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PRIVATIZATION IN PRACTICE: HUMAN SERVICES

PROFESSOR DILLER: I just want to give a brief introduction of our panelists.

To my immediate left is Anna Burger, who is with SEIU, the Service Employees International Union, which is the largest union representing human services employees.

To her left is Jackie Boggess, who is an advocate in Wisconsin. She is a Senior Policy Analyst with the Center on Fathers, Families, and Public Policy, and she represents and advocates on behalf of clients who deal with privatized human services.

To her left is Liz Krueger. Liz, who is known to many of you as our almost-state senator from the Upper East Side, is actually here as the former Associate Director of the Community Food Resource Center, an organization that coordinates the provision of emergency food services in New York City. Liz was one of the first people to flag issues in the MAXIMUS contract with the City of New York and bring the issues to public attention and debate.¹

To Liz's left, as you met earlier today, is David Mastran, who is the CEO and founder of MAXIMUS, which is the largest firm that provides outsourced human services in the country.

Finally, there is David Riemer, who is the Director of Administration for the City of Milwaukee. David, in the early 1990s, proposed in an article in *Focus* magazine, which is the journal of the Institute for Research on Poverty, the adoption of an entrepreneurial model of welfare administration, which first started the thinking about privatizing and outsourcing the administration of human services programs around the country.²

I will turn it over to Ms. Burger.

MS. BURGER: Thank you. I first want to thank everyone for inviting me here to present the views of the 1.5 million members of SEIU.

1. See, e.g., Bob Herbert, *Contracts for Cronies*, N.Y. TIMES, Mar. 27, 2000, at A21; Eric Lipton, *Rejecting Favoritism Claim, Court Upholds a City Welfare Contract*, N.Y. TIMES, Oct. 25, 2000, at A1; Eric Lipton, *State Extends Program to Enroll the Poor in Managed Care Plans*, N.Y. TIMES, July 1, 2000, at B4.

2. David R. Riemer, *Replacing Welfare with Work: The Case for an Employment Maintenance Model*, *Focus*, Winter 1994-95, <http://www.ssc.wisc.edu/irp/focus/focus.htm>.

Service Employees International Union is the largest health-care union in North America.³ We are the second-largest public employee union in North America.⁴ We are the largest union of building service workers.⁵ So we see this issue from many different perspectives.

Privatization is something that I know a little bit about personally. I was a state social worker for the Commonwealth of Pennsylvania, and then the president of that local. I spent twenty years fighting privatization—as I saw it, fighting ill-advised schemes to contract-out human services. I did so, and I continue to do so now, with a great passion, because I believe, and I believe evidence supports, that contracting out is bad for taxpayers, bad for service recipients, and bad for the workers who spend their lives trying to deliver services.

One of the themes of this conference is that contracting out often comes at the expense of public accountability, and I certainly agree. But I also want to make it very clear that contracting out comes at the expense of workers and the people they serve, because contracting out is one of those “double whammies” of evil. It acts to erode employment standards as well as performance standards.

When it comes to public service and human service, the goals of our members and of our unions are the same as those of the public at large. We all want high standards. We want workers to have the tools and the training required to do a good job. The public wants, and we want, to protect fairness and equal treatment in public programs, to protect people’s privacy, and to hold those responsible accountable. Most of all, Americans want public services that they can count on, and we want to provide that.

Workers cannot do that unless they are qualified, well-trained, highly motivated, and fairly compensated. In the public sector, we get those things because we bargain for and demand them through our unions. In the public sector, as people have said, more than forty percent of us are organized.⁶

3. AM. FED’N OF LABOR—CONG. INDUS. ORG., UNION MEMBERSHIP AND EARNINGS DATA BOOK: COMPILATIONS FROM THE CURRENT POPULATION SURVEY, at Section IV (2000).

4. *Id.*

5. *Id.*

6. U.S. DEP’T OF LABOR, BUREAU OF LABOR STATISTICS, UNION AFFILIATION OF EMPLOYED WAGE AND SALARY WORKERS BY OCCUPATION AND INDUSTRY, at tbl.3 (2001) (stating that 42% of employees in local government jobs belong to unions), <http://stats.bls.gov/news.release/union2.t03.htm>.

In the private sector, I believe it is hard to accomplish those things. It is hard to attract and retain competent workers, because less than ten percent of the private sector is unionized.⁷

To give you a concrete example of what the difference means, in 1999, the average hourly wage for a unionized employee was \$18.43 an hour.⁸ The average wage for a nonunion private-sector worker was \$14.30 an hour, and the vast majority of those workers had little or no health insurance and virtually no pension benefits.⁹ For social workers, the comparison was \$19.31 an hour to \$15.32 an hour.¹⁰

So we must ask: What happens to public sector workers who follow their jobs after they have been contracted-out? Well, one study of privatization in Chicago showed the impact to be dramatic.¹¹ Workers who moved from their public employment to private contractors saw their wages drop so dramatically that all of a sudden they began to qualify for food stamps, school lunch programs for their kids, energy assistance programs, and other means tested programs.¹²

Some would say—and the Chicago experience might argue—that money was saved by contracting out those services. But one thing is not debatable: this practice created new costs that were shifted to the county, to the state, and to the federal government.

That raises an accountability issue that must be of interest to this conference. It also changes some of the calculations of the alleged cost savings to taxpayers. Equally important is that the practice of contracting out to lower-paying jobs is objectionable for ethical reasons.

In reality today, there is rising support of living-wage laws across this country because people believe that workers deserve a living wage.¹³ People do not believe that we should be saving money by

7. 9.4% of private sector workers claimed to be union members in 1999. BARRY HIRSCH & DAVID A. MACPHERSON, BUREAU OF NAT'L AFFAIRS, UNION MEMBERSHIP AND EARNINGS DATABOOK: COMPILATIONS FROM THE CURRENT POPULATION SURVEY (2000).

8. *Id.* at 1 tbl.2a.

9. *Id.*

10. *Id.* at 58 tbl.8A.

11. CHI. INST. ON URB. POVERTY, DOES PRIVATIZATION PAY: A CASE STUDY OF PRIVATIZATION IN CHICAGO—ANALYSIS OF ITS EFFECT ON WORKERS AND COST SAVINGS ESTIMATES (1997).

12. *Id.* at 14.

13. See, e.g., Shawn Cox, *Coalition Decries 'Poverty Wages,' Councilwoman Urges Support for Living-Wage Rule*, RICH. TIMES-DISPATCH, Jan. 15, 2001, at B1; Shawn Foster, *Activists Slam Proposed Ban on 'Living Wage' Laws*, SALT LAKE TRIB., Jan. 29, 2001, at B4; Jen Kern, *Working for a Living Wage*, MULTINATIONAL MONITOR,

contracting out to poverty-wage employers. They think it is wrong public policy, and it is just plain wrong.

We also believe that it is objectionable on practical grounds because lower wages and less benefits attract fewer and fewer workers. The current nursing shortage is an example of this.¹⁴

Now, in the area of social services, we believe that the stakes are especially high because of the nature of the population receiving the services. Our union represents many workers who provide services to children, needy families, the elderly, and the disabled.

We have witnessed the impact of contracting out not in the abstract, but in the front lines. In recent years, many key social service areas have been heavily contracted out to profit-making companies, including services to the mentally ill and the developmentally disabled. We think there is an overwhelming consensus that the quality of care has declined—that consumers are receiving worse care than before. There are horror stories appearing daily in the newspapers about poor service delivery, fraud, corruption, waste, financial mismanagement, and neglect and abuse of our clients by private contractors.¹⁵

What is particularly alarming to me is the recent emphasis on block grants in key federal programs and the devolution of services to lower levels of government. This increases contracting out in the very areas that need the most protection.

There are examples every day in the newspapers. Coming down here today, I was reading *The Washington Post*. There is a scandal right now going on in Washington, D.C. with Lockheed Martin.¹⁶ It just happens to be the case of the day.

I would say also that the new Bush Administration appears likely to support this trend, which is concerning to us, but they also are going to expand, as we heard earlier, charitable choice. We believe that the expansion into faith-based initiatives is dangerous.

We also know that the overwhelming majority of the public disagrees with faith-based services as well. Studies have shown that

Jan. 1, 2001, at 14; Bonnie Piece, Editorial, *Wage Should Support Family*, "Living Wage" Debate Rages On, POST-STANDARD SYRACUSE, Jan. 25, 2001, at A9.

14. *Testimony of the American Organization of Nurse Executive before the Subcomm. on Aging of the Health, Educ., Labor and Pensions Comm. on the Nursing Shortage*, 107th Cong. (2001) (statement of Diane Anderson).

15. See, e.g., Clayton Bellamy, *Lax Oversight at Home for Disabled Leads to Injuries*, *Audit Says Review says Many Injuries were Preventable*, ST. LOUIS DISPATCH, Mar. 18, 2001, at Metro.

16. Petula Dvorak, *DMV Bears Down on Collection Agency; Ticket Complaints Rising; Director Wants Lockheed to Shake out Computer Bugs*, WASH. POST, Feb. 2, 2001, at B03.

the public feels that having religious organizations provide publicly funded programs leads to discrimination based on faith.¹⁷ They are concerned about discrimination both in hiring and in the provision of services.

Our research tells us that the public wants government to be extremely careful, to protect public accountability, and it wants to make sure that when contracting out is done, that we make sure that they are protected, and that their privacy is protected.¹⁸

I think that Kerry Korpi from AFSME made a strong point:¹⁹ even when you have good managers, often they cannot provide good services, so why do many believe those managers would do a better job when they are monitoring private contracts? The reality is they do not do a better job when they are monitoring private contracts.

