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JOINT LABOR-MANAGEMENT TRUST FUNDS FOR LEGAL SERVICES, 1973

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DOCUMENTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON

LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 1423

TO AMEND THE LABOR MANAGEMENT RELATIONS ACT, 1947,
TO PERMIT EMPLOYER CONTRIBUTIONS TO JOINTLY ADMIN-
ISTERED TRUST FUNDS ESTABLISHED BY LABOR ORGANIZA-
TIONS TO DEFRAY COSTS OF LEGAL SERVICES

APRIL 10, 11, AND 16, 1973



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JOINT LABOR-MANAGEMENT TRUST FUNDS FOR LEGAL SERVICES, 1973

TUESDAY, APRIL 10, 1973

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:13 a.m. in Room 4232, Dirksen Senate Office Building, Senator Harrison Williams (chairman) presiding.

Senators present: Williams, Javits, and Taft.

Committee staff members present: Gerald M. Feder, counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. This is a hearing of the Senate Subcommittee on Labor to consider S. 1423. This bill deals with prepaid legal services and was introduced by Senator Javits and myself on March 29, 1973.

To put this legislation into proper perspective, our eminent legal scholars of the staff have supplied me with this 18th century quotation from William Shenstone:

The laws are generally found to be net of such a texture as the little creep through, the great break through, and middle size are alone entangled in.

This is the situation millions of moderate income Americans find themselves in today. The United States has more laws than any other nation in the history of the world.

This massive body of law generates a massive amount of legal problems. In handling these problems, the affluent can afford the costs of legal actions, and the poor, in many instances are provided with free legal service. But what of the man in the middle. He is too rich to warrant free legal service and too poor to pay for it. Yet, these millions of moderate income Americans find themselves today without the services of a lawyer they can afford.

One of the glaring injustices in America is that Americans of moderate means neither know when they need legal services, how to obtain them, nor how to finance those services.

At this time I order printed in the record a copy of the bill (S. 1423) under consideration at this hearing today.

[The bill referred to and the report of the Department of Labor subsequently received follow:]

93^d CONGRESS
1st SESSION

S. 1423

IN THE SENATE OF THE UNITED STATES

MARCH 29, 1973

Mr. WILLIAMS (for himself and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Labor Management Relations Act, 1947, to permit employer contributions to jointly administered trust funds established by labor organizations to defray costs of legal services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 302 (c) of the Labor Management Relations
4 Act, 1947, is amended by striking out "or (7)" and insert-
5 ing in lieu thereof "(7)" and by adding immediately before
6 the period at the end thereof the following: "; or (8) with
7 respect to money or any other thing of value paid by any
8 employer to a trust fund established by such representative
9 for the purpose of defraying the costs of legal services for

1 employees, their families, and dependents: *Provided*, That
2 the requirements of clause (B) of the proviso to clause (5)
3 of this subsection shall apply to such trust funds”.

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

MAY 2 1973

Honorable Harrison A. Williams, Jr.
Chairman, Committee on Labor
and Public Welfare
United States Senate
Washington, D. C. 20510

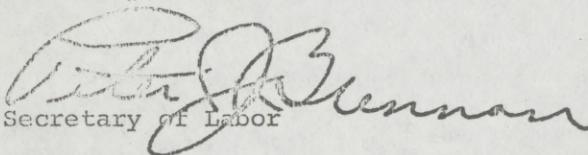
Dear Mr. Chairman:

In your letter of March 31, 1973, you asked for my views on S. 1423, a bill to amend the Labor Management Relations Act to permit employer contributions to jointly administered trust funds that are utilized in providing legal services for employees. The bill would amend section 302(c) of the LMRA by adding a new clause (8) authorizing the establishment of such programs.

As legal services are critical to all of us at various times in our lives, I support in principle the inclusion of such authority. Any such provision, however, should bar the use of legal service trust funds to pay for the defense of union officers facing criminal charges for misfeasance in office. It should also bar use of trust funds in suits by employees against their own employers (except when the employee is seeking to obtain workmen's compensation) and by union members against their own unions.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,


Secretary of Labor

The CHAIRMAN. With the recognition of these major obstacles, several nongovernmental groups, primarily in the past decade, have begun to experiment with programs designed to insure the availability of legal services. Bar associations across the Nation are experimenting with insurance programs to provide these services. Labor organizations, on their own and jointly with local bar associations, have begun establishing legal service programs. Even the U.S. Postal Service is now studying the possibility of establishing a private legal service program. My own State of New Jersey is experimenting with a Blue-Cross-type prepaid insurance program.

One major obstacle to the experimentation with and creation of such programs is section 302(c) of the Labor-Management Relations Act which prohibits labor and management from jointly administering trust funds established to provide such legal services to employees, their families, and their dependents. Today, management can establish such funds and labor can establish such funds but they are barred from jointly administering such funds.

S. 1423 would remove this obstacle. The bill is a proposed amendment to section 302(c) of the Labor-Management Relations Act of 1947, which presently sets out the fringe benefits which may be established through joint labor-management administration. These fringe benefits are presently limited to such subjects as pensions, health and welfare plans, life and accident insurance, and such matters as education, training, and child day care centers. This bill would add legal service programs to this list.

The legislation has been made necessary because of the growing recognition that existing methods of delivery of legal services to middle and working class citizens are inadequate, and that the establishment of legal service programs through collective bargaining, in a manner similar to the way health benefit programs were established, would be an important step forward toward alleviating this problem.

This bill will not mandate the establishment of such programs, it will not dictate the terms and conditions of such programs, it will not interfere in any way whatsoever with the operations of such programs. And it will not finance such programs. Rather, it will merely remove an unwarranted and unintended Federal roadblock to the establishment of such programs by the private sector, with private funding.

This measure will not replace bar association procedures with Federal procedures, it will not subvert State control over the practice of law with Federal control. It will neither require nor prohibit open panels or closed panels, it will neither require nor prohibit the establishment of such programs, and it will neither require nor prohibit bargaining between labor and management over such programs.

I can conceive of no reason other than an accident of history and unintentional legislative drafting for the Federal Government to be the major obstacle to private arrangements to insure the availability of legal services to the millions of moderate income Americans. This bill will remove that obstacle.

Our first witnesses will be in a panel representing four major labor organizations, each organization having a direct concern for providing their members with the needed legal service. I know their experience will be very helpful to the committee in considering this

legislation. Before I turn to them, Senator Taft, do you have any opening words?

Senator TAFT. Thank you very much. I do not have any prepared statement this morning. I do think the remarks made by the chairman are very appropriate indeed, and I myself am in substantial agreement with them.

I have never really understood why the law should have undertaken—I do not think it is intentional, really—to bar the setting up of trust funds of this kind for joint administration. Certainly the providing of legal services in today's complicated society is something that I think we all have a great concern for as witnessed by the fact that we are looking at the establishment of a legal services corporation in general and there seems little reason to me offhand why the freedom of contract between management and labor should not, if it desires to do so, and subject to proper safeguards, set up a trust fund for the purpose in question.

I look forward with interest and anticipation at hearing the testimony on the bill.

Thank you.

The CHAIRMAN. Thank you very much, Senator Taft.

Our panel is composed of Robert Connerton, general counsel, Laborers' International Union of North America; Stephen Schlossberg, general counsel, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW); Max Zimny, general counsel, International Ladies' Garment Workers Union; and Joyce Miller, director, Department of Social Services, Amalgamated Clothing Workers of America.

STATEMENT OF ROBERT J. CONNERTON, GENERAL COUNSEL, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA; STEPHEN I. SCHLOSSBERG, GENERAL COUNSEL, INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE, & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW); MAX ZIMNY, GENERAL COUNSEL, INTERNATIONAL LADIES' GARMENT WORKERS UNION; JOYCE D. MILLER, DIRECTOR, DEPARTMENT OF SOCIAL SERVICES, AMALGAMATED CLOTHING WORKERS OF AMERICA; COMPRISING A PANEL

Mr. CONNERTON. Mr. Chairman, for your benefit and Senator Taft's benefit, Mr. Zimny is on my extreme left, Mr. Schlossberg joins me, and of course our fine lady Joyce Miller is on my right.

My name is Robert J. Connerton, and I am general counsel of the Laborers' International Union. I am accompanied here this morning by Jack Curran, our legislative director.

Mr. Chairman, I have had an opportunity as general counsel to assist in the development of the prepaid legal services plans for Laborers' affiliates in Shreveport, La., Columbus, Ohio, Birmingham, Ala., and Philadelphia, Pa., and am presently engaged in helping set up prepaid legal services plans covering approximately 10,000 laborers in Washington, D.C., Virginia, and Maryland, and approximately 20,000 union laborers in the State of Massachusetts. I also have served as a member of the prepaid legal services committee of the American

Bar Association, since its inception in 1970, which has helped formulate the response of the organized bar to the challenge of providing legal services for moderate-income Americans. I also served as chairman of a steering committee which led to the recent establishment of the National Consumer Center for Legal Services.

I understand Mr. Duffy, the staff director of the center, is scheduled to testify at a later time.

From these three vantage points, I have been fortunate to watch and also to participate in the unfolding of the movement of making legal services freely available to all Americans. I think as both you and Senator Taft have indicated, there was not any deliberate attempt to stifle the growth of legal service plans. Actually section 302 was drafted in 1947 and was drafted in terms of the general prohibition with specific exceptions, so that as new programs developed from 1947, it has been necessary to come here and petition the Congress to amend section 302 to exclude these programs from the statutory prohibition.

So we have a long history in this connection. For example, back in 1959 you will recall the Congress excepted pooled vacations and holidays and severance plans and apprenticeship and other training programs from prohibitions, and 10 years later it added another exception for day care centers and scholarship programs.

Your bill would simply add one more specific exception to section 302 in order to correct the legislative draftsmanship oversight.

Last year in connection with the preparation for testifying in the House in support of this proposal, we did make a careful study of the legislative history of section 302. It was not based upon any consideration of public policy. Legal service programs were not then in existence and there is a good reason for it. Let me describe it to you.

For many years State bar associations took action against groups which were trying to provide legal services for their members. For example, today we still have outstanding injunctions against the American Automobile Association in many States of the country for providing legal services for their members. So we have had almost insuperable barriers built up until very recently on the representation by attorney to members of the group, by referral of the group.

In three relatively recent Supreme Court decisions, two involving trade unions and another involving a civil rights group, the Supreme Court held that the 1st and 14th amendments protected user groups in retaining attorneys or making any other legal arrangements to assist their members in asserting their legal rights. Still there were those in certain State bar associations who felt that these cases were limited to their facts, that they continue to take action against groups, and it was only 2 years ago in April 1971, that the Supreme Court in the *UTU v. State of Michigan* case delivered the definitive opinion which rejected any attempt to limit the earlier cases to their particular facts.

The Court made clear in that case that its holdings in previous cases did not turn upon any set of particular facts, but that the right was an unrestricted right protected by the 1st and 14th amendments, and such right could not be abridged or restricted.

Now we are really only talking about a period of 2 years, in which it has become clear that consumer groups of all types have a right to make arrangements to provide legal services for their members.

Now during that period of time the Court was also acting upon the right of Americans to be provided with competent counsel, and the Supreme Court, you will recall, has steadily expanded its notion that the Constitution requires that indigent defendants in criminal cases be provided with representation. Again it was only about 7 months ago in the *Argersinger* case where the Supreme Court ruled unanimously that counsel must be provided in criminal prosecution where there is even a possibility of incarceration, whether a misdemeanor case or otherwise.

Then we can also see this situation unfolding in another area. We found that during the 1960's the Congress of the United States provided for indigents in civil cases their neighborhood legal services, the right to counsel and although there has been some question raised now in the conversion of the service to a public corporation, I am sure these minor questions will be settled, and it seems clear that this service will continue to provide free legal services for approximately 40 million poverty level Americans who are eligible for benefits.

I would like to take you back to the Senate bill on this score 2 years ago which contains a little noticed provision which was subsequently deleted in conference, which would have permitted these Federal poverty law programs to expand their scope to serve the people of moderate income through a device of charging small fees to represent the citizens.

Now the matter was I gather stricken in conference without debate. Without imposing too much on you or Senator Taft, I think it is eminently clear that adequate counsel is still beyond the means of over 150 million Americans in this country. We thought that provision marked the handwriting on the wall. I do not think you can expect moderate income Americans living in an increasingly complicated society, having the same needs for adequate legal counsel as the poor, in the same general area, landlord, tenant, veteran, consumer cases and so forth, to continue and support free legal services for the poor while their own legal needs remain unfulfilled.

I am not suggesting that they will turn against neighborhood legal services programs, but I am suggesting unless we can provide through our free enterprise system the private mechanisms for the delivery of these services, it is inevitable that the Federal Government will be called upon to meet this growing demand.

Now across the country today the problem of providing legal services for this mass market of moderate income Americans is being attacked by a great variety of groups. The American Bar Association is active, American trial lawyers, insurance companies are interested in the field, universities, the consultants, Blue Cross-Blue Shield, all types of farm groups, cooperatives, trade unions, credit unions, religious groups, and civil rights organizations.

Now let me turn quite briefly to review just two plans in which my organization happens to be involved. The first was a cooperative effort between our local union in Shreveport with the American Bar Association and the Ford Foundation. This covers a group of approximately 600 laborers. It has been in existence for 2 years. It is financed by a 2-cent-per-hour union dues payment deducted by employers pursuant to voluntary checkoff. All members of the Shreveport Bar Association participate in these arrangements. Again it was necessary to

do it that way because of the present strictures of section 302. Coverage is provided just like a Blue Cross-Blue Shield medical plan pursuant to a schedule of benefits. The plan prohibits any suits against the unions. It prohibits suits against employers and prohibits suits between members.

Now after 2 years we can tell you that Shreveport is alive and well. It has not undermined the stability of the collective-bargaining relationship in any way. There has been no mad rush to either the lawyers or the courthouse—we were concerned we might have some legal hypochondriacs in our group, and we have not had any yet. There have been no harassing law suits involved. There has been no attempt made on the part of anyone to tear down the system.

We have put the emphasis up on the front end, up in the area of preventive law. It has paid 93 percent of the total legal billings. I was just down in Shreveport over the weekend for a meeting on the plan with the bar association reviewing its second year of activity and we found something very, very interesting that a certain kind of case involving very, very sharp practices in the consumer area has all of a sudden seemed to dry up. Whereas the union used to receive 8, or 9, or 10 calls a week from certain sharp operators looking for members, they are not receiving calls anymore. It is more in the nature of preventive law.

In fact, it has diminished from the number of cases going on the court's docket rather than adding to it, and this is simply what the union is seeking to carry out. There have been unemployment compensation cases, domestic relations, automobile cases, real property—somebody buys a house, drafts a will—and there have been retail credit and other consumer problems. This is the type of case we have had there.

The CHAIRMAN. What is the point there? Were the sharp operators promoting unwarranted litigation?

Mr. CONNERTON. Yes, Senator. And we have, as I say, any number of specific instances we will be delighted to furnish the committee. For example, they would be doing such things as going in the morning to a man's house and asking him to help him take out his furniture and put it in the truck, simply because he had signed a note for someone else maybe a year or two before. Obviously, under those circumstances if you are provided with legal representation, then this type of thing just simply does not happen, because it is illegal for them to do so in the first place.

We have found many, many cases in the consumer area where a poor person rather than spend \$300 or \$400 to go to a lawyer and defend himself, would rather sit by and let the person do something even though he knows it is illegal for them to do so.

Now, turning quickly to another plan that we have—and this is out in Columbus, Ohio, and it is more in the nature of a group health kind of plan, rather than following the analogy of Blue Cross, Blue Shield. Well, it covers 3,000 members and their dependents. Again it is financed through a working dues arrangement. It functions through a legal center staffed by attorneys, much like the group health clinic.

The usage there has been extremely high. It has been over 50 percent in the first year.

Again, this plan prohibits suits against employers or unions or between members. The union conducts an intensive educational program with mailings to its members so they can recognize consumer problems. It has a WATTS line where any of its members living in an outlying area can simply pick up the phone and get free advice and consultation from the legal center. It covers virtually every single type of case that is manageable except exclusions I mentioned earlier.

We found that in most of these cases that we develop a different type of practice, where there is practice in the law office, rather than practice in the courts. Most of these cases have been adjusted without the necessity of either litigation or trial. There is simply no evidence that the center is adding to the backlog of the courts.

Again we have had no frivolous actions.

Attorneys retain rights to reject any nonmeritorious claims. The plan is now in the process of being expanded to encompass other labor groups in Ohio. We are plugging in the Ohio State University Law School as a backup center. We have established an advisory board in which the bar and all other community groups participate. All of the information there is available to the committee or any other group that is interested.

I think I am imposing too much on everyone else's time. I would say in conclusion, Mr. Chairman, that we deem the request for providing legal services to moderate-income Americans simply to be entitled to the same equality of treatment as that afforded medical, dental, pension, day-care centers, or other permissible fringe benefits.

Passage of S. 1423 will be an important first step in this direction.

I want to thank you and Senator Taft for the opportunity of appearing here this morning.

I would like permission, Mr. Chairman, to submit my statement and other materials for the record.

The CHAIRMAN. Yes, that will be included in full.

[The prepared statement of Mr. Connerton with additional information follows:]

STATEMENT OF ROBERT J. CONNERTON, GENERAL COUNSEL
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA
BEFORE THE SUBCOMMITTEE ON LABOR OF THE
SENATE COMMITTEE ON LABOR AND
PUBLIC WELFARE ON S. 1423

April 10, 1973

My name is Robert J. Connerton, and I am general counsel of the Laborers' International Union of North America, AFL-CIO, a union with over 600,000 members, employed on all aspects of construction, in industrial plants, and for the Federal, State, and local public service, on whose behalf I am appearing here today, together with our Legislative Director, Jack Curran, to urge your support for passage of S. 1423, which would permit labor and management to negotiate for jointly-administered legal service programs. In this capacity I assisted in the development of the prepaid legal services plans for Laborers' affiliates in Shreveport, Louisiana, Columbus, Ohio, Birmingham, Alabama, and Philadelphia, Pennsylvania, and am presently engaged in helping set up prepaid legal services plans covering approximately 10,000 laborers in Washington, D.C., Virginia and Maryland, and approximately 20,000 union laborers in the State of Massachusetts. I also have served as a member of the Prepaid Legal Services Committee of the American Bar Association, since its inception in 1970, and which has helped formulate the response of the organized Bar to the challenge of providing legal services for moderate-income Americans. I also served as chairman of a Steering Committee which led to the recent establishment of the National Consumer Center for Legal Services, and I am a

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R. J. Connerton

member of its Executive Committee and serve as Co-chairman of its Legal Advisory Committee. In these three capacities I have been fortunate to watch and participate in the growth of the movement to make legal services freely available to all Americans.

Section 302 of the Labor-Management Relations Act (restrictions on payments to employee representatives) prohibits all payments by employers to employee representatives for purposes other than those specifically excepted in this section. The purposes of Section 302 are to eliminate bribery, extortion, shakedowns, "sweetheart contracts," and other corrupt practices, and to protect the interests of beneficiaries of lawful employer-supported funds. Among the lawful funds are those established for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance, pooled vacations, holiday, severance or similar benefits, or apprenticeship or other training programs, and day care centers and educational scholarships.

The courts have held that employer contributions to programs administered jointly by trustees representing labor and management which are outside the scope of the specific exceptions to section 302 are illegal. It should be stressed that prepaid legal service plans and collective bargaining about such programs are presently lawful.

Employers are free to provide legal services for their employees. Unions today are free to provide legal services for their members.

April 10, 1973

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R. J. Connerton

Only joint labor-management administration of such programs is unlawful because courts have held in interpreting S.302 that such joint administration would constitute a prohibited payment to employee representatives in violation of section 302.

It should be emphasized that such programs were not proscribed as a matter of public policy, but simply by the nature of the drafting of section 302. By enacting a general prohibition and setting forth specific exceptions, the Congress impliedly prohibited everything not excepted.

Thus, as new socially beneficial fringe benefit programs developed, it has become necessary to petition the Congress to amend section 302 to specifically exclude such programs from the statutory prohibition. Thus, in 1959, section 302 was amended to except pooled vacations, holiday, severance or similar benefits, or apprenticeship or other training programs; and approximately a decade later it was again amended to except day care centers and scholarship programs. S. 1423 would add one more specific exemption to section 302(c) -- jointly administered legal services programs -- in order to correct the legislative drafting oversight in the original enactment of the law.

At the outset I noted that legal service funds as such are not made illegal by section 302. (In fact, thousands of such funds are in existence today covering employees, and other members of various user groups such as trade unions, consumers, credit unions, farmers cooperatives, students, property owners, church groups, et cetera.) Nor does section 302 proscribe collective bargaining regarding such legal service plans.

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It is only joint labor-management administration of such programs that is unlawful, and only because of the drafting technique employed a quarter of a century ago.

Last year, in preparation for testifying, I made a careful study of the legislative history of section 302 of the Taft-Hartley Act. This study disclosed that the current prohibition against jointly-administered legal service plans is not based upon any considerations of public policy. The subject matter of such contributions was not considered by the Congress which enacted the Taft-Hartley Act.

There were sound reasons why Congress did not consider legal service funds in 1947, for prepaid legal service plans, as such, are of relatively recent vintage.

First, let me describe, in brief terms, the historical events which now give rise to S. 1423.

It was Anatole France who said that "poor and rich alike are prohibited from sleeping on a park bench." He could have carried the bitter irony further by suggesting that if charged, both rich and poor alike were not prohibited from retaining competent counsel in their defense.

For it has long been a commonplace in our society that the rich could afford adequate legal representation, that corporations, mercantilists, et cetera, were financially able to retain the best legal help, but that the middle class and the poor could not afford proper counseling, and suffered much as a consequence thereof. Surely, in our society the tenants did not draft the model landlord-tenant laws, the insureds did

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not draft the insurance laws, the debtors did not draft the credit laws, nor did these users have a hand in drafting the instruments setting forth the rights and obligations of the respective parties. Nor could they afford to hire proper representation to review these instruments prior to signing, nor when disputes arose concerning their meaning and application.

But in the past decade we have come a long way -- as a society -- in this land in the direction of making legal services available to the vast bulk of our citizens. The principle that all citizens in time of need should have a right of access to competent counsel -- in truth and fact as well as in theory -- was late in coming, but has now come to be accepted by virtually every element in our society. The evolution of this doctrine owes much to decisions of the U.S. Supreme Court and congressional legislation.

First, legally, the Supreme Court has steadily expanded the notion that the U.S. Constitution requires that indigent defendants in criminal proceedings be provided with legal representation. Indeed, as recently as June 12, 1972, in Argersinger v. Hamlin, the Supreme Court unanimously ruled that counsel must be provided in any criminal prosecution where there is a possibility of incarceration and that if the accused is not represented by counsel, imprisonment may not be imposed.

Then, throughout the 1960's, the Supreme Court also busied itself striking down State court decisions which sought to infringe upon the right of user groups to provide legal services for their members. Until then, some State bar associations had erected almost insuperable

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obstacles to the representation by an attorney of the members of a group upon referral by the group. In the United Mine Workers, Trainmen and N.A.A.C.P. cases, the court held that the 1st and 14th amendments protected user groups in retaining attorneys or making any other legal arrangements to assist their members in the assertion of their legal rights. Only in April 1971, in U.T.U. v. State of Michigan, did Mr. Justice Black deliver the definitive opinion on this subject, rejecting any attempt to limit the earlier cases to their particular facts.

The Court made clear therein, that its holdings in previous cases did not turn upon any set of particular facts, but that the right of a citizen organization to provide legal services for its membership, was protected by the 1st and 14th amendments and such right could not be abridged or restricted.

Second, during this same period, the Congress enacted legislation which included provisions for free legal services as an essential weapon in the war on poverty. Since that time, hundreds of thousands of poor people, through neighborhood legal services, and other federally financed plans, have been provided with decent legal representation and given a stake in the system they never possessed previously.

This movement has been vigorously supported by the organized bar. While a conflict has developed concerning the manner of appointment of its governing body, the service will be converted by the Congress into a permanent

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independent public corporation called the New Neighborhood Legal Services Corps, which will be federally financed to provide free legal services for the 40 million poverty level Americans eligible for benefit.

The Senate bill two years ago, contained a little noticed provision, subsequently deleted in conference, which would have permitted these Federal poverty law programs to expand their scope to service people of moderate income through the device of charging small fees to represent these citizens.

For adequate counsel is still beyond the means of over 150 million moderate-income Americans. And these moderate income Americans, living in an ever-increasingly complex society, having the same needs for adequate legal counseling as the poor, in such areas generally as landlord-tenant, debtor-creditor, consumer, property, and family relations, et cetera, yet are, under our system effectively denied proper legal representation.

That provision marks the handwriting on the wall. Persons of moderate income will not continue to support free legal aid for the poor, while their legal needs remain unfulfilled. And, unless our private system can structure the mechanisms for delivery of these services, it is inevitable that the federal government be called upon to meet this growing demand.

Today, across the country, the problem of providing legal services for this mass market of moderate-income Americans is being attacked with great relish by a wide variety of groups, such as the American Bar Association, insurance companies, professional administrators and consultants,

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Blue Cross-Blue Shield, consumers, cooperatives, trade unions, universities, credit unions, bar groups, students, religious groups, et cetera.

The ABA itself has manifested its interest in the area by establishing pilot programs to determine the feasibility of prepaid plans, and by appointing a Special Prepaid Legal Service Committee with a full-time staff director, to monitor these programs and the area generally, to assist groups interested in setting up plans, and to research the labor, insurance and tax law aspects of prepaid legal services. The committee conservatively estimates that there are well over 2,000 legal service plans in this country now. They run the gamut of sponsorship by trade unions, farmers, student groups, consumers, churches, credit unions, small businessmen, professional associations, property owners, et cetera.

The first ABA pilot program was a plan sponsored by the Shreveport Bar Association, through negotiations with Laborers' Local Union 229, which the American Bar Association and the Ford Foundation are also supporting.

This plan covers a group of 600 construction laborers and their dependents in Shreveport, La. It is financed through a 2 cent per hour union dues payment, deducted by their employers, pursuant to a voluntary checkoff authorization. This is an arrangement in which all members of the Shreveport Bar Association participate. Employers are prohibited from contributing and participating in such a jointly-administered plan by the present strictures of section 302. Coverage is provided pursuant

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to a schedule of benefits like a Blue Cross-Blue Shield medical plan. Suits against employers, the union, and between members are prohibited.

We can report, after two years, that Shreveport is alive and well. The stability of the collective bargaining relationship has not been disturbed. While the final results are not yet in, some tentative conclusions can be drawn already. First, there has been no mad rush to either lawyers or the courthouse. Contrary to fancied fears in some quarters, we have not discovered any legal hypochondriacs. There have been no harassing lawsuits, no attempt made to tear down the system. In two years over 50 percent of the membership have utilized the plan's services. 93 percent of the total legal billings have been covered by the plan. Increased emphasis is being placed upon educating the employees to recognize legal problems at an early stage, which will be susceptible to disposition by preventive means.

By category of claims, the leading classes of cases have been unemployment compensation, domestic relations, automobile, real property, retail credit, and other consumer problems. But the benefits of the plan cannot be gauged solely from analyzing the numbers of cases handled. The principal benefits have been, in our judgment, the awareness of the employees that legal services are available if needed, and the improved treatment which members of the group and their dependents have been accorded once it became generally known that legal representation was available to them, if and when needed.

Laborers' Local 423, effective March 1972, started a comprehensive legal service plan in Columbus, Ohio, covering 3,000 members and their

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dependents. This plan is likewise financed through a working dues checkoff arrangement and administered by the local union because of section 302 strictures. It functions through a legal center staffed with attorneys, much like a group health clinic. Usage has been extremely high -- well over 40 percent during the first year. Again, the plan prohibits suits against employers or unions, or between members. The center conducts an intensive educational program which emphasizes the preventive aspects of legal representation. The types of cases handled are similar to those outlined for Shreveport, except that Columbus also handles workmen's compensation cases and tax returns. Most cases are adjusted without the necessity of litigation or trial. There is no evidence of the center adding to the backlog of the courts. There have been no frivolous actions, for the attorneys retain the right to reject unmeritorious cases. Thousands of members and their dependents in a year have discovered that they too, have a stake in our private system.

The plan is being expanded to encompass other laborers' groups in Ohio.

Laborers' Local 559, Birmingham, Alabama, a group of 1,500 employees and their dependents, has launched a pilot legal services plan for its members, which likewise is financed by a working dues checkoff arrangement. This plan has a Shreveport type schedule of benefits which is provided through a law firm.

In Massachusetts, a 5 cents per hour checkoff has been in effect since November 1, 1972, covering 20,000 construction laborers and their

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dependents throughout the entire state. The plan is in the process of development. Preliminary consultations have been conducted with the Boston College Law School and the Boston and Massachusetts Bar Associations. The plan finally designed will, in my judgment, draw upon the experience in Shreveport and Columbus, while giving due regard to the unique qualities of Massachusetts.

Since August 1972, the Laborers' District Council of Washington, D.C., and Vicinity, has been receiving a 4 cents per hour working dues checkoff covering a unit of 10,000 laborers and their dependents in Washington, D.C., and the surrounding counties in Virginia and Maryland. The union therefore is presently seeking to structure a Tri-State Plan. A staff director has just been hired. This plan likewise will draw upon the experience of Shreveport and Columbus. In many other areas of the country laborers' locals are engaged in efforts to meet the growing demand for legal services on the part of their members.

A review of these plans will demonstrate to the Committee that from a practical standpoint there are really few differences between these plans and those that would be permitted under S. 1423. For example, all of the laborers' plans are, in reality, financed through collective bargaining. In each instance the employer association agreed with the union to a dues checkoff arrangement, during the time it also agreed to union wage increases. The checkoff arrangement became effective at the same time the union's negotiated wage increases went into effect. It is clear that the legal services plan arose out of collective bargaining and aside from the laborious procedures-if S. 1423 were enacted and

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the unions plans' converted into jointly-administered funds, the two principal differences would be that the employer would have an equal voice in the planning and administration of the fund and that the fund itself would be subject to the strictures of Section 302.

While we are proud of the trade union role, the interest of trade unions in providing legal services for their members is neither new nor unusual. Indeed, in one form or another, legal service plans for work related legal problems were almost commonplace in times past, among such groups as firemen, policemen, railroad men, miners, teachers, and so forth. Most such plans, of course, were not pursuant to formal arrangements, because of some State bar association hostility.

But now many such arrangements are becoming formalized, and are being expanded to cover nonwork related legal matters. A list of unions who have established, or are negotiating legal service plans, of one type or another, would read like a who's who of the labor movement, but would include such unions as the teachers, firefighters, the clothing workers, municipal employees, steelworkers, garment workers, building trades unions, postal workers, retail clerks, teamsters, meatcutters, and so forth. Virtually every trade union is now actively studying such plans.

Our parent body, the AFL-CIO, strongly endorsed prepaid legal service plans.

But the movement is far larger than trade union groups. Trade union activity constitutes a substantial but relatively small segment of the overall activity among user groups, insurance companies and the organized bar in seeking to develop private mechanisms to bring available

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services to the 160 million Americans of moderate income.

Mr. Chairman, we deem the quest for providing legal services to moderate-income Americans to be entitled to the same equality of treatment as that accorded medical, dental, pension, vacation, training, day-care centers, scholarships and other permissible fringe benefits. Passage of S. 1423 will be but an important first step in this direction. Before full equality of treatment can be assured, the Internal Revenue Code must be amended, and certain regulations must be rewritten.

Section 501(c) (9) of the Internal Revenue Code, provides exemption for tax purposes to certain fringe benefit funds. Revision of the regulations interpreting the code phrase "other benefits" is under active study by the service and we have the distinct impression that the revised regulations will probably define as "other (tax exempt) benefits" all funds specifically permitted by Section 302. Thus, if S. 1423 is enacted, in all likelihood, such jointly-trusted funds will be tax exempt.

Also, equal treatment would require amendment to sections 105 and 106 of the Internal Revenue Code. At the present time, taxes must be paid by the employee on all employer contributions to a legal service plan. Speedy passage of S. 1423 could provide the necessary impetus for later amendment of the Internal Revenue Code to place legal service programs on the same tax footing as medical plans.

Mr. Chairman, your bill reaffirms the wisdom of

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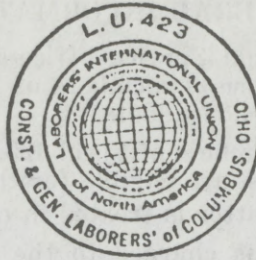
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permitting jointly-trusted funds in the field of fringe benefits. We subscribe to this principle of public policy. In industries characterized by hundreds of thousands of employees, it is the only way in which management can make provision for providing fringe benefits for its employees, and have a voice in the administration of such plans.

From a practical standpoint, there is simply no way in which each such employer could make provision for legal counseling for its employees. Absent the amendment called for by this bill, the result will be union administered plans for its members, financed from its dues rather than jointly-trusted and administered plans for employees. In my personal judgment, the time honored and tested joint administration principle would be the preferred course.

Mr. Chairman, let me express my deepest appreciation to you and the members of the subcommittee for the opportunity to appear here today to testify.

* * * * *



LABORERS' LOCAL 423 LEGAL SERVICE

A Prepaid Legal Service Plan

Established by

Laborers' Local 423

71 EAST STATE STREET
COLUMBUS, OHIO

228-4233



GENERAL INFORMATION

The Legal Service office is for the exclusive use of members of Local 423, and their dependents.

Only members of Local 423, and their dependents, are eligible for the service.

Each matter is treated in confidence.

No fee is charged to the individual for any service which is given. The Legal Service is paid by Laborers' Local 423.

What You Can Expect

When you, or a member of your family, talk to a lawyer from the Laborers' Legal Service, you can expect:

1. courteous treatment
2. competent legal advice
3. legal representation as provided by the plan
4. you will not be charged a fee.

How to Use the Plan

1. Call 228-4233 for an appointment.
2. Bring your Laborers' membership card and Legal Service identification card.
3. Don't wait until the last minute to call for assistance.
4. As long as the Legal Service represents you, keep it informed as to your latest address and phone number.

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THE LEGAL SERVICE PROGRAM

Introduction

This plan has been established by Construction and General Laborers' Local 423, Columbus, Ohio, affiliated with the Laborers' International Union of North America, AFL-CIO, to provide comprehensive legal assistance and services to members of the Local and certain of their dependents regarding their personal affairs. The plan shall be known as "The Laborers' Local 423 Legal Service Plan."

The plan has been instituted in the belief that its creation and operation will protect and advance the legal rights and interests of the members of the Local and their dependents, and that it will help to alleviate their present difficulties in resolving legal problems.

The plan will emphasize the process of educating members and their dependents of their legal rights and responsibilities, and it will seek to promote a "preventive law" approach for dealing with legal problems.

The plan will also serve as a pilot project for gaining experience in the operation of union-sponsored prepaid legal service programs. Accordingly, it will attempt to develop actuarial and related research data concerning costs and other issues involved in the operation of such a program. Such data will be available to other unions as well as to law schools, bar associations, insurance companies, and others interested in such programs.

Operation of the Plan

The Executive Board of Local 423 shall hire attorneys and staff, establish an office for the plan, and make such other expenditures from the Local's legal service fund as shall be necessary to operate the plan. The Executive Board is authorized to alter, amend, limit or expand the plan at any time. However, changes in the plan shall be prospective in operation only and shall not deprive a member or dependent of services to which he was entitled in connection with any matter pending at the time of the change.

Attorneys

Attorneys providing legal services under the plan shall be compensated from the Local's legal service fund. The attorneys' services shall be provided in accordance with the professional and ethical standards expected of lawyers. In providing such legal services, the attorneys shall adhere to the rules of the plan as established herein, but shall receive no further instructions, direction, or interference from Local 423 or its officers or agents. Their obligations and relations as attorneys shall be exclusively with their clients. They shall maintain the confidentiality of the lawyer-client relationship in accordance with applicable canons of ethics. They shall refuse to provide services in any matter they believe to be clearly without merit or frivolous.

Eligibility

The following persons shall be eligible

to receive the services provided under the plan if, at the time they seek such services, they are:

1. Members or retired members of Local 423 who are in good standing and have met all their financial obligations to the Local;
2. A spouse or other dependent of an eligible member of Local 423, provided that in connection with each particular matter, the member has consented to the receipt of such services;

"Dependents" shall be defined herein as follows:

1. A spouse if not legally separated;
2. An unmarried child ("child" as used herein shall include an adopted child, step-child, or foster child) under nineteen (19) years of age who has the same legal residence as the eligible member and is wholly dependent upon the member for support and maintenance;
3. An unmarried child up to the age of thirty (30) who has the same legal residence as the eligible member and is mentally or physically incapable of earning his own living and is wholly dependent upon the member for his support and maintenance;
4. A widow, widower, or child of a deceased eligible member, for

a period of six (6) months after the member's death, except in the case of probate and other matters related to the member's death as to which such individual shall be considered a dependent until such matters have been concluded.

In the event a member shall transfer or be suspended from membership in the Local, services provided to him or his dependents shall be terminated. In such event, as to any active matter, the attorney involved shall give appropriate notice of his withdrawal from such matter unless because of the closeness of the scheduled time for hearing or trial, the attorney determines that the matter would be prejudiced by such a withdrawal. In such case, the attorney shall continue to provide services until the conclusion of such hearing or trial.

Services Available

Subject to the limitations set forth herein, the following services shall be provided by the plan to eligible members and dependents (covered family) without any fee or charge:

1. Legal advice and consultation;
2. Representation in workmen's compensation and unemployment compensation proceedings arising within the geographical jurisdiction of Local 423;
3. A. In all other matters arising within the geographical jurisdiction of Local 423 which involve legal representation be-

yond advice and consultation, each covered family shall be entitled to 80 hours of legal services during each calendar year in connection with up to five (5) matters or proceedings per calendar year, in which an eligible member or dependent is or seeks to become a party or is involved. Upon exhaustion of 80 hours of legal services, representation in any pending matter or proceeding involving a member of the covered family shall be continued to its conclusion, but further services under this paragraph shall not be provided to any member of the covered family involved until the commencement of the following calendar year.

- B. Covered families which become eligible to receive services under the plan after January 1 of a calendar year shall be entitled to the services provided under paragraph 3A on a pro-rata basis during the remainder of such calendar year.
- C. In calendar year 1972, covered families eligible to receive services under the plan at the commencement of its operation shall be entitled to services under paragraph 3A as if the plan had commenced operation on January 1, 1972.

4. Costs and expenses incurred in connection with the rendition of legal services under the plan in any suit or administrative proceeding.

Notwithstanding the foregoing, services in connection with the following matters shall be provided only to the extent indicated:

1. Real estate matters shall be limited to legal services involving a member's residence;
2. In divorce and separation matters, once service has been undertaken on behalf of a dependent spouse, the member himself shall receive no assistance concerning the matter;
3. Each member shall be entitled to representation in not more than one (1) juvenile matter each calendar year for each of his minor children (under eighteen (18) years of age);
4. Bail or collateral shall be provided to an eligible member or dependent, if necessary, in an amount not in excess of \$500.00. In the event of forfeiture of such bail or collateral, the eligible member or dependent shall reimburse the plan for such loss. No further services under the plan shall be provided to an eligible member or dependent until such reimbursement is made.

5. Felony cases shall be handled through the indictment.

Unavailable Services

Services shall *not* be provided regarding the following:

1. Any business venture, or any other matter in which for federal income tax purposes the cost of legal services would normally constitute a business expense or a capital investment;
2. A judicial or administrative proceeding involving any of the following as an adverse party: (a) an eligible member or dependent of any other eligible member as defined herein unless such member or dependent consents to such representation and waives his own right to representation under this plan in such matter; (b) any employer party to a collective bargaining agreement with Local 423; (c) the plan or any employee or agent thereof; (d) Local 423 or any other labor union or its officers, agents, or employees; (e) any health, welfare, pension, or other fringe benefit program or plan, or the trustees, administrators or employees thereof in which Local 423 or any other labor union participates or has an interest;
3. Any matter or proceeding, except as otherwise provided herein, in which representation on a con-

tingent fee basis is normally and customarily available;

4. Any matter or proceeding in which legal services are available through insurance except to the extent that such services are not provided;
5. Interventions or *amicus curiae* filings in any matter or proceeding not involving the immediate and direct interests of the eligible member or dependent;
6. Payment of fines, penalties, or civil damages;
7. Payment of the first fifteen dollars (\$15.00) of filing fees in an original action or proceeding;
8. Collections on behalf of an eligible member or dependent;
9. Court appearances in connection with small claims;
10. Cases pending at the time a member or dependent becomes eligible to receive services under the plan in which counsel has already been retained.

Advisory Committee

An Advisory Committee shall be established consisting of not less than twelve (12) nor more than twenty-one (21) members who shall be selected by the Executive Board of Local 423. The members of the Committee shall serve on a voluntary basis for a three-year term. The Committee shall select its

own Chairman and shall meet at least once each year and otherwise upon the call of the Chairman. Expenses of the Advisory Committee shall be paid from the legal service fund of the Local.

The Advisory Committee shall investigate the operation of the plan and shall report its findings annually to Local 423. In addition, if an eligible member or dependent has a complaint regarding the operation of the plan, he may bring the matter to the attention of the Chairman of the Advisory Committee. Upon receipt of such a complaint, the Chairman shall appoint three members of the Committee to investigate the matter and submit a report to the full Committee for its recommendation. The recommendation of the Committee shall be forwarded to the Executive Board of the Local Union for disposition.

If the complaining member or dependent is dissatisfied with the decision of the Local Union Executive Board, he shall be entitled to obtain a resolution of the dispute through the process of arbitration. The Chairman of the Advisory Committee shall arrange for the conduct of the arbitration proceeding in accordance with the rules of the American Arbitration Association.

The decision of the arbitrator shall be final and binding upon the parties. The arbitrator shall be authorized to allocate the costs of the arbitration proceeding between the complaining member or dependent and the Local Union

legal service fund on a fair and equitable basis.

Miscellaneous Provisions

1. The services provided for herein are for the sole benefit of eligible members and their dependents. Such services shall not inure to the benefit of, nor vest in, any other person or entity, public or private, such as a Trustee in bankruptcy or under Chapter XIII or any other Trustee under the National Bankruptcy Act, or to any assignee for the benefit of creditors or otherwise. Services provided under the plan are not assignable.
2. The plan shall be subrogated to all rights of an eligible member or dependent to recover attorneys' fees and costs against any person or entity. Members or dependents shall execute and deliver to the plan any instruments or papers and do whatever else is necessary to secure such rights for the plan; and they shall do nothing to prejudice such rights.
3. No member or dependent is required or obligated to consult with or be represented by an attorney employed by the plan as a condition of union membership or otherwise; and such member or dependent shall remain free to consult with or be represented by any other attorney concerning any matter at his own expense.

Legal Service Advisory Committee

Mr. Merton Bernstein, Chairman
Professor, Ohio State University College
of Law

Mr. Tom Arconti
Regional Director, Laborers' International
Union of North America, AFL-
CIO

Mr. Jerry Bahlman
Director, Ohio State Legal Service Association

Mr. Ray Ball
President, NAACP

Mr. Maurice Breslin
Director, Half-way House

Mr. Mike Drakulich
Member, Laborers' Local 423

Mr. Frank King
President, Ohio AFL-CIO

Mr. Harry Mayfield
Sub-director, United Steelworkers of
America, AFL-CIO

Mr. John Palmer
Professor, Franklin Law School

Rev. James Parrish
Pastor, Shiloh Baptist Church

Mr. M. D. Portman
President, Columbus City Council

Mr. John Scales
Business Manager, Laborers' Local 423

Mr. Joe Sedivy
Secretary-Treasurer, Ohio State Building & Construction Trade Council

Mr. Charles Slanicka
Director, Labor Education & Research
Service, Ohio State University

Geographical Area Covered

1. Franklin County
2. Delaware County
3. Fayette County
4. Fairfield County
5. Pickaway County
6. Licking County
7. Madison County
8. Union County
9. Hocking County

NEWSLETTER

LOCAL 423

LEGAL SERVICES

JANUARY, 1973

ISSUE 1

LOCAL 423 LEGAL SERVICES EXPANDED

The Executive Board of Local 423 adopted Resolutions expanding the Legal Service Program effective January 1, 1973.

The geographical jurisdiction for the Legal Service Plan has been broadened. Under the new provisions a member is now covered under the Legal Service Plan in any county where Local 423 has work jurisdiction, in the county where the member lives, in any county that the member passes through in going in a normal and direct fashion to his place of work as a member of Local 423 to and from his county of residence.

Other expansions of the program include raising the amount of bail bond coverage to \$750.00; providing coverage on cases involving property damage only up to an amount not exceeding \$5,000.00 and the requirement that the member pay the first \$15.00 toward filing fees has been removed.

A letter has been sent to each member setting forth in detail the expansion of the program.

SAFETY PROGRAM

John Scales, Business Manager, Local 423 announced a new Safety Program for members of Local 423. Too many members have been getting hurt on the job, says Scales. We hope to make the members more conscious of unsafe working conditions and to cut down on the number of accidents.

As part of the program, each union steward will fill out a report as to each job accident and give recommendations as to how such an accident could be avoided in the future. Stewards will be encouraged to educate the members so that they are safety conscious at all times.

INDUSTRIAL COMPENSATION PROGRAM ASSISTS MEMBERS

The Local 423 Legal Service Program helps the member who is hurt on the job.

In 1972, members received \$26,019.00 in industrial compensation benefits. There was no charge to the members for this service.

Members were assisted even if their claim was just for the payment of a doctor bill coming from an accident on the job.

In addition, the Local 423 Legal Service Program assisted members who claimed unemployment compensation.

The Local 423 program provides valuable assistance to members who use it.

INCOME TAX PREPARATION

Place: Local 423-Union Hall

Time: 4:00 p.m. to 7:00 p.m.

Dates: January 23, 25 and 30

February 1, 6, 8, 13, 15, 20, 22 and 27

March 1, 6, 8, 13, 15, 20, 22, 27 and 29

April 3, 5, 10, and 12

The accountants will be present on these dates to help you prepare your income tax return. This is part of the Local 423 Legal Service Program. There is no charge to you for this service. Plan to take advantage of the service.



CONSUMER PROBLEMS

A consumer is anyone who buys products or services—at stores, from door-to-door salesmen, or anywhere and from anybody. So, we are all consumers since we all buy things. And, from time to time, we all have consumer problems.

Anytime you buy something that you think is not as good as it should be, any time you hire someone to do something for you and that someone does a bad job, you have a consumer problem.

Here are some examples: Suppose Joseph G. buys a refrigerator that doesn't work—he has a consumer problem.

Suppose J. R. hires an air conditioner repair man who takes his money without doing any work—J. R. has a consumer problem.

Suppose Jean F. hires a termite exterminator to get rid of termites, and the termites stay there—she has a consumer problem.

In this state, even if the seller does not give you a written or spoken guarantee, the law gives you a guarantee unless the seller says there are no guarantees! Many people do not realize the law gives them these guarantees, and because of this they often get worse treatment than they are entitled to!

Also, did you know that if the salesman tells you something that isn't true, and you go on to buy his product because of the untruth that he told you, you have a legal claim against him or his store?

So, the next time that you buy something that doesn't work right or is damaged, and the next time you hire someone who doesn't do the job the way it should be done, give your Legal Service a call. You may well have some legal rights to get the problem cleared up in a way that would be fair to you.

WILLS

You should have a will made. If you don't, the laws of Ohio, not you, will decide what happens to property which you leave. If you have a wife with minor children, it will give her problems.

Probably the worst thing about not having a will is that the way the law divides up property can make a lot of family problems. The law does not just make several piles of things and give each heir a pile. When a person dies without a will, the law gives each heir a part ownership in each piece of property.

For example: Say you have three sons living at the time of your death, and you own three cars at the time of your death. If you do not have a will, the law would not give a car to each son, even if the cars were exactly alike. Instead, the law would make each son a part owner of each car. And the law does not apply just to cars.

This is the way all property is divided by the law — each heir gets a part ownership in each piece of property.

No one heir gets full ownership of any one piece of property. Then, a decision must be made as to how these parts can be put together and given to someone. If the heirs cannot agree, sometimes the property must be sold and the money received is divided among the heirs. As you can see, family arguments can be expected where there is no will.

You can't just tell your relatives or some one else how you want your property to be divided at your death. Wills have to be in writing and they have to be written in a certain way. If you care at all about how your property is given out and if you want to save money on the dividing up of your estate, have a will made.

As a member of Local 423, all it takes to have a will made is for you to come twice to the Legal Service Office. Once to tell what you want in the will. Once, to sign the will which will be prepared.

Remember, there is no charge for this service.

CREDIT DIFFICULTIES

Did you know that the Legal Service has helped members who have credit problems? If stores tell you that you can't have a charge account because your credit is "bad", but you think your credit rating should be good because you have kept your bills pretty well paid up, we can help find out what the problem is.

The first thing the Legal Service does, is to get in touch with the store that turned down your credit application to see what their reasons are. If this doesn't help, we go to the Credit Bureau to see what their files show. Sometimes they may have their files mixed up because two or three persons in town have the same first and last name. They might have some other person's bills in your file because his first and last name are the same as yours. We can help straighten this out.

Because there are so many people in the Columbus area with the same first and last names, it is always a good idea to use your middle name or initial when you sign your name on checks and applications of all kinds. This helps keep people from mixing you up with others who have names similar to yours.

DISABILITY

Workmen's Compensation is not the only plan that pays money to people who are disabled. A person who is completely and permanently disabled can also get money from Social Security, even though he is receiving workmen's compensation at the same time! Someone who gets money from both plans will get his workmen's compensation benefits reduced, but the total he receives from both social security and workmen's compensation may add up to more than he would have gotten from workmen's compensation only.

If you have missed four months work and the doctor thinks you may be off twelve months or longer, you should go to the Social Security Office for assistance.



SO YOU ARE BUYING A HOME?

See the Legal Service before you sign the Purchase Agreement. Bring the Purchase Agreement with you.

Let the Legal Service help you.

LEGAL SERVICE ASSISTS OVER 500 MEMBERS FIRST 10 MONTHS OPERATION

Over 500 members called on the Legal Service for help in the first 10 months' operation of the Local 423 Legal Service Program. These members got assistance in over 1,000 different problems. In over 600 cases the Legal Service provided continuing representation such as court appearances and investigations.

Problems in the criminal area included traffic matters, misdemeanor, assault and battery, juvenile problems and felonies to the indictment stage.

In the civil area the types of problems presented by members included consumer complaints, real estate sales and purchases, landlord tenant problems, bankruptcy, and divorces.

Other legal service rendered included preparation of wills for members.

The office hours for the Legal Service Program are 8:30 to 5:30 and arrangements may be made for appointments at other times.

Additional Attorney Hired

Thurman Anderson, Attorney, formerly with the Attorney General, State of Ohio as an Assistant Attorney General has been hired by the Legal Service. The legal staff of the Service is being expanded due to the

work load and in an effort to keep cases current so that members' problems are promptly handled.

Mr. Anderson is a graduate of the Ohio State College of Law and the undergraduate school at Ohio State. He served in the Army Security Agency.

With the Attorney General's Office he served in the division of criminal activities.

**Call the
Legal Service
Long Distance
Without Charge**



Members of Local 423 living in counties outside of Franklin County are now able to call the Legal Service without paying any long distance telephone charge.

A line has been installed in the Legal Service Office that permits telephone calls to the Legal Service from any location within the State of Ohio without any charge. This system is called WATTS. The long distance telephone number to call is 1-800-282-0238.

This new system will permit easier access to Legal Service by members wherever they are within the State of Ohio.

Remember the number to call if you are calling long distance is: 1-800-282-0238.

LOCAL 423
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA

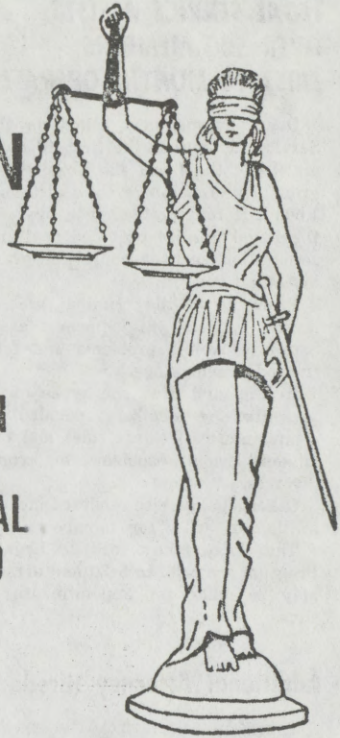
569 EAST LONG STREET

COLUMBUS, OHIO 43215



SHREVEPORT BAR ASSOCIATION

CONSTRUCTION
AND GENERAL
LABORERS LOCAL
UNION No. 229



PREPAID
LEGAL
SERVICE
PLAN

EFFECTIVE JANUARY 1, 1971

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Introduction

What the Plan Is About

Your Union has arranged through the Shreveport Bar Association a plan of pre-paid legal services for all members of Local 229 and their families.

The services available under the plan are listed and explained in this booklet.

These services include *advice and consultation* upon any legal problem from *any* attorney of your choice.

The plan will pay *all* costs incurred for *advice* up to \$25.00 per visit or \$100.00 per year.

In addition to the above, and subject to the payment by you of the first \$10.00 charged, you may receive up to \$250.00 of the legal services listed under "*office work*" in this booklet.

In addition, and subject to the payment by you of the first \$25.00 charged, you may receive up to \$325.00 or more for legal services in court cases when you are a plaintiff.

When you are a defendant in a court action, the plan will pay 100% of all costs up to the amounts listed in the brochure and will pay 80% of the next \$1,000.00 of such costs.

These benefits are available to you *and* your dependents as defined in the booklet.

They do not apply to *all* legal problems.

They are subject to the detailed rules, regulations and exceptions set forth herein.

This is a brief summary to advise you of the general benefits available under this plan. The detailed rules, regulations and exceptions governing the plan are set out in the following portions of this booklet.

How to Use This Plan

If you are a member in good standing of Laborers Local 229, you are entitled to the benefits provided by the plan. When and if your membership lapses you are not entitled to benefits after that date.

If you wish to consult a lawyer, call or come by the administrative office of the plan, Centenary Business Center, 2616 Centenary Blvd., Suite E. Telephone: (Area 318) 868-4532. You will be mailed or handed a set of forms and a copy of this booklet. Take these to the attorney whom *you* choose.

Attorneys will charge you and/or the plan their usual fees. There is no discount or group rate involved. The relationship between you and the attorney of your choice is exactly the same as if this plan did not exist. The plan is not designed to do anything more than *help* you pay for legal services that you may need. The plan will not pay for *all* legal costs that you may incur. It is designed to help you meet a substantial amount of these costs, however.

We urge that you explore with your attorney the *total* costs that *may* be involved in any problem with which you seek help so that you and he will have a working understanding of what the plan will pay and what expenses you will have to incur on your own. Attorneys are urged to bill the plan and the client each month for all services rendered in the preceding month so that no large or unforeseen legal costs will be incurred without full knowledge on the part of both the attorney and the client.

It is hoped that the availability of this plan will encourage you to seek the advice of attorneys *before* you encounter legal difficulties that might later cause you expense and worry. The sponsors of the program believe that the use of the plan will help you avoid legal complications before they involve you and your family in heavy financial or other troubles.

SHREVEPORT BAR ASSOCIATION A PLAN FOR PREPAID LEGAL SERVICES

I. BENEFIT SUMMARY

A. Advice and Consultation

You may seek advice on any subject of a legal nature from any attorney of your choice who subscribes to the rules of this program, for which the attorney will be paid not more than \$25.00 per visit or consultation not to exceed \$100.00 in any one year or case.

Maximum
Per
Case/Year
Per Family
\$100.00

If any case or problem upon which advice is sought in an initial interview leads directly to the use through the attorney consulted of one or more of the benefits described in this plan, then and in that case claim shall be made under the other benefits of this plan and no benefits paid under this section.

If, however, the interview leads to no other work of any kind other than preparation, drafting, or review of a legal document, form or other instrument or to other office work for which not more than \$25.00 is charged, claim for reasonable charges for this work may be made under this benefit.

No other exclusions, limitations or restrictions are applicable to this benefit. All exclusions or limitations hereinafter provided are applicable only to the other and following benefits of this plan.

B.

Office Work

In the event that preliminary consultation with your attorneys indicates the necessity of further legal services or the expenditure of money for expenses of the type outlined below in connection with a case or problem not falling within one or more of the exclusions hereafter set forth you and/or your attorney shall be entitled to reimbursement up to the maximum amount of \$250.00, subject, however, to the prepayment by you of a \$10.00 "deductible" amount per case.

Maximum
Per Year
Per Family
\$250.00

- (a) *Conferences and Negotiations*, including any and all meetings with adverse or associated parties, their attorneys or agents, telephone conversations or other efforts to settle cases or problems short of litigation or after litigation has commenced.
- (b) *Investigation and Research*, excluding legal research but including title examinations and opinions and any activity performed by the attorney or others under his direction in ascertaining facts, finding and taking statements of witnesses and gathering information of any kind and shall include the type of expenses listed in C (3) when suit is *not* filed, that may be reasonably necessary to the adequate legal representation of the client.
- (c) *Letter Writing and Document Drafting or Review*, including drafting or review of leases, contracts, settlements, releases, notarial acts, or any other type of legal document, *or the filling out of forms*.

C.
**Judicial and Administrative
 Proceedings**

The plan will pay up to the following amounts for fees and expenses attendant upon civil, criminal or administrative hearings, trials, motions, rules or appearances of any kind, before any judicial, quasi judicial, or administrative agency of any federal, state, or local government:

- | | Maximum
Per Year
Per Family |
|--|-----------------------------------|
| 1. <i>Preparation and filing of pleadings and briefs and attendance at hearings or the trial</i> | \$325.00 |
| 2. <i>Court costs and witness fees</i> | 40.00 |
| 3. <i>Out-of-pocket expenses and costs</i> consisting of depositions, stenographic fees, printing and copying, long distance toll calls, photography, bond premiums and scientific or technical assistance, report or tests, including medical examinations, | 150.00 |

Availability of this benefit shall be conditioned upon the prepayment by the employee of a \$25.00 deductible per case or suit when the covered employees is the plaintiff or moving party. This deductible shall not apply when the employee is a defendant or similarly situated.

D.

Major Legal Expense Benefit*Subject to the exclusions hereinafter listed*

In the event a covered member:

Maximum
Per
Case/Year
Per Family
\$800.00

1. Is named as defendant in a civil suit in a trial court of general jurisdiction,
 2. Is charged with a felony or misdemeanor by information or indictment, or
 3. Is named as respondent in any action before an administrative agency of the city, parish, state, or federal government,
- he shall be entitled to all the benefits listed in "C" above, subject to the conditions and limitations therein stated, and in addition, with respect to all expenses incurred in excess of the limits stated in "C" above that would otherwise be covered, except for the maximum dollar limitations stated therein, he shall be entitled to reimbursement of eighty per cent (80%) of the next \$1,000.00 of such expenses (being the maximum per year per family) over and above the said covered expenses.

II. EXCLUSIONS AND LIMITATIONS Applicable to Coverages B, C and D

1. BUSINESS EXPENSES

Legal fees and expenses incurred in connection with any business venture participated in by the member, including all legal expenses for which a federal income tax deduction or allowance would be permissible as a business expense or capital investment.

2. CONTROVERSIES INVOLVING IMMEDIATE PARTIES TO THE PLAN

Any judicial administrative, arbitration or other proceeding, problem or controversy wherein the Trust Fund, the Plan Administrator, the Trustees, the Settlor, any Labor Union, person, firm or organization that may be a party beneficiary or participant under this Trust Fund is either a plaintiff, defendant, or the equivalent. Disputes concerning coverage under this Plan shall be subject to the mandatory arbitration provisions of the Plan.

3. CONTINGENT FEE CASES

Any case not otherwise excluded from this Plan in which the member is a plaintiff or claimant and a contingent fee is normally and customarily charged, except that in such instances Benefit C(3), "Out-of-Pocket Expenses and Costs", shall be available upon the member and his attorney furnishing the Trustees an agreement for reimbursement to the Plan by preference and priority of all amounts advanced under this Plan out of any recovery or settlement.

4. FINES AND PENALTIES or amounts for which any member may be cast in judgment.

5. CHARGES THAT ARE UNREASONABLE or for services that are unnecessary or for which no charge would have been made except for the existence of this Plan.

6. PHYSICALLY FILLING OUT AND FILING TAX RETURNS

Advice and information on any tax problems are covered, however.

7. CLASS ACTIONS OR INTERVENTIONS OR AMICUS CURIAE FILINGS in any suit or controversy among other parties not involving the immediate and direct interests of the member. Two or more parties may not pool or combine their benefits for the purpose of asserting a claim in which they may have a mutual interest.

8. ANY CASE IN WHICH DEFENSE OR OTHER LEGAL REPRESENTATION IS PROVIDED TO THE MEMBER THROUGH ANY POLICY OF INSURANCE or by any other means for which the member does not have to pay, including any and all actions arising under the arbitration or other provisions of any union collective bargaining agreement or any other such contract providing for the furnishing of legal services in behalf of the covered employee, except that coverage will be provided under this plan to such extent as may be reasonably necessary to protect the member's interest in connection with questions of coverage or liability over and above the policy or contract limits.

9. "SHOPPING." The plan will not pay claims for services or advice when they involve a duplication of the same services or advice previously obtained in connection with the same problem and previously claimed for under the plan.

III. EXPLANATION OF PLAN BENEFITS

A. Advice and Consultation

The attorney must determine and certify whether the consultation led "directly" to the use of other services.

If, for instance, a single interview apparently ends the matter, claim will be paid on billing of the attorney thirty days after the interview and if further interviews or services are actually undertaken in connection with the cause at a later date, after this thirty-day period, they will be treated as new claims in new cases.

Interviews on a single problem may take place over a period of months, or on several occasions without any further work being performed. The thirty-day rule will be applied to each interview.

The attorney is charged with the responsibility for determining and certifying whether or not the interview leads to later work. The attorney is also charged with the responsibility for billing the plan within thirty days after any interview or consultation which he does not believe will lead to other work. The attorney may choose not to bill the plan at all.

The Trustees expect attorneys to treat any individual who comes to their office and who is covered by this plan exactly as they would treat any other client. No special consideration as to charging fees should be made in any circumstances. If it is the attorney's practice to interview clients with minor or non-legal matters without charge in the hope that they will return for or with major and profitable legal business later, the Trustees feel that the attorney should not let the existence of this plan interfere with this practice. If the attorney is in

the habit of charging for initial interviews, the Trustees want him to continue to do so if a client presents himself under this plan.

The Trustees ask that all attorneys conduct themselves, their offices and their routine billing and professional practices for persons participating in this plan in the same manner as if the plan did not exist.

The plan will reimburse the attorney and/or client to the extent provided and no more. The plan is an aid and assist to legal help. It is not designed or meant to cover all persons for all their legal needs. It is designed, like medical insurance, to cover a significant portion of those needs, but not to pay all expenses.

Many persons think that the advent of medical insurance precipitated the disastrous rise in medical costs that has taken place over the past ten years. The organized bar would hope that such charge might never be leveled at the legal profession on account of legal insurance. One of the principal purposes of this plan is to get people to lawyers' offices *before* they suffer drastic difficulties that require heavy expenditures. It is designed to gain the middle and lower-income groups' confidence in their ability to seek preventive legal advice without incurring unknown and unknowable charges.

