

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

October 18, 1985

PROCEEDINGS:

PANEL MEETING

TAKEN AT THE INSTANCE OF:

Legal Services Corporation
400 Virginia Avenue, S.W.
Washington, D. C. 20024

PLACE:

Ramada Inn North
Regency Ballroom #1
2900 North Monroe Street
Tallahassee, Florida 32303

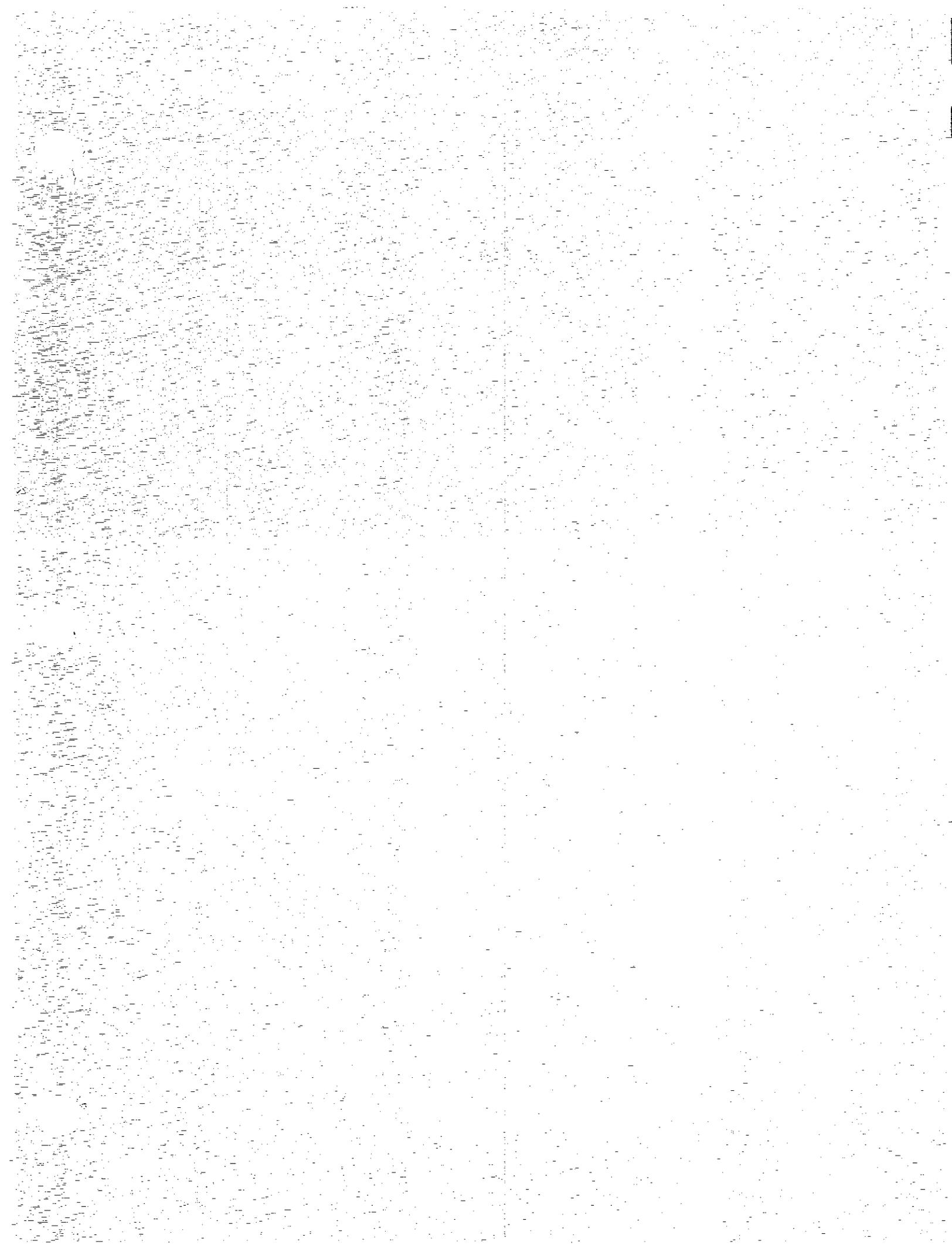
TIME:

Commenced at 9:06 a.m.
Concluded at 1:22 p.m.

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Tallahassee, Florida 32316
224-6200

ORIGINAL



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1 APPEARANCES:

2 DAN RATHBUN, PROVISIONS COMMITTEE COORDINATOR

3 ROBERT VALOIS, CHAIRMAN

4 JAMES WENTZEL, PRESIDENT

5 LORAIN MILLER

6 LEANNE BERNSTEIN

7 CLAUDE SWAFFORD

8 HORTENCIA BENAVIDEZ

9 * * *

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MR. VALOIS: Good morning. This is a meeting of the Committee on the Provisions for the Delivery of Legal Services of Legal Services Corporation. And we are meet- in Tallahassee, Florida. It is October 18, 1985. It is 9:07.

My name is Robert A. Valois, from North Carolina. I'm a Chairman of this committee and Vice-Chairman of the Board.

On my left is Hortencia Benavidez, of Texas; Claude Swafford, of Tennessee; our President, Jim Wentzel; LeaAnne Bernstein, of Maryland; and Lorain Miller, of Michigan.

I would first like to have a motion to approve the Agenda.

MS. MILLER: I move that the Agenda be approved.

MS. BERNSTEIN: I second.

MR. VALOIS: All those in favor?

PANEL: (Unanimous response)

MR. VALOIS: Any opposed?

PANEL: (No response)

MR. VALOIS: Second, I would like to approve the Minutes of June 28, 1985. There are a couple of typos. The word, 'introduced,' is misspelled in the fourth

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1 paragraph on page 2. The word, 'Demographer,' has become
2 'Demoographer' on page 1 of the Minutes. The word,
3 'students,' is misspelled on page 5. There is the word,
4 'product,' on page 12.

5 MS. BERNSTEIN: I was going to suggest a change on
6 page 13. The first line says: 'A number of individuals
7 representing Hispanic --' and the word used there is
8 'Church and migrant service organizations.'

9 I was going to suggest the change to 'religious'
10 rather than 'Church' since as I remember the testimony,
11 it was more of a -- it was a representative's religious
12 orders, but is not representing specific churches.

13 MR. VALOIS: If there's no objection, that's allowed.

14 PANEL: (No response)

15 MR. VALOIS: Do we have a motion to approve the Minutes
16 of June 28?

17 MS. MILLER: I'll make that motion.

18 MS. BERNSTEIN: I second.

19 MR. VALOIS: All those in favor of approving the
20 Minutes.

21 PANEL: (Unanimous response)

22 MR. VALOIS: All those opposed?

23 PANEL: (No response)

24 MR. VALOIS: The Minutes are approved.

25 * * *

1 MR. VALOIS: We are all pleased to be here in
2 Tallahassee. I'm particularly pleased, but I was last
3 here about twenty-five or thirty years ago when I came to
4 visit my wife, who was a student of Florida State. I also
5 happen to be a member of the Florida Bar, so I have some
6 affinity for the state. And I grew up in Florida and
7 graduated from the University of Miami Undergraduate School.

8 We are very pleased to be here. And we hand you all
9 for your cordiality and for your attendance and interest.

10 I'd like to read a letter, which I received from
11 Congressman McCullum -- and for the record :

12 "I'm pleased to learn the Legal Services
13 Corporation's Board of Directors Committee on the
14 Provisions for the Delivery of Legal Services will
15 meet on Friday, October 18, in Tallahassee, Florida.

16 It is my understanding that the purpose of the
17 meeting is to consider a report from the corporation's
18 office of field services pertaining to the status
19 of the Interest on Lawyers' Trust Accounts Program.

20 In addition to representatives from the
21 corporation, your committee will hear from individ-
22 uals from the public who share a common interest in
23 the success of this new program.

24 As you begin with this review, I wish to express
25 my support of the efforts of the Board and your

1 committee in particular in promoting the I.O.L.T.A.
2 Program as a supplemental source of funding for the
3 delivery of legal assistance to the poor. Encouraging
4 the provision of legal assistance to those unable to
5 afford it's high cost must be our top priority if
6 our goal is equal justice for all.

7 We must consider any idea which offers the
8 possibility of expanding the number of clients
9 served, while at the same time reducing the burden
10 of the American taxpayer.

11 Furthermore, it is my hope that the role of the
12 local bar associations will be significant in the
13 development of various initiatives established by the
14 I.O.L.T.A. Program.

15 An active bar association is a necessary
16 characteristic of a legal aid organization which
17 strives to be responsive to the needs of individual
18 poor persons.

19 Again, I applaud the dedication of you and your
20 colleagues and wish you the best as you continue this
21 most important task.

22 Sincerely, Bill McCullum, Member of Congress.'

23 I thank the Congressman for his comments and for his
24 greeting.

25 We will first hear from Dan Rathbun. He will give

1 us a report on the Office of Field Services status of the
2 I.O.L.T.A. Program.

3 MR. RATHBUN: Good morning, Mr. Chairman. My name
4 is Dan Rathbun, Provisions Committee Coordinator, and I
5 will be providing on behalf of the Office of Field
6 Services an update on Legal Services Corporation I.O.L.T.A.
7 Project.

8 This update will be supplemented by a number of
9 speakers here today who will give us additional detailed
10 information on the status of I.O.L.T.A. in the State of
11 Florida and nationally.

12 Those will be members of the Florida Bar Association,
13 The Florida Bar Foundation, I.O.L.T.A. Clearing House,
14 representatives from the Okaloosa and Walton Counties'
15 Bar Associations, and Legal Services of North Florida.

16 In April, 1983, the Legal Services Corporation
17 announced that it was launching an I.O.L.T.A. Project,
18 and it was an implementation of I.O.L.T.A. Program.
19 This project emerged from the new directions for the
20 private bar admissions passed by the LSC Board of
21 Directors in its December 16, 1982 meeting.

22 The goals of this initiative were as follows:
23 Firstly, utilize new directions for the private bar
24 funds to generate private separate funding as a supplement
25 to the continued Federal commitment to civil legal

1 assistance to the poor.

2 Secondly, stimulate and encourage I.O.L.T.A. Program
3 development and implementation in those states which do
4 not have an operating I.O.L.T.A. Program.

5 Thirdly, encourage the dedication and use of a very
6 high proportion of I.O.L.T.A. Program funds to provide
7 civil legal assistance provisions.

8 Fourthly, to improve the quality and quantity of
9 legal services provided to eligible clients by fostering
10 better working relationships between corporation recipients
11 in private bar.

12 Part of this initiative, LSC initially allocated up
13 to \$725,000 in funds to be given as grants to the states.
14 Two types of grants were made available: developmental
15 grants and implementation grants. Developmental grants
16 ranging from \$1,000 to \$2,500 have been rewarded to states
17 in the process of funding I.O.L.T.A. Programs.