The International Accounting Management Association has been tracking contracting out of government services since 1982.²⁰ Its survey of public managers found that sixty percent of public managers in charge of privatized contracts admit that they exercised no oversight at all of the outsource contracts.²¹

Today I do not want to talk only about all the evils of contracted services and contracting out, though I think that they are many. I want to spend a few minutes talking about the solutions.

We believe that there are solutions. SEIU has drafted the Public Service Accountability Act,²² or "PSAA," and there are brochures about it here that you can take when you leave.²³

The Public Service Accountability Act is designed to protect taxpayers and the users of public services by creating an objective way to evaluate proposals for service delivery.²⁴ This proposed legislation has seven main components.

17. Internal poll conducted by Lake, Snell, and Perry (2000) (on file with the SEIU) [hereinafter LSP Poll].

18. *Id.*

19. Panel Discussion, *Living with Privatization: At Work and in the Community*, in Symposium, *Redefining the Public Sector: Accountability and Democracy in the Era of Privatization*, 28 FORDHAM URB. L.J. 1397 (2001).

20. MILDRED E. WARNER & MICHAEL J. BALLARD, CORNELL UNIVERSITY TAKING THE HIGH ROAD: LOCAL GOVERNMENT RESTRUCTURING AND THE QUEST FOR QUALITY (2000), <http://www.crp.cornell.edu/restructuring/doc/reports/highroad/>.

21. *Id.*

22. The Public Services Accountability Act, a model for state and local level legislation, was drafted by SEIU in 1999, and is available at the following address: Public Services You Can Count On, Service Employees International Union, 1313 L Street NW, Washington, D.C. 20005.

23. *Id.*

24. *Id.*

First, it safeguards taxpayers' dollars by demanding a detailed cost analysis of all costs associated with contracting out.²⁵ It also requires a minimum savings of at least ten percent in all privatized contracts.²⁶

Second, it protects privacy. It prohibits contractors from selling private information, such as social security numbers, income information, and home addresses.²⁷

Third, it weeds out unqualified companies. Under the PSAA, prospective contractors are required to divulge their employees' experience and training; to divulge complaints filed against them for violations of federal, state, or local laws. They also have to divulge the political contributions of the company.²⁸

Fourth, it requires contractors to provide access to information. It guarantees the public will have access to all information pertaining to the delivery of the services.²⁹

Fifth, it protects whistle blowers. We believe that we need a guarantee that public employees who disclose information about wrongdoing of their employers are protected.³⁰

Sixth, it ensures that all funds go toward public services by requiring that private contractors cannot divert money to other activities, such as trying to prevent unionization or trips to other states and other ways of trying to solicit business.³¹

Seventh, it guarantees continuation of service delivery. It requires that services not be disrupted and that experienced, qualified workers not be penalized if a contractor changes.³²

We know that these seven points are supported broadly in this country. Again, we have done some polls. Seventy-eight percent of Republicans when we polled them have said that they would support legislation like this, seventy-seven percent of Democrats would support it, and seventy-six percent of independent voters would support it.³³

In summation: SEIU has launched a national campaign. We want to have a public-service worker/public-service client dialogue across this country to demand public officials provide social ser-

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. LSP Poll, *supra* note 17.

vices, human services, and public services that we can count on in a way that is reliable, dependable, and meets our standards.

Public employees are like everybody else. They want to work in a successful organization, they want to do a good job, and are impatient to have that opportunity. That is why we have launched this initiative.

We anticipate that as we begin this debate we will hear a lot from business groups who will fight us on these proposals because they know that they will not be able to compete against the public sector when they are held up against these standards.

Thank you very much.

MS. BOGGESS: First, I am going to give you a little background about what I do and why I am here today.

I was practicing law in Chicago, on the South Side, in a very small probate office, and my husband was in social welfare policy. I would come home and he would show me some statute relevant to his social policy work. He then would tell me what was happening to the population it was affecting. We questioned these statutes because of the negative effect they had on the populations they were designed to help. That is when I made the decision to pursue social welfare policy and educate people as to what these policies really mean. However, I intended this pursuit to be a temporary one, thinking eventually I would pursue something like English literature.

I find myself, though, still in social welfare policy, sort of stuck here, because what I found when I tried to explain such a statute and how it applies to recipients of the services—I was labeled an “advocate.” I thought I was just a policy analyst. But when I talked about human services and the people who receive human services, I discovered that I was an advocate. So that is what I am today, and I am going to do just that.

I work for the Center on Fathers, Families, and Public Policy, and we are dealing a lot with child support enforcement and the child support enforcement system. I do work with people, particularly fathers, who have to utilize privatized systems to receive services.

Early on in our work, we realized that it is poor people and not just poor fathers—that it is poor mothers and poor children and the services they are receiving—to whom we had to pay attention. Today I am going to talk about privatization from the perspective of poor people who receive human services.

I will tell you that individual clients do not much care whether or not services are privatized. Now, I do not mean that to say that I support privatization, because I do not, necessarily. I am concerned about contracting out child support enforcement services and welfare services to private companies.

In the debate about privatization versus public service provision, we must be careful not to forget accountability. What does accountability mean? I do not know if we have described or defined it today. From my perspective, the real question is: Accountability to do what in human services?

In a situation like trash pickup, for example, accountability is with the state. It is about efficiency, money, and where taxpayer dollars are going. I am resolutely *not* a taxpayer advocate today, but I understand in those situations that we are concerned about state interests.

However, in human services, accountability is accountability to humans who need the services.

I want to tell you about three issues. I just have to give a little background about just three places where people find themselves in the human service provision.

One is voluntary acknowledgement of paternity. Under the new federal welfare laws, when women go to get cash welfare benefits, they have to disclose the name of the father of their child.³⁴ The reason that happens is because in every state—except Wisconsin, where all federal child support is passed directly to welfare recipients—the state takes the assignment, reserves the federal child support payment, and keeps it in exchange for the mother's welfare check.³⁵ So what the state then turns around and does in most

34. 42 U.S.C. § 603 (1994) (*amended by* Pub. L. No. 106-554, 114 Stat. 2763 (2000)) (providing that a noncustodial parent is in compliance with a federally funded state welfare plan when there is a "commitment by the noncustodial parent to cooperate, at the earliest possible opportunity, in the establishment of paternity of the minor child, through voluntary acknowledgement or other procedures, and in the establishment of a child support order"); 42 U.S.C. § 608 (2001) (providing mandatory measures states are required to take, including reduction of public assistance, if a parent is noncooperative in helping to establish paternity); Margaret Campbell Haynes & Peter S. Feliceangeli, *Child Support in the Year 2000*, 3 DEL. L. REV. 65, 66 (2000) (discussing how Title IV-D of the Social Security Act, 42 U.S.C. § 651, requires as a condition to federal welfare funding, that each state establish a state child support agency to provide a 'paternity establishment' for parents or caregivers who receive public assistance).

35. *Compare* Haynes & Feliceangeli, *supra* note 34, at 79 (describing how, in most states, child support payments are paid through a centralized collection unit, as required by the Personal Responsibility and Work Opportunity Reconciliation Act, 42 U.S.C. § 211 (1996) *with* Wis. STAT. § 767.29 (2000) (stating "[a]ll orders or judgments

states is go after the father to repay this loan, which is the welfare cash benefit. So what they are doing now is “voluntary acknowledgement” —that is to say, men are just signing on the dotted line: “I am the father, I am the father, I am the father.”

There are a lot of due process implications from this practice that I do not have time to discuss today. States have required the father to sign when in hospitals and virtually anywhere. Fathers have been asked to do it in community-based organizations, child support offices, and even in bathrooms, as far as I know.

But when the provision of this service, voluntary acknowledgement, is provided by the public sector, someone hands a piece of paper to the father and says: “Sign here and you will not have to go to court.” The law says that the voluntary acknowledgement process and its implications must be explained.³⁶ I am sure this is done on some level. But from the clients I have spoken to, the clients that we have represented in our office—for example, the man who paid child support for ten years until a judge finally decided he was not the biological father—I have learned that they do not understand what is being said to them. They did not understand the implications of the requirements before the voluntary acknowledgement services were privatized, nor did they understand them afterwards. The people who receive human services do not know the difference as to voluntary acknowledgement of paternity.

The second issue is profit. I know that is one of the things we are concerned about. That is what one audience member was talking about earlier regarding MAXIMUS.³⁷ Where does the money go and how does that happen? I think we should be concerned about the fact that these contractor organizations receive a pot of money, subtract whatever they spend on the people who need the services, and the remainder is profit.

But remember, there were problems within the system even before contracting out happened. The statutory scheme that the government created is set up in such a way that to give welfare cash benefits to the woman, the government must find another poor person—usually, the father—from whom to get that money back.

providing for temporary or permanent maintenance, child support or family support payments shall direct the payment of such sums to the department or its designee *for the use of the person for whom the same has been awarded*”) (emphasis added).

36. 42 U.S.C. § 603 (2000).

37. Panel Discussion, *Public Oversight of Public/Private Partnerships*, in Symposium, *Redefining the Public Sector: Accountability and Democracy in the Era of Privatization*, 28 *FORDHAM URB. L.J.* 1357 (2001).

That money is never paid because the father is unable to do so. But that system, whether the government comes to get the reimbursement or a private company does, is the same to the people who receive the services. What they see is an entity trying to take money from them, money they do not have. It does not matter to them whether that entity is MAXIMUS, a not-for-profit organization, or anything else.