The option to charge for some office work, as opposed to advice and consultation only, under this benefit, rather than benefit "B", is discussed in the following section.

Any covered employee or dependent may use this benefit for any purpose covered by the definition of "legal services" in Section IV. The exclusions listed in Section II or elsewhere, are *not* applicable to this benefit.

B.
Office Work

This benefit means simply that by the payment of a \$10.00 fee the client may obtain legal costs and services of the types outlined up to \$260.00 in value.

The client pays the first \$10.00, the plan pays the next \$250.00, the client pays any further amounts over this \$260.00.

The payment of the deductible is an absolute requirement that cannot be waived by the attorney or client or by them jointly. They must both certify that it has been paid in fact in order for any other benefits under this plan to be payable.

Office work of the types listed may and usually does extend into the litigation stages of a case, in which event these benefits continue to be payable, in addition to the litigation expenses subject to the per case/year limitations stated.

This benefit is designed to cover physical work and out-of-pocket costs in performing the various services listed and to reimburse the attorney for his time spent in these activities. It is not intended to cover legal research or other efforts to find out what *law* is applicable to any given problem, but rather to furnish the ways and means for finding and determining the facts applicable to the problem. It also includes the attorneys' fees for doing this which will necessarily include the time and effort spent in thought and cogitation on the problem for which the attorney is expected to charge his normal and customary fees.

The listing of types of services is intended as descriptive and not as limiting or excluding. For statistical and research purposes, however, claim forms will require to the extent possible a breakdown of charges itemized under each of the three categories (a) Conferences and negotiation (b) Investigation and research and (c) Letter writing, document drafting and review.

It is not intended that the \$10.00 deductible be required for simple mechanical functions that lawyers may often perform for clients in the course of a single office visit, such as the notarization of an auto license transfer, review of a simple credit sale agreement, a telephone call to an agency or attorney, etc., and provision is, therefore, made for the payment of fees for such services under the benefit "A", which is not subject to a deductible. If the fee for any such service is between \$25.00 and \$35.00, the claim will be made under benefit "A" and the client will pay the difference. If the fee is greater than \$35.00, the client will pay \$10.00 and the claim made under benefit "B".

C.

Judicial and Administrative Proceedings

This broad language is intended to include courts, juries, coroners, hearing officers, arbitrators, magistrates, justices of the peace, mayors, tribunals, legislative committees, commissions, commissioners, inquests, panels, investigative bodies, boards, and other such agencies of all types constituted by or under color of governmental authority — in other words, the entire gamut of formal actions before official bodies of every kind that might assert jurisdiction over the person, property, or interests of the covered employee. If any agency is not apparently covered by the express language of the benefit summary, the attorney and client are requested to apply to the administrator and/or trustees for a ruling as to coverage.

For purposes of the deductible, the attorney must determine and certify whether his client is a moving or instigating party to the proceedings. The adversary process leads to the same person being both a plaintiff and defendant by reconvention, counterclaim, set-off, etc., in many instances. The deductible is applicable only to the initiation of proceedings. If the covered member is cast in a subsidiary or ancillary role as respondent or mover, plaintiff, or defendant, after initial proceedings have been instigated, the deductible does not apply again.

The dollar limitations stated in the plan will not be affected by set-off, counterclaim, third-party demands, etc. Cases including such ancillary proceedings will be treated as one case for purposes of the deductible and the limitations.

D.

Major Legal Expense Benefit

This benefit simply provides co-insurance on an 80/20 basis in connection with expenses of litigation that exceed the maximums stated in benefit "C" whenever the covered client is a defendant in a civil or criminal action. The plan will pay 80% of all fees incurred up to \$1,000.00 in excess of the amounts paid and the deductibles under the "basic" benefits. Thus the plan's limit of liability under this benefit is \$800.00. Payment of the other 20% is mandatory as a condition precedent to any reimbursement under this benefit. The same annual and per case limitations apply as in the other benefits.

IV. GENERAL RULES

1. *Dependent Coverage.*

Eligible dependents are an eligible employee's

(a) Lawful wife

(b) Each unmarried child who has not reached his 19th birthday.

"Child" means and includes stepchild, adopted child, or any child of whom the employee has care, custody and control under a court decree, or any other child under 19 living in the household of the employee, provided such child is wholly dependent upon the insured person for support and maintenance.

However, unmarried dependent children shall remain covered up to their 23rd birthday provided they are enrolled in an accredited high school or college and are dependent upon the employee for support and maintenance; and dependent children whose coverage would otherwise terminate solely due to attainment of the age 19 shall continue to be considered eligible while they are incapable of self-sustaining employment by reason of mental retardation or physical handicap, and satisfactory proof of this fact is furnished to the Trustees within thirty (30) days after the dependent reaches 19 years of age.

2. *Domestic Relations Cases.*

In domestic relations or any other type of case in which the interests of any other family members or dependents are opposed to that of the covered member himself, coverage shall be restricted to the covered member himself and shall not be extended to any other family members or dependents *except* upon the written authorization and consent of the covered member himself.

3. *Cases other than contingent fee cases in which costs and/or attorneys' fees are recoverable.*

Such cases are not excluded under this plan. The client and attorney, however, must agree in writing before such case is undertaken that the plan shall be reimbursed for any and all payments made under it by preference and priority from the first proceeds of any settlement or recovery of costs and/or attorneys' fees in such cases.

4. *The Plan cannot be used by proxy.*

Each and every problem must be related to the claimant, must concern his own affairs and be personally presented by the claimant.

5. *Coverage year.*

This will be defined as one year from the effective date of an individual's initial coverage under the plan.

If more than one case is handled in any one year, or if the same case extends through more than one coverage year, no more than one year's applicable limitations will be paid for one case and no more than one year's applicable maximums paid in any one year for all work on every case of every nature.

6. *Billing and claims.*

No claims will be paid prospectively or in advance. Payment may be made to the client as reimbursement for fees or costs paid by him to an attorney or the benefit may be paid directly to the attorney upon assignment to him by the client. In each instance, however, both attorney and client must sign and execute the necessary claim forms.

The Trustees suggest that attorneys bill the plan within thirty days of the date any service is rendered or costs are incurred under it, in order to protect the client and attorney against an inadvertent "build-up" of costs and expenses in excess of the coverage limits without full awareness of the limits applicable.

Claims shall be submitted to and paid by the administrator designated by the board of trustees.

7. *Management and Administration.*

The plan shall be conducted and managed by and through a board of trustees established in accordance with a trust agreement executed by the Shreveport Bar Association with advice and approval of the participating group.

8. *The Dollar Limitations.*

The maximums are applicable to each individual case undertaken, with the further proviso that no more than the stated maximums will be paid in the sense of billing and reimbursement to the attorney in any one year also.

Thus when a client has a case in litigation that may take a year or more to try or settle, and, in the meantime, has other problems or claims under the plan, the new problems may be claimed and paid for under the plan, but the client and attorney must know that if the services for these other cases occur in the same year as the case already in process, no more than the maximums will be paid for all the work combined, on the basis of the first case instituted in order of time being paid for first until the maximum is reached.

However, if benefits A or B or C have not been used *at all* in any year, then and in that event the plan member may have the benefit of a "carry-over" not to exceed one year's benefits to any future year in which such benefits may be needed on account of legal work on more than one case in that year. Thus a client who has not made *any* claim in 1970, may have two cases in 1971 and receive the maximum payments on each of them.

The benefit is wiped out for any year in which it is used at all. The carry-over is allowed only as a bonus for not using the benefit at all during any given coverage year.

9. *Legal Services.*

The types of services covered by the plan are those included in the definition of "Practice of Law" in R.S. 37:212, including:

- "(1) In a representative capacity, the appearance as an advocate, or the drawing of papers, pleadings or documents, or the performance of any act, in connection with proceedings, pending or prospective, before any court of record in this state; or
- (2) the advising or counseling of another as to secular law, or
- (3) in behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights, or
- (4) the doing of any act, in behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right.
- (5) Performing as a notary public, any act necessary or incidental to the exercise of the powers and functions of the office of notary public."

10. *Attorneys.*

Clients covered by this program may be reimbursed for fees and costs incurred on account of the employment of any licensed attorney in Louisiana or elsewhere in the United States who submits claim or certification of services rendered under this plan and agrees to abide by the arbitration and other provisions of the rules stated herein.

11. *Disputes or controversies concerning the Plan.*

(a) As to fees charged under the plan. Any client or the Board of Trustees of the plan may object to the payment of any fee or charge submitted for payment hereunder on the grounds that it is unreasonable or in excess of normal and customary charges for similar services among competent practitioners according to prevailing standards in the place where the services are rendered. In the event of any dispute over

fees or payments under the plan, the parties shall submit the matter to arbitration in accordance with the general arbitration rules of the American Arbitration Association and shall be bound by the decision so reached. No suit shall lie against the Trustees or any client or participant in this plan unless and until these conditions precedent have been met.

(b) Questions of coverage or amounts of coverage.

Any such questions arising between or among the parties, the administrator, the Trustees, the participants or attorneys shall similarly be submitted to arbitration under the general rules of the American Arbitration Association, all such parties agreeing to be bound by the decision of the arbitrator. No suit shall lie against any party by any other party in interest hereunder unless and until these conditions precedent have been met.

12. *Appeals.*

Fees and expenses attendant upon appeals or applications for writs may be claimed for and paid under benefits "C" and "D", subject to the case and year maximum limitation expressed. The appeal will not be considered as a separate case, but simply as a continuation of one case, for purposes of the maximums.

V.

INSTRUCTIONS FOR USE**A. General Conditions**

Members wishing to use the plan are asked to apply to the Administrator for certification of their eligibility and qualification for coverage.

Eligibility is based upon union membership.

Eligible members under this plan may seek the services of any attorney anywhere at any time. The plan does not govern or alter in any way the usual and customary attorney-client relationship. It consists simply of a unilateral obligation upon the part of the plan to reimburse the client or attorney for certain legal costs and services to the extent provided and subject to the dollar limitations set forth in the plan.

Neither the Shreveport Bar Association, Local Union 229, Laborers International Union, the Administrator, nor any other party guarantees the payment of any costs or fees incurred except those provided in this plan and incurred through the end of the 2nd month following the date of certification of eligibility, or through the end of the month following any date upon which notice is mailed to the member's address of the cessation of benefits under the plan. This means that if certification is dated February 5th, benefits would be promised only through April 30th. Eligibility will continue, however, as long as the client remains a member in good standing of Local 229 or until the program is terminated.

The member shall freely and upon his own responsibility employ an attorney of his choice to perform the services or convey the advice he seeks. His relationship with the said attorney shall be governed by the arrangements for fees and

services he has privately and individually agreed upon and is in no way governed by this plan.

The Sponsors, Union, or Administrator are not the guarantors of the skill, quality or capability of the attorney selected. The client releases them and their agents individually and collectively from any liability for the results or outcome of any case or problem. Attorneys handling matters under this plan are governed by all existing laws, usages and customs and rules concerning the practice of law in this state and nothing in this plan is intended to heighten or diminish his professional responsibilities to his client or the client's obligations to him under the law.

B. Eligibility

Eligibility for coverage under this plan is based upon Union membership. Dues are payable monthly with a thirty-day grace period, which in practice amounts to a sixty-day grace period before membership actually lapses.

Certification of coverage is good, therefore, through the last day of the second month following the month in which it is issued. Thus a certification issued on February 20th is good through April 30th. A certification issued March 1st is good through May 31st.

For this reason, attorneys and clients must submit a status report (Form 5) not later than the 10th day of the second month following the date of the certification. A report will be due not later than April 10th for a certification issued on February 20th. A report will be due not later than May 10th for a certification issued March 1st. *Subsequent reports must be made by the 10th of each succeeding month.* If the client has ceased to be a member of the union and thus not entitled to further benefits under the plan, the attorney and the client will immediately be notified upon receipt of the prior month's report.

In the event a client is de-certified, a final bill should be submitted covering work through the month in which notice is received and the client advised that no further benefits are payable under the plan.

The attorney and client may thereafter make any arrangement they wish for continued handling of any unfinished business pending, or the attorney may withdraw as counsel. Attorneys are asked to treat clients covered under this plan in exactly the way they would handle any other client in accordance with their normal office practices, except for the reporting requirements set forth above.

C. Forms and Reports

As consideration for the reimbursement or payments provided in this plan, however, the attorney and client agree to furnish the information requested by the various claim and data forms and to cooperate with the Bar Association, the American Bar Foundation and the Administrator in the collection of information necessary to evaluate the value and workability of this program. The Foundation, the Association and the Administrator obligate themselves not to divulge or publish any employee's or attorney's name in connection with any data collected and will maintain the confidentiality of any and all information submitted which will be used for research purposes by the American Bar Foundation and Shreveport Bar Association and for no other purposes.

The Plan uses the following forms:

1. Pre-Claim Application and Certificate of Eligibility.
2. Instructions.
3. Interview report if case is not accepted or no charge is made.
4. Opening case report.
5. Attorney's monthly status report.
6. Billing and claim form.

The attorney may keep the pre-claim application, certification and instruction sheet for his files. If the case is not accepted and no billing is made, the attorney is requested to simply tear off the "Interview Report" (Form 3) and mail it back to the Administrator.

It will not be necessary in such case to fill out any other forms.

If the case is accepted, it is requested that Form 4 ("Client Interview Form and Opening Case Report") be returned immediately.

For the reasons stated under "Eligibility" above, it is essential that the monthly status report, Form 4, be submitted on all outstanding cases under the plan not less often than the 10th of each month covering work performed during the preceding month.

In addition to these reports, necessary for purposes of research and analysis by the American Bar Foundation, attorneys are invited and urged to submit their general comments upon this program or any aspect of it, either favorable or unfavorable. The purpose of the project is to develop experience and test the reaction of attorneys and clients to its workings.

The Administrator and the Shreveport Bar Association and American Bar Foundation will particularly welcome any and all suggestions, comments or criticisms concerning forms and procedures.

D. Billing and Claims

A billing and claim form has been devised to allow efficient recovery of research data concerning the working of the plan and attorneys are urged to use it if possible. Bills may be submitted at any time. The Association urges that billing be kept as current as possible so that clients will not be surprised by bills in excess of the coverage provided in connection with work initiated under the plan.

If the form is not suitable, however, for any particular billing situation, attorneys are asked to submit any form of bill that will adequately describe the services performed and the part of the plan under which claim is made.

When a claim is for consultation only, benefits will not be paid under any other sections of the plan. When a claim is made under any of the other sections, no payment will be made for consultation.

Attorneys are urged to submit bills for consultation and advice not later than thirty days from the date the services were rendered, if it appears that the consultation will lead to no further work under the plan.

It is not the intent of this plan to regulate or attempt to suggest the amount of any fee that should or should not be charged by any attorney for any service. This plan will reimburse and help pay for fees and charges up to the limits stated and no further. These limitations do not imply any suggested maximum or minimum charges of any kind.

Any attorney may accept or reject any work tendered to him by any beneficiary under this plan and may withdraw or resign as counsel for the client at any time and/or for any reason consistent with his duties under the Canons of ethics, including inability of the client to pay his fee or the costs.

Similarly, a client may discharge his attorney subject to the general law existing on this subject.

These are intended as general statements of the relationship normally existing between attorney and client.

The attorney and client may vary the effect of the above by any lawful contract of employment they may wish to enter into.

The client is responsible for payment of *all* fees charged. This plan constitutes a promise to reimburse the client or his attorney to the extent provided. The client may assign his benefits under the plan to his attorney or he may pay the attorney and be reimbursed directly by the plan.

It is, perhaps, needless to say that the sponsors hope that attorneys will not take advantage of the existence of the plan to perform unnecessary services or to charge for services for which they would not ordinarily charge. By the same token, the sponsors hope that clients *will* use the plan to obtain services that they need but would not ordinarily obtain because of inability to pay.

Neither the Shreveport Bar Association nor the union can guarantee the continuance of this program for any given length of time. It is designed as an experimental project funded by donations from educational and charitable agencies with a view of developing cost and usage experience to test the feasibility of such plans. It is hoped that sufficient funding will be available to continue the program for two years. The sponsors may, however, discontinue the program at any time upon notification to the union and will not be responsible for claims incurred thereafter.

PARTICIPANTS OR ATTORNEYS

**requiring any information or
assistance in connection with
this program should call or write:**

SOUTHWEST ADMINISTRATORS, INC.

**Centenary Business Center
2616 Centenary Blvd. Suite E
P. O. Box 4552
Shreveport, Louisiana
Telephone: (318) 868-4532**

or

**1407 Decatur St.
P. O. Box 4096
New Orleans, Louisiana
Tel.: (504) 949-1642**

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1970-1971**

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The CHAIRMAN. What was the earlier legislation that you mentioned, the measure that was dropped? What bill was that in?

Mr. CONNERTON. That was the bill to convert the OEO legal services program.

The CHAIRMAN. That is what I thought.

Mr. CONNERTON. I can get the provision.

The CHAIRMAN. No. I just wondered whether it was OEO.

I do not have any questions. Do you have any questions, Senator Taft?

Senator TAFT. I have a few. First of all, counsel has called to my attention some rather interesting language here that perhaps we might put in the record.

[The information referred to follows:]

[From the Congressional Record, Senate, May 8, 1947]

STATEMENT OF SENATOR TAFT ON SECTION 302 ON MAY 8, 1947

Mr. TAFT. Mr. President, the amendment was explained yesterday by the Senator from Minnesota [Mr. Ball] and the Senator from Virginia [Mr. Byrd]. It is substantially the same as the amendment which was adopted by the Senate last year as part of the so-called Case bill, which amendment was offered by the Senator from Virginia. The occasion of the amendment was the demand made by the United Mine Workers of America that a tax or 10 cents a ton be levied on all coal mined, and that the tax so levied be paid into a general welfare fund to be administered by the union for practically any purpose the union considered to come within the term "welfare." Of course, the result of such a proceeding if there is no restriction, is to build up a tremendous fund in the hands of the officers of the labor union, to be distributed for welfare, which they may use indiscriminately.

There is no specific provision with respect to it. They may distribute it to members of the union whom they like or they consider proper charity cases, and they may refuse to distribute it to other members whom they do not like.

The demand originally made by Mr. Lewis was so broad that practically the fund became a war chest, if you please, for the union. The money for welfare funds is deducted from the wages of the employees. It is money earned by the employees, and certainly there should be some restriction on the right of those who bargain collectively for the employees of any company, as to how far they can take the money earned by the employees and use it for union purposes without restriction. Obviously the man who is bargaining should have no right to obtain any personal advantage.

The amendment provides, first that—

"It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees."

That is, it may be said, in a case of extortion or a case where the union representative is shaking down the employer. Certain exceptions are made.

Then with regard to the check-off, which is a device by which the employer pays into the union treasury, without the consent of the particular employees who have earned the money, a certain percentage agreed to in the collective-bargaining agreement contract, the amendment provides that it is proper to make such an agreement with respect to money deducted from the wages of employees in payment of membership dues in a labor organization, provided that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than 1 year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner.

So far as the testimony shows that is the usual form of check-off. Under it the employee himself signs a slip or assignment authorizing the check-off, if he once signs such an assignment under the collective-bargaining agreement, it may continue indefinitely until revoked, and it may be irrevocable during the life of the particular contract, or for a period of 12 months. That, I think, is substantially in accord with nine-tenth of all check-off agreements, and simply prohibits a check-off made without any consent whatever by the employees.

Provision No. (5) at the bottom of page 2 and the top of page 3 of the amendment deals with the question of welfare fund. It provides that the payments must be made, in the first place, as found in line 25 on page 2, "to a trust fund established by such representative"—that is by the union—"for the sole and exclusive benefit of the employees of such employer, and their families and dependents, or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents."

In other words, this must be a trust fund. It cannot be the property of the union without a definite statement that it is in trust for the employees, who, after all have earned the money.

In the second place, "such payments are held in trust for the purpose of paying, either from principal or income, or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance, or accident insurance."

I think that covers all the welfare purposes which are contained in any of the existing welfare funds now established in a certain number of industries.

Then there is the provision under (B) that—

"The detailed basis on which such payments are to be made is specified in a written agreement with the employer."

So that the purpose of the provision is that the welfare fund shall be a perfectly definite fund, that its purposes shall be stated so that each employee can know what he is entitled to, can go to court and enforce his rights in the fund, and that it shall not be, therefore, in the sole discretion of the union or the union leaders and usable for any purpose which they may think is to the advantage of the union or the employee.

Mr. President, it seems obvious that if these funds grow rapidly, as they are growing—which is perfectly proper—they should be regulated by the Federal Government. They should be in definite terms. They should not be subject to the arbitrary discretion of the union leaders, the very ones who are making the agreements and who are making the demands for the particular funds, whether the employees want them or not.

We are saying to the employee, "You have earned \$100 this month, but all you get is \$95. You must put \$5 into the fund." That is at the behest of the union leaders. The employee has nothing to say about it. Certainly he is entitled to have us say that the fund shall be definite, that his rights shall be determined by law, and that he shall be able to demand them.

What was actually done by the Government when it agreed with Mr. Lewis? This is the agreement with respect to the United Mine Workers' fund:

There is hereby provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:

"(a) A welfare and retirement fund: A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers 5 cents per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the President of the United Mine Workers, and the third chosen by the other two.

In this case the Government is the employer.

"The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (1) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (2) other related welfare purposes, as determined by the trustees. Subject to the stated purposes of the fund, the trustees shall have full authority with respect to questions of coverage and eligibility, priorities among classes of benefits, methods of providing or arranging for provision of benefits, and all related matters.

This represents money earned by the employees, in the form of a tax of 5 cents a ton, which is turned into a fund, and two private persons, without restraint, have almost unlimited authority to determine how the money shall be spent. Whether the words "other related welfare purposes" make it unnecessary to furnish a definite statement, as required by this amendment, is a question. It is left entirely in the choice of two men, who do not have particularly at

heart the interests of the public, to determine the terms under which the money shall be distributed.

The purpose of the amendment is to require that the fund shall be established in definite, detailed form, in the form of a trust fund, with respect to which the employees can determine their rights and can insist upon them.

Mr. Lewis' original demand was that the fund be solely in the administration of the union. He finally agreed to a joint administration. Unless we make such a provision there will be no requirement for a joint administration. This amendment provides that the employees and employers must be equally represented in the administration of the fund, together with such neutral persons as they may agree upon. In the event of a deadlock the agreement shall be submitted to an impartial umpire.

The purpose is to prevent the abuse of welfare funds. We have provided for a general study of welfare funds of this nature. There are a number of them in existence. I have before me a list of such funds. The amendment would not substantially affect any of those funds, except that with respect to some of them the appointment of an employer representative might be required in order that there might be joint administration instead of single administration. Otherwise most of the existing funds already comply with this provision. The tendency at present is illustrated by the demand of the United Mine Workers and other demands. This is the demand made by the painters in Washington:

"The parties to this agreement agree to set up a trust fund, to be known as the Painters' Insurance Fund, of Washington, D.C., and Vicinity. The purpose of this fund is to provide life insurance, sick benefits, hospitalization, accident, surgical, and dismemberment benefits for all journeymen and apprentices of local unions 368, 890, and 797."

There are no specific terms. No one can tell what the fund may finally be used for. Painters are notorious drifters. They have something deducted from their wages, and then they drift on to some other city, where they may find no fund, and lose the money they have already contributed. The tendency is to demand a welfare fund as much in the power of the union as possible. Certainly unless we impose some restrictions we shall find that the welfare fund will become merely a war chest for the particular union, and that the employees for whose benefit it is supposed to be established, for certain definite welfare purposes, will have no legal rights and will not receive the kind of benefits to which they are entitled after such deductions from their wages.

As to the question of interest, it is questionable how far we should go in the matter of private welfare funds. We have a general social security system. We have a separate fund for the railroad employees. There is a number of other special funds. I believe that the Finance Committee should study the whole problem of social security and welfare funds. Very likely there should be further restrictions. There should be a requirement that such funds fit into and supplement the ordinary social security system. The subject calls for long and involved study.

This amendment is, in effect, a provision to prevent the abuse of the right to establish such funds by collective bargaining, pending further study of the whole problem. Otherwise I think we shall find that the welfare fund will become a racket. In many unions it is very easy for it to become a racket. It becomes, in effect, a tax. In Mr. Petrillo's union there is a tax on records. In the United Mine Workers' Union there is a tax on coal. Unless there are some restrictions, if such an agreement is forced upon an employer, in effect we make the officials of the union who collect the tax Government agents for collecting and distributing the tax. Under the proposed agreement originally demanded by Mr. Lewis he could distribute the fund for the benefit of schools, or he could operate anything he wished to operate in the nature of local government. The whole thing would become a great weapon of power, as it was in the case of Mr. Petrillo, to dominate the union, to please the members whom he wanted to please, and punish members whom he did not wish to please, or who refused to go along with the policy of the union.

Senator TAFT. This is a statement in May 1947 by Senator Taft with regard to the original purposes for which this provision was put in the law, and makes mention of possible abuses of welfare funds to the detriment of union members. This was the principal protection sought to be put in the bill at that time, and I think pretty clearly illustrates that this is a historical accident that we banned certain

developments that can certainly be construed as certainly nothing other than the interest—in fact, I really wonder if in fact legal services, and perhaps my first question would be: What happens if under one of these plans one of the members of the plan wishes to sue the trustees of the trust fund? Under those circumstances, would that be proper or not, or would you advocate that that be included or not included in any plan that might be negotiated?

Mr. CONNERTON. I would advocate, Senator, that to the extent we could keep anything dealing with labor and management relationships, which is covered in another area, out of a legal service program, we could advance the interests of the people who would be covered by the program.

For example, as I indicated earlier, we do not think that these plans should be used to sue employers, except in compensation cases where the employer is either a nominal defendant on the one hand, or he may be self-insured on the other.

My own feeling offhand is that the employer-union relationship or interunion problems are matters that should be completely divorced from legal service programs.

Senator TAFT. Another matter that gives me some pause—I think I know the answer to it, but I would be glad to have your views on it—is in the area of domestic relations. It has been somewhat my observation that at times the cost of taking action in domestic relations cases has tended perhaps to keep families together. Has there been any indication that the existence of free legal services within the terms of the plan of this kind might be against the public interest insofar as it might stir up domestic discord or the possibility of further domestic divorce of the parties from each other, rather than to help them?

Mr. CONNERTON. I would think, Senator, without passing upon the question of whether people who have irreconcilable differences should be held together simply because one party lacks the income to retain an attorney—without passing on that, I would be the first to agree with you that these plans will provide some help to people under those circumstances and that you probably will have some slight increase because of that. I think so. In the plans that we have had, we have not had any great increase to date, and we really do not expect it.

We try to emphasize that we are more concerned with reconciliation, with keeping people together, than tearing things down. Under the legal service programs with which I am familiar, the moment a person comes in on a domestic relations matter, every single attempt is made at having the parties reconciled.

Senator TAFT. Do any of the trust funds that exist today provide for marriage counseling or other social service counseling in connection with family matters?

Mr. CONNERTON. I think the Senator raises an eminently fine question. The answer is, no, of course largely because as I say it is experimental. We are at the present time meeting with the School of Social Services at Ohio State University, and this is exactly what we would like to be able to plug into a legal service program. We are meeting with them on that end of the matters.

Senator TAFT. You do not think there is any legal prohibition on that end?

Mr. CONNERTON. I think there would be the possibility—the question still remains, unless some language perhaps were placed in the legislative history, but I would think that services that are directly related to legal services, such as marriage counseling, should be permitted. It is a far wiser course than going the other direction.

Senator TAFT. Should there be a contributory factor—I am not talking about whether or not the union contract calls for a contribution by the members of the trust fund? That is not what I am concerning myself with. What I am concerning myself with is whether outside and beyond the contribution or payment from the trust fund, no matter how that is put together, should there be a requirement of a percentage or partial contribution to the actual payment for legal services by the member involved?

Mr. CONNERTON. In terms of the member directly financing it, I would not myself be in favor of imposing a requirement that the member make a financial contribution. It is not required by the other funds permitted by section 302. I would see no great reason for the difference here.

I would guess myself that like welfare plans and retirement plans, in many cases it will be joint contributions between employers and individual employees. I think that is a matter that really should be left to collective bargaining. Many times an employee group will choose to have an employer completely finance, let us say, his health plan, rather than take extra moneys which he has coming to him in the form of wages. So I think that matter should be left free.

In the plans which I am familiar with, some of them try to reach that question in another way. That is to say, for example, in the Shreveport plan, they include a provision that a covered employee or his dependent must pay, let us say, the first \$15 or \$25 before legal action can be brought, and that is an effort to sort of restrain—another effort to restrain the bringing of some frivolous actions.

I would think myself, Senator, that union and management trustees working together would attack the problem, and if they saw any abuse developing in the obtaining of legal services, they would impose restraints, monetary restraints along the lines that I think you may have reference to.

Senator TAFT. What is the situation with regard to court costs? Would that not serve in part as a contributory factor having the effect that contributory factor might require, in other words, putting a burden, partial burden at least in any such suit among the members using the services, if there were court costs involved?

Mr. CONNERTON. Yes. On how you handle the court costs, the canons of ethics differ from State to State, but basically in some of the plans there are provisions that the employees must pay part or all of the court cost involved.

Senator TAFT. You say by the canons of ethics in some areas they have to.

Mr. CONNERTON. That is correct. I would say probably in most areas they have to. Obviously these plans would be required to follow the canons of ethics unless they were clearly unconstitutional.

Senator TAFT. Just one other area. What effect would this change have on the question of unfair labor practice? In other words, would it be an unfair labor practice to refuse to bargain as to a legal services plan, if this measure were passed?

Mr. CONNERTON. Well, let me answer it this way. The best we know, neither the labor board nor the courts have ever passed upon the question as to whether an employer is obligated to bargain for the delivery of legal services to his employees. We feel that he is. We feel that it is a mandatory subject of collective bargaining, but we hasten to point out to the Senator that neither the board nor the courts have passed upon the question. It would be our suggestion to this committee that they leave that problem where they find it. We are not here seeking to have this committee make it a mandatory subject of bargaining, if it is not at the present time.

In that connection, we would like to leave the law where we find it, and leave that issue for resolution by the boards and by the courts.

Senator TAFT. Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Schlossberg.

Mr. SCHLOSSBERG. With the Chair's permission, I would like to submit my lengthy statement of 14 pages and ask that it be entered in the record and summarize and speak to you.

The CHAIRMAN. That will be fine.

[The prepared statement of Mr. Schlossberg follows:]

Testimony of Stephen I. Schlossberg,
General Counsel of U.A.W.
Before the
Labor Subcommittee of the Labor and
Public Welfare Committee

In Support of S.1423
Amendment to the Labor Management Act

April 10, 1973

My name is Stephen I. Schlossberg and I am general counsel of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), headquartered in Detroit, Michigan.

I appear here today to urge, on behalf of the UAW, its members and their families, the passage of amendment of Taft-Hartley to permit employer payments to joint labor-management trust funds to finance legal services programs for workers and their families (H. R. 77). The passage of such an amendment would constitute a recognition of the need for such services and would make the development of such plans amenable to the collective bargaining process so that the unions and employers, so desiring, could establish legal services programs, similar to the medical services programs, which are already so widely accepted in collective bargaining.

Convention Mandate

The UAW, composed of almost a million six hundred thousand members, is under convention mandate to urge the Congress as we do here.

The 1972 Constitutional Convention adopted, without dissenting vote, the following resolution:

" Many millions of people in the United States receive inadequate and overpriced legal services. UAW members are often unable to obtain quality legal services at reasonable rates, and as a consequence, many who need legal advice and assistance remain deprived.

" The use of modern methods, paraprofessionals and the team delivery of legal services has lagged far behind the need of the people. Since the UAW has long supported the principle of prepaid group medical practice in the United States because it has proven to be superior, it is logical that the UAW should lead, too, in the development of efficient, economical and high quality prepaid group legal services in the United States.

" The concept is not a new one. But the recent revival of interest in group legal services has stemmed from the growing awareness of a twofold problem: A substantial number of Americans in the wage-earning class are increasingly beset by problems whose solutions require legal assistance in one form or another. These can, and often do, include such problems as disputes with landlords, conflicts over debts in an increasingly credit-card economy, battles with financing companies, troubles with auto or appliance warranties, the complexities of the sale or purchase of a home or even the drafting of a will.

" Yet this segment of the population seldom, too, thinks of obtaining a lawyer to help handle these problems; many do not know where to get a lawyer or how he could and should help them if they did. And most often, the cost of retaining a lawyer is enough to stop them.

" The other part of the problem is the lack of an effective system of delivery for legal assistance.

" It has become apparent that for the majority of Americans -- not only the perceptibly poor -- the existing method of distributing legal services is woefully inadequate. Today's ordinary citizen is cast in a variety of roles, including that of consumer, taxpayer, voter, employee, parent, investor, lessee, as well as accident victim or cause. While each of these identities is beset with legal implications, too often they are undertaken without any legal advice. To a significant extent, the unmet need for legal services is tied to costs. Even under the 'minimum fee' schedule of many local bar associations, recommended hourly fee rates are no lower than \$25 to \$50 per hour and specific, albeit simple, services can entail stiff flat rates.

"We are now at the same historical stage of development with prepaid legal plans as medical plans were 25 years ago. Unless unions participate now at the formative stage to use their mass purchasing power to insist upon quality services at a reasonable cost, then the same mistakes and waste which occurred in the medical service field will come to pass here.

RESOLVED:

"1. The UAW fully supports prepaid group legal services, oriented toward the consumers of legal services and the needs of the group served.

"2. The UAW urges consumers and unions to lead the way so that coming group practices plans will prove valuable to the public -- including consumers and union members -- rather than only to profit the organized bar.

"3. The International Executive Board is authorized to assist in the mobilization of a coalition of public interest, consumer and labor groups to ensure that prepaid group legal services are encouraged in the direction of the public interest and consumers.

"4. The UAW should join with others to seek an amendment to the National Labor Relations Act which would permit negotiated employer contributions to be paid into group practice plans, where such plans are negotiated in collective bargaining and to seek regulations from the Internal Revenue Service guaranteeing the exemption from taxation for such plans."

The above resolution mandated action by the International Union, which has already taken steps to carry out its mandate.

UAW Action to Date

1. Washington Conference

The International Union was one of those organizations to take the lead in calling, and participating in, a national conference in Washington, D.C. in July 1972 of concerned persons and organizations who use legal services and who need legal services. The President of the UAW was one of the eight sponsors of the conference. Among the groups and organizations which attended the conference were labor unions, church groups, consumer organizations, cooperatives, civil rights and minority groups, senior citizens, women's groups, credit unions and poverty lawyers.

2. New Organization

As a result of that conference, a new organization was born. It is the National Consumer Center for Legal Services (NCCLS) which is established as a tax-exempt non-profit corporation in Washington, D.C. UAW Vice President Olga Madar is one of the members of the first Board of Trustees of NCCLS and I am one of the legal advisors to the Center.

The purposes of NCCLS are:

1. To improve the quality of justice in the United States.
2. To provide a national advisory organization for consumers who do not now have full access to legal services, and to ascertain the needs of such consumers in order to make such services to them.

3. To improve the delivery of legal services, with emphasis on better systems, new technology, paraprofessionals, and quality review, in order to improve quality and reduce costs for the consumers of legal services.
4. To act as a clearing house and a public information center for matters affecting consumers of legal services, with special emphasis on legal services plans in existence or formation, state and federal laws and professional rules and canons.
5. To assist in the establishment and operation of legal services plans and in the recruitment of personnel -- both professional and non-professional.
6. To engage in and to assist in negotiations, litigation and other proceedings involving or affecting the establishment or operation of legal services plans.
7. To conduct and sponsor research and pilot programs to provide legal services to consumers.
8. To develop alternative model plans for the delivery of legal services.
9. To maintain close contact and cooperation with consumer, labor, civil rights, defender, legal services and aid, student and academic groups, public interest groups, cooperatives, bar associations and national organizations active in the consumer

- health field, and to work with such groups to establish legal services plans.
10. To develop programs to make legal services available to those consumers in need of such services but who are not members of organized groups.
 11. To coordinate nationally the activities of legal services plans.
 12. To engage in thorough and searching cost analyses of legal services plans in cooperation with member groups and to devise ways to minimize costs.
 13. To work with law schools, universities, colleges and junior or community colleges and other organizations or institutions to develop courses for legal workers and to bring in more people to participate in the delivery of legal services.
 14. To develop programs for the education of consumers for lay advocacy.
 15. To promote programs of preventive law, to educate in the use of legal services and to encourage the expression of legal rights by individuals and groups without the assistance of an attorney.
 16. To encourage developments and innovations in public interest law.
 17. To investigate and generate funding (from government, charitable and other private sources) for this organization, and for special projects.

18. To establish subordinate or affiliated organizations to carry out some or all of the above goals.

19. To carry on nonpartisan legislative activity to further the above goals.

3. Liaison with Professional Organizations and Other Organizations

In order to better protect the interests of its members, the International Union, through its general counsel, has maintained close contact with the various lawyer organizations and with public interest, labor, consumer and other organizations interested in legal services. I am a member of the American Bar Association Consortium on Legal Services, which is the group which oversees and coordinates all of the ABA committees dealing with group or prepaid legal services in any way. We are maintaining close relations with the National Legal Aid and Defenders Association. Finally, we are in close contact with the group which is conducting a national survey of legal needs and the public perception of lawyers. Because we believe the problems of unmet legal needs of middle income persons in this Nation are so great, we will continue to work with other unions, consumers, public interest groups and professional organizations in a search for solutions. That, of course, is why we are here today.

The Coalition

The coalition favoring the amendment you are considering is significant in and of itself. I do think it's important that we're here today. We have been in coalitions before, important coalitions, like the Leadership

Conference on Civil Rights, in which the UAW, AFL-CIO and other unions, civil rights organizations, and church groups and others have worked together on important pieces of legislation affecting human beings on civil rights, and on which we've had successful fights on some issues. Many of us presently work together in the Committee on National Health, which has an important relationship to the work that you're doing here today. It is an ongoing organization. The only problem with the Committee on National Health is that it was born 25 years too late. The coalition favoring this amendment, which I understand includes the American Bar Association, large parts of the insurance industry and others, is one born at the right time and in the right manner.

The Need for and Interest in Legal Services

The renewed interest in group legal services and the unmet legal problem needs of the people stems not only from recent well-known Supreme Court cases, dealing with legal services. The interest in the subject is to a very large extent heightened by our experience with the legal services programs for the poor. The poverty lawyers have, even though they've operated under scathing attacks by Vice-President Agnew and others, managed to do a great deal for the poor they represent and for the general public. Let me remind you in only a line of some of the great victories that these young, idealistic lawyers have won. In the Goldberg case, no denial of welfare rights without a hearing. In the Foley case, an indigent may not be just denied the right to seek a divorce because he or she cannot afford the filing fee. In Lynch, a creditor may not attach a debit bank account without a court judgment holding the

debt valid. The Sniadach case, no wage garnishment without a prior fair hearing. In another case, the same was held on the repossession of goods under conditional sales contracts, and in Java, a landmark case for the labor movement, in which UAW participated, unemployment compensation benefits may not be stopped without a prior hearing -- the requirement that unemployment benefits for workers who are out of a job be paid when due. And, the Social Security Act means that they must be paid when they are needed, and that prohibits the states from holding up those benefits while an employer appeals. These are landmark decisions. No wonder some of the bitter, anti-people leaders of the reactionary forces in the country have mounted vituperative campaigns against these kinds of poverty lawyers. We have much to learn from them.

The UAW has found that our members and their families have needs that are unmet and that legal services could meet some of those needs. For instance, many, many ordinary people in the United States die intestate, without any will, and they have no conception whatsoever of the intestacy laws of the various states. Brothers and sisters and their issue, far removed, long estranged from a deceased husband, find themselves the beneficiaries of intestate law much to the chagrin of a surviving widow. These people need wills. They need to know about the problem at the very least.

These people have other problems. The bankruptcy laws in this country, I don't have to tell the people in this room, are heavily

oriented toward commercial bankruptcies, and not toward consumer bankruptcies. The bankruptcy laws in this country are at least 50 years out of date, and they need to be overhauled. Of course, the problems of the bankruptcy and intestacy laws, as well as other areas plaguing middle income people are not merely solved by writing wills and by doing the best you can under the present bankruptcy laws. Fundamental changes in laws are needed. But until we can bring about orderly change, we need to supply legal services to handle these matters, as well as day to day workmen's compensation, commercial, probate, and domestic problems. Certainly as long as such little understood doctrines as "holder-in-due-course" are ex tant, people need preventive law.

We in the UAW and, I believe, most of the labor movement, see collective bargaining as a significant instrument for the distribution of and allocation of resources that flow from workers to satisfy their needs. That is why §302 must be amended as soon as possible. It must be amended because we need the right to use that very valuable instrument of collective bargaining as soon as possible. The prompt passage of H. R. 77 is a social and economic necessity.

There's no reason, it seems to me, why we can't meet these needs through collective bargaining. We have models to go by. We've met health needs, we've met pension needs, we've met child care needs, we've met vacation needs, training and education, and there's no reason

why we can't use this significant instrument to help meet these real and pressing needs of people.

This is a collective bargaining year in the automobile industry. As the UAW approaches the industry, one by one, this summer, we are conscious of the tremendous progress we have made for those we represent over the years. We are conscious, too, of the challenges facing us and the potential for constructive use of the collective bargaining process.

The world knows that the UAW, through collective bargaining, has pioneered in supplementary unemployment insurance, the guaranteed annual income, funded pensions, complete health and medical care for its members and many other areas. We have always tried to negotiate imaginative and innovative agreements, responsive to the needs of our membership and responsible to the community. We have always tried to make progress with the community, instead of at the expense of the community. If the Congress will remove this illogical and artificial barrier to the use of the collective bargaining system to satisfy unmet needs of workers and other middle income Americans, I can assure you that UAW policy makers will pay serious attention to the matter and will consider presenting its employers with responsible proposals in this important area of American life.

There is a tremendous gap in the legal services of the rich and the poor and the rich and the middle class. We believe that this can be turned around, but it can only be turned around by using instruments such as collective bargaining and by the insistence of those who consume legal services. Unfortunately, despite good intentions, the bar alone has not adequately met its responsibilities to the average citizen. The bar speaks in glorious cliches and it talks about the need for representation and it talks about the rights of every person to use the law, and I believe that many lawyers even understand, as a theoretical matter, that laws, like clothes, as Clarence Darrow once said, must be tailored to fit human beings, but it hasn't yet worked out that way. If we are to make quality legal services at reasonable costs available to average people in this country, we must find new ways to do it. No single way offers more promise than collective bargaining.

Justice Brandeis once said:

The leading lawyers of the United States have been engaged mainly in supporting the claims of the corporations, often in endeavoring to evade and nullify the extremely crude laws by which legislators sought to regulate the power or curb the excesses or either. Able lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations. Instead of holding a position of independence between the wealthy and the people, prepared to curb the excesses of either, able lawyers have used their powers for the protection of great interests. We hear much of the corporation lawyer and far too little of the people's lawyer.

If the Congress will remove the legal impediments to the utilization of collective bargaining as a means to provide quality legal services at low cost to moderate income persons, it will have paved the way for imaginative unions and employers to establish "people's lawyers" -- house counsel for the people -- and that will be a great contribution to the improvement of the quality of life in this nation.

The UAW appreciates the opportunity to present its views and it urges prompt, favorable action on the amendment under consideration.

* * *

Mr. SCHLOSSBERG. My name is Stephen Schlossberg, and I am general counsel of the UAW headquartered in Detroit, Mich. I very much appreciate the opportunity to be here and talk to this committee about what I think is a pressing need for workers and for middle-income Americans.

I would like to note, Mr. Chairman, before I go any further, that there are some UAW members from the State of Ohio who happen to be in town for a conference and are visiting with us today. I am pleased that they are here and I know they probably would like to say hello to you, Senator Taft, if we have a break sometime. I am pleased they are here, and I did want to note their presence.

I had the rare opportunity to work as a technical adviser with the resolutions committee of the last UAW constitutional convention, and I remember we had a resolution—that dealt with the whole subject of legal services for middle income people, for workers, and it urged very strongly the amendment of Taft-Hartley to eliminate what we see as an oversight obstacle, an obstacle which prevents unions and management from constructively getting together and using the very valuable instrument of collective bargaining to provide these services to a very large group of people in this country who do not now get them.

The debate on that resolution in the committee over this subject was one of the most stimulating things I have ever heard. Of course I also heard some pretty terrible horror stories from various committee members, and our members are chosen from all over the United States and from every section of our union. They are not only representatives of the big three automobile makers. We have aerospace, small parts, agricultural implement workers, all races, all colors, all creeds, and almost all persons on that committee either the members of the committee themselves or their families had either been victimized by legal practices or the workings of the legal system or by inadequate representation by lawyers or overcharged in costs or had some experience which really shook up this committee.

It is not amiss for me to tell you this, but there are some members of the bar who do not live up to their obligations, and some lawyers, particularly engaged in compensation fields, in the worst kind of practices. They not only employ runners who are paid but in an effort to get the business of large local unions—and I should tell you that the UAW has some local unions which are as large as other international unions, we have a local with 30,000 members in some cases—and they are engaged in dangerous work, working in a factory today is dangerous, it is unhealthy work in many instances. We are working on that in every way that we can. But because of the inability to make a factory at this point—it is an animal we have not yet tamed—to make the factory a safer and healthier place, we do have many job-related injuries, and they are covered by the workmen's compensation system. I guess philosophically and socially and ideally at one time it was thought that a layman could handle his own compensable injuries before a very simple administrative board instead of suing for injuries. It has not worked out. It is a field for lawyers.

Some lawyers pay runners and pay laymen who solicit this business and engage in widespread solicitation themselves, but from the standpoint of the UAW, the thing that bothers us the most is the possibility of corruption of a local union through unscrupulous lawyers who seek

this kind of business. It would not be too wild a speculation to say that in some cases local union officials have had their election expenses paid by lawyers who would engage in this kind of activity. You are making available this instrument, which nobody intended to reserve in the first place for this worthy purpose. It would, I believe, eliminate many shady practices that now go on and threaten this society as a whole and certainly some of the people we represent.

Now Senator Taft asked Mr. Connerton a question, and I want to amplify one of the answers if I may, Senator Taft. You asked if members could sue the trustees of the plan, and I know Mr. Connerton meant to say this—if he did not, maybe he disagrees with me—but I certainly believe that members ought to be able to sue the trustees of the plan. These are after all fiduciaries, and if the trustees of the plan engage in any kind of breach of fiduciary duty and do not faithfully serve the interests of the beneficiaries of the trust. I am sure Mr. Connerton would agree in that case that suit would lie and it should lie.

The CHAIRMAN. That is not the question, whether the suit lies or whether they can sue, it is whether the services are paid—

Mr. SCHLOSSBERG. The services would not be paid for by the plan.

Senator TAFT. That is the difficult question.

Mr. SCHLOSSBERG. I do not think anybody intends to foreclose the right of fiduciaries to be sued by the beneficiaries.

The CHAIRMAN. Absolutely not. But the question is whether the legal services fund pays the attorney for that suit.

Mr. SCHLOSSBERG. I would hope that any plan that is set up by an intelligent employer and an intelligent union would provide that suits may not be maintained against either of the contracting parties, again that is by payment through the fund, or by one member against another member, where there would be a built-in conflict of interest.

Senator TAFT. I think your point is well taken about the conflict of interest. But I am not sure that at times a class action against the trustees could not be bought, for which the trust could be required by the court to provide compensation.

Mr. SCHLOSSBERG. Absolutely. I think if a beneficiary sues a fiduciary that the court could well award legal fees and costs in that situation, much as it has done in stockholders' suits or any other kind of fiduciary action.

However, it seems to me that one thing we ought to clarify is that a good way to handle these kinds of things, again to avoid litigation, would be to provide for some sort of arbitration by a neutral third party to settle claims against trustees or disputes against lawyers. In other words, there are private systems that could be worked out to handle this kind of thing. I am sure that mistakes will be made, because we are pioneering in a new field, but that there is enough ingenuity among the representatives of management and of labor and in the bar and in the various people who will be involved in these plans to work out ways to avoid litigation.

In that connection I would like to say that I believe these kinds of plans, rather than encouraging litigation, will cut down on litigation. Think for a moment of the economic incentive of a lawyer who is working on one of these plans. If he is a paid lawyer, if he is a hired lawyer, and what we call the closed panel situation, he is going to get the same salary, whether he litigates or he does not, and there is no incentive for him to litigate.

As you know, today I think a good deal of the litigation we seek is the litigation that is encouraged by economic incentive of more money for litigating. I heard of a plan the other day, a medical plan, in which the surgeons in the plan had performed thousands of unnecessary operations because they were paid to perform operations.

Now I am not here to accuse this plan, I am here simply to say that in a group health situation, that is a situation like the Kaiser plan or the Metropolitan-UAW hospital plan, the surgeon makes the same money whether he discourages surgery or encourages surgery. I do not think these plans can in any way contribute to that.

What bothers me is that the average worker who works and is confined to workplace for 8 or 10 hours every day does not know how to find a good lawyer. Fortunately or unfortunately as the case may be, the bar does not permit dignified advertising that would alert people of the possibility of lawyers. There is no such thing. The board of ethics and canons prevents any kind of educational advertising that I think would lead people to better legal services. So the average worker has to rely on what his friends tell him or people that belong to his church or what his lodge brother tells him or somebody else tells him, and that word of mouth seems to be often, does not produce the kind of legal care these people are entitled to.

How many people do you think in a State like Michigan, Ohio, or Pennsylvania have no will and have substantial estate, and are entirely without wills? Do most of those people do you think understand that even though they may have a spouse that they are not going to determine how their property passes at death, but that some State laws, which may be anachronistic, that were enacted many, many years ago are going to determine how that passes, how that property passes at the dependent's death, and that maybe a sister or brother that this deceased has not seen for 20 years will share in that estate, rather than the whole thing going to the spouse, to the surviving spouse? They just do not know that.

The whole business of holder in due course and the gypsy salesman who come from door to door, these kinds of things can be settled mainly by preventive law, by using these kinds of legal plans to provide bulletins, to provide classes to teach people, but the most important thing of all, if you give us this instrument and permit union and management responsibility to negotiate these kinds of plans through the instrument of collective bargaining, then working people will have a new added dignity.

It is not unusual when a wealthy person is accused of some crime, minor or otherwise, or is in an argument or dispute, whether it is business or otherwise, to say, well, just a minute, I am going to call my lawyer. The average worker cannot say that. But if we can take this instrument and use it creatively, employers and management together, we can provide really what I would call house counsel for the people so that every worker will have the dignity of saying when he is confronted with either a problem of bureaucracy or consumer problem or whatever, just a minute, I want to call my lawyer, and that is a social value that I think is terribly important.

I think it will increase respect for the law and will increase access for the law, and at the same time not flood the courts.

I came from Roanoke, Va. That is where I was born and raised. We had a celebrated case in Roanoke, Va., when I was in high school, in

which a young boy, 12 years old, was arrested for murder involving another child. I heard the story of his father going to a very prominent criminal lawyer in Roanoke—this was middle-income man, and he said to the lawyer, I want you to defend my son. The lawyer said, well, I might be interested in that.

He said, what will it cost?

The lawyer said: What have you got? That is what it will cost, everything you have got when I try a capital case.

I say when we have that kind of thing facing citizens of middle income in this country, we need to do something about it. I suggest that with your help, with the Senate's help and with the House's help, we can make this wonderful instrument of collective bargaining available so that creatively unions and management can create a new opportunity for solving the problems of people in society.

I want to say just one more thing, if you please, Mr. Chairman. We are almost on the eve of three big negotiations in the UAW. We go up against negotiations, or we go up with the negotiations the largest manufacturing corporation in the world, General Motors Corp., and we will bargain with other large corporations, and that will set up a new round of collective bargaining.

We have done very responsible and creative things in collective bargaining in the UAW. We have provided for a guaranteed annual wage. we had the long strike to provide for funded pensions. We provide for complete medical and health care for our people and their dependents, even to the point of psychiatric care, which is not provided for in many such contracts. We provide for the health and welfare of our people who are already on retirement and we tend to those matters with great seriousness.

I can assure you that on behalf of this one union which feels deeply about these kinds of problems and does not approach this matter in a parochial, business, union sense but as a large social problem that affects our membership and their family and society as a whole. If you will permit us, we will make responsible proposals to responsible employers and try to work responsibly in this field.

The CHAIRMAN. Thank you very much, Mr. Schlossberg. Senator Javits.

Senator JAVITS. Mr. Chairman, I believe we ought to hear all the witnesses and then ask questions.

The CHAIRMAN. Next we have Max Zimny, general counsel, International Ladies' Garment Workers Union.

Mr. ZIMNY. My name is Max Zimny. I am general counsel of the International Ladies' Garment Workers Union.

I am the third attorney this morning to speak to you. My predecessors are, as you have heard, highly able and well-informed. They leave me little to do except largely to traverse grounds already covered, so I hope you will bear with me.

I received short notice of the opportunity of testifying before you, and so I hope you will excuse the fact that I do not come with a statement prepared at this moment, but I will submit written statements on behalf of the International Ladies' Garment Workers Union hereafter.

The CHAIRMAN. We would appreciate them. They will be included in the record.

(The prepared statement of Mr. Zimny follows:)

STATEMENT OF MAX ZIMNY, GENERAL COUNSEL,
INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, IN SUPPORT OF S. 1423, PREPAID LEGAL
SERVICES

My name is Max Zimny. I am General Counsel of the International Ladies' Garment Workers' Union. On behalf of the Union, I urge support of S. 1423, a bill to amend Section 302(c) of the Taft-Hartley Act to permit employer contributions to programs for legal services jointly administered by labor and management under the safeguards contained in Section 302.

The ILGWU is a labor organization with about 427,000 members in the ladies' and children's garment industry throughout the United States and Canada. Founded in 1900, the ILGWU has been a pioneer in employee benefit funds designed to meeting the fundamental needs of workers and the community at large. Our health, welfare, and retirement funds were among the first of their kind; and we now have additional funds providing a variety of other benefits. We have a Supplementary Unemployment Benefits Fund which provides money to workers who lose jobs to help them overcome transitional unemployment; and a Health Services Plan which provides prescription drugs and medicines at nominal cost. Each of the funds operates pursuant to Section 302(c) with notable success. Legal services programs are entitled to no less.

Our system of government is based upon principles of "law" and "justice". Justice under law is an integral part of the American democratic experience. The law expresses and determines the relationship between individuals,

on the one hand, and between the individual and the state on the other hand. But the observance of legal guarantees is totally dependent upon effective access to the legal system. Such access is dependent, in turn, upon the ability to meet the cost of quality legal services. This lesson is dramatically demonstrated by the legal struggles of the labor movement, the civil rights movement, and, most recently, by the war on poverty.

The inability to fund meaningful access to the courts is a deprivation of constitutionally protected rights. As Mr. Justice Black stated in United Transportation Union v. Michigan Bar, 401 U.S. 576, 585-586 (1971):

" . . . 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 costs of legal representation."

(See also "A First Amendment Right of Access to the Courts for Indigents", 82 Yale Law Journal 1055 (April 1973)).

In our complex society the ordinary citizen is faced with an almost endless variety of legal problems. Whether it is a faulty appliance, an unintelligible tax form, a recalcitrant landlord, a sudden accident, or a Will to be drawn, proper legal advice and representation is essential.

The wealthy can easily afford the costs of high priced legal talent. Subsidized legal services programs have provided outstanding representation to the poor, although this important program is now under attack. However, the more than 150 million Americans whose annual family incomes range from

\$5,000 to \$15,000 cannot afford the cost of quality legal services, and no governmental aid is available to them for this purpose. Access to lawyers and the courts is largely an illusion for America's middle class. The Supreme Court's decision in Gideon v. Wainwright, 372 U.S. 335 (1963), established the right of counsel for indigent criminal defendants. It spurred the growth of legal assistance programs for the poor. But Gideon's trumpet has not yet blown for the bulk of the working people who comprise America's middle class. Public officials, the organized Bar, and commercial interests are in full agreement with the trade union movement that Americans of moderate means suffer from a lack of adequate legal representation which deprives them of the enjoyment of rights and privileges under the law.

At the present time, there are some 1500 prepaid legal services plans which vary widely in cost, coverage, and systems of delivery. These plans provide limited coverage for over one million people. For the most part, these plans have been initiated by labor unions, consumer groups, and community service groups. But these plans are inadequately financed through membership dues, payroll deduction, and other limited contributions by covered individuals. The plans include the "closed panel" program consisting of a staff of salaried attorneys hired by the group; the "open panel" system in which the covered individual may hire an attorney on the open market; and insurance company plans such as the plan operated in Philadelphia by the Insurance Company of North America and the Philadelphia Bar Association.

The existing plans fulfill only a tiny fraction of the actual need. The growth of such plans can be greatly promoted if they are made subject to the collective bargaining process by inclusion among the fringe benefit plans permitted under Section 302(c) of the Taft-Hartley Act. In short, amendment of Section 302 as provided in S. 1423 is the key to unlocking the storehouse of legal rights for middle America.

The list of permissible objectives under Section 302(c) has grown as the needs of working people have been recognized. Thus, jointly administered plans providing for health, welfare, retirement, severance, drugs, dental, vacation, scholarships, and day care are all now permitted. Plans for providing legal services are certainly of equal importance and they deserve equal exposure to the successful experience which has characterized other Section 302(c) plans.

It seems to us that the case for amendment of Section 302(c) to include prepaid legal services plans is clear and undeniable. The International Ladies' Garment Workers' Union therefore urges all members of the Senate to join it in supporting S. 1423.

Mr. ZIMNY. We appear before you in support of S. 1423, which would amend section 302 of the Taft-Hartley Act, to permit employer contributions to legal services, programs jointly administered by labor and management under the safeguards contained in section 302.

Legal service programs would merely be in addition to the long and steadily expanding list of permissible objectives for funds functioning under 302(c). It comprises nothing new of a kind. It comprises merely additional opportunity to meet fundamental needs, needs which all sectors in America seem unanimously to support as fundamental.

You have had submitted to you, and you will have testifying before you, members of the organized bar associations, consumer groups, trade unions, and others, and with no exceptions I think the need for legal services by the approximately 150 million Americans comprising America's middle class seems extremely well established.

It seems almost redundant to come before so eminent a committee and to tell them what is extremely clear, which is that this great country owes its greatness in very large part to its system of organic laws which protect and safeguard the right of its citizens, and if so large a group of its citizens are inadequately able to gainful and effective access to that body of American freedoms, then in effect their rights are being impaired and they are being impaired so fundamentally and really so outrageously that such a deprivation should no longer be entertained.

This problem has continued for a very long time. Legal hurdles have finally been surmounted, but the most serious hurdle has yet to be surmounted, and that is the ability to fund these very necessary legal services.

Present programs which in number are impressive under the limitations which presently exist in the law cover only perhaps a major or 1½ million people. The programs themselves are necessarily fragmentary and so they number more than 1,000, their coverage is limited, and it is limited because of the inadequacy of the ability to fund better programs, programs for more people, programs providing more coverage.

The obvious way to adequately fund legal service programs is precisely the way other necessary programs have been funded and that is through the labor-management processes, with the safeguards set forth in 302(c), through the joint administration of labor and management and through legal service programs which are funded and managed in these cautious and prudent ways.

The union that I represent, the International Ladies' Garment Workers Union, has long experience with jointly administered funds, funds operated under section 302(c). We have, as a matter of fact, been a pioneer in many fund areas. We have, as is well known, more than 425,000 members. We represent workers far in excess of that number.

The union which was founded in 1900 pioneered very early in health, welfare, and retirement funds. They now have still additional funds which provide a variety of other benefits. They have supplementary

unemployment funds, which provide money to workers who lose jobs, in order to help them over transitional unemployment. We have a health service plan which provides prescription drugs and medicines at nominal costs and all of these funds operated with notable success, operate within section 302(c). Of course the ILGWU is not alone in the use of benefit funds to meet the needs of our citizenry, and so the use of benefit funds to meet legal service needs is obvious, and there appears no good reason whatsoever why the section should not be amended to permit its negotiation between labor and management.

You have already heard the many additional good reasons why these legal services are necessary, indeed almost imperative. Let me point out some additional reasons.

I think that over and above the need of people for adequate legal representation is the need of the organized bar itself. I think the bar ranks low among the list of professions which the ordinary person respects and looks to for aid, and I think that problem is one of the many problems which more and better programs, better organized, better funded, with a broader range of services can help to alleviate. I think too that there is a steadily growing number of young boys emerging from law schools, and I think that legal service plans provide them with an unprecedented opportunity for jobs and for service to the public and to provide them with a range of services which, except in particular instances, is now not readily available to the public.

The ability to practice preventive law and the more traditional function of advocacy in courts are all possible under legal services programs and for the large middle class in America they have been largely unavailable. Lawyers have been sought by these people very often after the damage has been done, and if the matter was serious enough, the cost might be disabling, if not bankrupting, depending upon the means of the individual involved.

Legal service programs therefore represent, I think, an unprecedented opportunity to meet the need of the public, to meet the need of the bar, both those presently in practice as well as those of the emerging. And, yes, there is no better way, it seems to us, than to provide for amendment section 302(c) which will, I think, provide fresh impetus for the establishment and expansion of legal service programs. Perhaps for the first time law and order can become a living and meaningful concept and the textbook phrases about American freedom and American democracy can be translated into everyday realities.

I think, gentlemen, that the bill in question is very necessary and our union asks that that bill be supported.

The CHAIRMAN. Thank you very much, Mr. Zimny. I have no questions. Senator Javits?

Senator JAVITS. I thought we would wait and hear all the witnesses.

The CHAIRMAN. Ms. Miller.

Ms. MILLER. I have brought with me a written statement which I would like to enter into the record and just speak from notes.

The CHAIRMAN. Fine. We will include it in the record, and we will be pleased to hear your comments on this bill.

[The prepared statement of Ms. Miller.]

STATEMENT OF JOYCE D. MILLER, EXECUTIVE ASSISTANT
AND DIRECTOR OF SOCIAL SERVICES OF THE
AMALGAMATED CLOTHING WORKERS OF AMERICA
BEFORE THE
SUBCOMMITTEE ON LABOR OF THE COMMITTEE
ON LABOR AND PUBLIC WELFARE ON
S.1423

This Bill, S.1423, would allow employer contributions to trust funds for prepaid legal services under Section 302(c) of the Labor Management Relations Act and I appear before you today in support of this legislation. I want to discuss the need to provide working men and women with legal aid and assistance as a matter of right. Workers are denied free access to the law because they cannot, in most cases, afford the services of an attorney. The cost of legal services becomes a burden on working men and women and their families so that new avenues of financing such a service is urgently required.

On April 1, 1972 a Prepaid Group Legal Services Plan was instituted for 6,000 Amalgamated members in the Chicago area. These 6,000 members had authorized payroll deductions of 50¢ per month to be used for Group Legal Services. I would like to tell you the background of this program.

Our organization in Chicago has 12,000 members, representing people who are engaged in manufacturing in the men's clothing industry and a few thousand in the retail field. About 70% are women and about 35% are from minority groups, primarily black and Spanish speaking people. In addition we have 3,000 retired members. We began this program as a result of the recession that began to hit our members during the middle of 1969. There were extensive lay-offs, and we found that many of our members were beginning to experience the problems of the working poor--short hours,

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unemployment, and so on. We found that our members did not know what community agencies were available to help them in their time of need. So we established a Social Service Department, with a professional social worker, to help these members with the problems that happen to people who do not have the economic wherewithal to take care of themselves. It quickly became apparent, these were non-job related problems, that a substantial portion of them needed the benefit of legal counsel.

