. What kind, what quality of legal services will be delivered under these inevitable and socially desirable programs?

There was general consensus that implementation had to focus and direct itself toward the delivery of first-rate legal services, something more than just a gesture in the direction of a felt need. And obviously, this is not purely a consumer problem. The organized bar, the disorganized bar, if you will, manifestly has a comparable interest in this relating to professional safeguards. In terms of bread-and butter considerations, such a compensation for lawyer participants, I think there was a sense that as these programs emerge the dynamics militate toward the solution of that problem: lawyers will not work unless they are fairly compensated. Secondly, and perhaps more important in terms of the societal need, was the consensus that as these plans emerge, they must preserve professional safeguards and standards relating, for example, to quality control. Quality control, being the sine qua non, it seemed to most people present has to be adequate to meet the needs of the consumer.

And then very specifically, there was a discussion in the context of the traditional professional inhibition against solicitation. For example, this really translates itself into a marketing problem, that perhaps we ought to take another look at these inhibitions with the recognition that marketing a program, such as we are talking about, is quite different from marketing an individual lawyer, and at the necessity of accommodating tradition and in this context perhaps outdated inhibitions and the establishment of rules of professional conduct having an application to prepaid legal services programs.

There was discussion of the paraprofessional concept, which is really not, and I think this was felt by most, quite as alien to this matter of prepaid legal services as it might at first appear. One gentleman from Detroit with a large firm mentioned the extensive use of paraprofessionals in his firm. It is to be hoped, and I think most of us who have explored the paraprofessional concept and are working in that direction hope, that the proper use of paraprofessional personnel will result in no diminution of the cost, first, to the law firm which then could propose lower charges, and then to the consumer who would be the beneficiary of that event. The one caveat that was expressed by several of the participants with respect to the paraprofessional activity was that it must function

under lawyers' supervision in areas that the dynamics of this movement are rapidly seeing occupied by well-motivated but unprofessionally directed consumer groups. There was a reply to that in the context of one such group in which the speaker made it clear that the group with which he was identified was acting under professional supervision.

The general consensus, the general sense that I gained and Mr. Jones, our reporter, gained from the spirited and useful discussion was that the profession must move more promptly in the problem areas that were identified in the meeting and that I have tried briefly to identify to you in order to avoid the type of chaotic topsy-like growth from which the Office of Economic Opportunity is now attempting to recover; I have no doubt they will recover from it. I think the present movement in the Congress is constructive and likely to overcome the problems of a war on poverty which, to go back to my original premise, was probably the only was that we have fought without a battle plan. Hopefully, what will come from this type of seminar and from the activity of the various committees working on this will be a battle plan which will meet the needs of the consumer, serve the needs of the profession, and in the final analysis recognize that the last half of the twentieth century is quite different in terms of felt needs and necessary responses than was the nineteenth century. Thank you.

DISCUSSION

F. William McCalpin:

Thank you very much. In the interest of utilizing our remaining time as effectively as possible, first of all I would ask whether the first two groups feel that they need to have any rebuttal or response to anything that was said after they spoke, respectively. Bob, do you feel any, or Charlie do you need to reply or Stu in any way?

All right, anybody in the audience who would like to make a brief comment? We have about 5 minutes total to add to any of the reports which have been made or something that was not said.

Charles Gabler, attorney, Van Nuys:

I've been present at the two-day seminar here and I've never clearly heard the American Bar Association, the California Bar Association, specifically disclaim any of these proposed plans materials on which have been passed out to all of us. We read Rule 20, which makes these negative statements. All I would like to know is when can the American Bar Association,

or for that matter the California Bar Association, come up with some positive guidelines to many of the attorneys who are here today that have this problem as far as having prepaid legal services is concerned? Instead of giving negative comments, when can you give us positive information?

Mr. McCalpin:

Well, it was our hope in providing you with this that we were giving some affirmative help in structuring a plan. We certainly, by putting our time and our money into Shreveport and into Los Angeles, have been trying to give some affirmative assistance. It is not the intention of the American Bar Association to impose a plan on anybody. I, of course, can't speak for the California Bar, and indeed I don't speak for the American Bar as such. I can speak for the American Bar committee, I believe. There are enough of them here to reverse me outright on the floor if I don't. In saying that we stand ready to cooperate, we don't know all of the answers. We have tried to help structure programs around the country. We stand ready to do that within the limits of our knowledge and ability. Yes sir? Dave Robinson, do you want to say something?