The third issue is also one in which our clients do not see any difference. But, before I explain this issue, let me say that we represent very few people in our office. We have one lawyer besides me. I do not practice and he is a recent law school graduate. However, we do focus groups. As a policy organization, we do focus groups by talking to women who receive welfare benefits in Wisconsin, and the men who pay child support all over the country. There are reports from our organization in which we have documented this information.³⁸

The third issue is the problem of services provided by faith-based organizations. Again, just as with privatization, I am, and think you should be, nervous about it. Being involved in the so-called fatherhood movement, I have gone to community-based organizations and talked to people who would provide these services—the people who would be sliding the voluntary acknowledgment from across the table to fathers for their signatures. One of the things required by many of the statutes granting money to groups that help fathers find jobs, is that fathers sign a voluntary acknowledgment with no attorney present. A man could say, “No, I will do it later, wait until I go to court, wait until there are people around who can tell me what is going on.” But if someone is handing out a job to you, you sign. Many sign without the understanding that under the Personal Responsibility and Work Opportunity Reconciliation Act, the voluntary acknowledgement has the full force and effect of law sixty days after it is signed.³⁹ Once the sixty days passes, it cannot be voided or changed by anybody except a court,

38. CTR. ON FATHERS, FAM. & PUB. POL’Y & NAT’L WOMEN’S LAW CTR., REACHING COMMON GROUND, FAMILY TIES: IMPROVING PATERNITY ESTABLISHMENT PRACTICES AND PROCEDURES FOR LOW INCOME MOTHERS, FATHERS, AND CHILDREN 9-11 (2000) (addressing the setting and modification of child support awards, child support enforcement, and custody and visitation for low-income families), available at <http://www.cffpp.org/commonground.prf>; MARGUERITE ROULET, CTR ON FATHERS, FAM. & PUB. POL’Y, NEGOTIATING THE CHILD SUPPORT SYSTEM: REPORT FROM A DISCUSSION OF POLICY AND PRACTICE, (1998-99) (providing discussions with fathers and case managers on their experiences in the child support system), <http://www.cffpp.org/publications/negotiatingthechildsupport-system.htm>.

39. 42 U.S.C. § 666 (2001).

without proof of fraud, duress, or mistake of fact.⁴⁰ I have yet to meet a poor father who has had an attorney, has read that statute, or who knows what fraud, duress, or material mistake of fact constitutes.

We should be concerned about “fatherhood groups” and faith-based organizations that do this work, but we also should be concerned for the men affected by a 1993 law.⁴¹ This law says that all maternity hospitals with a certain number of births every year must ask the woman—as she is lying in the hospital bed—the identity of her baby’s father.⁴² If the man is present, he signs, she signs, and then we have an acknowledgement allowing the child support enforcement office or the private corporation to pursue the father for money.

So whether the man signs while at the hospital, whether they go to the child support enforcement office, whether they go to the human services place, wherever they go to get this service, there is that piece of paper that is slid across the desk accompanied by a conversation about marriage and staying together. I am not sure how this differs from the faith-based organization that says “you should get married.” The welfare reform law begins, in effect, by saying “we want everybody to get married.”⁴³ I am not sure how that differs from the perspective of the people who receive the services.

Privatization is an important issue and we need to talk about it in all the ways that I have heard people talk about it today. We need to find out if it is efficient. The taxpayer advocate needs to be worried about how money is spent, among other things. I am undecided about privatization, but it is critical that it we discuss it.

Let us go back to what somebody said in the second panel today. Accountability for what, and is it being done so great now?⁴⁴ Whether or not we decide to have privatization cannot be based on the current allocation of most service provisions to the public sector. This decision cannot be based on the public provision of these

40. *Id.*

41. *Id.*

42. *Id.*

43. 42 U.S.C.A. § 601 Note (1996) (stating that “(1) [m]arriage is the foundation of a successful society. (2) Marriage is an essential institution of a successful society which promotes the interests of children. (3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children”).

44. Panel Discussion, *supra* note 37.

services as some kind of goal, because if it is, we are going backward or downward.

Thank you.

MS. KRUEGER: Hi. I *will* be the taxpayers' advocate today, even though I actually have spent twenty years as an advocate for the poor. Further, I recently ran for elected office because of what I believe is the bottom line in this context of practicality and privatization: I do not think we know what we are doing when we are contracting out and privatizing. I do not think the government actually knows its role. I also think the job it is doing is pretty bad and, as a result, bad things are happening to poor people and bad things are happening with our taxpayer dollars.

Privatization does not mean one thing. The panel before us clearly exemplified that you can talk about so many different issues when discussing privatization.⁴⁵

Privatization, of course, is not, technically, that new in human services. For the last century, states have purchased services from not-for-profit and religious organizations, although not through a charitable choice model until the mid 1990s.

I am going to stick to what I think are the real problems. We fail to do our job in evaluating: first, whether the service should be funded by government at all; second, if so, whether there should be privatization of that specific service; and third, after the privatization, whether we actually are measuring what we ought to be, in terms of process or outcomes, in order to hold private contractors accountable. I think that Anna Burger's examples of the questions that must be answered in doing those evaluations are exactly right.⁴⁶

As someone who, in my previous job, not only took government contracts but also advocated for better delivery of human services to poor New Yorkers, and as someone who has been very critical of this mayoral administration's policies for contracting out and privatizing services, I am concerned that we fail to understand the questions regarding accountability.

Frankly, in New York City we do not have a model through which anyone outside the administrative agency making some specific privatization decision can ask the question: "What are we contracting for and is it a good use of our money? Is it something we need?" The City of New York is spending an enormous amount of

45. Panel Discussion, *supra* note 19.

46. See Remarks of Anna Burger, *supra* this Panel Discussion.

money in contracts that I would argue are not a good use of our tax dollars.

Privatization is especially tricky in human services. It is more complicated than Jacquelyn's example of waste management.⁴⁷ Although New Yorkers know that even waste management contracts have not proved to be a simple process, and it is much less complicated to pick up and move garbage than it is to deal with the complexities of human services.

One of the examples that I like to use is that a few years ago the City of New York and many states and localities around the country started to use finger imaging of poor people applying for government benefits.⁴⁸ I will argue that we knew finger imaging was unnecessary as a new mechanism of human service at the time we entered into those contracts, but that a group of for-profit companies in the digital information and identity business—primarily for defense contracts—wanted to develop new markets. By focusing public attention on welfare fraud, they were able to create a new market for products they already had in their inventory.

Governments all over the country went along and started spending tens of millions of dollars per locality or per county to put in finger imaging equipment. I do not know whether this discussion is still going on out there, but at the time that governments were doing finger imaging, they were talking about the inferior model of combating fraud through finger imaging—because finger image fraud was possible—and that they needed to move to retina scanning.

Well, the punch line is that before anybody actually let those contracts, there already had been some research done showing that you do not save any money for taxpayers by doing finger imaging. In fact, although there are many ways to commit welfare fraud just as there are many ways to rip off *any* government program that has ever existed, recipients pretending to be multiple people to get those benefits several times per month does not account for a significant percentage of the losses due to fraud. I would argue that truly talented criminals follow that old rule: you rob banks "because that is where the money is." Talented criminals do not waste their time getting \$137 twice a month in Home Relief here in New York City.

47. See Remarks of Jacquelyn Boggess, *supra* this Panel Discussion.

48. E.g., *Welfare Policy—Fraud Prevention—New York Requires Finger Imaging for Welfare Recipients*, 109 HARV. L. REV. 1168 (1996).

We knew all that before we made the contracts, but were sold a bill of goods by people who, to give them credit, were just representing companies looking at their bottom line and marketing their products.

But government bought the product without having any mechanism for evaluating who should run the program—the SEIU or a private company or the City of New York. And, should we be buying it at all? Our government contracts all the time without answering these preliminary questions establishing proper evaluation mechanisms.

I will use New York City as my example of how government does this, because it is my home base, and I am most familiar with it. We were going to contract with a company called “HANEK” [Hellenic American Neighborhood Action Committee] several years ago. It was sort of the first contracting scandal of the Giuliani Administration and New Yorkers will remember it. It got canceled, frankly, because of political patronage stories coming out about how that company received the contract.⁴⁹

At the time, I was arguing, “Yes, patronage is bad, but did anybody read the contract?” The administration wants to use government money to hire private companies to close people’s cases and they will get paid per every case they close. The evaluation tool is not whether they provided a human service, not whether they moved people out of poverty—which I think should be the real question in measuring outcomes in welfare reform—but just whether cases were closed.

I asked all over in the structure of New York City government and New York State government about the outside review process for determining whether that is a good scope of service to be contracted out.

The other argument against contracting for such services is that those are functions that should be the responsibility of social service employees. I actually agree with that—it should be social service employees who work for the City who make the determination.

In the HANEK case there was no mechanism for the public to question the administration about whether we should be doing a contract for that scope of service, or whether the potential provider had given major support to the mayor’s campaign.

49. *Contractor Cries Foul to U.S. Sup. Ct. Over De Facto Debarment: Hellenic American Neighborhood Action Committee v. City of New York*, ANDREWS GOV’T CONTRACT LITIG. REP. 4, June 5, 1997.

These problems go further than that. In the City of New York, we do this sort of contracting of hundreds of millions of dollars repeatedly. Still, we do not even ask for what are we contracting.

In addition, I strongly believe government does not know how to write contracts that actually meet their privatization goals—even once we decide whether a service should be contracted-out. Should it be done by government? Is this something our taxpayer dollars should be used for? We still are clueless about how to enter into a contract with a large corporation on an even playing field.