The rich have always been able to afford proper legal care and the poor can take advantage of Legal Aid Programs. But there is a vacuum for the average wage earner. Union members today are caught in the worst bind - they make too much money to be eligible for legal aid programs, and not enough money to be able to pay standard Bar Association fees. For union members to achieve the fullest participation in the democratic process, they must have proper legal counsel and services.

As we began seeking Legal help for our members, we found that there were several problems, the most serious of which is Section 302(c) of the Taft Hartley Act which does not permit collectively bargained trust funds to be used to provide legal services for union members.

We established the prepaid Legal Program giving our members a limited group legal coverage. It is our hope that Taft-Hartley will be amended, so that a complete legal coverage may be provided. I would like to describe the technique we used. We have a medical-insurance program through collective bargaining. It gives outstanding hospital

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and medical insurance. But like many other programs, it is not complete and there are gaps. So we established through our own insurance company in Chicago, a supplemental program that we make available to our members. The initial cost was \$1.00 per month for an individual, and \$3.00 for family coverage. (It is now \$2.00 and \$5.00). This supplemental insurance picks up the difference between the collective bargaining health insurance program and total coverage. Payment for this is on a voluntary enrollment basis through payroll deduction. When we put this program into effect, we had a tremendous response, because for this small cost per month, our people were able to get the difference between what we were able to bargain for collectively on a national basis and, basically, total economic reimbursement for hospitalization, surgical costs, doctor's visits in the hospital, and weekly sick and accident benefits.

We decided to use this same vehicle for prepaid group legal services. We charge our members 50¢ per month as a payroll deduction, in addition to the supplemental insurance premium, on a voluntary basis, and they now have paid for a retainer for attorneys. The union acts as a conduit and transmits these voluntary premiums monthly to the attorneys.

The cost had to be modest because our members are not at that stage of understanding where they realize the full value of legal services. The nature of the legal problems that our members have are in the following broad categories:

- (a) Consumer Transactions; (b) Domestic and Family Relations;
- (c) Landlord and Tenant Problems; (d) Non-Commercial Real Estate

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Transactions; (e) Defenses against lawsuits arising from a debt, and (f) legal advice. In addition, there is the matter of wills -- every individual is entitled to the dignity of having his possessions, no matter how meager, disposed of in accordance with his wishes.

This is the nature of the problems our members have and we wanted attorneys who have expertise in garnishments, personal bankruptcies, divorce, etc. The kinds of everyday problems that our members are involved in. The law firm also had to have sympathetic understanding of the nature of the people who would be their clients -- the category of people making \$5,000 to \$14,000 a year. A firm that would be sympathetic to the racial and ethnic backgrounds of our members. We found a group of five attorneys who met these needs, who felt a commitment to the kind of thing we were trying to do, and we put the program into effect.

The interest is continually growing. It is an educational process. Many people do not have the kind of feeling for an attorney that they might for a doctor. People seek out a doctor because they have to -- they are in pain. Legal problems are of a different nature. High costs, fear of the unknown and lack of knowledge about where to go keeps Union members from seeking needed legal assistance. They, therefore, have all too often allowed their problems to go by default, thus forfeiting their legal rights. In time, we will have at least 7,000 or 8,000 people who will enroll, if not more. We enrolled people during the month of February, 1972. The first deduction was made in March, and the program actually started on April 1st. We have now had one year of experience.

Prior to establishing the prepaid group legal program, we were able, through the social service department, to determine the directions in which we would be going.

Between February 1, 1971 to February 1, 1972, 403 different members saw the social worker, many of these saw her several different times with their personal off-the-job problems. Of the problems of these 403 members, 75 needed the assistance of an attorney. In addition, there were many consultations between the social worker and the attorneys where proper advice avoided the necessity of legal action.

During the 1st year of the Program, April 1, 1972 to April 1, 1973 over 1,000 members saw the social worker. The increasing usage and our experience has shown us that there is no question in our judgment that there is a great need for legal assistance among union members.

In order to hold costs down, as well as define the problem, the member makes an appointment with the personal service worker. We expect to add additional social workers as the program grows. It is not necessary to consult an attorney when it's very possible that two-thirds of the problems are non-legal matters that a social worker can handle. The social worker can guide the member to the proper community agency or counsel him on his difficulty. The social worker can perform para-legal work - for example, on wills, gather necessary information and save the time of the attorney in doing so. The social worker, working closely with the attorneys is also able to solve many problems at this level. For those cases that need direct legal action, an appointment is made with the attorneys at a time convenient to the member and arranged so he does not lose any time on the job.

In the one year that the program has been in effect, we do have some interesting statistics on the operation of the program, which indicate the growth and utilization we expect. During 18 working days for the social worker -- she saw 107 different people, and had 129 personal visits. Of these 107 cases, 50 directly involved legal matters. 25 of these cases were covered under the program and another 14 cases were handled by the social worker in consultation with the attorneys. 25 cases were not covered under the program either because of the nature of the case or because it involved the spouse or another member of the family.

We have found that when merchants know that the member has legal protection they are less likely to take advantage of them, particularly in credit transactions. We witnessed during the year members having excess credit charges removed from their bill; landlords refunding unfairly held rent payment; the adoption of 5 different children in three cases, who otherwise would be left unprotected and many other cases of this nature.

I would like to cite some of the case we have had:

One case involved charges of \$200 for items never purchased at a national mail order house. When the credit manager told her, "lady, just pay it, it will cost you more to hire a lawyer and fight it than just to pay the bill!" She said, "We'll see about that, through my union -- I have a lawyer." The end result was that this member saved over \$200.

Another case involved a large department store where the member signed a non-cancellable contract to purchase furniture as advertised for \$550. The next day the salesman told her that unless she paid an additional \$160 the contract was cancelled. Non-cancellable for her but cancellable for the

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department store. The result of this case was that the department store delivered the furniture at the price quoted.

Another case involved a member who had a one year guarantee on plumbing in a new home she purchased. The plumbing was faulty and had to be repaired. Our member was billed \$325 for the repair work. The plumbing contractor was held responsible and the member saved \$325.

One last case involves a member whose insurance was cancelled retroactively by an insurance company after he had an accident and they refused to pay over \$300 damages. The result was that the Insurance Company did pay the damages.

In each of these four cases the member would have had no recourse if not for our prepaid legal program. Access to justice in the courts and in our legal system is often denied workers, because the cost of hiring lawyers is prohibitive. The Constitution says that all men are entitled to the equal protection of the law. But you are not equal before the law if you don't have an attorney, and for most working people, hiring a lawyer is something that enters their minds only as a last resort because it is so expensive.

The Program is necessarily limited, in order to hold down costs, to the member only -- not the family.

The Program does not cover any contested matters, income producing transactions, and initiation of law suits, except those that arise in connection with a debt. We do not cover these matters because we do not know the economic boundaries of these cases. We do not handle criminal matters nor cases involving jury trials for the same reason. Out-of-pocket costs are paid by the member, filing fees and court costs. If Section 302(c) is amended we shall be able to broaden the scope of the Program both in the kinds of matters covered as well as adding family coverage.

Obviously, there are great limitations to our program because of costs in expanding the coverage and in the type of things that we can do. In the final analysis, if the great mass of workers who need legal help are going to be able to receive it, those who are economically beyond the limits of legal aid and below the limits of conventional Bar Association fees, and if these people are going to have effective freedom of equal representation before the law, then the only answer is to have Group Prepaid Legal Programs, as a legitimate goal of collective bargaining. Group prepaid legal services will have to be paid for through the same trusts that have been established through collective bargaining in the same manner that insurance, pensions, vacations, holiday pay, sick leave, etc., and the other kind of programs that have become so extensive in this country.

We have instituted in many areas Retiree Centers, and programs for senior citizens who would have no place else to go if not for these Centers. We pioneered in establishing an Education Plan where by the children of our 13-year members are eligible for \$700 per year, renewable for 4 years, to attend any college or technical school; a program that says any child is entitled to higher education "as a matter of right" and it doesn't matter if the student is in the middle or the bottom of his class. We established in the Baltimore area and Chicago, for 1500 children, Day Care Centers of the highest quality and which have been nationally recognized for their development of young children intellectually, emotionally, physically, and nutritionally. I mention all these programs because without the previous amendments of the Taft-Hartley Act, none of these innovative and worthwhile programs would have been possible.

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I only hope out of the Hearings today, that you will speed up the process of helping to make available to the millions of Americans who need it, competent Legal Services. But the longer it takes to amend Section 302(c) of the Taft-Hartley Act, you're literally depriving millions of American workers from having the opportunity to be protected by the law in their time of need.

Ms. MILLER. My name is Joyce Miller, and I am director of social services for the Amalgamated Clothing Workers. I am not an attorney, so I will not be discussing that aspect of the bill.

I represent a union, Amalgamated Clothing Workers of America, which has 350,000 members. I know firsthand the needs of our members, which is how we got involved in prepared legal services. We have had 2 years of experience in the Chicago area in a program covering 6,000 members. The first year was a trial year, and 407 members used the program. During the second year, 1,000 members participated in the program. Of the 1,000, 765 members were sent to attorneys or social workers—they go to social workers first, and the problems are handled in conjunction with attorneys over the telephone, or if it needs direct action of an attorney, then that is done.

I would like to tell you the kind of problem we have been helping our members with.

Very briefly, these are the kinds of everyday problems—I am only citing a couple of them—but to give you an understanding of why this program is so important to us, I will give these examples.

We had a member who was dying of cancer, the member's wife is dying of cancer. This is the second marriage, and her daughter who is 17 years old has not been adopted by the husband. They did not have this daughter adopted when they got married. They have an 8-year-old child of their own. Because they did not have the money, they did not go to an attorney and have this child adopted. So now she is terminally ill, very worried as to what is going to happen to this child.

The natural father has not been heard of in years, and because of this program being in effect in Chicago, this member is now able to go to an attorney, have the child adopted, and by the time something happens with her, she can rest assured that the child will be taken care of.

We have reality cases, one example where a member put down a deposit on a house, \$500 deposit. The bid was not accepted by the owner of the house, and yet the member could not get the \$500 deposit back.

Once the attorneys got into the picture and they knew this member had representation, the member did get the money back.

We had another case, and this happens all the time where the member had some credit charges put on their bill, and when she took it up with the credit manager of this very large company, the credit manager said in a very almost derogatory kind of way, lady, look, you better pay that \$200, because it will cost you more than that to get an attorney and defend you and go into court, and solve your problem, so why don't you pay it and we will forget all about it.

This member said, no, I am not going to pay it, I am going to go to my union. She did. They took it up with the credit manager and they backed out completely, and she was reinstated. This is over, I think, something like \$243 exactly, this is money after taxes, after working that this member would have been out if she did not have this resource to go to in terms of the union.

Another thing that is developing since we started our program, just one example, of a woman who was going to buy a house. It was put down as a two-family dwelling, income property, and she was

going to buy it. She went to the attorneys who investigated it—it turned out it was not a two-family house at all, it was a one-family house, with illegal conversion.

There was one exit only for the second floor apartment. There were numerous fire violations against it, and we were so delighted that we could be involved because we got involved at the point before the member got into trouble.

I think 90 or 95 percent—well, attorneys know more about this than I do—were going to seek attorneys only after they got into trouble, not before. This was the case with a member who sought advice before getting into trouble and saved herself a lot of grief and, of course, did not put a bid on that property.

I think more and more cases are like this. This is the whole thrust of our education program, come and see the attorneys before you sign the contract. See the attorneys before you get yourself in trouble.

We have had and are doing more so in terms of education programs, in encouraging members to use their program which they need so desperately. We would like to amend section 302(c) because we want to broaden our program; necessarily our program is limited to members only, it does not cover the family. If the amendment goes through, we can cover the entire family which is so desperately needed, because the kind of cases we were not able to recover—because we had to keep the costs low—there were some adoptions we were not able to handle, some domestic relations cases, some landlord-tenant problems, wills, and we feel very strongly that every member is entitled to the dignity of a will to leave his possessions, however small they may be.

In eight consumer cases, we were not able to handle. We would like very much to extend this to family coverage.

In closing, I particularly would like to call attention to page 8 of my statement for in addition to establishing health centers, insurance programs, pensions, free prescriptions, drug programs, et cetera, we have established across the country retiree programs where our members would have no place else to go after they have stopped working, if it was not for these retiree centers.

We have established an education by right program where the members receive \$700 a year renewable for 4 years for education beyond high school for their children.

We have established daycare centers in the Baltimore and Chicago areas, where the children receive the highest of quality care.

All of these innovative and worthwhile programs were made possible because the Taft-Hartley Act was amended earlier. So I almost beg you in terms of the desperate need in this country for workers to have the help of an attorney to amend the act.

Thank you very much for allowing me to appear here today.

The CHAIRMAN. Thank you very much, Ms. Miller. This has been an excellent panel. Senator Javits.

Senator JAVITS. Thank you, Mr. Chairman. I am thoroughly convinced of the soundness of this legislation. That is why I joined with the chairman in proposing it, and compliment the chairman on the idea which is his.

I am personally, deeply involved in legal services for the poor, and this is a very proper corollary to that proposition.

I did have a couple questions I wanted to ask of Ms. Miller, because she seems to be the one in the panel who has actually administered such a program.

One, do you believe without in any way committing your union or anybody else's union, that this is the kind of program that ought to be contributed to both by the employer and the employee?

Ms. MILLER. Yes; Senator Javits. I certainly do.

Senator JAVITS. How does it work with your experimental program?

Ms. MILLER. We started out a program on a very low premium. The members pay 50 cents a month. As much as I say on one hand how much the member needs an attorney, I am afraid our members do not look at the attorney as something they do need. They go to the attorney only when they are in trouble. The cost of going to an attorney keeps people away.

If this program was put under collective bargaining, because obviously we cannot keep the program going on that kind of small premium, we would be able to expand both the coverage, as I mentioned earlier, the spouse's coverage as well as the children of the member, as well as some of the areas in the law that we do not cover now because of cost.

Senator JAVITS. Would you then consider that the desirable course to take would be to make it contributory or would you make it a fringe benefit?

Ms. MILLER. I would make it a fringe benefit.

Senator JAVITS. In other words, the employer would pay, but it would be calculated as an element of the wage, is that right?

Ms. MILLER. At our industry, yes.

The CHAIRMAN. Well, the bill does not prescribe the way.

Senator JAVITS. I was just trying to get what you said.

Ms. MILLER. I considered it an off-the-record kind of question.

Senator JAVITS. The other thing would be about the compensation of the lawyer, I imagine you operate now on a fee for service bases, is that right, with a panel of lawyers?

Ms. MILLER. We have a closed panel of attorneys, and we deal with a law firm which has five attorneys. Because of the premium, 50 cents a month would not do very much good to have an open panel. We deal with the union—the union acts only as a conduit. The member pays the premium and we transmit this to the law firm.

Senator JAVITS. And the limitations of the law firm, what they will do with that retainer as contained in some letter agreement?

Ms. MILLER. We have a little booklet in which this is spelled out in black and white for all the members.

Senator JAVITS. What do you do about disbursements? Is that included in the 50 cents?

Ms. MILLER. Pardon me?

Senator JAVITS. Disbursements, when the lawyer has to pay—

Ms. MILLER. The lawyer pays any of the legal court costs.

Senator JAVITS [continuing]. He pays disbursements and court costs?

Ms. MILLER. Right.

Senator JAVITS. Do you think that is the optimum way to proceed or do you think when you work it out as a union proposition, you ought to have a closed panel with a salaried lawyer?

Ms. MILLER. Well I can only again speak in terms of our experience in what we are—I would be very much in favor of closed panel attorney.

Senator JAVITS. With a salaried lawyer?

Ms. MILLER. Right.

Senator JAVITS. And finally should we not relegate this whole thing to the Legal Aid Society, which functions in most of our big cities that if a person needs a lawyer and cannot afford one, they should go to the Legal Aid Society, which is sort of bar association adjunct?

Ms. MILLER. Senator Javits and Senator Williams, this is exactly the first sort of block, if you will forgive me that we bumped up against when we began our program. Our members are caught in a bind of making too little money to be able to go to a Lasalle Street lawyer, too much money to be eligible for legal aid services. When we first started our program, I thought I had worked out a program with the legal aid in Chicago, and found out very quickly that the first members we sent over there were making too much money to be eligible, and so therefore they are not covered by programs which now exist. As I said in my testimony, for the man making from \$4,000 up to \$12,000 or \$14,000 there are no legal services available within that income range.

Senator JAVITS. Is the union responsible for the quality of the lawyer, that is, the union has picked what they consider to be an optimum lawyer?

Ms. MILLER. Absolutely. The firm which we picked, No. 1, they were one of the few firms that were willing—they felt the same kind of commitment that we did toward this kind of program. We talked to several different law firms in the Chicago area and could persuade none of them to join with us on this program. They were concerned about the bar association primarily and wanted nothing to do with it, although they thought it was a good idea, but said, go to another firm, not us. The law firm that we picked has great expertise in the kind of problems that our members have; a corporate law firm is not the kind of law firm I think we are looking for. We wanted a firm that had experience in personal bankruptcy situations, in wills, in adoptions, in credit landlord-tenant situations, that kind of problem which our members are involved in. This is the law firm that we picked. We have had marvelous response from the members toward the law firm that treats the member with great dignity and respect, and were able to make arrangements that no member will ever lose time on his job because of appointments with attorneys.

The attorneys will come in the evening, they will come in on Saturdays to meet with members, which is also very important. Because what good is it to arrange an appointment with an attorney and then lose their hourly pay on the job? They were willing to be very flexible, and I feel it gives us control in the sense of quality, that if a member is not happy with attorneys, they can come to the union and say, "I was not treated properly." This has not happened in our experience.

Senator JAVITS. Thank you very much, Ms. Miller.

Now, the lawyers in the panel, if you would be kind enough to comment on one or more of the questions I have asked. You understand as lawyers why I ask them to a layman, because she has had the actual experience with such a program. Your expertise should be brought to bear on the same question.

Mr. ZIMNY. I would like to address myself to your last question, which was about the selection of the law firm. There, of course, you are referring to a closed panel, such as what Amalgamated has in Chicago. One of the obvious advantages of 302(c) over the present lack of it is that you would have a joint labor-management equally manned board of trustees, which would make the decision as to the selection of the law firm, be it closed panel or as to what kind of system in providing legal services. There are, as a matter of fact, several available systems. The closed panel, the open panel, similar to Blue Cross, there are insurance companies, one in particular that I am aware of, insurance company in North America that has developed a policy covering this.

What would be best for a given group of employees of course would vary with many conditions. But in a 302(c) type of plan, that decision will be made by joint board representing both labor and management, which I think in terms of cost, in terms of services, and in terms of the many other things that go into selecting the right system and the right group, will be best taken care of. Our own union does not have a legal service plan in operation as yet, so I cannot answer your questions with respect to experience with specific matters and the like, but I think that Mr. Connerton who spoke first—Senator Javits, I do not think you were in the room at that time—has at least two major plans in operation which provide a great deal of experience in an area where even at best the experience is limited necessarily for the reasons that have already been stated, simply because there is not enough funding around to expand this entire area.

Mr. SCHLOSSBERG. Senator Javits, Mr. Connerton does have experience, and in my case we are about to embark on some pilot plans. I hope to get some started this year. We feel we can learn a lot from mistakes that were made in the medical field. We are concerned about the quality of legal services, and we feel that imaginative and capable union professionals, union leaders who are elected by their members, and corporate managers can work on this quality problem. With all due deference to the bar, I think it is unfortunate that the average person does not have a forum in which to complain about inadequate service or overcharging or any of these other problems. We are concerned about lowering costs and improving quality in the system of legal representation in this country. I believe that if you make this instrument available to us, we will make a contribution along those lines. I do think that increasing the limits of legal aid, so that middle-income workers might be included, would not be an answer to this problem. It would not afford any lay control over quality and costs. It would be simply acceptance of the fee-for-services proposition, and as you know, I believe a case in Virginia has found the minimum bar fee system to be a violation of the antitrust laws. I know from hiring lawyers all over the country for various matters we have that I am confronted with this minimum bar fee schedule, whether it is compulsory or a suggestion or a kind of modus operandi, whatever it is, it is an inhibiting factor. I think that the minimum fee schedules really raise the price of legal services rather than lower them. I believe we can make contribution along those lines.

I do not think legal aid is the answer. Under this system, there are all kinds, under collective bargaining system, there are all kinds of permutations to be worked out. The lawyers can be salaried, as the

doctors are salaried in Kaiser and the Metropolitan-UAW group hospital plan. The lawyers could be a law firm that is contracted. It could be an open plan, and it could be fee for services by Blue Cross and Blue Shield. But by your making this instrument available to us, the whole panorama of combinations are available which I believe can only enrich the profession and the public.

Senator JAVITS. Thank you very much.

Mr. CONNERTON. I would like to say we have had experience with both closed and open panel plans. The Shreveport plan is an experimental pilot program being conducted in conjunction with the Shreveport Bar Association, American Bar Association, that is on an open panel basis. This covers about 700 people and their dependents.

Our Columbus, Ohio, plan covers about 3,000 people and their dependents, and that is molded along group health lines. It has a legal center, and in addition to that, we have a law firm that handles workmen compensation cases. We are now in the process, once we are able to figure out the cost of handling individual cases, of giving the individual employee covered a choice of whether or not he wanted to go to the legal center or to go to any attorney of his choice, at which point we would pay what it would cost to go to the legal center for his services.

So far as we are concerned, we are only interested in providing quality legal services at the most reasonable cost. We think at the present time there is a great deal of competition going on in the field, and we would rather rely upon empirical data after studying operation of these plans for a number of years to choose what we think would be the best instrument to provide legal services for our members.

The American Bar Association does not have any particular position. Their position is that legal services should be delivered by both types of plans, and we share exactly the same feeling.

Senator JAVITS. The only thing this bill would add, would it not, Mr. Connerton, is joint management by labor and management?

Mr. CONNERTON. That is correct.

Senator JAVITS. I must say I am a little bit troubled on the fringe benefit side. I appreciate this simplicity which it would introduce for unions. I question whether it would give the same sense of dignity to the worker. I would commend to you all a study of whether or not in this unique case, unlike many others, there might not be something desirable about an affirmative contribution by the worker, so that he knows he is paying for his lawyer—it is not a fringe benefit, you know, kind of lost in the woodwork—and therefore the lawyer owes him an obligation. He is a real client. He pays money actually out of his paycheck. A checkoff system is OK. I do not see any harm in that. There is nothing legal about this. It is just—I am a lawyer myself and you are all lawyers, and if what we are trying to give the worker is the dignity that he has got a lawyer, it is his lawyer, I just commend to you gentlemen that possibility of thinking that through as what we are saying—what you are really trying to effect and what you are trying to bring about. In addition, I will tell you honestly there is no reason why employers should oppose this. They should enthusiastically support it. Yet, I fear that they will oppose it, because they say, well, there is another piece of the Christmas tree, another fringe benefit, we will not get any credit on the wage, all we have to do is pay for some more.

I just submit that to you as an observation of one rather experienced lawyer in this field, and if you wish to comment.

Mr. CONNERTON. I would like to comment on that, Senator. Section 302 as it is presently designed does not include any contributory requirement on the part of employees or for any of the other funds. We can see really based upon our own experience no reason for including it here. Now these plans that we have had in operation have caused no mad rush to the courthouse in any way, nor have we been able to find any legal hypochondriacs. We found the problem indeed in the opposite direction.

I think you know, Senator, most ordinary people mistrust lawyers in the first place, and whether it is for considerations of cost or otherwise, it is very difficult to get them to use a lawyer.

We, on the other hand, have been required to adopt all kinds of affirmative educational programs, to tell them do not be afraid of the lawyers, go out and see these lawyers, get to them at the early stage, and at the preventive stage.

We have a feeling ourselves that if we include cost considerations in that, all we are doing is we are erecting another barrier to the use of the person who does not have legal services at the present time. As I say, we have a number of different plans in operation now. In Shreveport, for example, there is a provision in the plan that once you go beyond the original advice and consultation, which is free, then the member has to pay a certain portion of it himself, and that is to discourage people who might want to take cases in the courts. But there are other ways of controlling it, Senator, for example, in the plans that we have, the right of the attorney not to process a case is protected. He can reject any individual who comes in and asks him to file suit, and that is specifically set forth in the plan.

I know there are considerations that flow both ways. It is not an easy problem. Our feeling based upon the experience we have had to date is that we want to push our plans in the direction of giving open access to all their members, of providing them with advice and consultation well in advance, and emphasizing as much as we can the use of preventive law, rather than recourse to the courts.

Mr. SCHLOSSBERG. Let me comment briefly, Senator Javits. I understand your suggestion to be in the nature of a tactical suggestion, not a legislative suggestion, and I deeply appreciate that. I do want to say that I think while the lawyer-client relationship is an unusual relationship, so indeed is the patient-doctor relationship, and that it has been our experience in the group health plans that we have, which are closed panel plans, and which fees are not—costs are not contributory, but they are really a part of the fringe benefit package that there is a great deal of dignity and empathy with the doctors who are salaried doctors, who work for the institution. We did have at one time in the Metropolitan Hospital Center a \$2 fee that the person paid when they went to see the doctor as a supplement to what the benefit required. Gradually over the years they went down to \$2 fee to \$1 fee and it has largely been eliminated.

Similarly without prescription drug program that we negotiated with the three big automobile companies, that started out for \$2 payment for prescription, regardless of the size of the prescription, and the plan paying the balance. That went out. That is now a \$1 payment.

I do think it is possible in working out these plans that it might be that there will be some charges to individuals. In any event, I want it perfectly clear that with sophisticated bargainers today, we are about to go into bargaining with the big three—everybody is extremely conscious of costs, especially the terrible rise in medical and hospital costs as you are well familiar with. We hear it from our employers, and we know that the employees we represent are really paying for these costs, because the package is going to be of a certain size, and it is the workers' money. If that money did not go into these terrible inflated and medical hospital costs, it would be available for workers' paychecks. One thing we feel is this, that is the leaders of our union, I am not talking about industry now, that we have learned enough from the medical and the health experience that we have had to try to keep this one from going the same way, where it would lead to astronomical costs and become a Frankenstein monster.

Mr. ZIMNY. Senator Javits, I want to point out that amending 302(c) to permit employer funding does not mean employer funding alone. It means employer funding along or employer funding in conjunction with worker contributions. There is no requirement under the section that contributory over noncontributory or the converse be the rule. All the amendment does is permit this to be subject to the process of collective bargaining, which may produce a variety of solutions. Moreover, even if you had solely employer funding, you may in operation have less than that, because the plans themselves may provide for various deductibles so that covered members must bear additional costs up to a certain level before the plan's funds take over. But all of that is part of the freedom which 302(c), as your bill would amend it, would allow the parties. It is part of the development which might arise and very likely would arise from increased experience and efficiency under the various plans which would really be highly promoted by the labor-management negotiating system for legal service plans which amendment 302(c) would allow. There also is no evidence, Senator Javits, that there is a lessening of dignity and devotion as between a closed group plan and open group plan. Certainly medical experience furnished no such evidence, and the confidentiality of the relationship is equal, I think, as between lawyers and doctors.

I certainly would not say that lawyers are entitled to a greater degree of confidence with clients, nor do clients demand it, than they do have with doctors. As a matter of fact, I suppose one could get up a number of instances where the doctor over the lawyer situation might prevail. But this is a matter of quality, and there is no evidence to indicate that the problem with lawyers is any different or any greater than it is with doctors.

You also mentioned that employers—there seems no good reason why employers should oppose this—some employers might oppose it on the grounds of increased costs. This would give the union another little thing to bite at.

I think that is largely fanciful. There are now permitted under 302(c) a variety of plans and benefits which can be negotiated. Some unions negotiate more and some unions negotiate less. Within the things that are negotiated, you have an infinite variety of coverage. You could have more or less coverage. You could have coverage of a worker, and coverage of the worker's family. It depends not on the

greater availability of benefits, and legal service benefits would be added to those now available if the bill were passed, but rather on the economics and relative strength of the parties.

The employer bargains with a total costing in mind. The union hopes to achieve as much as it can, but realistically within the economics of the industry and within the economics of what the employer can reasonably afford. After all, members and their jobs are important. You do not overload the package at the expense of jobs, and at the expense of the economy of the industry involved. None of this changes.

All that the bill permits is that 302(c) allows the parties, if they so desire, if the economics are right, to also speak of legal service plans. It does not mandate anything. It only permits it.

I would like to add one other observation. It seems to me the whole scheme of 302(c) is probably long outdated. With responsible parties, and labor and management in this country are responsible, with the safeguards provided by 302(c), there seems no good reason why there should be any limit on purposes for which clients can be formulated and that labor and management can negotiate.

The idea of this section, which is a criminal section, hangs over parties at negotiating tables and inhibits them in their freedom to approach any benefit subject if they should so desire, seems quite undesirable. It might at some future time be appropriate to cast the entire scheme of 302, not in terms of criminal statute, but in terms of parties formulating plans to meet real needs and formulating safeguards. I think 302 safeguards are there, and they have worked very well, the experience is a very good gone.

Senator JAVITS. Thank you very much, gentlemen. I asked the questions to provoke you intentionally. We want to cover every element. I agree with the bill and shall do our utmost with the chairman for it.

The CHAIRMAN. Thank you.

Senator TAFT. I have one question. This may have been covered. If so, just advise me. But should there be a limit on hours or fees paid to the benefit of any one employee or family, and if so, should that limit be in the plan or do we have to here authorize or should we here authorize or direct some limitation should be put on the individual family?

Mr. SCHLOSSBERG. It would seem to me that it ought to be left to the good sense of the bargaining parties. We have—for instance, in the UAW we not only have the choice for the employee of Blue Cross or Blue Shield or group medical plans, but we also have major medical insurance which kicks in. That took us many years to get, but it seems to me the good sense of the parties and economic realities will answer that problem for you.

Senator TAFT. Just one other question. This is sort of rhetorical, but is it not true that there also are some possible costs savings or at least time savings involved for both labor and management in moving in this plan, in the fact that a lot of the headaches and some of the legally oriented personal problems with employees today are taking time and attention of stewards and the time and attention of personnel managers, and, I might say, time and attention sometimes of Congressmen and Senators?

Mr. SCHLOSSBERG. No question about that. I want to let Bob supplement that. I want to say that one of the things we are concerned about in the automobile industry, for instance, is excessive absenteeism. One reason for absenteeism is that factory workers, unlike white-collar workers, are almost chained to their jobs. When the lawyers' offices are open and the dentists' offices are open, they are in the factory. And with the excessive overtime our industry has been working, even Saturdays and Sundays, they are in the factory. So with the plan that would adjust itself to the needs of these people, I believe it would cut down absenteeism and make for elimination of what is popularly called blue-collar blues. I think it would.

In that sense, it would be very constructive for both labor and management.

Mr. CONNERTON. I would like to add in the plan with which I am familiar, I had to testify in the House the other day, I went back to check the experience of these plans. The man bringing the most matters—by matter, I mean to say one that has been brought to the attention of the legal service plan, whether it results in court action or not—the biggest single case we had was an individual who during the course of the year had brought four matters to the attention of the legal service branch. None of these matters were court matters. But that is the highest we had. We had limitation on hours in Columbus, and it is a fairly high limit. We just plugged it out of the air to have some sort of limit, and we have never come anywhere reaching that at all. One point perhaps that I did not make, and I should have made, what I think is really the principal benefit of the legal service plan. That is that we find that people who are members of legal service plans are far better treated than they were before they had a legal service plan. I am not talking about any actions, just that they get better treatment in the community because the community forces are aware that they will have legal representation when and if necessary.

The other side of that coin is even better. Both in Columbus and Shreveport, a large number of people have not availed themselves of the plans. But yet they support it because they know that the plan is there if and when they need it, and it is a nice feeling of being able to go around and know that if by some chance you get involved in legal action beyond your control, that you at least have some place to turn to without having to worry about your life savings. This to me has been the most important part of these particular plans.

Senator TAFT. Thank you very much.

The CHAIRMAN. Thank you very much.

Mr. ZIMNY. One additional thought. There have recently been many studies indicating that lower worker morale has serious adverse effect on the workplace, and it seems to me that to the extent we increase the personal dignity in the eyes of the worker himself, of also as a person within the context of his society, to that extent we help alleviate this problem of lower worker morale, and when we are talking of workers, we are talking of precisely the middle class, which would benefit from these legal service plans, and to that extent these plans contribute to the solution of what these studies indicate to be rather serious and widespread problems. In addition, there really are exciting possibilities for improving the practice of law, both for lawyers and for clients. Lawyers are known to be notoriously inefficient, particularly in small and medium sized offices, in the way in which they deliver

services. This certainly does not advantage them or does not advantage their clients. There are new systems which can be tried and which with proper opportunity will surely be tried that they can help solve this problem.

As I indicated earlier, they would have the effect, I think, of not only improving the workers' image—the lawyer's image in the community and the lawyer's contribution to the community, because, after all, that is what a lawyer's function is; he is not really in business for himself—but also make available increased access more closely controlled and reasonable costs to this large middle-class group referred to before. Remember, they number some 150 million people in this country.

Senator TAFT. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Our next witness is J. D. Lee, president, Association of Trial Lawyers of America, accompanied by Daniel Jones, Southeast Law Center, Norwalk, Calif. Proceed, gentlemen.

STATEMENT OF J. D. LEE, PRESIDENT, ASSOCIATION OF TRIAL LAWYERS OF AMERICA, ACCOMPANIED BY DANIEL JONES, SOUTHEAST LAW CENTER, NORWALK, CALIF.

Mr. LEE. I would like to ask permission to file my formal statement and ask that it be included in the record in support of this legislation.

The CHAIRMAN. We appreciate it. It will be included in the record. Thank you.

Mr. LEE. My name is J. D. Lee. I am president of the Association of Trial Lawyers of America, and I am honored to appear here this morning on behalf of the associations' some 27,000 members in support of the amendment to the Taft-Hartley Act, S. 1423, a very worthy and important piece of legislation.

We are pleased to note that this legislation has wide support, not only from the legal profession, but from a variety of membership of the associations, labor unions, and consumer groups representing Americans from virtually all walks of life.

Our association has had a prepaid group of legal services committee for some time. Its current chairman is Herman Riley from Houston, Tex. Mr. Riley and I, talking about appearance or appearance by our association here at this committee, we wanted to have not only some one to speak for us, but a person that would be very beneficial to this committee in arriving at its recommendation on this legislation.

Accordingly I am pleased to say that we have chosen not only a friend of mine, but a man that is a pioneer and expert in the field of prepaid legal services, Danny Jones of the California bar. Mr. Jones organized a group legal practice at the Southwest or Southeast Law Center in California almost 4 years ago. He now acts as a consultant to the national legal care program, a prepaid legal service program also based in California.

Mr. Jones has written numerous books and handbooks on the law as well as given speeches and written articles covering the subject of prepared legal services.

I not only have worked with him for some time during my work in organized bar activities, but I find that he has not only been help-

ful to me and helpful to our association, he is a member of the Association of Trial Lawyers of America, but he has been a very beneficial help to me in my work in this field.

So with your permission, with my formal statement already filed, I would like to ask Mr. Daniel Jones to give his views if I may at this time.

Mr. JONES. Good morning, Mr. Chairman and members of the committee. I will try to be brief. The hour is close to noon, so I will try to make it as quickly as possible.

I really speak on behalf of a group of people referred to by President Richard M. Nixon as the silent majority, and identified by past president of the American Bar, Robert W. Meserve, as the forgotten client. Twenty years ago, that same group of Americans were referred to by U.S. Supreme Court Justice Robert H. Jackson as "an anxious and bewildered people."

Today, more than 120 million Americans are failing to reap the fruits of hundreds of thousands of laws, most of which are designed for their benefit.

This country has more laws for the protection of the rights of its people than the rest of the world combined. Moreover, fewer than 40 percent of the entire population has adequate advice on how they can use and benefit from the complex mass of legislation and case law.

Chief Justice Warren E. Burger has referred to them as being "forced to stand by in frustration."

The movement for prepaid legal services is a reality. Contrary to some impressions, lawyers did not start it. It began with the people. It was a bastard child which only became legitimized through four hotly contested U.S. Supreme Court cases against the organized bar associations. It is now history that the organized bar lost every round where it tried to block the consumer client organizations in their quest for a fair share in the administration of justice. In spite of the bars' initial opposition and the lack of response by the legislators to aid these middle-class Americans' efforts, it is estimated that 3,000 prepaid legal arrangements have appeared within the last few years.

I had the privilege of organizing one of these plans in its infancy. That plan is presently operational at the Southeast Law Center in the middle-class community of Norwalk, Calif. I am also a consultant to another plan known as National Legal Care Program, Inc.

It is estimated that, in California, approximately a million people are being serviced by some form of group legal service plan. Most of those have been experimental. Their primary value has been to determine the magnitude of the need. With over a million people seeking the aid of these rudimentary plans, it is obvious that the question of need is now moot.

The plan is existence at the Southeast Law Center had its third anniversary in January of 1973. There are presently 41 consumer client groups enrolled with a membership of almost 100,000. The arrangement with these groups is under rule 20 of the California State Bar Association's rules of professional conduct. The only fully prepaid service is the initial consultation. All other services are paid for by the individual members. Yet, this "prepaid advice only" service is so cherished by member clients that not a single group has withdrawn

from the plan since its inception. Several of the groups are trying to expand their benefits.

Robert M. Leventhal, executive secretary of the Southern California Professional Engineering Association has already executed a contract for expanded benefits. He is most hopeful that "procedural difficulties * * * will be quickly remedied."

The groups subscribing to the plan at the Southeast Law Center are divergent. They run the gamut from police associations to college students.

In a recent survey by the Southern California Professional Engineering Association, 75 percent of the members voted in favor of a prepaid legal service plan.

Prepaid legal services today are analogous to the prepaid medical services instituted about 40 years ago and, incidentally, for the same reasons. It was the middle class in the 1930's who realized that the medical profession could dramatically reduce the misery of pain and suffering, and even death.

Most people, for reasons of cost, only called upon the medical profession when a member of the family suffered from severe injury or the grave prospect of death. They looked upon a doctor or hospital bill as not only denoting physical problems but also economic pain. In short, they only saw doctors for major illness. By the same token, today they only see lawyers when it is too late to avoid court. In those days they were unfamiliar with the practice of preventive medicine, just as today they are unaware of the practice of preventive law.

In 1932, a committee proposed that medical care be covered by group prepaid plans. Prepaid medical practice services began to appear around the Nation. The benefits were only gained however after a battle. The American Medical Association (AMA) expelled physicians who were involved in prepaid group practice. Just as the organized bar associations lost in their original efforts to block prepaid legal services, so did the AMA lose in its preliminary efforts to thwart prepaid medical services. Indeed, the AMA was indicted by a Washington, D.C. grand jury for violating the Sherman Antitrust Act. In 1940, after a month of trial, the AMA was convicted and fined \$2,500.

Today, over 150 million Americans have some form of prepaid medical care.

True, the cost of medical services has not been controlled; but, with few exceptions, they have received proper care.

While medical care and its availability were progressing, the Congress, State legislatures and courts created thousands of statutes and laws which protect and enormously benefit the American of moderate means. With all of the laws designed to give better protection he is, nevertheless, "legally disenfranchised." That the denial of justice is a denial of a necessity of life, is no longer debatable.

Mr. Leventhal thinks that, "A legal matter can completely destroy an employee financially or emotionally thereby rendering him of limited value in the employment relationship." Thus we can see from one of the top experts in the United States in his field, that there is a "real connection" between legal insurance and employer-employee relationships.

The middle-class American has been referred to by the press as "like the medically indigent of yesteryear." The Washington News

stated that the "moderate-income families shun lawyers unless they're sued or accused. For them, the lawyer is usually on the other side.

I estimate that over 30,000 legal matters go unattended every day.

A recent study in California showed, that for people within the \$10,000 to \$15,000 annual income bracket, fewer than 15 per cent who thought they had a legal problem had taken it to a lawyer—and fewer than one in three had actually retained an attorney."

The truth is that middle-class Americans have no fewer legal problems than the well-to-do or the poor.

One labor leader has a standard question that he asks when he goes to union meetings. "If you are arrested on your way home from work or from this meeting and your car is searched, and you are charged with illegal possession of marihuana, how many of you have an attorney that you can call?" In the average meeting, less than 10 to 15 percent have someone to call. He asks a second question: "How many of you feel that in this situation you would need an attorney?" Obviously, all hands go up. The last, and most critical question asked is: "Do you feel that the union (of which you are a member) has a responsibility to help you in this area?" There is always unanimous agreement that this is a work-related matter—in the same sense as is adequate medical care.

We must recognize that legal service and advice is not only a necessity of life, it is unquestionably a proper function of the joint labor-management effort. Therefore, an amendment to the Taft-Hartley Act, section 302(c) to include joint administration of prepaid legal services is essential.

The U.S. Supreme Court has said, "Collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the first amendment."

There are manifold reasons why many Americans do not consult lawyers until their problems are economically devastating. Therefore, the lawyers for this class of people subconsciously program themselves to set their fees and thinking upon the "I'll see you in court attitude." Hence a person in this class tends to think of lawyers in terms of combat.

Compared to doctors, the lawyers of the middle class today only practice major surgery. They know that their clients will only pay for legal services after the lightning has struck. As we implement universal prepaid legal services, we must also tutor those lawyers to practice preventive law. They will be seen less in court. For the first time they, like the lawyers for the rich, will be paid to keep their clients out of court.

Another task we must face in the implementation of prepaid legal plans is to teach people how to use the service. Wealthy people know from experience that lawsuits can and are avoided by directing their attorneys to negotiate and arrange their affairs in advance of legal friction progressing to the white heat explosive point.

The coming of universal prepaid legal plans will change the patterns of practice of law for the better. Law schools will emphasize the

technique and skill of negotiation, advice and counsel, and practice of preventive law.

In order to survive and successfully serve their members, all prepaid legal plans must have defined benefits, specified limitations, and built-in protections against abuse. The lawyers under these plans should be paid for supplying only specified services. They are not designed or intended to provide purely social litigation. The whole cant of prepaid legal services is to avoid litigation.

Some fear that employees with prepaid legal plans will sue everyone in sight. I am firmly convinced that these average Americans are not out there waiting for prepaid legal service plans so they can start a barrage of shotgun lawsuits.

If the wealthy, as a rule, do not abuse justice, how can we say that the middle-class American will abuse that privilege.

In truth, prepaid legal services will reduce contested litigation. It is the middle class—those who have the least access to legal advice—who are presently clogging the courts.

I discussed this problem recently with Judge Vincent Dalsimer who has master calendar experience in the Los Angeles County Superior Court. Judge Dalsimer reported that substantially over 50 percent of all civil trials would not be in court had both parties been advised by a lawyer—any lawyer—in advance. “Rarely is there an occasion where both parties to litigation have competent attorneys advising them before the subject of the lawsuit occurred. Most people don’t even have lawyers. They try to handle matters themselves; that’s why they end up in my court,” so reported the good judge.

Harry Shafer, presiding judge of department 1 of the Compton, Calif., municipal court for 6 years, thinks that prepaid legal services should be supplied to middle-class people on a broad basis. He contends that “prepaid legal services are an absolute necessity. It is a form of preventive law that is essential to the speeding up of the legal process. More than 50 percent of all the civil litigation would not be in the courts today if there were competent counsel available to advise people in advance. Prepaid legal services are to the legal profession what cancer detection is to the medical profession.”

The world is more complex than it was 30 or 40 years ago. Its people have become more tense and intense. The practice of prepaid legal, like prepaid medical would be a contribution to society’s health and welfare. Now is the time to resolve some of the problems while they are in their infancy and still regulatable and manageable.

Passage of S. 1423 would hurdle a major obstacle by bringing the silent majority into the dynamics of our system of justice.

I beg of you, on behalf of those 120 million Americans, to take this one major step in the progress of mankind in our country.

Thank you.

I would like to submit my full statement for the record.

The CHAIRMAN. We are pleased to have it and it will be included.

[The prepared statement of Messrs. Lee and Jones along with additional information follows:]

STATEMENT OF J. D. LEE, PRESIDENT, ASSOCIATION OF
TRIAL LAWYERS OF AMERICA

MISTER CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE

My name is J.D. Lee. I am President of the Association of Trial Lawyers of America, and I am honored to appear here today on behalf of the Association's 27,000 members. We support S. 1423, a very worthy and important piece of legislation.

We are pleased to note that this legislation has wide support, not only from the legal profession, but from a variety of membership associations, labor unions and consumer groups representing Americans from virtually all walks of life.

Prepaid legal service programs already exist. We must insure their continued growth. The benefits of legal care must reach all Americans. Permitting the establishment of jointly administered trust funds for this purpose under section 302(c) of the Taft Hartley Act is, as you have said, Mr. Chairman, an important first step in the better provision of legal services.

The middle class, law abiding, working citizen, just like the wealthy, and just like the poor, must conduct his personal -- and sometimes his business -- affairs in an environment of laws, rules and regulations which touch upon every aspect of his life: his marriage, his home, his taxes, his automobile, the food, clothing and appliances

his wife purchases, the manner and method by which he wishes to distribute his belongings to his heirs. All of these aspects of his life are somehow affected by some rule of law about which he has virtually no understanding. The law has such a profound impact on contemporary life, that the availability of legal services is as important to our citizenry as is the provision of other vital services, such as health care.

Now that some of the questions raised concerning the legal and ethical aspects of group legal services have been put to rest by the Supreme Court in the United Mine Workers, Brotherhood of Trainmen, and N.A.A.C.P. cases, it is imperative that the steps are taken to insure the existence of an environment which will guarantee the reality of legal services to so many of our citizens.

Some feel that this legislation will serve no purpose other than to spawn litigation. One opponent to a similar proposal before the House of Representatives characterized the legislation as little more than "legalizing champerty." The answer to this suggestion is quite simple, as anyone who has ever tried a lawsuit can tell you. Litigation is the child of error. Lawsuits result from either improper or mistaken conduct.

It is the heirs of the man who -- rather than seeking the services of an attorney -- decided to write his own

will who find themselves in the courtroom. It is the homeowner, handling his own real estate closing and misunderstanding the words in a chain of title, who finds himself in court to enforce what he thought was his right to quietly enjoy his property. It is the defrauded consumer, neglecting to read the fine print in an installment purchase contract, who finds himself in court after his promissory note has been sold and the goods he purchased turned out to be worthless. If this testator, this homeowner, this consumer could have consulted an attorney as a matter of course, these situations could have been avoided. I do not think that there is an attorney in America today who can not recount instances of when litigation would have been avoided had the parties availed themselves of preventive legal care.

It is a foregone conclusion that making legal services available to all Americans is a desirable social goal. The only question remaining then is, what is the proper vehicle for achieving this goal? The vehicle ought to be effective in terms of the numbers of people it reaches and it ought to be consistent with American tradition. The utilization of the free enterprise system through the collective bargaining process to establish jointly administered trust funds for prepaid legal services for the millions of Americans covered by collective

bargaining is the ideal vehicle for making this goal a reality. For this reason, the Association of Trial Lawyers of America supports S. 1423 and strongly urges its passage.

Mr. Chairman, we are fortunate to have with us today Danny Jones, a pioneer and expert in the field of prepaid legal services. Mr. Jones organized a group legal practice at the Southeast Law Center in Norwalk, California almost four years ago. He now acts as a consultant to National Legal Care Program, Inc., a prepaid legal service program also based in California. Mr. Jones has written numerous books and handbooks on the law as well as speeches and articles covering the subject of prepaid legal services. While we have presented to this Committee a formal, detailed statement, Mr. Jones will summarize it and will be most happy to answer any questions that you may have.

UNITED STATES SENATE

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STATEMENT OF DANNY R. JONES

SUBMITTED

APRIL 10, 1973

BEFORE

SPECIAL SUBCOMMITTEE ON LABOR

of the

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY THIRD CONGRESS

STATEMENT OF DANNY R. JONES (1) PRESENTED APRIL 10, 1973 BEFORE THE SPECIAL SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE, UNITED STATES SENATE, NINETY-THIRD CONGRESS ON S 1423, A BILL TO AMEND THE LABOR MANAGEMENT RELATIONS ACT OF 1947 TO PERMIT EMPLOYEE CONTRIBUTIONS TO JOINTLY ADMINISTERED TRUST FUNDS TO BE USED BY LABOR ORGANIZATIONS TO DEFRAY THE COST OF PREPAID LEGAL SERVICES. (2)

MR. CHAIRMAN AND MEMBERS OF YOUR HONORABLE COMMITTEE:

I really speak on behalf of a group of people referred to by President Richard M. Nixon as the silent majority, and identified by past president of the American Bar, Robert W. Meserve as "the forgotten client." (3) Twenty years ago, that same group of Americans were referred to by United States Supreme Court Justice Robert H. Jackson as "an anxious and bewildered people." (4)

Today, more than one hundred and twenty million Americans are failing to reap the fruits of hundreds of thousands of laws, most of which are designed for their benefit.

This country has more laws for the protection of the rights of its people than the rest of the world combined. (5) Moreover, fewer than forty percent of the entire population has adequate advice on how they can use and benefit from the complex mass of legislation and case law. (6)

Chief Justice Warren E. Burger has referred to them as being "forced to stand by in frustration." (7)

The movement for prepaid legal services is a reality.

Contrary to some impressions, lawyers did not start it.

It began with the people. (8) It was a bastard child which only became legitimized through four hotly contested United States Supreme Court cases against the organized bar associations. (9)

It is now history that the organized bar lost every round where it tried to block the consumer client organizations in their quest for a fair share in the administration of justice. In spite of the bars' initial opposition and the lack of response by the Legislators to aid these middle-class Americans' efforts, it is estimated that three thousand prepaid legal arrangements have appeared within the last few years. (10)

I had the privilege of organizing one of these plans in its infancy. That plan is presently operational at the Southeast Law Center in the middle class community of Norwalk, California. (11) I am also a Consultant to another plan known as National Legal Care Program, Inc.

It is estimated that, in California, over a million people are being serviced by some form of group legal service plan. (12) Most of those have been experimental. Their primary value has been to determine the magnitude of the need. With over a million people seeking the aid of these rudimentary plans, it is obvious that the question of need is now moot.

The plan in existence at the Southeast Law Center had its third anniversary in January of 1973. There are presently forty-one consumer client groups enrolled with a membership of almost

one hundred thousand. The arrangement with these groups is under Rule 20 of the California State Bar Association's Rules of Professional Conduct. (13) The only fully prepaid service is the initial consultation. All other services are paid for by the individual members. Yet, this "prepaid advice only" service is so cherished by member clients that not a single group has withdrawn from the plan since its inception. Several of the groups are trying to expand their benefits. (14)

Robert M. Leventhal, Executive Secretary of the Southern California Professional Engineering Association has already executed a contract for expanded benefits! He is most hopeful that "procedural difficulties...will be quickly remedied." (15)

The groups subscribing to the plan at the Southeast Law Center are divergent. They run the gamut from police associations to college students. (16)

In a recent survey by the Southern California Professional Engineering Association, seventy-five percent of the members voted in favor of a prepaid legal service plan. (17)

Prepaid legal services today are analogous to the prepaid medical services instituted about forty years ago and, incidentally, for the same reasons. It was the middle-class in the 1930's who realized that the medical profession could dramatically reduce the misery of pain and suffering, and even death.

Most people, for reasons of cost, only called upon the medical profession when a member of the family suffered from severe

injury or the grave prospect of death. They looked upon a doctor or hospital bill as not only denoting physical problems, but also economic pain. In short, they only saw doctors for major illness. By the same token, today they only see lawyers when it is too late to avoid court. In those days they were unfamiliar with the practice of preventive medicine, just as today they are unaware of the practice of preventive law.

In 1932, a committee proposed that medical care be covered by group prepaid plans. Prepaid medical practice services began to appear around the nation. The benefits were only gained however after a battle. The American Medical Association (AMA) expelled physicians who were involved in prepaid group practice. (18) Just as the organized bar associations lost in their original efforts to block prepaid legal services, so did the AMA lose in its preliminary efforts to thwart prepaid medical services. Indeed, the AMA was indicted by a Washington, D. C. Grand Jury for violating the Sherman Anti-trust Act. (In) 1940, after a month of trial, the AMA was convicted and fined \$2,500. (19)

Today, over one hundred and fifty million Americans have some form of prepaid medical care. (20)

True, the cost of medical services has not been controlled; but, with few exceptions, they have received proper care.

While medical care and its availability were progressing, the Congress, state Legislatures and courts created thousands of statutes and laws which protect and enormously benefit the

American of moderate means. (21) With all of the laws designed to give better protection he is, nevertheless, "legally disenfranchised." (22) That the denial of justice is a denial of a necessity of life, is no longer debatable.

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The middle class American has been referred to by the press as "like the medically indigent of yesteryear.." (26) The Washington News stated that the "moderate income families shun lawyers unless they're sued or accused. For them, the lawyer is usually on the other side." (27)

I estimate that over thirty thousand legal matters go unattended every day. (28)

A recent study in California showed, that for people within the \$10,000 to \$15,000 annual income bracket, fewer than fifteen percent who thought they had a legal problem had taken it to a lawyer--and fewer than one in three had actually retained an attorney." (29)

The truth is that middle-class Americans have no fewer legal problems than the well-to-do or the poor. (30)

One labor leader has a standard question that he asks when he goes to union meetings. "If you are arrested on your way home from work or from this meeting and your car is searched, and you are charged with illegal possession of marijuana, how many of you have an attorney that you can call?" In the average meeting, less than ten to fifteen percent have someone to call. He asks a second question: "How many of you feel that in this situation you would need an attorney?" Obviously, all hands go up. The last, and most critical question asked is: "Do you feel that the union (of which you are a member) has a responsibility to help you in this area?" There is always unanimous agreement that this is a work related matter--in the same sense as is adequate medical care. (31)

We must recognize that legal service and advice is not only a necessity of life (32) it is unquestionably a proper function of the joint labor-management effort. Therefore, an amendment to the Taft-Hartley Act, Section 302 (c) to include joint administration of prepaid legal services is essential.

The United States Supreme Court has said, "Collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." (33)

There are manifold reasons why many Americans do not consult lawyers until their problems are economically devastating. Therefore, the lawyers for this class of people subconsciously program themselves to set their fees and thinking upon the "I'll see you in court attitude." (34) Hence a person in this class tends to think of lawyers in terms of combat.

Compared to doctors, the lawyers of the middle class today only practice major surgery. They know that their clients will only pay for legal services after the lightning has struck. As we implement universal prepaid legal services, we must also tutor those lawyers to practice preventive law. They will be seen less in court. For the first time they, like the lawyers for the rich, will be paid to keep their clients out of court.

Another task we must face in the implementation of prepaid legal plans is to teach people how to use the service. Wealthy people know from experience that law suits can and are avoided by directing their attorneys to negotiate and arrange their affairs in advance of legal friction progressing to the white heat explosive point.

The coming of universal prepaid legal plans will change the patterns of practice of law for the better. Law schools will emphasize the technique and skill of negotiation, advice and counsel, and practice of preventive law. (35)

In order to survive and successfully serve their members, all prepaid legal plans must have defined benefits, specified limitations, and built in protections against abuse. (36) The lawyers under these plans should be paid for supplying only specified services. They are not designed or intended to provide purely social litigation. The whole cant of prepaid legal services is to avoid litigation.

Some fear that employees with prepaid legal plans will sue everyone in sight. (37) I am firmly convinced that those

average Americans are not out there waiting for prepaid legal service plans so they can start a barrage of shotgun lawsuits.

If the wealthy, as a rule, do not abuse justice, how can we say that the middle-class American will abuse that privilege.

In truth, prepaid legal services will reduce contested litigation. (38) It is the middle-class--those who have the least access to legal advice--who are presently clogging the courts.

I discussed this problem recently with Judge Vincent Dalsimer who has Master Calendar experience in the Los Angeles County Superior Court. Judge Dalsimer reported that substantially over fifty percent of all civil trials would not be in court had both parties been advised by a lawyer--any lawyer--in advance. "Rarely is there an occasion where both parties to litigation have competent attorneys advising them before the subject of the law suit occurred. Most people don't even have lawyers. They try to handle matters themselves; that's why they end up in my court," so reported the good Judge.

Harry Shafer, presiding Judge of Department 1 of the Compton, California Municipal Court for six years, thinks that prepaid legal services should be supplied to middle class people on a broad basis. He contends that "Prepaid legal services are an absolute necessity. It is a form of preventive law that is essential to the speeding up of the legal process. More than fifty percent of all the civil litigation would not be in the

courts today if there were competent counsel available to advise people in advance. Prepaid legal services are to the legal profession what cancer detection is to the medical profession."

The world is more complex than it was thirty or forty years ago. Its people have become more tense and intense. The practice of prepaid legal, like prepaid medical would be a contribution to society's health and welfare. Now is the time to resolve some of the problems while they are in their infancy and still regulatable and manageable.

Passage of S 1423 would hurdle a major obstacle by bringing the silent majority into the dynamics of our system of justice.

I beg of you, on behalf of those one hundred and twenty million Americans, to take this one major step in the progress of mankind in our country.

FOOTNOTES

1. Jones, Danny R., - Experience in the field of prepaid legal services and law related matters is attached, marked Exhibit "A."
2. S 1423, just introduced in the Senate will add an eighth exemption to Section 302 (c) of the Taft-Hartley Act. Its passage will provide for employee contributions to jointly administered trust funds to be used by labor organizations to defray the cost of prepaid legal services.
3. American Bar Association Journal, November 1971, V57 "Our Forgotten Client: The Average American," by Robert W. Meserve.
4. Jackson, Justice Robert H. as quoted by the Los Angeles Daily Journal, "Bar Fails to Respond to Needs of Our Time," October 14, 1970.
5. Foster, Thomas A., statement from Hearings before the Special Committee on Labor of the Committee of Education and Labor, House of Representatives, Ninety-Second Congress, Second Session on HR 13839, a Bill to Amend the Labor Management Relations Act of 1947 to permit employee contributions to jointly administered trust funds to be used by labor organizations to defray the cost of prepaid legal services.
6. New Careers In Law: II, American Bar Association Special Committee on Legal Assistants Conference Report, June 1971, Robert B. Yegge and Eli Jarmel.
7. "Court Reform" by Honorable Warren E. Burger, Chief Justice of the United States Supreme Court as delivered at the National Conference on the Judiciary, Williamsburg, Virginia, March 12, 1971.

8. NAACP v BUTTON, 371 US 415, 9 L Ed. 2d 405, 83 S.Ct. 328 (1963). That 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.

9. Supra, note 8.

BROTHERHOOD OF RAILROAD TRAINMEN v VIRGINIA EX REL. VIRGINIA STATE BAR, 377 US 1, 12 L. Ed 2d 89, 84 S.Ct. 1113 (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.

10. The Saturday Review, September 23, 1972, "Planning a divorce? Want a title-search on a house? Trying to unsnarl an income tax question? What you probably need, and soon may be getting is Legal Insurance," by Thomas De Baggio.

The Evening Star and Daily News, Washington, D. C., July 17, 1972, "Group Plan, Lawyer 50¢ a Month," by Miriam Ottenberg.

11. Norwalk, California is a city of over ninety thousand predominately middle-class people located in Southeast Los Angeles County.

12. Los Angeles Daily Journal, Monday, March 19, 1973, "A Look Into Future Sees Prepaid Legal Services Burgeoning," part I by Marlene Adler.

13. California State Bar Association, Rule 20 of Rules of Professional Conduct which attempts to codify the United States Supreme Court Decisions on the subject of group legal practice. Supra, note 9.

14. Southland Businessmens Association, International Chemical Workers Union. Copies of letters from these groups are attached, marked Exhibit "B."

15. Leventhal, Robert M., letter dated March 23, 1973, attached, marked Exhibit "C."

16. Southeast Law Center, Group Legal Services group member roster, attached and marked Exhibit "D."

17. In the Spring of 1972, the Southern California Professional Engineering Association mailed to 3,000 of its members a survey concerning prepaid legal services. The survey told the members, "Interest has been growing in providing expanded legal services to our members. Several years ago the Association instituted a legal referral service to help members find attorneys and keep costs down. This is of some help, but does not really meet the needs.

"Members buy homes and cars without having the papers reviewed by attorneys. When a family member is arrested, most don't know what to do or where to turn. Problems arise in the domestic relations and civil fields that can be financially disastrous.

"Only in the past several years has any real thought been given to group legal services on a prepaid basis. To date there are no known major collective bargaining agreements that provide for such a service - however, programs are now available.

"If a program could be obtained that would, in effect, give you the right to use attorneys for the review of all documents, defense in civil matters, traffic citations, and most criminal matters (we don't want to defend a Charlie Manson), have the right to review and receive advice on matters of concern with an attorney, and all these would be either without fee or based on a very minimum fee schedule that is known in advance, would you

be interested in such a program?"

Seventy-five percent of those receiving the questionnaire answered "yes," twenty-three percent said "no" and two percent did not reply.

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

19. This conviction was duly affirmed by the United States Supreme Court. United States v American Medical Association, 60 S.Ct. 1096 (1940).

20. One-third of all doctor bills and two-thirds of all hospital bills are presently covered on a prepaid basis. United States Bureau of the Census, "Statistical Abstract of the United States" 1970 (91st Ed) Washington, D. C. 1970.

21. On Guard, A Guide For the Consumer, California Department of Justice Information Pamphlet No. 3, Evelle J. Younger, Attorney General. A twenty-four page pamphlet, couched in simple lay language covers subjects such as buying a new car, door-to-door sales, understanding warranties, preventing crimes of force, and many more laws designed to protect the consumer, but not generally known by him. For copies of this publication write: Crime Prevention Unit, 217 West First Street, Room 203, Los Angeles, California 90012 or telephone (213) 620 3286.

22. SCPEA News, August, 1972, "The Coming of Legal Aid," by Robert M. Leventhal.

23. Ibid.

24. Leventhal, Robert M., B.S., M.B.A., Industrial Relations, Certificate of Industrial Relations, University of California, Los Angeles (U.C.L.A.); Executive Secretary, Southern California

Professional Engineering Association; Instructor, U.C.L.A.-- on the subjects of (a) Collective Bargaining, (b) Grievances and Arbitrations (Public and Private Sector), (c) Impasse Resolutions and Grievance Procedures (Public Sector), (d) Collective Bargaining and Public Employment, Survey in Industrial Relations, (e) Labor Relations in Transportation and (f) Labor Management Relations; contributing speaker at the November, 1971 Conference on Prepaid Legal Services.

25. "During World War II, a defense plant in California created its own in-house legal aid department for the principal purpose of saving man-hours by keeping employees on the job during the vital years of the war effort. In 1944, 3,461 employees of that corporation received free legal services at an estimated saving of 15,364 man-hours of production time to the employer. This demonstrates I think the very legitimate role of a program to provide legal services in the overall context of the employer-employee relationship."

Testimony of William F. Mc Calpin, Chairman of Special Committee on prepaid legal services, American Bar Association, at the hearings before the Special Subcommittee on Labor of the Committee on Education and Labor of the House of Representatives, Ninety-second Congress, Second Session on HR 13938.

26. The Evening Star and Daily News, Washington, D. C., July 17, 1972, "Group Plan, Lawyer 50¢ a Month," by Miriam Ottenberg.