18 These grants were designed to serve the following
19 purposes: provide an immediate stimulus to the states'
20 efforts to develop and I.O.L.T.A. Program; insure sound
21 planning and design in that program; encourage the
22 eventual allocation of a very high proportion to no less
23 than two-thirds of an I.O.L.T.A. Program's moneys to
24 civil legal services to the poor; and strengthen local
25 legal services programs' relationships with the private

1 bar.

2 Implementation grants ranging from \$10,000 to \$25,000
3 were available to states with I.O.L.T.A. Programs approved
4 by the enacting authority, whether that be in the State
5 Supreme Court or the State Legislation.

6 These grants were designed to provide an immediate
7 capacity for a state to enlist lawyers and lawfirm
8 participation in its I.O.L.T.A. Program, encourage
9 eventual allocation of a very high proportion no less
10 than two-thirds of an I.O.L.T.A. Program's moneys to civil
11 legal services to the poor, and insure the sound manage-
12 ment and disbursement of I.O.L.T.A. grants to the state's
13 legal services provided.

14 The corporation issued its first solicitation
15 providing states to apply for I.O.L.T.A. developmental
16 and implementation grants in April of 1983. The first
17 awards were made in August of 1983.

18 The second solicitation was issued on September 30,
19 1983, and the deadline for submitting a proposal was
20 originally scheduled for December 30, 1984 and was
21 extended to February 28, 1985. The deadline extensions
22 directly result in LSC received from states
23 wanting to apply for an LSC grant but needing additional
24 time to meet the requirement.

25 To date, LSC has awarded twenty-four grants:

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1 sixteen implementational grants and eight developmental
 2 grants. These grants total \$368,074 and were awarded
 3 to twenty-one jurisdictions. LSC has also established
 4 the National I.O.L.T.A. Clearing House. The Clearing
 5 House provides states with information, materials, train-
 6 ing and technical assistance of an I.O.L.T.A. Program
 7 design and operation. Clearing House is operated by
 8 the Florida Justice Institute. LCS has awarded three
 9 grants to the National I.O.L.T.A. Clearing House. These
 10 grants total \$376,569.

11 Combining all the LSC expenditures for I.O.L.T.A.,
 12 the corporation's total investment to date on this
 13 project has been \$744,643.

14 The committee will now hear from a number of speakers
 15 representing associations in the State of Florida who can
 16 speak to the current status of the I.O.L.T.A. Program
 17 here and nationally.

18 The first speaker are speakers who will represent
 19 the Florida Bar Association.

20 MR. EMMANUEL: Mr. Chairman and ladies and gentlemen,
 21 I'm Patrick Emmanuel, President of the Florida Bar. We
 22 do not have the word, 'Association,' on our -- end of my
 23 name, just 'The Florida Bar.'

24 We welcome you to Tallahassee and the State of
 25 Florida and trust your visit here will be worthwhile and

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1 that you'll get to enjoy some of the hospitality of our
2 Capital City of Tallahassee.

3 I know we have a busy program, so I'll try to move
4 along in what I understand to be my assignment or request
5 here this morning based on a letter from Mr. Rathbun,
6 dated October 3, 1985.

7 First, as you already know, Florida originated the
8 I.O.L.T.A. Program. In Florida, we call it I.O.T.A.,
9 Interest on Trust Accounts. Most of the states who followed
10 out lead later on call it I.O.L.T.A., Interest on Lawyers'
11 Trust Accounts.

12 I understand that last week the State of South
13 Carolina Supreme Court approved I.O.T.A. And, I believe,
14 that now makes about thirty-eight states, which means
15 that thirty-seven of those states, we're pleased to say,
16 follow the lead to Florida which originated this program
17 after a number of years of hard work.

18 Mr. Carlisle, one of the people who will direct you
19 this morning, was Chairman of the Florida Bar Committee
20 a number of years ago which worked on this and finally got
21 I.R.S. approval and the Supreme Court approval and put
22 the program into effect.

23 The Florida Bar is an integrated compulsory bar in
24 which all members who practice in the State of Florida
25 must be participants and members. It does not administer,

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1 however, the I.O.L.T.A. Program in Florida. The program
2 is administered by the Florida Bar Foundation which is a
3 separate organization. The Florida Bar does not have any
4 control over the Florida Bar Foundation. We do have a
5 good liason. I sit, for instance, on the Board of
6 Directors on the Foundation.

7 We have a good liason relationship with our Supreme
8 Court under which the Florida Bar Foundation and the
9 Florida Bar operates.

10 I do want to make the point that the receipt of
11 I.O.L.T.A. Program funds, the disbursement of I.O.L.T.A.
12 funds, the conduct we have of the program in Florida
13 is conducted by the Florida Bar Foundation. And that
14 does not mean that Florida Bar does not have any involve-
15 ment. We do not have any legal involvement in the sense
16 of control and direction. However, we are involved in
17 the sense that our Board of Governors in the Florida Bar
18 have at all times been committed to the program of
19 I.O.L.T.A. And we encourage that program and see it
20 expand.

21 Now, to the matter of grants. Those are handled, as
22 I stated by the Florida Bar Foundation. However, under
23 the rules, they have established eighty percent of their
24 grants. That's the goal toward providing legal needs of
25 the poor and those who can not provide those funds

1 themselves. The other twenty percent goes for other
2 purposes.

3 We've had some delay in what we would like to have
4 seen further growth of this program in Florida because
5 of what we call the Glasier lawsuit. You may be familiar
6 with that lawsuit brought by Mrs. Glasier against the
7 Florida Bar and the Florida Bar Foundation in one of our
8 large law firms, claiming in short that the interest on
9 the Trust Account Program is illegal and unconstitutional
10 and takes property without due process, and so on.

11 That program -- or rather that lawsuit is before
12 U. S. District Court. The matter is being heard by a
13 Senior Federal Judge from Alabama because the Florida
14 District Judge who was assigned excused himself and the
15 Chief Judge of the Eleventh Circuit Court of Appeals
16 appointed Judge Linn.

17 We are hopeful that we will have a ruling on that
18 case within the next few weeks. That depends on Judge
19 Linn, but the indications are that he has given it
20 priority. And that decision is one that we hope, of
21 course, will be favorable to the program.

22 I would say to you that I think that it's probably
23 a lawsuit that needed to be litigated once and for all
24 in the Federal Courts. I'm pleased that Florida is the
25 one that's litigating it and not because we like to be

1 sued but -- and I may say that somebody is a partisan
 2 because I believe the Florida Bar Foundation and the
 3 Florida Bar know as much as anyone about the I.O.L.T.A.
 4 Program. And we would much rather litigate it on through
 5 than to have had some state that has had small involvement
 6 with it and maybe have been sued first and at the burden
 7 of that litigation.

8 Of course, if the results run favorable, the whole
 9 I.O.L.T.A. Program could go down the tube. We're trusting
 10 that that will not be the decision. I assume that if the
 11 decision of Judge Linn is favorable to us that there will
 12 probably be an appeal. And if so, so the impact probably
 13 would be as good to help to get the law established so
 14 the law will know where we are.

15 A comment was made about local bars. So I'm pleased
 16 to say that I believe in Florida we have local bars which
 17 are very active in providing legal aid programs. But
 18 several of our local bar associations, which are voluntary
 19 bars, have a requirement of that to be a member you must
 20 contribute pro bono services or something to compensate
 21 for those pro bono services. But we do not have a
 22 mandantory pro bono program in Florida. We do not have
 23 a mandantory I.O.L.T.A. Program.

24 However, we have taken a number of surveys over the
 25 years through the Florida Bar. And we have some very

1 fine people on that staff with expertise on surveying.
 2 And the statistics are that the majority of our lawyers
 3 do participate on program support. All of our local bars
 4 are actively engaged in that type of program, and many of
 5 them work in unison in different ways in which come from
 6 the federally-funded program.

7 That comes down to the matter of funds. I would say
 8 to you that regardless of the amount of I.O.L.T.A. funds
 9 that are available, regardless of the amount of assistance
 10 given by lawyers on a free pro bono basis, regardless of
 11 the amount of funds that Congress votes for your corpor-
 12 ation, we will still not meet the needs of the poor and
 13 needy for legal service. I think the statistics will
 14 bear that out.

15 And so I think that if there is every any thought
 16 given to the sense that funding from your program is not
 17 needed to give legal services to the poor and needy -- and
 18 I'm talking about the individuals who need it -- I'd like
 19 to disabuse any such concept or idea. We recommend and
 20 hopefully we carry out cooperation between the various
 21 groups in the State of Florida who are involved in these
 22 type programs.

23 We are pleased that the I.O.L.T.A. Clearing House
 24 is located in Miami. And the people involved in that
 25 program are certainly very knowledgeable. And it's

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1 encouraging to read their reports which come out period-
2 ically about the number of states which have joined up
3 and the number of dollars that are being disbursed and
4 the poor and needy who will be helped.

5 I recognize that some I.O.L.T.A. funds are used
6 for purposes other than the poor and the needy. As
7 I stated to you earlier, Florida is committed to eighty
8 percent of those funds being used for that particular
9 program, and I think that that is where it should go.

10 Mr. Chairman, I believe that generally sums up
11 what I understood you might desire me to speak to.
12 There are representatives here of the Florida Bar Found-
13 ation who will address the matters of grants and dollars
14 and recipients. And I felt it not appropriate that I
15 try to do that.

16 If any questions concerning the Florida Bar, I will
17 be glad to try to explain them.

18 MR. VALOIS: Do any members of the Board have any
19 questions of Mr. Emmanuel?

20 MS. BERNSTEIN: I think that it would be more --
21 better addressed to the foundation.

22 MR. VALOIS: All right. Thank you very much for
23 coming. We appreciate your interest and glad to see you.
24 Thank you.

25 MR. EMMANUEL: Thank you.

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1 MR. RATHBUN: Mr. Robertson, and also a represent-
2 ative from the Florida Bar Foundation.

3 MR. DALE: My name is Howard Dale. I'm the Treasurer
4 of the Florida Bar Foundation. I'm a private attorney
5 and practice in Jacksonville, Florida. I want to thank
6 you on behalf of the Foundation to be here.

7 Gene Robertson, our Executive Director, had another
8 commitment and could not be here; and the same is true
9 of Sylvia Walhon, the President of our Foundation.

10 As I understand the information that you would like
11 from the foundation this morning, basically, is in
12 response to your questions about how the money has been
13 used -- the LSC money was used, and starting the I.O.L.T.A.
14 Program here in Florida, and a little bit about the
15 history and performance of that program to date. And
16 I have some remarks that I would like to make in that
17 regard.

18 Before I do that, I would like to Mr. Emmanuel's
19 comments that the I.O.L.T.A. funds that are being
20 generated in Florida. They are definitely a valuable
21 supplement to providing a cost for legal services for
22 the poor. They, by no means, have the potential under
23 the present voluntary program of being able to bear the
24 entire cost of legal services for the poor.

25 We would like to take one thing that Mr. Emmanuel

1 said. He commented that the Florida Bar Foundation had
2 adopted a grant criteria which called for eighty percent
3 of the funds to be used for legal services for the poor.
4 While that criteria is in effect, it was established by
5 the Florida Supreme Court in order that -- to establish
6 the I.O.L.T.A. program. So we're operating the program
7 pursuant to the Supreme Court requirements that eighty
8 percent of the funds be used for legal services for the
9 poor.