I will use as an example the structure for EBT, Electronic Benefit Transfer, payments in the State of New York. New York State contracted-out—and I will not blame New York too much, because every other state is contracting with the same company—to Citigroup to provide the distribution of basically all cash assistance and other income support benefits from government to people through an ATM system.⁵⁰ Many advocates in the State of New York had real concerns about how this contract was going forward, why suddenly the savings disappeared for government. Originally the state said the people would save \$250 million through movement to EBT, and now it is saying, “Well, maybe we will not save anything.”

A lot of us were very concerned that, as new clauses in the contract imposed costs, Citigroup decided to charge poor people for the services. Now the vast majority of people who go to ATMs to get their public assistance benefits in New York are paying \$1.00 to \$1.50 per transaction at the ATM just to get their cash assistance.⁵¹ This is not because Citigroup to some degree violated their contract, but because the State of New York did not have a clue how to negotiate a good contract for billions of dollars.

This was part of a seven-state, seven-year regional contract. I think it is a \$3 billion contract. Some of us went to another government agency, the New York State Banking Department, and asked them if Citigroup was breaking the rules of the contract. They said, “No. The contract is so bad.” When told the Department of Social Services wrote the contract, their reply was: “Well, they do not know anything about contracting with a financial institution. Why did they do it this way?” Well, “why” is a great question. There

50. Editorial, *Soaking the Poor*, N.Y. TIMES, Aug. 8, 1999, at A24. See generally David J. Kennedy, *Due Process in A Privatized Welfare System*, 64 BROOK. L. REV. 231 (1998) (discussing EBT system of cash assistance programs).

51. Editorial, *Soaking the Poor*, *supra* note 50 (discussing fees charged with certain withdrawals).

were many layers of government—federal, state, and local—in-
volved in that process.

Poor people are not the only ones to get ripped off. Bad con-
tracting rips off all taxpayers. I would argue that EBT is a good
example of a service appropriate for privatization, but in this in-
stance it was executed poorly.

We also have no mechanism, I believe, for truly evaluating im-
plementation and oversight of contracting for human services.
That gets very complicated in the world of welfare benefit time
limits, federal welfare rules, and for-profit motives for contracting
versus not-for-profit, mission-driven motives, and religious
motives.

My biggest worry in contracting and privatizing in human ser-
vices today is the reality of the profit motive. Again, I refer to my
finger-imaging example. I missed this morning's panel, but appar-
ently some issues regarding MAXIMUS corporation already
arose,⁵² and the gentleman from MAXIMUS is here. MAXIMUS
was just one of the companies involved in the City of New York's
welfare-to-work contracting process. This process was atrocious
for a variety of reasons, including that the contracting rules were
not followed. I would argue we have not even started to lay down
the rules we should have for making these decisions.

My real concern, big picture, on the profit motive in contracting
out human services is that you cannot look at it like a nice econom-
ics book example of how competitive competition will drive down
costs and get you better delivery of services. It is human services,
and, therefore, it is very complex. It is very difficult to get into the
business, so there are limitations on who can enter and compete in
the "market."

My biggest reason for concern about for-profits in the human
services world is the worry that this is all one giant dot-com story
waiting to happen. A bunch of companies emerged in the human
services market, and made IPOs, and made a lot of money. I ap-
plaud the head of MAXIMUS for coming here today. You earned
\$18 million when MAXIMUS went public a couple of years ago.
You can afford not to spend your day sitting here with all of us.

And yet, what happens when these companies fold and disap-
pear, as so many of the dot-coms suddenly have this year? We in-
vested government money in the delivery of services to poor
Americans. If the company with the contract to deliver services

52. Panel Discussion, *supra* note 37.

does not complete the assignment or does not complete the assignment well, it may or may not have made all its profits on the IPO and stock options anyway. Its profits are irrelevant of the actual contract arrangements, but taxpayers' money has come and gone. Poor people may or may not have had the opportunity to get the services they needed. Their lives can be destroyed in the process. And, of course, time limits on welfare benefits mean they do not get another chance to get the help they need.

I think there is something fundamentally wrong with having a for profit model for delivery of human services. Companies decide to stop unprofitable ventures. However, you still have to deliver the human services. What happens if there is no infrastructure left because you contracted out: the company either makes money and leaves the market, or does not make money and leaves, or violates the rules and is asked by government to leave. There is no infrastructure in place to continue to deliver those services. And again, the money, time, and resources that should have been available to help people no longer exist.

I think that we are in a spiral where we have not seen the end of the story yet, but we have seen enough of it to know that we should be very, very wary of the fact that billions of dollars in the City's budget are contracted out. I do not know the exact numbers or what percentage of this is for human services, but it is billions for human services. Multiply that dollar amount to get the figure on a national level.

Again, I would argue, we have to go back to scratch. Do we know what we actually are contracting for and why? Do we know how to do it? Do we know how to measure the implementation and the outcome and to fix things mid-stream? I, unfortunately, do not think we have the answers to any of those questions, and yet we are doing it all, and for human services purposes. Sadly, low-income Americans are the ones who pay the price for our not having done our homework.

Thank you.

DR. MASTRAN: I am really glad I came.

One of the reasons I am here is because there are a lot of misperceptions about for-profit companies and contracting for the provision of human services. I hope that perhaps I can at least provide a perspective to you that you can consider. I also am prepared, if any of the professors here or other interested groups want it, to make our data available. I will be glad to talk to them in our Reston, Virginia facility. The General Accounting Office is doing a

study on our projects, and we like that. We are open to any investigation. We support opening up the process so people can understand what is happening.

Why is this outsourcing going on? I will tell you. Because government managers want to do it, and they want to do it for a couple of reasons.

One reason is that they are very frustrated with the performance that is occurring in their programs. I am speaking from my knowledge base. I am not speaking for prison industries or other services I do not know about. I am talking about human services, health and human services. The government managers want performance, and when they get frustrated and they cannot get it from the public sector, they look to alternatives; and, inevitably, when they are completely frustrated, they look to contracting it out.

For example, in Tennessee, the District Attorney's Office is responsible for administering the child support collection.⁵³ Well, the District Attorney prioritizes child support as the lowest case type on their hands. The District Attorneys would rather chase murderers and burglars, so sometimes the performance of this service suffered in Tennessee. So the state started contracting it out.

Government managers also contract out because there are new programs that they do not know how to run. When managed care came along, government did not even have employees in managed care, or any systems for managed care. They brought in a private contractor and said, "We want you to do the system and we want you to run this program for us." And, believe it or not, most of our business really does come from new programs.

When we take over an existing troubled program, in every case we have hired the employees that previously worked in that program. And in every case we have provided a better environment for those employees, one that had up-to-date computer systems, one that provided training, one that had top management, one that had a nice-looking facility, one where they were rewarded for their performance, one where they felt better about what they were doing. In all our surveys, they are happy employees.

At first, when we acquired former government employees we thought that perhaps they would be the kind that did not like to work, but that is not true at all. They are as good workers as anybody else. They are just put in a different environment.

53. TENN. CODE ANN. § 8-7-602 (2000) (designating the office of the district attorney general as the agency participating in the child support collection program as provided by federal law).

So let me assure you that much good is happening to poor people out there as a result of privatization.

The big topic here today is accountability. I agree that government does not know how to contract well in some areas of human services, though in some areas of human services it does. In order to have a good contract, you have to know what you want, you have to be able to define it, you have to be able to measure it, and somebody has to be able to achieve it. So you need to have those ingredients in place, and there is a lot of learning that has to take place on the part of government contractors.

But we operate under standards, believe me. We have standards that are imposed on us in some jurisdictions that are far more severe than any government ever took on for itself, and we are accountable to meet those standards.

In some places, there is not intensive monitoring, that is true, but in some places, I think there are too many. For example, in one of our California offices, we have twenty-three government monitors there all the time.

We are accountable because we can be fired. Every contract I have signed has a thirty- or sixty-day cancellation clause for the convenience of the government. If we are not doing our job, we are out of there. That is not true in the government. That is why government managers get more response from the private sector—we can be penalized financially if we do not perform.

Now, this can be good and bad. We had a contract that had a set of eight performance standards, which we met perfectly. Two years later that jurisdiction did an evaluation and decided to replace MAXIMUS saying that we did not do what they wanted. I was given two performance standards that I had never seen before, and that were not even in our contract. They were good standards, but it was not what they contracted for us to do. We told them if they were put in our contract, we would follow them. So I think there also is a responsibility on the part of government to make its needs and requirements clear.

And I agree—we all support good government and happy employees, but this is a learning process. Many of these programs fail because it is the first time something like it has ever been done, and everybody learns from it.

In terms of accountability, I defy any organization to have gone through as much public scrutiny as MAXIMUS or as many investigations as MAXIMUS. We are viewed through a microscope, we are always looked at, and we have to withstand that, we have to

stand up to that. I say if you do not hold us to higher standards and we cannot stand up to it, then we should not be providing services. That is why you should privatize—why you should outsource—because you can hold an organization to a higher standard based upon performance and ethics.

When we took over the welfare program, one of the innovations I introduced, which was unheard of, is to give feedback forms to the recipients. We asked, “What do you think about how we treated you?” No government that I know had ever done that before.

We had a standard, which was not required by our contract, but every welfare recipient would be interviewed within fifteen minutes of coming to our offices. They logged the time when they came in, and when the case manager picked them up. Sometimes our own internal standards are higher than what a contract imposes on us. In fact, many times states and countries have learned from our own internal standards and have rewritten contracts to incorporate those standards.

We are subject to public hearings like anybody else. So we are accountable. We are accountable because we can be fired, we are accountable for specific standards, we are exposed to extreme scrutiny, we go to public hearings. If you can define what you want and we agree to do it, then we can be held accountable. I think there is more accountability in the private sector.