27. The Evening Star and Daily News, Washington, D. C., July 18, 1972, "Prepaid Legal Aid Plan Pays Off," by Miriam Ottenberg.

28. Supra, note 10.

"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 they would estimate that their services were not retained because potential clients could not afford or did not chose 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 (*) 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." *American Bar Foundation, "The Lawyer Statistical Report" (1968).

"Prepaid Legal Services A Boom or A Bust for the Lawyer," by Danny R. Jones, before the Conference on the Development of Prepaid Legal Services, November, 1971, pg. 8.

29. The American Federationist, January, 1972, "Legal Services as a New Union Benefit," by John A. Grimes.

30. Southeast Law Center Group Legal Services records show a variety of types of legal problems. A statement of Lawrence Schorr, general practice attorney and a list of examples of the types of questions asked by middle income clients is attached, marked Exhibit "E."

31. Supra, note 24.

32. Juris Doctor, April 1972, "We Need More Lawyers!" by Norman Dorsen and Stephen Gillers.

33. UNITED TRANSPORTATION UNION v THE STATE BAR OF MICHIGAN,
US, 28 L. Ed 2d 339, 91 S.Ct. (1971)--Referring to the First
 Amendment to the United States Constitution.

34. The legal profession is "our largest remaining cottage
 industry. Half of the 215,000 lawyers in private practice work
 alone, hanging their shingles near some county courthouse and
 waiting for whatever kind of business comes along..."

Fortune, September 1971, "The Angry Young Lawyers," by
 Peter Vanderwicken.

35. University of Southern California, Professor Louis M.
 Brown teaches a course in preventive law.

36. National Legal Care Program, Inc. has designed three basic
 programs. Copies of those programs are marked Exhibit "F" and
 attached hereto.

37. Hearings before the Special Subcommittee on Labor of the
 Committee on Education and Labor, House of Representatives, Ninety-
 Second Congress, Second Session on HR 13938, A Bill to amend the
 Labor Management Relations Act, 1947 to permit employee contributions
 to jointly administered trust funds established by labor organizations
 to defray the costs of legal services, held in Washington, D. C.
 April 27 and May 16, 1972, page 104 of the transcript of those
 hearings.

38.. The Southeast Law Center, group legal service program re-
 corded that during the period May 1, 1972 to February 28, 1973,
 1,480 people were counseled and advised by a general practice
 lawyer. The types of problems were landlord tenant, consumer
 contract, real estate, general civil disputes, etc. involving

small amounts of money or property. Of those people who sought legal advice at the outset of these general practice type problems, records indicate that not one returned at a later date to retain a lawyer for litigation involving the same legal problem.

In an effort to confirm these records, random telephone interviews were conducted with people who had received advice. The consensus was that the advice they received had helped them avoid further complications.

In addition to the general legal matters above referred to, it was found that in 1972 there were 2,068 clients referred to a lawyer for specialized legal services such as criminal matters, debt relief problems, domestic relations matters, personal injury or workmen's compensation cases. Of those clients, 14.3% actually proceeded into litigation. In most cases these specialized problems were of a catastrophic nature. Experience of that plan shows that clients will not seek legal services merely to utilize their prepaid legal program.

EXHIBITS

DANNY R. JONES, Norwalk, California

University of Southern California - Juris Doctor Degree, 1949.

Co-Founder of the Southeast Law Center in Norwalk, California.

Consultant on Prepaid Legal practices for the nonprofit corporation,
National Legal Care Program, Inc.

Consultant to the American Trial Lawyers Association Committee
on Prepaid Legal services.

Author and/or Co-author of the following books and articles:

1. Belli Looks At Life And Law In Japan
2. Belli Looks At Life And Law In Russia
3. Trial Lawyers Ready Reference To The Evidence Code Of California
4. Courtroom Ready Reference For The Plaintiff's Attorneys
5. Where Does The Guest Statute Apply?
6. Lawyers' Ready Reference To Class Actions
7. The Serviceman's Right To Sue
8. Why Lawyers And Clients Need Trained Legal Assistants
9. Prepaid Legal Services--A Boon Or A Bust For The Lawyer
10. Group Legal Practice: The Clients' Right, The Lawyers Duty

Exhibit "A"



INTERNATIONAL CHEMICAL WORKERS UNION

12749 Norwalk Boulevard, Suite 204, Norwalk, California 90650
PLEASE REPLY TO: P. O. BOX 605, NORWALK, CALIFORNIA 90650

THOMAS E. BOYLE, PRESIDENT

FRANK MARTINO, SEC'Y-TREAS.



ART WOOD
Vice President
Region 9

March 28, 1973

Mr. Danny R. Jones
12749 Norwalk Boulevard
Suite 100
Norwalk, California 90650

Dear Danny,

We have found from experience with the Southeast Law Center group legal service that our members had a need for legal services which they did not realize until a group legal service program was available to them. We would consider it a severe loss were our membership unable to participate in this group legal service.

The members have learned to become aware of their need for legal services, and to utilize the services of lawyers in the first instance when they have a legal problem. This has prevented litigation and court action in many cases.

Very truly yours,

ART WOOD, Vice President
International Chemical Workers Union, Region 9

AR:m

SBA

SOUTHLAND BUSINESSMENS ASSOCIATION
 East Whittier Professional Building
 14442 East Whittier Blvd. Suite 0
 Whittier, California 90605
 213/698-5211 213/698-1513

March 28, 1973

Mr. Danny Jones
 Attorney At Law
 Southeast Law Center
 12749 Norwalk Blvd. - Suite 205
 Norwalk, California 90650

Dear Mr. Jones:

I wish to take this opportunity, on behalf of the members of the SOUTHLAND BUSINESSMENS ASSOCIATION and their employees, to express my gratitude for the services rendered by GROUP LEGAL SERVICES.

The members of SOUTHLAND BUSINESSMENS ASSOCIATION have enjoyed the peace of mind in having qualified representation in all fields of law in addition to knowing that this eminently qualified legal assistance was available when needed. This has led to an improved morale and increased loyalty to the individual employer by the covered employee.

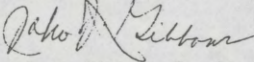
The need for legal services are in fact very evident in the usual routine of living for all members of the SOUTHLAND BUSINESSMENS ASSOCIATION and their employees. The ordinary procedure of selling a family residence could cost as much as 25% of the selling price without adequate advise.

Besides the savings in money we have the very real savings in time and the agonizing over the selection of properly qualified representation in a period of stress, such as when a child may be in difficulty with local law enforcement; for the parent in lease problems and contract negotiation; marital difficulties and traffic problems.

The unfailing, prompt, sincere, sympathetic and successful disposition of the matters brought before GROUP LEGAL SERVICES are compelling evidence of the need and worthiness of this type of practice.

I am attaching an exhibit to illustrate some of the problems that are encountered by many people that demand expert legal assistance.

Very truly yours,



John J. Gibbons, President

Exhibit "B" Page 2 of 5

FOR OFFICE USE ONLYLEGAL CARE BENEFITSFOR OFFICE USE ONLYBANKRUPTCY, NON-BUSINESS:

Office consultation. Necessary phone calls. Necessary correspondence. List all assets and liabilities. Prepare the petition including all necessary papers. This file runs about two inches thick. Represent subscriber at all hearings.

DISSOLUTION OF MARRIAGE, SEPARATION OR ANNULMENT: Contested or uncontested. Office consultation. Appraise all community property. This could eliminate a big problem as to whom gets what. File the petition and serve other spouse. Subpoena other spouse if there is a question of support payments. Represent the subscriber at all hearings.

DEFENSE OF A CIVIL SUIT: Municipal, Superior or Federal Court.

A typical case would be when the subscriber is served with a complaint, perhaps seeking \$25,000 in damages. Whether the action is valid or not, you must defend yourself. The first step is an office consultation. The complaint is answered. There follows an interrogatory session - depositions are taken - pre-trial hearings attended, etc. The actual amount of time involved depends on the individual case. Suits arise over money, property, breach of contract, most any type of argument or difference of opinion.

PREPARATION OF A WILL - WITHOUT TRUST CLAUSES:

This is something we should all take care of but seem to overlook. When a person spends a lifetime accumulating assets, the least he should do is to decide who will receive this property upon his death. The very best time to do this is when you are in good health and have a clear mind. Make an appointment with the attorney who will help you to achieve your objectives, in conformity with the laws of the State of California; and in other states if you hold property outside of California. In this way you can be sure the right people benefit from your estate.

HABEAS CORPUS PROCEEDING:

We must be aware that a person can be held for 72 hours without violating his right to a speedy trial. We must also be aware that the 72 hours are "court hours", not 3 consecutive days. This proceeding involves a very lengthy document that is very time-consuming to prepare. It also requires the proper signatures to have the subscriber released. If you are held, rightly or wrongly, it is very nice to know that you have an expert working to get you out of jail.

ADOPTION PROCEEDING:

You will receive the very best advice to assure a proper legal safeguard against future legal problems when adopting a child. You will also receive representation as needed.

FELONY HEARING AND TRIAL:

A felony is a very serious matter. If convicted of a felony, in addition to the sentence of the court, you lose many civil rights. Some examples of a felony, in addition to the ones to which we are exposed while driving an automobile, are: arson, murder, forgery, burglary, drugs, robbery, wife-beating, etc. Defense of a felony could cost \$15,000 or more. Beside the office consultation, there are pre-trial hearings, the trial itself, probation and sentence hearings, etc. All of this just to prove your innocence.

MISDEMEANOR TRAFFIC - CRIMINAL:

- 23101 Felony drunk driving or under the influence of drugs involving bodily injury. State prison - 1 to 5 years or county jail, 90 days to 1 year, plus a fine of from \$250 to \$5,000.
- 23101.5 Driving under the influence of poison (new): felony; toluene, glue-sniffing. (Same as 23101)
- 23102 Misdemeanor drunk driving. County jail for 30 days to 180 days; fine - \$250 to \$500, first offense; second offense within seven years - county jail for 5 days to 1 year plus a fine of from \$250 to \$1,000.
- 23102.5 Misdemeanor driving under the influence of poison (New). See 23102.
- 23105 Narcotics. (--addicted to - under influence of, etc.). Felony. (See 23101) plus a fine of \$200 to \$5,000.
- 23103 Reckless driving. County jail - 5 days to 90 days plus a fine of from \$25 to \$250.
- 23104 Reckless driving - bodily injury. County jail for 30 days to 180 days, plus a fine of from \$100 to \$500.
- 20001 Hit and run driving. Bodily injury. Public offense. Same as 23101.
- 20002 Hit and run driving. Property damage. Misdemeanor. County jail to 6 months, plus a fine of \$500.
- 23108 Non-narcotic drugs. Bodily injury. Felony. Same as 23101 except fine from \$200 to \$5,000.
- 23106 Non-narcotic drugs. Misdemeanor. County jail to one year and a fine to \$500.

MISDEMEANOR - CRIMINAL:

All except - Plain drunk, disturbing the peace, or vehicle violation.

SELECTIVE SERVICE - CIVIL AND CRIMINAL:

This is important coverage for draft age subscribers. It covers administrative hearings and criminal hearings.

REPRESENTATION BEFORE A GOVERNMENTAL OR ADMINISTRATIVE BOARD:JUVENILE DEPENDENCY:

Matters related to family law - support problems, etc.

OFFICE COUNSELPROBATE AND JOINT TENANCY:

If representation is necessary in a probate case, the statutory fee will apply otherwise the matter will be handled on the contingency fee basis. The contingency fee will be 25%.

The usual and customary contingency fees run from 33% to 50% and higher.

CONDEMNATION:

After office counsel - contingency fee will apply. (Freeway - Eminent Domain)

APPEALS FROM THE LOWER COURT:

Handled on an individual basis - after office counsel.

REAL ESTATE MATTERS:

Could involve a civil suit.

PERSONAL PROPERTY REPOSSESSION:

Might evolve into bankruptcy.

DEBT COLLECTION - DEBT RELIEF:

Handled individually - after office counsel.

PERSONAL INJURY AND WRONGFUL DEATH:

Contingency matter - on an individual basis.

WORKMEN'S COMPENSATION:

Contingency basis or as allowed by the Workmen's Compensation Appeals Board.

PROPERTY DAMAGE:

Could become a civil suit against the subscriber or a contingency matter.

ALL OTHER ASPECTS OF OTHER LEGAL MATTERS - including business problems.

EXCLUSIONS

NON - EMPLOYMENT BUSINESS.

PROCEEDINGS INVOLVING THE EMPLOYER OR THE GROUP.

PROCEEDINGS AGAINST LEGAL CARE.

ACTION INSTITUTED PRIOR TO BECOMING A LEGAL CARE SUBSCRIBER.

PROCEEDINGS AND CASES COVERED BY INSURANCE.

APPEALS - EXCEPT AS STATED ABOVE. (OFFICE CONSULTATION)

PATENTS AND COPYRIGHTS.

SMALL CLAIMS COURT PROCEEDINGS. (ADVICE AND COUNSEL)

PREPARATION OF STATE AND FEDERAL TAX RETURNS.

ALL INVESTIGATIVE FEES, FILING FEES, COURT COSTS, REPORTERS FEES AND OTHER MISCELLANEOUS COSTS, IN ANY PROCEEDING, SHALL BE PAID BY THE SUBSCRIBER.



**SOUTHERN CALIFORNIA
PROFESSIONAL ENGINEERING ASSOCIATION**

3711 LONG BEACH BLVD. - SUITE 903 - LONG BEACH, CALIFORNIA 90807

TELEPHONE: 595-4513
433-6767

March 23, 1973

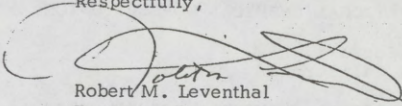
Mr. Danny Jones
National Legal Care Program, Inc.
12749 Norwalk Blvd.
Norwalk, Ca. 90650

Dear Mr. Jones:

This letter is to verify that our Association has used a pre-paid legal program for many years. As a result of this program, many members have received legal assistance they would not have commonly solicited. We have had numerous reports that such services inured materially to their benefit.

At present we have a signed contract for a pre-paid legal care program that will grant more expanded benefits than the current program. We are hopeful that procedural difficulties which are delaying the implementation of this important benefit will be quickly remedied.

Respectfully,



Robert M. Leventhal
Executive Secretary

RML:cc

cc: L. C. Ricks, III

Exhibit "C"

professional advancement through cooperative effort

SOUTHEAST LAW CENTER, GROUP LEGAL SERVICES GROUP MEMBER
ROSTER

CAL POLY POMONA
3801 West Temple Avenue
Pomona, California

COMPTON POLICE DEPARTMENT
100 West Almond
Compton, California

GOLDEN WEST COLLEGE
15744 Golden West Blvd.
Huntington Beach, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 1
11416 State
Lynwood, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 11
12749 Norwalk Boulevard
Suite 204
Norwalk, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 47
12689 Stanwood
Los Angeles, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 53
23725 So. President
Harbor City, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 58
11929 Serra
Chino, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 66
433 North Seracuse
Anaheim, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 78
7335 Gaybar
West Covina, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 112
3034 North Glenn
Altadena, California

INTERNATIONAL CHEMICAL WORKERS UNION
LOCAL 138
2140 Charlmagne
Long Beach, California

SOUTHEAST LAW CENTER, GROUP LEGAL SERVICES GROUP MEMBER ROSTER

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 146
 P.O. Box 1025
 Lompoc, California

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 224
 Star Route
 Box 47-C
 Arroyo Grande, California

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 255
 2620 E. 221st Street
 Long Beach, California

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 350
 654 South Oakford
 Los Angeles, California

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 398
 82250 4th Street
 Argus, California

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 404
 63 Calavera
 Goleta, California 93107

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 452
 P.O. Box 605
 Norwalk, California 90650

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 598
 5922 Madden Avenue
 Los Angeles, California 90043

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 748
 4311 1/2 Elizabeth
 Cudahay, California

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 805
 15419 Wyandotte
 Van Nuys, California

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 855
 P.O. Box 53
 Blythe, California 92225

SOUTHEAST LAW CENTER, GROUP LEGAL SERVICES GROUP MEMBER ROSTER

INTERNATIONAL CHEMICAL WORKERS UNION
 LOCAL 866
 241 Valejo
 La Habra, California 90631

INTERNATIONAL PETROLEUM WORKERS
 1606 West Brookdale
 Fullerton, California

INTERNATIONAL SERVICE STATIONS
 DEALERS ASSOCIATION
 1052 Pinegrove Avenue
 Hacienda Heights, California 91745

LUCKY STORES CREDIT UNION
 6800 Orangethorpe
 Buena Park, California 92630

METROPOLITAN WATER DISTRICT
 1053 Sunset Boulevard
 Room 201
 Los Angeles, California

NORWALK CITY EMPLOYEES
 12700 Norwalk
 Norwalk, California 90650

ORANGE COAST COLLEGE
 2701 Fairview Road
 Costa Mesa, California 92626

PACIFIC VALVES CREDIT UNION
 3201 Walnut Avenue
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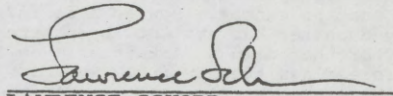
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March 30, 1973

My name is Lawrence Schorr. I am general counsel for the Southeast Law Center Group Legal Services Program.

I have had many years of experience in advising middle income clients in matters of daily concern to them. Attached are examples of the most often encountered problems.



LAWRENCE SCHORR

1. I have just been fired from my job. I think I was fired because the employer doesn't like me. What do I do?
2. I just got into an auto accident without personal injury. How do I collect money from the other guy?
3. Incorrect information regarding my credit rating has been given to my credit union. What do I do?
4. I loaned this guy \$500 and he won't pay me back. What do I do?
5. I want to stand on the corner in front of the court house and give a speech. May I?
6. I was hurt on the job. When do I sue?
7. I ordered an automobile with green paint. When it came it was blue. What do I do?
8. I've just received a summons and complaint; it says I have to answer within 30 days. How do I write my answer?
9. My automobile has been repossessed. What do I do?
10. If I write a Will in my own handwriting. It is good?
11. How can I legally declare my children as income tax dependency exemption on my tax return if they are living with their mother?
12. My husband is in hospital and I want to endorse his check. What do I do?
13. Last night a salesman sold me an encyclopedia and I gave him a check. I want to cancel. How do I do it?
14. My daughter has just now been arrested. How do I get her out of jail?
15. My brother died in Arkansas. How can I be advised regarding probate proceedings there?
16. I have a service connection disease, but I never had this disability while I was in the service. What do I do to get treatment?
17. I have been caring for my mother for 10 years while she has been bedridden. Now she tells me she is leaving me out of her Will. What do I do?
18. My car has just been repaired. The repairman won't give me the car. What do I do?
19. How do I change my name legally?
20. My wife's visa is being terminated. What do I do?
21. The movers damaged my furniture. Is it true that the damages are limited by weight?
22. I am having a pool put into my backyard. Despite a written contract, the contractor now wants more money. What do I tell him?
23. I purchased an organ I ordered. I don't like it. What do I do?
24. I paid money for tickets on an air charter flight the air charter people have just gone out of business. How do I get my money back?
25. I ordered a repair on my sofa the repairman did a lousy job. What do I do?
26. How do I collect a small claims judgment?
27. What do I do to seal a criminal record made when I was child?
28. How do I transfer auto registration to my brother?
29. My auto has been stolen. What do I do?
30. I've been summoned for jury duty. What do I do?
31. My mother abandoned me when I was a child. Now she is receiving old age assistance and the county is dunning me for payment under Section 12100 W&I Code.

32. How do I resend a contract?
33. How do I lower my child support payments legally?
34. I co-signed a loan recently; now they are coming after me. What do I do?
35. My neighbors' tree hangs over my property. Can I cut off the limb?

WHAT LEGALCARE OFFERS . . .

As voluntary subscribers to Legalcare, a comprehensive schedule of benefits is available to your group's members based on principles developed after long and careful study.

THE BENEFITS

Qualified attorneys will provide legal counsel in a wide range of areas. These are:

- Bankruptcies
- Dissolution of Marriage
- Civil Complaints — Municipal, Superior or Federal Court
- Civil Petition — Municipal, Superior or Federal Court
- Civil Trial — Municipal, Superior or Federal Court
- Preparation of Wills
- Insanity and Infirmities Proceedings
- Juvenile Dependency Proceedings
- Juvenile Delinquency Proceedings
- Habeas Corpus Proceedings
- Adoption Proceedings
- Felony Hearings and Trials — State or Federal
- Misdemeanor Traffic Violations
- Other Misdemeanor Violations

Additionally, subscribers are entitled to 6 hours legal advice annually on the following:

- Probate and Joint Tenancy
- Condemnation
- Appeals from Lower Courts
- Real Estate Matters
- Personal Property Repossessions
- Debt Collection
- Personal Injury and Wrongful Death
- Property Damage
- Administrative Proceedings

PLUS 2 hours advice on any other legal matter annually:

EXCLUSIONS

Matters not covered under the Legalcare program include the following:

- Non-Employment Business
- Proceedings Involving Employer or Group
- Proceedings Involving Legalcare
- Actions Instituted Prior to Becoming a Legalcare Subscriber
- Proceedings and Cases Covered by Insurance
- Appeals Except as Stated Above
- Patents, Copyrights
- Small Claims Court Proceedings
- Preparation of State and Federal Tax Returns

WHAT LEGAL CARE OFFERS

As voluntary subscribers to Legalcare, a comprehensive schedule of benefits is available to your group's members based on principles developed after long and careful study.

THE BENEFITS

Qualified attorneys will provide legal counsel in a wide range of areas. These are:

- Bankruptcy
- Dissolution of Marriage
- Defense of a Civil Suit—Municipal, Superior or Federal Court
- Preparation of Will
- Habeas Corpus Proceeding
- Adoption
- Felony Hearing and Trial—State or Federal
- Misdemeanor Traffic—Criminal
- Other Misdemeanor—Criminal
- Selective Service—Civil and Criminal
- Representation before Governmental or Administrative Board
- Juvenile Dependency

Additionally subscribers are entitled to twelve (12) fifteen (15) minute consultations annually on any of the following:

- Probate and Joint Tenancy
- Condemnation
- Appeals from Lower Courts
- Real Estate Matters
- Personal Property Repossessions
- Debt Collection
- Personal Injury and Wrongful Death
- Property Damage
- All Aspects of other Civil Matters

EXCLUSIONS

Matters not covered under the Legalcare program include the following:

- Non-Employment Business
- Proceedings Involving Employer or Group
- Proceedings Involving Legalcare
- Actions Instituted Prior to Becoming a Legalcare Subscriber
- Proceedings and Cases Covered by Insurance
- Appeals Except as Stated Above
- Patents, Copyrights
- Small Claims Court Proceedings
- Preparation of State and Federal Tax Returns

LGB-2 3-72

WHAT LEGAL CARE OFFERS

As voluntary subscribers to Legalcare, a comprehensive schedule of benefits is available to your group's members based on principles developed after long and careful study.

THE BENEFITS

Qualified attorneys will provide legal counsel in a wide range of areas. These are:

- Dissolution of Marriage—One party only
- Felony Preliminary and Trial—State or Federal
- Defense of a Civil Suit—Municipal, Superior or Federal Court
- Misdemeanor Traffic—Criminal
- Other Misdemeanor—Criminal
- Selective Service—Civil and Criminal
- Representation before Governmental or Administrative Board
- Juvenile Delinquency
- Habeas Corpus

Additionally, subscribers are entitled to twenty-four (24) fifteen (15) minute consultations concerning the following legal matters:

- Bankruptcy
- Probate and Joint Tenancy
- Preparation of Will
- Condemnation
- Appeals from Lower Courts
- Real Estate Matters
- Insanity and Infirmities
- Juvenile Dependency
- Adoption
- Personal Property Repossessions
- Debt Collection
- Personal Injury and Wrongful Death
- Property Damage
- All Aspects of other Civil Matters

EXCLUSIONS

Matters not covered under the Legalcare program include the following:

- Non-Employment Business
- Proceedings Involving Employer or Group
- Proceedings Involving Legalcare
- Actions Instituted Prior to Becoming a Legalcare Subscriber
- Proceedings and Cases Covered by Insurance
- Appeals Except as Stated Above
- Patents, Copyrights
- Small Claims Court Proceedings
- Preparation of State and Federal Tax Returns
- Traffic Citations and Warrants in connection with Juvenile Delinquency proceedings

The CHAIRMAN. It is a very helpful statement. Senator Taft, do you have any questions?

Senator TAFT. I have no questions. I think it was very interesting, very good statement. I look forward to reading some of the material in the appendix.

Mr. JONES. If you gentlemen would like any further information, you can write to me and I will be happy to reply.

Mr. LEE. Thank you very much.

Mr. JONES. Thank you.

The CHAIRMAN. Our next witness is Mr. Hugh Duffy, executive director, National Consumer Center for Legal Services.

STATEMENT OF HUGH DUFFY, EXECUTIVE DIRECTOR, NATIONAL CONSUMER CENTER FOR LEGAL SERVICES

Mr. DUFFY. Mr. Chairman, I request permission to summarize my prepared statement.

The CHAIRMAN. We will include your statement in the record, and we appreciate your summary.

Mr. DUFFY. I represent a broad spectrum of consumer groups. They include, among others, the Consumer Federation of America, Public Citizen, Inc., the NAACP, the National Education Association, the AFL-CIO, the UAW and a number of others. We have watched the success of the OEO Legal Services Program, and have seen the potential of programs such as the one operated by Danny Jones, the Berkley Co-op, and the Laborer's union plans in Shreveport and Columbus. We believe that prepaid legal service programs of this type are the answer to the problem of providing the average American with access to our legal system.

We support S. 1423, very briefly, because we believe that the prepaid legal services movement is in the same position that the group health movement was in 25 years ago, when our country was producing some of the finest doctors at some of the finest medical institutions in the world, and the average American citizen was not getting adequate medical care. Just as labor unions led the way 25 years ago in the group health area through the collective bargaining process, we believe that they are going to do the same thing for the average American in this area.

We think that a great popularization of prepaid legal service plans is going to occur, as union members begin to get the benefits of these plans.

Finally the bill which you have introduced, Mr. Chairman, not only removes a major barrier to collectively bargaining these plans, but it also brings into play the safeguards and protections of section 302(c), contained in the proviso clause of section 302(c)(5). We endorse S. 1423 enthusiastically and without qualification, and thank you very much for allowing us to appear here and state our views.

The CHAIRMAN. Thank you very much. We have been looking forward to your very helpful statement, Senator Taft.

Senator TAFT. I have no questions. Thank you.

The CHAIRMAN. Thank you.

Mr. DUFFY. Thank you, Mr. Chairman.

[The prepared statement of Mr. Duffy follows:]

STATEMENT OF HUGH G. DUFFY, EXECUTIVE
DIRECTOR, NATIONAL CONSUMER CENTER FOR
LEGAL SERVICES.

BEFORE THE SUBCOMMITTEE ON LABOR OF
THE SENATE COMMITTEE ON LABOR AND
PUBLIC WELFARE ON S. 1423, JOINTLY
ADMINISTERED TRUST FUNDS FOR LEGAL
SERVICES PLANS.

April 10, 1973

-1-

Good morning, Mr. Chairman and members of the Subcommittee. My name is Hugh G. Duffy. I am Executive Director of the National Consumer Center for Legal Services and appear here today on its behalf. We appreciate this opportunity to state our views on S. 1423.

We believe that prepaid legal service plans are the key to providing low and middle income Americans with needed legal services at a reasonable cost, and we enthusiastically support S. 1423 as the first necessary step in eventually making these plans available on a widespread basis to the average American.

N C C L S

Since the National Consumer Center for Legal Services is a new organization, I believe it would be appropriate to say a word about its origin.

The Center was formed in January of this year by a coalition of labor, consumer, civil rights, student, farmer, church and community service groups, and is dedicated to providing low and middle income Americans with access to effective legal representation through the use of prepaid legal service plans and other improvements in the American system of delivery of legal services.

The founders of the Center had earlier called a two-day National Consumers Conference on legal Services

to consider the problem of the adequacy of the legal services being delivered to the American public. The conferees met in Washington in July of 1972 and conducted a wide-ranging discussion of the most promising solutions to a problem which was universally conceded to exist: high quality legal services were not readily available to most Americans.

The conferees concluded that the best solution lay in the rapidly burgeoning prepaid legal services movement, and they voted to establish an independent consumer organization which would be concerned solely with the quality and adequacy of legal services to the consuming public.

Our Board of Directors includes representatives of the following organizations:

American Federation of Labor - Congress of

Industrial Organizations

Consumers Federation of America

Cooperative League of the U.S.A.

Credit Union National Association

Family Service Association of America

National Association for the Advancement of

Colored People

National Clients Council

National Council of Senior Citizens

National Education Association

National Farmers Union

National Legal Aid and Defender Association

National Rural Electric Cooperative Association

National Urban League

Public Citizen, Inc.

United Auto Workers

United States Catholic Conference

United States National Student Association

We plan to carry out our mission through three major activities:

(1) by fostering and promoting the growth of the prepaid legal services movement through (a) educational campaigns, (b) the operation of a clearinghouse and public information center here in Washington, and (c) the provision of technical resources to local groups attempting to develop prepaid legal service plans;

(2) by removing the legal obstacles which are inhibiting the growth of the prepaid legal services movement, through non-partisan legislative activity, advocacy before state regulatory bodies and bar associations, and the conduct of litigation;

(3) by encouraging the consumers of legal services to use their massed purchasing power to ensure that prepaid legal service plans deliver a uniformly high quality of legal services at the lowest possible cost. We believe that consumers cannot afford to leave this movement entirely in the hands of the legal profession.

We are, of course, available to the members of this Subcommittee and the staff for whatever information and assistance we can furnish as you deliberate on S. 1423.

Lack of Access to the Legal System

Ready access to legal advice and representation can make a significant difference in a person's ability to cope with the pressures and problems of modern life. People develop irreconcilable marital problems and wish to settle their property and custodial rights and re-arrange their legal status. They get into credit wrangles, have disputes with their landlords, get saddled with expensive but faulty products, want to buy a home, make a will, or set up an educational trust fund for their children. They may be the subject of a criminal prosecution, or feel they are being unfairly treated by some agency of the government.

The only effective recourse a person has in most of these situations is to get a lawyer.

If you are wealthy, you will have no difficulty in getting a lawyer. If you are poor, you can in many cases go to a Legal Aid Society, the Public Defender, or one of the Neighborhood Legal Services offices established by the Office of Economic Opportunity. If you are one of the 140 million Americans whose annual family incomes range between \$5,000 and \$15,000, you will have great

difficulty in finding legal assistance that you can afford.

Minimum bar fee schedules for uncontested divorces, for example, range between \$300 - 500; the cost of a contested divorce can be catastrophic for many people. Low and middle-income people in many cases face the prospect of being wiped out financially by the legal costs necessary to solve their problems, or of simply trying to struggle along with their problems.

Prepaid Legal Service Plans

We believe that the answer to the problem of providing people with needed legal services and protecting them from catastrophic legal expenses can be found in prepaid legal service plans.

There are at least 1,500 prepaid legal service plans in existence today, varying widely in costs, benefits, and the method of selecting participating attorneys. They service members of groups such as labor unions, cooperatives, credit unions, teachers' associations, student bodies, and, in a growing number of cases, members of the general public.

Present plans range in cost from 50 cents per month to \$10 per month. They range in benefits from coverage of job-related legal problems only, to coverage of almost all personal legal problems up to a specified dollar

amount of benefits. Some insurance companies are already making plans available to the general public, although most plans are now available only to those holding membership in a specific group which has developed a plan.

Some examples:

- o Members of the Maryland Credit Union Association can purchase, for \$5 per month, insurance for up to \$2,500 of certain kinds of legal services per year.
- o The Berkeley Cooperative Association has signed up 1,000 members in a plan called Consumer's Group Legal Services, Inc., where for a \$25 membership fee, members can call upon a full-time staff attorney for a certain number of consultations per year, and can get reduced rates for more complicated legal work from a panel of fifteen participating attorneys.
- o The American Bar Association and the Ford Foundation have sponsored an experimental program in Shreveport, Louisiana, which offers the following services to 600 members of a Laborers' Union local, for which each member contributes 2 cents per hour from his wages:
 1. \$100 worth of consultative services on any subject, not to exceed \$25 per visit;
 2. \$250 for office work, such as research, investigation and negotiation, requiring a prepayment of \$10 by

the client;

3. \$325 for legal fees for representation in administrative or judicial proceedings; if the member is a defendant or respondent, 80% of the next \$1,000 in litigation expenses incurred.

These and other prepaid legal service plans are similar in purpose to group health insurance plans: the group members can insure himself against unexpected legal costs by "pre-paying" the costs of future legal services and spreading the risk over a large group of people. Equally important, the group member obtains access to "preventive" legal assistance in those commonplace situations where, even though the member is not suddenly involved in a major legal proceeding, a lawyer's advice and counsel can be extremely important.

Why NCCLS Supports S. 1423

Our primary interest is in promoting ways in which legal services can be made available to the average American at a cost he or she can afford.

If S. 1423 becomes law and local unions begin putting prepaid legal service plans on the collective bargaining table, we foresee tremendous competition among insurance companies, bar associations, and various groupings of lawyers to offer unions and management the best possible package of services at the lowest possible cost.

Just as unions led the way in establishing group health plans as a widely available benefit, we expect that the same popularization will occur here. Once the bugs are shaken out of prepaid legal service plans, through experiences with unions, and our private enterprise system has determined the leaders among the various plans which will be marketed, these plans will be as commonplace as group health plans are today.

In a country whose people have a deeply ingrained respect for legal institutions and the rule of law, there are few goals more to be cherished than the one embodied in this bill -- to take a step toward giving the average American the full benefits and protections that flow from those legal institutions. We deeply appreciate the work this Subcommittee is doing to attain that goal.

The CHAIRMAN. We will resume at 10 o'clock tomorrow.
[Whereupon at 12:23 p.m., the meeting was recessed to reconvene on Wednesday, April 11, 1973 at 10 a.m.]

JOINT LABOR-MANAGEMENT TRUST FUNDS FOR LEGAL SERVICES, 1973

WEDNESDAY, APRIL 11, 1973

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m. in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Hathaway, and Taft.

Committee staff members present: Gerald M. Feder, counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. We shall proceed. This morning we resume our hearings on S. 1423.

At the outset I want to note with pleasure that Senator Taft has become a cosponsor of this legislation.

In a recent article entitled "Our Forgotten Client," the average American, Robert W. Meserve, president of the American Bar Association, noted:

The rich and well to do are aware of the need for legal services and have no trouble obtaining them, the poor being increasingly assured of services, but there is a large segment of the population between these extremes. This is the vast middle economic group, the people of moderate means who are the forgotten clientele.

I think it is appropriate to quote this remark to begin our hearing testimony this morning.

Our first witnesses this morning are F. Wm. McCalpin, chairman, Committee on Prepaid Legal Services, American Bar Association and Emanuel A. Honig, chairman, Prepaid Legal Services Committee, New Jersey Bar Association.

We welcome you to this committee, gentlemen, and we are very, very pleased to receive your testimony.

STATEMENT OF F. WM. MCCALPIN, CHAIRMAN, SPECIAL COMMITTEE ON PREPAID LEGAL SERVICES, AMERICAN BAR ASSOCIATION, AND EMANUEL A. HONIG, CHAIRMAN PREPAID LEGAL SERVICES COMMITTEE, NEW JERSEY BAR ASSOCIATION

Mr. MCCALPIN. My name is F. William McCalpin. I am a practicing lawyer in St. Louis, Mo. Since August 1970 I have served as chairman of the American Bar Association's Special Committee on Prepaid Legal Services.

I appear before you today as the designated representative of the American Bar Association at the request of Robert W. Meserve, its president, to convey the enthusiastic and unqualified support of the association for the speedy enactment of S. 1423, which would amend section 302(c) of the Labor-Management Relations Act to permit employer contributions to jointly-administered trust funds to be used for defraying the costs of legal services.

The need for and access to legal services for the poor and persons of moderate means has been the subject of considerable attention and focus by the American Bar Association. The modern history of aggressive leadership by the association in this area commenced in 1965 with the adoption of an historic resolution by the house of delegates committing the association—"to improve existing methods and to develop more effective methods for meeting the public need for adequate legal services."

While this resolution is most often cited in connection with the cooperation between the association and the Office of Economic Opportunity, which has resulted in tremendous advances in providing legal services to the poor, it also served as the charter for the Committee on Availability of Legal Services created in 1965, which I had the honor to chair until it was succeeded by the Committee on Prepaid Legal Services in 1970.

During its 5-year existence the Committee on Availability of Legal Services, with the active cooperation of the American Bar Foundation, stimulated considerable research into the needs of our middle and lower income citizens for legal services, the improvement of tried and proven methods, and the development of new approaches to the delivery of legal services to middle income America. These persons, earning from \$5,000 to \$15,000 or even more a year are estimated to constitute roughly 70 percent of our population. They do not qualify for free legal services and yet their means frequently do not permit ready access to private lawyers in times of need.

It was found to no one's surprise that the problems to be addressed were extremely complex. Many people simply do not perceive a "legal" problem when one is encountered. It is also an unhappy fact of life that lawyers are not always held in the highest esteem by our citizens. Fear of cost of legal service, whether well founded or not, is also a problem which discourages greater utilization of legal services by lower- and middle-income groups. While much is being done to modernize law office practices to deliver legal services more efficiently and economically, it does not appear that this very real problem of cost will disappear in the future.

Research into these problems continues but it was obvious that work on the solutions could not be postponed. Two promising developments of direct interest to the subcommittee are the advances which have been made in group legal services—sometimes called closed panel plans, in which a lawyer or law firm hired or retained by an identifiable group, such as a labor union or members of a church, renders legal services to its members—and prepaid legal services, open panel plans, roughly comparable to health insurance plans in which the

group member is provided financial assistance to retain the attorney of his own choice.

When we began our efforts nearly 8 years ago, there was no legal service counterpart to prepaid health programs. Therefore, the American Bar Association decided to sponsor an experimental project which might answer some of the many questions relating to these relatively new delivery systems. In cooperation with the Ford Foundation the program was initiated in Shreveport, La., in January 1971. Now that the plan has completed its second year of operation, I am pleased to report that the Shreveport Plan of Prepaid Legal Services covering approximately 500 members of Laborers Local No. 229 and their families has provided us with a wealth of information which, while still being analyzed and digested, has fully demonstrated that prepaid, free choice of attorney programs are not only possible but well within the means of average Americans.

The American Bar Association continues its commitment to bringing quality legal services to all our citizens. Our leadership in this area has been and continues to be both progressive and productive. Within the past year, there have been many encouraging developments in the area of prepaid legal services which merit your attention.

Approximately 1 year ago, we began here in Washington the third in a series of conferences on prepaid legal services involving representatives of the bar, unions, consumer groups, the insurance industry, and other interested parties. In preparation for that conference we revised our handbook and published a working paper, copies of which have been provided to the counsel of this subcommittee. I would like to request that these materials be included in the printed record of these proceedings.¹

The CHAIRMAN. They will be.

Mr. McCALPIN. The proceedings of the conference were transcribed and have now been published. I have submitted copies to the subcommittee counsel for the information of the members.

In August of 1972, the house of delegates of the association considered and adopted "Interim Standards for Prepaid Legal Services Plans." In short, the standards provide certain minimum essentials which the association feels are necessary to protect the public and assure the professionalism of prepaid legal services plans. They have been widely distributed to State and local bar associations, union and consumer groups, and insurance companies now involved or about to be involved in prepaid programs.

I have also submitted copies of the "Interim Standards" the Report of our committee in support of those standards. These have been submitted to your Counsel, and I urge that they also be included in the hearing record.

The CHAIRMAN. They will be.

[The information referred to follows:]

¹ The handbook and other materials referred to may be found in the committee files.



AMERICAN BAR ASSOCIATION

SPECIAL COMMITTEE ON PREPAID LEGAL SERVICES

SPECIAL REPORT TO NATIONAL CONFERENCE ON PREPAID LEGAL SERVICES

**APRIL 27-29, 1972
Washington, D. C.**

Cautionary Note: This special report is not intended as a policy statement of the American Bar Association.

American Bar Association
Special Committee on Prepaid Legal Services
Special Report To
National Conference On Prepaid Legal Services
April 27-29, 1972

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The assistance of the Ford Foundation in making the publication of this report possible is gratefully acknowledged by the American Bar Association.

Copies of this publication may be purchased at a cost of \$2.50 each from the American Bar Association, Circulation Department—5072, 1155 East 60th Street, Chicago, Illinois 60637.

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SPECIAL REPORT TO NATIONAL CONFERENCE ON PREPAID LEGAL SERVICES

I. Definition

"Prepaid legal services" means a system in which the cost of possible legal services needed in the future is prepaid in advance by, or on behalf of, the client who receives such services. The plan is usually offered to a group of clients so that the combined payments are pooled, and the principle of spreading the risk between users and non-users is achieved, thereby decreasing the overall cost. Many of the plans either proposed or now operating are similar to Blue Shield plans for the provision of medical services. For the payment of sums deducted weekly or monthly, a set amount of legal services is provided either in terms of gross dollar amounts for specified work functions of lawyers (counselling, negotiation, litigation) or for maximum amounts payable for a set of specified legal work tasks (adoption, divorce, bankruptcy, or drawing a will, et cetera).

If made as a group offering, a plan that provides for specified prepayments by the individual member, made by such member or paid for him by some other organization on his behalf, could be described as a group legal service plan. Historically, however, most group plans have not been so clearly refined in the manner of a specific capitation rate for each group member. Payments were often made by a union, generally out of its treasury, for services that were rendered to individual members. There was no specific fund for legal services, but legal benefits were provided as an incident for union membership that was based, in turn, upon payment of dues to the union. There is a trend for current union plans to set aside a segregated amount for the payment of legal benefits so that it could be said that these union group plans are becoming more definite prepaid legal service plans. The plans of the Amalgamated Clothing Workers in Chicago and The Laborers' Local 423 Legal Service Plan at Columbus, Ohio are examples.¹

Within the organized bar, the term "prepaid legal services" has usually meant that the in-

dividual group member may have a free choice of lawyer. Also, the range of services that the individual group member may enjoy is usually broader than job related matters. Most earlier union group plans and plans of employee associations were restricted to legal services in relation to the employment of the member. Furthermore, the group member normally was required to use the services of one lawyer or a panel of lawyers preselected by the union leadership.

II. The Response and Activity of the Organized Profession

A. The Role of the American Bar Association

The American Bar Association has a membership of 153,000 lawyers out of a total of 355,000 lawyers now in practice in the United States. It clearly has a duty to represent that constituency. But it also has a broader duty to the public to see that the legal profession justifies its retention of the monopoly of legal services to the public.

One aspect of this public duty is clearly enunciated in the new Code of Professional Responsibility adopted by the American Bar Association House of Delegates and now adopted by 47 state bar associations, plus the District of Columbia Bar Association. Only Alabama, California and North Carolina have failed to adopt the Code. That ethical canon, EC-2, postulates an affirmative duty to "make legal counsel available" to the general public. It is worthwhile to reproduce the 1969 language of the Code since it accurately predicted the motivation and impetus for today's development:

EC 2-1. The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to

recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

EC 2-2. The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system, with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. Examples of permissible activities include preparation of institutional advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.

EC 2-7. Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently 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 into new areas, persons of limited education or means, and others who have little or no contact with lawyers.

EC 2-24. A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.

However, as tersely stated in one commentary on the Code, it "does not take sufficient advantage of its aspirational foundation."

During the past several years, the presidents and other officers of the American Bar Association have been outspoken in their support of the need to make legal services more available

throughout the entire spectrum of American society. The President, Leon Jaworski, has spent countless hours in discussing questions about prepaid legal services with bar leaders throughout the country, and he reports that inquiries on this subject have arisen at practically every bar meeting he has attended.

The President-Elect, Robert W. Meserve, has spoken on the subject to two conferences, two state bar association meetings, to insurance agents, and other groups. His article in the November, 1971 issue of the *American Bar Journal* (pp. 1093-1095) enunciates the need for affirmative action by the profession everywhere to plan and to offer better systems of delivering legal services to a largely unserved public—the average American.

The ABA did declare its strong support for increased availability of legal services in a historic resolution in February, 1965, when the present Associate Justice of the U. S. Supreme Court, Lewis Powell, was then President of the ABA. Although the resolution was born chiefly out of concern about the expansion of legal services to the poor, its inclusive language reads:

Whereas . . . it is recognized that the growing complexities of modern life, shifts of large portions of our population, and enlarged demands, for legal services in many new fields of activity warrant increased concern for the unfilled need for legal services, particularly as to persons of low income, and that the organized bar has an urgent duty to extend and improve existing services and also to develop more effective means of assuring that legal services are in fact available at reasonable cost for *all* who need them . . .

Now, Therefore, Be It Resolved, That the American Bar Association reaffirms its deep concern with the problem of providing legal services to *all* who need them and particularly to indigents and to persons of low income, who, without guidance or assistance, have difficulty in obtaining access to competent legal services at reasonable cost; and authorizes the officers and appropriate Sections and Committees of the Association, including such additional special committee (if any) as the Board of Governors may establish, in cooperation with state and local bar associations and the National Legal Aid and Defender Association, *to improve existing methods and to develop more effective*

methods for meeting the public need for adequate legal services. (emphasis added)

Following that resolution, a Special Committee on Availability of Legal Services was created. In turn it recommended investigation of prepaid legal cost insurance possibilities as one solution to the problem of availability of service to the average American. There followed a Subcommittee of the Board of Governors which secured funds to begin experimental programs at Shreveport and Los Angeles. Thereafter, the mounting importance of the work led to the appointment of a Special Committee on Prepaid Legal Cost Insurance in July, 1970. The work of this committee was buttressed by full-time staff assistance in November, 1970, and an increasing amount of staff support ever since that date.

Since January, 1970, the American Bar Association and the American Bar Endowment have invested or pledged \$149,500 to activity in the field of prepaid legal services. The Ford Foundation has given \$123,000 in grants to the experimental projects at Shreveport and Los Angeles.

One of the charges to the Special Committee is to recommend to the ABA the permanent role of the Association in relation to this development. It has not yet done so. However, it is actively promoting interest in the subject and assisting bar associations in the development of operating plans that will involve broadly the whole lawyer community rather than a small, selected group. But it has not yet issued any formally approved or prototype plans that are to be applicable everywhere. Outside of the ABA / Louisiana State Bar / Shreveport Bar / Ford Foundation project at Shreveport, no plans of prepaid legal service—that offer broad coverage of personal legal problems with the client free to choose his own attorney—and for which *data is publicly available*—are operating. In view of this lack of data, it is extremely difficult to postulate any national position. A number of plan designers and some insurance companies have sought a “seal of approval,” but none have been issued.

B. State and Local Bar Association Activity

During the last six months, a most encouraging and significant development in the field of prepaid legal services has been the strong interest shown by the state and local bar associations. During this period of time, at least 19 state bar associations have formed commit-

tees that are actively exploring this new system of delivering legal services:

Arizona	Michigan	South Dakota
Colorado	Mississippi	Texas
District of Columbia	Montana	Utah
Indiana	Nebraska	Washington
Kentucky	Nevada	Wisconsin
Massachusetts	New York	Wyoming
	Oregon	

State bar associations with prior committee activity were:

California	Illinois	New Jersey
Connecticut	Missouri	Pennsylvania

By the time that this report is circulated, there will undoubtedly be more associations at a state level engaged in activity on the front of prepaid legal services. The State Bar of New Mexico is devoting a substantial portion of its Midyear Meeting to the subject. The ABA does not always immediately learn of interest at the various state and local levels. It is fair to predict, however, that all state associations will have some committee or special group studying this development by the end of 1972. The Special Committee has received inquiries from lawyers in all of our 50 states, and the associations will soon respond to this individual showing of interest by their membership and the profession generally.

At the state level, the State Bar of California has shown the most pronounced interest in prepaid legal services. It appointed its Ad Hoc Committee on Prepaid Legal Cost Insurance in May, 1971. In seven intensive meetings of the full committee plus a number of subcommittee meetings and a great deal of staff assistance, that committee produced a comprehensive and forceful report.² The report recommended that the State Bar take affirmative action to form a corporate structure, under the management of the lawyers participating in the program, that would enable the delivery of services on a statewide basis. The program would allow the free choice of lawyer. California is now engaged in a massive campaign to inform the individual practitioner in regard to the importance of participating in programs of prepaid legal services. It has deployed teams of speakers throughout the state to speak to meetings of local bar associations, sent out quantities of literature, publicized the program in the communication media, and intends further mailings, including a questionnaire, to all of its 36,000 members. With the bar thus informed and ready to participate, California will then

be able to take further steps to begin an operating program.

Apart from state bar activity, a goodly number of local bar associations from Los Angeles to New York are at various stages of planning. Some plan to begin operating pilot programs before the end of 1972. The size of these local associations ranges from 100 to 9,000 lawyer members. However, other than Shreveport, no local bar yet has any plan in operation. A number have drafted comprehensive plans.³

At this stage most of the local associations are looking to the state organizations for leadership in devising umbrellalike plans that will involve the local associations and practicing attorneys. In turn, some of the state associations have asked for guidance on a national level from the American Bar Association. As stated previously, the ABA has not yet issued any suggested guidelines or prototype plans nor has there been a formal resolution regarding prepaid legal services, but it has promoted and encouraged the open panel or free choice of lawyer approach in the design of plans. Shreveport is the only free choice of lawyer plan operating under local bar sponsorship, although two non-bar organizations are also operating.⁴ Data about these two plans is far from complete. Similarly, a number of broader closed panel plans are now in operation, but statistics as to usage, client satisfaction, quality of service, cost, and other important factors are not available. Therefore, no formal guidelines have yet been issued.

III. The Need for Better Systems to Make Legal Services Available to Persons of Moderate Means

A. Introductory

To define "need" for legal services requires that a lawyer scrutinize and judge a myriad of life situations in which the services of a lawyer would be essential or might be useful or advantageous. The yardstick "essential" would produce the narrowest definition of need. The judgment of "useful or advantageous" would produce the broadest definition. If defined this broadly, the legal needs of the American public—whether rich or poor—would require not only the efforts of the existing lawyer population of 355,000 but also the added effort of the 95,000 students waiting to graduate from our law schools. Furthermore, this lawyer workforce would have to be geared up to the highest levels of efficiency. They would use better office management procedures, increase the use

of lay assistants, and develop groupings of efficient specialists.

In terms of amount of legal services used by the public, a host of changes might occur. All traffic violators would be defended as well as accused murderers. \$100 contract claims might come back in style to compete with the possibly vestigial \$1 million personal injury claims. We would become a completely testate nation. Certainly the counselling skills of the lawyer would be fully exploited. All decisions would be undertaken with full understanding of the legal consequences. It is an awesome vision, yet perfectly within the possibilities of the elastic definition of "need" when applied to legal services.

Usage of lawyers is a much more measurable and objective event than the estimate of need. Usage of lawyers by 90% of our population is extremely low in comparison with the usage made by business entities and the top 10% of individuals in our population. The amount of use by the poverty group (lowest 20%) has increased substantially during the past five years as more lawyers have become available through expanded legal aid and legal service programs. If comparative studies existed, they would probably show that the lowest economic grouping in our population now enjoys fuller legal services than the "near poor" and probably fairly far up the middle income scale. Use of lawyers by the public depends upon a number of factors: ability to perceive what is a problem in which the services of a lawyer would be essential or helpful; ability to pay for services; ingrained habit patterns or life styles that militate against or inhibit use of lawyers.

Demand for legal services by the public arises after there has been a perception of need for legal services by the individuals seeking such services—from the "grass-roots level"—or from leaders of groups who are convinced of the need for such service to their members. Even with scientific surveys it is sometimes hard to hear the voice of the grass-roots consumer.⁵ The voice of the leadership of group organizations is becoming increasingly clear and articulate about their desire for increased legal services for their memberships.⁶ Trade union interest and demand is increasing daily, and the national interest of AFL-CIO is reflected by the recent publication of a comprehensive article on prepaid legal services in their official publication, *The American Federationist*.⁷ In addition to the trade unions, there is a growing demand for legal services from teacher associations, employee associations (at state, local, and federal

levels), cooperatives, student groups, and credit unions.

B. Research Data on Usage

One of the reasons that prepaid plans have not sprung up more quickly in response to the growing demands for such systems is that practically no data existed on the legal needs of middle class groups or on the frequency of use of lawyers by these groups. The surveys or studies that did exist had various flaws: the groups were too small; the research methodology left something to be desired; they related to special groups like servicemen or clientele of legal aid and legal service programs. In his necessarily brief survey analysis of the legal needs of the public, Professor Preble Stolz sadly concluded that "It is surprising that in this age of market research and opinion polls we know so little about the public's need for or use of legal services."⁸

As a result of these actuarial unknowns, plan designers have had to squeeze the most possible out of data at hand; use data about legal aid and servicemen groups; ponder the meaning of court administrator reports, and then jump into the icy water with something less than staunch actuarial conservatism. Ralph Jackson, the actuary and designer of the Shreveport plan, noted, "Accurate figures on the need for legal services and the use of legal services in relation to availability are practically nil . . . An actuarial projection with a 200% margin for error would generally be considered meaningless for planning purposes. We can only plead that this represents the approximate range of ignorance on this subject that exists in the present state of the art and reflects the inherent uncertainties in this preliminary study."⁹ His statement was made in the throes of designing the Shreveport plan. It reflects an honest appraisal of the limitations of the actuary's mystic powers in the data-less world of prepaid legal services.

The ABA Special Committee on Availability of Legal Services had noted this lack of data and urged that there be further exploration and experimentation with systems of prepaid legal service. A subcommittee of the Board of Governors did follow through and was able, with the help of the Ford Foundation and American Bar Endowment, to launch two projects: one at Los Angeles and one at Shreveport.¹⁰ At the same time, the Ford Foundation funded an American Bar Foundation effort to do an intensive evaluation of the Shreveport operation. Before operations began in January,

1971, a research team interviewed all members of the union and about 37% of the lawyers in Shreveport. They developed a "Before" profile on attitudes towards lawyers and usage of lawyers. After one year's operation concluded on January 22, 1972, they completed an intensive "After Plan" picture. A report on some of their preliminary observations and conclusions will be given at the National Conference.

Although small in size and perhaps having some atypical characteristics, Shreveport is the *only* plan of prepaid legal services about which data is freely available. The members of Laborers' Local 229 and all the lawyers in Shreveport have made themselves available for inquisitive evaluators and examiners. It is open to the scrutiny of the world and has received attention from Canada, Great Britain, the Netherlands, and South Africa, as well as all 50 states, the Commonwealth of Puerto Rico, and Guam.

To gain broader insights as to the legal needs of the public, the ABA Special Committee to Survey Legal Needs has been created and will try to develop a broad overview of the legal needs of the public. Its efforts should add to the skeletal body of knowledge that we now have on the overall needs of the American public for lawyers. In addition to this Special Committee, the ABA Section of General Practice is exploring the amount of group legal service activity now prevalent in the country, and the ABA Section of Insurance, Negligence, and Compensation Law has recently appointed a Committee on Prepaid Legal Services that will add further work effort towards understanding the needs of the public and the response of the profession to such needs.

C. The "Drop Out" Client Unserved by Programs of Legal Assistance to the Poor

In the 1870's, programs of legal assistance for German immigrants in New York and for worthy women and children in Chicago were established, and in time they became the New York Legal Aid Society and Legal Aid Bureau of United Charities in Chicago. Although statistics of early operations are not available, it is probable that from their inception they had to reject "ineligible" clients who came to their offices for legal help.

The principal criterion for eligibility is the locally determined limit of income to the family unit seeking legal assistance. If the client is under the figure, he can be served; if over, he must be referred to a private attorney and

pay a normal fee. The scales of income range enormously, depending on living cost needs in rural or large metropolitan settings. Unless extremely extenuating circumstances are found, few offices in the United States would serve families with incomes of over \$5,000 per year. Clients are also rejected if the case is fee-generating and, in most cases, if it is a criminal matter. Defense of indigent accused is usually in the hands of a public defender or assigned counsel.

Since the Legal Services Program of the Office of Economic Opportunity began in 1965, these systems of legal aid and legal service offices have grown immensely to a present dollar expenditure of \$75 million annually. 80% of the funds are from OEO with small percentages from the Department of Urban Development and the Department of Health, Education, and Welfare. About \$46 million annually is spent on public defender systems, and most of those funds are from local county budgets. It should be noted that in some large metropolitan areas, well over 65% of defendants accused of felonies are represented by the public defender.

These programs for the poor provide good listening posts as to the number of "near poor" and middle class Americans who try to obtain legal help, but can't because they are a few dollars "above scale." In some offices, particularly those that are in downtown areas where a flow of clients with differing incomes might be expected, there are turn-down rates as high as 25%. Such clients are referred to a theoretical resource of a lawyer referral plan or some other system designed to try to obtain legal help for them. Yet the downtown office of one major city noted that 40% of ineligible clients referred to a bar association office "never made it around the block." There could be a number of explanations for this "drop out," of course, but it does occur now as part of the present system. And it occurs at two stages: the initial referral from the poverty office to the lawyer referral system, and within the lawyer referral system itself in finally obtaining the services of a lawyer to assist a perhaps scrubby and certainly footsore client.

D. Consumer Protection Needs of the Average American

Within the past few years there has been a marked increase in "consumerism" and need for consumer protection in the Madison Avenue marketplace of America. Due in great measure to the efforts of poverty lawyers and

other special emphasis groups such as the NAACP Legal Defense Fund—plus the broadening entry of public interest law firms—consumer law is changing rapidly and even ascending to constitutional dimensions of due process. The unwary "emptor" is being surrounded by protective substantive law decisions. A lawyer can now help a client utilize these newly emerging decisions. He need no longer answer "You must settle or pay because it's all in the fine print." Therefore his availability is more meaningful to the average consumer, since his counselling and argument may now spell total victory rather than the discounted settlements of times past.

In addition to substantive law changes and possible successful litigation in the courts, the past five years have been ones of growth for many administrative agencies devoted to consumer concerns and protection, both at the state and federal levels. A lawyer can be helpful to a client in weaving through the occasional intricacies of such agencies and utilizing their cooperative efforts fully on behalf of a consumer client.

IV. Group Legal Service Plans Using Closed Panels of Attorneys

As indicated earlier, group plans are often thought of as union plans and ones served by one lawyer or a narrowly preselected panel of lawyers. There is considerable development now of these closed panel plans both within trade union groups and outside of the unions. The newer plans are planned to offer, and are offering, a broader range of personal legal services in comparison to the older plans that were often limited to employment related matters only.

A. The Plan of Amalgamated Clothing Workers, Chicago

At the ABA-UCLA conference at Los Angeles, Murray Finley, manager of the Chicago Joint Board of ACW, gave the following background and history of their projected plan:

Recession conditions affected the Clothing Workers in 1969, and ACW then established a social service department to help workers with advice on personal problems and with referrals to local community resource agencies. That department reported that about one-third of the problems of members were legal in nature and on matters that were not job-related. The union leadership quickly perceived a need for a broad program of legal service, not one solely related to employment problems.

The union was aware that Section 302 of the Taft-Hartley Act did not permit the program as a jointly trustee plan. They were also worried about possible attack by the bar associations under the ethical canons. They finally decided to fund the plan by voluntary payroll deductions to a supplementary insurance program already in existence. ACW had previously established its own insurance company to allow its workers to contribute a small supplementary payment for full medical and health protection that filled out the gaps in benefit coverage provided under collective bargaining.

To price the program, ACW knew that prior experience dictated they start small and work up. It was thought that members would sign up for a 50¢ a month program. Obviously, the benefits available would be minimal at the beginning. With 12,000 active and 3,000 retired members, they projected a signing up of between 8,000 and 9,000. That enrollment would produce only \$48,000 to \$54,000 per year. With this limited fund, ACW felt it was impracticable to provide legal services other than through one law firm. In finding this firm, they looked for lawyers who had expertise in the area of personal legal problems (consumer, domestic, landlord-tenant), and who would have a "sympathetic understanding of the nature of people who would be coming in to them." Their own corporate law firm did not fit these requirements, and a firm of young lawyers has been chosen.

Benefits will be limited to civil matters. Initially, criminal cases and traffic offenses will be excluded. The plan will not be able to handle cases involving protracted litigation or appeals. Out-of-pocket costs and filing fees will be paid by the member. The social service department will screen requests for service and refer only those requiring the skills of a lawyer. Within these limits the plan will, however, attempt to handle a broad range of personal legal problems. If the first year is successful, the contribution can probably be increased to \$1 per month and benefits expanded.

The plan has been discussed with their delegate bodies and interest has been definitely growing. Mr. Finley sees the use of lawyers as an educational process, requiring time. Utilization will grow, but ACW hopes not so rapidly as to break the bank at the beginning.

Mr. Finley urged that bar associations help speed up the process of making competent legal service available to millions of Americans who are able to pay only through collectively

bargained programs. He assured the conference that the lawyer-client relationship would remain intact throughout future developments—just as the doctor-patient relationship has remained free of interference in the many health and medical plans now operating.

7,000 members of the ACW had signed up by March 1, 1972, and the plan is to begin on April 1. A report on its first stages of operation will be given at the National Conference.¹¹

B. The Plan of Laborers' Local 423, Columbus, Ohio

On March 1, 1972, Laborers' Local 423 at Columbus, Ohio, announced the formation and beginning of a broad-ranging plan of legal services for its 2,600 members in the area. Offices for the plan will be housed separately from the union office. The plan will retain a full-time staff lawyer, aided by a panel of selected attorneys for specialized matters, and also aided by consultants, paraprofessionals and law students. They expect to use the most modern law office procedures to reduce the cost of operations. They also will conduct seminars to familiarize their members with the plan and to promote the preventive use of law to help avoid common problems and pitfalls.

A report of operations of this plan will be given at the National Conference by the director of the plan. The full plan is also included in this report.¹²

C. The Consumers' Group Legal Services Plan of the Berkeley Cooperative

Apart from the now-broadening plans of trade unions in their offerings of legal services on a closed panel basis to union members, there are many non-trade-union groups adopting this same approach. One such plan is the Consumers' Group Legal Services, Inc. of the Berkeley Cooperative. Whereas most union plans require 100% participation of the group, the Berkeley plan is one of voluntary enrollment. The plan offers two consultations with a full-time staff attorney, access to a closed referral panel at a schedule of fees less than prevailing charges, and participation in the program's continuing education and preventive law sessions. The cost is \$25 per fiscal year. As of March 1, about 700 members of the Co-op had voluntarily enrolled, and usage was high—with about 15 persons per week availing themselves of the consultative benefit. It has been in operation since October 15, 1971, and a report of its experience will be given at the National Conference.¹³

Besides cooperative organizations, there are many other non-trade-union groups that are considering plans of expanding coverage of personal legal problems to their memberships on a closed panel basis. Some of these are teachers' organizations,¹⁴ employee organizations,¹⁵ student groups,¹⁶ credit unions,¹⁷ and specialized employee groups such as policemen and firemen.¹⁸

D. The Prevalence of Group Legal Service Plans

Should group plans of broader legal services than employment related matters develop mainly into closed panel arrangements, the lawyer most affected would be the general practice lawyer. Since the development of prepaid legal services has such impact, the ABA Section of General Practice is extremely concerned in following the direction of future developments in this field. Its Committee on Group Legal Service has begun a survey to determine the extent of group legal activity, and the usual connotation is that this activity presupposes a closed panel of lawyers — so that measurement of such activity can afford the Section some guidance for its members. This survey is not complete, but a review of some of the initial reactions will be given at the National Conference.