10 The Florida Bar Foundation received a \$25,000 grant
11 from the Legal Services Corporation in September, 1981
12 to provide technical assistance in implementing Florida's
13 Interest on Trust Accounts Program. This grant and a
14 \$25,000 loan from the Florida Bar funded the initial
15 I.O.L.T.A. recruiting efforts carried out by the special
16 commission to implement the Interest on Lawyers' Trust
17 Accounts Program.

18 From the first year of I.O.L.T.A.'s operation in
19 1981, through September of 1982, the Foundation received
20 approximately \$70,000 in indirect support from the Legal
21 Services Corporation. Through the private bar involve-
22 ment activities of these grants East in the State of
23 Florida, these funds were awarded for the start-up of the
24 foundation's administrative operation of the I.O.L.T.A.
25 Program. The I.O.L.T.A. Program, at the outset, was the

1 result of a ten-year effort to bring interest on Lawyers'
2 Trust Accounts concepts to this country. It began in
3 Florida in 1971. And The staff counsel of the Florida
4 Bar gathered information about the program from the
5 jurisdictions outside of the United States.

6 In 1976, at the urging of the Florida Supreme
7 Court Justice Arthur England, the Florida Bar filed a
8 formal petition in the Florida Supreme Court requesting
9 adoption of the Interest on Trust Accounts Programs.

10 The Court initially approved I.O.L.T.A. in 1978.
11 But due to problems with income tax aspects of the
12 program, it was not until 1981 that I.O.L.T.A. began
13 operating in Florida.

14 The Florida Supreme Court directed implementation
15 of Florida's I.O.L.T.A. Program in September of 1981.
16 At that time, staff support for I.O.L.T.A. was provided
17 by the Florida Bar and Florida Justice Institute.
18 The Foundation hired its first staff and established
19 this office in June, 1982. The Foundation located its
20 office in Orlando at the invitation of the Orange County
21 Bar Association in the Legal Aid Society.

22 The Legal Aid Society offered the Foundation free
23 office space for one year and a second year, if needed.
24 This support for I.O.L.T.A. from one of Florida's largest
25 voluntary bar associations and a nationally prima legal

1 aid society has given the foundation a sound base of
2 support in Florida.

3 The initial I.O.L.T.A. recruiting effort, funded
4 in part by the Legal Services Corporation, included
5 mailing information, brochures and enrollment forms to
6 every Florida attorney, one-on-one recruiting visits to
7 major law firms and all of Florida's judicial circuits,
8 a series of breakfast and luncheon meetings co-sponsored
9 by voluntary bar associations, and education of Florida's
10 financial by media.

11 In one year, ten percent of Florida's attorneys
12 with the Trust Accounts were participating in I.O.L.T.A.
13 In the four years since the program began, I.O.L.T.A. has
14 generated more than eight million dollars.

15 Twenty-one thousand of Florida's attorneys with
16 Trust Accounts now participate. And I.O.L.T.A. will
17 receive close to four million dollars in the current
18 twelve-month period.

19 As remarkable as these figures are, they are well
20 below I.O.L.T.A.'s potential. If every Florida attorney
21 with a Trust Account participated, ten to twelve million
22 dollars could be raised each year for the citizens of
23 Florida. The I.O.T.A. Program is a simple concept.
24 I.O.L.T.A. only makes use of client trust deposits so
25 small or expected to be kept for so short a time that



1 interest can be made available -- interest can not be
2 made available to the client as a practical matter.
3 Whenever the size or duration makes it possible for
4 a trust deposit to be made productive for an individual
5 client, I.O.L.T.A. does not alter long-standing trust
6 administration practices, and no client is deprived of
7 any income-producing opportunity.

8 I.O.L.T.A. does not impose any administrative
9 burden on attorneys or law firms, as financial institutions
10 routinely permit the interest directly to the foundation.
11 Because the interest is reportable as income to the
12 foundation, there is no tax liabilities for the attorney
13 or law firm or the client.

14 I.O.L.T.A. allows financial institutions to recover
15 their costs for involvement in the programs through the
16 reduction of service charges from interest paid to the
17 Foundation. I.O.L.T.A. does not change the manner in
18 which attorneys or law firms account for their client's
19 trust deposit. They continue to use the same checks
20 and trust account numbers.

21 The Florida Supreme Court named the Florida Bar
22 Foundation as administrator of the I.O.L.T.A. Program
23 and vested authority in the Foundation to distribute
24 those funds according to three charitable activities
25 approved by the Court. One: legal aid to the poor.

1 Two: law student moneys and scholarships. Three:
2 improvements in the administration of justice.

3 The Foundation is governed by a twenty-four-person
4 board of directors and comprised of fifteen elected
5 directors, the Chief Justice of the Florida Supreme
6 Court, and two other judicial officers appointed by
7 the Chief Justice, the President of the Florida Bar,
8 and a designee as the Board of Government to the
9 Florida Bar, and the President of Florida Legal
10 Services, a state-wide organization providing
11 technical support to the legal-aid-provided community.

12 Elected directors are nominated by the Foundation's
13 committee and elected at large by the membership.
14 Directors may also be nominated by provision of the
15 members. The elected directors serve for three-year
16 terms and may not serve for more than two consecutive
17 terms. Officers are nominated by the Foundation
18 committee and are elected annually by the directors.
19 They are the President, Vice-President, Secretary,,
20 and Treasurer. Officers are voting directors.

21 The Foundation also elects assistant officers
22 who are not voting directors.

23 When the Florida Supreme Court established the
24 I.O.L.T.A. Program, they required the Foundation to
25 amend its charters to provide that all participating

1 attorneys automatically become members of the Foundation.
 2 The Foundation's administrative operations have been
 3 kept small in order to assure that the greatest
 4 possible amount of I.O.L.T.A. dollars are spent for
 5 grants.

6 Presently, the Foundation has three full-time
 7 staff members and an annual expense operated budget
 8 of \$222,368. In 1985-86 grant year, the administrative
 9 cost represents seven percent of total grant allocations.
 10 The Foundation operations on a grant year from October 1
 11 through September 30. Each year, in June, the
 12 Foundation's Board of Directors allocate I.O.L.T.A.'s
 13 revenues received in the previous twelve months for
 14 distribution for the next year.

15 By investing the I.O.L.T.A. funds for twelve
 16 months prior to awarding grants, the Foundation is
 17 able to earn sufficient investment income to cover
 18 normal operating costs. I.O.L.T.A. grant funds are
 19 presently allocated as follows: legal services for
 20 the poor, 80%; law student loans, 5%; improvements
 21 in the administration of justice, 10%; grants reserved,
 22 5%.

23 To date, \$4,181,490.00 in I.O.L.T.A. grants have
 24 been awarded in all three categories. In the 1985-86
 25 grant year two-point-nine-five million dollars will

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established by the United States Department of Labor.
A client group is one whose members in it includes
50% or more persons eligible to services or whose primary
purpose is assistance to eligible persons.

An applicant must be in compliance with the standard
of measure with all grant requirements established by
the Florida Bar Foundation and provide a sufficient and
acceptable format information requested under the grant-
reported system.

An applicant must be staffed by at least one full-
time attorney, licensed to practice in the State of
Florida or have access to one full-time attorney or
panel attorneys.

The Foundation's grant requirement set out standards
for structure and operation of legal aid programs which
was commonly accepted as necessary for the effective use
of I.O.L.T.A. funds. Applicants must submit detailed
budgets for their current programs as well as for the
I.O.L.T.A. funds requested. It must also submit audited
financial statements with their grant applications.

In developing grant criteria, the Foundation
provided for sufficient flexibility to enable smaller
or budgeting programs to compete for funds.

To aid in the grants' award process, the Foundation
contracts with Florida Legal Services to screen

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representatives and the Board of Governors of the Florida Bar and the Board of Foundation provided information on how the grant recipients should be evaluated and how to measure success and how to aid in improve in delivering legal services to the poor.

This information formed the basis of a formal legal assistance for the poor to grant the evaluation program implemented with the '84-'85 grants. As a supplement to program activities, funds to be add-ons, private foundation support and continued Federal funding, I.O.L.T.A. promises to aid efforts to insure legal representation to those in need.

With respect to the administration of justice and law student assistance grants, the Foundation has used the same inclusive process in developing this I.O.L.T.A. improvement -- excuse me -- it's I.O.L.T.A. improvements in the administration of justice and law student assistance to grant programs.

Grants totaling \$251,609 have been awarded under the administration of justice category. Law student assistance funds are used to provide financial aid to law students working in programs which expose them to meaningful public services grants. To date, \$177,000 in I.O.L.T.A. law student assistance in the past have been awarded.

1 On October 11, 1984, as Pat Emmanuel alluded to it,
2 a Plaintiff's past action challenging the Florida
3 Interest on Lawyers' Trust Account Program was filed
4 in the United States District Court against the Foundation,
5 the Florida Bar, and the Plaintiff's former law firm,
6 Highland and Wright, as representatives of a defendant
7 class composed of the lawyers and law firms participating
8 in I.O.L.T.A. Several Florida legal service providers
9 have joined the suit.

10 The Plaintiff alleges that the I.O.L.T.A. Program
11 constitutes a violation of the 5th and 14th Amendments
12 to the Constitution. In addition, the Plaintiff alleges
13 that the payment of the interest on her nominal deposit
14 of \$13.75 to the Foundation was a breach of fiduciary
15 duty and constituted conversion under State law. The
16 Plaintiff demands defense to her again which is equal
17 to all the interest earned on client's short-term on
18 nominal trust funds and aid her through the Foundation
19 from the beginning of the I.O.L.T.A. Program,
20 \$15,000,000 in punitive damages.

21 In November, 1984, the Court denied the plaintiff's
22 request for a preliminary injunction to guard the
23 Foundation from disbursing I.O.L.T.A. funds until the
24 final judgment in a lawsuit. Accordingly, legal aid
25 grants awarded prior to the filing of the lawsuit were

1 paid. Since then, the Foundation has continued to
2 solicit and review grant applications in all three
3 funding categories but to date has not disbursed grant
4 funds.

5 In March, 1985, the Court entered an oral Order
6 that class certification issues would be decided only
7 after determination of the constitutional issues.
8 The parties filed cross-motions for partial Summary
9 Judgments on the merits of the case last Spring.

10 In September, 1985, just last month, the Plaintiff
11 requested a preliminary injunction for the second time.
12 The Foundation has filed its memorandum in opposition
13 to request the injunction along with a request for
14 expedited consideration and consolidation of the hearings
15 on the merits and on the injunction request.

16 Normally the Foundation awards legal aid grants
17 in September. However, in view of the lawsuit and the
18 potential for liability of the defendant class of lawyers
19 participating in I.O.L.T.A., the Foundation has delayed
20 consideration of the two-point-two-six million dollars
21 in the 1985-86 I.O.L.T.A. grants until its November 22,
22 1985 board meeting. And I hope that the Court will have
23 ruled by that time.