The frustration government managers have is that they cannot hold their own public bureaucracy accountable. They do not have any choices. Often, jurisdictions use the threat of privatization if government managers fail. Some jurisdictions actually have what they call a managed competition where they will bring in a company, let's say MAXIMUS, to compete simultaneously with the regular government employees. This is going on right now in California.⁵⁴

This is a healthy thing, because not only does MAXIMUS perform well, but the government does, too. Their performance improves. Everybody gets better at service delivery. Everybody wins.

So there are a lot of good reasons for privatization.

One of the questions that arises is: What can be privatized? Since this is a law school, I thought I would tell you something that

54. E.g., Jerry Taylor, *Prediction: California Power Deregulation will be a Fiasco: If Politicians had Heeded this 1996 Warning, California Wouldn't be in the Dark Today*, NAT'L POST, Jan. 19, 2001, at C19.

I have not heard yet today. You talk about discretionary decision making—that cannot be privatized. I have been in two lawsuits over it. What is privatized is ministerial work that has policies and procedures that can be well defined. You cannot privatize a policy-making function. That is the role of government.

You can privatize a series of procedures, policies that have to be carried out. However, even that is confusing. We have heard the Welfare Reform Act of 1996 mentioned.⁵⁵ That Welfare Reform Act says, although not explicitly, that a private company can determine the eligibility of a person for welfare, but cannot determine the eligibility of someone for Medicaid or Food Stamps, which are almost exactly the same thing. We can determine the eligibility for the child health insurance program, which is a by-product of determining eligibility for Medicaid. So in terms of the ethical question, if we can determine eligibility for welfare, certainly we can determine eligibility for another component.⁵⁶

I also would like to talk about the profit motive because I think that is an extremely important issue and has to be addressed. The MAXIMUS mission is “Helping Government Serve the People.” That is why we were founded. That is what we do. Underlying that mission is a philosophy with three tenets.

The first tenet is quality. We must do a quality job for the service recipient. Is it measured by the client? Is it measured by the recipient in terms of an outcome for that recipient? If we cannot do a quality job, we are getting out of the business of providing that service, because you cannot survive if your primary motive in this business is profit. You will be exposed, and you will fail. If you are of any intelligence, you have to understand that to have a long-term life here, you have to focus on quality—you must maintain a focus on quality and not on profitability.

The second tenet is profitability. Once we are satisfied that we are serving these people and we are doing a quality job, then we will try to earn our profit. Our profit comes not at the expense of anybody, but from our efficiencies.

The third tenet is growth. If we cannot do a quality job and we cannot make a profit, we will not do any more of this. We will go somewhere else and find something else to do through which we can add value to society.

So our company follows those tenets.

55. See Remarks of Jacquelyn Bogges, *supra* this Panel Discussion.

56. Block Grants to States for Temporary Assistance for Needy Families, 42 U.S.C. § 601 (1996).

In closing, I would like to share with you an example from a contract we had with the State of Connecticut about three years ago. Connecticut had a decentralized child care system, in which workers throughout the state determined families' eligibility for child care and paid providers.⁵⁷ It was not working. There was a thirty percent error rate. The service was bad. Someone else—we do not lobby for this stuff—some brave government manager, said, “Well, why don't we try to see if the private sector can do this?” They put out a request for proposals (“RFP”) and said, “Let's consolidate this in one place, in Hartford. Let's do it by telephone and by mail, and see if we can be more efficient.” Their RFP said it would take fifty-two people to do the job fielding 1000 phone calls a day. It would function without face-to-face contact.

This was the first time childcare administration had been outsourced anywhere in the nation on this level. MAXIMUS bid seventy-two people because we felt that Connecticut had underestimated the number of staff necessary to do the job.

When the conversion to service delivery by MAXIMUS took place, a virtual meltdown resulted. We were getting 5000 phone calls daily, and the number of people we had was far too small to handle that program. The press was screaming, “Here comes another private company screwing up this thing.” The state said, “We should have known better,” and began threatening to terminate our contract and to fire us.

It was bedlam, and the service recipients were getting hurt. Providers were not getting paid. Women who were off welfare and who were holding jobs could not stay in them because they were not being provided with child care. It was a bad situation.

So I said, “There is only one way this is going to get solved. We are going to just go in there and spend all the money we have to spend until it is fixed.” I personally went to Connecticut for five months. We had 170 people on that job—from their RFP's stated fifty-two to 170—before I got the situation under control.

After it was under control, I went to the state and I said: “Here is what it takes. If you do not believe it, take some of these people away.” We negotiated an equitable settlement where we bore half the risk and the state bore half the risk.

This is where quality comes first. We must deliver the service first.

57. Jonathan Rabinovitz, *In Connecticut a Privately Run Welfare Program Sinks into Chaos*, N.Y. TIMES, Nov. 24, 1997, at B2.

So that is how you succeed in this business. You do quality first, profits come second, and then if you are good at those, then you can grow.

Thank you.

MR. RIEMER: One of the most distinguished graduates of my law school, Harvard Law School, was Oliver Wendell Holmes. I believe he once said, "the life of the law is not logic, but experience." This was sort of a heretical thing to say at a school whose governing spirit was Christopher Columbus Langdell,⁵⁸ who seems to have had no real experience in the legal world but a strong love for abstract logic. But Holmes was of the old school and he felt that experience was important.

The reason I am here, I guess, is not to be illogical, but to speak out of the experience I have had as the administrator across a broad range of governmental programs.

This morning, as I prepared for speaking today, I was thinking about where I have worked. Many of the programs in which I have been involved have ranged all across the board. In some cases, they are split between traditional public administration, in which rules are set, a framework is established, government employees cover the job out; and/or programs in which government acts as a purchaser and enters into privatization relationships.

There is also a second kind of category of privatization that, to me, somewhat stands apart, and with which I also have been heavily involved. This category of privatization includes programs like Medicaid or school choice or Food Stamps—in which government does not so much contract directly with a private vendor, as it empowers the individual service recipient with purchasing power to obtain a service from a regulated marketplace. Such voucher programs are similar to traditional privatization, but have some distinct characteristics.

The City of Milwaukee has a police department. Police officers are public employees, but the cars they drive, and the guns and bullets that they use, are purchased through contracts with private vendors. We have fire fighters, but we buy fire engines from the private market. The city has a bunch of engineers, but we also contract for private engineering services, and the road construction that the engineering ultimately leads to is typically done by private

58. Christopher Columbus-Langdell was the dean of Harvard Law School from 1870-1895. He introduced the method of teaching case law to legal education. *ENCYCLOPEDIA BRITANNICA*, <http://www.britannica.comseo/c/christopher-columbus-langdell>.

vendors, as is the reconstruction. We have sanitation workers that plow the streets when it snows, which it does pretty often in Milwaukee, and clean the streets in general and pick up the garbage and, from my point of view, are probably the most important public health workers in Milwaukee. But we also hire private vendors to do specialized sanitation, special pickups, to kind of “plow the corners,” areas that the regular sanitation workers do not do. We have parking checkers, but we also have a contract with Lockheed to manage the parking checker system. In my department, we have programmers and computer people, but we also contract, on a case-by-case basis, with private organizations to do some of that work.

Shifting to the human services area, which I do not directly administer, but I have been involved in, the City of Milwaukee has public health nurses and officials, but the biggest part of health care in the Milwaukee area is delivered through the Medicaid Program.⁵⁹ Healthy Start⁶⁰ is another SCHIP program managed by HMOs, private organizations, which, in turn, basically pay private doctors and private hospitals. The last public hospital in Milwaukee was closed down by the county, not the city, a couple of years ago.

County employees enroll people in Medicaid and Healthy Start, SCHIP and Food Stamps, but private agencies, W-2 agencies—MAXIMUS is among them, as well as Goodwill and the YWCA—do the enrollment and provide the service for other parts of that system.

We have public schools, but we also have private schools under contract to the public schools, charter schools under contract to both the public schools and the city and the university, and also “choice” schools.⁶¹

We have a Food Stamp program, which obviously is a government program. Our experience with EBT has been very positive.⁶² I actually just asked the welfare advocates from Milwaukee about it the other day, and they said that, unlike some of the rural counties where it did not go so well, Milwaukee learned from their lessons and we transferred 60,000 people from government checks to

59. WIS. STAT. ANN. § 49.45 (1997) (discussing provision of health care to eligible persons).

60. SCHIP is the acronym for “State Children’s Health Insurance Program.” *Id.*

61. Steven Walters, *Choice Funding Splits Capitol*, MILWAUKEE J. SENTINEL, Apr. 12, 2001, at 1B (describing the current system in Milwaukee and summarizing the debate regarding possible reformations by the state legislature).

62. *But see* Remarks of Liz Krueger, *infra* this Panel Discussion.

EBT cards for Food Stamps with hardly a ripple. So at least there it went pretty well.

I have seen a lot of forms of both public and private programs. I have seen completely public programs. I have seen completely privatized programs in which government contracts out and is decentralized in the private sector. Beyond that, I have seen all kinds of mixes and matches. I can say without fear of contradiction that it is almost impossible to come up with a single conclusion about the effectiveness of one approach versus the other.

We are at a law school, so I suppose it is sort of *de rigueur* to say “it depends”—isn’t that the answer to every essay you ever had in law school, “it depends on the facts?”

But it truly *does* depend on the facts. It particularly depends on the management. I want to make it clear that to the extent anything I say suggests or implies a criticism of traditionally administered programs, the criticism is fundamentally no different than the criticisms of privatized programs that have not succeeded. The problem lies almost overwhelmingly with management.