V. Prepaid Legal Service Plans Using Open Panels or Free Choice of Attorney

A. Bar-Sponsored Not-For-Profit Corporation

The two pilot projects sponsored by ABA and supported by the Ford Foundation contemplated plans in which all or a voluntarily enrolling portion of the profession could participate. Shreveport has been the first to begin operations and it has organized a not-for-profit corporation as the entity to oversee and administer the plan of legal services in its community.¹⁹ Los Angeles presently plans the same type of organizational structure. Similarly, the State Bar of California will design its structure along these same lines. Thereby, there will be professional input and control of the function of dispensing the professional services of lawyers in the community. The State Bar of California is considering the articles and bylaws of the California Dental Services as a possible model.²⁰ So designed, the lawyers participating in the program will control the administration of the operating services. All plans provide for the input and participation of the consumer groups that are served by the program.

All of these bar-sponsored plans provide for free choice of lawyers. In the smaller community of Shreveport, 100% of the some 250 lawyers in active practice are available to any members of Laborers' Local 229. In the Los Angeles area, a voluntary signing up of lawyers is expected to produce a panel of at least 500 lawyers out of some 16,000 lawyers practicing in Los Angeles County. The plan of the State Bar of California also contemplates a signing up of lawyers throughout the state. Their report indicates that a "substantial" number is needed. The number needed to provide service will obviously depend upon the number of groups who are to receive service and the geographic areas in which the clientele is located.

In the Los Angeles and California plans, it is the participating lawyers who are basically the guarantors of provision of service. Under the comprehensive coverage provisions of the Los Angeles plan, lawyers would receive fixed fees for certain scheduled services. However, if the plan ran out of funds, the lawyers might have to accept pro rata amounts or wait for an extended period for their fees. The California plan also provides that the participating lawyer may look only to the "corpus of the funds" in the corporation's treasury for payment.

B. Bar-Sponsored Program in Conjunction with Blue Cross/Blue Shield Organization

The New Jersey State Bar Association is exploring a new approach: a joinder with an existing Blue organization to add legal services into current plans of medical and dental services. The not-for-profit structure of the Blue plans plus the existing resources of administrative expertise make the arrangement an attractive one.

The lack of sufficient actuarial data still makes it difficult to price any offering of legal services. Therefore, no cost or schedule of benefits has yet been set. Payments to lawyers will be at their usual and customary fees. A separate corporation for the legal service component is planned, with professional control of the operating entity.

The plan would allow free choice of lawyer. A report on current developments of this plan will be given at the National Conference.²¹

C. Commercial Legal Insurance Plans

In 1969, no insurance company contacted by the American Bar Association showed any interest in plunging into the unknown waters of legal service coverage. CNA/Insurance of Chicago did generously help ABA by having

a task force from their company analyze and appraise the original design for the Shreveport plan. However, because of the many actuarial uncertainties, they did not think it feasible for an insurance company to enter the field at that point.

During these past six months there has been a continuous flow of inquiries from many carriers, not to mention brokers and agents. At the Los Angeles conference in November, 1971, the consensus of insurance representatives present seemed still to be: "Let some brave loss leader take the first step." Certainly some companies were designing policies and gearing up, but no public announcements were being made.

In March, 1972, the first group policy offering was filed with the Insurance Commissioner of Alabama. That offering will be discussed at the National Conference.

Except for the Shreveport data, there are still no wide testings of the public to determine any likely frequency of usage of a plan of prepaid legal services. However, there are several factors which may contribute to the new interest and action of the insurance industry on this front. One is the slow but certain movement of National Health Insurance. Such federal plans could force the retirement of the private carriers from this field and impel them to replace lost revenues with new offerings such as legal service insurance. Many brokers, including the largest, have sensed a new group market and are urging the companies to underwrite such plans. After due consideration of the known experience, slight as it is, the conservative judgment of insurance actuaries may be acknowledging that the field is not as risky as it appeared at first blush.

D. Private Plans Allowing Free Choice of Attorney

1. American Legal Aid, Inc.

A unique type of plan is found in American Legal Aid, Inc., of Casper, Wyoming. Gross amounts of legal expense are covered according to *type of work task* (e.g., out of court consultation—\$150) or *court forum where action is tried* (Justice/Municipal—\$250; District—\$1,000; State Supreme—\$2,000; U. S. Supreme—\$3,000). Members are voluntarily enrolled as club members at a cost of \$29 per year. All club memberships are sold by direct door-to-door selling, and applicants are carefully screened to avoid enrollment of a litigation-prone member. About 4,000 memberships have been sold. The operation is now under a

temporary injunction against doing further business until it is determined whether it must qualify as an insurance company. The plan excludes taxes, pre-existing conditions, domestic relations, use of drugs or alcohol cases, probate, or actions on behalf of a commercial enterprise. The plan allows free choice of attorney. American Legal Aid, Inc., has operated for some two years and will make a report on its operations at the National Conference.

2. Legal Defender, Inc.

The first private plan of prepaid legal services was that designed by the predecessor organizations to Legal Defender, Inc., of San Diego. The interest of this group was to devise a plan that would offer a broad variety of services and be adaptable to greater or less amounts of coverage, depending on the number of dollars available for a prepaid legal benefit. The plan offers some \$2,500 worth of coverage at a cost of 6.5¢ per hour, and is structured with fixed dollar amounts allowable for various legal services.²² With a relative value percentage table, the amount of benefit can be scaled up or down in accord with the amount of dollar input. The firm is an administration firm and interested in performing these services, but it had to design plans in order to try to market its administrative services. The current operations of this plan will be discussed at the National Conference.

VI. Problems of Regulation and Supervision of Prepaid Legal Service Plans

It is clear that activity which may in time involve millions of Americans both invites and requires regulation by someone. A number of groups might exercise such regulation: the bar and the courts, the state insurance commissioners, the state attorneys general. Besides these offices at a state level, federal agencies may also assert an interest. Amending legislation has again been introduced to change Section 302 of the Taft Hartley Act so that legal services are a permissible fringe benefit. Therefore, the Department of Labor would have an interest in the field as it affects national labor unions. In some states, service plans are specially categorized, exempted from insurance regulation, and placed under the supervision of the attorney general. The Knox-Mills Act of California is one example.²³ Most of the state insurance commissioners will regard these plans as insurance, and, therefore under their regulation. And the bar and the courts will

continue their scrutiny of the professional conduct of lawyers.

A. Regulation by the Bar Under Rules of Professional Conduct

The keystone of regulation by the Bar is Disciplinary Rule 2-103 of the ABA Code of Professional Responsibility, now adopted in substantially identical form by 48 states.²⁴ The rule was written to control group legal services and there is the usual implicit assumption that group arrangements are closed panel arrangements. At the time of its adoption in 1969 it was the subject of heated discussions within the American Bar Association. In its pure form it does not require a reporting of group arrangements to the bar association. In adopting the Code, the states of Florida, Missouri, and Oregon have modified DR 2-103 to require such reporting. California and Washington have rules that require reporting, but the content of California's Rule 20 and Washington's newly adopted version of DR 2-103 are quite different than the original ABA Code.²⁵

Thus far there has been only one interpretation of DR 2-103 by a state committee on professional ethics.²⁶ That opinion was issued before the recent U. S. Supreme Court case of *United Transportation Union v. State Bar of Michigan*, 28 L. Ed. 2d 339 (1971). Critics of that opinion consider that the *UTU* case overrules the New York opinion. However, a recent disciplinary case decided by the Supreme Court of Missouri, *In re W. A. Sale* (No. 57459, decided February 22, 1972), would seem to construe the matter otherwise.²⁷

The power of the Bar to regulate prepaid legal services does pose a need for further definition of what conduct is within the purview of the Bar and what conduct is protected by the U. S. Supreme Court's interpretation of First Amendment guarantees.

A regulatory system by the Bar would also require attention to the need of regulating open as well as closed panel systems. Not all open panel plans are bar sponsored, and there is a growing proliferation of such non-bar-sponsored plans. Those private planners who are trying to make a legitimate offer of value to the public are anxious that there be some regulation to control "fast-buck" schemes that will discredit the whole concept of prepaid legal services with the public.

B. Regulation by Government Officials

The state insurance commissioners will certainly consider that they have jurisdiction over

most prepaid plans on today's drawing boards. Most plans are structured like insurance offerings, although there are differences that can be argued as taking this form of benefit out of the realm of insurance. In states like California, current legislation that defines prepaid health plans as not "insurance" could be amended to classify legal plans in such a non-insurance category. If so, regulation would be under the state attorney general.

Footnotes

1. In the ACW plan, the initial contribution rate is 50¢ per month per member. Thus far, 7,000 individual members out of a total active and retired membership of 15,000 have signed up for the plan. In the Laborers' Local 423 plan, a portion of the dues collected from the active members is set aside in a legal service fund from which payment for services is made. Further details can be obtained from Murray H. Finley, Manager, Chicago Joint Board, Amalgamated Clothing Workers of America, 333 South Ashland Blvd., Chicago, Illinois 60607; or from Victor I. Smedstad, Director, Laborers' Local 423 Legal Service Plan, 71 East State Street, Columbus, Ohio 43215. See Appendices II and III of this Special Report for descriptions of each of these plans. Reports on current operations of the plans will be made at the National Conference.

2. This full report is reproduced as Appendix VII of the *Revised Handbook on Prepaid Legal Services*. Individual copies of the report are available to members of the State Bar of California from Robert Becker, Esq., State Bar of California, 540 Van Ness Avenue, San Francisco, Calif., 94102. A limited supply of single copies is also available from Division of Public Service Activities, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

3. Since the design and operating procedures of its projected plan are quite different from the plan in use in Shreveport and the plan to be offered by the Los Angeles County Bar Association (full plan descriptions of the foregoing can be found in Appendices II B and III C of the *Revised Handbook on Prepaid Legal Services*), the plan of the Century City Bar Association (northwest part of Los Angeles County) is reproduced in full as Appendix I of this Special Report.

4. Legal Defender, Inc., 3511 Camino Drive, San Diego, Calif. 92108 (formerly known as Nationwide Coordinators, Sacramento) and American Legal Aid, Inc., 311 South Center Street, Casper, Wyoming 82601.

5. However, a grass-roots survey was conducted by the California Teachers Association in January, 1971, of 5,000 teachers in the Los Angeles area, randomly selected. The 2,235 responses received within a 30-day span—the promptness of response and percentage being some index of interest in and of itself—showed that 23.0% were not interested in a plan of prepaid legal services at any cost; 41.6% were sufficiently interested to pay \$1 to \$3 per month for such a plan; the remaining 35.4% were willing to pay more than \$3 per month for a plan of legal services. The survey questionnaire did not indicate how broad the legal coverage might be, so that the responses should be viewed as a generalized reaction to the thought that some kind of legal service plan would be helpful. The full results of the survey may be found as Appendix III E of the *Revised Handbook on Prepaid Legal Services*.

6. In announcing the plan of legal services on March 1, 1972, for the members of Local 423 of the Columbus, Ohio, Laborers' Union, the regional manager, Thomas J. Arconti, pointed out that "the well-to-do and the very poor in the United States now have access to legal representation—the rich because they can afford to retain top attorneys, and the indigent because of the availability of legal services financed by federal, state and sometimes local governments. . . . But adequate counsel frequently is beyond the means of an estimated 150 million moderate-income Americans, who include the vast bulk of union members. This is the prime reason the Laborers have decided to enter the area of prepaid legal services." The Business Manager of Local 423 stated that: "In the past our members have not obtained legal services they have needed because they first don't know how to contact an attorney and also because they are fearful that they can't afford a lawyer. As a result, they have too often allowed their problems to go by default, thus forfeiting their legal rights. Under our plan, we hope to correct this situation." The press release very importantly noted that "The plan will keep detailed records of its operations, costs, frequency of use, and the kinds of legal problems it handles . . . and these statistics will be made available to help unions, bar associations, insurance companies, actuaries and others who are now actively studying the feasibility of such programs."

7. "Legal Services as a New Union Benefit," John A. Grimes, pp. 16 to 21, *The AFL-CIO American Federationist*, January, 1972.

8. Preble Stolz, "The Legal Needs of the Public: A Survey Analysis," *Research Contributions of the American Bar Foundation*, 1968, No. 4, at p. 14. This brief 14-page paper contains a review of all the then known sources of information. One later article should be noted: "The Social Organization of Legal Contacts," by Leon Mayhew and Albert J. Reiss, Jr., *American Sociological Review*, Volume 34, No. 3, June, 1969, pp. 309 to 318. It is a study of 708 residents of the Detroit Metropolitan area. The data being developed from Shreveport operations by the administrator and the American Bar Foundation will, of course, have relevance. The February 28, 1972, report of Southwest Administrators on Shreveport is to be found as Appendix II H of the *Revised Handbook on Prepaid Legal Services*. Part of a preliminary study by ABF is reproduced as Appendix II G of the *Revised Handbook*.

9. See Appendix II A of the *Revised Handbook*, Chapter V on "Actuarial Estimates."

10. The current Shreveport plan is reproduced as Appendix II B of the *Revised Handbook*.

11. See Appendix II of this Special Report.

12. See Appendix III of this Special Report.

13. Excerpts from a brochure describing its services follow:

The following series of questions and answers has been prepared to help Co-op members become acquainted with this new service

What activities will the Group perform?

Major function of the Group will be to provide legal services to its members. A staff attorney will provide legal advice; more complicated legal problems will be referred to a member of the group's panel of attorneys. Other activities will include preventive law and educational programs.

Who may be a member of the Group?

Any member in good standing of the Consumers Co-

operative of Berkeley may become a member of the Group upon approval of his or her application and payment of the annual dues.

How much does membership cost?

Dues are \$25 per family group per fiscal year if membership begins in the first six months of the fiscal year; \$15 per family group if membership begins in the last six months of the fiscal year. All memberships expire on the last day of the fiscal year, which is the Saturday nearest to October 1.

What do I get for my membership fee?

Membership includes the right to two free consultations with the staff attorney (or other group attorney), access to the Group's referral panel at guaranteed fees, and participation in the Group's continuing education and preventive law programs.

What is a "consultation" and what is its purpose?

A "consultation" is essentially an opportunity to talk with an attorney about some problem you may have. It is a good opportunity to get legal advice on such matters as buying or selling a home or automobile, leases or purchase agreements, or to learn one's legal rights in a given situation. Minor legal problems, which can be resolved by a letter or telephone call by the attorney or by a discussion with him of the law and procedures involved in the case, also fall within our definition of "consultation." Any unused free consultations remaining at the end of the membership year will be carried over to the next year.

What happens if my problem cannot be resolved by consultation alone?

Persons having legal problems which cannot be resolved through consultations will be referred to an appropriate attorney on the Group's panel. Each Group attorney has been selected for professional competence and experience. A client has a right to refuse an attorney and request that another assignment be made.

What is a fixed fee schedule?

The Group has negotiated fees that are much lower than those commonly charged. Equally important, Group members know in advance specific fees for specific services.

Can the fixed fee schedule be changed?

Your annual dues guarantee the fee schedule in effect until the end of the membership year.

* * *

14. The Teacher groups throughout the United States have been very interested in the development of broader plans of legal services for their members. Those who have indicated such interest to the ABA include groups from California, Florida, Illinois, Maryland, Michigan, Ohio, Nevada, and New York. Undoubtedly others are also interested. In its group (a closed panel using 23 lawyers/law firms), the California Teachers Association spent some \$70,000 for legal fees to lawyers aiding teachers in employment-related matters. The expenditures of the Classroom Teachers Association in Dade County, Florida, for a broader consultation plus lower fee arrangement on a broader spectrum than employment, is not known. Usage of the plan there by the 7,500 members was lower than expected—with no certain explanation of the reluctant non-usage. Teacher groups, because of higher income levels and consequent property concerns, plus their higher level of sophistica-

tion about using and approaching lawyers, are an allegedly dangerous group in terms of using legal services.

15. Employee groups are also high in interest in prepaid and broader plans. Groups in New York and Los Angeles are distinctly planning programs. A recent press story indicates that a Pennsylvania group is actively bargaining for this benefit from the Commonwealth.

16. Heretofore, most student groups have been oriented to the needs of the students who were "busted"; however, a number now are trying to serve the overall personal needs of this large group in our society. An example of one such group is the College Legal Clinic, 1231 East Chapman Avenue, Fullerton, CA 92631. It has been trying to enlist the support of the local lawyer work force in its plan by the following invitation:

"The College Legal Clinic, a non-profit corporation, was organized in April of 1971 to combat the alienation and ignorance among the college students in this county with regards to the legal system. In the past, the student class remained fairly exempt from most types of legal problems. Times, however, have changed and students today are a more integral and less isolated part of society and are constantly faced with legal problems. Additionally, with the passing of the Eighteen Year Old Adulthood Act, by the California Legislature, more and more young students are going to find themselves in need of understanding the legal avenues open to them.

"The College Legal Clinic, currently serving eight (8) college campuses in Orange County with seventy-thousand (70,000) students, is particularly concerned with the cost of legal financing for college students. According to recent research, college students, in Orange County, average a mere \$2,000.00 per year per student in wages. That amount is substantially below the poverty level as established by the Office of Economic Opportunity. However, due to the fact that they are students they have great difficulty in being able to finance legal problems. Many times students, wishing to obtain adequate legal counsel, are forced to sell their meager possessions and drop out of school, thereby possibly forever jeopardizing their academic future. An alternative to dropping out of school is pleading guilty, regardless of innocence or guilt, so legal counsel does not have to be obtained. The subsequent feelings of these students are quite bitter and hostile, and the legal system suffers directly.

"Because of these concerns the College Legal Clinic is establishing a Group Legal Services program. The clinic wishes to establish its own list of standard legal fees on behalf of the college students it serves. Enclosed you will find a copy of the proposed standard legal fees we wish to initiate.

"We are attempting to seek attorneys to assist us with this legal program. We would desire your cooperation in our preventative law educational program as well as agree [sic] to accept referrals from the clinic and charge our student members according to the enclosed fee schedule.

"It would go without saying that all of the provisions of Rule 20 of the Rules of Professional Conduct would be complied with, specifically that the College Legal Clinic will not, directly or indirectly, derive a profit from, or receive any part of, the consideration paid to the member of the State Bar for the rendering of legal services thereunder. Furthermore, the College Legal Clinic will operate in strict compliance with all of the regulations of the State Bar."

PROPOSED LEGAL FEES/GROUP LEGAL SERVICES PROGRAM

1. To enter a plea of guilty	50.00
2. Traffic and arraignment	100.00
3. Misdemeanor (plus 1st day of trial)	250.00
for @ additional day in trial	85.00
4. Felonies (including preliminary hearing) ..	250.00
* 5. Felonies (preparation for trial plus 1st day in Ct.)	250.00
6. Drunk driving (plus 1st day of trial)	250.00
for @ additional day in trial	85.00
7. Unlawful detainer	100.00
* 8. Paternity	200.00
* 9. Divorce/Dissolution	175.00
* 10. Divorce/Dissolution with child custody	400.00
11. Bankruptcy (one person)	165.00
(two persons)	225.00
12. Juvenile matter	150.00
13. Contingency	33%
14. Counseling fee (by the hour) (max.)	25.00
(min.)	10.00

* each additional day in trial assessed at the rate of \$125.00 per day

17. Credit union groups at Baltimore and Los Angeles have recently shown interest in a prepaid plan of legal services for members. Whether such a plan is permissible under state or federal regulation of their activities has not yet been decided. There are some 13,000 credit unions organized under federal enabling statutes, and there are about an equal or greater number organized under state statutes.

18. One of the first groups to have a job-related plan were the policemen in New York City. Now these groups are moving towards broader plans: Los Angeles, Washington (D.C.), San Jose (California) are some examples.

19. See Appendix II D, *Revised Handbook*, for articles of incorporation.

20. See Appendix VII A, *Revised Handbook*, for reasons behind committee's recommendation that this structure be adopted.

21. Extracts of report by Emanuel A. Honig, Esq., to Francis J. Bolduc, Executive Director, New Jersey State Bar Association.

* * *

While the Committee on Availability of Legal Services may be the appropriate standing committee to administer further consideration of the program, the trustees will have to supervise all aspects of the studies and may find it desirable to appoint a special committee or committees with respect to various phases of the matter. These problems include the following:

1. It may be necessary to secure enabling legislation to authorize Hospital Service Plan of New Jersey or such separate corporation as it may desire to organize, to administer the plan. Blue Cross heretofore conferred with Commissioner Robert Clifford and obtained an informal opinion from him that legislation may not be requisite. Mr. Fairty and I feel that, if it is at all possible, an attempt should be made to initiate a plan without special legislation, even though a voluntary effort to procure such legislation may be justified at a later date. We share this view because any attempt to secure legislation may be protracted and may delay our program. Thus, for example, the recently established dental program was delayed for a number of years because of difficulty in securing approval of an enabling

statute. I suggest that we confer with Commissioner Clifford for his advice in the matter.

2. Probably the single most difficult issue to resolve will be acceptance by the Bar of the limitation respecting the fees which they will receive under the plan. It is contemplated that Blue Cross (this name will be used throughout to designate the proposed carrier) will pay "usual and customary fees" so that lawyers can bill on the basis of normal charges. However, there will be a ceiling which the governing body of the organization will fix so that when a bill exceeds this amount the attorney in question will be informed that his bill exceeds limitations and he will be asked to consider whether or not he is prepared to resubmit a bill in a lower amount. The precise amount of the fee fixed by the ceiling will not be disclosed, for obvious reasons. If an attorney refuses to accept the limitation, he will be severed from the panel of participating attorneys. Obviously, great care must be exercised in obtaining acceptance of this concept within the Bar.

It is also possible to offer an optional program under which the plan will pay up to the maximum fee fixed by the ceiling, permitting the attorney to bill the client for any excess. A decision will have to be made respecting the advisability of such a policy. In my view, the Bar would be well advised to avoid such an alternative.

3. In order to qualify the plan, it appears that Blue Cross will have to provide the necessary reserves required by the Department of Insurance. There is some question concerning the nature of the plan as insurance coverage because it is contemplated that benefits will be paid directly to lawyers rather than to members. However, if a separate corporation is to be organized, reserves would be required. This is a problem for Hospital Service Plan of New Jersey to resolve but I am informed that they feel they have the authority to invest in other corporations and subsidiaries. We must merely understand that the resolution of this problem will be prerequisite to the establishment of a plan.

4. Hospital Service Plan of New Jersey contemplates that it will be advisable to establish a new corporation to operate the plan. This may be a subsidiary of Hospital Service Plan of New Jersey or other corporate structuring may be undertaken, the details of which need not be discussed at this time. However, a name must be developed for the plan and it is our feeling that a symbol such as "Blue Cross" must be devised. We discussed this with Mr. McAlpin because we all feel that some uniform nationally recognized symbol or trademark should be used to give the program national scope. Since no one else is working on a plan, no decision has been made in the matter, although a number of names have been suggested. It will also be necessary to work out details respecting the composition of the board of the corporation. We must resolve the question whether the Bar Association desires to designate lawyer representatives or whether it would be preferable to have lawyers individually named. We do feel that the president of the State Bar Association should automatically be a member of the governing body. Obviously, also, careful consideration must be given to the selection of representatives from other sectors of the public and it seems apparent that organized labor will want to participate actively. We have also discussed the desirability of having the State Bar Association act as an advisory committee or board to the governing body of the corporation.

5. The immediate problem will be to devise a return structure and a schedule of benefits. There is little actuarial experience available as a guideline at the present moment, and to a large extent Blue Cross will have to pioneer the field. Considerable help is available from the pilot projects now under way and this will be made available to us if we desire. However, it is in the field of schedule of benefits that Blue Cross will most need our services and advice. Immediate consideration should be given to the enlistment of a group of experienced lawyers to assist in this phase of the project.

6. Mr. Fairty cannot presently give any indication as to the time which would be required to implement the program so that the legal service plan can be put into operation. Certainly it will take a considerable period of time to do all of the planning work and we must commence immediately, if we are to meet our lead time requirements.

7. Edward B. McConnell, the Administrative Director of the Courts, has reviewed my original report and has advised me by letter that we should seek a formal opinion from the Advisory Ethics Committee of the Supreme Court respecting the validity of a prepaid legal service project. I suggest that such an opinion be solicited officially by the Committee on Availability of Legal Services at the same time as it seeks reconsideration of a prior opinion declaring that a system for financing legal services through promissory notes discounted by banks is impermissible.

8. Apart from this plan, there are implications in the prepaid legal services movement which will have serious consequences for the practice of law in our state. It appears that in many other states private programs are being organized either by bar associations on the same pattern as the Shreveport and Los Angeles programs or along differing avenues as diverse as the imagination of their sponsors can conceive. It also appears that private insurance carriers are getting into the field and we discussed with representatives of some states the probability that at least one or two insurance companies would file a plan within the next sixty days. Likewise group legal service concepts are surfacing which contemplate providing prepaid legal services to groups, particularly to labor unions, teachers associations, etc. Theodore Meth was at the conference on behalf of a Carpenters Union, which he represents in New Jersey, and he indicates that he is about to organize a group legal service program for such a union in New Jersey. The decision of the United States Supreme Court in *United Transportation Union v. The State Bar of Michigan*, 401 U.S. 576 (1971) makes it clear that group legal services will no longer be limited to a format under which the services are incidental and directly related to the employment of the member. This poses serious problems with respect to the practice of law which the trustees must now consider.

I strongly recommend that we urge the Supreme Court to adopt a rule requiring all lawyers who are engaged in group legal service representation to register with the court, similar to Rule 20 adopted by California, where the group legal service projects may create serious problems with respect to the Code of Professional Responsibility.

Because Mr. Meth is directly interested in the program, I am taking the liberty of sending a copy of this report to him and I will suggest to Mr. Debevoise that he invite Mr. Meth to the next meeting of the Committee on Availability of Legal Services.

9. The Trustees should also give consideration as to how further publicity should be given to the project in the future.

Sincerely,
Emanuel A. Honig

Dated: February 7, 1972

* * *

22. This plan is summarized in Section III of the *Revised Handbook* as Plan B.

23. See Appendix IV B of *Revised Handbook*.

24. DR 2-103 Recommendation of Professional Employment.

(A) A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.

(B) Except as permitted under DR 2-103 (C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client.

(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.

(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

- (1) A legal aid office or public defender office:
 - (a) Operated or sponsored by a duly accredited law school.
 - (b) Operated or sponsored by a bona fide non-profit community organization.
 - (c) Operated or sponsored by a governmental agency.
 - (d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.
- (2) A military legal assistance office.
- (3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.
- (4) A bar association representative of the general bar of the geographical area in which the association exists.
- (5) Any other non-profit organization that recommends, furnishes, or pays 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:

- (a) The primary purpose of such organization do [sic] not include the rendition of legal services.
- (b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.
- (c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.
- (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.

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

25. See Appendix IV of this Special Report for comments of the Chicago Council of Lawyers on differences in these various rules.

26. Opinion 163, New York State Bar Committee on Professional Ethics, decided October 9, 1970, and published in *New York State Bar Journal*, August, 1971, at pp. 357-361. A discussion of some of the ethical problems raised by group plans may be found in the transcript of the ABA-UCLA Los Angeles Conference on Prepaid Legal Services. A summary of conference discussions may be found as Appendix I D of the *Revised Handbook*. See also Preble Stolz, "Sesame Street for Lawyers," November, 1971, issue of *ABA Unauthorized Practice News*.

27. The full text of the Missouri opinion is set out below:

IN THE SUPREME COURT OF MISSOURI EN BANC

Tuesday, February 22, 1972

WRITS

57459 In Re: W. A. Sale, Pet.

Petitioner, W. A. Sale, having filed a petition herein in which he voluntarily submits himself for such action as to the Court may seem just, the Court, upon consideration of the petition and the evidence, finds that said W. A. Sale violated the provisions of S. Ct. Rule 4 in agreeing with the Carpenters' District Council of Greater St. Louis upon a Legal Care Program, and in permitting the executive secretary of said Union to send to the Union membership an improper communication relating to said program. While the Court is of the view that said petitioner had some basis, although erroneous, for his view that the United States Supreme Court, in the case of *United Transportation Union vs. Michigan*, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed. 2d 339, had approved such arrangement, the Court hereby strongly reprimands said petitioner for extreme carelessness in entering into said arrangement without ascertaining that such did not violate Rule 4. The Court takes into account the fact that petitioner promptly disassociated himself with the arrangement when question as to its propriety arose, and has concluded that under the facts of this case a reprimand is sufficient and suspension is not required. All costs are hereby adjudged and taxed against him.

Appendix I
CENTURY CITY BAR ASSOCIATION
PROTOTYPE
GROUP LEGAL SERVICE PLAN

I. Costs and Application of Funds

- A. Cost — \$3.40/member/month or its hourly equivalent.
1. Equivalent to the cost of Vision and/or Prescription plans.
 2. Less than the Nationwide Coordinators "Legal Defender Series."
 3. Less than other Fringe Benefits, such as One Day's Paid Vacation or One Day of Sick Pay.
- B. Application of funds.
1. Payment of Benefits75%
 2. Administration of Plan20%
 3. Sales Expenses 5%

II. Definitions

- A. The term "group" shall be defined as "a professional association; trade association, labor union or other non-profit organization or combination of persons, incorporated or otherwise, whose primary purposes and activities are other than the rendering of legal services."
- B. The term "eligible group member" shall be defined as a person who has been certified by any such group as being a member in good standing thereof and the certification thereof shall remain in full force and effect until written notice from a responsible representative of such group, to the contrary, has been received by the administrator of this plan.
1. In the case of any member of a labor organization the term "eligible group member" shall mean any member employed by a contributing employer to this plan, and an active member in good standing with his local union where so required by the terms of his employer's collective bargaining agreement.
 - a. Employees who by the terms of said collective bargaining agreement are considered as full-time employees and are eligible for benefits under this program, after the employer has made the agreed-upon contribution for a consecutive two (2) month period. Part-time employees, defined as such under the terms of their employer's
- collective bargaining agreement are not eligible for benefits hereunder.
- b. Terminated employees are employees who have quit, were laid-off, discharged, or were in work stoppage. Terminated employees may extend coverage or benefits for not more than two (2) months, from the last month paid in which the employees ceased active work.
2. Dependents defined.
- a. An eligible member's spouse, unless legally separated or divorced.
 - b. All unmarried children including any stepchild, legally adopted child, or foster child under 19 years of age and unmarried children under age 23, attending college or university full-time, and financially dependent upon the employee.
 - c. Any person who would otherwise be considered a dependent working for any Contributing Employer to this plan shall not be considered a dependent.
 - d. Dependents remain eligible for benefits only if the member is eligible and when residing in his or her household, except full-time students living elsewhere, and attending college or university.
- C. Basic benefits described.
1. All Criminal Cases, excluding Traffic citations, in which the member is a Dependent, but no more than 3 matters/member/year.
 - a. The following benefits are free.
 1. First Consultation.
 2. All court appearances in misdemeanor cases for purposes of arraignment and entry of plea.
 3. All court appearances in felony cases, prior to preliminary hearing.
 4. In all cases in which an eligible member enters a plea of guilty and/or note contendere ("no contest"), and no preliminary hearing has been commenced and/or no

- trial has been commenced, all Court appearances for purposes of probation and sentencing.
- b. All other criminal proceedings, including preliminary hearings, pre-trial motions other than motions for continuance for time to enter a plea, trials, and proceedings after trial including motion for new trial and appeals—the maximum schedule of charges shall prevail.
2. All other matters, but no more than 3 matters/member/year.
 - a. Where the eligible member is Plaintiff or intends to become a Plaintiff.
 1. Where the member seeks to collect money damages, the charges payable to the attorney for the first consultation shall be \$15.00, for a consultation of approximately 30 minutes, unless the attorney undertakes to enforce the member's claim, in which event, the initial consultation is free.
 2. Where the eligible member seeks only non-monetary relief, the first consultation shall be only a \$15.00 charge paid to the attorney, for a consultation of approximately 30 minutes.
 - b. Where the eligible member is a Defendant in an actually pending or threatened lawsuit, the initial consultation of approximately 30 minutes is free.
 - c. In all other matters, the initial consultation charge paid to the attorney shall be only \$15.00 for consultation of approximately 30 minutes; however, the services of the attorney for preparation of any one (1) of the following, in such a consultation, the hereinbelow described legal documents, only shall be free:
 1. Affidavit—Death of Joint Tenant.
 2. Assignment of Deed of Trust, Request for Special Notice.
 3. Assignment of Deed of Trust, Individual.
 4. Assignment of Deed of Trust, Corporate.
 5. Grant Deed — Individual.
 6. Grant Deed — Corporate.
 7. Grant Deed — Joint Tenancy, Individual.
 8. Grant Deed — Joint Tenancy, Corporate.
 9. Deed of Trust and Assignment of Rents, other than Subordinate Deeds of Trust and/or Subordination Agreements.
 10. Notarial Acknowledgments, excluding notarization charges, for (a) Individuals; (b) Partnerships; (c) Attorneys-in-fact; Corporate.
 11. Deed of Trust and Assignment of Rents, Request for Special Notice.
 12. Note Secured by Deed of Trust, Installment—Interest Included.
 13. Note Secured by Deed of Trust, Installment—Interest/Extra.
 14. Note Secured by Deed of Trust, Installment—Included (Balance Due Date).
 15. Note Secured by Deed of Trust, Installment — Interest Extra (Balance Due Date).
 16. Notice of Cessation, Individual.
 17. Notice of Cessation, Corporate.
 18. Notice of Completion, Individual.
 19. Notice of Completion, Corporate.
 20. Notice of Preliminary to Recordation of Mechanics' and Materialmen's Lien.
 21. Mechanics' and Materialmen's Lien.
 22. Release of Lien.
 23. Request for Full Reconveyance.
 24. Request for Partial Reconveyance.
 25. Request for Notice.
 26. Notice to Pay Rent or Quit.
 27. Notice of Quit.
 28. Declaration of Homestead.
 29. Abandonment of Homestead.
 - d. In all other matters, the schedule of maximum charges shall prevail.
- D. Exclusions from both the basic benefits and the schedule of maximum charges.
 1. Preparation of Municipal, State and/or Federal Income Tax Return.
 2. Any dispute and/or proceeding between an eligible member and any group as defined hereinabove, and any dispute and/or proceedings, the disposition of which is provided for by the articles and/or by the laws of the member's group or any other agreement to which said group is a party thereto, or any other person or persons who may have become obligated

to make any contributions on an eligible member's behalf and are not in default and/or pursuant to the then prevailing statutes rules and/or regulations of any governmental body pertaining to labor-management relations.

3. Any action or proceeding which arose prior to the effective date of this plan, or prior to the eligibility of the member, whichever is later, whether or not said member was aware or should have been aware thereof after becoming eligible hereunder.
4. Other legal representation to which the member is actually entitled by reason of another program, plan, group arrangement or insurance policy.
5. Appearances in any proceeding in which the then prevailing laws, rules and/or regulations pertaining thereto preclude a person from being represented by an attorney therein (Small Claims Trials).

E. Schedule of maximum charges.

(The foregoing shall apply to limit the amount a member shall be charged for legal services in excess of the Basic Benefits for matters not excluded under this plan):

1. Criminal Matters.
(Trial and Stentencing):
 - a. Misdemeanors.
 - (1) Traffic Matters.
 - (a) Where member is charged with hit and run, or reckless use, or being under the influence of alcohol or drugs: \$350.00.
 - (b) Other Traffic Matters: \$150.00.
 - (2) Other Misdemeanors (Non-Traffic): \$100.00 for each half-day of Trial.
 - b. Felonies (Excluding Capital Cases).
 - (1) Preliminary Hearing: \$250.00 minimum or \$300.00/day, whichever is more.
 - (2) Arraignment and Plea: \$100.00.
 - (3) Trial in Superior Court: \$350.00/day.
 - (4) Probation and Sentencing: \$125.00.
 - c. All other Criminal matters: \$40.00/hour.
2. Civil Matters:
 - a. Domestic Relations
 - (1) Includes Preparation of Petition for Dissolution, Original Order to

Show Cause, Hearing on Order to Show Cause not in excess of half-day hearing, Uncontested hearing for Dissolution, and Entry of Final Decree: \$300.00.

- (2) All other matters, including Negotiations, Preparation of Property Settlement Agreement, Discovery Proceedings, Trial, Trial Preparation: \$40.00/hour.
- b. Bankruptcy.
 - (1) Includes Preparation of Schedules and First Meeting of Creditors.
 - (a) Individuals—\$300.00
 - (b) Husband and Wife—\$350.00
 - (2) All other matters—\$40.00/hour.
 - c. Wills.
 - (1) Simple Will
 - (a) Individual—\$25.00
 - (b) Husband and Wife—\$35.00
 - (2) All other matters — \$40.00/hour.
 - d. Civil Suits.
 - (1) Where an eligible member merely asserts defense to claims of another: \$40.00/hour.
 - (2) Where member seeks to recover money damages by complaint or otherwise, the maximum schedule of charges does not apply, except that no contingency arrangement shall exceed 40% of the amount recovered.
 - e. All other matters.
 - (1) Except as noted in e-2 below, no more than \$40.00/hour.
 - (2) In those instances in which the attorneys' fees are either based upon a legislative, administrative, or judicially established schedule, and/or subject to the approval of a governmental authority, charges to members shall not exceed the aforesaid governmental prescribed limitations.

III. Administrative Procedures

A. Arrangements with Participating Attorneys Providing Services Hereunder.

1. Any member of the State Bar of California who is also a member in good standing of the Century City Bar Association, upon certification by the Secretary of said Century City Bar Association until decertified, may be retained by any eligible member of any group enrolling in this plan, to provide the legal services available hereunder, provided

said attorney has agreed in writing to adhere to the provisions hereof, included the furnishing of the above described basic benefits and further agreeing to abide by the other provisions hereof, and has paid such registration fees as may be imposed by the entity described below, as the non-profit corporate entity, provided however, that said registration fee shall not exceed \$10.00/mo.

2. Subject to the hereinbelow described reserve, attorneys receive 75% of received contributions in consideration of furnishing the above-described basic benefits and abiding by the provisions of the schedule of maximum charges of this plan and proportioned among the aggregate number of claims allowed by said non-profit corporation, unless otherwise adjusted by said non-profit entity in a fair, just and equitable manner.

3. Reserve Fund

- (a) There shall be created for each attorney a Reserve Fund, equal to 33 $\frac{1}{3}$ % of his other proportioned shares of the above-mentioned 75% for the first full year of operation of the time from and after the time when members first become eligible hereunder. The funds placed in the Reserve for each ensuing year thereafter shall decrease annually by 20% of the aggregate amount on deposit at the end of said first full year—until the aggregate deposits into the Reserve Fund are equal to the gross amount, exclusive of the Reserve, that would have otherwise been paid to each attorney at the end of the first full year above-mentioned, if there had been no Reserve.
- (b) Accordingly as the contributions to the Reserve Fund decrease, the payments to each attorney shall increase. Thereafter, augmentations to the Reserve shall remain level at the rate of \$40.00/member per year.
- (c) At no time—and also in the event the Retainer Agreement with an Attorney is terminated for cause, as is more particularly described hereinbelow, he or she shall have no claim against said non-profit corporation, except as provided herein, and no intent in and to any portion of the undistributed Reserve, in which

event his or her share of the aggregate Reserve will be transferred to the Reserve Account to be created for all other participating attorneys.

- (d) In the event an attorney chooses to terminate the Reserve prior to the aggregate deposits therein reaching the level described in 3 (a) above, he or she shall have no further claim or interest in said Reserve, and the undistributed balance shall be transferred as in the manner described in 3 (c) above.
- (e) In the event an attorney terminates his Retainer Agreements subsequent to the level described in 3 (d) above, there shall be vested unto him a sum equal to 10% of the then undistributed balance for each full consecutive year he has participated hereunder. Any unvested funds shall then be transferred as was described in 3 (c) above. In the event of termination by a group without cause—and subject to any other charges, claims, or contingent liabilities arising pursuant to this plan—the entire reserve shall be fully vested unto the Participating Attorneys hereunder.
- (f) All funds transferred from a pre-existing reserve pursuant to 3 (c), (d) and/or (e) above and all unvested shall be available for the following purposes:
 - (1) To discharge and/or limit any liability which may have been incurred out of the operation of this plan;
 - (2) To compensate, upon approval of the non-profit corporation, a specialist who may be engaged by a participating attorney hereunder, where there is reasonable necessity to engage such a specialist—as no other appropriate method of compensation is available (additional benefits).
 - (3) Where an eligible member becomes involved in extensive, protracted, and involved litigation, and his financial ability to pay the necessary and reasonable legal fees and/or other costs of suit is insufficient, the non-profit corporation shall be

authorized to make such distributions from the Reserve as are appropriate to defray such costs to the member by loan, grant, or otherwise, on such terms as the administrator deems fair, just and reasonable additional benefits.

- (4) Where, by virtue of extraordinary circumstances, a participating attorney hereunder is so inundated with the representation of the members hereunder, so that, in the opinion of the non-profit Corporation, said attorney requires additional emergency and temporary personnel—both legal and/or secretarial—in order to provide competent and adequate services to the members hereunder, the non-profit corporation is authorized to provide funds to the participating attorney, on such terms as it here deems fair, just and reasonable.
 - (5) In the event of the dissolution of any group hereunder, except by way of merger—any undistributed funds remaining after all obligations have been satisfied—the Reserve shall be distributed in the manner set forth herein, and any remaining balance shall be distributed in the manner provided by law.
 - (6) The administrator, for its services hereunder relative to the Reserve, shall be entitled to a fee of 5% per year of the average annual balance of the Reserve for its ordinary services hereunder, with a minimum of \$500.00/year plus such reasonable charges for any extraordinary services rendered hereunder, in addition to the above described compensation.
4. The Attorney Retainer Agreement shall be for a one-year term, but shall be cancelable on 30 days' written notice.
 5. Upon Termination of said Attorney Retainer Agreement, up to the full amount of the Reserve may be applied to discharge or limit any liability for having

contracted with the attorney or administered the plan.

6. In the event the determination is made in good faith that the attorney has not abided by the maximum schedule of charges, or has unduly prolonged the disposition of a member's case, for the sole purpose of charging an unnecessary fee, the reserve may be applied as stated above.
7. The Attorney's Retainer Agreement shall specifically prohibit any of the consideration paid to him from being disbursed, directly or indirectly to any group, its agents, or members, and specifically prohibit any of the above parties and/or the administrator from interfering with the performance of the attorney's duties to his client and shall be filed with the State Bar Association pursuant to Rule 20.
8. All announcements of the plan, to members, shall comply with the then prevailing State Bar Rules.
9. All disputes between attorney, groups and/or administrator shall be subject to mandatory arbitration.

B. Arrangements with Employers.

1. It shall be the responsibility of each group to contribute or arrange to the non-profit corporation, the above-mentioned cost of the plan, with the understanding that no other person shall be responsible therefor. Contributions shall initiate, as of the eligible member's first day after the effective date of the agreement adopting this plan. The obligation to contribute for an eligible member in the case of employee members, shall cease at the end of the pay period during which the employee is terminated, except that an employee who ceases work because of sickness or injury shall be deemed to still be actively employed at work for a period of three (3) months from the last day of the month in which such disability commenced.
2. Termination in this respect shall mean quit, lay off, discharge, work stoppage, or the date on which employee enters into active service in the armed forces of the United States or any State thereof except as a member of a reserve organization for training period of one (1) month or less from the date entering into such

training or one (1) month or less from the date employer enters into said negotiated agreement.

3. The administrator of this Plan shall be authorized to enforce the prompt payment of contributions. Delinquent contributions shall bear interest at the rate of 10% per annum and the party agreeing to contribute shall be liable for costs of suit, collection and attorneys' fees if the administrator incurs the same to collect said delinquent contributions.

C. Claims Procedures.

1. Member contacts the Administrative Office, requesting assistance.
2. Office does not give legal advice: it verifies coverage, partially completes Claim and Disposition form, gives same to member, refers member to assigned attorney and notifies attorney of member's claim.
3. The attorney completes the Claim and Disposition form, stating the nature of the services rendered, the charge paid by the member, if any, and the result accomplished for the member. The form is then returned to the Administrative Office.
4. The Office then verifies the result accomplished by securing the member's confirmation, and if so confirmed, provides the union with a copy of the confirmation.
5. All files are set for 60-day review, and if the member and the attorney both confirm that the matter cannot be concluded within that period of time, the office shall provide such extensions as are necessary, so that the file may ultimately be closed.
6. In the event the member does not confirm the attorney's closing or interim reports, the attorney is required to express his opinion on the matter.
7. In the above fashion, the Administrative Office should always be in a position to ascertain whether or not the attorney is providing professional services in a competent and ethical fashion.

D. Arrangements with Administrator and Consultants.

1. The administrator may enter into con-

sulting agreements with one or more consulting entities relative to the installation and administration of this plan.

2. The aggregate sums to be disbursed to all consulting entities shall not exceed 5% of the employer contributions for this plan and allocable to the group so involved and collected. No person except those contracting to pay contributions shall have any liability hereunder for uncollected contributions.

3. The consultant(s) shall endeavor, whenever and wherever feasible, to do the following:

- a. Advise the administrator as to the volume of members involved and for which the consultant intends to endeavor to facilitate the installation of this plan over such periods of time as the parties deem feasible. This shall not be construed as a minimum commitment or obligation on the part of the consultant, but as a guide to the administrator in planning for new plan installations.
- b. Advise and assist the administrator in maintaining good relations with various group members, and employers participating herein.
- c. Not seek to install other group legal service plans except on 90 days' notice to the administrator.
- d. Provide the administrator with written confirmation of the foregoing understanding and such other data as may be mutually beneficial.

E. Non-Profit Corporation.

1. To be sponsored by the Century City Bar Association which will be entitled to select a majority of its directors.
2. Other directors to be selected from such advisory councils as it may form from such sectors of the community as the board deems proper.
3. Shall be authorized to contract with groups, for administrators, consultants and sales organizations.
4. Shall prudently invest reserves.

F. Administrator Shall Be Responsible for Communications, Record Keeping and Eligibility Verification, and Preparation of Reports.

Appendix II
CHICAGO JOINT BOARD,
AMALGAMATED CLOTHING
WORKERS OF AMERICA LEGAL
SERVICE PLAN

The Chicago Joint Board, Amalgamated Clothing Workers of America, proposes to offer to its members the availability of legal representation. The following information sets forth in detail our purposes and the specifics of our plan.

PURPOSES

It is apparent from all informational sources that competent legal services are either not available to average union members, or are available only on a minimal or limited basis. While legal aid programs service the "hard core" poor with incomes up to \$5,000.00 per year, and private lawyers serve the higher income brackets, a wage earner with more than minimum income does not have sufficient wherewithal to retain proper counsel. The void existing in this group of lower middle income persons, is composed of typical union members and is the concern of the union and the basis for a plan of representation. Too rich for a poverty program, too poor to afford good counsel is the plight of massive numbers of working people throughout the country. To the extent of its membership, this union proposes a solution in providing such representation.

PLAN

The legal services program, which is proposed for offering to the union membership, should include the specific representation as is enumerated in detail in this letter. The limitations to service proposed are suggested in order to provide the basic representation in an economical fashion, while still carrying out the goals of providing the needed legal services to members who either could not afford them or would have great difficulty securing them.

The legal services which are fee-generating or commercial in nature, are generally not to be included. The services offered should be rendered from the initial interview and consultation through a satisfactory conclusion or disposition of the matter involved. Such representation, of course, contemplates the handling of each case through all stages of negotiation and/or non-jury litigation to its complete conclusion through settlement or final Court order.

The service offered will be extended to all active union members. Members of the family will make their own arrangements for representation, with the exception in the area of joint and mutual wills for husband and wife, which will be covered, and suits filed under a family expense statute which renders both husband and wife liable for family purchases, which will be covered also.

All phases of advice, consultation, negotiation, preparation of legal pleadings or documents necessary to conclude each matter successfully are necessary components of such representation. The following specific matters are encompassed in the plan:

A. Consumer Transactions — Consumer transactions will basically include the defense of claims and lawsuits arising from all members' consumer transactions for the purchase of goods or services, other than those undertaken primarily for commercial or profit-making purposes; claims or suits for automobile deficiency balances or deficiency balances for any repossessed merchandise; claims or suits seeking collection of an unpaid balance under contracts of purchase or similar claims resulting from services rendered. In addition to the defense and disposition of such claims, should judgment be entered against members, then defense will be undertaken against all supplementary legal procedures as listed below:

1. Representation of debtor-defendant in wage deduction proceedings (garnishment). It is understood that such representation will necessarily include vacating judgments or modifying existing court orders of any kind.
2. Appropriate defense against wage assignments by preparation of affidavit of defense and attempts to negotiate and settle or, in the alternative, force the creditor to commence legal action.
3. Representation of defendant in answer to citation proceedings for discovery of assets. Motions and other actions needed to vacate judgments or open default orders are necessarily included.
4. Representation of defendants when

served with executions and/or levies for money.

5. The filing of wage earner bankruptcy cases or proper insolvency proceedings when appropriate.
6. Defense of a debtor in post-bankruptcy proceedings. For example, when the debtor is sued for conversion of merchandise or obtaining money under a false financial statement or where action is taken against the debtor for the recovery of merchandise sold as in a replevin suit or detinue action.

In properly defending the above-outlined matters, it sometimes becomes necessary to file counterclaims for damages or take other positive action on behalf of the debtor as a tactical matter to provide the best defense. In the event that such action is necessary, it will be included in the representation offered.

On the other hand, if, out of the defense of a case, the facts warrant the filing of claims for damages, such as wrongful garnishment matters, or suits based on libel or slander, and such claims result in the recovery of money damages to the union member, then that portion of the judgment or verdict which results in the recovery of monies will be treated as an individual, fee-generating lawsuit, and from the recovery the member will be expected to pay an individual fee. If the counterclaim or positive defense does not result in a money judgment on behalf of the member, then the total representation is included within the services under this plan.

B. Domestic Relations (Family-Marital)—Legal matters or services arising under this topic usually involve the defense of a husband or a wife when confronted by court action against him or her, to enforce compliance with a previously entered order of court, or to initiate action in an attempt to solve or alleviate some marital or family difficulty. These matters are customarily broken down into the following categories which will be handled under the plan:

1. The filing of a complaint for divorce, or appearance and defense of such complaint, for either husband or wife, is limited to proceedings which are not contested but which include claims for child custody, support or alimony. This service contemplates the necessary negotiation to affect property settlement agreements or agreed support orders, so long as the matters are heard as default

matters and do not require a trial before the court.

2. The filing of a complaint for annulment of a marriage, either on behalf of a husband or a wife, which is uncontested at the time of trial of the issues.
3. The filing of an action for support maintenance on behalf of either husband or wife which is also uncontested and heard as a default matter.
4. Child support adjustments (post-decree motions) to increase or decrease amounts of child support or to modify divorce decrees because of a change of circumstances of the parties.
5. The representation of either husband or wife in defense of an action filed against him or her for divorce, annulment or support maintenance, including the filing of necessary appearance and answers and negotiating proper agreed orders or disposition ultimately heard as default matters and not involving contested trials of the issues.
6. The foregoing representation extends to all matters which are not contested. By a contest it is specifically meant an actual trial where no agreed orders have been entered or worked out and which requires an actual hearing with the presentation of argument and evidence on behalf of both sides.

C. Adoptions—The handling of adoption matters contemplates the customary action made with the approval or consent of both parents, or which requires the approval of an agency should the adoption be for a non-related child. Also included, though not directly related, should be petitions for change of name, correction of public records and documents.

D. Landlord-Tenant Problems—The services proposed under this topic envision the representation of tenants and can normally be said to fall in the following two categories:

1. Defense of eviction actions brought against a tenant for the non-payment of rent or against a contract purchaser for the non-payment of installments under the contract.
2. Defense of mortgage foreclosure actions against a member/owner of a single family dwelling, normally used as a home-stead.

E. Real Estate Transactions—The representation contemplated under this heading in-

volves the handling of the purchase for a member of single family dwellings: not commercial or income-producing property. The representation of a union member who is the seller of covered real estate will not be included under this plan, since the sale generates sufficient capital to retain individual counsel.

F. Wills—Each member should be entitled to the preparation of what is commonly regarded as a simple will, specifically meaning wills which do not include creation of trust or other estate. Preparation of wills as stated will include wills for the spouse of the union member as well as the member. The limitation excluding trusts from the included service is defined to mean the creation of a separate trust agreement or document involving a corporate trustee and is not meant to exclude customary clauses making a husband or relative trustee of a fund for minor children.

It is further understood that all members will be entitled to advice and consultation under this program which is necessary before a determination can be made as to the exact nature of the representation required, after which it will be determined whether such representation falls within the categories provided under the plan or not.

The following services are specifically not covered by the plan:

- A. All criminal matters, including traffic violations.
- B. Collection suits as Plaintiff to enforce collection of monies on behalf of members.

C. Paternity cases involving suits against putative father to establish paternity and enforce payment of child support.

D. Commercial or income-producing realty matters involving leases, buy and sell agreements, incorporations, and general business transactions.

E. Existing lawsuits wherein a demand for trial by jury has already been made.

F. Appellate Court proceedings.

G. Contested adoption matters.

H. Claims on behalf of plaintiff for bodily injuries resulting from accident or other cause.

I. Claim for compensation under the Workmen's Compensation Act.

J. Proceedings for deportation or change of status arising under immigration laws, or any hearings involving immigration problems.

Union members will be advised that they may seek counsel of their choice for the above matters and that individual fee arrangements will have to be made for the handling of such cases with your law firm, if such is the decision made.

It is further expressly understood that all costs incident to any legal matter including Court filing fees, Sheriff fees for service of summons or other process, searches of public records, land title examinations, will be borne and paid directly by the client-member.

Appendix III

THE LABORERS' LOCAL 423, COLUMBUS, OHIO LEGAL SERVICE PLAN

INTRODUCTION

This plan has been established by Construction and General Laborers' Local 423, Columbus, Ohio, affiliated with the Laborers' International Union of North America, AFL-CIO, to provide comprehensive legal assistance and services to members of the Local and certain of their dependents regarding their personal affairs. The plan shall be known as "The Laborers' Local 423 Legal Service Plan."

The plan has been instituted in the belief that its creation and operation will protect and advance the legal rights and interests of the members of the Local and their dependents, and that it will help to alleviate their present difficulties in resolving legal problems.

The plan will emphasize the process of educating members and their dependents in their legal rights and responsibilities, and it will seek to promote a "preventive law" approach for dealing with legal problems.

The plan will also serve as a pilot project for gaining experience in the operation of union-sponsored prepaid legal service programs. Accordingly, it will attempt to develop actuarial and related research data concerning costs and other issues involved in the operation of such a program. Such data will be available to other unions as well as to law schools, bar associations, insurance companies, and others interested in such programs.

OPERATION OF THE PLAN

The Executive Board of Local 423 shall hire attorneys and staff, establish an office for the plan, and make such other expenditures from the Local's legal service fund as shall be necessary to operate the plan. The Executive Board is authorized to alter, amend, limit or expand the plan at any time. However, changes in the plan shall be prospective in operation only and shall not deprive a member or dependent of services to which he was entitled in connection with any matter pending at the time of the change.

ATTORNEYS

Attorneys providing legal services under the plan shall be compensated from the Local's legal service fund. The attorneys' services shall be provided in accordance with the profes-

sional and ethical standards expected of lawyers. In providing such legal services, the attorneys shall adhere to the rules of the plan as established herein, but shall receive no further instructions, direction, or interference from Local 423 or its officers or agents. Their obligations and relations as attorneys shall be exclusively with their clients. They shall maintain the confidentiality of the lawyer-client relationship in accordance with applicable canons of ethics. They shall refuse to provide services in any matter they believe to be clearly without merit or frivolous.

ELIGIBILITY

The following persons shall be eligible to receive the services provided under the plan if, at the time they seek such services, they are:

1. Members or retired members of Local 423 who are in good standing and have met all their financial obligations to the Local;
2. A spouse or other dependent of an eligible member of Local 423, provided that in connection with each particular matter, the member has consented to the receipt of such services;
"Dependents" shall be defined herein as follows:
 1. A spouse if not legally separated;
 2. An unmarried child ("child" as used herein shall include an adopted child, stepchild, or foster child) under nineteen (19) years of age, who is unmarried, has the same legal residence as the eligible member and is wholly dependent upon the member for support and maintenance;
 3. An unmarried child up to the age of thirty (30) who has the same legal residence as the eligible member and is mentally or physically incapable of earning his own living and is wholly dependent upon the member for his support and maintenance;
 4. A widow, widower, or child of a deceased eligible member, for a period of six (6) months after the member's death, except in the case of probate

and other matters related to the member's death as to which such individual shall be considered a dependent until such matters have been concluded.

In the event a member shall transfer or be suspended from membership in the Local, services provided to him or his dependents shall be terminated. In such event, as to any active matter, the attorney involved shall give appropriate notice of his withdrawal from such matter unless because of the closeness of the scheduled time for hearing or trial, the attorney determines that the matter would be prejudiced by such a withdrawal. In such case, the attorney shall continue to provide services until the conclusion of such hearing or trial.

SERVICES AVAILABLE

Subject to the limitations set forth herein, the following services shall be provided by the plan to eligible members and dependents (covered family) without any fee or charge:

1. Legal advice and consultation;
2. Representation in workmen's compensation and unemployment compensation proceedings arising within the geographical jurisdiction of Local 423;
3. A. In all other matters arising within the geographical jurisdiction of Local 423 which involve legal representation beyond advice and consultation, each covered family shall be entitled to 80 hours of legal services during each calendar year in connection with up to five (5) matters or proceedings per calendar year, in which an eligible member or dependent is or seeks to become a party or is involved. Upon exhaustion of 80 hours of legal services, representation in any pending matter or proceeding involving a member of the covered family shall be continued to its conclusion, but further services under this paragraph shall not be provided to any member of the covered family involved until the commencement of the following calendar year.
- B. Covered families which become eligible to receive services under the plan after January 1 of a calendar year shall be entitled to the services provided under paragraph 3A on a pro-rata basis during the remainder of such calendar year.
- C. In calendar year 1972, covered families eligible to receive services under the plan at the commencement of its operation shall be entitled to services under paragraph 3A as if the plan had commenced operation on January 1, 1972.
4. Costs and expenses incurred in connection with the rendition of legal services under the plan in any suit or administrative proceeding.

Notwithstanding the foregoing, services in connection with the following matters shall be provided only to the extent indicated:

1. Real estate matters shall be limited to legal services involving a member's residence;
2. In divorce and separation matters, once service has been undertaken on behalf of a dependent spouse, the member himself shall receive no assistance concerning the matter;
3. Each member shall be entitled to representation in not more than one (1) juvenile matter each calendar year for each of his minor children (under eighteen (18) years of age);
4. Bail or collateral shall be provided to an eligible member or dependent, if necessary, in an amount not in excess of \$500.00. In the event of forfeiture of such bail or collateral, the eligible member or dependent shall reimburse the plan for such loss. No further services under the plan shall be provided to an eligible member or dependent until such reimbursement is made.
5. Felony cases shall be handled through the indictment.

UNAVAILABLE SERVICES

Services shall *not* be provided regarding the following:

1. Any business venture, or any other matter in which, for federal income tax purposes, the cost of legal services would normally constitute a business expense or a capital investment;
2. A judicial or administrative proceeding involving any of the following as an adverse party: (a) any other eligible member or dependent as defined herein unless such member or dependent consents to such representation and waives his own right to representation under this plan in such matter; (b) any employer party to

a collective bargaining agreement with Local 423; (c) the plan or any employee or agent thereof; (d) Local 423 or any other labor union or its officers, agents, or employees; (e) any health, welfare, pension, or other fringe benefit program or plan, or the trustees, administrators or employees thereof in which Local 423 or any other labor union participates or has an interest;

3. Any matter or proceeding, except as otherwise provided herein, in which representation on a contingent fee basis is normally and customarily available;
4. Any matter or proceeding in which legal services are available through insurance, except to the extent that such services are not provided;
5. Interventions or *amicus curiae* filings in any matter or proceeding not involving the immediate and direct interests of the eligible member or dependent;
6. Payment of fines, penalties, or civil damages;
7. Payment of the first fifteen dollars (\$15) of filing fees in an original action or proceeding;
8. Collections on behalf of an eligible member or dependent;
9. Court appearances in connection with small claims;
10. Cases pending at the time a member or dependent becomes eligible to receive services under the plan in which counsel has already been retained.

ADVISORY COMMITTEE

An Advisory Committee shall be established consisting of not less than twelve (12) nor more than twenty-one (21) members who shall be selected by the Executive Board of Local 423. The members of the Committee shall serve on a voluntary basis for a three-year term. The Committee shall select its own Chairman and shall meet at least once each year and otherwise upon the call of the Chairman. Expenses of the Advisory Committee shall be paid from the legal service fund of the Local.

The Advisory Committee shall investigate the operation of the plan and shall report its findings annually to Local 423. In addition, if

an eligible member or dependent has a complaint regarding the operation of the plan, he may bring the matter to the attention of the Chairman of the Advisory Committee. Upon receipt of such a complaint, the Chairman shall appoint three members of the Committee to investigate the matter and submit a report to the full Committee for its recommendation. The recommendation of the Committee shall be forwarded to the Executive Board of the Local Union for disposition.

If the complaining member or dependent is dissatisfied with the decision of the Local Union Executive Board, he shall be entitled to obtain a resolution of the dispute through the process of arbitration. The Chairman of the Advisory Committee shall arrange for the conduct of the arbitration proceeding in accordance with the rules of the American Arbitration Association.

The decision of the arbitrator shall be final and binding upon the parties. The arbitrator shall be authorized to allocate the costs of the arbitration proceeding between the complaining member or dependent and the Local Union legal service fund on a fair and equitable basis.

MISCELLANEOUS PROVISIONS

1. The services provided for herein are for the sole benefit of eligible members and their dependents. Such services shall not inure to the benefit of, nor vest in, any other person or entity, public or private, such as a Trustee in bankruptcy or under Chapter XIII or any other Trustee under the National Bankruptcy Act, or to any assignee for the benefit of creditors or otherwise. Services provided under the plan are not assignable.
2. The plan shall be subrogated to all rights of an eligible member or dependent to recover attorneys' fees and costs against any person or entity. Members or dependents shall execute and deliver to the plan any instruments or papers and do whatever else is necessary to secure such rights for the plan; and they shall do nothing to prejudice such rights.
3. No member or dependent is required or obligated to consult with or be represented by an attorney employed by the plan as a condition of union membership or otherwise; and such member or dependent shall remain free to consult with or be represented by any other attorney concerning any matter at his own expense.

Appendix IV
Extracts from Report on Code of
Professional Responsibility by
Chicago Council of Lawyers

II. Summary of the Essential Differences Between the Three Proposals

At present, (1) the Chicago Council of Lawyers; (2) the Illinois State and Chicago Bar Associations; and (3) the American Bar Association's Special Committee on Availability of Legal Services ("The McCalpin Committee")*, have adopted substantially different positions with respect to the circumstances under which lawyers should be permitted to participate in group legal services programs. The positions of each of these respective groups are attached hereto as Exhibits B, C, and D respectively.**

A. The Chicago Council of Lawyers' Position

The Council believes that under the safeguards and limitations contained in its Resolution on Group Legal Services (Exhibit B hereto), not-for-profit organizations should be allowed to provide legal services of any kind to their members. The rationale of the Resolution is to allow the extension of group legal services under circumstances which ensure effective individual representation, maintain the essentials of the traditional attorney-client relationship, and safeguard against possible dangers to the public.