24 As you may know, the only other legal challenge to
25 an I.O.L.T.A. Program has been completed. California's

1 legislatively-enacted mandantory I.O.L.T.A. Program was
2 impelled as constitutional by California's court of the
3 District Court of Appeals in December of 1984. The
4 California Supreme Court denied rehearing the case.
5 And on October 7, 1985, which was in the last couple of
6 weeks, the United States Supreme Court denied writ of
7 certiorari in that case.

8 In conclusion, although it took ten years to grant
9 Florida's I.O.L.T.A. Program provisional, the program
10 has spread across the country in record time. In less
11 than four years, thirty-seven jurisdictions have adopted
12 Interest on the Trust Accounts Program. Many groups
13 are responsible for this rapid growth: the organized
14 bar, the judiciary, the financial committee, the media,
15 and very importantly the financial support of the
16 private foundations and, of course, the Legal Services
17 Corporation.

18 Across the country, Interest on Trust Accounts
19 Programs promises to generate the much needed funding
20 which, coupled with continued support of Legal Services
21 Corporation will aid in the effort to provide legal
22 services to those in need and improve the way our
23 justice system responds to those it serves.

24 On behalf of the Foundation, I want to thank the
25 Legal Services Corporation for its support in Florida's

1 program. The National I.O.L.T.A. Clearing House and
2 the I.O.L.T.A. Programs across the country, I thank
3 you very much.

4 I'll be glad to try to answer any questions.

5 MR. VALOIS: Thank you. I have a couple. None
6 of these funds go toward the support of criminal claims.
7 Is that --

8 MR. DALE: That is correct.

9 MR. VALOIS: How many directors are there in the
10 Foundation?

11 MR. DALE: Twenty-four directors.

12 MR. VALOIS: Give me an example of what category
13 -- in the category of administration of justice -- what
14 are those funds actually used for?

15 MR. DALE: In the first few years of the program's
16 operation, those grants were awarded on a quite inflexible
17 basis and pretty much responded to applications received
18 that fell within that general concept. I can give you
19 some examples.

20 There was, in Alachua County a mediation panel
21 established to assist in resolving family disputes. It
22 was funded partially by the county government on a
23 matching-funds basis with the I.O.L.T.A. funds.
24 Only about 177,000 has been funded to date.

25 And another example of an administration of justice

1 grant was to the Youth and Law Committee of the Florida
2 Bar to assist in establishing a program materials for
3 the public school systems to use in educating high
4 school students and junior high school students about
5 the legal system.

6 Those were the ones that come briefly to mind.
7 I will be glad to provide you with a list of all of them.

8 MR. VALOIS: I'm just curious as to what falls into
9 that category. Have any -- has anybody applied for a
10 grant and been turned down? And, if so, can you just
11 tell me the category and if there is more than just one,
12 and why they were turned down?

13 MR. DALE: In the administration of justice
14 category?

15 MR. VALOIS: No, in the general category.

16 MR. DALE: In the legal services --

17 MR. VALOIS: Yes.

18 MR. DALE: -- award category? There have been
19 applications that have been turned down.

20 MR. VALOIS: Just give me some idea about why
21 those were.

22 MR. DALE: Well, I don't think there's a general
23 reason that applies across the board. I can recall
24 there have been some that have been turned down because
25 it didn't appear that they would be productive with the

1 dollars they would use. They weren't serving enough
2 people for the dollars they requested. There has been
3 discouragement that the Foundation has had to funding
4 staff attorney programs. The Foundation has encouraged
5 the use of funds that go to existing providers that
6 have established programs and to encourage pro bono
7 involvement by private attorneys.

8 MR. VALOIS: You mentioned one of the criteria in
9 the grant process is the determination, as I understood
10 what you said, by the Foundation of needs of the
11 proposed community to be served. How do you all make
12 a determination of that? How do you determine the needs?

13 MR. DALE: Fifty percent of the funding in legal
14 services for the poor is based on low income population
15 to make sure that the funds are being spread around the
16 State in at least somewhat proportion to the low income
17 population. And I think that's based on the assumption
18 that the legal problems of the poor is spread fairly
19 evenly to the low-income.

20 MR. VALOIS: Have there been any grants to migrant
21 programs?

22 MR. DALE: Yes, there have been.

23 MR. VALOIS: Directly or -- or specifically migrant
24 programs rather than mixed?

25 MR. DALE: You mean programs --

1 MR. VALOIS: That certain migrants --

2 MR. DALE: With the migrants? I know that the
3 Foundation has funded Florida Rural Legal Services.
4 Of course, that is an LSC program that handles both
5 migrant problems routine low-income problems in the area
6 of service.

7 I think there have been maybe one or two very
8 small programs that have been solely for migrants, but
9 I can't right offhand think of them.

10 MS. SWAFFORD: I have a question. I didn't under-
11 stand it all. And it has to do with your eligibility
12 to client groups. How do you establish? And who are
13 the client groups?

14 MR. DALE: Okay. The criteria is that 50% of the
15 members of the group must qualify under the income
16 standards. In other words, their income must be less
17 than 125% of the poverty guidelines. Or their members
18 must be -- must have as their primary role the service
19 of those persons. I think if I read it more direct --
20 this doesn't come up very often. I don't know if we've
21 ever been called upon to apply that specific criteria.

22 A client group is one whose membership includes
23 fifty percent or more persons eligible for services or
24 his primary purpose is assistance to low-income persons.

25 MS. SWAFFORD: I can understand concrete things,

1 but give me an example of who would be a client group.

2 MR. VALOIS: My imagination on it was -- may not
3 be the right answer. I may be wrong, but if somebody
4 proposed to establish a program in -- I don't know -- in
5 Pahokie -- would you all make a geographic study of
6 whether or not fifty percent of the people in Pahokie
7 were below the income level?

8 MR. DALE: No, we wouldn't do that. I think maybe
9 an example would be like a disability law center which
10 provides legal services for low-income persons who are
11 disabled, or a program that provides civil legal assistance
12 to low-income persons who are in prison.

13 MS. SWAFFORD: That would be a client group is
14 what you have identified?

15 MR. DALE: Yes. Russell Carlisle, who is on this
16 Agenda later, is also probably much more familiar with
17 many of these areas we're delving into, and I hope
18 you'll feel free to go into those with him.

19 MRS. BERNSTEIN: Of the twenty-four members, the
20 fifteen elected at large or by petition of the members,
21 are any of those members also either staffy attorneys
22 or either members of the Board of Directors or Legal
23 Services, or the LSC funded Federal programs across the
24 State?

25 MR. DALE: I'm sure that some of them are members

1 of the Board of Directors. I don't know the exact
2 number. To the best of my knowledge, none of them are
3 staff attorneys to any of those programs.

4 MS. BERNSTEIN: But they may be members of the --

5 MR. DALE: There may be --

6 MS. BERNSTEIN: I notice that you have said that
7 there was a Florida Legal Services. I think that you
8 said that you have contracted with them to screen the
9 applications. I'm a little -- you know -- obviously this
10 is the first that I've heard in terms of this procedure.
11 But I'm a little concerned because it sounds to me that
12 you've set up a conflict of interest situation because
13 the Florida Legal Services is in a situation of one
14 having some fiduciary ties to other Legal Services
15 Corporation funds to entities.

16 And also, I'm not positive of the exact makeup of
17 the Board of Directors of the Florida Legal Services
18 as a state support unit. But I will say that it is
19 common in legal services programs for staff attorneys
20 on other legal services programs to be members of a
21 Board of Directors in the state support unit.

22 So we've got a direct conflict of interest in
23 some situations. As I say, I don't know what your
24 actual situation is in Florida. But it's a little bit
25 of a concern to me that the entity that you contracted

1 with to screen the applications may be in a situation
2 of being either biased or against certain entities.
3 Has this question ever come up?

4 MR. DALE: I'm sure that someone at some time has
5 raised a similar concern. And I think it's proven over
6 three years of experience to be more theoretical concern
7 than a practical one. But Florida Legal Service, by their
8 performance, has demonstrated to me their handiness in
9 reviewing the applications we have funded. I don't have
10 the exact dollars, but we have funded approximately as
11 many private legal aid societies as we do Legal Services
12 Corporation providers. And we see no evidence of any
13 bias.

14 MS. BERNSTEIN: You said that one of the require-
15 ments that one of the prerequisites is that any grantee
16 has to -- that you would establish a compliance with
17 your grant assurances. Could you give me an idea of
18 what some of those grant assurances are?

19 MR. DALE: We have a reporting system where they
20 report to us periodically after the grants are made,
21 and they compare those to, you know, the original
22 purposes in the grant. And we, from time to time,
23 have monitoring visits on a random basis as the need
24 arises.

25 MS. BERNSTEIN: So you do monitor the programs

1 periodically? Is this like a management monitoring
2 as well as in the fund accounting kind of monitoring or
3 functional kind of monitoring?

4 MR. DALE: It's primarily to see that the programs
5 are using the funds in the ways they have set out for
6 us that they would use them. We're still in an early
7 stage of our operation, and we are improving on that
8 monitoring effort as we get more experience under our
9 belt. So it's really a very early stage in that effort.

10 MS. BERNSTEIN: I'm a little curious as far as the
11 eligibility assistance. This is a question that comes
12 up with -- How do you go about monitoring a program to
13 see if they are complying in the terms of serving
14 eligible clients?

15 MR. DALE: We don't have any specific auditing
16 requirements or books or applications or service that
17 clients sign, or anything to that effect. We, at this
18 point, are relying, unless we have reason to believe that
19 we shouldn't be relying, on the evidence or the information
20 given to us by the recipients, The monitoring is presently
21 being done is, like I say, a view of their useable funds
22 in relation to the particular budgets.

23 MS. BERNSTEIN: How do you select your monitor?

24 MR. DALE: To date, they have been done on a
25 voluntary basis by members of the Board to that and

1 frequently those who are elected in the same general
2 vicinity as the providers with occasional support, experts
3 in the field in that particular area.

4 MS. BERNSTEIN: Do you utilize the -- for instance,
5 someone who -- Do you have any particular prohibition
6 or restrictions on someone who has received funds, service,
7 monitor to someone else who --

8 MR. DALE: Would you say that again?

9 MS. BERNSTEIN: Well, in other words, if you got
10 somebody on the Board who is, say, also serving on the
11 Board, Legal Aid Society, or maybe a staff attorney in
12 a program, would they be then be allowed to be a monitor
13 for another grantee?

14 MR. DALE: I'm not aware of any express prohibitions
15 on that in our stated policies. We tried to use the
16 Board members who are available and have the interest
17 and the background to monitor or to visit with a recipient.

18 MS. BERNSTEIN: When you fund a program, is that
19 funded also by the legal services program? Is there
20 any grant or compliance requirement that the fund that
21 they accept be expended in accordance with the LCS
22 regulation?