Every now and then, you get a rogue employee in the government—for example, a police officer who goes off the deep end and murders somebody. Obviously, New York and every other city have seen instances of that. We had that in Milwaukee. Most cities have that.

However, also in the private sector, every private firm has employees who do illegal things and stupid things. And, sure enough, there are trial lawyers out there who remind them of that and bring multimillion-dollar judgments for sexual harassment or discrimination.

However, the main reason things go wrong is because of management.

I would like to suggest in talking about the distinction between public administration and privatization, although we often see them as quite distinct and often get exercised by the differences between the two, that at a certain fundamental level, they are not as far apart as we think.

First of all, as several speakers have said, most of the main decisions that are made are made by government.⁶³ Government officials make decisions about whether to deliver a service in the first place, what kind of service it should be, when it starts, and when it stops. And then, as Jacquelyn said, at the receiver end, people

63. See Remarks of Jacquelyn Bogges, *supra* this Panel Discussion.

often do not know the difference. People have no clue many times as to whether the service delivery agent is a government employee, a private employee, or anything in between.⁶⁴

When you look analytically at a government service and a private service, there really are aspects of them that are fundamentally the same. They both involve government playing a role and private decision-making.

Obviously, in traditional government service, the government sets the framework and sets the rules, but after the framework and the rules are set, individuals exercise a huge amount of discretion. Any person who ever has followed a DA in any county knows that DAs are different—the same law, same legal structure, but there is wide discretion about prosecution for drugs, about attitudes about sentencing.

The whole debate about Attorney General John Ashcroft was a debate, in essence, about privatization within the Justice Department.⁶⁵ He says, “I am going to follow the rules and settled law will be enforced.” So why doesn’t everybody just pack their bags and go home? What is the issue? Because we all know that the Attorney General of the United States has a huge amount of private decision-making discretion. That is why the groups that support reproductive rights and other groups are deeply concerned about him as Attorney General, and why groups on the pro-life side are deeply supportive of him. It is precisely because he will, indeed, exercise a lot of discretion. Privatization by another name.

You shift over to privatization—obviously you’ve got a nongovernmental set of organizations and employees doing the work and making independent decisions, but they are subject to a huge amount of governmental structure. Private organizations are chartered. They have corporate status. In theory, their corporate status can be removed. They are subject to laws of contract, laws of property, limited liability, laws that govern their structure. A massive array of laws protecting workers, protecting consumers, protecting investors, surround what they do. So there is this general overarching legal framework.

Then there is the specific contract itself. That contract does not let them do anything they want. They have to comply with the contract.

64. *Id.*

65. See, e.g., Alison Mitchell, *Senate Confirms Ashcroft as Attorney General, 58-42, Closing a Five-Week Battle*, N.Y. TIMES, Feb. 2, 2001, at A1 (summarizing the debate over President Bush’s appointment of John Ashcroft as Attorney General).

So it seems to me that what we have is two blended or mixed systems that have much of the same characteristics, but we need to understand the differences better.

To me, the more fundamental difference between the two of them is that traditional administrative structures focus on the discretion not of the hiring of the person, but the discretion *after* the person is hired to deliver the service. Once the bureaucrat or official is in place, what decisions do they make, and are those decisions made fairly and not arbitrarily.

Whereas on the privatized side, the focus is on primarily two decisions: one is which private person do we pick. A fair amount of the discretion lies in the choice of vendor. The second is the discretion about whether they complied with the performance requirement.

I want to finish by talking about a couple of things.

First of all, I do think that there are some aspects of the nature of the business to be carried out, whether it is cleaning the streets or whether it is something else, that tend to steer decisions toward either traditional government administrative structures as the best result, all else being equal, versus other factors that tend to steer toward privatization decisions. This is what John Donahue's book is about.⁶⁶

I do think that there are these criteria: Is the task simple or is it complicated? Can we measure the outcome or not? Is absolute uniformity important to us or can we tolerate a wide range of discretion? You can go down a checklist and make judgments about which way to go.

But even with that, you often can take any one of the things that might be a little more susceptible to government administration, privatize it, and still do it well, and vice versa.

In the end, I think what is of greatest importance is leadership and outcomes. Probably far more important than any of this is having good managers, good leaders, people who know what they are trying to do, who have an internal sense of what is important. If you do not have that, you are going to fail, no matter how the work is done.

One thing that I think has come out over and over again from people who support privatization, people who are opposed to it and people who are undecided about it, is the importance of outcomes. If you do not have clear outcomes, if you cannot measure

66. JOHN DONAHUE, *THE PRIVATIZATION DECISION: PUBLIC ENDS, PRIVATE MEANS* (1989); see also Panel Discussion, *supra* note 37.

the results, if you do not have a mechanism for translating the dollars into the outcomes, or have a structure in place, service delivery is not going to work. Although I do not think a publicly administered system will be a terribly successful system, a privatized system will be a less effective system.

On the other hand, if you have clear outcomes, if you can measure them, if you can link dollars to performance that clearly resonates with the outcomes, if you can inject risk that is related to the outcomes, you often can produce very good results with a private contract that are perhaps better than you can get in some other way.

I think that this, to me, is the biggest area where we fail. I think a lot of the public administrators do not understand how to do this. They were not trained to think about outcomes or to link dollars to outcomes. They did not learn about it in law school, they did not learn about it in public administration school, they did not learn about it on the job. They often were raised within a culture, within a bureaucracy, that perhaps did not have a habit of dealing with outcomes and linking dollars to outcomes, so that when they try to do it, they are lost at sea.

A lot of the organizations that do privatization best are ones that have just been doing it a long time and have people who know how to do it.

The street that I walked on to get over here, the sidewalk, was probably built by a private contractor; not by City of New York employees, I assume, but by a private firm contracted with by the City of New York. I assume that is how you do it here. That street was probably built within the price and met specifications. But those people were in the business of doing that year after year.

We must learn to develop a cadre of lawyers and public administrators who know how to do this and know how to do it right. Until we get people who are experienced in doing this, going back to Holmes's point, we can have all the talk at all the forums about the theories, criteria, and standards, but unless we get people in place who know how to do this we are never going to succeed with either direct administration or privatization.

Thank you.

PROFESSOR DILLER: Before we turn it over for questions, because there was such a diversity of views on the panel, I would just ask if anyone wants to respond or comment on anything that has been said.

MS. BURGER: I actually have a question, regarding the MAXIMUS contract with the State of Connecticut. You stated that when you had all the disasters in Connecticut that you *split* the cost with the State of Connecticut. What was the original value of the contract and what was the increased cost to the State of Connecticut? And how is the program operating now?

DR. MASTRAN: Let me just say that when we bid on that contract and increased the cost by proposing to hire seventy-two and not fifty-two people, the increased cost was still below the bid of the next competitor. The increase did not take them higher than the next company that we competed against.

MS. BURGER: So your original cost was \$12.4 million and the actual cost went up by fifty percent in the next contract, and state workers had to move in to help resolve the situation.

DR. MASTRAN: That is not true. I know that is what the newspapers say, but that was not true.

In terms of how are we being received now, we have all kinds of letters from the providers that ask to bring MAXIMUS back. I would be glad to make those letters available to you.

MS. BURGER: What would be interesting would be to figure out how we have full accountability, so we can actually see what is true based on what the company says what the newspapers say, and what the State of Connecticut says. That way, we could actually evaluate whether services are being provided, whether the costs are real, and whether they are being efficient, in terms of accountability.

DR. MASTRAN: I think that is fair. I do not have a problem with that.

MS. BURGER: So maybe you could look at our brochure and see if you support it.

DR. MASTRAN: Sure. I will tell you that Connecticut recontracted with us even though they had an option not to recontract.

One other thing I want to mention is that government *does* have to know how to do this. Sometimes cost is a factor, although frequently it is not. Mostly it is a factor of effectiveness—are we really delivering services? In fact, in some of our contracts the government has been so happy with the delivery, they actually increased the size of our contracts.

But if the government goes with a low-cost bidder, a company that does not have a track record and has not been around a long time, or is an “irresponsible” contractor, you are going to have problems.

So this process requires an extra step—that is, be able to contract effectively, which is not easy to learn—but if you can take that extra step, if you can learn that extra step, there are benefits at the end of it.

PROFESSOR DILLER: Any questions from the audience?

QUESTIONER: I have a question for Dr. Mastran. You stated that your goals were quality, profitability, and growth. In some government services, particularly human services, quality and profitability may not be compatible goals. There may be clients who need more service than it is profitable to deliver to them—may need more job training, may have more problems—and so sometimes choices need to be made about how much service you are going to deliver to them.

DR. MASTRAN: We do not do that.

QUESTIONER: The quality versus profitability choice. I am just wondering—so you resolve that choice in favor of quality?

DR. MASTRAN: Our first requirement is quality. I think there were newspaper articles about us, in fact, before this other stuff hit, about how our case managers put more and more time into making sure that they delivered quality services.⁶⁷ So that is our premise, deliver quality first.

QUESTIONER: Okay. I am just wondering what your shareholders think about that choice. You have to make money.

DR. MASTRAN: The shareholders believe that if we do not deliver quality first, we are not going to remain in business.

PROFESSOR DILLER: There is a question there?

QUESTIONER: In the interest of full disclosure, I am the president of a large public-sector union here in New York State. We are very familiar with the issue of design and construction in the Department of Transportation. Under two state comptrollers, a Republican and a Democrat, it has both been found that state employees do it cheaper and do it better. An independent consultant who looked at DOT also found that contracted-out employees do it at a cost that is seventy-five percent higher.