In particular, the Resolution includes the following safeguards and limitations on an attorney's participation in a group legal services program:

1. The organization which employs the attorney must be not-for-profit;
2. A written agreement between the lawyer and the organization must be in effect and must have been filed with the Illinois Supreme Court;
3. That agreement must include a provision that neither the organization nor any member shall interfere with the lawyer's independent exercise of his professional judgment;
4. The member to whom the services are rendered, and not the organization, is the client of the lawyer;

*The McCalpin Committee's position was not adopted by the American Bar Association.

**Exhibit E, enclosed herewith, prepared last year by our subcommittee on group legal services, gives a more thorough discussion of the subject.

5. Permissible publicity by the organization concerning the services rendered by the organization's attorney is carefully defined and circumscribed;
6. An attorney's participation in a group legal services program in no way diminishes or changes the attorney's obligation to conduct himself in accordance with the standards of professional conduct applicable to all attorneys;
7. Violation of any of the provisions of the agreement could lead to restriction or termination of the group legal services program by the Supreme Court.

B. The ISBA-CBA Position (Exhibit C)

In contrast with the Council's philosophy of extending group legal services under reasonable safeguards, the rationale of the ISBA-CBA is to restrict the extension of group legal services as far as constitutionally permissible. The limitations adopted are designed to restrict group legal services and not to deal with specific problem areas. The principal limitations are:

1. It permits an attorney to participate in group legal services only to the extent that "controlling constitutional interpretation at the time of rendition of the services requires the allowance of such legal services activity. . . ." DR 2-103(D) (5) (emphasis added);
2. The "primary purposes" of the organization must not include the rendition of legal services and the rendition of legal services must be "incidental and reasonably related to the primary purposes of such organization." DR 2-103(D) (5) (a)-(b).

C. The McCalpin Committee Position (Exhibit D)

The McCalpin Committee position, as submitted to the House of Delegates of the American Bar Association, would permit the widest extension of group services of the three positions summarized. It is essentially similar to the Council position with the exception of these provisions:

1. The organization which renders the serv-

- ice need not be a not-for-profit organization, but "shall not derive a profit or commercial benefit" from rendering the services;
2. Like the position of the Council, it does not prohibit an organization from engaging in group legal services as a primary purpose. It does, however, require that such an organization obtain from the "regulatory agency having authority to discipline the lawyer a certificate that the program complies with applicable laws and court rules . . ." See paragraph (5) (e) of Exhibit D.

III. Discussion of the Differences

The first, and most significant, difference between the Council and McCalpin Committee positions on the one hand and the CBA-ISBA position on the other hand is that the CBA-ISBA proposal permits group legal services only to the extent that controlling constitutional interpretation *requires* the allowance of such programs.

The Council believes that this CBA-ISBA requirement is irrelevant to the true issues involved, *i.e.*, whether and to what extent public interests and ethical considerations require restrictions on the extension of group legal services. This restriction is not tailored to meet any rational objection to the allowance of group legal services. The McCalpin Committee describes it as:

"[U]nfortunate and inept language [which] furnishes no reliable standard for either the public or the profession, invites further regulation by judicial intervention and places the profession in the deplorable position of conceding with obvious reluctance that we will honor the constitutional rights of our prospective clients, but no more." Exhibit D, p. 4.

John F. Sutton, Jr., the Reporter for the ABA Special Committee on Evaluation of Ethical Standards makes this criticism:

"The regulations [DR 2-103(D)(5)] are more in the nature of a lateral pass of the problem to the United States Supreme Court than an attempt to find solid grounds upon which to regulate group legal services." Sutton, *The American Bar Association Code of Professional Responsibility: An Introduction*, 48 Tex. L. Rev. 255 (1970).

The Council believes there are other failings of the CBA-ISBA approach:

1. It gives attorneys no practical guidance as to what kind of programs they may or may not participate in beyond those which have been ruled on by the Supreme Court. In practice, the result of that uncertainty will be the equivalent of an outright prohibition. Smith, *Canon 2, A Lawyer Should Assist the Legal Profession in Fulfilling its Duty to Make Legal Counsel Available*, 48 Tex. L. Rev. 285, 309 (1970).
2. It provides no guidance as to what kinds of restrictions are appropriate to prevent unethical conduct by attorneys involved in such programs.

The second major difference between the Council-McCalpin Committee positions and the ISBA-CBA position is that the latter would limit group legal services programs to organizations which do not make the rendition of legal services one of their "primary purposes" and which only provide such services as are "incidental and reasonably related to the primary purposes" of the organization. (DR 2-103(D)(5)(a)-(b)). Again, these restrictions are imprecise, and generate uncertainty which will discourage lawyer participation in desirable group arrangements. More importantly, they are not tailored to meet specific evils but instead are designed only to constrict the magnitude, scope and growth of group legal services programs.

Certainly, ethical considerations do not support the limitation that permits an organization to engage only in "incidental" group legal services. Such an approach discriminates against small organizations with only a few purposes and favors large and diversified organizations. For example, two organizations might be rendering services identical in quantity and in nature, but if one organization was small and had few other activities, its group legal services program might be considered a "primary purpose," or not "incidental," and thus not be permitted.

And the requirement that the group legal services rendered be "incidental and reasonably related to the primary purposes" of the organization actually seems *contrary* to ethical considerations. The likelihood of organizational interference with the attorney-client relation would seem more probable when the organization's purpose is "reasonably related" to the reason a member of the organization needs a lawyer. In fact, a non-profit organization whose primary purpose was to provide legal services, and which had no other purposes,

would seem least likely to have any reason to seek to interfere with the attorney-client relationship and most likely to be concerned with the quality of the legal representation it provides.

Lastly, the CBA-ISBA limitations (a) and (b), which are not designed to meet specific problems, appear to be in violation of constitutional standards. As stated by Theodore Voorhees in *Group Legal Services and the Public Interest*, 55 A.B.A.J. 534, 539 (1969):

"The only limitations that would seem to have a chance of standing up [to constitutional standards] would be those relating directly and clearly to specific evils of sufficient magnitude to support an argument that the suppression of those evils would justify some limit on constitutional rights."

See also *Controlling Lawyers by Bar Associations and Courts*, 5 Harv. Civ. Lib. Civ. Rights L. Rev. 301, 354-376 (1970) which argues that the limitations in DR 2-103(D) (5) are unconstitutional on their face. The Council is in accord with each of these positions, which are supported by the decision of the United States Supreme Court in *United Mine Workers v. Illinois State Bar Association*, 389 U.S. 217 (1967), reversing, 35 Ill. 2d 112 (1966). That decision makes clear that neither impairment of the attorney-client relationship nor "commercialization" of the legal profession is inherent in group legal services arrangements, each of these being concerns expressed in the opinion of this Court in the *Mine Workers* case. Furthermore, the Resolution of the Council directly and specifically attempts to preserve the integrity of the attorney-client relationship and the unswerving dedication of the lawyer to his client, in addition to safeguarding against other possible dangers to the public and the attorney-client relationship arising out of group arrangements. The proposal of the CBA-ISBA fails to come to grips with these matters and leaves substantially unregulated authorized group legal services programs.

Conclusion

The Council believes that existing restrictions on unethical conduct by lawyers, combined with additional safeguards in our Resolution, provide substantial and adequate protections against whatever potential evils may arise from group legal service arrangements.

The Supreme Court of the State of Califor-

nia, on January 20, 1970, approved Rule 20 of the Rules of Professional Conduct (attached hereto as Exhibit F) which is substantially in accord with the Council's Resolution on group legal services.

We respectfully urge this Court to follow the lead of the California Supreme Court and to reject the CBA-ISBA proposal on the grounds that it disserves both the public and the legal profession, that it infringes upon precious First Amendment rights, and that it unreasonably restricts the availability of legal services to the segment of our society which the profession is now failing to serve adequately. See generally, Nahstoll, *Limitations on Group Legal Services Arrangements under the Code of Professional Responsibility*, DR 2-103(D) (5): *Stale Wine in New Bottles*, 48 Tex. L. Rev. 334 (1970).

At a time when it is vital for the operation of the law to be effective at every level of society, the Illinois Supreme Court can make a significant contribution to this end by adopting the Resolution of the Council and permitting the expansion of group legal services programs.

Group Legal Services

Recommendation:

Amendment of DR 2-103 as follows (brackets indicate omissions and italics indicate new language):

DR 2-103 Recommendation of Professional Employment

- (D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

* * *

- (5) Any other non-profit organization that recommends, furnishes or pays for legal services to its members or beneficiaries, but only [] when and if the following conditions are met:

(a) *The lawyer shall not have solicited the use of his services by the organization or its members in violation of any Disciplinary Rule in this Code.*

(b) The organization shall not derive a [] profit from the rendition of legal services by the lawyer.

(c) A written agreement between the lawyer and the organization is in force containing provisions that:

(i) Any member of the organization may obtain legal services independently of the arrangement from any attorney of his choice;

(ii) Neither the organization nor any member thereof shall interfere or attempt to interfere with the lawyer's independent exercise of his professional judgment;

(iii) The member or beneficiary to whom the legal services are rendered, and not the organization, is the client of the lawyer;

(iv) The organization will not in any way influence or attempt to influence the lawyer to violate any of the Disciplinary Rules contained in this Code;

(v) The nature and extent of the legal services program will be fully disclosed to the members or beneficiaries of the organization.

(vi) Any publicity given by the organization to its members concerning the group legal service program may only give the lawyer's name, address, telephone number, such other information as may be required to facilitate the access of a member to the services of the lawyer, and other information concerning the legal services program set forth in the agreement; and any publicity disseminated by the organization to non-members will only state the nature and extent of the legal services to be offered and will not identify the lawyer.

(vii) The agreement may be terminated by either party in the event of any substantial violation of the foregoing provisions.

(d) Such written agreement must be filed with the Supreme Court of Illinois. In case of a violation of the agreement, or of this Rule, the Supreme Court may restrict, suspend or terminate the right of the organization to continue its group legal services program.

(e) *Nothing in this Rule modifies the attorney-client privilege.*

(f) *This rule does not diminish or change the obligation of each lawyer engaged in a group legal service arrangement to conduct himself in accordance with the standards of professional conduct applicable to licensed attorneys in the State of Illinois.*

DISCUSSION

Approximately one year ago, the Chicago Council of Lawyers submitted to this Court a proposed disciplinary rule covering group legal services and a Petition in support of the adoption of such rule as a Supreme Court Rule. (M.R. 1349.) (A copy of the Petition is attached hereto as Exhibit A.) Some weeks later, the Chicago Bar Association and the Illinois State Bar Association jointly submitted to the Court the entire Code of Professional Responsibility, which deals with group legal services at DR 2-103(D) (5) in a manner which the Council criticized in detail as misdirected, overly restrictive, and indeed, in apparent violation of then existing constitutional standards.

Subsequently, the Supreme Court of the United States in *United Transportation Union v. State Bar of Michigan*, 28 L. Ed. 2d. 339 (1971) ended all doubt as to the breadth of the First Amendment protection for group legal services arrangements.

"... 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 in *NAACP v. Button*, *Trainmen*, and *United Mine Workers* 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 costs of legal representation." *Id.* at 347.

In the face of this sweeping pronouncement by the Supreme Court, DR 2-103(D) (5) as submitted by the CBA-ISBA cannot stand. It is already an anachronism. It attempts to restrict the extension of group legal services as far as constitutionally permissible, when the Supreme Court has now clearly stated that the Constitution embraces and guarantees group

legal services. It further permits group legal services arrangements only in organizations which provide legal services not as one of their "primary purposes" and only where such legal services are "incidental and reasonably related to the primary purposes," (DR 2-103(D)(5) (a) & (b)). Both of these restrictions now appear even more clearly to be in conflict with the First Amendment protections as enunciated by the Supreme Court in *United Transportation Union*.

In short, a different position than the CBA-ISBA rule *must* be adopted by this Court. As noted by Justice Harlan:

"I share my Brothers' concern with the problems of providing meaningful access to competent legal advice for persons in the middle and lower economic strata of our society. This is a matter of public concern deserving our best efforts at resolution, *a task that the organized bar may be thought to have been too slow in recognizing.*" *Id.*

at 354 (dissenting opinion). (Emphasis added.)

The Council urges this Court to adopt its Disciplinary Rule on group legal services. It is consistent with both the tenor and holding in *United Transportation Union*. It preserves the integrity of the attorney-client relationship and, at the same time, increases the availability of legal services to segments of our society which the profession is now failing to serve adequately. In addition, the requirement of filing with this Court the requisite agreement between organization and attorney in all group arrangements establishes a means for supervision and review of new group legal services programs in order to safeguard against any potential abuses which might arise. In sum, and without repeating here the reasons set forth in the original petition, the Council submits that its recommended Disciplinary Rule is adapted to public needs and to the profession's responsibility to serve the public interest.



American Bar
Association
Special
Committee on
Prepaid Legal
Services

The following Interim Standards were adopted by the House of Delegates of the American Bar Association at their Annual Meeting in San Francisco on August 16, 1972.

Recommendation

That the House of Delegates approve the following interim standards to be met by all plans providing for prepaid legal services:

1. The entire plan shall be reduced to writing and a description of its terms shall be distributed to the members or beneficiaries thereof;

2. The plan and description shall:
 - (a) State clearly and in detail the benefits to be provided, exclusions therefrom and conditions there-to;

- (b) Describe the extent of the undertaking to provide benefits and reveal such facts as will indicate the ability of the plan to meet the undertaking;

- (c) Provide that there shall be no infringement upon the independent exercise of the professional judgment of any lawyer furnishing service under the plan;

- (d) Specify that a lawyer providing legal service under the plan shall not be required to act in derogation of his profession responsibilities; and

- (e) Set forth procedures for the objective review and resolution of disputes arising under the plan;

3. There shall be a periodic written report not less often than annually disclosing to members or beneficiaries of the plan, to this Association and to the bar of any state in which benefits are paid a summary of the operations of the plan including, but not limited to, all relevant financial data, the number of members or beneficiaries receiving legal services, and the kinds of benefits provided;

4. Each plan should provide for an advisory group including members of the bar and beneficiaries of the plan which shall meet periodically to review and evaluate the organization and operation of the plan and to offer suggestions for its improvement.

Report

Since its inception the Committee has been constantly besieged by requests for "the plan," prototypes or models recommended, "the approval of the ABA," "regulations of the ABA concerning plans of prepaid legal services," and other requests for standards or guidelines. Many have come from bar associations, but a goodly number are inquiries from developers of private plans, from insurance companies, from lawyers and from many segments of the general public. It is clear that a substantial part of the public, many bar associations and many individual lawyers look to the ABA for guidance and suggestions as to the proper course of action.

Apart from developments within the trade union movement and a scattered few consumer groups, there is a growing number of "private plans" of prepaid legal services that have already or are about to commence operations in this field. A number of these private venturers have asked for guidance and instruction and have indicated a willingness to conform to accepted professional standards. Their cooperation may be partly inspired by a hope to exclude further competition or an honest desire to serve both the public and professional interests while achieving some measure of reward for their own promotional efforts.

At least one insurance company has directly asked permission to publicize its plan as "being developed in cooperation with the ABA." Another has made a more indirect request for approval.

In response to all of these, the Committee has stated that it cannot give "approval" or "endorsement" to any plan. We have also indicated that there is no prototype or preferred plan. We have encouraged and assisted in the development of locally designed plans to meet local needs, but our inability to be on the scene in every

locality where a prepaid legal service plan is being considered creates the threat either that the effort will die a-borning or that a plan will be developed without professional guidance.

This Committee is convinced that prepaid legal service plans present the most hopeful solution to one of the most serious problems facing our profession today—finding ways to make the law accessible to people, especially to that 70% of the population generally referred to as middle-income Americans. If the plans now coming into existence turn sour, fail in operation or shortchange their members, the public will predictably—and justifiably—blame the profession unless it offers leadership and guidance. Such a reaction can only aggravate the problem and delay solutions. It is incumbent upon the bar to inject its experience and expertise by offering advice and assistance. There are obviously certain fundamental principles that should be honored in the creation and implementation of any plan which provides legal services. These would include a full and frank disclosure of the nature and scope of the plan, and the extent of the plan's undertaking to provide legal services, basic protection of the integrity of the lawyer-client relationship and participation by all interested parties in the formulation, operation and evaluation of the plan.

The guidelines proposed are a rudimentary first step. They are proposed in full recognition of the probability that even limited additional knowledge and experience will indicate desirable improvements and additions. They are, however, based upon contact with every known plan of every type, three national conferences conducted by this Committee involving members of the bar, plan organizers and sponsors, the insurance industry, consum-

ers and other potential client groups. They represent our considered judgment of what is presently desirable and feasible.

In proposing these standards, the Committee is taking only the first short step on what may be a long road. Already we can dimly perceive the possible outlines of a more substantial role to be played by the organized bar at the national level in the development, promotion, operation and regulation of prepaid legal service plans. We are keenly cognizant of the bold program being undertaken by the State Bar of California. We have begun consideration of the possibility that this Association might itself create a separate entity which would assume and discharge the obligations of the bar in this field on a national basis. Such an entity almost certainly would serve as a medium for the collection, exchange and dissemination of information from and concerning legal service programs everywhere in the United States. It might usefully provide common services for independent programs sponsored by state and local bar associations including compilation of statistics, provision of actuarial service and even of plan administration. Finally, such an entity might itself, as is contemplated by the California program, offer a variety of legal service plans to be adopted by state and local bars and client groups or, alternatively, it may provide a vehicle whereby the resources of all professionally sponsored legal services programs may be marshalled in support of any of them.

Obviously, many issues remain to be considered and problems resolved including not only those outlined above but also the character of the entity, the composition of its membership and directorate, its relationship to the organized bar at all levels and similar matters. More thought and discussion must precede any specific recom-

mendation incorporating the foregoing concept or any variation thereof. It is produced at this time merely to underline the fact that the recommended standards are but a first step.

The standards themselves do not seem to require extended explanation or justification. They are but an implementation of the principles enunciated above.

Reduction of the plan to writing is obviously desirable in providing a full and frank disclosure of its nature and scope. In addition a written instrument will serve to impress upon all concerned the importance of preserving the historic lawyer-client relationship and the inviolability of the lawyer's professional obligations.

A special word might be added about the requirement that the written instrument shall describe the extent of the undertaking to provide benefits and disclose the plan's ability to meet its promise. Some plans will, such as Shreveport's does, promise to provide legal services without any limitation to financial resources. In an insurance policy such a promise is backed by reserves or undivided profits. In the Shreveport program it is underwritten by the commitment of the bar. Other plans may limit the obligation to provide legal services to the assets and resources available to the plan at any given time. This is the clear statement and qualification of the projected program of the State Bar of California. It is obviously important that users and beneficiaries of the plan know in advance whether the promise to provide legal services is qualified and if so, how, or, if unqualified, what is the potential for performance.

The provision of periodic reporting is but a continuation of the requirement for a full and frank disclosure of the nature and scope of the plan. Just as users and beneficiaries are entitled to know in advance what their

contributions will purchase, they are entitled to know periodically what funds or other assets have been put into the plan and how they have been expended. This information would not be of full value unless the users and beneficiaries were in a position to offer advice and recommendations about possible modifications to the plan to make it meet their needs more adequately. Thus the provision for an advisory group to receive and consider financial and other data and use that data as a base for evaluating the plan and recommending changes is considered desirable.

The suggested standards should be considered as bare minimum essentials. These proposals should not be construed as any guarantee on the part of this Committee that additional standards may not be required in individual plans or even that adherence to these minima will in all cases guarantee operation of a plan in the public or professional interest. They are suggested and recommended as guides to bar associations, to user and consumer groups and to others in the formulation of plans for legal services. Those persons will add to these standards in light of the requirements of the specific plan. As indicated above, further experience will doubtless suggest better and additional basic safeguards.

Respectfully submitted,
 John F. Arnold
 Robert J. Connerton
 Charles L. Goldberg
 Beverly C. Moore
 Henry A. Politz
 Samuel O. Pruitt, Jr.
 Davis H. Roenisch
 Robert M. Segal
 F. Wm. McCalpin, *Chairman*

August, 1972

Mr. McCALPIN. In addition, the House of Delegates passed a resolution urging State and local bar associations to become informed, to encourage the creation of and to implement prepaid legal service programs.

The demonstration of interest in prepaid legal services witnessed during the past year has been phenomenal. Virtually every State bar association and a great many local bar associations have established committees which are replicating, on the State and local level the activities of the American Bar Association Committee. Hardly a day goes by when we do not receive information from throughout the country regarding new projects or pilot programs being authorized or studied or existing programs improved.

Many associations have adopted policy resolutions in support of prepaid systems and, more specifically and of direct interest to the Subcommittee, many have passed resolutions supporting the enactment of legislation such as that before you today.

More than 400 group legal service programs embracing some one million participants are registered and operating in California. The State Bar of California has formed the California Lawyers' Service a unique corporation specifically authorized by the California Legislature, to operate and administer a statewide system of prepaid legal services. A pilot program is expected to be announced shortly.

Similar organizations are contemplated in Colorado and Washington. Other States which have witnessed considerable progress in the development of statewide approaches include Massachusetts, Connecticut, New York, New Jersey, Maryland, Virginia, North Carolina, Georgia, Florida, Ohio, Michigan, Illinois, Wisconsin, and Texas. In listing these States, I do not intentionally exclude others, including my own State of Missouri, where similar progress has probably been made. I simply wish to emphasize the heightened degree of interest bar associations across the country in the burgeoning movement of prepaid legal services.

I would also like to briefly note the continuing cooperation among the American Bar Association, labor unions, consumer groups, and insurance companies which has contributed considerable impetus to the progress which has been made. We were encouraged by the action taken by the AFL-CIO Executive Council at its meeting on February 26, 1973, of which you are undoubtedly aware, pledging active support for the prepaid legal services movement.

We have watched with interest the recent formation of the National Consumer Center for Legal Services which is actively and effectively representing the voice of the consumers of legal services in the prepaid movement.

The insurance industry is now evidencing considerable interest in the field of prepaid legal services. At least two companies have filed policies which have been approved by the insurance commissioners in several States where they are being actively marketed. Other major companies have announced plans to offer such policies, and more are known to be considering the possibility. The involvement of the insurance companies will undoubtedly develop and refine the reliable actuarial data which up to now has been very sparse. I am pleased to note that representatives of the insurance industry will appear before you here today.

While greatly encouraged by the existing developments which I have briefly sketched, our interest in the speedy enactment of legis-

lation such as that before you today is in no way diminished. The addition of legal services to the benefits which can and should be provided from jointly trustee funds is a logical and necessary extension of the services which can and should be provided through the American tradition of union-management bargaining. Our experience and research over the past few years has convincingly demonstrated that prepaid legal services is an idea whose time has arrived.

Before closing, I think I should allay one fear you may have. At a time when courts all over the land are inundated with more cases than they can efficiently handle, you may ask, as others have, "Won't these programs swamp the courts?" The answer can best be given by looking to the programs now in operation.

In large measure, they simply provide counsel in actions already initiated by others, the representation of defendants, not plaintiffs. Most programs have built-in requirements which make it more difficult for a plan member to institute an action himself. All plans concentrate heavily on counseling—preventive law—designed to resolve incipient disputes before they get to the level of litigation. As the sponsors of the Shreveport program have frequently noted, their 2 years of operation have developed no legal hypochondriacs.

One final word. The announced restructuring and restriction of Government-funded legal services programs make it all the more important that the American people be afforded every opportunity to provide legal services for themselves. If I may depart from my prepared text for just a moment, I would like to emphasize that point. If the American people are being told that they must provide for themselves, then we must make it possible for them to provide for themselves, whether at the middle or the lower end of the economic spectrum.

I should point out to the subcommittee that the group involved in our Shreveport experiment has a median income of less than \$5,000 a year. Many members of that group would be in a legal aid recipients for whom legal aid services may be denied, if there is a cutback in the OEO Legal Services program. By instituting such programs as we are talking about here, jointly funded, jointly administered programs under section 302, these people realistically can provide themselves with legal services on a continuing basis.

If the American people are being told that they must become self-sufficient, then we must provide them the means by which they can become self-sufficient. This is precisely what prepaid legal services plans are intended to accomplish.

I think it is striking that in *Trusts and Estates* magazines, a publication which you would not generally consider—

The CHAIRMAN. What is the name of the magazine?

Mr. McCALPIN. This is the April 1973 issue of *Trusts and Estates* magazine. This is the vehicle of the trust officers and the probate lawyers. This talks about enactment of provisions such as we are discussing today for the orderly organization of people's property affairs. It states specifically, discussing prepaid programs, and I quote:

It is apparent that before any significant progress can be made in establishing group legal services as an employee benefit, section 302 of the Taft-Hartley Act would need to be amended.

That is in *Trusts and Estates*, a publication which would not be considered in the forefront of the prepaid legal services movement.

I suggest to you then, merely as underlying and emphasizing the necessity of amending section 302 of the Taft-Hartley Act, to make this logical and necessary extension of the benefit programs already subject to jointly trustee administration.

I submit that the breakthrough which will greatly be provided by the enactment of this bill will advance us toward the cherished goal of equal access to justice for all of our citizens.

The CHAIRMAN. Thank you very much, Mr. McCalpin.

If there are not any questions right now, why do we not hear from Mr. Honig.

Mr. HONIG. Mr. Chairman and members of the subcommittee, I am Emanuel A. Honig, a trustee of the New Jersey State Bar Association and chairman of its Special Committee on Prepaid Legal Services. The New Jersey State Bar Association supports and urges the adoption of legislation authorizing labor and management to administer trust funds established to provide prepaid legal services for employees, their families, and dependents.

Our interest in such legislation arises because we are convinced that it is greatly in the public interest to make legal services more effectively and economically available to all citizens, especially to those in the middle-income sector.

In our statement in support of H.R. 13838 last year we pointed out that the proposed amendment to section 302(c) of the Labor Management Relations Act of 1947 was prerequisite to the fullest success of our program. As we proceed toward the establishment of that program it becomes increasingly clear to us that this legislation is essential to the most advantageous development of any prepaid system.

The New Jersey program is unique in several respects: It is the first program which seeks to utilize the cooperation and expertise of an established health care agency experienced in the field of prepaid insurance, Blue Cross of New Jersey, to market, administer, and service the prepaid insurance aspects of our plan; it further seeks to provide a more effective means for members of the benefited group to identify lawyers competent to serve their special needs, and it is intended to be structured in a way which hopefully, will keep the costs of legal services within reasonable limits. In short, our plan does not merely contemplate supplying clients with funds with which to pay lawyers, but rather seeks to establish broad programs to bring the legal process more effectively to the public.

We have now reached a point in this project where we are seeking enabling legislation from the New Jersey legislature to authorize the formation by Blue Cross of a corporation which can serve as the vehicle for the plan. Blue Cross is enthusiastically behind the project and is prepared to launch a program which will offer statewide coverage to all who can qualify as subscribers.

We are persuaded that the public is prepared to utilize the system and that it offers great promise of affording to every citizen an opportunity for protection of his legal rights and for maximum participation in a system based upon the rule of law. We are encouraged to believe that the system will result in a great enlargement in the practice of preventive law, to enable participants to recognize and

define their legal rights and responsibilities before they get into trouble or require burdensome litigation.

Although we can effectuate our program by voluntary participation of individuals and groups, even through payroll deduction plans, we recognize that it is essential to a thorough development of the concept of prepaid legal services that the benefits be provided and financed through jointly trustee funds. Anything less will limit the program to a shadow of its true potential. In this sense the protection of the legal rights of the people is almost as important as the delivery to them of adequate health care.

We believe that our program envisions a time when all citizens of this Nation can be assured of equal access to justice and a reasonable assurance of the attainment and protection of their basic legal rights. The time will not fully come, however, unless these protections are assured as a fundamental part of the employment system made possible by this amendment to the Taft-Hartley Act.

In conclusion, I wish to emphasize our firm belief that what we are seeking is intended to serve the public interest and not merely to make more business for lawyers. Unfortunately, millions of people in this country are today deprived of any meaningful access to the legal process. Lawyers are amply occupied in serving the needs of those who can afford their services. What we seek is a method of enlisting our profession in the task of protecting and serving those who are now largely ignored by it.

The CHAIRMAN. Thank you very much, Mr. Honig.

I mention to Mr. McCALPIN that Senator Eagleton, who is a member of the committee, did want to be here but found it impossible to attend.

Mr. McCALPIN. I had a message from him that he would not be able to. Thank you.

The CHAIRMAN. This is of course most helpful testimony in support of this legislation. I just have one or two questions and we will turn then to Senator Hathaway and Senator Taft.

We will later this morning have statements in opposition to this approach, to meeting the need for prepaid legal services. Mr. Dunn from the Associated General Contractors will tell us that "it is noted that the proposal is not limited to defensive legal services but could be used to start law suits and even stir up litigation, litigation which might well be directed toward either labor or management or both."

"This ironic situation is entirely possible under the bill S. 1423." You mentioned the possibility of promoting litigation, Mr. McCALPIN. Could you comment on Mr. Dunn's fears here.

Mr. McCALPIN. Yes, sir, I would be glad to.

I think I should begin by pointing out that the existing subsections of 302 which relate to exemptions for pension programs, certain health programs, do not purport to specify the detail of the pension program or the health program.

Nothing in 302(c) says, for instance, that a jointly trustee health program must provide a surgical schedule or that it must cover the cost of a 2-bed room in the local hospital. These are the details of the plan.

Now, I can proceed from that to say to you, by way of example in the Shreveport program which we have sponsored and funded, there is a specific provision arrived at by the sponsors of that program which include the Shreveport bar and Local 229, that the program shall not be used to subsidize law suits against the union. The employees down there were asked to participate in this in negotiations in 1970. They wound up by not participating in the program.

It is funded another way, by dues checkoff, and as a result it is open to the possibility of suits against the employer, simply because they did not participate in it.

The CHAIRMAN. We had testimony yesterday in this regard, and I will have to go back and review the details of it, but I think it answered a lot of these questions.

Those union-sponsored plans that now exist—of course they are not jointly administered, that is why we are here; the law does not permit it—where they are created by the unions most of them I understand do have a prohibition against that kind of litigation.

Mr. McCALPIN. Against the union?

The CHAIRMAN. Yes.

Mr. McCALPIN. Yes.

The CHAIRMAN. This again is a detail that can be worked out in the bargaining process. That is what you mentioned first, is it not?

Mr. McCALPIN. Yes, sir. This is a detail. These plans differ, each one. There are no two really alike. They differ in their content, in their scope, in their coverage, in their exclusions, and they literally can include anything that the parties want.

The CHAIRMAN. There is an old axiom—if it is elevated to that level—if you cannot beat them, join them.

Mr. McCALPIN. I have heard that.

The CHAIRMAN. Mr. Hathaway.

Senator HATHAWAY. Thank you very much, Mr. Chairman. I really do not have any questions. I am glad to have both these gentlemen testifying in support of the bill, and I hope we can get it through.

Mr. McCALPIN. I hope so too.

The CHAIRMAN. Senator Taft.

Senator TAFT. Thank you, Mr. Chairman.

Mr. McCALPIN, have there been any formal actions by the American Bar Association in regard to this question?

Mr. McCALPIN. Yes, sir, on several levels. First of all, the interim policy-making body which meets between the meetings of the house of delegates and the Board of Governors, has specifically authorized me to appear in support of the legislation.

Second, there was the action taken last summer at the annual meeting, which is incorporated in this pamphlet which I believe has been made available to the members of the subcommittee through your Counsel.

The American Bar Association is on record as supporting plans of this type, and I am specifically authorized to appear in support of this legislation as enhancing the adoption of plans of this type.

Senator TAFT. What is the position of the American Bar Association as to a national legal services corporation?

Mr. McCALPIN. The president of the American Bar Association, Mr. Robert Meserve, appeared before the Subcommittee on Equal Opportunities of the House Committee on Education and Labor on February 21 of this year and made a statement concerning some pending legislation.

The position of the American Bar Association is, and continues to be, supportive of the concept of a national legal services corporation.

There has, of course, been debate over the particular format of the corporation.

Senator TAFT. As to a national legal services corporation, some of the fears and criticisms of establishing funds of this kind, it would seem to me to apply equally to a national legal services corporation. Do you think I am correct?

Mr. McCALPIN. Yes, sir.

Senator TAFT. It would apply only to those who qualified presumably in a lower economic status than many of those who would qualify for a trust fund plan, but the same arguments would apply basically to a national legal services corporation that would apply to these funds?

Mr. McCALPIN. I believe that is right; yes.

Senator TAFT. I think that is all I have, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Taft.

Another reason for opposition will be stated here later by Mr. Segal from the Sheet Metal & Air Conditioning Contractors National Association. Mr. Segal will tell us:

To our way of thinking this sort of compulsory participation abridges the very fundamental right of free choice of legal counsel and/or legal assistance in general.

I thought there was another point there that he also is going to suggest that there was some inhibition on a lawyer's free choice of judgment in terms of how to handle the matter. It is not in Mr. Segal's statement.

But first on this question of free choice of legal counsel, will you comment on that?

Mr. HONIG. Yes, sir. The very basic purpose of the New Jersey plan is to insure that there is free choice of counsel by every single individual.

As contrasted with the closed panel plan in which there is no free choice, we are seeking to offer an open panel plan in which every single individual who is a participant can choose any lawyer he wants, whether he be a participating lawyer or not under the New Jersey plan.

What we intend to do is to publish panel listings of people who feel they are qualified more or less as specialists. These panels will be made known to all the participants.

They will be panels who feel that they are qualified in a particular area and can handle matters more expeditiously because of their expertise, and every single purchase of it will be free to go to these lawyers or any other lawyers he wants.

We will more or less parallel the English system in which we will open them up wide to every lawyer. If we do not do this, then under

the cases handed down by the Supreme Court, labor unions may recommend to their employees' lawyers on a closed panel basis, and free choice will be destroyed.

What we are trying to do is to preserve free choice and to prevent the intervention of a third party between the lawyer/client relationship.

The CHAIRMAN. Again the legislation does not spell out any directive here. This is again a matter of free choice of the parties, as to how they want to structure their own plan.

Mr. HONIG. That is right.

The CHAIRMAN. I predict we will hear apprehension that this will be a further inflationary push. Are there any comments on that from you eminent practitioners of the bar?

Mr. McCALPIN. I think two points need to be said about that, Senator.

First of all, there are in existence collective bargaining agreements which provide certain specific sums of money—a nickel, a dime, a quarter an hour—to be devoted to fringe benefit programs at the election of the union.

To the extent that we are talking about legal service programs funded out of such contracts as that, there is no cost increase because that cost has already been negotiated and the only question is, to which program will the already negotiated money go.

The Laborers International Union has negotiated such contracts. It is such a contract which is supporting their Columbus, Ohio, closed panel type program today.

Second, it is likely to be—and the Senator will know more about that than I do, but we hear it all around—the possibility of legislation in the health field in the years immediately ahead which we understand has the potential for changing the focus of expenditure of fringe benefit money to the extent that moneys presently devoted to the health field are freed because of national legislation, and thus available for legal service programs, among others. There is no additional cost impact.

Now, beyond those two I would have to say in candor that if a new fringe benefit is negotiated on top of already existing fringe benefits, that adds to the cost. But it seems to me in the context of the bargaining situation it is just a question of whether the employee wants to take what is available on the bargaining table in terms of wages or fringes, whether it goes into one or the other is not of significance to the employer.

The CHAIRMAN. Thank you very much, Mr. McCalpin and Mr. Honig.

I mentioned two of these gentlemen who will appear before us now, and there are three or four others: Mr. Harry Taylor, William Dunn, Edward Torrence, George Segal, Walter Gerson, and Robert White.

Gentlemen, we would like to have all of you come up to the table. You are drawn from various parts of one industry, am I right, contracting? I take it that you will all further describe your particular specialty as you present yourselves.

STATEMENT OF HARRY P. TAYLOR, PRESIDENT, COUNCIL OF CONSTRUCTION EMPLOYERS, INC.; WILLIAM DUNN, EXECUTIVE VICE PRESIDENT, ASSOCIATED GENERAL CONTRACTORS; EDWARD TORRENCE, DIRECTOR, GOVERNMENT RELATIONS, PAINTING AND DECORATING CONTRACTORS; GEORGE SEGAL, CHAIRMAN, LEGISLATIVE STEERING COMMITTEE, SHEET METAL AND AIR-CONDITIONING CONTRACTORS; WALTER GERSON, GOVERNMENT RELATIONS, PLUMBING, HEATING, COOLING CONTRACTORS; ROBERT WHITE, MANAGER, PUBLIC RELATIONS, NATIONAL ELECTRICAL CONTRACTORS; COMPRISING A PANEL

Mr. TAYLOR. Mr. Chairman and members of the committee, my name is Harry P. Taylor, and I am president of the Council of Construction Employers, Inc. The council is a nonprofit organization having as its members 10 national employer associations in the construction industry consisting of the following: Associated General Contractors of America, Inc., Ceilings and Interior Systems Contractors Association, International Association of Wall and Ceiling Contractors, Mechanical Contractors Association of America, Inc., National Association of Home Builders, National Automatic Sprinkler and Fire Control Association, Inc., National Constructors Association, National Electrical Contractors Association, National Roofing Contractors Association, Sheet Metal and Air Conditioning Contractors National Association, Inc.

CCE member associations have a combined membership of 50,000 contractor employers in the construction industry employing approximately 2 million construction workers.

I am appearing here today on behalf of the member associations of the council and two additional leading associations in the construction industry: the National Association of Plumbing-Heating-Cooling Contractors, Inc., and the Painting and Decorating Contractors of America. At this time I would like to introduce to the members of the subcommittee those in attendance representing participating associations on this panel:

Mr. William E. Dunn, executive vice president of the Associated General Contractors of America, Inc.

Mr. Walter Gerson, director, Government Relations of the National Association of Plumbing-Heating-Cooling Contractors, Inc.

Mr. Robert L. White, manager, Public Relations of the National Electrical Contractors Association, Inc.

Mr. Edward S. Torrance, director, Industry and Government Relations of the Painting and Decorating Contractors of America.

Mr. George Segal, chairman, legislative steering committee of the Sheet Metal and Air-Conditioning Contractors National Association, Inc., accompanied by Mr. James P. Hensley, director, legislative affairs also of the Sheet Metal and Air-Conditioning Contractors National Association, Inc.

We oppose S. 1423, a bill which would amend the Labor Management Relations Act of 1947 to permit employer contributions to jointly

administered trust funds established by labor organizations to defray the costs of legal services.

We recognize the need for quality legal services to be available to all citizens. If such services must be provided through a fund, then it should be a unilateral fund established by the beneficiaries. However, we do not believe that such services should be provided through the labor-management collective bargaining process.

Provision for expenses such as employing legal counsel, and other personal expenses, is and should continue to be the responsibility of the individual. Employers are not legal guardians of their employees. The workers should retain full responsibility and authority over how much of their wages to spend and how much to set aside for emergencies. We believe most Americans wish to retain these rights and responsibilities and Congress should not through its action, transfer those responsibilities to the public through employers.

Like car insurance, if an individual wants to take advantage of group rates for employee prepaid legal services, then he or she may subscribe to group prepaid legal service plans for which the employee pays. This, however, should be an individual's election and certainly not at an employer's expense as a subject of bargaining.

If such a legal service plan is indeed desirable it can be established under existing law by any group of employees that wants one through the simple expedient of the interested individuals funding it themselves. As the committee is undoubtedly aware, a number of pilot programs of this nature are currently in existence in several sections of the country. Established in this manner, the plan is available to those employees who have a genuine interest, it is funded by the beneficiaries themselves and it does not have an inherently inflationary effect on the collective bargaining process and the industry generally.

In the construction industry, labor and management are already bargaining not only for wages, hours and working conditions, but also for employer contributions to many already legitimated funds including, but not limited to health and welfare, pensions, pooled vacations, pooled paid holidays, so-called showup time funds, union dues check-off, training funds of several types, supplemental unemployment benefit funds and guaranteed annual wage funds.

During the Korean war era, fringe benefit programs became a major issue in negotiating collective bargaining agreements in the construction industry. At that time, working within the framework of the wage stabilization machinery, the average fringe benefit package permitted under controls amounted to 7½ cents per hour.

Today, in some instances, the combined contributions to such funds, excluding wages, exceed \$4 for each man-hour worked. With each negotiation, even a modest increase of contribution to those funds and to wages, collectively constitute inflationary cost increases to an industry which no longer can survive them.

Indeed, the collective bargaining process in the construction industry nearly collapsed in recent years and required government intervention in March of 1971, months before controls were placed on other industries. To add yet another issue to be bargained and paid for with further inflate the cost of construction and is not in the public interest. To illustrate the cost of such a prepaid legal services fund for the construction industry, a contribution of 10 cents per hour would cost approximately one and a half billion dollars per year.

As the rate of contribution increases, as it has in virtually all fringe benefit funds, the cost to the building public will increase proportionately. Since approximately one-third of construction is performed for government procurement agencies, the taxpayer will be forced to directly bear the brunt of a large portion of the increased costs. Eventually, the public pays the entire cost, directly or indirectly.

If the bill passes, we may expect a proliferation of funds for legal services. Unions which have never heretofore shown any interest in such programs will be compelled by considerations of competition and prestige to negotiate them and employers will be obliged to contribute money to them. The result will be an increase in labor-management wrangling in a new area, together with an increase in construction costs, and undoubtedly labor strikes.

Moreover, this type of fund, if included as one which may be jointly administered under the proposed provisions of section 302(c)(8), would open the door to further legislation to permit the employer and thereby the public to pay for additional social and professional services such as prepaid funds for accounting and engineering services, which do not provide the employee and his family with essential health and welfare benefits. In fact, collective bargaining for prepaid legal services could serve to lessen the future benefits of existing essential programs by competing for such employer contributions as may be available.

In our industry a prepaid legal service fund would add to the cost of construction with no compensatory return in the way of increased productivity. Thus, it differs from some other joint labor-management programs that involve training and skill improvement programs, medical care, and the like. Such programs have some tie-in with an employee's ability to produce, however, the subject bill, S. 123, does not.

Because of the vagueness of the bill, it is difficult to comment on its intended uses. Who could use the fund and against whom could they use it? Could the union as an agent of the employees use it to sue the employers who made the contribution in the first instance? Could the individual union member use it to sue the employer or the union or both? In a divorce case between a union member and his dependent wife, could the fund be used to pay attorney fees for both? It appears certain that if such funds are created, those eligible to do so will be compelled to spend them even on frivolous charges in some cases. The bill provides no safeguards against such potential misuses.

In summary, construction management opposes the passage of S. 1423 because it would tend to provide another area for labor-management infighting, create further inflation and provides no assurance that the funds created would be used for the benefit of the workmen generally, the union, employers, or the public.

We recognize that all committees of Congress are confronted with a very heavy workload. However, we believe that this proposed legislation is of such importance that affected major organizations in our vast industry should have been afforded an opportunity to present complete oral statements. Certainly we believe that opponents of the bill should have been given equal time with proponents of the bill.

The CHAIRMAN. What is that all about, Mr. Taylor? Where are you reading? In terms of numbers, you outweigh the others I think.

Mr. TAYLOR. In terms of time we do not, sir.

The CHAIRMAN. You only started.

Mr. TAYLOR. I could have told some of the national associations—

The CHAIRMAN. We have been looking all over the country for people in opposition because we wanted a full story. You seem to be standing almost in isolation. We had a dragnet out to find the potential opponents.

Mr. TAYLOR. Some of them because of time did not get it.

The CHAIRMAN. Who was that?

Mr. TAYLOR. In our industry, sir.

The CHAIRMAN. Who?

Mr. TAYLOR. I believe the plumbing and heating contractors—am I correct?

The CHAIRMAN. We had a communication from them on April 9, and their statement is coming. That is the way they want to do it.

Who do you talk to in plumbing?

Mr. TAYLOR. This is Mr. Gerson.

Mr. TAYLOR. He is the National Constructors Association.

The CHAIRMAN. Who is Mr. Borck?

The CHAIRMAN. Mr. Gerson is here.

We have reached out to as many as we could think of. We have called the U.S. Chamber of Commerce. Are there any members here from that organization?

Mr. TAYLOR. We may have a member who is a member.

The CHAIRMAN. They did not even return the call. You see what I mean? You have a heavy burden of carrying the entire opposition right on your shoulders.

Mr. TAYLOR. That may be due to the recent introduction of the bill, sir.

The CHAIRMAN. I think with the history—we called you before you called us on this bill to come in and testify.

Mr. TAYLOR. That is because of the introduction in the House of an almost identical bill which preceded this.

The CHAIRMAN. I will let you amend that statement if you want to, because, frankly, the procedures are open, fair and complete.

Mr. TAYLOR. We would like an opportunity for the industry to have the same research time and so on that the proponents of the bill have. I know in the construction industry this is a bit sudden because I burnt a lot of midnight oil on the thing. I had to do it in order to make it.

The CHAIRMAN. Does this statement have any supplementary material to the statement you made over on the House side?

Mr. TAYLOR. Yes. I was given time from somebody else. I had to take part of somebody else's time to get before the committee in the House.

The CHAIRMAN. That is their problem, but the contents of the statement was about the same, was it not?

Mr. TAYLOR. Combined with all the construction industry—not my own personal—there is more here than there was in the House.

I want to thank you for allowing me to present the views of the panel.

The CHAIRMAN. That is better.

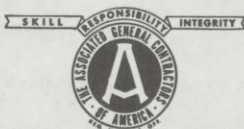
Mr. TAYLOR. But I was not quite finished. Still, I would like to have more time, and I would like now to call on other members of the panel to elaborate on some of the points about which I have commented.

I would like to call on Mr. Dunn first.

Mr. DUNN. With your permission, I would like to have my statement included in the record. I would like to then highlight my statement.

The CHAIRMAN. Your statement will appear in the record in its entirety.

[The statement referred to follows:]



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

1957 E STREET, N. W. WASHINGTON, D. C. 20006 · EXECUTIVE 3-2040

STATEMENT OF
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE
UNITED STATES SENATE
ON PROPOSED LEGISLATION, S. 1423, TO ALLOW
JOINT LABOR-MANAGEMENT FUNDS FOR LEGAL SERVICES

April 11, 1973

Mr. Chairman and members of the Committee, my name is William E. Dunn. I appear before you today in behalf of the Associated General Contractors of America, a trade association representing 9,500 member firms engaged in all forms of construction in the 50 states, Puerto Rico and the District of Columbia. Our membership performs a great part of the total annual construction in the United States. We also represent 100,000 associate members who are engaged in supplying material and services for our construction firms. The construction industry employs approximately 5 million workers, 3.5 to 4 million of which are employed by or through collective bargaining agreements with members of our Association.

AGC is opposed to S. 1423, to legalize joint labor-management funds for legal services in general, and is particularly opposed to the specific wording of the proposal.

The concept of creating a huge fund from which employees may freely draw to pay for legal services whenever they think they need them is basically unsound. There is no objective way to limit the use of such funds. It is safe to say that if once established, they will grow and grow just as all such fringe benefit programs have.

It must be recognized at the outset that such a fund will simply be another cost of doing business to be paid by the employer and in due course by the public.

Prepaid Legal Services vs. Other Fringe Benefit Programs

A legal fund in no way equates with funds now permitted by law to be jointly administered, such as providing health care for an employee and his family; income protection for an employee's family should the employee pass away while in the employ of the company; and a pension for an employee after long and honorable employment. These funds give the employee security and are a measure of the employer's interest in the employee as an individual. A legal fund does not have the same effect or fulfill the same needs and is merely a benefit that may or may not be of value to the individual. It is in no way similar to funds which promote the worker's skill, his productivity or his safety.

This type of fund, if included as one which may be jointly administered under the provisions of Section 302(c)(8), would open the door to further legislation to permit the employer and thereby the public to pay for additional social services which do not provide the employee and his family with essential health and welfare benefits. In fact, collective bargaining for prepaid legal services could serve to lessen the future benefits of essential programs. Employer contributions to such funds would not be in place of wage increases but in addition to wage increases.

Provision for expenses such as employing legal counsel, and other such personal expenses, is and should continue to be the responsibility of the individual.

Increases the Cost of Construction

In our industry it will add to the cost of construction with no compensatory return in the way of increased productivity. Thus it differs from some other joint labor-management programs that involve training and skill improvement programs, medical care, safety training, and the like. Such programs have some tie-in with an employee's ability to produce, however, the legal fund permitted by S. 1423 does not.

The move to enact a bill like S. 1423 comes at a particularly bad time because construction labor costs are already much too high and this bill would simply add to the inflationary trend and the public must bear the full cost of this program.

The legislation suggests the cost of such legal services would be borne jointly by labor and management, but nothing could be more naive. The actual cost would, of course, be added to the purchase price of the construction under way, paid by the purchaser, or, in the case of Federal or Federally-aided projects, by the American taxpayer. Not only would the result be one more example of unnecessary inflation, but the public, already suffering from spiralling prices, would be forced to contribute to a scheme which would eventually result in even more demands on pocketbooks.

It Will Make Trouble and Stir Up Litigation

Another basic objection to the proposal is the prospect of it stimulating litigation by persons covered by the plan. No Federal law should be allowed to be a

part of the stimulation and subsidy of law suits. It is noted that the proposal is not limited to defensive legal services, but could be used to start law suits and even stir up litigation -- litigation which might well be directed toward either labor or management or both. This ironic situation is entirely possible under S. 1423.

Adversary legal proceedings are increasing in this country to the point that even construction projects are enjoined, stopped and the livelihood of the construction worker diminishes for so-called environmental reasons. More attention should be given to this serious problem instead of finding ways to force the employer and in turn, the public, to pay for legal services.

Suits Against Management

In addition, AGC is specifically opposed to the bill now under consideration since it fails to indicate that the joint fund would be limited to legal services for employees only. This deficiency opens the door to the build-up of large legal service funds for use by the labor unions, as such. Assuming large funds were made available to unions, to use as they wished, to initiate law suits against those who displeased them, the courts would soon be flooded with ridiculous and inconsequential law suits initiated by unions, whether for legitimate reasons or for harassment. It is clear that the threat of bringing law suits financed by legal funds could become an important new weapon to harass management. There is already a harmful imbalance of power at the bargaining table.

The passage of this bill would cause more demands and strikes by the union seeking employer approval of free legal services through jointly administered funds. Unlike some other provisions of Section 302, it does not contain a proviso "That no

labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice."

S. 1423 is not in the public interest and should not be passed.

Mr. DUNN. We concur in the statements of Mr. Taylor. I represent the Associated General Contractors who are the prime and general contractors doing substantial part of our Nation's construction volume.

We are opposed to the bill in principle and also from a practical standpoint.

The sections provided in section 302 (c) in this bill are different from the other welfare provisions that have been enacted by Congress—different in nature and different in principle. You will note that the original exception back in 1947 contemplated the establishment of a joint trust fund to administer welfare programs then in existence and others to follow.

They dealt with such things as health and hospitalization, medical expenses. Later on they dealt with such things as training, safety, things of that nature, all of which increased the productivity and efficiency of the worker.

It was something that he would want in connection with his job, and it would bring back a return for the industry.

I was looking up the legislative history of this law, Mr. Chairman, and I noticed a report by the Senate committee which talked about the whole subject of welfare. They made an exception to the law, saying that you could not pay money to a union official if you were an employer representative, but under these circumstances they said you could do it in five or six instances, one of which was this joint welfare program.

At that time there was a report filed by Senator Robert Taft and others, pointing out there was a serious question whether they should have these welfare funds to begin with. However, there were a number of both in existence. John L. Lewis had one.

They felt they wanted to eliminate those, but they said in some way welfare funds should be part of social security, that social security should be opened up to include all those things that are contemplated here, and they should be integrated with social security.

Now, could you conceive of opening up social security to provide for legal prepaid expenses? This is going back to the original intent.

We say this is different. That had something to do with productivity and the workers' welfare. I will point out, Mr. Chairman, that this is, as Mr. Taylor said, very costly. No matter what it starts out to be, it will grow. That is the nature of the thing.

We estimate if it is 10 cents an hour, and we are talking about 3½ million workers, it will come to \$450 to \$500 million, or, in round figures, a half billion.

Who is going to pay for that? The consumer is going to pay for that, the user. It will not come back in a return—I am only talking about construction—to the industry, and it will not reduce the price of houses or hospitals or whatever else is built, whereas a safety training and that sort of thing increases productivity.

So you can write off x dollars, whatever it is, and we estimate it would probably run, with the backing of the lawyers and the insurance companies and the unions, to a great amount, and funds very likely will grow, just as the other welfare funds.

They start out, as Mr. Taylor said, in round figures at 7.5 cents an hour. That was the Wage Adjustment Board's impetus. At that time there was no wage, therefore you can pay 7.5 cents an hour. Since 1952 that figure has been increased to 1,500 percent.

We expect once they get a fund going for legal expenses, that will grow likewise.

The total round figures in construction are \$42 to \$45 billion in welfare today.

The consumer will pay for this. There is no way to absorb that. We wonder, Mr. Chairman, if this is good for the worker?

First of all, he may not want that instead of the money. He may rather take the wage increase, instead of the benefit. He may not need a lawyer. Maybe he does not like lawyers; maybe he does not want to sue anybody, including his wife, his neighbor, or his boss.

Maybe he would rather have the money. Now, if he does not use that legal expense, he is not getting any return. He is giving up his wage increase. According to the proponents' theory, he is taking his 10 cents which would be a wage increase, and that is thrown into a kitty or fund.

This will add to the inflation that we have in our country today which we have brought under control, thanks to the U.S. Government policy under CISC.

By proposing this increase I wonder if the unions have not come to the brink of inflation and are saying, if you add this additional cost, Mr. Chairman, to the cost of construction in our country, it is going to cut down on job opportunities of the union worker. With the growth of the open shop this is a serious problem, and the unions should be thinking of that.

We believe it will stir up litigation. There is no safeguard, Mr. Chairman, to protect innocent persons from litigation.

I think the American Bar Association's spokesman made an eloquent case for his profession, but it is not in the public interest unless safeguards are put in this act. Do not leave it up to collective bargaining. The unions have too much power now. This gives them just that much more.

This will cause strikes, turmoil, and in the long run the public, the owners, are going to say, "we want that job finished; we cannot stand any more strikes; give it to them; it is only 5 or 10 cents an hour."

We say there are no safeguards in the bill, and if this is going to be passed, it should be in the bill; do not leave it up to collective bargaining. The unions have too much power today, without giving them additional weapons to demand more money from employers.

Sure, there will be court jams. The courts will be flooded with litigation. The *Shreveport* case is not a good example.

I think further studies are necessary, Mr. Chairman. That is not a very good premise on which to have such a widespread piece of legislation.

Where do we end up with this concept of from cradle to grave everything is taken care of for you? Would there not be a logical sequence here, a trust fund for tax purposes, to take care of your tax bill, your car purchases, repairs, wedding expenses, funerals—the whole works.

It is only because lawyers are powerful, they are behind this, and they are very naive people when it comes to building trades. The building trades will strike. Lawyers do not know anything about this.

This is a lawyer's bonanza, and insurance companies benefit. We think more time is necessary.

This form of legal medicare is very serious, it is going to cause strikes, and you need to give this more study, Mr. Chairman, before you walk into the situation.

Consider the great departure we have from 1947 and 1973. This is not what Congress intended when they opened up the welfare program.

The CHAIRMAN. This section has only been amended twice. Is that right, Senator Taft? Since 1947 we have added funds for pooled vacations and day care. In other words, we have not substantially increased the number of activities permitted.

Mr. DUNN. I think that is wise.

The CHAIRMAN. It has been turned down.

Mr. DUNN. I think it was twice they turned them down. I think it was the Landrum-Griffin amendment that included apprenticeship and training.

The CHAIRMAN. That was the vacation pooling.

Mr. DUNN. You know that some of the others say that you cannot strike. There is no such provision in this proposed act.

The CHAIRMAN. We do not want to repeat that mistake.

Mr. DUNN. You do say something. You introduced a bill, but I am not sure it says bargaining will not be required.

The CHAIRMAN. In this legislation—I might have missed what you said there—but if you are dealing with any suggestion that this legislation makes this a mandatory issue, it does not.

Mr. TAYLOR. Sir, if I may speak to it as one who did negotiate, representing management, with the building trades unions, if I had a choice between it being mandatory or permissive—

The CHAIRMAN. You would rather have it mandatory?

Mr. TAYLOR. No, sir, but only for those few cases—and, they are rare—where the negotiator for the union is not astute enough to inflate his demand for mandatory bargaining issues.

This is the situation where they say, now, you just give a little more on this permissive issue, and I will get reasonable on the mandatory issue. The net effect in dealing with an astute negotiator—most of them are that I have met—from the union, it really makes very little difference. They will make it mandatory by the mere practice, even if it is just permissive.

I would rather have it permissive.

Mr. DUNN. Just to follow up this statement that you made is the one that I am concerned about. This measure will not replace the bar association procedures with Federal procedures; it will not subvert State control over the practice of law with Federal control. It will neither require nor prohibit open panels or closed panels. It will not require nor prohibit the establishment of such programs.

The CHAIRMAN. That is a very sound statement.

Mr. DUNN. I just want to clarify. This does not require it, but NLRB may, is that what you mean? In other words, this particular act would not require bargaining.

The CHAIRMAN. Right.

Mr. DUNN. If it does not require it, who does?

Senator TAFT. The question is whether the law does. We went into that yesterday, and there is no clearcut court decision, as I understand

it—I would like to be corrected if I am wrong—as to whether this would be mandatory.

It would leave the matter where the law has left it at the present, in other similar type situations, but it has not been ruled on before.

Mr. TAYLOR. Regardless of the eventual outcome of that decision, it would not change the part that it was permissive and therefore, as I said before, mandatory as a practical matter.

Senator TAFT. What you are complaining about really there—and I might have some sympathy with it, and this seems to go through the whole thread of all the testimony, so I would welcome comments from later witnesses—but what you are really complaining about, it seems to me, is an imbalance of bargaining strength in your particular industry between labor and management.

This is something I have discussed many times, but I do not think it necessarily goes to the merits of this particular piece of legislation as such.

It seems to me that if we are going to attack that problem, we ought to attack it on a far broader basis, not by simply excluding a particular approach which may be a pretty strong positive reason for it.

Mr. TAYLOR. If I may, sir, add one more issue to be bargained.

Mr. DUNN. Its precedent, Senator, is in the part that deals—I think the last addition to the exceptions on welfare—it says “provided that no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute unfair labor practice.”

So there is precedent to put this kind of caveat around if you are to pass this.

Senator TAFT. It could be done. We could add it. I do not know. I rather agree I am not sure how much effect it would have.

Mr. TAYLOR. Every little bit helps.

May I now call on Mr. Torrence.

Mr. TORRENCE. Mr. Chairman, I represent the Painting and Decorating Contractors of America, a national association with some 6,000 members that employ in excess of 100,000 journeymen and apprentice painters. Our members unanimously oppose this legislation.

We certainly agree with every statement that Mr. Taylor and Mr. Dunn have made. One of the great things that disturbs our members, we feel enactment of this bill certainly is going to cause more work stoppages and strikes. Negotiations at the present time are certainly in an intense area, and the proposal of anything such as a legal defense fund is going to cause a great reticence on the part of management. They are not going to give in to it very easily.

Whether or not it happens to be mandatory, a mandatory subject of bargaining, I would not want to debate.

I have been handling negotiations for some 30 years. I think I know what happens. I think that if this bill is enacted, many negotiations will have as a labor demanding establishment some type of front. As it now stands, we can very frankly and honestly see that is illegal, we cannot talk about it, we just cannot consider it at all.

I would hope that this committee would give it some consideration. We would hope sincerely that that situation would stay as it is. Do not legalize employer contributions to a legal defense fund.

You have heard the figures given around by Mr. Dunn and by Mr. Taylor of the great cost of all of these fringe benefits we have now. I tell you that the painting industry is almost faced with the fact that we have about priced ourselves out of business. We want to stay in business.

We urge that nobody add any 5 cents or 10 cents an hour to an already high bill that the customer is going to have to pay.

We appreciate this opportunity to make our position known. We have filed a statement with the committee, and I would hope that would be included in the record.

The Chairman. It will be.

[The prepared statement follows:]

STATEMENT OF POSITION
OF
PAINTING AND DECORATING CONTRACTORS OF AMERICA
ON
S.1423

SENATE SUBCOMMITTEE ON LABOR

Gentlemen:

The Painting and Decorating Contractors of America (P.D.C.A.) oppose enactment of S.1423 which would amend the Labor Management Act of 1947 to permit employer contributions to jointly administered trust funds established by labor organizations to defray costs of legal services.

This national trade Association is comprised of over 6,000 members from every state of the nation and have long been recognized as the spokesman for management in the painting and decorating industry. Members of our Association employ in excess of 100,000 journeymen and apprentices. All of our membership are considered small businessmen and employers.

P.D.C.A. opposes S.1423 for the following reasons:

(1) Painting Contractors of necessity are concerned with the ever increasing cost to the customer of their services. These costs have already reached the saturation point and even a necessary small increase can only result in a decrease in business.

(2) We feel that if furnishing of legal services to employees is needed, this should be a sole responsibility of the unions which are their legal representatives. It should not be the duty of the employer to finance such services. Legal services, per se, covers a very wide and almost unlimited area. S.1423 places no limitation on the type of services to be furnished.

(3) It is our considered opinion that enactment of this proposed legislation will result in increases in strikes and work stoppages. While the proposed legislation does not state that consideration of establishment of such funds is a mandatory subject of collective bargaining, to believe otherwise is being overly optimistic. Unions will include such provisions in their demands. Even though this particular issue may not result in a strike, any consideration by negotiating committees of employer contributions to legal service funds can well create much friction. Further, it is our opinion that if this proposal is enacted, it will soon be declared a mandatory subject of bargaining. As it now stands, such employer contributions are illegal, and in our judgement, should so remain.

(4) Proponents of S.1423 state that enactment would lessen rather than increase the load of courts and judges. This is debatable and seriously questioned. Experience usually indicates that whenever any service is free, such a service becomes more attractive and more often used.

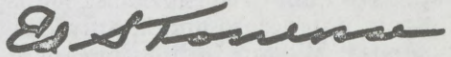
(5) While others will submit concrete figures on the vast sums of money which enactment of S.1423 will provide, we must remind that accumulation of such funds can only result in increased costs to the government and to

the purchasing public. Such an increase cannot be inconsequential. The entire American public is appalled at the increase in cost of homes and their maintenance. This proposed legislation, in our opinion, ignores that concern.

The Painting and Decorating Contractors of America are deeply concerned with the future economy of this nation. We urge this sub-committee carefully weigh all evidence and testimony submitted.

We are most appreciative of this opportunity to state our position and thank each of you for your thoughtful consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ed. S. Torrence". The signature is fluid and cursive, with a large initial "E" and a long, sweeping underline.

Ed. S. Torrence
Director Government Relations
Painting and Decorating
Contractors of America

The CHAIRMAN. Did you testify on the House side, too?

Mr. TORRENCE. No, I was unable to, I might say, because of time.

The CHAIRMAN. Did you file a statement there?

Mr. TORRENCE. Yes.