23 MR. DALE: No.

24 MS. BERNSTEIN: The Florida Bar Foundation is the
25 entity that disburses the funds?

1 MR. DALE: Yes.

2 MS. BERNSTEIN: Is that a -- I mean, it sounds like
3 a private non-profit organization.

4 MR. DALE: It's a private non-profit foundation,
5 yes.

6 MS. BERNSTEIN: Okay, so it would be private funds.
7 Is that correct?

8 MR. DALE: It's private in the sense that, you know,
9 it's not -- its officials are not elected. It is
10 obviously -- The program that it runs is a public
11 program for funds for which come from the I.O.L.T.A.
12 Program established by the Florida Supreme Court. The
13 entity, itself, is a private entity, itself, I guess
14 in a technical sense.

15 MS. BERNSTEIN: So -- I don't know whether you're
16 familiar with the Legal Corporation Act. But one of the
17 requirements in the Act is that any funds that are
18 recipient of our funds received are subject to the same
19 restrictions in the Act and regulations, unless the
20 funds are public funds that are designated for a different
21 purpose.

22 And the way that I'm reading that is that we -- the
23 I.O.L.T.A. funds in Florida given to grant recipients
24 would be private funds under that reading and would,
25 therefore, be subject to our restrictions. And the reason

1 it's a concern is that your definition of a group is
2 different than ours as a definition in our regulations.

3 And the problem is, as I see it, you know, from
4 my perspective, is that when legal services promoted
5 the I.O.L.T.A. concept, it was for the idea that we would
6 be extending the -- hoping to leverage more funds for
7 the same clients that we are supposed to be serving.

8 And I guess that I'm a little bit concerned
9 because from what I've heard, there is no kind of concern
10 on your part that this be -- that our Act and regulations
11 be adhered to by your grant recipients who also receive
12 our funds.

13 There is no, you know, coordination in terms of
14 monitoring for whether or not, for instance, that
15 someone is representing aliens that is prohibited under
16 our Act.

17 MR. DALE: I'm not totally familiar with it and
18 certainly to the extent of your -- of the Legal Services
19 Corporation Act. I think that -- It hits me that
20 these are certainly not private funds. This program
21 wouldn't exist if the Florida Supreme Court had not
22 entered an Order permitting them to exist and authorize
23 Interest on the Lawyers' Trust Accounts, authorizing the
24 Foundation to handle the recipient and handle the duties
25 of receiving those and disbursing those funds.

1 MS. BERNSTEIN: But Court Orders in terms of, you
2 know, of labor, treating dues in certain ways.

3 MR. DALE: Those dues exist without regards to the
4 Order. These dues -- These funds would not exist but
5 for the Florida Supreme Court Order. There would be
6 no interest earned on the Trust Account had the Florida
7 Supreme Court not established this program.

8 MS. BERNSTEIN: So you're saying these funds are
9 a problem in nature and we should not look to them as --
10 In other words, we have wasted our \$750,000 in terms of
11 trying to promote the additional availability of funds
12 that would be used for purposes authorized for our Act?

13 MR. DALE: You didn't waste your money. You've
14 gotten so much benefit for your money.

15 MS. BERNSTEIN: I -- I'm being facetious but I --
16 I'm saying that we're -- we have obviously an interest
17 in seeing that the clients that we're bound to serve
18 have access to this money. And what I'm hearing from
19 you is that there is no guarantee that those clients
20 will be served at all.

21 MR. DALE: Well, as a practical matter, most of
22 the funds are used for the same type groups that the
23 LSC agencies use their funds for. There are some few
24 exceptions where there are peculiar state problems.
25 For example, the Haitian immigrants. Florida has a very

1 unique problem, and fortunately the LSC guidelines prohibit
2 the use of funds, as I understand it, to provide legal
3 services for those people. And we've got to deal with
4 that problem. And the I.O.L.T.A. funds, fortunately,
5 are available to do that.

6 MS. BERNSTEIN: But there would be a possibility
7 for the Florida Bar Foundations concerned to deal with
8 them in a way that would not put our recipients in a
9 position of possibly being in violation by funding another
10 entity that is not receiving funds.

11 MR. DALE: That's certainly a possibility. It may
12 prove to be uneconomical to do it that way. You can not
13 just start out with legal agency every time you have a
14 legal problem to address. You have to consider the
15 economy to scale and so forth that go with the odysseys
16 of funding and particularly those that you fund an
17 existing agency to do that and take advantage of their
18 structure. And I have to start a whole new office and
19 hire a director, and so forth. You do so to use the funds
20 wisely.

21 MS. BERNSTEIN: How many applications do you
22 receive in the proportion of the number of grants you
23 get? For instance, this last year.

24 MR. DALE: In the legal services for the poor area
25 alone? I can give you approximate numbers. I think we

1 receive probably about forty-five applications and funded
2 about forty of them. I can give you -- Those are
3 approximations. I can give you exact later.

4 MS. BERNSTEIN: It's a very small number you're not
5 actually funding.

6 MR. DALE: Yes.

7 MS. BERNSTEIN: You said that you try to distribute
8 funds according to the low-income population. Fifty
9 percent of it goes to the low-income population. What
10 data do you use? And how often is that updated in order
11 to determine where the low-income population is? Because
12 we've been having a very tough time with Congress trying
13 to get our data -- to get it accepted, that maybe we
14 should relook at our formula. So our funds are targeted
15 according to the 1970 census data right now. And this
16 is something that this Board has been struggling with
17 in terms of trying to reallocate the money for the people
18 that are poor actually are.

19 MR. DALE: I was not personally involved when that
20 criteria was applied. But it is my understanding, they
21 used the 1980 census data.

22 MS. BERNSTEIN: The county figures on just poverty
23 population without any additional element regarding
24 or unemployment or special circumstances?

25 MR. DALE: Yeah. They may have made some adjustments.

1 I wasn't involved in that process and I'm not sure
2 exactly.

3 MS. BERNSTEIN: Okay.

4 MR. VALOIS: Mr. Wentzel.

5 MR. WENTZEL: Thank you. I just have a few questions.
6 In the legal services for the poor category, what -- just
7 so I'm straight, and for the record -- what are restric-
8 tions on these grant orders? First of all, are there any?

9 MR. DALE: Well, there are restrictions that are,
10 from time to time, placed on specific awards. In other
11 words, we respond to their application, and if there is
12 something that we don't agree with, we may make some
13 restrictions or contingencies in the awards.

14 But, as far as a general restriction, they must be
15 used for the eligible clients as defined earlier.

16 MR. WENTZEL: But that's the only restriction?

17 MR. DALE: That's the main one. I think it would --
18 For all practical purposes, yes, that's the restriction.

19 MR. WENTZEL: Okay. That's in monitoring the money
20 that has been raised. I'm not too sure about the means
21 of monitoring. But assume -- I guess I will assume that
22 it's some kind of oversight on how these funds are spent.
23 Has each grant that you've made now been monitored in
24 some respect?

25 MR. DALE: They're all monitored in the sense that

1 we received financial statements from time to time and
2 compared those to the budgets at the time the applications
3 are granted. Not all of them have received personal
4 visits. Many of them have.

5 MR. WENTZEL: How do you cross-check the financial
6 statement that you have received? Or do you cross-check
7 them in any way? Or do you rely on the grantees for
8 knowledge of what they are doing with the fund? Is there
9 any cross-check?

10 MR. DALE: By cross-check, do you mean by auditing?
11 Go behind the numbers and ask for verifications? To the
12 best of my knowledge, we don't do that unless we have a
13 reason to believe there's something wrong.

14 MR. WENTZEL: Has there been a reason?

15 MR. DALE: There may have. I've just not been
16 involved in that part of the program.

17 MR. WENTZEL: You stated there were different
18 alternative modes of delivery of these services in terms
19 of your grant. Could you break that down by percentage
20 in terms of the alternatives? You know, how much of your
21 grant moneys go to, say, some of our grantees, to Legal
22 Aid Society, to the private bar, recipients, that kind
23 of thing?

24 MR. DALE: I don't have those numbers presently
25 available. I'll be glad to get those for you and send

1 them to you so you can have them specifically. It's my
2 general understanding it's about fifty-fifty.

3 MR. WENTZEL: Would you mind sending that?

4 MR. DALE: I'll be glad to.

5 MR. WENTZEL: You can address it to the Chairman
6 of the committee.

7 MR. VALOIS: Ms. Swafford.

8 MS. SWAFFORD: I'm still interested in a little bit
9 more information about your client group.

10 MR. DALE: Yes, ma'am.

11 MS. SWAFFORD: But maybe, as we go along, maybe
12 I'll get satisfied on that point.

13 MR. DALE: Okay.

14 MR. VALOIS: Thank you, Mr. Dale.

15 MR. DALE: Yes, sir.

16 MS. BERNSTEIN: I just wanted to verify -- You said
17 that you're the Treasurer of the Bar Foundation?

18 MR. DALE: Yes.

19 MS. BERNSTEIN: And yet you don't have any relation-
20 ship with the auditing monitoring?

21 MR. DALE: I've been Treasurer for about two months
22 and dealt with the auditor on our claim. But the auditing
23 question was asked relating to monitoring the grant
24 recipients, in auditing their statements. I have not
25 been involved in that.

1 MS. BERNSTEIN: Do you have a committee for that
2 who would be in the Bar Foundation that would be responsible
3 for that?

4 MR. DALE: The Legal Services for the Poor Sub-
5 Committee would handle that.

6 MS. BERNSTEIN: Who is the Chairman?

7 MR. DALE: As of about two months ago, I am. But
8 before that time, Mr. Rod Petri was the Chairman. He
9 has had substantial experience.

10 MS. BERNSTEIN: Does he have other relationships with
11 legal money -- fund programs?

12 MR. DALE: I really don't know. He may have. I
13 really just don't know. He practices law in Miami.

14 MS. BERNSTEIN: Okay. Thank you.

15 MR. RATHBUN: Representatives from the I.O.L.T.A.
16 Clearing House.

17 MR. CARLISLE: Mr. Chairman, ladies and gentlemen,
18 my name is Russell Carlisle, and I am a member of the
19 Advisory Committee of the National I.O.L.T.A. Clearing
20 House. I've been asked by our Chairman, former Chief
21 Justice, Arthur England of Florida, to appear on behalf
22 of the Clearing House. Mr. Emmanuel and others in the
23 audience, during your questioning of Mr. Dale, have asked
24 me to advise you that I have not -- while this is the only
25 office that I presently hold -- I have in the past been

1 President of Legal Aid Services of Broward County, which
2 was started as a local program and is now LSC recipient.

3 I've also served as President of the Broward County
4 Bar Association. I was President of Florida Bar Foundation
5 for two years up until the same three months ago. I was
6 President of Florida Legal Services which is the State
7 support agency. And Mr. Emmanuel tells me that my term
8 as Chairman of the Commission on Access to the Legal
9 Assistants to the Florida Bar has now expired.

10 But any way, if I can assist you with any of the
11 concerns that you have which Mr. Dale did not have
12 complete information available, I'll be happy to do so.
13 I think that the presentation I have to make on behalf of
14 the Clearing House is reasonably extensive and certainly
15 important to you because it is a presentation of the
16 National material.