David Robinson, President of the California State Bar:

Well, with regard to California and with respect to the gentleman from Van Nuys' specific inquiry, I think there are two things which you should be aware of. Number one is the existing plans, which are group plans. The State Bar has made a very extensive investigation into all existing plans that we knew of. This report which is almost, I think, a hundred pages long and includes some suggested revisions or clarifications is before the board of governors at our next meeting. The matter of better guidelines for existing plans in Rule 20 is being given specific consideration. With regard to where we are going, as I mentioned yesterday, on the prepaid legal services we have the committee that's done an excellent job. Its report will be before us this next week. We are moving and we're moving very rapidly. The report is not available at the present time because it's in the process of being considered by the board of governors. We're going to decide next week whether or not the whole report or summaries of it will be made available; it's quite an extensive report and thus may not all be available to the public soon.

Mr. McCalpin: Yes sir?

Floor:

Mr. Chairman, I'm envious of the group. This is a very volatile, provocative, and aggressive meeting. Usually the

chairman thanks people, but I think I can speak for this entire group thanking the California State Bar, the American Bar Association, the Los Angeles County Bar Association, and the dean of our UCLA Law School who encouraged us to put on this entire program.

Mr. McCalpin:

Thank you very much. As you were talking, I was wondering if somebody was going to apply that adage about "fools rush in" or something of that sort. Yes sir?

Floor:

One problem that I can see in everyone of these particular elements is that there is a need and a demand by the consumer for prepaid or some type of group legal services. And my question is, is the American Bar Association, or the insurance companies, or the labor representatives, or anybody else here planning any kind of promotional activity of finding some way of giving to the general public information on how to find an attorney or use an attorney. To me this is what will make it all work.

Mr. McCalpin:

Boy, how do I answer that question? Yes or no, somebody suggested. Of course, the insurance industry, some aspects of it, as you heard, may be getting into that. The labor unions, it seems to me, are very much actively engaged in that already. And to a very considerable extant, though in my judgement not nearly enough, so is the American Bar Association. Mrs. Manoil, I've been pushing you off, the representative from the Massachusetts Bar asks to speak.

Colette Manoil:

Mr. Chairman, I can make a statement that's very easy and without provoking its own war.

Mr. McCalpin: Would you take a microphone perhaps?

Mrs. Manoil:

It occured to me, now that I have your attention, I want to propose that this conference adopt some kind of recommendation. I attended the conference on the legal profession this morning, and it seemed to me that the major problem we have--and this is your opport nity, Mr. Goldberg--is in the area of solicitation. What I would suggest is that this conference adopt a recommendation, to be formulated by the chairman of the ethics committee, that it reconsider the prohibition against solicitation and similar ethical inhibitions in the context of prepaid legal insurance or in some other form with a view to permitting the organized

bar and individual members thereof to take the initiative to develop programs which meet the needs for increased and improved systems of delivery of legal services to the general public. This resolution would, of course, be based on the assumption that the bar is in the best position to assure equal access of high-quality legal services, whether by attorneys, paralegal personnel, or otherwise, And if such a resolution were to be adopted, that it be circulated to the various bar associations in the states to obtain their reactions to it.

Mr. McCalpin:

When she talked about the chairman's role I was tempted to say this meeting adjourned at 12 o'clock promptly. Happily though, I don't have to formulate anything because, as I understand, this is being taped and Mrs. Manoil's proposal is on the record. We didn't set out to have a resoluting sort of conference. I gather from the spontaneity of the response that there is a certain support to the lady. Well, let me say that certainly everything that transpires in this meeting will be reflected in the report of the special committee to the house of delegates in February, and we intend to cover the whole meeting in our report to the house of delegates. I wouldn't object if it's the sense of this group to communicate to the committee, the name of which I've forgotten at the moment, which has a continuing responsibility for the Code of Professional Responsibility, that there was this sentiment expressed from this group.