Under those circumstances, we have asked the legislature repeatedly to put in place more state employees. They will not do it.

Finally, we said, “Okay, let’s do managed competition.” We got legislation passed that put in place a five-year managed competition between the privates and the publics. Both the Republicans

67. See Greg Garland, *Child-Support Collectors Win Praise for Improving System*, BALT. SUN, June 1, 2000, at 1B.

and the Democrats agreed that that was appropriate. The governor vetoed it on a technicality.

My question is, that even under the most rational basis, we cannot seem to get politicians to move away from contracting out. So then, my question is: Would it be appropriate—and I would ask the panel to comment on this—would it be appropriate to take away the ability of those that bid on contracts to make political contributions? Because I have to believe that that is now playing a role.

MS. BURGER: One of the things in our PSAA requires is that they at least, have to disclose their political contributions, so the public will know who private bidders have contributed to, which candidates. But I think that is an interesting question, whether you could prohibit that or not.

DR. MASTRAN: By the way, I did not hear any of those conditions that you laid out that were objectionable to me. I did not hear the first one clearly.

MS. BURGER: We will give you a brochure.

DR. MASTRAN: Please.

MS. BURGER: There is actually a card you can sign to pledge.

PROFESSOR DILLER: Maybe we actually can bring about some consensus here.

DR. MASTRAN: I have tried to work with Andy Stern who is the head of the SEIU. I went and met with Andy Stern, and I said, "Look, Andy, what is the problem here? You want happy employees; we want happy employees. You want good government; we want good government. Why are we fighting each other? Why don't we create some kind of relationship that accommodates the efficiencies of privatization and the security or the feelings that labor has?"

"For example, we are willing to contract or subcontract our human resources function to the labor union. You are concerned about grievances, you're concerned about paying benefits? You can do it."

"We ask that you consider that we have a contract for a certain period of time. You can participate, and if you want, we will work with you."

He said, "That sounds great. Let's try it."

Our first trial was in a place I am not going to mention, and it did not work. The union locals did not want it.

So MAXIMUS is not against working with people to make for better government. We are willing to do that. I will be glad to look at SEIU's list.

In terms of contributions, I do not know about this state's Department of Transportation, but I can tell you any contributions that we make are publicized, and I think it is fair to say that the union is one of the largest contributors to the political process.

MS. KRUEGER: As someone who was just running for state legislature, I actually would support the fact that we desperately need campaign finance reform at the state level, because we basically have no accountability for anyone who is in elected office or running for elective office to have to explain why they took the money they did and what they do in exchange for it.

There are plenty of better models for us to be following, including the campaign finance system that New York City has in place. But New York State is almost the counter-opposite. After years, we finally got the state senate to agree that if you are being lobbied at dinner, you should at least write it down somewhere.

QUESTIONER: I think that it is appropriate that the audience knows that the private sector contributes fifteen times more than unions.

PROFESSOR DILLER: Why don't we take another question? Jack Beermann?

PROFESSOR BEERMANN:⁶⁸ I had two things. First, Ms. Krueger, your example about the fingerprinting technology—correct me if I am wrong; I may not have understood it—but it seemed to me that was a failure of *government* because they bought something they did not need. It was not a system of private provision where the private service vendor bought unnecessary technology at taxpayer expense. It would seem that the privatized provider of the services would have an incentive not to buy unnecessary equipment.

Second, I have never been a big advocate of privatization, but the more I have heard today, actually, the more I am interested in it, particularly in the child support enforcement area.

I am wondering, when there is privatization—I do not know how much of that has ever been privatized—if there are similar experiences with privatized child support enforcement in which the private vendors do not do what they are supposed to do and they do not turn the money over to who is supposed to get it?

MS. KRUEGER: You heard me right. My criticisms were primarily of government failing to have systems in place to make the

68. Panel Discussion, *The Changing Shape of Government*, in Symposium, *Redefining the Public Sector: Accountability and Democracy in the Era of Privatization*, 28 FORDHAM URB. L.J. 1319 (2001).

decisions they ought to be making in what services we ought to be delivering, how we ought to be delivering them, who we are contracting to, and how we are monitoring it. So you did not mishear me. I was being critical of government, not the vendors. I was saying the vendors were doing what they do. They were going out there to look for new markets to make more money for themselves. That is sort of the definition of a for-profit corporation. So I was not criticizing them for following their mission. I was criticizing the government for not handling its responsibilities correctly.

I think I should hand it to Jacquelyn on the child support enforcement question.

MS. BOGGESS: I just wish you would ask that question one more time.

PROFESSOR BEERMANN: I am familiar with big-time failures of government bureaucracies in doing things like going after child support, providing the paternity enforcement service it is supposed to do, and in turning over the money when and if, it is collected. Often that money sits in the account and never actually gets turned over to the people who are supposed to get it—at least in most states, the first \$50, even if they are getting full welfare.

MS. BOGGESS: Not in most states.

PROFESSOR BEERMANN: They don't get it anymore. They used to get the first \$50. I just wonder if there have been similar negative experiences with privatized child support enforcement or if that is only a problem with government child support enforcement. I do not know whether it has ever been privatized.

MS. BOGGESS: Yes, it has. I do not think that is only a problem with government child support enforcement. I think it is a problem all the way around.

In Illinois, the problem, if I am correct, is that, because the law dictates that collected child support money did not go to women on welfare, because they were receiving welfare benefits, once they went off welfare, the money still was not being sent to them, so it was just being built up in the state's coffers. In Illinois, it was said that the problem was that they could not get the computer systems necessary to track the money.

I cannot answer your question. I do not think that it is any different between public or privatized child support enforcement as to whether or not the money is getting across, getting to the women.

DR. MASTRAN: I would like to comment on that. We collect child support around the country in about fifteen states. If we were a state, we would be the twenty-second largest in terms of collect-

ing child support. We have been brought in to improve performance. The rate of collections in our projects—and again, we can look at the data; I think the GAO has looked at this—is better than what these states could do before we took over. So there is child support privatization out there.

MS. BOGGESS: But his question was not about the rate of collections.

DR. MASTRAN: Right. What I think he was asking was, were there the same failures in the privatized child support as there are in the public, right? I am saying, not that I know of.

MS. BOGGESS: Same thing I said.

DR. MASTRAN: For a mother with two kids who is trying to collect child support, what I ask them is, “Would you rather have someone trying to collect your child support who gets paid whether or not they are successful, or would you rather have someone who is trying to collect your child support who will only be paid if they are successful?” That is the difference between privatization and non-privatization.

MR. RIEMER: I just want to follow up on that point, because I do think that one of the problems we have with a lot of privatization contracts is that they are fixed-price contracts that basically give the private firm a franchise for a fee. Once that is the case, they have an incentive to keep their costs down. Some firms will resist those incentives and other will not. I think that if you can structure the contract so that you have the dollar amount rising in proportion to the outcome that you are seeking—so that the payment is bigger if the child support collections are bigger; in the education training area, if the payment made to the firm is bigger based on the earnings that people get or the percent that get above the poverty line, or some combination like that.

A fellow, named David Kindig, who is a professor at the University of Wisconsin in Madison, has written a book, called *Paying for Health Results*,⁶⁹ which tries to link the payment to HMOs for low-income people to actual results. The more you can link the dollars to the rise and fall of a performance, rather than a fixed sum, the more likely it is to work.

These are the kinds of things, again, that typical government managers do not think about as much as they ought to, and it is one of the reasons why they then often design these performance contracts that are flawed.

69. DAVID A. KINDIG, *PURCHASING POPULATION HEALTH* (1997) (analyzing the effect of HMOs on the quality of healthcare for individuals with low income).

DR. MASTRAN: I have a paper that I will make available, called *Privatization Contracts That Work!*,⁷⁰ and it describes how performance-based contracting should be done and how risk can be shared between the government and the contractor. That may be helpful.

MS. BOGGESS: This is the last thing I want to say. The difference is, in child support enforcement and collection of child support orders, the amount of money that is given to families. If you add up all the money that is collected and all the money that is then passed on to families, the part that is passed on to families is a fraction of the amount that is kept by the government or by the private agencies that run child support enforcement.

So I guess it goes back to what I said at the beginning. What is accountability? What is success? What exactly are we asking? I think that Dr. Mastran is right. He is doing exactly what the government asks him to do. But what is that? That is the question. Is it to collect child support?

In Wisconsin, after our state welfare reform legislation passed, we have “four work tiers.” Everybody knows that in Wisconsin “everybody has a job” and “nobody is poor.” We have four work tiers: one is called unsubsidized work, one is called subsidized work, one is called CSJ (community service jobs), and one is called trial jobs.⁷¹ I will not go into what each of those means.

But the first category is the one we all love, unsubsidized work. But a lot of people are put by either the government or the private organization—and Dr. Mastran would be right if he said “that is what the government told us to do”—into the unsubsidized job category not because they have a job, but because the worker sitting cross the desk decides that they are job-ready; that is to say, that client does not have a job and does not receive any kind of cash benefits at all. That decision is made by someone—correct me if I am wrong, Dr. Mastran—who works for MAXIMUS.

And then that person—because we have no one on welfare in Wisconsin—is responsible to do what the Welfare Department asks them to do, but gets nothing—no money, no child care, no nothing, so they leave the system. So, in my opinion, privatization of welfare in Wisconsin is not a success story.