17 But I'm at your pleasure as to how you want to
18 proceed, Mr. Chairman.

19 MR. VALOIS: Well, I think we would like to hear
20 your presentation and have an opportunity to answer some
21 of the questions that are not quite fully developed. We
22 appreciate that opportunity, too.

23 MR. CARLISLE: Thank you, Mr. Chairman. I'll proceed
24 in that manner.

25 I'd like to ask Ms. Anne Swanson, who is the

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1 Assistant Director of the Clearing House, to come and sit
2 at the table with me. And also we have three items of
3 written material which we would like to present to the
4 Committee. I'm not quite familiar with your procedure,
5 but Ms. Swanson has sufficient copies for each member of
6 the Committee. And we would like to have you have that
7 material because I'll be referring to it as we go along.

8 MR. VALOIS: I'll tell you about the area I'm going
9 to ask you about. I'm very interested in I.O.L.T.A. My
10 own state has a program not as old as yours. We only
11 have fifteen percent participation. It's only about a
12 year old. New Hampshire, I believe -- I spoke to the
13 President of the financial bar last week when we were in
14 Hampshire and told me, I believe, the number was thirty-five
15 percent or something like that --

16 MR. CARLISLE: Yes, sir.

17 MR. VALOIS: -- in that range. I guess in terms
18 of development of I.O.L.T.A., I'd like to know how we
19 can get -- how we can multiply that.

20 MR. CARLISLE: I'd be glad to address that. I've
21 spoken to at least fifty local state bar groups, and I
22 have been involved in the development of these programs.

23 MR. VALOIS: Can you tell us how it's done, and ask
24 you why you're running twenty-one percent?

25 MR. CARLISLE: Well, because we're big. Because

1 we're conservative. And because we haven't been able to
2 get our Supreme Court to make it mandantory.

3 But let's go with the -- I'm going to sit, if I
4 may.

5 MR. VALOIS: Please.

6 MR. CARLISLE: As a trial lawyer, I prefer to be on
7 my feet, especially when I'm answering questions.

8 MR. WENTZEL: The lawsuit hasn't helped a bit.

9 MR. CARLISLE: The lawsuit hasn't helped us a bit.
10 Basically we haven't -- Since the lawsuit has been
11 pending, we really haven't done any recruiting. You know,
12 we still get some sign-ups because people change the
13 law firms and no longer continue with the program.
14 Haven't had any significant numbers drop out.

15 MR. VALOIS: Of the lawyers in Florida, approximately
16 how many of them have trust accounts? I know -- How
17 many lawyers in Florida now?

18 MR. CARLISLE: Well, to answer your first question --
19 We are estimating that 17,500 have trust accounts. We
20 have over 30,000 members of our bar. But we do not require
21 our bar members to be residents in our State. And all
22 they have to do is pass the examination and pay their
23 dues. And so, as a result, we have about 8,000 members
24 who are not residents of the State of Florida.

25 MR. VALOIS: I'm one of them. So put me down because

1 our firm participates in North Carolina.

2 MR. CARLISLE: Good. We're glad to hear that.
3 So we have an unusually large number of members of our
4 bar who are not residents of and practicing in our state.
5 We're going to get a better handle on that because on the
6 new bar dues notice, the trust account compliance question
7 now asks them to identify whether or not they have trust
8 accounts. So, we're going to get a firm handle on that
9 number this year.

10 MR. VALOIS: Would you ask them to extend that
11 question to say, 'In Florida'? Because the last time I
12 got that question on the dues notice, I didn't know if
13 they meant Florida or --

14 MR. CARLISLE: Well, Mr. Hartness, the Executive
15 Director of the Bar, I believe that falls in his category.
16 Mr. Hartness, one of your bar members has a suggestion.

17 MR. HARTNESS: I heard him.

18 MR. CARLISLE: Okay. The National I.O.L.T.A.
19 Clearing House. Now, what we have provided you with in
20 the materials which I'll be referring to is a document
21 entitled 'Organizational Structure.'

22 We also have for you the most -- the last newsletter.
23 I think all of you are on the mailing list. I certainly
24 hope so. And we have a new newsletter which Anne tells
25 me went to press yesterday. So, you'll be receiving one.

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1 We did extrapolate from the current newsletter this item
2 which is probably going to be the most significant to
3 you, which is the status of the operational I.O.L.T.A.
4 Programs as of September the 30th. And it goes state by
5 state, chronologically, in order in which the programs
6 were established. And it gives you in the first column
7 the type of the program, the number and percentage of
8 participants.

9 In the second column, the amount of interest income
10 received. And that is cumulative from the beginning of
11 the program.

12 And the third column is the amount distributed to
13 legal services to the poor.

14 The second number that you see under the interest
15 income received, if you'll refer to footnote number two,
16 that is an average -- monthly average income reported
17 to the Clearing House.

18 So you have it there for each state. Now, I was
19 at that first meeting with Mr. Beauguard, the then
20 President of the Legal Services Corporation. And we, at
21 that time, had eight programs. And those are the same
22 eight that you see on our letterhead -- the states, that
23 is -- because they were the ones that were represented on
24 the first National Advisory Committee. And as Mr.
25 Rathbun has reported, the history of the establishment of

1 this organization that I'm appearing for today.

2 I think that you can see that we have done quite
3 a job with the money that you have given us. And that
4 the states have done quite a job with the money that has
5 been granted to them.

6 To briefly review the financial status of the
7 grants, the Clearing House, itself, has received
8 \$376,569 in three increments. And that has been used
9 basically to provide technical assistance to these thirty
10 additional jurisdictions that we have been able to get
11 programs established in over this three year -- not quite
12 three year period of time.

13 We have done it by telephone. We have done it in
14 writing. We have had our staff go visit. We have had
15 volunteers, such as myself, go visit. And it just depends
16 on the local situation, what needs to be done. We, in
17 some cases, we've had the opportunity to appear and argue
18 before the Supreme Courts about these other jurisdictions.
19 In some cases, we participated in the brief writing, the
20 rule drafting. Other times, we'd assist in getting
21 their regulatory approvals. And it just depends on what
22 has to be done. It has been done.

23 not want to tell you that this is the only source
24 of funds we have. We also have received \$108,000 from
25 Ford Foundation. And we have received \$50,000 from

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1 Rockefeller Foundation. These funds have been used for
2 general support and implementation along the same lines,
3 but they have also been used to prepare the Amicus
4 briefs which have been filed and prepared by the Clearing
5 House staff and filed in litigations in other states.

6 No LSC funds have been used for the preparation of
7 any Amicus briefs. And we have specific discussions
8 with Mr. Beauguard on that. He asked us not to do that.
9 We said, "Fine, we will go get the money somewhere else."

10 But no LSC funds have been used for any Amicus
11 briefs, specifically, the one in California which was
12 successful in assisting the upholding of the California
13 program. And we also filed in the Supreme Court of
14 California and in the Supreme Court of the United
15 States.

16 We also subsidized one of our staff members, Mr.
17 Siegal, in preparing a very learned article. When he
18 sent me the first draft, I said, "Peter, that thing is
19 just too long and too dry. It took me three days to
20 get through it."

21 But anyway, he did condense it, and it's now been
22 published in the University of Florida Law Review. And
23 I believe we have that citation somewhere. If you would
24 care to read it, we'll be glad to send you a copy, and
25 we have pamphlet copies available.

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MR. VALOIS: I would like to see a copy.

MR. CARLISLE: Do you want them to send one copy to each Board member, or just --

MR. VALOIS: If you would send us a dozen copies.

MR. CARLISLE: So now we are in the situation where I think that we should review the grants that you -- as Mr. Rathbun already briefly reviewed. There have been eight developmental grants and sixteen implementation grants given in twenty-one different jurisdictions. The developmental grants are those that are granted to assist the state in getting their petition filed or getting their legislation through.

The developmental grant, after they got the order of legislation. This is to assist them in claiming regulatory approvals particularly in the states where we have a voluntary program, which we are going to talk about a little bit.

In the state, we have voluntary programs, getting the materials out to the lawyers, getting the banks on line with the program, and so forth and so on.

It's my understanding that the grant program as far as LSC goes for either developmental or implementation grants is now at the .

There are no further grants because the last cycle was in February. So what we're talking about so I think

1 we can now talk a little about what's happened. And, as
2 I said, we had eight programs when we started. We've
3 got thirty-eight programs now. Thirty-seven states and
4 the District of Columbia.

5 Of those thirty-eight programs, only six are
6 mandantory programs. And then we have four of what are
7 called an opt-out program. An opt-out program is where
8 it's a negative check-off type of thing. In other words,
9 if the lawyer or law firm has a trust account and doesn't
10 say, "I do not wish to be a part of the program," they are
11 automatically in. This has been very effective in the
12 smaller jurisdictions.

13 The folks in Delaware thought it up, and they say
14 that the lawyers in Delaware have a very difficult time
15 writing a letter to the Supreme Court of Delaware saying,
16 "Dear Mr. Chief Justice: I don't want to be in this
17 program," because there are only five hundred lawyers
18 in Delaware with trust accounts.

19 And I think the Chief Justice knows much, and I
20 think they have been very successful in the participation
21 in the opt-out. And if you'll notice, it's been adopted
22 in two hundred jurisdictions in Utah and Rhode Island.
23 And they don't have a very large population, and in the
24 District of Columbia where they have a peculiar problem
25 because a lot of the firms don't have a trust account.

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They don't deal in these types of transactions that we're talking about.

Now, thirty-two of these programs are operational now. In fact, when we say 'operational,' what we mean by that is: that means they're collecting money. It takes awhile to get to that point because you have to get regulatory approval and you have to get the banks to accept the program and say, "We will accept these accounts," and get going and start sending the money.

Now, as far as the percentage of moneys going to legal assistance to the poor, I think we have overachieved that goal which was sixty-six and two-thirds percent initially. And, as you've been told, in Florida it's eighty percent in several of the jurisdictions, particularly where it's by legislative act, which is a hundred percent.

There are no alternatives. Everything goes to the legal services to the poor. But in most jurisdictions, that the minimum figure has been the sixty-six and two-thirds percent, it ranges on up depending on the jurisdiction to a hundred percent. So we have over-achieved that particular goal.

Now, we are in a position then going to the last page of your state-by-state handout, we have the totals. And that's what's been raised in the first column;

1 \$40,762,104.00. And the next column is what has been
2 paid out: \$27,309,307.00.

3 Again, those totals are cumulative. They are
4 obviously cumulative totals rather than .
5 But I think it's more important to know that we are
6 probably raising about \$25,000,000.00 per year from the
7 various programs. It's important to note, however, that
8 approximately half of that is in California, the largest
9 bar in the country, a mandantory legislative program.
10 One hundred percent goes to legal services to the poor.
11 And they are raising about \$12,000,000.00 a year out
12 in California. Their litigation has now been successfully
13 included and concluded in favor of constitutionality,
14 and they have really got it going out in California.

15 The rest of us are coming along. And I think that
16 we're going to see growth in these figures. And I think
17 it's important to recognize some things that are generally
18 true about these programs.