The CHAIRMAN. Thank you.

Mr. TAYLOR. Mr. Segal.

Mr. SEGAL. Mr. Chairman, I am George Segal, chairman of the Legislative Steering Committee for the Sheet Metal and Air Conditioning Contractors National Association, Inc. in Arlington, and also past president of the national association. I am accompanied today by James P. Hensley, the association's director of legislative affairs.

We want to consider just one aspect of the bill as proposed. I am certainly in accord and in agreement with everything the panel has said today. We are fully aware there is a considerable interest in experimentation in this country with these legal service procedures. I cannot debate the merit of them. There must of course be some merit for those currently enjoying the rights of it.

However, we are departing from a right of selectivity which is not a cross-sectional viewpoint of the great numbers of people who would really necessitate this sort of a plan.

It has not been proven to anyone I have heard by the proponents the actual numbers of people who would actively have participation in this.

To the proponents of the bill I am sure there are many who were good intentioned and have good plans. These plans are suited to the particular needs of their group's requirements and rightly so.

I can understand participation, I can understand the necessity for that. Outside of that I feel in America traditional selectivity is one of our fundamental rights, and it should not be thrown into a hopper and put on the same basis as other types of trustee funded plans.

With reference to the prepared statement that I submitted to the committee, and I hope that will be included in the record, the chairman remarked about the objectivity of the plan, as to whether it would be closed or open ended funds.

Certainly there are closed plans in existence, and I find those are very burdensome to the participants. They do isolate the type of legal counsel that the beneficiaries pertain to. Certainly if the legislation is considered an open plan, a plan would be mandatory in my opinion.

I hope I reflect a genuine concern for the issue at hand, but not whether the concept is good or bad. I think that is yet to be proven. I do not think there is enough yet to prove a necessity for it.

My basic concern of course is as a businessman in the construction industry: Who is going to pay for that concern? I think that is just one of the fundamentals we have to face realistically.

The other remark that has been made by these people here—we are the only opposition to it; I can only bring out the issue that the construction industry has always been considered a bell weather sort of service for various fringe benefit funds.

We are told we are the inceptors who have given these trusteeships, and then there is the additional cost that other industries have to bear as well.

Thank you very much for this opportunity.

The CHAIRMAN. Thank you, Mr. Segal.

Mr. TAYLOR. Mr. Gerson.

Mr. GERSON. Mr. Chairman, I represent the Plumbing, Heating and Cooling Contractor Association of some 8,080 contractors in our industry. For many reasons we strongly object to yet another fringe benefit for employees.

We feel that the proposed legislation can easily lead to the use of legal services by unions which we can best characterize as being capricious and frivolous.

We note that the cost of legal services for this bill would be for employees, their families and their dependents. Like contractor groups, unions are obliged to keep their members content. This bill would be an excellent method of achieving that goal for the unions.

The bill as written does absolutely nothing to protect the employer from indiscriminate use of legal services. This is only one of the many reasons we find S. 1423 to be totally unacceptable, and the members of our association will do everything possible to urge its defeat.

The CHAIRMAN. Thank you, Mr. Gerson. You have one speaker remaining.

Mr. WHITE. Mr. Chairman, I represent the National Electrical Contractors who employ over 208,000 electrical workers. We have submitted a statement that I hope will be included in the record.

The CHAIRMAN. It will be.

[The prepared statement referred to follows:]

STATEMENT OF THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.
BEFORE THE SENATE SUBCOMMITTEE ON LABOR
APRIL 11, 1973
IN REGARD TO
S. 1423, LEGALIZING JOINT LABOR-MANAGEMENT FUNDS FOR LEGAL SERVICES

Mr. Chairman, Members of the Committee, my name is Robert White. I am manager of Public Relations for the National Electrical Contractors Association. NECA, as we are known, is the trade association of the electrical construction industry, representing more than 5600 contractors who employ over 208,000 electrical workers.

Our members have expressed a serious concern for the implications of S. 1423 and its companion bill in the other body. They foresee many widespread and critical problems developing if S. 1423 is passed in its present form.

Before I elaborate on some of these potential problems, it should be stated that NECA does not oppose the concept of prepaid legal services per se. It may be that some employee groups could put such a fund to good use. However, it is our strong conviction that such funds do not and should not constitute an appropriate, reasonable or rational subject for collective bargaining.

As this Committee is aware, there are several prepaid legal service plans in existence now. These are operated on a unilateral basis. If this Committee believes they have proved worthwhile as they now exist, then that would seem to indicate the validity of their continued expansion on that same unilateral basis. If some Committee members are not convinced of their worth, then subjecting such plans to the collective bargaining process, joint administration and the intricacies these entail will certainly not increase their value, and would almost surely dilute their usefulness.

Bargaining leverage in collective bargaining in the construction industry is already heavily weighted in favor of the employee bargaining units. This is amply illustrated by the tremendously inflationary wage and fringe benefit packages which were being negotiated in the years prior to Federal controls. Indeed, the establishment of controls on construction industry bargaining and the Construction Industry Stabilization Committee predated the general economic stabilization program by almost half a year.

Controls will not be with us forever. To allow collective bargaining for prepaid legal services simply adds another inflationary pressure on the already overloaded side of the employee bargaining unit. We could be assured that employee representatives, even if they were not convinced of the worth of a fund for prepaid legal services, would bargain for such a fund in hopes of a trade-off for other gains.

If an employee group is truly interested in establishing a fund for prepaid legal services, it should be allowed to continue as is now allowable... that is, to establish such a fund and administer it unilaterally. Because of the inflationary wage and fringe pressures, passage of this measure would eventually lead to further increases in the cost of construction and expense to the already overburdened taxpayer. Since about one-third of all construction is Federally contracted or Federally assisted, the taxpayer is going to have to pay a good share of the increased costs incurred because of this measure, should it be enacted.

We are not talking about an insignificant amount of money, either. If the relatively small amount of 10 cents an hour were to be contributed toward such funds for all employees in the construction industry alone, fund monies would amount to nearly half a billion dollars in the first year. Since the Korean War fringe benefits in the industry have increased more than 1,000%. So increases could be expected, even though the amount might seem modest at first glance.

Perhaps the most incredible aspect of S. 1423 is the concept of bargaining for legal services. Collective bargaining has traditionally been related to matters directly related to an employee's wages and working conditions. Fringe benefits include such items as health, pension benefits and travel pay. To stray so far from this path as to consider legal services could set a precedent which would open a Pandora's box of ominous possibilities. What next? Prepaid funerals? Consumer credit funds? These matters, and legal services as well, lie in the domain of use of an employee's discretionary income... and should remain there!

The jointly^{ly} administration of prepaid legal funds could easily become a cause of constant friction between employer and employee. Access to money in the fund would have to be supervised by the trustees. Disagreement over access and distribution could rebound to adversely affect the entire collective bargaining process.

In addition, S. 1423 contains no safeguards for the employer. Monies in the fund could conceivably be used to finance a lawsuit against the very firm jointly contributing to it. This gross inequity should be corrected without delay. Although trustees representing employer and employee must agree on use of the funds, this alone provides no adequate safeguard. If an employee group requested use of funds for a suit against an employer the trustees might split right down the middle along labor-management lines. In such a case an outside party makes the final determination, as set forth in the National Labor-Management Relations Act Section 302 (c)(5)(B). From an employer's standpoint this could be the equivalent of flipping a coin. Safeguards for the employer in this legislation are a must.

The measure also carries the potential for indiscriminate use of lawsuits, with a commensurate increase in the case load of already overloaded court dockets. Although this may not be apparent from the few unilateral plans now in existence, it is an inevitability if such plans spread across all industries all across the nation.

In summary, the National Electrical Contractors Association feels that funds for prepaid legal services are not an appropriate subject for collective bargaining, and that if such plans are viewed desirable by an employee group they should be established and administered on a unilateral basis outside the purview of the National Labor-Management Relations Act. Specifically, NECA feels S. 1423 should be amended to provide strong safeguards for employers contributing to a fund, so that contributed monies cannot be used in a legal action to his detriment.

Thank you for allowing me this opportunity to present our views.

Mr. WHITE. I would like to direct my primary remarks to the concept of safeguards for the employer who, under this bill, would be a joint contributor to the fund, safeguards for employers who are contributing funds for lawsuits engendered by the very money they are contributing.

Although the fund as I read the legislation would be jointly administered, under section 302(c)5E, in cases where the trustees reach a deadlock, which would almost assuredly be the case where the union would decide to institute a suit against an employer, the matter then goes to a so-called impartial umpire who would then have the option of deciding the matter in his judgment.

In that case it comes to a kind of case of flipping a coin from the employer's standpoint.

We feel strongly there should be some safeguards included in any legislation of this type that would protect the employer against use of funds against his interest.

In other regards we would also like to associate ourselves with the substance of the remarks by the rest of the panel.

The CHAIRMAN. Thank you very much, Mr. White.

That concludes the formal statements.

Mr. TAYLOR. This concludes our formal statements. Our understanding that is each of the group's written statements—

The CHAIRMAN. All of the statements—and we have them all—were received on time, and as you noticed earlier, I had read them, so I knew something of what was coming.

Mr. TAYLOR. Mr. Chairman, if I could as the last departing gesture, I would like to urge the Congress to at least study this legislation a little, and talk to some of the people who have fears about it before Congress seeks enactment.

The CHAIRMAN. Are you gentlemen all based here in Washington?

Mr. TAYLOR. Not all of us. We all have a base in Washington.

The CHAIRMAN. Did you happen to see the newspaper reports and hear the radio reports, including a radio editorial this morning, on the harshness of an obscure bit of district law on a woman who was a debtor because of some home improvements for \$800. She had paid her debt but as a debtor, her creditor was a debtor, and his creditors sued him. They came to her, even though she had already wiped out her debt. She got a notice of the hearing and knew it was a mistake, did not show up, and half of her house was put up for auction?

Did you hear of that?

Mr. TAYLOR. I did not hear it, but contractors are confronted with that every day.

The CHAIRMAN. This is the harshest kind of situation that suggests a little legal aid is necessary. Someone suggested perhaps people do not like lawyers, but they sure need them in times like that.

Mr. SEGAL. Senator, if I may, I appreciate that woman's plight, but frankly I am having trouble seeing how an amendment to the Taft-Hartley Act would help that situation.

The CHAIRMAN. I am just saying I have a long list of these kinds of cases that have come up in the average individual's life. This is one of them.

For those of us who know we need a doctor, that is one thing, but a lot of people do not know they need a lawyer. This would be an oppor-

tunity for people not that sophisticated, and frankly it requires a degree of sophistication to know that you need a lawyer.

To be part of a plan where you are advised, I would think would make your coverage for legal expense meaningful to an awful lot of people.

There is one thing that does distress me that you men have not dealt with, and it would seem to me something that you could help us on, that is, the time lost on the job because of the necessity of your working people having to go to lawyers during the day.

It must be quite a cost burden in construction. There are very few areas where a lawyer's office is open at night. I used to practice in New Hampshire, and that is when I did most of my business, at night, when people were not working.

But in the average city or even moderate size town it is not true. In rural parts of the country, yes.

It would seem to me that this would be another way to reduce the need for people having to take off considerable time. We have had testimony to support that.

Ms. Miller was here from Chicago, and under that union plan, which of course is not a jointly administered one, part of the arrangement they have made is the lawyers who went on their open panel agreed to be available for legal services at night.

I wish you would not just come in with your total opposition here but look to some of the benefits that your industry might see in this opportunity for new coverage.

Mr. TAYLOR. As a practicing contractor, perhaps Mr. Segal could answer the question. I am not a practicing contractor.

Mr. DUNN. The worker gets caught. He starts around 7, and he is off at 4, and I would think the American Bar and the local bar ought to encourage their attorneys to be available for business, just as doctors are, too.

They should accommodate their hours to the client. Maybe we can make a recommendation to the American Bar to get on that, instead of this.

The CHAIRMAN. Perhaps that is part of their reason for strong support. [Laughter.]

The American Bar and the State bars are for this legislation.

Mr. DUNN. I think it is monetary.

Mr. SEGAL. Mr. Chairman, I would love to answer the question because it is one of the points I tried to zero in on.

I am a small businessman. Our staff totals about 55 people year round. We have been in business since 1946; incorporated in 1955.

I honestly cannot tell you of the incidents we have had in those years where people have required any kind of intensive time off because of legal problems. There have been of course some funerals, some death benefits, estate matters where they have had to be involved, but the amount of time is so negligible that I question the relative amount of people who would be directly affected under this proposed legislation.

That is really my point. I do not know the numbers involved, and I think that is fundamental. If we are talking about a broad scope of people involved in legal questions, there certainly are many, but in terms of the percentage of the entire work force from the people at least in Detroit where my firm is, I find it to be very small, besides which there are other benefit plans that permit them time off for this which they are paid for.

The CHAIRMAN. I would like to put in the record that there are studies that have been made and conclusions on this particular point that might be helpful here. Here is one that appears in the Law Journal of the State of California.

This was a wartime contractor, World War II, a California defense contractor, and he set up a legal aid department. He says they aided over 3,400 employees during the year 1944, saving an estimated 15,364 man-hours of work.

I will include the rest of that in the record.

[The information referred to follows:]

[Excerpt From the Journal of the State Bar of California]

COMMITTEE REPORT ON GROUP LEGAL SERVICES

Corporations. The number of attorneys employed by corporations has increased tremendously over the years. Corporate counsel's obligation is to the company; yet he is often approached by corporate employees to handle personal matters. He will sometimes handle a personal non-corporate matter, particularly if the appeal is made to him by a high-ranking officer of the company. He will and does handle personal matters if the company has an interest to protect, i.e., a patentable invention produced by an employee of the company.

Most often the employee seeking legal advice is channeled elsewhere. Corporate counsel may maintain an informal list of attorneys known to him to which he may refer the employee. The employee may be sent to the local lawyer referral service, if one exists in the community.

Our brief investigation has disclosed one corporation that actually employed attorneys on a salaried basis specifically to handle the personal legal problems of its employees. The corporation, a California defense plant, employed attorneys during World War II; the primary purpose was the saving of man-hours by keeping employees on the job during the vital years of the war effort. The employee's manual contained the following information about the service:

"Under supervision of the Legal Division, a Legal Aid Department is maintained at the principal plants. Working in close cooperation with the Welfare Division, Legal Aid gives limited, free legal advice and assistance to employees. Particular attention is given those whose wages have been, or are about to be, garnisheed. All legal aid counsel are lawyers and will perform only such limited service as the rules of the profession, and of the organized bar of the particular state in which the plant is located, will permit. No employee is required to consult Legal Aid."

Certain types of cases were not handled. Any case with a built-in fee was not taken. Tax assistance was not given. In these and similar cases, referrals to local attorneys were often made.

A strict effort was made to separate the legal work of the corporation from the legal aid offered employees. That there was some difficulty in maintaining this separation is evident from the records kept by the company, which included the following statement in memorandum:

"No legal aid counsel should render any opinion or write any legal memorandum on any subject affecting the liability of the corporation, from either a civil or criminal standpoint, unless such opinion or memorandum is submitted to the appropriate company counsel and approval is endorsed thereon by him."

Some records are available to attest to the use of the Legal Aid Department by

employees. For example, the following figures concerned the new matters in one plant for one month in 1944:

Accounts against employees.....	57
Claims for automobile collision damages.....	12
Title to automobile.....	1
Domestic relations.....	18
Garnishments and wage assignments.....	58
Real estate matters.....	17
Traffic violations.....	25
Witnesses in court cases.....	2
Instruments prepared (affidavits).....	15
Estates of deceased persons.....	2
Miscellaneous	10
Total	217
New matters recorded.....	217
Old matters handled.....	158
Total	375
Estimated man-hours saved.....	1, 230

A 1944 annual report for the same plant contained the following statistics:

Total number of employees aided.....	3, 461
Traffic problems and cases.....	373
Employees summoned for jury service excused.....	61
Estimated man-hours saved.....	15, 364

Immediately after the war the legal aid program was terminated. There were proponents within the company for a continuance of the program, claiming the savings in man-hours would, in effect, underwrite the costs involved. The argument of the proponents of the plan was stated in these terms:

"... when an employee comes in troubled almost beyond endurance, and after the matter disturbing his or her mind is given thorough and patient consideration as to the available facts, and often beyond the apparent or immediate problem, and with a new hope and determination they return to work in their department. And with a new vigor they put their hands, their heart and their minds to the task of creating instruments for National Defense to preserve and protect their homes and freedom, and ours, and those of all mankind."

According to officials of the company, the program did serve its purpose—to keep employees on the job at a time when they were vitally need. The primary function served in this program was a contacting one. In easily and quickly establishing the attorney-client relationship, the company was attempting to minimize the adverse effects that a legal problem might have upon an employee, both in time lost from the job and attitude on the job.

In the last decade, a northern California community has blossomed from fruit producing orchards to the new industries of electronics and aerospace. Attendant to the growth of the industry, and of one company particularly, employment boomed and new residents came to the community—without local family ties, without knowledge of the area or the reputation of the people there.

For these new residents, their first and sometimes sole contact with the area was the company. Many employees were transferred to the community from other company locations. Often, when personal legal problems occurred, an employee would turn to the corporate legal staff for assistance. The staff considered it necessary to deny legal assistance to individual employees. At the same time, it was difficult to send them elsewhere for help. Although the community was growing and some new attorneys were moving into the area, it was difficult for the corporate attorneys to recommend any particular attorneys to employees in need of legal advice. Therefore, and largely upon the initiative of the company, a local bar association was formed, initially for the purpose of creating a lawyer reference service to serve employees and the community at large.

The bar association was founded in 1959 and lawyer reference service began operating in that year. The first secretary of the service was an attorney for the corporation. The service was advertised in the yellow pages of the local telephone directory and on bulletin boards at local plant facilities. The success of the

service, in aiding the client with a problem and without a lawyer and in assisting the lawyer to serve new clients, is apparent from the figures:

	Attorneys on panel	Clients referred	Cases per attorney
Year:			
1959.....	18	473	27
1960.....	18	300	17
1961.....	17	749	44
1962.....	18	843	47
1963.....	22	1,297	63

The local bar association has 27 members, and ranks 79th in size among all local bar associations in California and 47th among the 47 bar associations that operate lawyer reference services. Yet in 1962, it handled more referrals than all but 10 such organizations, ranking above many more populous areas.

Although no statistics are available, local lawyers report that the majority of their referral cases concern employees of the company instrumental in initiating the service. Corporate officials, and particularly the legal staff, are reportedly convinced that this method of servicing company employees is satisfactory both from the company and employee standpoint.

The major function being served in this informal type of program is one of making the employee aware of the availability of legal services in his community and of bringing him into contact with a lawyer. There is no organized attempt to point out particular attorneys for specialized problems; when the lawyer reference service is called, a local answering service simply mentions an attorney's name and telephone number. The person inquiring then calls the attorney's office for an appointment. The answering service has a list of those attorneys on the panel, and it runs through the list alphabetically so that all attorneys receive approximately an equal number of cases.

From an economic standpoint, the caller is assured that his first visit to the office will cost him a certain amount—five dollars. Any further work is charged at the usual rates.

A similar plan, using an existing lawyer reference service, was attempted when a national corporation announced the establishment of a multi-million dollar assembly facility in an area in California rapidly growing in population. The proposed plan stemmed from a 1960 resolution of the Board of Governors that provided, in part:

"As an experiment, in a community where there is a successful lawyer reference service operating, union and employer cooperation might be attempted."

The director of Lawyer Reference Services of the State Bar of California approached the corporation, the unions involved, and the local bar association with a plan designed to provide for the new employees adequate legal advice and representation when needed. Under the agreement, the local bar would agree to establish and maintain a lawyer reference service office at a location convenient to the corporation assembly plant, through which employees of the corporation could be referred to an attorney. The local bar would maintain a panel of attorneys who, as a prevailing lawyer reference service operation, would agree to charge a minimal rate (usually \$5.00) for the first consultation. In addition, a smaller panel of attorneys would agree to be available at anytime for assistance in criminal matters. The corporation and unions involved would agree to keep employees informed of the service through appropriate methods. The bar would report annually to the corporation and unions on the effectiveness of the service. In addition, a standing committee composed of three members, representing the bar, corporation and unions, would meet periodically to discuss the operation of the service.

Such a plan, being ready to operate at the opening of the new corporate facility, was intended to provide the thousands of new employees an adequate method of seeking legal advice and assistance when necessary. Due to the opposition of the local bar, the proposed service was never activated.

The CHAIRMAN. Did anybody see Alistair Cook's program last night? Did you see it, Bob?

Senator TAFT. No.

The CHAIRMAN. It showed the part the shipbuilding industry played in World War II. When we went into the war it was taking 2 years to build the ship. Mr. Kaiser out there on the west coast broke that down to building a ship a day. I am just saying I am reminded of that when I think of this defense contractor who says in his plant alone he saved nearly 15,000 man-hours by having a legal aid department.

Senator Taft.

Senator TAFT. Thank you, Mr. Chairman.

Gentlemen, would I be correct in assuming that if the bill eliminated suits against employers—and probably suits against unions—some of your objections would be overcome, but that you still would have objections to the bill?

Mr. WHITE. Some would be overcome. I think it would make it marginally more palatable.

Mr. DUNN. We would still object to it.

Mr. TAYLOR. We want to keep it out of the collective bargaining process. That is our basic fundamental feeling.

Mr. TORRENCE. Speaking for our association, I would have to say we would still object to it.

Senator TAFT. But it would be more palatable.

Mr. TAYLOR. It is like a choice between a gas chamber and the electric chair. How do you want to die?

Senator TAFT. The productivity argument does not seem to me to hold too much water. There are various welfare funds that do not necessarily lead to productivity, and it would seem to me that this type of service in the same sense of other type of welfare systems would tend to increase productivity. I have a hard time seeing why you feel it would not for instance help a man's productivity if he has say a tax question, or if he does not know how to handle it or if he has a domestic relations problem in which he needs advice. I am not talking about the suit actually going to court, I am talking about the preventive nature of legal services insofar as providing good advice to your employees and saving them time by getting to the place.

That is what actually happens. Why does that not contribute indirectly to productivity?

Mr. DUNN. I think I raised the question.

Senator TAFT. Your employees move around a great deal from place to place. They are buying or selling houses; they have to avoid getting into fights with their landlord or getting into fights with people from whom they are buying houses, getting the thing settled in a quick efficient way.

Is that not an element in productivity of the work?

Mr. DUNN. I would hope to answer that, Senator. I was the one who threw that in.

I see a direct connection between apprentice training and scholarships and other things that are exceptions to the rule.

If you have a very general concept about this, if you had a worry-free employee, and he is going to produce more theoretically if he is not burdened by his lawyer's bill or his upcoming divorce, sure, you can get rid of it completely that way.

I think that is a very, very general concept, that if he has no worries about his legal problems, he is not going to really get rid of them because he has a lawyer. This might even cause more litigation.

But in a very general sense he is going to produce more probably if he has no legal problems. I do not think there is a great direct connection between that kind of mental attitude and the man who is trained in safety who becomes a really productive journeyman. In other words, this is the burden on our industry, and not an improvement. That is my point.

This kind of thinking will be a cost which we could not absorb.

Mr. SEGAL. If I may, Senator, there could be counter to that particular problem, having legal services available could possibly cost time. Availability sometimes gets misused.

You cite the example of this shipbuilder, and certainly those were worthy intentions, but it also happens that a lot of those man-hours were utilized because it was available, not because of necessity, and I do not know where we draw the fine line.

Perhaps a fine line must be drawn in some very stringent legislation, but many people use things. They feel because it has been prepaid, by God, they are going to get the blood out of it. This is what we are trying to negate.

Senator TAFT. We have had testimony to indicate that there has not been an abuse of this availability.

Mr. TAYLOR. But that goes to your earlier point of why we have wage controls. At the bargaining table we just do not have the balance of power, and so all these things go one way.

Senator TAFT. I have a question that goes to the inflationary argument. It seems to be very devious, I think, in its gross sense because you know you end up with a package, no matter; you have a package. You make a division between compensation and fringe benefits in any labor contract you negotiate.

Mr. TAYLOR. Senator, if I may say so, there is a difference between contributions to fringe benefit funds, because some of them are spending so much money that they have to have more contributions on top of the wages to even keep them solvent.

That is a great claim now. So they are not always considered just a package. If you have to put a little bit here and a little bit there, no matter how small it is—I tried to bring that out in my statement—collectively that amounts to a lot.

Mr. DUNN. If you add this on to what they have, it is not included, it is that much more.

Senator TAFT. I think where you have an arm's-length bargaining transaction, I still think the basic fact is that the fringe benefit is an economic benefit that would be bargained for. I have a hard time buying the inflationary approach.

Mr. GERSON. May we ask a question. Who is going to pay for this extra benefit? Is it just going to be part of the total package?

Senator TAFT. I do not see any difference from an economic inflationary standpoint whether it is 10 on top of the hourly wage.

Mr. GERSON. Somebody has to pay for it—the consumer.

Senator TAFT. Yes, if you increase the wage at 10 cents, it is going to be the consumer also.

Mr. TAYLOR. It does not reduce the amount needed in the fringe benefit funds to keep them going.

Mr. DUNN. It is required in all Government jobs.

Senator TAFT. It has not been included in this.

Mr. TAYLOR. It will be.

Mr. DUNN. It will be.

Senator TAFT. This is a big question.

Mr. TAYLOR. I think there are a lot of questions that need to be answered.

Mr. DUNN. Like any other welfare plan, it is added on, Senator.

Senator TAFT. It is not mandated. The particular plan is not mandated. What you are saying about it, you are putting it into the whole package—which is exactly the direction I am arguing. It is just a question of the economic benefit involved.

The CHAIRMAN. How much has the day-care jointly administered fund cost this industry?

Mr. DUNN. That is a garment worker's thing. It started in New York. It affects us very little as far as we are concerned.

Mr. SEGAL. We are basically a male-oriented industry.

The CHAIRMAN. You have not had any additions since 1959.

Mr. DUNN. The ones we had, Senator, were big enough, and they just got bigger.

The CHAIRMAN. We are being a little light about the day-care, but your industry will be attracting its share of women as time goes on.

Mr. DUNN. I do not see any problems with that. I may be wrong.

The CHAIRMAN. Thank you very much.

Mr. WHITE. I was going to talk to Senator Taft about who is paying for this.

The American Bar Association has thoroughly embraced this. The question is whether there was any consideration given to perhaps going along with unilateral plans which are already established under the law and utilizing or setting up something through the bar association to provide the members of such plans with legal services at considerably reduced rates, which would not necessitate further legal changes in the law and could be done at no greater cost to the employee than what he would normally be paying.

Mr. SEGAL. After all, there are many people who participate in Blue Cross who are not covered under the Federal statutes.

The CHAIRMAN. That is coming on a parallel course. We have had testimony this morning concerning the New Jersey Blue Cross proposal.

Mr. DUNN. I suspect, Senator, when the other industries learn about this, that this came from construction, we will get a buildup of this. I would say as soon as people learn about this, there will be a big reaction, and the lawyers may hear from their clients. We are going to tell our lawyers to be against this.

The CHAIRMAN. You are making a prediction of things to come. Are you pretty accurate in your predictions?

Mr. DUNN. I have been watching the operations in the Senate.

[Laughter.]

No disrespect, talking about the efficiency of this committee.

The CHAIRMAN. Thank you all very much.

[Recess.]

The CHAIRMAN. Our next panel is composed of Dr. Lee Morris, vice president, Corporate Planning & Research, Insurance Company of North America; and Thomas Foster, Esq., World-Wide Financial Management, Inc.

Dr. Morris, we appreciate your being here.

STATEMENT OF DR. LEE MORRIS, VICE PRESIDENT, CORPORATE PLANNING AND RESEARCH, INSURANCE CO. OF NORTH AMERICA, ACCOMPANIED BY JAMES A. FABER, SECRETARY, PERSONAL INSURANCE DEPARTMENT, INA, AND THOMAS FOSTER, ESQ., WORLD-WIDE FINANCIAL MANAGEMENT, INC., COMPRISING A PANEL

Dr. MORRIS. Thank you, Mr. Chairman. My name is Lee R. Morris and I am vice president, Corporate Planning & Research, Insurance Company of North America. I am accompanied by James A. Faber, secretary, Personal Insurance Department, who is the chief designer of the project for us.

I would like to express our appreciation for this opportunity to appear before the subcommittee in support of S. 1423, a bill which would amend section 302(c) of the Labor-Management Relations Act, 1947, to permit employer contributions to jointly administered trust funds providing prepaid legal services for employees, their families, and dependents.

The Insurance Co. of North America, an INA corporation company, is among the Nation's oldest and largest providers of commercial and personal insurance coverages and related financial services. INA was founded in Washington's second administration in Independence Hall, Philadelphia.

As such, we have assigned a high priority to the development of innovative and operationally sound individual and group insurance programs for meeting of broad range of consumer needs.

We are, therefore, pleased to have been able, in cooperation with concerned organizations and associations in Philadelphia, including consumer and bar association representatives, to develop a prepaid legal services program which we think offers significant opportunities for improved access to needed legal representation.

Our research and market analyses indicate that there is a large and presently unmet and sometimes unrecognized need for legal representation, especially preventive legal services, among middle-income families which, under some estimate, would include about 70 percent of the population. It appears that the public is largely unaware of the value of legal services in their every day lives and that many middle-income people do not seek legal assistance because of a fear of excessive costs, a lack of recognition of circumstances in which an attorney could be helpful, and a general belief that attorneys would, for a variety of reasons, be unavailable to meet their legal representation needs.

Senator Williams, your story this morning of the woman here in Washington with her house was similar to one which took place recently in our area. During the period last fall when we announced this program with the bar in Philadelphia, just about a week or so before, an individual had just returned from the Jersey shore after a 2 weeks vacation to find that a home improvement team had arrived while he was away, had ripped the cedar shingles off his house and put up aluminum siding. He had not requested it.

Sometimes later, within a week or so, he received a letter asking for \$2,000 to cover the cost of this work. He called the company of course, and they said they were sorry, they had made an error, their

crew was on the wrong street with the wrong number, and they were awfully sorry, but he still owed \$2,000.

He was simply at a loss as to what to do, and did not know what to do, and they were in the process of beginning to take over the property.

He wrote to the Philadelphia Bulletin, and they suggested he get in contact with a lawyer, the point being exactly the same that you were making, that people are not fully aware of their rights, and that they need access to legal services.

Our research in this area indicated when you design a program of this sort you must be aware of these two major barriers: cost, and developing an awareness of legal needs on the part of the insurer.

The group prepaid approach, embodied in our plan, contributes in four important ways to overcoming these barriers to effective legal services utilization. It will spread costs among the participants on a group basis. It will provide a periodic payments system. It will facilitate consumer education and encourage an awareness of legal assistance needs. It will produce administrative safeguards and operational economics for users and sponsors.

The group based prepaid legal services program, which we plan initially to make available in Philadelphia, features an open panel of attorneys enabling each participant to select counsel of his choice for whatever problem he might have within the coverage provided. Through the cooperation of the Philadelphia Bar Association—and bar associations in surrounding counties—the Bar Referral Service will be available whenever assistance is needed in the selection of attorneys. We would, of course, seek similar cooperative relationships in other communities where this program might be operative in the future.

In that regard we talked to the Massachusetts Bar, the California Bar, the New York Bar, and the Virginia Bar—any number across the country—who are very interested in having this type of service provided in their areas.

This program will provide two types of legal services coverage. One is associated with litigation and provides for pretrial and trial defense of civil and criminal actions and for the bringing of civil actions in certain consumer situations.

In that regard we are talking about the refrigerator that does not work, the car warranty that is not honored. We have a deductible aspect under which the participant participates to the extent of the first \$30. We feel that this type of coverage meets those principal consumer and family legal needs, such as domestic relations cases, juvenile matters, traffic problems and other civil and criminal actions, which are not covered by or which are in excess of existing coverages provided under other insurance.

The type of coverage we are talking about here does not support actions against the sponsors, does not support actions in terms of creating new legal activities in the courts. The one area in which we do provide assistance is in consumer problems which we feel are of importance to the middle-income group.

To assure a primary focus on consumer and family matters these coverages would not include class actions, business pursuits, probate or other cases in which the attorney would be compensated by other

means, and would be subject to certain other limitations such as the time for the commencement of an action.

The other major area is the provision of preventive legal assistance through a schedule of office consultations and document preparations to which participants would be entitled. This area would include advice and drafting services regarding a wide variety of personal legal relationships including, for example, wills, residential property leases and deeds, adoption papers, and review of contracts for consumer goods and services.

In addition, the program includes a Policy Guidance Committee, consisting of representatives of the Bar and the Judiciary and of consumer groups, and INA personnel. This Committee will provide an ongoing review and analysis of program operations and results and will make recommendations regarding any program deficiencies or operational problems which may be brought to its attention.

Coverage under this program would be provided to the participating group member, all dependent relatives resident in the member's household, and all dependent children up to the age of 21 regardless of their place of residence.

Costs under the program cannot at this time be forecast with certainty. We do not have sufficient operating experience, in comparable programs, for actuarially precise predictions as to levels of utilization or costs. We believe, however, that the experience which we will develop in Philadelphia will give us a broader basis for these determinations when the program becomes operative in other areas. We are, of course, greatly indebted to the American Bar Association and several other groups for their pioneering work in this area, and we welcome the additional experience which is now being accumulated through an increasing number of innovative efforts along this line throughout the country.

At this time, based on analyses and projections which we believe are reasonable, it appears that the overall costs of providing these coverages in Philadelphia, with an annual maximum limit of \$1,000 in pre-trial and trial assistance, including 2.5 hours of consultative services and up to two documents per participant, would be in the range of \$6.50 monthly or about \$78 annually. For an employment based group program, this would amount to about 3.5 cents to 4.5 cents per man-hour.

Of course these coverages, exclusions, limitations, and costs can be adjusted to meet the requirements of a particular group when a particular plan is negotiated, and we would expect that experience gained under program operations would suggest additional modifications for consideration by plan sponsors.

This program, which we have developed initially for use in Philadelphia, has been discussed with Pennsylvania State Insurance Commissioner Herbert S. Denenberg and an insurance filing is being made under the indicated requirements of the Pennsylvania insurance code.

We have just received their first comments, and at first blush I must say I am rather pleased in terms of the comments. We are hopeful that the department will approve our policy form within the near future. We know of interest by local organizations in Philadelphia and we believe that, with appropriate group sponsorship, the initial operation of this program could be commenced by early summer.

Funding is, of course, critical to the successful delivery of this package of services. At this time, it would appear that labor organizations would be the groups which most realistically could undertake this program on behalf of their members.

Under present law, of course, they could establish employee funded plans without employer contributions and some have.

However, the most effective vehicle offering the best assurance of stability and continuation of funding together with sufficient participation to realize the economies of group programs would be jointly administered trust funds.

Incidentally, it would seem to me that the joint administration of these trust funds would be the best way to assure the employer a degree of control in the development and implementation of employee legal services plans. If an employer were worried about the way in which the plan would be used in terms of his being sued and so on, through the joint administration of the plan his role in designing the plan could be very important from his standpoint.

Employer contributions for this purpose should be given the tax status accorded certain other employer sponsored fringe benefits if the full potentiality of this approach is to be realized.

In further comments on the bill, it would be appropriate to consider whether prepaid legal expense plans within the scope of this legislation are insurance or noninsurance financial services. In this connection, State approval and supervision of prepaid legal expense plans, as insurance services, would be required in some instances but not in others.

For example, just yesterday there was a meeting in San Francisco called by the California Insurance Commission. The meeting was to discuss prepaid legal service plans, and their relationship to insurance. There were three of the larger insurance companies and five others.

There is a great deal of interest in this, and the purpose of the meeting was to discuss how such plans fit within the California code and the insurance requirements. This requirement is being studied by State regulator authorities. The language of the proposed amendment, in S. 1423, retains sufficient flexibility to permit the jointly administered trust funds to select either insurance or non-insurance vehicles available under State law.

We think, of course, that such plans serviced by experienced insurance organizations, whether or not deemed to be insurance in particular applications, will be commercially and operationally more acceptable to both management and labor. These plans will require a computer system, funding initially to support and perhaps to underwrite the plan, and the ability to deal with claims on a nationwide basis. The large insurance company has those types of services.

For example, the New Jersey participant who has a son involved in a marijuana charge in Oregon will need program coverage which can be exercised in Oregon as well as in New Jersey.

We would hope that the parties would be entitled to insist upon the consideration of prepaid legal expense plans in labor contract negotiations since we think that the relative benefits to both parties of this fringe coverage should be explored fully in a variety of specific situations and S. 1423, in its present form, seems most likely to produce that result.

What we are essentially asking for is the freedom of choice of those benefits most desired by the employee group, the simple ability to select legal services as well as services in other fringe benefit areas.

Another serious problem and one that is receiving a great deal of our attention, is the need to assure quality control and to prevent utilization and pricing abuse in a program of this sort. The problems that have shown up in medicare and other health services financing programs worry us in this connection.

We plan to rely strongly on bar association disciplinary committees to enforce their codes of ethics and we plan to use Policy Guidance committees, such as the one that we have established in Philadelphia, to act as a sounding board for the consideration of complaints and for public participation and user protection in these programs. We feel that through people of this sort the Policy Guidance Committees can do a great job in the area of holding down fees and insuring against abuse. In addition, we plan to make extensive use of our computer facilities so that through statistical analyses and other available information we will have an early and accurate indication of any trend or movement in pricing as a result of the use of legal services programs.

We recognize, of course, that other questions can be raised about the extension of negotiated fringe benefits programs to include prepaid legal expense plans but we believe that the value of the approach to legal services both to the employee and to the employer will be broadly recognized. Moreover, a variety of experimental and operational programs are now providing useful employee based group legal services experience.

Examples would include the labor union legal services programs funded by members' contributions. Other approaches include the provision of legal services to employees using employer provided counsel. Examples would include the Defense Department legal services program for military personnel and employee legal services provided, in many instances, by businesses.

We believe that well developed and soundly administered employment based prepaid legal expense plans could produce substantial productivity gains resulting from improved employee morale and efficiency and that, with cost conscious operation, these gains could substantially offset employers' contributions.

The Senator mentioned the California plan. We have reviewed that as well. The Army has had a legal services activity. The Army legal assistance program was established in 1943, and has been continuing ever since in the provision of legal services to the members of the armed services. The Navy has a similar program.

These programs are all defended on the basis of productivity improvement and efficiency and increases in available manhours. I think as businesses get into this program, they will find the same thing.

If, so, according to our estimates, within 5 years we could see at least 5 million Americans receiving legal services under this type of plan and within a decade prepaid legal services could be a common fringe benefit available to most of America's 35 to 40 million middle income families.

We have a lot to learn but we have moved ahead in developing a feasible approach. I must reiterate, however, that the primary step needed now to get this program moving forward in providing legal services to middle income America is the amendment to the Taft-Hart-

ley Act that would be provided by S. 1423. In our opinion, group pre-paid legal services plans cannot become a commercial reality without the experience to be gained through jointly administered and funded programs under Federal labor laws. For this reason, we strongly urge early enactment of this proposed amendment.

In closing, Mr. Chairman, I would like to offer for the subcommittee's consideration, as an appendix to my prepared statement, a review of existing research and market analyses regarding the need for pre-paid legal expense plans, in further documentation of the unmet public need in this area. I think copies of that were given to the staff earlier.

I would also like to introduce Mr. Faber who will be available if there are any questions concerning our plan or the way in which it was developed.

The CHAIRMAN. Thank you. That was a great statement, and very, very helpful. The research you have done on legal needs will be most informative too for our members.

Now we will turn to Mr. Foster. We are happy to have you, Mr. Foster.

STATEMENT OF THOMAS A. FOSTER, WORLD-WIDE FINANCIAL MANAGEMENT, INC.

Mr. FOSTER. Good morning Mr. Chairman.

My name is Thomas A. Foster. I am an attorney in private practice in Minneapolis, Minn., with the firm of Carroll, Cronan, Roth & Austin. I am retained as insurance counsel and consultant to World Wide Financial Management, Inc., in the development of Legal Services Insurances.

The United States has more laws than any other nation in the world; and, consequently, more lawsuits. Legal problems arise generally from the fact that one party did something he should not have, or neglected to do what was supposed to have been done. The net result is—see you in court.

The socioeconomic judicial complexity of American life makes it rather difficult for the average American to understand those often quoted constitutional rights of "Life, Liberty, and the Pursuit of Happiness." Those rights unfortunately many times are equated with criminal matters, but let us briefly look at some of the consumer legislation passed by the Congress in the past few years to help Americans in their "Pursuit of Happiness":

Establishment of the National Commission on Product Safety; Wholesale Meat Act; Truth-in-Lending Act; Interstate Land Sales Full Disclosure Act; Toy Safety Act; Fair Credit Reporting Act; the Securities Investor Protection Act; the Poison Prevention Packaging Act; and the Motor Vehicle Information and Cost Savings Act.

On one end of the spectrum are the affluent. They, of course, can afford the cost of legal action. The poor, on the other hand, have legal aid provided through governmental organizations. This leaves us with the man in the middle: any of the millions of Americans who are too rich to receive free legal aid, too poor to pay for it.

As the Chairman wisely quoted, permit me also to quote from the poet William Shenstone: "Laws are generally found to be nets of such

a texture as the little creep through, the great break through, and the middle size are alone entangled in." It is in such a net that the average, middle-income American finds himself today, without the service of a lawyer that he can afford. And, with the socioeconomic and judicial makeup of this country, one has to consider having a lawyer a necessity rather than a luxury.

This need can best be served through the vehicle of legal insurance, spreading the risk, providing coverage for unexpected yet commonplace emergencies that demand a lawyer's advice and handling.

The evolving demand for legal insurance was predicated upon the public demand made known and brought about through the diligent efforts of the labor union movement and recently expressed by U.S. Supreme Court decisions. These demands may be answered through a comprehensive legal insurance policy which provides for the everyday legal needs of the public and complies with insurance laws.

Studies have shown that, although everyone is a potential legal case from birth until after death, and ignorance of the law is not held to be an excuse, people know little about their legal rights or obligations. They are leery of the myriad statutes, decrees, and decisions that govern their everyday conduct and what the ultimate cost of legal services may be to them.

Law is fundamentally commonsense, and it was with a combination of this fundamental "commonsense" plus a working knowledge of the types of legal services which are required by the average American, that directed the design of this insurance policy. The coverage areas contained in the law are: (a) preventive law, that is, consultation, (b) criminal law, (c) costs, (d) civil action, and (e) general practice such as domestic relations, bankruptcies, and so forth.

Before I get into the details involved in each area of coverage, I must make note of the extensive research and study that was made to provide the actuarial data we needed to prepare this comprehensive policy; statistical data that was absent until our research.

We traveled to study and consult with our British consultants. Their long history and experience of being involved in new types of insurance gained for us invaluable advice and direction. We analyzed the workings of German legal insurance policies which have been in force for some 40 years. Study was also made of legal insurance in existence in Sweden since 1961. All the available information from the OEO programs and from programs in existence in California, the Shreveport program, and many others, were collected, studied in depth, and applied toward the design of our policy.

The demand for a complete legal insurance plan, designed to combine the needs of people with the general professional ability of a lawyer, has resulted in the following coverages:

(a) Preventive law.—Each insured individual is entitled to consult with a lawyer of his choosing during a policy year, giving the individual the opportunity to meet with the lawyer, consult with him, discuss all aspects of the case including ultimate costs, thereby providing the individual with the security of being able to confer on any problem with the lawyer of his choosing, knowing cost is not a factor.

(b) Criminal law.—Here, it must be understood that coverage under criminal law does not just include felonies, but rather all areas in which an individual is accused of statute violations; encompassing as well misdemeanors, juvenile matters, and traffic matters.

I point out to the chairman the Supreme Court case that came down last year made reference to a particular study in which defendants who were represented by counsel were more likely five times to one to get off without any fine or charge.

I will talk now of costs.

This involves investigation and research, and may include activities performed other than by an attorney, in finding facts from witnesses for proper representation of the client. Included herein are court costs, witness fees, out-of-pocket expenses and cost for depositions, long-distance calls, bond premiums, and medical examinations.

(d) Civil action.—Problems in which clients get involved in questions of being sued in excess of their policy limits, be it automobile or homeowners, and further, covers actions by retailers against them for recovery of goods sold and general consumer-type problems that arise.

(e) General practice—Our last category of legal coverage carries the title of "General practice." Here we provide for the more administrative aspects of law by covering such areas as bankruptcy, domestic relations, family law, adoptions, real estate change of name, and wills.

As you can see, we have prepared a legal insurance policy that literally leaves no stone unturned and covers the gamut of legal problems which may arise.

To determine what was a reasonable fee for the service to be rendered by attorneys to the clients having the above-covered problems, we took into consideration, after much study, the following categories of a lawyer's profession: Office work and consultation, trial work, general office operation such as real estate, bankruptcies, tax, and other related matters.

This study was combined with consideration given to the article found in the ABA Journal of 1971, which analyzed fees set throughout the country by various bar associations. Of course that is now changed. A number of bar associations do not have fee schedules but from our standpoint the study was valuable in making the analysis. From this research, together with data available from the OEO and other programs here and in other countries, a reasonable fee was set for the services which are to be rendered under the policy. All fees are, of course, listed specifically in the policy. The policy does not purport to set any fees for a lawyer. That is a question between the individual and the lawyer.

To this point, I have elaborated on the necessity for a legal insurance policy. I have specified what means were taken in acquiring the actuary data necessary in preparing a policy of this kind. I have presented a detailed outline as to coverage and further stated that all fees set are of reasonable amount to cover services rendered.

An important point yet to be covered is a key feature of our policy; and, to a great degree, an emotional part of any pending litigation: "The free choice of lawyer." At the midwinter meeting of the ABA in New Orleans in 1972, Mr. Ray Marks, of the ABA committee, made two observations that came from the pilot programs conducted in Shreveport, La.; points we found to be very significant during our aforementioned studies.

First, it was found that members of insured unions had a noticeable sense of security, in that if a problem arose, they could call upon a lawyer of their choosing. Second, there was a noticeable lack of

problems between unions and their members and between members and management. It seemed to be of great psychological comfort that members did not feel threatened because they had available to them a lawyer of their choice who could advise them, and at a cost they were able to afford.

Lawyers are, of course, the doctors of social hurts; experts trained in law, engaged in solving problems that turn one man against another. And, like doctors of medicine, are held in suspicion by those in the vast majority who have a misunderstanding and even a fear of the law, as expressed by the poet, Carl Sandburg, when he wrote,

"Why is there always a secret singing when a lawyer cashes in? Why does a hearse horse snicker hauling a lawyer away?"

Simply stated, when a man has a legal problem, it is the only problem in the world of any real import to him. Due to the emotional level of a legal problem, an individual finds it difficult to cope with the conflicts that arise in litigation; and, because he feels so strongly about the righteousness of his cause, the other side becomes the object of hostility.

He therefore chooses, as he has a right to, an attorney he feels is the best in the business. The right, or better stated, the privilege of selecting an attorney of one's own choice provides the confidence not found where legal aid has been court appointed or otherwise selected, even though competent counsel are selected. That is why we feel so strongly about the importance in our policy stating the insured's rights to counsel of his own choice.

We obviously do not propose that our policy will change the feelings toward lawyers and the practice of law. What we do propose is a program in which any man can select a lawyer of his choosing, thereby eliminating the possibility of developing a lack of confidence sometimes accompanied by "establishment" appointed counsel and guaranteeing the right to expert legal advice and consultation with the secure feeling and knowledge that this service is available at a cost he can afford because it is paid for.

These remarks are similar to my testimony in April of 1972 on H.R. 13938.

Since the filing of the first legal insurance policy in Alabama by the Stonewall Insurance Co. in the spring of 1972 a number of major U.S. companies have entered the field to also provide a vehicle for administration of legal services as it is considered a proper benefit and feasible to underwrite.

We are pleased to advise this committee that since that first filing, filing for legal insurance have now been accepted in the following States: Alabama, Arizona, Colorado, Washington, D.C., Florida, Idaho, Indiana, Missouri, Minnesota, Montana, New Mexico, North Dakota, South Dakota, Utah, Washington, and Wyoming. Applications are pending in a number of other States.

We attach herewith a copy of the Stonewall policy and a schedule of benefits.

With restrictions placed on wages today and rising inflation, fringe benefits to a workingman are essential, and particularly legal services, a fringe benefit which the American workingman has been denied for too long. The Shreveport study has shown that providing such serv-

ices is beneficial and has not produced unnecessary litigation or legal hypochondriacs.

Perhaps if one thing is to be learned from medical insurance it is that emphasis should be placed on preventive care. We point out that with legal insurance preventive law is the first coverage available.

The benefits to millions of Americans afforded by recent medical and dental attitudes toward the old axiom, "an ounce of prevention is worth a pound of cure," is evidenced by present medical insurance policies covering annual physical and 6-month dental checkups. The security of knowing that people have coverage to detect something early which will prevent pain, even death, and related large medical and dental bills if otherwise gone unnoticed for a period of time could be applied to the area of legal services. The emphasis on preventive law in the legal insurance field will provide that kind of security.

The anomaly that the average citizen is faced with is that he is held to knowledge of the law, but cannot conceivably understand the complexity of the law. Passage of the proposed bill will help rectify that situation.

We respectfully urge passage of the bill.

I would like to thank the chairman for having this opportunity to testify, and I consider it an honor. The chairman mentioned a fact that it requires a degree of sophistication to know one needs a lawyer. I think that is very true, and one of the problems today is that people are not aware of what services a lawyer can perform.

The more education one has, the more one is able to have available the services of a lawyer.

To make a brief comparison here, the experience of contraception has shown that the more education one has, the more one is apt to use it to prevent pregnancy. I think this is probably true somewhat in the legal field also, that the more one becomes aware of problems, the more one might be apt to do something about it once he is given that experience.

The CHAIRMAN. These are two excellent statements, Dr. Morris and Mr. Foster.

Dr. Morris, you mentioned the specific instance where family coverage could mean so much when a family is away from home and has a problem in another State. I would imagine it would be of great service to know that you had your coverage, and you had a national panel of lawyers available to you that would be easily available through whatever the plan's procedures were.

As a lawmaker I get so many calls, generally at night, from someone who has a youngster way out there with a problem. You can see this is the greatest anxiety.

Dr. MORRIS. The situation I described actually happened. A neighbor had a student at the University of Oregon—he was living in Pennsylvania—and the student was in trouble. Well, this man is not in the higher income group and he had no knowledge of any lawyers in that area. He called me, and indeed we did put him in touch with a lawyer in a matter of hours.

I am not sure how the situation turned out, but I think that it illustrates a need which the legal services programs should meet. People do have problems outside the place they work, outside the community in which they reside.

The CHAIRMAN. If we all succeed here Shenstone's quote will not be understood 20 years from now, and Sandberg's observations on the community's feelings about the lawyer might change, too.

I can see what you do in your spare time, Mr. Foster. You do a lot of reading, do you not?

Mr. FOSTER. Yes.

The CHAIRMAN. We borrowed that Shenstone quote from you, you know. [Laughter.]

Your statements have been very complete. I do not have any questions. I do not feel any are necessary. Your testimony will be very helpful.

The subcommittee is adjourned.

[At 1:50 p.m. the subcommittee adjourned subject to the call of the Chair.]

JOINT LABOR-MANAGEMENT TRUST FUNDS FOR LEGAL SERVICES, 1973

MONDAY, APRIL 16, 1973

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11:15 o'clock a.m. in room 4232, Dirksen Senate Office Building, Senator Harrison Williams, chairman, presiding.

Present: Senator Williams.

Committee staff members present: Gerald M. Feder, counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. We will come to order.

We have as a final witness on this bill, Thomas E. Harris, associate general counsel of the AFL-CIO. This is our concluding testimony on this legislation, Mr. Harris. We are honored that you are the anchor-man.

STATEMENT OF THOMAS E. HARRIS, ASSOCIATE GENERAL COUNSEL, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. HARRIS. Thank you, Senator.

We are very pleased to be here, and we appreciate your committee's holding these hearings, and the promptness with which you have held them. We are hopeful that this legislation can be moved this session.

The CHAIRMAN. There have been 3 days of excellent hearings supporting this bill. We are very hopeful that we will be able to move into executive session on it shortly.

Mr. HARRIS. My name is Thomas E. Harris. I am associate general counsel of the American Federation of Labor and Congress of Industrial Organizations and appear here on its behalf. We appreciate this opportunity to state our views.

Last May the AFL-CIO executive council adopted a statement on prepaid legal services which specifically endorsed the Williams bill. I have appended this council statement hereto, and ask that it be included as part of this statement.

The CHAIRMAN. It will be.

Mr. HARRIS. I also append, and ask that with it be included a statement adopted last month by the AFL-CIO Executive Council on "National Consumer Center for Legal Services."

The CHAIRMAN. That will be included also.

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Mr. HARRIS. With the permission of the chairman, I will request that my prepared statement be incorporated in the transcript, and I will endeavor to paraphrase it and depart a little from it.

The CHAIRMAN. Fine. We will include your full statement, Mr. Harris.

[The information supplied by Mr. Harris follows:]

Statement of the AFL-CIO Executive Council

on

Prepaid Legal Services

Washington, D.C.

May 2, 1972

The inability of working people and their families to obtain high quality legal services at prices they can afford has recently become a subject of great concern to many unions, as well as to consumer groups, bar associations, government agencies and others. The problems they face are many, ranging from inefficiency in the manner in which legal services are produced and distributed to lack of protection against unduly high and sharply rising costs. Recognition of this situation has resulted in the recent establishment of a number of prepaid group legal service plans by unions and others.

The concept of prepaid group legal services is not new. For many years the AFL-CIO has been involved in a legal struggle with bar associations which sought to enjoin the operation of union-operated group legal service plans on the ground that they violated bar associations' canons of ethics.

In a 1971 decision written by the late Mr. Justice Hugo L. Black, in the United Transportation Union v. Michigan State Bar case, the United States Supreme Court declared that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment" and that a "union of workers seeking to assist its members in effectively asserting their legal rights is constitutionally protected...." This Supreme Court decision has finally made clear that legal services may be provided to workers by their unions in the same way that health services have been provided in the past.

In response to this decision, legislation has recently been introduced in the Senate by Senator Harrison A. Williams, Jr., (D.-N.J.), and in the House by Congressman Frank Thompson, Jr., (D.-N.J.), which would permit the establishment of joint labor-management trust funds to finance group legal service plans. The enactment of such legislation would make the development of prepaid legal service plans amenable to the collective bargaining process so that unions which choose to do so could seek to establish such programs through free collective bargaining.

The AFL-CIO supports and endorses this development as well as the aforementioned legislation since it believes that full-fledged citizenship can only be meaningful when citizens are in a position to exercise their legal rights effectively.

Prepaid Legal Services

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Legal services for union members and their families can best be provided through union or community sponsored prepaid group legal service plans. The alternative, open-ended fee-for-service arrangements, permits no effective cost controls and would lead to the same kind of run-away cost escalation many unions have suffered in fee-for-service medical programs.

Statement by the AFL-CIO Executive Council

on

National Consumer Center for Legal Services

Bal Harbour, Florida

February 26, 1973

Legal services are not readily available to many AFL-CIO members and their families. While the rich can afford lawyers and many of the poor have access to legal aid, families in the income range from \$5,000 to \$15,000 find it difficult to obtain quality legal services at reasonable rates.

To meet this need, various groups, including trade unions, have developed in recent years a relatively large number of prepaid legal service plans, differing in costs, benefits, coverage and methods of selecting participating attorneys.

The availability of these services have helped many people cope with the pressures and complications of modern life as consumers and debtors, as home-buyers and tenants, with domestic relations and other problems, including unfair action by governmental units.

To promote and develop uniformly high quality prepaid legal services, to help remove legal barriers and other restrictions which tend to inhibit their growth, and to balance the power of the organized bar with the mass purchasing power of consumers, thereby avoiding the costly mistakes made by voluntary health care schemes, the National Consumer Center for Legal Services was founded by a number of national voluntary organizations, including the AFL-CIO.

The AFL-CIO, which has participated from its very inception in joint efforts to bring essential community services to its members, their families and all citizens, is convinced that such an organization is necessary to bring another important service -- legal aid -- to its members and the community.

To this end, the AFL-CIO will participate in the organization and development of the National Consumer Center for Legal Services, and urges all affiliates to do the same.

STATEMENT OF THOMAS E. HARRIS, ASSOCIATE GENERAL COUNSEL,
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
BEFORE THE SUBCOMMITTEE ON LABOR
OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
ON JOINTLY ADMINISTERED TRUST FUNDS FOR LEGAL SERVICES PLANS
(S. 1423)

April 16, 1973

My name is Thomas E. Harris. I am Associate General Counsel of the American Federation of Labor and Congress of Industrial Organizations and appear here on its behalf. We appreciate this opportunity to state our views.

Last May the AFL-CIO Executive Council adopted a statement on prepaid legal services which specifically endorsed the Williams bill. I have appended this Council statement hereto, and ask that it be included as part of this statement. I also append, and ask that it be included, a statement adopted last month by the AFL-CIO Executive Council on "National Consumer Center for Legal Services".

As this Committee is, I am sure, aware, there is an increasing demand among middle-income Americans for some sort of prepaid legal services plan. We in the trade union movement are very conscious of rising interest among our members, which I think reflects the feeling of millions of families in the income range from \$5,000 to \$15,000.

Even the bottom families in this income range do not meet the eligibility standards for OEO legal services, and even families at the top of this income range are not able to pay substantial legal fees out of current income. Hence there is a growing demand for some sort of arrangement that can provide legal services, if the need arises, on a prepaid or amortized basis. The bar associations and the insurance industry evidently likewise perceive this unmet demand and both are making their arrangements to meet it.

To union people accustomed to collective bargaining, the natural form for a prepaid legal services plan is a jointly-administered trust set up under Section 302(c) of the Labor-Management Relations Act. They are used to looking to such trusts for pension and welfare benefits, and a wide range of other fringe benefits now sanctioned by Section 302. Finally, where small employers are involved, so that a separate legal services plan for each employer is not practicable, a multi-employer legal services plan jointly administered under Section 302 may well be the most feasible way of administering a plan.

That is why we are here asking that Section 302 be amended as proposed in S. 1423. S. 1423 is narrow in scope; several considerations weigh in its favor; and we at least can see no rational ground for opposition to it.

At the present time a union is free unilaterally to establish and unilaterally to administer a legal services plan financed out of dues or other union revenues. There have in fact been a few such union plans for many years, though usually they have been confined to job-related legal problems, such as workmen's compensation or unemployment compensation claims.

A union and an employer are likewise free to set up a legal services plan through collective bargaining, if the plan is administered solely by the employer or, for that matter, by third parties who are not agents of the union.

The effect of S. 1423 would be to permit plans jointly administered by employers and unions and subject to the other safeguards of Section 302. It seems to us highly desirable to permit joint administration in view of the evident legitimate interests of both employers and unions. (One side effect of joint establishment and administration will of course be that the legal services plan will not finance suits against the employer or union, which is one reason why employers might prefer such plans to ones financed solely through a union.) It also seems to be desirable to extend

to legal services plans the safeguards of Section 302, which have proven valuable to beneficiaries where they now apply.

The minority of witnesses who expressed opposition last year to a similar bill, at hearings before the House Education and Labor Committee, did so principally on the ground that enactment of such legislation would set off a wave of legal services plans and would put employers in a position where they could not resist union proposals for the establishment of such plans.

Such objections are hardly more than fanciful. We think the spread of legal services plans would be a good idea, and they are spreading, but the workers involved must always be free to decide to put immediate wage increases ahead of fringe benefits such as a legal services plan. That temptation is particularly strong in this time of rapidly rising living costs. As far as the employer is concerned, it probably will make little difference to most employers whether an additional labor cost of say two cents an hour is to go directly to their employees as wages or for fringe benefits. If particular employers do object strongly they will no doubt be able to make their objections prevail in collective bargaining.

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as it seems unlikely that any substantial number of unions will regard establishment of a legal services plan as an issue to strike over,

The AFL-CIO respectfully urges that the Committee report this bill favorably.

Mr. HARRIS. I think the committee has had abundant testimony as to the need for some sort of prepaid legal services. We feel that this need is particularly acute among families in the income range from \$5,000 to \$15,000, which encompasses of course the great bulk of union members.

Even the bottom families in this income range do not meet the eligibility standards for OEO legal services—even if we can assume, as I hope will be the case, that those services will continue to be in existence—and even families at the top of this income range are not able to pay substantial legal fees out of current income. Hence there is a growing demand for some sort of arrangement that can provide legal services, if the need arises, on a prepaid or amortized basis. The bar associations and the insurance industry evidently likewise perceive this unmet demand and both are making their arrangements to meet it.

People in this income group have the same difficulty about sending their children to college. The rich can go to college; the poor can go to college, but when you get to this range, it is mighty tough to pay for it; and the same thing is true of legal services. What we are looking for is some sort of prepaid amortized legal services.

To union people accustomed to collective bargaining, the natural form for a prepaid legal services plan is a jointly administered trust set up under section 302(c) of the Labor-Management Relations Act. They are used to looking to such trusts for pension and welfare benefits, and a wide range of other fringe benefits now sanctioned by section 302. Finally, where small employers are involved, so that a separate legal services plan for each employer is not practicable, a multi-employer legal services plan jointly administered under section 302 may well be the most feasible way of administering a plan.

That is why we are here asking that section 302 be amended as proposed in S. 1423. S. 1423 is narrow in scope; several considerations weigh in its favor; and we at least can see no rational ground for opposition to it.

At the present time a union is free as far as the law is concerned unilaterally to establish and unilaterally to administer a legal services plan financed out of dues or other union revenues. There have, in fact, been a few such union plans for many years, though usually they have been confined to job-related legal problems, such as workmen's compensation or unemployment compensation claims.

A union and an employer are likewise free to set up a legal services plan through collective bargaining, and to pay for it by a checkoff if the plan is administered solely by the employer or, for that matter, by third parties who are not agents of the union.

The effect of S. 1423 would be to permit plans jointly administered by employers and unions and subject to the other safeguards of section 302. It seems to us highly desirable to permit joint administration in view of the evident legitimate interests of both employers and unions.

I have read that one objection expressed to the legislation here has been that it might be that such a legal services plan might be used to finance suits against an employer.

On the contrary, it seems to me a jointly administered plan is one way an employer and a union too for that matter make sure the plan is not used for the purpose of suing employer or union.

There should either be a list of permissible or impermissible types of suits, some sort of joint employer-union screening committee to pass on the type of suits to be financed.

You can be sure that if General Motors were to set up a fund, there would be no chance to finance the suit for stricter control of automobile emission, or something of that sort. If employers are really concerned about the plan being used to sue them, a jointly administered plan under 302 is about the best safeguard they can have.

Actually in the past the plans that have been set up solely by unions, though they have been limited surface plans, have been dedicated in considerable measure to suing employers.

The type of plan that some of the rail unions have had have looked to suits under the FELA; and those of the Mineworkers have looked to workmen's compensation suits. But if the employers are concerned, this is the way they can protect themselves.

Incidentally, every plan that I have seen that is jointly set up by employers and unions, however administered, does have a provision that it will not be used to finance suits against the employer or the union.

I think the safeguards included are valuable and provide some of the safeguards that I think are needed, such as the provision for an annual audit; that the plan be set out in writing; that there be equal representation in the administration, with a provision for breaking a deadlock by a mutual; that the books be available for inspection at the office, and so on.