70. David V. Mastran, *PRIVATIZATION CONTRACTS THAT WORK!* (2001) (on file with the Fordham Urban Law Journal).

71. STATE REG. ALERT, *Wisconsin Notices: Workforce Development—Wisconsin Employment System*, Jan. 1, 2001.

My point again is what has MAXIMUS been asked to do? Well, he has told us that MAXIMUS has done, and other private organizations have done, what they have been asked to do. That is true. It seems to me it is our responsibility to find out what they have been asked to do.

PROFESSOR DILLER: Do you want to respond to that?

DR. MASTRAN: No. I agree with you. I think that we do what we are asked to do.

In Wisconsin, we are asked to move people through those four tiers, and we have performance standards, and we have been meeting them. But such a contractual system does require government do this more effectively, and understand what they want. Sometimes they do not.

QUESTION: Actually my comment is a follow-up to what you have just been saying. I come from Connecticut. I think we have a real problem in Connecticut with what the government has contracted with MAXIMUS to do. I am sure that you are meeting the standards the government has set for you there. At the same time, Connecticut is last in the country in terms of the percentage of eligible families that are actually getting this child care benefit to which they are entitled.

I wondered if anyone on the panel, including Dr. Mastran, would want to comment on that?

DR. MASTRAN: I would like to. The amount of money authorized by the legislature is not under our control, so if you are last in the nation on the amount of child support per capita, or whatever, we do not have any control over that. But I believe that the situation in Connecticut has improved dramatically in the past two years.

MARK WARD:⁷² Thank you. Just, at least from this voice, one final question for the day. Yesterday and today in Washington, D.C., there was the first of what I am presuming will be many debates and discussions about welfare reform reauthorization. There are many key players there from Capitol Hill, program practitioners, and the like.

So focusing for the moment on TANF⁷³ service delivery, and given the fact that reauthorization likely will be discussed this year and written and implemented in 2002, if you were to take one recommendation back to Washington as to how to improve the deliv-

72. Mark Ward works for the United States General Accounting Office.

73. Block Grants to States for Temporary Assistance for Needy Families, 42 U.S.C. § 601 (1996).

ery of services from an accountability perspective, or from whatever perspective you want to offer, what would that recommendation be?

MR. RIEMER: I think that the federal government should require that the states put in place and enforce an outcome measure, or performance measure, based on the earnings of participants. The goal of the system should not be caseload reduction. It, frankly, should not be even what I call sort of “baby steps” toward earnings, like what was the initial wage rate that you got when you got a job, or what was the initial length of stay.

The goal is to get people who have a low earnings stream to get a higher earnings stream, get them enough earnings to get well above the poverty line. So if the goal is to get low-income adults—custodial parents, non-custodial parents, even childless individuals who are in that category—to the point where they have income well above the poverty line, the federal government ought to require the states to set up systems that pay its vendors, whether it is a county, MAXIMUS, or a not-for-profit, based on earnings in excess of the poverty line. The goal ought to be to try to get seventy-five or eighty or ninety percent of the participants above the poverty line, with an earnings stream above the poverty line, with rewards going to states based on the growing distance above the poverty line.

That would transform dramatically the incentives within the system. It also would, for those of you who do not know this, be much easier to administer, because the states already collect through their unemployment compensation systems the wages of virtually every worker, and several states are moving forward to shift from quarterly collection of wages to almost online or more frequent collection. So you would have an independent, already systemized, system of data to use. You would not have to create new forms, new reports. Basically, you would just have to have the welfare bureaucrats walk down the hall to the unemployment insurance bureaucrats and say, “Tell me how these 5000 people did in the last quarter or the last year compared to where they were before we entered the system.” This would be dramatically better and it would be very simple to do.

PROFESSOR DILLER: I think I am going to follow up with a question on how critical performance standards are in all of these systems. My follow-up question is: Who should decide the performance standards and how should the decision be made?

MR. RIEMER: You know, you get into these issues of “who is in charge here,” but I think that the federal interest in getting people sufficient earnings to get out of poverty through work, to attain self-sufficiency, is so strong that the federal government ought to set a minimum standard and then allow the states to experiment above the standard. So, for instance, if the federal government said “our goal is to have every state pay people based on at least seventy-five percent getting earnings to at least one hundred percent of the poverty line,” but if states want to do more than that and go to eighty percent or ninety percent or go to one-hundred-and-five or one-hundred-and-ten percent of the poverty line, they can.

If I were the federal government, I would not want to contract with a state, or give a block grant to a state, that basically allowed it to only do caseload reduction or only say, “Well, all right, we will just do a little bit of improvement in the initial wage rate, but we will not pay any attention to whether people actually get an earnings stream to get them out of poverty.”

I think that there is a significant enough federal interest here, grounded in the interstate Commerce Clause⁷⁴ and the General Welfare Provision⁷⁵—so legal—but I think if the federal government is paying more than fifty percent of it, I think it is a valid interest.

And frankly, if the federal government did this, it could strip out of TANF a lot of the process requirements.⁷⁶ A lot of the stuff that is in there is sort of paperwork junk that somebody stuck in back in 1996 and no one paid any attention to.

So I think this could be done in a way that actually would reduce the administrative burden on the states. It would not be a burden to the states to do it. The states could then transfer the burden to their vendors. They can put it on the counties and county employees, or they can put it on private vendors and private employees. So the state itself can shift the risk down to the local level, as it should.

QUESTION: The fundamental problem in New York has been that government knows exactly what it wants—it wants lower caseloads—and it has done a very good job getting that. I wonder

74. U.S. CONST. Art. I, § 8 (granting Congress the power to regulate commerce between the states).

75. *Id.*

76. Block Grants to States for Temporary Assistance for Needy Families, 42 U.S.C. § 608 (2001).

if in New York there is not the political juice to require government or instill in government the interest in doing, for instance, what Mr. Riemer is describing, increasing the number of people moving out of poverty. If it does not work in New York, how could it conceivably work anywhere else? So maybe the federal government angle is the way to go.

I wonder what your take is on Tommy Thompson⁷⁷ and what his philosophy might be in Health and Human Services along those lines?

MR. RIEMER: I do not know, and I think philosophically he would be more inclined to not be so prescriptive to the states. But, on the other hand, I think that the Governor, like a lot of Republicans, would be supportive of this. After all, the idea of getting rid of process and having outcomes is part of what many people in the Republican Party and the various think tanks have been talking about.

So I do not think this is anathema to them. There is sort of a conflict, in a way. If they view the federal government as this entity that just sort of gives the states lots of discretion, then they would, in one way, be inclined to go against this approach. If they view the federal government as a business-like organization that ought to strip out of the system all these process requirements and rules—maybe even entitlements, an important thing to debate—but then say, “All right, we have taken all that out, but we really want outcomes for our money,” they go another way and would support this.

My hope is that if the Bush Administration does not push this, Congress would do something like this. Maybe if the GAO says it is really a good idea, they will. Then the Administration may say, “Well, all right, this was not our idea, but we do not object to it, so we will sign it.” They do not have line item veto power in Washington, so if they get a bill, they have to kill the whole thing or adopt the whole thing. So they might take it. They might hold their nose and say, “Well, we are ambivalent about it, but Congress really wanted to do this. We are not going to send the whole damn bill back.”

PROFESSOR DILLER: At this point, I would like to thank all of our panelists for the entire day, and, in particular, to thank you all for working within the close time constraints that were created by the richness of the program.

77. Mr. Thompson was Governor of Wisconsin, and is the Secretary of Health and Human Services under President George W. Bush.

And also, I would like to thank the audience. I know, from having seen the registration sheets beforehand, that this is actually a remarkable group of people in this room. The questions reflect that, too. I hope you get a chance to speak with each other out at the reception that follows.

Before we conclude, I just wanted to thank the staff of the *Urban Law Journal*, who put this together: Peter Hatch, Sheri Bonstelle, Patty O'Connor, and Jessica Pesce. I have worked with the *Journal* before and with other journals on putting together conferences, and I have to say I thought this was a remarkable effort on the part of the students. The trains ran on time in every respect throughout—and I do not just mean today; I mean in the months putting this all together. It is a pleasure to work with them.

If they do not make it in the law, which I do not think will be true—I think they will all be great lawyers—but if they do not make it in the law, they certainly have a future in the conference planning business.

Thank you all.

I think Peter Hatch wanted a concluding word.

MR. HATCH: Thank you.

For those of you who joined us this afternoon, I am Peter Hatch, the Editor in Chief of the *Fordham Urban Law Journal*. Because we did manage to bring this Symposium to a conclusion before the official time, I am going to beg a moment's indulgence.

On behalf of the *Journal* and, in Dean Feerick's absence, Fordham Law School, I would like to say a few words of thanks.

First, to all of our distinguished panelists and moderators today, who joined us from all across the country and, as we discovered during the first panel, all across New York City.

I also would like to thank everyone who joined us in the audience today for their patience and for their active participation in contributing to what I think was a very rich dialogue, and an important one. This will continue to be a key issue that our nation and localities face.

I need to say a few specific words of thanks. First, to our co-sponsors, the Louis Stein Center for Law and Ethics and also to the William and Burton Cooper Chair on Urban Legal Issues. It was terrific to work with those institutions on this important Symposium.

And also to Professor Diller, whose expertise in administrative law, experience as a public interest lawyer, and affiliations with both the Stein Center and the Cooper Chair contributed to the suc-

cess of this Symposium. If I may borrow some of the rhetoric of today's discussion, without his partnership, this important venture would not have been the success that it was. So thank you to Professor Diller.

And finally, I would like to express my tremendous appreciation to every member of the *Urban Law Journal*, and specifically again to Sheri Bonstelle, Patty O'Connor, and Jessica Pesce, who really did most of the work over many, many months and late nights putting this all together.