19 The first thing is: these programs are state
20 programs. They are authorized either by the Supreme
21 Court of a state under its rule-making authority. Or
22 they are authorized by the legislature of a particular
23 state. They are state programs also in the sense that
24 their governing bodies are established or controlled by
25 their state agencies.

1 Now, in Florida, and in several other jurisdictions
 2 where bar foundations were already in existence, we have
 3 the bar foundation being used as the vehicle to collect
 4 that income due to grant making process and disburse the
 5 income. But in other states, such as Minnesota, which
 6 has a mandantory court rule program, they have a legal
 7 services board which has been created by their Supreme
 8 Court and has various appointing authorities.

9 New York is another example. It's a voluntary
 10 legislative program with a separate board with multiple
 11 appointing authorities: the Governor, the Supreme
 12 Court, Legislature, and so forth.

13 So, while the bar foundation model is the most
 14 common, it is certainly not universal. And in one of
 15 the reasons -- Is it in this one?

16 MS. SWANSON: (Inaudible)

17 MR. CARLISLE: The issue I'm looking for is the
 18 table that shoes how each program works. Which issue
 19 is that?

20 MS. SWANSON: The Winter of '85.

21 MR. CARLISLE: Okay. In the Winter of 1985 issue,
 22 there was a table, a spread table, which shows you all
 23 of those variations. It shows you whether the program
 24 is voluntary or or mandantory. It shows you whether it
 25 is Supreme Court or Legislative. It shows you what

1 the governing board is. It shows you whether it's
2 limited to legal assistance to the poor or what other
3 purposes are involved, and so forth and so on. And I
4 think that instead of my going through the examples in
5 a lot of detail, but I think that the thread that runs
6 through this is that the state agencies are in a better
7 position, certainly in the best position probably, to
8 determine what the legal needs of poor people in that
9 state are, and to determine the proper use of the interest
10 on trust account funds.

11 I think another important thing is -- and this is
12 true in Florida and in other states -- is that legal
13 assistance to the poor funds are provided by a lot of
14 different sources. And probably the most prominent
15 certainly are Legal Services Corporation funds and
16 interest fund trust accounts funds.

17 But we do have state and local appropriations. We
18 do have an awful lot of incoming donations, which
19 Mr. Emmanuel referred to. Filing fees. We've got other
20 foundations that contribute to various. We have lawyer
21 donations and time and money required and voluntary.
22 We have United Way, and just a myriad of different kinds
23 of support. We have other governmental agencies. For
24 example, funds which are used for legal services and
25 elderly people that I'm sure you're aware of under

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Title three of the old Americus Act, and so forth.

And, finally, I think it's important and I think it's true not only in Florida but in other jurisdictions that what we have out there in the legal services provided communities is not just Legal Services Corporation and grantees.

We funded here in Florida last year thirty-eight different organizations. We have thirteen legal services grantees in the State of Florida if you count F.L.S., which is sort of an unusual implement. But we have given grants to the Lutheran Ministries, not only for their Haitian program, but for their older -- for their guardian ad litem program to provide guardians for elderly people who can't afford to have a guardian, who don't have a relative living there to be a guardian.

We have provided funds to, as Mr. Dale said, to Haitian F.E.G. Organization and to the Aleutian-American Community Association. We've given money to Lutheran Ministries for their Haitian program. We've given money to the migrant program. It's a three -- There's a migrant organization in Pompano, one of our rural areas near Orlando, which is a part of the Catholic migrant ministry which is funded. One of our past presidents of Florida Bar, Russell Troutman, in Orlando, has privately supported that program and was able to help us coordinate

1 that grant there.

2 MR. WENTZEL: Won't you give us a complete breakdown
3 of those grants?

4 MR. CARLISLE: Oh, yes, I've got it. I don't think
5 I have enough copies for everybody. But I have the
6 recommendations for the 1985-86 grants. I do not --

7 MR. WENTZEL: Do you have a breakdown on the past
8 grants?

9 MR. CARLISLE: I don't have it with me, but it's
10 available. It's published. We try to get a lot of
11 input from our bar. We publish it in the bar news.
12 If we've got it, I'll --

13 MR. WENTZEL: The '84 grants.

14 MR. CARLISLE: Okay, here's '84. And we have -- it
15 will show you the grantee. It will show you the location
16 where the principal office is. It will show you the
17 grant. And it will show you a description purpose for
18 which these moneys are used, whether it might be general
19 support or for some special program that they might have.
20 But I'll be happy to give you that information. So the --
21 But I think the bottom line is, as the other speakers
22 have said, that what we talked about when we first got
23 together with Legal Services Corporation, and Legal
24 Services Corporation did provide the basic \$750,000
25 which was expended but, in any event, was that we were

1 going to get -- go out and get supplemental funding for
2 legal assistance to the poor.

3 I think that \$40,000,000.00 is a pretty good return
4 on \$750,000. But I had thought of Mr. Emmanuel's comment,
5 and it's particularly true in Florida. We have the
6 budgetary reductions in 1982, approximately 25 percent.
7 We had had some slight increases based on the cost of
8 living since then. But here in Florida, we have had an
9 increase in 600,000 people in the poverty population.
10 Our State population, of course, has increased much
11 greater than that. And I recognize that all states don't
12 have this type of relief.

13 The Commission to which I refer - The Commission on
14 Access to the Legal System of Florida - which
15 last year found, we went back and had public hearings
16 around the State. We got the input, and we got the 1980
17 census figures right on down to funds.

18 We found that we got an increase in Florida of
19 600,000 more people. And the Commission's answer was,
20 "We got to have more money, and we got to have more
21 lawyers giving free or reduced price legal services.
22 And that money can come from mandantory interest on
23 trust accounts which we think in Florida it could mean
24 \$10 to \$12 million instead of three-point-six million
25 dollars. It can come from State and Federal funding, and

1 it can come from required public interest service by
2 lawyers.

3 It's going to take a lot of education to get those
4 things. But I think -- I'm a private practitioner. I'm
5 a volunteer. And we have got to remember particularly
6 here in the State with an integrated bar that we, as
7 lawyers, have a monopoly on rendition of legal services.
8 We have that right because we have complied with the
9 State Supreme Court's requirement. And the corollary
10 and corresponding duty is that we have a right and a
11 duty to recall our oath that we all took when we became
12 members of the Bar that we would never refuse any person's
13 cause for the reason of money. What we have to do as
14 attorneys, as members of the legal profession, is remember
15 that duty and organize and persuade our brethren and
16 our sisters to do that duty and provide legal services
17 to the poor.

18 MR. VALOIS: In the universe of trust accounts, not
19 all trust accounts are trust accounts of lawyers.
20 And my personal perception is that the money in those
21 trust accounts is not the lawyers. I think everybody
22 accepts that. But there must be some other source of
23 entities. How about accountants? Do they have trust
24 accounts?

25 MR. CARLISLE: No, but real estate brokers and

1 private loans sure do.

2 MR. VALOIS: You know I accept what you say about
3 the lawyer's duty representation, but I don't think the
4 converse of that is that it's also entirely the lawyer's
5 financial responsibility to support that --

6 MR. CARLISLE: I agree with you. That's why we
7 have these other fundings.

8 MR. VALOIS: Have you made or have you thought
9 about or made any personal sort of -- done any brain-
10 storming about what other kind of accounts are available
11 in addition to lawyers' accounts?

12 MR. CARLISLE: Well, I think that two that I
13 mentioned would immediately come to mind because the one
14 in Florida and in other states where the real estate
15 practice is still, at least in substantial part with
16 the attorneys, the attorneys very often hold those kinds
17 of deposits. The five or ten percent that's put down
18 as a residential transaction, and generally it's held
19 for thirty days.

20 In some states, they have guidelines saying if you
21 can earn \$50.00 in interest, then it goes in separate
22 account, and so forth. But the largest real estate
23 organization, brokerage organization, in my county has
24 their own guidelines. If it's \$10,000.00 or more, they
25 put it in a separate account and the money goes to the

1 fund. So they are beginning to -- the real estate
2 profession, at least, in Florida -- is beginning to
3 recognize that.

4 There has been a lot of talk in real estate
5 profession in Florida that I'm aware of. And, perhaps,
6 to lesser extent in the Land Title Association in Florida,
7 with regard to the proper handling of these trust accounts.

8 Now, in connection with the title companies, they
9 are governed by the agreements with their underwriters.
10 For example, I'm an agent for a Chicago title. And they
11 require me to keep all funds for their closing in a
12 separate account from our realtors which is specifically
13 identified as the Chicago Title of (inaudible).

14 MR. VALOIS: That is an interest-bearing account?

15 MR. CARLISLE: No.

16 MR. VALOIS: Not?

17 MR. CARLISLE: It is not. But what I'm saying is
18 the title underwriters have certain restrictions they
19 place on the agents whether they are title companies
20 or attorneys.

21 MR. VALOIS: The state would regulate that --

22 MR. CARLISLE: By legislation, yes, from trust
23 accounts from the United States. And what we did was
24 different from Canada and Australia where you have
25 legislative control of everybody is that we did it by

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Court ruling. That's the uniqueness of trust accounts in the United States except for those jurisdictions (INAUDIBLE: I think that are of that of the legislature).

MR. VALOIS: Do you think the legislature could regulate real estate trust accounts?

MR. CARLISLE: Yes, sir, with their (INAUDIBLE: current increment drafting). And they can be productive of income exactly the same way. And they are not productive of income for the clients unless the size of the deposit or the (INAUDIBLE: term?) of which it is held to create enough interest to make it feasible.

MR. VALOIS: Do you have an opinion of whether those things are generally interest-bearing accounts, the ones that the real estate firms have?

MR. CARLISLE: I believe that they are. Of course, you have your banking restrictions. Now, the profit corporation can not have a Now Account. One of our significant regulatory victories was to convince the Federal Banking Authorities that since the interest was going to a non-profit corporation that we could use Now Accounts even though the law firm was incorporated. That was a 'biggy' in addition to Internal Revenue. And we have a ruling from the General Counsel of the Federal Reserve Board and the Federal Home Loan Bank

1 Board.

2 MS. BERNSTEIN: I'm going through your credentials
3 rather rapidly, and I'm hearing you talk not only from the
4 I.O.L.T.A. Clearing House standpoint but also from the
5 relationships that you have with Florida Legal Services
6 and with the Florida Bar Foundation.

7 What were the years that you were President of the
8 Florida Legal Services?

9 MR. CARLISLE: 1981 to '83. I'm sorry -- 1983 to
10 '85. Excuse me.

11 MS. BERNSTEIN: Were you on the Board of the Florida
12 Legal Services prior to 1983?

13 MR. CARLISLE: Yes, from 1975 forward.

14 MS. BERNSTEIN: Okay. You said that F.L.S. is an
15 unusual . Are you talking of -- I--I haven't
16 memorized on these lines who's who in the State support,
17 you know. Is this a joint venture? Is it the joint --

18 MR. CARLISLE: It's a separate corporation.

19 MS. BERNSTEIN: But is it -- does it receive its
20 funds directly from Legal Service Corporation --

21 MR. CARLISLE: No.

22 MS. BERNSTEIN: -- or do you receive it from each
23 individual L.S.C. grantee and then --

24 MR. CARLISLE: Those that participate, yes. And
25 they also receive funds from the Florida Bar Foundation

1 and also receives funds from the Florida Bar.