All of those provisions have proven valuable in the case of pension funds and welfare funds, and the other types permitted by 302(a) I think would be here, too.

Some of the witnesses have also suggested that this will lead to a vast increase in labor costs because if 302 is amended the employers will have to automatically grant this new fringe benefit, and that will cost money.

I have never had the good fortune to meet these employers with no powers of resistance, though I continue to hope to do so.

Actually this will of course be one more labor cost. It probably will not make too much difference to an employer whether the 2 cents an hour goes to a prepaid legal services fund or goes directly into the wage bill.

As far as the workers are concerned it will be up to them to decide in each case whether their exigencies are such that any available increase needs to go to wages or whether they feel that they would like this new type of protection.

At the present time I am concerned that the rapidly rising costs of living may put a good deal of pressure on workers simply to seek straight wage increases in order to try to hold their own on their living standard. On the other hand, if we were to get into some sort of stabilization program which fixed direct wage increases but left greater flexibility for fringe benefits, such a thing as that would of course encourage the spread of this type of fringe benefit just as the controls by the War Labor Board did during World War II.

I don't think I have anything else, Mr. Chairman, unless there are some questions.

The CHAIRMAN. What has been the experience under section 302 which provides for an audit? I was concerned more about the annual

audit. What has been the experience on the auditing of these jointly administered funds?

How many areas are there where there are jointly administered funds?

Mr. HARRIS. There is a very large number of them. The first was pensions, but they have spread to various types of medical and hospitalization schemes. Section 302 when it was originally written I believe stopped at five.

Then there was an amendment back in the 1950's to cover pooled vacations, holiday, severance or similar benefits. Maybe that was part of the Landrum-Griffith Act. I think perhaps it was.

Then there was one more recently covering scholarships for the benefit of employees, their families and dependents, and also child care centers, so that there have been those two sets of additions to the original list.

The problem arises of course because of the technique used in drafting 302. Originally in dealing with employer payments to unions it endeavored to specify permissible purposes rather than simply specifying nonpermissible purposes.

Since there was no way of foreseeing everything that might come along, and that might be regarded as a permissible purpose, it has been necessary to come back from time to time to Congress to ask for additions to the list.

The CHAIRMAN. So we take them one by one now as exceptional situations although there have been only two cases when that has been done since the enactment of the Labor-Management Relations Act.

Mr. HARRIS. Yes.

The CHAIRMAN. One was day care. What was the other one?

Mr. HARRIS. Day care and scholarships were included in the same amendment. Then there was an earlier one.

The CHAIRMAN. It was for vacations.

Mr. HARRIS. The earlier was on vacations. Child care centers and scholarships were the last.

The earlier one was on vacation, holiday, severance or similar benefits, and also that would include apprenticeship and training programs.

The CHAIRMAN. On this annual audit it is a mandatory provision?

Mr. HARRIS. Yes.

The CHAIRMAN. Every agreement shall contain provisions for an annual audit; a statement of the results shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement.

Who are the interested persons now?

Mr. HARRIS. Any beneficiaries of the program or any potential beneficiaries.

The CHAIRMAN. But there is no requirement that there be anything but an audit and the audit results are to be made available for inspection. There is no disclosure of the audit without someone requesting the disclosure; is that right?

Mr. HARRIS. I think that is right.

The CHAIRMAN. That is probably one of the reasons why the United Mine Workers Fund went so far in the wrong direction for so many years.

Mr. HARRIS. I think the Mine Workers, although there were some nominal employer trustees, I think that the employer interest was pretty nominal and was part of the problem there. I should think an employer would take a greater interest in a prepaid legal fund.

The CHAIRMAN. It was not nominal. There were three trustees: Management, union, and the independent or neutral.

Mr. HARRIS. Yes. The accusation has been made that all of these trustees, whether employer, were highly amenable to the suggestions of the union.

The CHAIRMAN. My point is that the audit was available for inspection; there was no publication or disclosure of that other than its availability.

It was a published audit. It was printed, and its results were there. It was not published and disseminated. It was there and available for inspection at the principal office. We will not get into where that was available, but it certainly was not a matter of great interest evidently to very many people who were interested persons because they let it go for many years without the funds being deposited and making any interest?

Mr. HARRIS. Yes, it must have been a very long period; 25 years maybe.

I think that one problem there was the employers did not take any continuing interest really in the administration of that welfare fund. Where there is a legal services plan, certainly the employer would be well advised to take an interest in it, and I think usually they have done so.

But in the case of the Mine Workers fund, at least the accusation has been made that they simply let the union run it.

The CHAIRMAN. Let me ask you. What has been the experience on the most recent additions to 302(c), opportunities for joint trust funds for day care? Are you familiar with what is happening under the opportunity made available for day care?

Mr. HARRIS. On scholarships and day care, I believe some have been set up in the needle trades. I have not heard of them outside of the needle trades. I do not know whether they have spread beyond that or not.

I know some of the needle trades unions are administering or do have day care centers and do have scholarship programs under these provisions.

The CHAIRMAN. There is a lot of interest in that, I know, and I hope it is being used.

Mr. HARRIS. I really do not know how widely it is being used outside that particular field.

The CHAIRMAN. We had some discussion during the other 2 days of hearings, Mr. Harris, on the question of whether this will be found to be a mandatory item for bargaining or whether it will not be a mandatory item. Our response was that we made no provision here. Other provisions of law will prevail.

Do you have any observations on how the law would apply to this area?

Mr. HARRIS. I do not know whether it would be a mandatory subject of bargaining or not. There have been no decisions on it, and I at least would not want to bet on it. When that question has come up in the past, it has been decided not by reference to section 302 but by looking at the language of, I believe, section 9(a) which speaks of wages, rates of pay, hours and working conditions, something of that sort.

I was involved a little bit in the early litigation about whether pensions were a mandatory subject of bargaining, and the cases were decided entirely under section 9(a) and without reference to 302, though it seems to me that the union could have argued that the specification in 302 as to how tripartite pension funds could be set up showing a congressional intention that it be the subject of collective bargaining.

Nevertheless, the courts did not look to 302 at all. They simply looked to 9(a) and decided pensions were a part of wages or conditions of employment. I suppose that they will do the same thing.

The CHAIRMAN. Were you in the first case that decided that, 1948?

Mr. HARRIS. In 1949 I think there were two cases. One was *Inland Steel* which the seventh circuit denied; the other was the *Crossett Co.* in the first circuit.

The CHAIRMAN. It was decided under the provisions for wages. This fell within that area.

Mr. HARRIS. Yes; wages or conditions of employment. I think the *Inland Steel* case was pensions, and *Crossett Co.* I believe, was a welfare fund.

The CHAIRMAN. I hope you are right that it was *Inland Steel*. I know I have been quoting that case for that proposition for about 3 full years.

I do not have anything further. Thank you very much.

At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

[The information referred to follows:]

REMARKS OF RUSSELL M. TOLLEY, PRESIDENT,
NATIONAL ASSOCIATION OF PROFESSIONAL ADMINISTRATORS
BEFORE THE
SENATE SUBCOMMITTEE ON LABOR

My name is Russell M. Tolley and I am here on behalf of the National Association of Professional Administrators. NAPA is a recently formed voluntary association of leading professional administrators of collectively bargained employee benefit plans. These programs, which include health, welfare and pension plans, take the form of trusts in which management and labor are equally represented in conformity with the requirements of Section 302(c) of the Taft-Hartley Act.

Professional administrators assume the responsibility for the proper handling of the fiscal affairs of these joint trusts, determining eligibility and conduct a myriad of administrative transactions designed to achieve the object of the trust. Professional administrators, through years of experience, have developed a practical expertise in the operation of employee benefit trusts. Professional administrators are intimately familiar with the provisions of trust law, investment policies, actuarial assumptions and other aspects of the employee benefit trust fabric. One particularly important aspect is the establishment and maintenance of

communication with participating employees. Working closely with trustees, professional administrators render periodic reports to them, attend trustee meetings and participate in the deliberations which take place. They also maintain a close working relationship with the attorney for the trust, certified public accountants, actuaries and other professionals serving the trust. Policy decisions are, of course, made by the trustees but it is the administrator who is charged with carrying them out.

Of the many fundamental changes in the fabric of American life and society which we have witnesses over the past decade, perhaps the most encouraging is the trend to greater access to the law for all segments of the population. It is almost axiomatic that the rule of law is the hallmark of American democracy. Without it no man is safe for as Justice Black stated in Meltzer v. LeCraw, 402 U.S. 954, 957 (1971), "the judicial process is the exclusive means through which almost any dispute can be resolved short of brute force". But constitutional guarantees and pontificating statements by themselves do not assure rule of law. Unless all segment of society have both the access to and the desire to use the legal system the phrase "democracy under law" will have no

meaning except to those wealthy or influential enough to confront the system on its present terms. If the events of the past decade have taught us anything, it is that the rule of law can be truly viable only when there is an ability and willingness to use the law and where there is open and equal access to its administration.

Most rights which society grants us and duties which it imposes are determined through the legal system. Access to that system, therefore, is as important as the right to vote. Nobody would suggest for an instant that the power to influence one's society through political processes ought to be restricted, yet for far too long the equally important power to seek redress of grievances through the judicial system has been restricted, largely because of the nature of that system. To make effective use of the system, an individual must have professional representation. The most affluent 10% of the citizens of this country, have never had any difficulty in providing themselves with legal services and in the last half dozen years, there has been a dramatic expansion of legal services to the most impoverished 20% of the population, although these gains are by no means certain of retention as efforts to undercut the expansion of OEO legal activities

continue. This leaves, however, approximately 70% of the population without any significant access to the system. This latter group is what the editorial writers like to call "middle America", that portion of the population whose annual family income is between \$6,000 and \$18,000. To this group (and, indeed, to many families with incomes far higher) being named a defendant in a law suit or criminal charge would rank second only to major illness in terms of catastrophic effect. When the impact of potential judgments is considered, the catastrophe is compounded. Legal services, as traditionally available, are a luxury well beyond their financial reach.

The brightest hope for the 140 million persons who fall within the middle income segment and, indeed, one of the brightest hopes for the American legal process in general is the rapid growth of group legal plans. Not only are the persons comprising this segment well aware of their need but they are also equally aware that it will go unfulfilled unless they can participate in some group plan.

In an effort to determine more precisely the extent of need for legal services, Tolley International Corp., of which I am President, conducted a survey of over 150,000 persons representing varying levels of incomes and diverse geographic locations. Although the group studied consisted principally of

union members, I feel that their replies are probably not atypical of the population in general.

One of the more interesting results of the survey was the indication that about 30% of persons responding indicated that they perceived a need of an attorney in the past but had not retained one. Responses also indicated that only 25% of those replying had had wills professionally prepared. Of the replying union members who had been charged in criminal matters, only about one-half had retained attorneys. Twenty-five percent of the union members surveyed indicated that they had suffered consumer problems in the past. However, of these, only 3% had retained attorneys to assist them.

Although the survey results indicated a significant underutilization of legal counsel, an overwhelming 75% of those surveyed indicated that they were in favor of a group legal program sponsored by their union. Most of the remaining 25% stated that they were undecided on the question. These responses, I feel, clearly indicate that the need for effective counsel is as clearly perceived as is the inability to secure it effectively on an individual basis. As the growth of group legal programs enables increasingly larger groups of persons to effectively utilize the judicial process, a salutary impact

both on that process and on society in general is certain to result. The increasing use of the legal system will inevitably generate a respect for that system where as now it generates mostly fear. At present the impact of the general practitioner on the legal system is small. With the growth of legal services plans, his importance will undoubtedly grow as the matters with which he deals with take on greater importance. As attorneys' begin participating in these programs, a system of accountability for charges and quality of services will have to be devised. Such accountability, which has never existed in practice under the traditional legal system, will assure the client that the professional capability of his attorney is high.

A number of group legal programs have recently been established, the best known being the one established by the Laborers Union in Shreveport, Louisiana. Although the number of plans continues to increase (now about 1500), the growth rate is far below what it should be. One of the principal reasons for this is the statutory prohibition against the establishment of any jointly 'trusteed group legal plans under the Taft-Hartley Act. Traditionally, unions have been in the forefront of all new developments in benefits and social

programs, yet in the vital matter of providing legal services to their members they are severely restricted by Section 302(c) of the Act. Although the legislative history of the Act nowhere indicates an intent to preclude the development of collectively bargained benefits, the statute, because of the manner in which it was drafted, nevertheless precludes a collectively bargained joint trustee benefit other than the few specifically enumerated. Without the active participation of labor unions and their members, the development of the concept of group legal will be sporadic at best and in many cases poorly conceived.

There are currently pending in the Congress a number of bills which would amend the Taft-Hartley Act so as to permit the establishment of collectively bargained legal service programs. The principle bills are H.R.77, introduced in the House by Congressman Frank Thompson, and the bill before this Subcommittee S.1423 introduced by the Committee's distinguished Chairman and its distinguished ranking minority member. NAPA strongly supports both bills.

The passage of H.R.77 and S.1423 will permit the people who most need legal services to work out solutions to their own problems on a group basis without interference from

the federal bureaucracy. In bargaining for legal services, each group would be free to create a program tailored to its peculiar needs instead of forced to fit into an artificial pattern imposed by government.

One additional point remains to be made. Recently a number of hastily conceived and implemented group legal plans have sprung up in various parts of the country. In my opinion, these plans are unlikely to be successful, and will if they fail, tend to erode public confidence in the underlying principles of group plans. Unless labor unions are permitted to bargain for their own jointly administered plans, the number of smaller, financially and administratively unsound ones will inevitably proliferate. The results of such a proliferation and concomitant undermining of public confidence will be to further slow the growth of these vitally needed services.

It is true that a great number of questions must be resolved in the creation of legal services programs, but these problems are not insurmountable and can be best dealt with by the group involved. They do not justify the further withholding of the right to bargain. Although the tax status of contributions to legal plans is as yet unsettled, I have

no doubt that they will be quickly resolved by the Internal Revenue Service and the Congress. Similarly, the remaining questions of ethics will be quickly settled by the state and national bar associations and the courts.

A tide of public desire for group legal plans is swiftly rising in the country. It is incumbent upon Congress not to frustrate this will. Unless Section 302(c) is amended, the growth of group legal plans will remain agonizing slow and the goal of providing adequate legal assistance to the bulk of the American public will remain unfulfilled.

ADVANCING VOLUNTARY LEADERSHIP IN A CHANGING WORLD

Chamber of Commerce of the United States

LEGISLATIVE ACTION GENERAL MANAGER
HILTON DAVIS

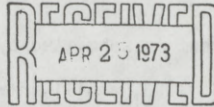
202-659-6140

1616 H STREET, N.W.
WASHINGTON, D.C. 20006

April 24, 1973

Honorable Harrison A. Williams
Chairman, Labor Subcommittee
Labor and Public Welfare Committee
United States Senate
Washington, D. C. 20510

SUBCOMMITTEE ON LABOR



APR 25 11 22 AM '73
SENATOR
WILLIAMS
N.J.

Dear Mr. Chairman:

The Chamber of Commerce of the United States is opposed to S. 1423 now before the Labor Subcommittee, which would amend the National Labor Relations Act to permit the establishment of a jointly-administered trust fund for the payment of legal fees of members of labor organizations.

The National Chamber feels that if the Congress is to consider amendments to the Act it should go far beyond consideration of S. 1423. The administration of the National Labor Relations Act has resulted in a serious imbalance in labor-management relations which favors organized labor. For this reason, we urge the subcommittee to schedule hearings at an early date for the purpose of thoroughly examining the need for a general reform of the Act. Barring such consideration by the subcommittee, we will seek to amend any proposal reported by the subcommittee, in order to provide the reform we seek.

Insofar as S. 1423 is concerned, its passage would present an unwarranted addition to the collective bargaining table which would permit organized labor to use its already inequitable strength to force establishment of these "joint" funds upon employers. Perhaps the most offensive result if S. 1423 were enacted is the availability of monies from such funds for suits against the funding employer.

In addition, the potential abuse of the funds is boundless, absent any restriction on their size and use. Prior to enactment of Section 302 of the Act in 1959, the Congress carefully examined those activities between employer and union representatives which had the greatest potential for abuse. Its study included consideration of jointly-administered trust funds and resulted in listed exceptions in Section 302 to the general prohibition against jointly-administered funds. The courts have construed Section 302 narrowly, based on the legislative history of the Act. We see no evidence which warrants legislating a new exception to Section 302.

We will appreciate your consideration of these views and, we request that this letter be made a part of the hearing record.

Cordially,

cc: Subcommittee Members
Gerald Feder, Subcommittee Counsel

STATEMENT OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
WITH RESPECT TO
S. 1423, A BILL TO AMEND
THE LABOR-MANAGEMENT RELATIONS ACT, 1947
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
APRIL 20, 1973

This statement is submitted by the National Association of Manufacturers with regard to S. 1423, a bill introduced by Senator Williams of New Jersey, to amend the Taft-Hartley Act to permit employer contributions to trust funds established by unions to defray "costs of legal services."

The membership of the National Association of Manufacturers, a voluntary non-profit, business organization, includes employers of all sizes -- large, medium, and small -- whose products account for a major portion of all manufactured goods in the United States, and who employ a substantial percentage of the nation's work force. Practically all of the members of this Association are subject to the National Labor Relations Act and are covered by the collective bargaining requirements of that Act, and accordingly are vitally concerned with the law governing collective bargaining and defining the subjects of collective bargaining.

S. 1423 would add a new eighth exception to Taft-Hartley Section 302 (29 U.S.C. 186) which prohibits any payment by employers to a representative of employees. The new exception 8 would permit payments by "any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services."

Thus the bill would apparently open up for collective bargaining a completely new subject that has little or no connection with the employer-employee relationship or to the "wages, hours, and other terms and conditions

of employment" on which the Act requires employers to bargain collectively with their employees.

Moreover, the present bill apparently would, by implication, make employer contributions to such trust funds not only a permissible subject of bargaining under the Act but also a mandatory subject of bargaining by employers on demand of unions. This is especially apparent when the proposed new exception is compared with the last previous exception added to Section 302 in 1969 by Public Law 91-86, which made an exception for trust funds established by a representative "for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees." In adding that exception, however, the Congress wisely negated any duty to bargain on the subject by including the following proviso: "Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice." The intent was explained in House Report No. 91-286 on that bill:

"The bill would simply make clear that Federal law will not inhibit voluntary labor-management cooperation in establishing these programs. There is no apparent public policy served by inhibiting such cooperation.

H.R. 4314 specifically sets forth that no labor organization or employer shall be required to bargain on the establishment of these trust funds, and that refusal to do so shall not constitute an unfair labor practice. In other words, the establishment of the jointly administered funds authorized by the bill would be a 'permissive' and not a 'mandatory' bargaining subject."

The absence of any similar provision in the present bill suggests the strong probability that bargaining on trust funds for legal expenses would be mandatory if the bill were enacted.

Experience under the existing law shows that when exceptions are made for trust funds under Taft-Hartley Section 302, international unions establish such funds on a union-wide basis and that demands for employer contributions to such funds become a standard item in negotiations with all employers. Where the law makes such funds a subject of mandatory collective bargaining, as in the case of pension and insurance funds, unions can enforce their demands for contributions by strike action. Few, if any, individual employers, and probably no small employer, can afford to take a strike and resist such demands.

The requirements of clause (B) of the proviso to clause (5) of Section 302(c) for joint administration by employees and employers, and for an annual audit, really provide little protection for such funds in many instances. The individual employer who is forced to contribute has no opportunity to participate in the administration, since there are only a small number of employer trustees in a union-wide fund of an international union. Moreover, the employer trustees are in no position to oppose effectively the policies and methods of administration sought by trustees from unions with which the employers have to enter into periodic collective bargaining contract negotiations. The ineffectiveness of joint administration to prevent fraud, corruption and misuse of trust funds is apparent in the controversies and suits that have arisen over such funds, including some litigation now pending in which fraud and corruption are alleged.

Furthermore, the type of trust fund proposed to be legalized by the present bill to cover "costs of legal services" would seem to offer even more opportunity for favoritism, nepotism, kickbacks, and other forms of fraud than most other types of trust funds. Questions as to the need for legal services and the reasonable value of such services rendered in any particular instance could be determined only by investigation of all of the facts and

circumstances of each particular case, an investigation that would be impractical under any circumstances and would be virtually impossible for employer trustees whose companies have to bargain with the union involved.

Even further complicating the situation is the broad general language of S. 1423 permitting such trust funds for "costs of legal services." There is no limitation on the types of legal services covered or the persons for whom they are to be performed. The bill's language could include legal services for unions, officials or employees of unions, union members, other employees, the families and dependents of employees or union members, and perhaps other persons or organizations. As to the type of legal services, it could include attorneys' fees and other legal services for a union official or union member or employee or other person or organization as a defendant in any kind of criminal case. It could include attorneys' fees and other costs of legal services in civil cases of any kind, whether they involve private and personal matters or are concerned with labor relations matters. It could even include legal expenses of a plaintiff in a suit against a contributing employer himself. It could also include legal services not involving litigation, such as drawing contracts, wills or other documents, or any other type of legal work.

If such trust funds were truly intended for the benefit of employees, it would appear that they should certainly cover the legal expenses of an employee in any proceeding against a union which has restrained or coerced him in the exercise of his statutory rights under the Taft-Hartley Act or has deprived him in any way of his rights under the Bill of Rights and other provisions of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq. Any such use of a trust fund to which an employer has contributed,

however, might be prevented by the provision in 101(a)(4) of the Labor-Management Reporting and Disclosure Act (29 U.S.C. 411) that no interested employer shall directly or indirectly finance any action or proceeding by a union member against a union. This provision would at least give unions a good excuse for preventing use of such trust funds in suits or proceedings against themselves.

We have had the opportunity to read the statement submitted on April 27, 1972, to the Special Subcommittee on Labor, House Committee on Education and Labor, by F. Wm. McCalpin, Chairman of the Special Committee on Prepaid Legal Services of the American Bar Association, in which the work of that Special ABA Committee in connection with group legal service plans and prepaid legal service plans is described at length. We note that that statement treats H.R. 13938, which is similar to S. 1423, as merely "allowing" employers to make payments to union trust funds for legal services, and does not comment on the extreme breadth of the bill's language or on any of the legal and practical issues, problems and consequences that would be involved in the bill's proposal to extend the Labor-Management Relations Act to cover union trust funds for legal services and to include such funds as one of the subjects of collective bargaining.

Concerned members of the Bar are, of course, aware that group legal service plans established by unions in the past have conflicted in a number of respects with State regulation of the practice of law and the canons of professional ethics. Examples of such conflict appear in the United States Supreme Court's decision in United Transportation Union v. The State Bar of Michigan, 401 U.S. 576, 28 L ed 339 (1971), and earlier decisions of the same court cited therein. Those cases have already restricted to some extent the authority of the States to regulate the practice of law and the ethics of the profession, particularly with respect to solicitation of business and use of "runners."

Members of the Bar are also aware of the supremacy clause of Article Six of the Federal Constitution and with the doctrine of federal preemption under which the federal government tends to occupy any field it enters, to the exclusion of State regulation. Those who have worked in the field of labor relations law know that the federal government has gradually preempted this field almost in its entirety, to the exclusion of the States. Under the Supreme Court's decisions, where it is found "that conduct is protected by § 7, or prohibited by § 8, then the matter is at an end, and the States are ousted of all jurisdiction." And even where that finding has not been made, the Supreme Court says the States cannot take jurisdiction because "The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy." San Diego Building Trades Council v. Garmon, 359 U.S. 236 at 245 and 246, 3 L ed 2d 775 at 783 and 784 (1959).

As indicated earlier in our statement, if S. 1423 were adopted it would seem logical that international unions would seek to establish trust funds for legal services on a union-wide basis, with a single plan covering employees in all of the States and receiving contributions from employers in all States. Under the present system of State regulation of the practice of law and ethics of the legal profession, there would inevitably be different regulations, restrictions and requirements applying to a nation-wide union trust fund, and employees in different states would receive different treatment and different benefits. This would naturally result in pressure for federal regulation of the practice of law and the ethics of the profession on a uniform basis throughout the country. We believe it is the predictable outcome that the federal government would preempt this subject to the exclusion of State legislatures, State courts and State Bar Associations.

In any event, it seems clear that the aforementioned legal issues should be fully developed and considered by this Subcommittee before any action is taken on the bill.

Another major legal problem that would arise if S. 1423 were enacted is the tax status of such trust funds for legal services, both with respect to the income of such funds from employer contributions, investments and other sources, and with respect to the income tax liability of beneficiaries of the trust fund whose expenses for legal services are paid from the trust fund. The Congress would surely be faced with strong pressures to create new income tax exemptions for such funds and for all payments made to beneficiaries thereunder. The result of such exemption would be that lawyers' fees and other legal expenses would be paid with tax-free dollars. The tax aspects involve serious questions of tax policy and revenue that would have to be considered by other appropriate committees of Congress responsible for tax policies and tax legislation. Certainly this Special Subcommittee on Labor should take no action until the tax aspects have been fully considered by the appropriate committees.

In conclusion, the bill would permit, and perhaps make mandatory, collective bargaining on employer contributions to union-established trust funds for legal services, a subject which has no real connection with the employment relationship. It would open up a new field of controversy having little or nothing to do with wages, hours, or other terms and conditions of employment. It would permit creation of trust funds for virtually unlimited purposes so long as they could be classed as legal expenses of some persons or organizations, whether in litigation or not. Because of the impossibility of determining the need for legal services and the value of legal services rendered in each particular case, it would invite favoritism, kickbacks, and other forms of fraud and corruption, none of which can be effectively prevented

by the nominal joint administration that would be required by the Act. Further such funds doubtless would not be available to employees for one of the protections which Congress has found employees need most -- protection against unlawful and improper acts of unions themselves.

Moreover, since the establishment and operation of such trust funds for legal services involve numerous and serious problems regarding regulation of the practice of law and the ethics of the profession, the proposed inclusion of such funds as a subject of collective bargaining under federal labor law could result in federal preemption of the regulation of the practice of law and legal professional ethics, to the exclusion of traditional state regulation. Finally, enactment of the bill would undoubtedly lead to pressures for new tax loopholes to provide income tax exemption for such funds and the monies paid therefrom for legal expenses of fund beneficiaries, a subject that involves important questions of tax policy and revenue which are beyond the jurisdiction of this Subcommittee and should be considered by other committees of Congress before any action is taken on this bill.

#

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 385 WASHINGTON ST., ST. PAUL, MINN. 55102

April 6, 1973

U. S. Senator Harrison A. Williams, Jr.
 Senate Office Building
 Washington, D. C. 20510

S. 1423

Dear Senator Williams:

The captioned Bill amends the Taft-Hartly Act to allow negotiation of prepaid legal services as an employee benefit. This will add important impetus to the development of such prepaid legal service plans.

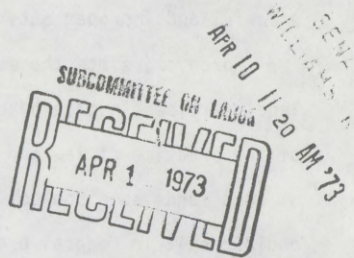
We have been active in developing a legal insurance program, and wish to express our support for the concept imbodyed in your Bill.

Sincerely yours,

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

Kernel L. Armbruster
 Corporate Counsel
 Insurance Law Department

KLA/rm



TRUST FUNDS FOR LEGAL SERVICES
S. 1423

Statement of
Ms. Eleanor J. Kelly
Chairperson, Subcommittee on Federal Legislation
Committee on Legal Research
Chapter 60, Parents Without Partners

Before the
Subcommittee on Labor
Committee on Labor and Public Welfare
U. S. SENATE

April 19, 1973

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

My name is Eleanor J. Kelly. I am a member of Parents Without Partners, an organization of single parents with over 80,000 members in more than 700 chapters in the United States and overseas. Our Greater Washington Chapter 60 is the largest single chapter, with more than 2,500 members.

Within Chapter 60 we have established a Legal Research Committee which serves a two-fold purpose for our membership:

1. To advise single parents on securing adequate legal counsel which we can also afford, a problem that nearly all of us face at some time;
2. To monitor and encourage legislation being considered in Maryland, Virginia, the District of Columbia and Congress which is of interest to single parents.

The second function covers legislation affecting many issues of great importance to single parents such as tax relief, day care centers for working single parents, revision of marital laws, and particularly, the legislation you are sponsoring regarding prepaid legal services.

Our Subcommittee for Federal Legislation has carefully studied the legislation you have proposed. We believe the concept of prepaid legal services is in the interest of the growing number of Americans who face heavy and repetitive legal costs because of marital difficulties, separation, divorce, and custody and support issues.

While we have no statistics indicating the number of our members who may belong to trade unions, we feel that any major step toward

establishing prepaid legal services for a large segment of the population, such as the American trade union community, will lead to the adoption of these services in other areas of American life. This would undoubtedly impact the lives of many single parents throughout the country.

The widespread negotiation of pension and welfare plans by the trade union movement in the past quarter century has led to its acceptance as an employee benefit in many companies, even those which do not hold collective bargaining agreements with trade unions. The benefit has, so to speak, "brushed off."

Whether the majority of our members belong to unions I cannot say, but certainly most fall within the range of those you have stated would find fiscal relief from the legislation you have introduced. I refer to your statement of April 9:

"This legislation is necessary because of the need to improve existing methods of delivery of legal services to low and middle income Americans."

And further, to your statement of March 29:

"One of the most glaring injustices in our country is that Americans of moderate means neither know when they need legal services, how to obtain them, nor how to finance these services."

One of the most common complaints among our single parent membership relates to the contrast between cost and quality of legal services.

The urgent need for legal assistance usually occurs during a time of great emotional upset to the individual. High legal costs which intensify the many pressures affecting separating parents greatly increase the trauma to the family. Also, separation or divorce often places the burden of sharing among two families an income that in many cases was barely adequate for one family squarely on individuals who are least able to cope with financial strain. Excessively high legal costs are often a factor that may force the affected parties into debt for a long period of time. This unfortunate circumstance can only exacerbate an already precarious financial situation.

Any measure which will relieve the financial burdens of the single parent can only result in a better way of life for those to whom we are dedicated and devoted as parents and as an organization: our children.

Your legislation, we believe, would go a long way to set a precedent in our American way of life which would benefit one of our most burdened and needful groups - the millions of single parents of today and tomorrow.

We most heartily endorse and urge enactment of your bill to allow collective bargaining to establish prepaid legal services.

DIAL 839-5211

MINOT AND WILLISTON

P. O. BOX 1832

*Teamsters Union Local 74*AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA

April 9, 1973

Minot, North Dakota 58701

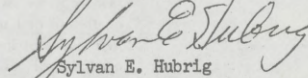
Mr. Gerald Feder
Room G
237 New Senate Building
Washington, D. C. 20016

Dear Mr. Feder:

I would like to testify before the Senate Labor Committee regarding the amendment of Section 302-C of the Labor Management Act on April 16, 1973.

I am the president of Teamsters Union Local 74 of Minot, North Dakota. We have approximately 500 members many of whom are interested in seeing Section 302-C of the Labor Management Act amended to provide for prepaid legal insurance.

Very truly yours,


Sylvan E. Hubrig
President

SEH:cs

cc: Jack Flynn

Legal Services, the Bar and the Unions

by Jules Bernstein

After some episodes of conflict, both the organized Bar and organized labor now seem to be on a course of co-operation to develop high-quality legal services programs for people of moderate means. This co-operation is essential if "group" or "prepaid" legal services plans are to realize their potential good for society. Unions have an interest in developing legal services as a collectively bargained fringe benefit, but there are legislative impediments to be overcome.

If "group" or "prepaid" legal service programs are to realize their maximum potential for providing high quality legal services at a moderate cost to the Bar's "forgotten client: the average American",¹ co-operation between the organized Bar and the American trade union movement will be essential. For it can be expected that these two highly influential institutions will play leading roles in shaping the course of the rapidly developing legal services movement.

As for the organized Bar, it has come to recognize that for a number of reasons most of the existing methods of providing legal services to people of moderate means are woefully inadequate and that new modes of production and distribution must be developed quickly if the Bar is to meet adequately its obligation to serve the public.

Shortcomings of Present System Are Well Known

The shortcomings of the existing system of providing legal services to moderate-income consumers are by now well known.² First, except for automobile and personal liability insurance, there is no institutionalized method for obtaining advance protection against unexpected legal costs. This has meant that the client has had to bear the burden of paying for legal services at or near the time of their rendition. Second, it is often difficult for moderate income citizens to determine the existence or nature of their legal problems or to find lawyers competent or willing to deal with them. Finally, the built-in inefficiencies of many small law offices that cater to the legal needs of moderate-income citizens too often have resulted in low-quality services at unnecessarily high prices.

As a result of these circumstances, tens of millions of middle-income citizens now are foreclosed from obtaining effective legal representation just at a time in our history when the increased complexities of life and the law seem to make legal representation a necessity for all.

In response to this situation, several bar associations are attempting to develop programs aimed at meeting some of the problems of high costs, poor quality and the general unavailability of legal services. The State Bar of California is exploring the possibility of establishing a statewide program to provide prepaid legal services through a nonprofit corporation that would administer its plan.³ The New Jersey State Bar Association is looking into the creation of a similar program in which New Jersey Blue Cross would serve as administrator.⁴ And many other state and local bar associations have plans under active study. On February 3 of this year, Louis J. Lefkowitz, Attorney General of New York, issued a report "on the nonavailability of legal services to persons of moderate income", in which he recommended that each New York "county bar association . . . give immediate consideration to the desirability of establishing a prepaid legal service plan".⁵

1. Robert W. Meserve, President-Elect of the American Bar Association, used this phrase in his article, *Our Forgotten Client: The Average American*, 57 A.B.A.J. 1092 (1971).

2. CHRISTENSEN, *LAWYERS FOR PEOPLE OF MODERATE MEANS* 26-39 (1970).

3. SPECIAL COMMITTEE OF THE STATE BAR OF CALIFORNIA, *PREPAID LEGAL SERVICES* (September, 1971).

4. N. J. LAW JOURNAL, February 17, 1972, page 1; Newark Sunday Star Ledger, February 13, 1972, page 1.

5. REPORT OF NEW YORK STATE ATTORNEY GENERAL LOUIS J. LEFKOWITZ ON THE NON-AVAILABILITY OF LEGAL SERVICES TO PERSONS OF MODERATE INCOME 23.

thing. It can only take a defendant to court for the purpose of convincing a court either to impose a fine or to order the defendant to cease discharging and clean up the effects of past discharges. In either situation, the prosecutor must convince the court that the defendant has done or is doing something that should be halted. That burden, as a practical matter, is insurmountable if the defendant can establish that it has taken every precaution and in fact has abated its pollution to the maximum currently feasible.

There could be situations in which every conceivable precaution had not abated the discharge entirely. In my experience prosecution of this kind of case is completely hypothetical. Resources do not permit prosecution of these minimal polluters. There are far more polluters readily available who yet practice nineteenth century industrial mores. Reliance on the prosecutor to be sensible is part of the system of criminal justice and is not in the least unusual. In the last analysis, the abuse of discretion can only bring a defendant to court. There the prosecutor, in an open public proceeding, must bear his burden of demonstrating to the court that a fine or an injunction should be ordered.

Moreover, the primary rationale for a standard is not present in the pollution area. Companies desire standards in order to predict what will be an acceptable level of abatement. But standards are changing constantly. What today seems to be an acceptable level most likely will not be considered so in the future. For a company to install pollution abatement equipment meeting an outmoded standard is foolhardy. If it does not install the most advanced equipment available, regardless of the current written standard, it is wasting money.

The standard now found in the Refuse Act makes sense most of all because it is enforceable. It is a standard readily comprehensible to everyone, industrialist and citizen alike. At a time when pollution of practically all major waterways is plainly visible, the Refuse Act offers hope for meaningful abate-

ment. Its clear commandment places the burden directly on the discharger either to cease discharging or to take every precaution currently available to eliminate contaminants from his effluent. Equally important, it mandates that the enforcement officials take action. Neither can hide behind disputes about relative toxicity, and neither can buy time awaiting the ultimate standard and the ultimate black box to eliminate the noxious portion of a discharge. It is unlikely that "zero" discharge can ever be achieved; it is equally unlikely that setting a lesser standard will produce more or better abatement.

The fifth allegation is that the Refuse Act appears defective in that it does not settle which government authority—the states or the Federal Government—has priority of enforcement. Whereas most recent federal legislation implicitly or explicitly defers to the states, the Refuse Act is silent. The Refuse Act follows the traditional criminal law theory that certain conduct, even if punishable under state law, might also be punished as a federal crime if constitutionally permitted contacts exist, as, for instance, receiving stolen goods (state crime) and receiving stolen goods that have moved in interstate commerce (federal crime).

Absence of Pecking Order Is No Defect

The absence of a pecking order is no defect at all. Surely no one would contend that there has been too much enforcement in the pollution area. The experience is quite the contrary. More important, concurrent jurisdiction has decided advantages. A United States attorney vigorously enforcing the Refuse Act cannot help but cause the competitive (or self-protective) fires to ignite in local and state enforcement agencies. The same competition works between the EPA and the United States attorney offices, as well as between United States attorneys in neighboring districts. While it may not be obvious to even the most well-informed people, this has been one of the most important products of the Refuse Act. In

probably no other area has competition fostered by concurrent jurisdiction had a more beneficial effect. The Refuse Act is necessary and has been successful on this basis alone—actions under it proved enforcement possible and desirable and made others uncomfortable if they were not being equally as tough.

Refuse Act Is a Superior Enforcement Tool

The Refuse Act has developed into a superior enforcement tool for the betterment of our environment. An examination of the record of enforcement bears this out. Criminal indictments are being voted increasingly by grand juries around the country. In the two years ending July 1, 1969, eighty-seven criminal cases were brought under the act, but in the next two years almost four times as many criminal actions were brought—a total of 320. Once convicted, defendants can expect a substantial fine. As Judge Thomas F. Croake stated when he imposed the \$200,000 fine on Anaconda, no longer can pollution fines be viewed as merely a cost of doing business. These actions bring credibility to the commitment to clean up. Without the certainty of being caught and punished, there is little left to that commitment, no matter how grand the administrative machinery or how stringent the standards.

If I were to grade the importance of the Refuse Act and enforcement under it, I would list these things as the most important, above even the significant successes of individual cases:

—It has and is creating a climate in which industry—the potential defendants—now feels a growing certainty that it can no longer pollute with impunity.

—It has and is creating a climate in which local and state agencies can become more stern in their enforcement policies.

Much remains to be done. But there could not be a more explicit mandate than is now found in the Refuse Act, nor could that be a more workable scheme of enforcement than is now evolving under the present statute.

At present, however, the only bar-sponsored program in operation is the Shreveport (Louisiana) Bar Association plan which has been providing legal services since January, 1971, to the approximately 600 members of Laborers' Local 229 and their dependents. The program has received sponsorship and financial assistance from the American Bar Association and the Ford Foundation.⁶

Union participation in the Shreveport pilot project is indicative of labor's growing interest in helping to broaden union members' access to effective legal representation.

In 1971, during the course of the Federal Government's first effort at comprehensive labor negotiations, engaged in through its newly created Postal Service, four unions representing approximately 650,000 rank-and-file postal workers proposed prepaid legal services as an employee fringe benefit. Although agreement was not reached on this issue, in part perhaps because of the absence of any functioning national legal service delivery system, the parties decided to establish a joint labor-management committee to study the matter. The committee is scheduled to report at the commencement of the next series of negotiations, which will begin in the spring of 1973.

Ohio Laborers' Local Begins Prepaid Program

On March 1 of this year, Laborers' Local 423 in Columbus, Ohio, began operation of a closed-panel prepaid program designed to provide comprehensive legal services to the local's approximately 2,600 members and their dependents. And on April 1 the Chicago Joint Board of the Amalgamated Clothing Workers established a closed-panel prepaid legal services program covering more than 7,000 union members and their dependents. Similar union-sponsored programs are in operation or on the drawing board.

In addition, legal services was on the agenda of a November, 1971, conference of labor lawyers who represent the more than a hundred national and international unions affiliated with the American Federation of Labor—Con-

gress of Industrial Organizations. And an article on legal services as a benefit of union membership appeared in the January, 1972, issue of the A.F.L.-C.I.O.'s *American Federationist*, labor's principal journal of opinion.

Labor's Interest Is of Long Duration

Although labor now seems to be exploring seriously the opportunities for benefiting its membership in the legal service field, its interest in the subject is of long duration. For example, on several occasions during the last decade, unions have been challenged by the organized Bar over the legality of union-sponsored legal service programs that were in existence as early as 1913.

In both of the *Trainmen Cases*, 377 U. S. 1 (1964) and 401 U. S. 576 (1971), and in the *Mine Workers Case*, 389 U. S. 217 (1967), unions, aided by the United States Supreme Court, succeeded in overcoming Bar opposition to their closed-panel legal services programs. Objections had been interposed by the State Bar of Michigan in one case, the Virginia State Bar in the second and the Illinois State Bar Association in the third. The results in these cases have clearly renewed labor's desire to expand legal protections for members.

But despite the revival of labor's interest, it can be anticipated that for several reasons movement by unions in establishing legal service programs will tend to be gradual. For in order to clear the way for the full-scale development of legal services as a collectively bargained fringe benefit similar to health and welfare coverage, changes in existing law will be required. At present, legal services is not one of the fringe benefits specifically enumerated in Section 302 of the Taft-Hartley Act (29 U.S.C. § 185). This means that it may not be made the subject of a jointly administered labor-management trust fund. While possible avenues for circumventing the provisions of Section 302 exist,⁷ it can be anticipated that a statutory amendment will be required before prepaid legal services become a common subject of collective bargaining. Legislation has been

introduced in the 92d Congress.⁸

Another impediment is to be found in Section 501(c)(9) of the Internal Revenue Code, which governs the tax exempt status of certain employee benefit plans. This section declares health, accident and "other [employee] benefit" plans to be exempt from federal taxation. But the Internal Revenue Service has never specifically defined "other benefits", although in 1968, it published proposed regulations intended to do so.⁹ Because the definition of "other benefits" contained in the proposed regulations was extremely narrow, legal service plans, as well as several existing fringe benefits, would have been denied tax exempt status. On behalf of its affiliates, the A.F.L.-C.I.O. filed detailed comments with the IRS, in which it took the position that labor-management legal service plans and other existing fringe benefit programs should be declared tax exempt. No action has been taken by the IRS to make the proposed regulations final.

Another problem concerns an employee's federal income tax liability for his employer's contributions to a legal services fringe benefit fund on his behalf, as well as for legal service benefits he receives. Under present law, a worker who might be provided with \$2,000 or \$3,000 worth of legal service benefits under a collectively bargained plan would later face a \$400 to \$700 federal income tax liability based on the fair market value of the services. Medical benefits are tax exempt under Section 105 of the Internal Revenue Code, and it would certainly seem equitable to treat legal services in a similar manner. But specific legislation would be required to achieve this result.

Although these and other related problems are troublesome, they are not

6. Marks, *The Shreveport Prepaid Legal Services Plan*, 36 UNAUTH. PRAC. NEWS 24-25 (1971); Politz, *Prepaid Legal Services—The Shreveport Plan*, 7 TRIAL 29 (1971); *Shreveport Pilot Project Ends First Year's Operation*, 1 GROUP LEGAL SERV. NEWS 4-5 (1972).

7. Cf. *Mutual Employees v. New York Racing Association*, 398 F. 2d 587 (2d Cir. 1968); *Shapiro v. Rosenbaum*, 171 F. Supp. 875 (S. D. N. Y. 1958).

8. S. 3386, 92d Cong., 2d Sess., 118 Cong. Rec. 4315-4318 (1972); H.R. 13938, 92d Cong., 2d Sess., 118 Cong. Rec. 2268 (1972).

9. 34 Fed. Reg. 1028.

Legal Services



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insurmountable. Indeed, in the encouragement of appropriate remedial legislation, it is possible that the Bar and the unions will find common ground for co-operation.

Partly because of these legal obstacles, the Laborers' Union Shreveport and Columbus programs and the Clothing Workers' Chicago plan have been financed through the unions' dues structure or through contributions from participating members. Most of the existing union-sponsored legal service plans, however, are operated by law firms that provide legal services to union members at or below bar association suggested minimum fees. According to the State Bar of California, as of October 1, 1971, there were approximately 192 groups throughout the state with an estimated combined membership of 750,000 covered by 215 arrangements with eighty-two law offices. These "discount house" programs seek to lower costs by increasing the volume of cases handled.

While these methods of providing legal services to union members will continue to be utilized, in the long run the collective bargaining process

offers the most promising resource for the broad scale development of union-sponsored legal service programs. Through the collective bargaining process, health, welfare and pension plans have reached a point in their growth where they now handle billions of dollars in contributions. Today these programs provide benefits that were undreamed of twenty-five years ago but are now taken for granted by organized workers and their families. And just as was the case in the medical and pension fields, while the fringe benefit of legal services is rare today, tomorrow it may become commonplace.

Can Funds and Union Interest Be Generated?

Once the legal obstacles to collectively bargained legal service programs have been removed, the question will then become whether or not sufficient funds and union interest can be generated to make legal service plans feasible. For example, the imposition of wage controls by President Nixon under the Economic Stabilization Act of 1970 would seem to have an inhibiting effect on the availability of collectively bargained funds, although fringe benefits have generally been excluded from the definition of "wages" under the 1971 amendments to the act.¹⁰ On the other hand, the future enactment of some form of national health insurance may result in freeing existing employer health benefit contributions which could then be used for new fringe benefits, such as legal services, group auto insurance, etc.

The labor movement's long-term contribution to legal services will not be limited to helping to finance programs. Labor has developed an extraordinary amount of expertise in the administration of similar fringe benefit programs that will be of great assistance in connection with legal services. There are skilled administrators, actuaries, lawyers and others with experience in the fringe benefit field who already have expressed an interest in providing similar services in the legal service arena. Their expertise would be particularly beneficial since it would

permit costs of administration of legal service programs to be shared with other fringe benefit plans.

Just as in the medical field, the labor movement can be expected to contribute to the ongoing dialogue over the relative merits of open- versus closed-panel legal service plans. Generally it is expected that unions will lean toward closed-panel programs on the belief that higher quality services can be provided at lower costs than under open-panel plans.

In response to the Bar's frequent claim that an individual should be entitled to make his own selection of an attorney, unions can be expected to reply that the problems surrounding the selection of an attorney are so difficult that union members generally would prefer to be represented by lawyers whose competence and qualifications have been ascertained by their unions.

In this regard, the closed-panel models established by the neighborhood legal services program of the Office of Economic Opportunity and by legal aid societies may serve as models for unions to follow. Indeed, the Laborers' Union Columbus legal service plan was established with these models in mind. Under the plan, an office has been opened and staffed with attorneys who have had experience in operating legal aid and defender programs.

When a union's membership is small or is geographically dispersed, it is possible that an open-panel plan modeled after Shreveport might be established. While an open-panel plan might include all lawyers in a community who would wish to participate, it could also require that participating attorneys agree to accept work only in areas in which they are qualified, reduce their fees, maintain adequate malpractice insurance and submit to peer review or arbitration, or both, complaints concerning the quality of services rendered. Still another alternative would be to develop programs similar to some in the health field in which group mem-

10. Pub. L. No. 92-210. On February 23, 1972, the Pay Board adopted a resolution on implementation of the provisions of the 1971 amendments dealing with exempt fringe benefits.

bers may choose between open or closed panels.

While the Bar and labor may continue to disagree over the relative merits of open and closed panels, recent developments, including the newly adopted codes of professional responsibility, leave no room for argument over the ethical propriety of "group" or "prepaid" legal service programs¹¹

or over the necessity for their development. Rather, these circumstances create an atmosphere in which unions and the Bar may be able to join together for the common purpose of providing more comprehensive, effective and inexpensive legal services to a segment of the American public that has been deprived too long of legal representation. If labor and the Bar can work together

to achieve this goal, an important step forward will have been taken in advancing and protecting the rights of vast numbers of Americans.

11. See Stolz, *Sesame Street for Lawyers: A Dramatic Rendition of United Transportation Union v. State Bar of Michigan*, 36 UN. AUTH. PRAC. NEWS 14 (1971).

Young Lawyers Become VIPPs in New Correctional Program

MORE THAN 1,000 members of the American Bar Association's Young Lawyers Section have initiated the Section's Volunteers in Parole Program in eight selected states. The one-year pilot program, funded by a grant from the Law Enforcement Assistance Administration is sponsored jointly by the Section and the American Bar Association's Commission on Correctional Facilities and Services, of which Richard J. Hughes, former Governor of New Jersey, is chairman.

The program seeks to ease the heavy caseload burden on parole officers in the various state parole systems and at the same time to provide the young lawyers who participate with invaluable clinical experience.

The photograph shows Robert P. Murray (left) of Lakeland, Florida, who is Chairman of the Young Lawyers Section, talking with his parolee-partner, Delbert Varner, who was recently released from Lowell Prison. In Florida, where more than a hundred volunteers are in the program, the Young Lawyers Section of The Florida Bar is acting as an additional sponsor.

The parolees who volunteer to see sponsors visit their partner in place of the required weekly visits to their parole officer. Participating attorneys work under the supervision of these trained specialists, who are often too busy to provide the intense contact and assistance the volunteer can by offering informal visits.

The \$210,995 Law Enforcement Assistance Administration grant is funding the staff and paper work for the project, but the young lawyers are strictly volunteers. They do not provide legal representation or services of any kind. Using its share of the federal funds, Florida held two training and orientation sessions for its volunteers. The project chairmen are working closely with Florida's Parole and Probation Commission, which will study and evaluate the project.

The eight selected states were chosen to give a cross-

section of environments for study of both rural and metropolitan areas. If the project achieves its goals, says Mr. Murray, it could be expanded nationwide at the end of the year. The project is the first in a series of action programs to be launched by the Association's Corrections Commission.

Sara Sharpe



Our Forgotten Client: The Average American

by Robert W. Meserve

Striving to find the best way to provide legal services to the client of moderate means, the American Bar Association has helped design and is supporting two experimental projects for prepaid legal services, one in Shreveport, Louisiana, and the other in Los Angeles. State and local bar associations must study the prepaid legal services concept and plans and be prepared to help in the design of programs that will be professionally acceptable.

PROVIDING LEGAL SERVICES to the individual client of moderate means is a subject of deep concern to lawyers everywhere. The subject is one that embraces services to some 70 per cent of our population by well over 50 per cent of our practicing lawyers. It is a subject that requires more than thoughtful consideration or some well-worded resolutions; it also requires that the members and the leadership of state and local bar associations be now fully committed to intense and immediate efforts of exploration and planning.

If we do not put forth this concerted effort, fundamental changes in the mode of practicing law will be determined to our disadvantage and to the disadvantage of our society as a whole by forces outside of the profession not restrained by professional, ethical requirements. Changes are already occurring in response to pressures for more adequate systems of making legal services available. We must participate in planning and reshaping a better system of providing our services so that the public will be assured of adequate and professionally sound services.

The rich and well-to-do are aware of their need for legal services and have no trouble obtaining them. The poor are being increasingly assured of services. But there is a large segment of the population between these extremes.

This vast, middle economic group—the people of moderate means—I define as that part of our population between the poor, the lowest 20 per cent in income, and the wealthy, the highest 10 per cent in income. So defined, numerically this group is approximately 140,000,000. Barlow Christensen in his book, *Lawyers for People of Moderate Means*, defines moderate means as an income from \$5,000 to \$15,000 per year for a family unit. These family

groups comprise 60 per cent of the American population as of 1963, or 28,000,000 family units. Either definition means sizable clientele—our forgotten clientele.

The more than 50 per cent of our practicing lawyers affected are those primarily in general practice and practicing alone or in small firms. They are part of the age-long professional tradition of "hanging out one's shingle" and being ready for all clients on all legal problems. They are still the average American lawyer. Yet they already are beset by ever-increasing office costs, the increasing need to have expertise in more and more specialized fields and the problem of making their availability known and understood in the faceless cities of today. Like the forgotten client, they may prove to be the forgotten lawyer unless their talents are brought into some newly structured system of expanded legal services.

Does the average American use the services of a lawyer when needed? It would appear that he does not, except, perhaps in the personal injury and accident field where liability and casualty insurance may provide a lawyer for him if he is a defendant, or the existence of the contingent fee may make it possible for him to retain a lawyer if he is a plaintiff.

Yet the question itself poses difficulties. The overwhelming majority of our countrymen, too, may not always be able to perceive what problems are "legal" and, therefore, ones in which the help of a lawyer should be sought.

AUTHOR'S NOTE: I wish to acknowledge with gratitude my debt to Philip J. Murphy, staff director of the American Bar Association Committee on Prepaid Legal Services, for his generous assistance in the preparation of this material.

A lawyer is trained to be a problem solver in the broadest social sense. He is trained to analyze a problem, scale it against any legal rules that may be applicable, and arrive at a conclusion and suggested course of action within a fixed time limit based on the evidence and his evaluation of the law, to the extent that it is available through investigation and research within that time limit. This generalized capacity makes him useful in a broad context, and his usefulness is not confined to appearances as an advocate before a court or administrative tribunal. Unfortunately, the average client rarely avails himself of this counseling skill, particularly for preventive advice.

We know from old and new public opinion polls, as well as from literature, that a lawyer is generally regarded by the public as a necessary evil rather than as a helping hand. These polls, however, do not reveal all the reasons for our far from winsome public image. We still do not have enough scientifically gathered data on which to base a documented statement on the reasons for use or nonuse of lawyers by the average citizen.

Now the American Bar Foundation is developing these data in regard to the American Bar Association project for people of moderate means at Shreveport, Louisiana. However, that program has been in operation only eight months, and it will be some time before any careful conclusions can be drawn. This lack of data forces us to make some careful estimates and calculations not supportable by exact statistics or studies.

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. Paying a lawyer seems to be especially agonizing for many members of the public. Lawyers, too, are agonized over their own increasing costs and the necessity to charge higher fees.

The American Bar Association and many state and local bar associations have given much attention to the primary problem of reducing law office expense so that the cost of legal services

to the public could be stabilized or perhaps reduced. The names of our Committees suggest the approaches made to this problem: Economics of Law Practice; Legal Assistants; Specialization. We all want to make the most efficient use of our time so that we can maximize the input of our professional skills. But we also want to be certain that we do not achieve these efficiencies at the cost of the traditional values in the lawyer-client relationship.

Payment Must Be Less Onerous and Painful

Our efforts to reduce lawyers' costs are not enough to solve the problem of making services more available to the client of moderate means. As Mr. Christensen has pointed out, it is also necessary to address ourselves to the problem of our clients' ability to pay. That ability must be enhanced by arrangements that make payment less onerous and painful. Some possibilities are an adaptation of the English system of awarding adequate attorneys' fees as part of costs to the successful litigant; bank financing (by clients' borrowing) of fees for legal services; legal service subsidies; and legal insurance and prepayment plans analogous, but not identical, to Blue Cross and Blue Shield. The last arrangement deserves the most careful consideration.

The American Bar Association began serious exploration of prepaid legal service systems in 1968. In that year the Board of Governors appointed a subcommittee, whose work now has been taken over by a Special Committee, to explore the field thoroughly and to launch appropriate pilot programs to test the feasibility of plans which would allow the client a free choice of a lawyer in his community. The recommendation for that action had come from the Special Committee on Availability of Legal Services. Its study had concluded that (1) the middle segments of our population were not receiving or using the services of lawyers when services would prove highly useful or appropriate; (2) no statistical data existed that broadly or accurately measured the use of lawyers by the average American; and (3) no systems of de-

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livery of legal services existed that involved the participation of a substantial majority of the Bar and allowed for a free choice of lawyer by the prospective client.

In 1969 the American Bar Endowment and American Bar Association made grants to two experimental programs—one in Shreveport and the other in Los Angeles. In 1970 and 1971 the Ford Foundation made further grants to both these projects. Somewhat more than \$100,000 has been made available to Shreveport to help with the costs of administration and benefits of its plan for a two-year period. \$96,000 has been given to Los Angeles to help with actuarial and administrative costs for a three-year period. Shreveport began operations on January 22, 1971. Los Angeles is scheduled to commence this fall.

What Is a Plan of Prepaid Legal Services?

What exactly are these plans? A plan of prepaid legal services is an arrangement by which the cost of potential service is paid in advance by or on behalf of the client. The payment is made to the organization administering the collection and disbursement of moneys received under the plan. The individual who receives services is practically always a member of a group. Thereby the insurance principle of spreading the risk over the members of the group to achieve lower cost for the individual participant can operate. To achieve our objective of free choice of a lawyer, the lawyers who provide the services must constitute at least a substantial proportion, if not all, of those in active practice in a given area. In Shreveport it is 100 per cent of a tightly knit bar of 250 members. In Los Angeles the bar hopes to enroll at least 10 per cent of the 16,000 lawyers in that county.

As we visualize it, the prepaid plan would establish a schedule of benefits

Our Forgotten Client

available under the plan in return for the contribution made by the client-member. Benefits could be described in terms of a dollar allowance for specified legal work tasks, as in a Blue Shield surgical schedule. There could also be gross dollar amounts available to pay for a lawyer's time at a maximum hourly rate.

In Shreveport the group is a laborers' union local, and the member contributes 2¢ per hour of his wages to pay the Shreveport Legal Services Corporation for the following benefits:

(1) \$100 worth of consultative services on any subject, not to exceed \$25 per visit; (2) \$250 for office work, such as investigation, research or negotiation (a prepayment of \$10 by the client is required); (3) for representation in a judicial or administrative proceeding—\$325 for legal fees; \$40 for courts costs; \$150 for out-of-pocket expenses (prepayment of \$25 by client if he is the moving party); (4) if the member is a defendant or respondent, the benefits under (3) plus reimbursement of 80 per cent of the next \$1,000 in litigation expenses incurred.

The membership of the union ranges from 550 to 600 persons. With family dependents included, about 1,400 are covered. For the first seven months of operation, there were ninety-two cases begun under the plan. About 38 per cent were completed at an average billing cost of \$180. The cases were in the following categories:

Type	Per Cent
Employment benefits during a strike	26
Real estate and repossession of property	10
Domestic relations	10
Automobile accidents	10
Criminal matters	9
General consultation and advice	10
Miscellaneous	25

Except for an upsurge in August, use of the plan has been much less than expected, especially for advice and consultation. The research team from the American Bar Foundation consider that it is much too early to draw conclusions. They will conduct an intensive follow up and evaluation after twelve months of operation.

Some persons attribute this initial nonuse of the service to the nonaverage characteristics of the group. Ninety-eight per cent of the members are black and have a median family income of about \$5,000 annually. Yet, it would surely appear that fear of cost should not have deterred use of lawyers by this prepaid group. Research by the American Bar Foundation into legal services for the poor indicates that inhibitions about seeking legal services require more complex explanations than the mere inability to pay. Habit patterns, life style, ability to find and use resources—all of these can cause the phenomenon of not seeking out a lawyer. These findings, moreover, probably are applicable to a fairly large segment of Americans above the poverty level.

The Shreveport and Los Angeles plans were designed, encouraged, supported and helped into being by the American Bar Association. Our Association's Committee on Prepaid Legal Services, under the chairmanship of F. William McCalpin of St. Louis and with Philip J. Murphy as staff director, stands ready to advise and assist state and local bar associations in designing and implementing similar projects.

These plans will give us an opportunity to test the feasibility of a system that affords the public a choice of a substantial number of the lawyers in their own community. The grants were made to test this experimental concept, for no such systems were in operation before 1971. No further grants for experimentation are likely to be available. The onus of developing these programs now has passed to the legal profession itself.

Organized Bar Must Make Necessary Changes

The organized Bar now must move to make the necessary changes in the way legal services are made available to the client of moderate means because there are increasing and significant developments outside the organized profession.

First, there is an unquestioned growth in group legal services. Although the words are general, this

phrase has taken on a specialized meaning because of the many discussions in and out of the American Bar Association House of Delegates. The phrase certainly means that the services of lawyers are available to a group on an informal or formal understanding. But it usually connotes more; the group is usually a union membership; the lawyers who provide service are preselected by the union leadership so that members have a restricted choice of lawyers; the legal problems covered are restricted, usually job-related matters. These group arrangements have existed for many years. They were often under attack by the organized Bar because they collided with ethics provisions on interposition of lay intermediaries between lawyer and client, presented "runner" problems and provided the possibility of improper solicitation. In a long line of cases culminating with *United Transportation Union v. State Bar of Michigan*, 401 U. S. 576 (1971), the United States Supreme Court has ruled that these group arrangements are protected under the First Amendment to the Constitution. The new Code of Professional Responsibility incorporates the substance of these decisions.

Now many of these group plans are becoming open and explicit. Their prepaid nature is fully understood, and the benefit offerings are formally stated. They are broadening their coverage to include the usual personal legal problems of individual members. The dimension of this development cannot be gauged accurately, since only three states have rules requiring the disclosure or reporting of these arrangements. The figures from California, Florida and Missouri show that somewhat more than 200 group arrangements exist in those states. The Chairman of our Committee on Prepaid Legal Services has made a calculated guess that there may be about 1,000 of these plans in the country.

While we may properly complain about the preselection of lawyers feature of these group arrangements, the simple truth is that the profession itself has not given the trade unions any viable alternative to their closed systems.

Our lawyer referral systems, no matter how well staffed and equipped with competent and available lawyers in special areas, do not respond fully to the demand for prepaid service.

There also are other large groups. In bargaining with the new United States Postal Service, 750,000 postal workers asked for legal services as one of the fringe benefits. The demand was not met immediately, but the corporation has agreed that a study committee should explore the possibilities. Teacher groups in California, Michigan and New York with about 400,000 members are interested in the provision of legal services for their members. To these groups must be added student groups, credit unions, co-operatives, municipal employees (including firemen and social workers), and large church-related groups.

In addition to the group interest, there are several private entrepreneurs, often lawyers, busy at work to serve the rising demand. Some of them have expressed a desire to accord their plans

to whatever patterns were approved by the American Bar Association. The Association has issued no guidelines or prototype plans that would suggest what is best and approved for the public and the profession. Some of these requests are well intentioned, but none has been answered affirmatively or negatively. Because of the still imperfect knowledge in this field, guidelines or prototype plans must be delayed at least until more experience is developed.

Prepaid Legal Services Have Caused Inquiries

In the last several months our Committee has noted a startling increase of interest by the insurance industry in prepaid legal services. First, this interest was heralded by inquiries from smaller brokers, but it rose to larger proportions when questions were asked by two West Coast offices of the third largest brokerage firm in the United States. Then came inquiries from smaller carriers and then some of the

largest insurance companies. These sellers and producers sense the demand and the market. More than the unions and the private entrepreneurs, they have money available to experiment with prepaid legal services plans. So far the carriers profess a desire to co-operate with the organized Bar in making their offerings—if we can offer some suggestions for control.

Exploration of and action on the problem of providing legal services to the client of moderate means are of bedrock importance to all lawyers. The American Bar Association has never raised a war chest to support intransigent opposition to the changing needs of society. It has relied on the great common sense of lawyers to discern when change is needed and to make changes that preserve the essence of our independence as a profession serving the public. We want to achieve or at least approach the goal of being an advocate and counselor to all persons in our society. To do this we must live in this century, not the last.

The CHAIRMAN. This concludes our hearings on this bill. We will be announcing very shortly an executive session to consider it.
[Thereupon, at 11:40 a.m., the hearing was adjourned.]