Floor:

I'm concerned about the lack of emphasis on the black communities in terms of legal services. Number one, I'm concerned about the fact that they're going to the ABA or universities on the need for special consideration for black legal services that have not effectively done the job in terms of the way they work and the assigned job. But I do feel that something should be brought about under the action plans, so that when you have these types of seminars there should be some emphasis for the blacks within your program. I'd like to see some black attorneys within some of these groups, and some effort made along that line. None of them are here. That's my concern.

Mr. McCalpin:

I shall certainly take note of that. The one issue that is before our committee this afternoon is whether this conference or a conference of this type should be repeated elsewhere in the United States in the months ahead, and certainly your comment is a suggestion which we can take to heart in that respect. One more question and I'm afraid we'll have to quit.

Stanley Weissburg, Los Angeles:

Apart from the issues raised by the lady's resolution a moment ago, it seems to me that the other critical matter for consideration by this group has been the question of whether there is a market, will it sell, and what sort of data can be gathered. It seems that the sense of all the panels was that there is inadequate data. Well, the American Bar Association has taken the lead with the Ford Foundation in putting $100,000 into a teachers' program to test the market in probably the most propitious market area in the country, Southern California. And it strikes me that perhaps the most practical answers that must be made available to this nationwide group of people are the data that will arise from the other areas of the program. I would like to propose therefore that this group appoint a committee of however many as practical to stay in touch on behalf of itself and to report back to this group in some proper form in 60 or 90 days or periodically the data on the experience that is encountered in putting together, administering, and marketing the legal programs in the country.

Mr. McCalpin:

Let me say, of course, this conference is not a continuing body, the Special Committee of the American Bar Association is. What you have suggested is precisely our responsibility to keep in touch with all experimental and operative programs everywhere, to report on those as frequently as we possibly can. We have attempted to do that here in our handbook, and we do it in our reports. We do it in other publications, professional and otherwise. Mr. Murphy has written several articles on the subject. We do regard that as our responsibility and we will continue to do it.

CONFERENCE SUMMATION

F. William McCalpin

I would like to take only a brief couple of moments as you finish your dessert and coffee to say a quick good-bye to each of you and a far more valuable, I hope, a far more heartfelt and somewhat lengthier thank you on behalf of Dave Robinson, President of the State Bar of California, Murray Schwartz, the Dean of the Law School at UCLA, the American Bar Association, and particularly the Special Committee on Prepaid Legal Services, for the enrichment, the knowledge, the insight, the information which you have brought to this meeting and have provided to us in the last day or so. I'm frank to say that in a sense we are overwhelmed with what you have told us, what we have learned. We must now take a long step backwards to see precisely whether we are where we thought we were or someplace quite far removed from where we thought we were.

I want to assure you that the Special Committee on Prepaid Legal Services will continue to try to collect as much information as it possibly can on existing prepaid legal services programs all over the United States. We will, on a relatively formal basis, as often as we can disseminate that information to those on our mailing lists. In the meantime, we stand ready to respond to any request by any of you for particularized or generalized information. I would ask only that you communicate with us, with the ABA headquarters in Chicago at 1155 East 60th Street. We have a very competent young lady there. Phil Murphy is in Santa Barbara here, I am in St. Louis, and other committee members are scattered across the country. If Sue Wolkowski in Chicago cannot answer your inquiry immediately, she will promptly refer it to Phil Murphy or to me, and we will get you an answer as fast as is humanly possible. We do intend to disseminate, to collect and disseminate, the information and the plans which we have received here.

As I announced over the humbug at the end of the last session, you will receive a notification from UCLA, hopefully in about 45 or 50 days, of the availability of the transcript, and will have an opportunity to respond as to whether you wish to have that transcript or not. If there is any other way that you find or see that we can serve you, that's our purpose. It is not, as I view it, our purpose to create or promote, although we certainly do not shy from that task. Our purpose really is to serve

you, to provide you with all the help and assistance that we possibly can as you and we go forward to provide the various kinds of plans and programs of legal services for the great mass of our fellow American citizens.

We are all of us indeed grateful to you for your attendance, the initiative that you have taken, the trouble and investment of your time and money in coming to this conference. We hope that we have justified your expectation in coming here. We know that you have richly rewarded us by your contributions. As I said when I began, a very heartfelt thank you, a quick good-bye. We hope that we shall see you again shortly. Thank you very much.