2 MS. BERNSTEIN: So it falls under the category, I
3 guess, as L.S.C. Corporation -- or organization, or
4 something.

5 MR. CARLISLE: If you can help me with your
6 terminology, that's great. But I'm not --

7 MS. BERNSTEIN: I think that's where --

8 MR. CARLISLE: I would call it 'all-time funding.'

9 MS. BERNSTEIN: You said that when you talked to
10 Mr. Beauguard about the funding for the Amicus brief
11 that it was determined that no L.S.C. funds would be
12 used.

13 MR. CARLISLE: He requested that. He (INAUDIBLE).

14 MS. BERNSTEIN: Okay. But there were private
15 funds obviously used for it though.

16 MR. CARLISLE: The Ford Foundation, which are
17 granted for that specific purpose.

18 MS. BERNSTEIN: Do you have a combination because
19 you talked about the Winter of 1985 article that talked
20 about the structure of the various organizations. Do
21 you, in the Clearing House, have access to the members
22 of the Board of Directors or the members of the founda-
23 tions or the members of the State committees, or whatever
24 it is. Is this part of the information that Clearing
25 House receives in terms of the membership of these

1 various organizations?

2 MR. CARLISLE: I don't think we got that. We get
3 what kind of organization it is and probably what the
4 basic document is. It says, "Who are the appointing
5 authorities?"

6 But I'm not certain that we have any information,
7 for example, of who is on the Minnesota Services Board.
8 They change, you know. They're all staggered in terms
9 of -- they all have multiple authorities.

10 MS. BERNSTEIN: So if we wanted to get an idea
11 of who is actually involved in the Foundation funds,
12 we wouldn't be able to get that information?

13 MR. CARLISLE: Not from a Clearing House. I'm
14 sure that they would respond to increment. What you can
15 get from us is the name of the organization and their
16 address.

17 MS. BERNSTEIN: Okay. The Florida Bar Association,
18 which is its companion --

19 MR. CARLISLE: I'm -- Our --

20 MS. BERNSTEIN: When you're in the Florida Bar
21 Foundation, could you describe and -- I'm trying to
22 just get this straight in my mind -- what is the
23 process when a grant application comes in? Exactly
24 what happens?

25 MR. CARLISLE: It comes to the Florida Bar Foundation

1 office. And then when the deadline has passed -- or
2 maybe F.L.S. gets a copy, but any way F.L.S. does the
3 first screening -- Florida Legal Services.

4 So, the package, which is like this (INDICATING),
5 you've got one from Okaloosa which might have been
6 submitted. And they have to put in all the materials.
7 They have to put in the background of the grant, what
8 it's for, and to show that they are entering(?) directly,
9 what the services are for. They have to show that they
10 are a corporation or whatever entity they are. They
11 have to give us a copy of the last audit. They have to
12 break it down for what they are going to use these
13 funds for that they are requesting by category. And
14 they have to parallel that by showing the overall
15 budget. So we get one of these packages from each.

16 MS. BERNSTEIN: Okay, Florida Legal Services, then,
17 gets a copy of it.

18 MR. CARLISLE: Yes.

19 MS. BERNSTEIN: And then what happens?

20 MR. CARLISLE: Then the Florida Legal Services'
21 staff reviews the applications for timely filing in
22 compliance with the grant criteria. And then the --

23 MS. BERNSTEIN: What are the grant criteria?

24 MR. CARLISLE: It's written. I generally tell you
25 the same thing that Mr. Dale told you. It's about a

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three- or four-page document. Part of it is mandantory and part of it is directive in the sense that we like them to render directly the services to the Board.

MS. BERNSTEIN: Is there a preference given in terms of compensated or partial compensated pro bono programs?

MR. CARLISLE: Most are here. Mr. Dale just furnished me with the data record.

MS. BERNSTEIN: Is there any preference stated in the criteria for a certain delivery model?

MR. CARLISLE: No. No preference, although I think the only one contracted out was Kent's program, over in Jacksonville.

MS. BERNSTEIN: The only one being contracted out would be the only one that uses the (INAUDIBLE).

MR. CARLISLE: Where they are hiring outside attorneys to render the service, which is not to say that some of the particular grantees don't have part-time attorneys, part-time paralegals and part-time secretaries. But generally they are direct delivery programs. They don't all have staff attorneys because some of them are so small. We have sixty-seven counties in Florida. And some of the counties are quite small although our overall population is large.

1 We have got counties that have less than a hundred
2 lawyers, less than ten thousand people, a lot of them.

3 MS. BERNSTEIN: I'm just looking over this compila-
4 tion. It says the Florida Bar Foundation Interest on
5 Trust Accounts Program Legal Assistance to the Poor
6 Grant Program - 1985-86 Funding Application. And I
7 notice that first on the list the Association for
8 Retarded Citizens of Tallahassee. It's a new applicant.
9 F.L.S. recommended zero. F.L.S. believes that new
10 grant fails to show proficient cooperative effort and
11 relying too heavily on compensated private counsel.
12 That sounds like you're supposed to be with the criteria
13 there (INAUDIBLE: analogy(?) of your guideline(?) and
14 compensated by the --?--)

15 MR. CARLISLE: No, they are also supposed to -- one
16 of the criteria is cooperative efforts with other
17 agencies. At least, don't multiply and whereby increase
18 the administrative clause by having -- which we have a
19 big problem with that. I think we have eight grantees.
20 A big problem. Have the cooperation and be compensated
21 private counsel. I am sorry to say that I was not on
22 the Committee-- I'm sorry I was on the Committee, but
23 I wasn't there.

24 But anyway, you'll see that when it got over to the
25 Florida Bar Foundation, which is the next step, that they

1 recommended that they get ten thousand.

2 MS. BERNSTEIN: But again it says funds are not
3 to be used for contracted service which sounds to me that
4 there is a definite field in part of not only
5 for the Florida Bar Foundation but contract services
6 that are chartered.

7 MR. CARLISLE: I don't think that's fair to say at
8 all.

9 MS. BERNSTEIN: Well, the other thing that I was
10 interested in here is the Florida Justice Institute, which
11 is the Clearing House.

12 MR. CARLISLE: Wait a minute. The Florida Justice
13 Institute has a lot of other functions besides the
14 Clearing House. And they're funded by -- not only is
15 I.O.L.T.A. funded by the Foundation, but that's a
16 Florida function.

17 MS. BERNSTEIN: But that is, you're subjected to
18 direct relationship between the Florida Justice Institute
19 and the Clearing House?

20 MR. CARLISLE: Oh, absolutely.

21 MS. BERNSTEIN: What is that relationship?

22 MR. CARLISLE: Well, the National I.O.L.T.A. Clearing
23 House is one of the functions of the Florida Justice
24 Institute, yes.

25 MS. BERNSTEIN: And the Florida Justice --

1 MR. CARLISLE: And the staff is to, in part, assigned
2 to the Clearing House.

3 MS. BERNSTEIN: Okay. Of the \$80,000.00 of the
4 present grant to the Florida Justice Institute, did any
5 of that go to the Clearing House?

6 MR. CARLISLE: I don't believe so. That grant has
7 some other specific purposes having to do with a class
8 action litigation to grant relief to adult living
9 facilities. They've got a criminal project. I believe
10 it's a juvenile criminal project they're doing, to the
11 best of my recollection for the purpose of the -- but it
12 is not for the Clearing House.

13 MS. BERNSTEIN: When you were President -- I think
14 you were President for some years that you were on the
15 Board of the Florida Legal Services. There was a -- what
16 was called the state support plan, and I think that the
17 date on it is February, 1981. And this is a plan that
18 was given by Jeffery Barker and Bruce Free?--

19 MR. CARLISLE: Yes.

20 MS. BERNSTEIN: -- to the project directors and
21 local coordinators.

22 MR. CARLISLE: That's right.

23 MS. BERNSTEIN: And one of the tasks that was
24 identified in that plan was to -- this plan was to assure
25 the continuation of the legal services program. I will

1 tell you that the G.A.O. has looked at this whole process
2 of expending Federal moneys for what essentially was a
3 nationwide lobby effort, and has frowned upon it. But
4 one of the tasks that was to be performed by the Florida
5 Legal Service is at that time was to collect detailed
6 information about each Senator and Congressman, which
7 will enable us to approach him or her in a sophisticated
8 manner and to assure greater .

9 What kind of information would that be?

10 MR. CARLISLE: Information as to the identity of
11 the staff person and responsibility and , and
12 persons who were close to that particular person who
13 might be able to get access.

14 MS. BERNSTEIN: The third task is to undertake two
15 visits with each member of Congress. And then the fourth
16 task was to assure the delivery of at least twenty
17 letters per week from each office from a client or client
18 group. This would be in addition to letters of support
19 from people besides clients. How would you go about --
20 how would you have proposed in going about assuring that?

21 MR. CARLISLE: Who would go about assuring?

22 MS. BERNSTEIN: I don't know. The task was to
23 assure the delivery of at least twenty letters per week
24 from each office. It sounds to me like, you know, this
25 is the grass-root lobby appropriation of this -- of this

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state support --

MR. CARLISLE: 'To preserve the Legal Services appropriation,' yes, ma'am. End quote.

The point is --

MS. BERNSTEIN: How --

MR. CARLISLE: --that's 1981. F.L.S. has completely restructured now.

MS. BERNSTEIN: Well, I'm just asking because you said you were on the Board at that meeting.

MR. CARLISLE: I sure was.

MS. BERNSTEIN: How would you go about assuring this is a task and publish it and send out to every program in the State. How would you go about assuring these letters to the clients and say to the clients, "We'll be glad to serve you."? But first, it's in the letter.

MR. CARLISLE: Ma'am, I don't know because Board members set the policy. They don't go down to local projects and assure that client groups send out letters or do not send out letters.

MS. BERNSTEIN: Okay, this was a task that was to be performed. How would you say then that it should have been assured?

MR. CARLISLE: It would be the responsibility of, in my opinion, the Executive Director. Either give to do it and make sure it gets done. That's what Executive

1 Directors do. They carry out policy and Board-set policy.

2 MS. BERNSTEIN: So you would say that it would be
3 up to the Executive Director to write letters to the
4 clients or make sure the clients sit down and write --

5 MR. CARLISLE: I'm not even sure if that proposal
6 was adopted or was adopted in that form. (INAUDIBLE)

7 MS. BERNSTEIN: I'll be glad to send you a copy of
8 the state-support claim, but I presume that since you
9 were the Board of Director at that time that you had
10 it. So, the --

11 MR. CARLISLE: I remember it.

12 MS. BERNSTEIN: This was a situation that, in fact,
13 one of the preliminary remarks in this is that unquestion-
14 ably resources are going to have to be taken from clients
15 to assure this. And this is one of the ways the world
16 works right now and we want this implemented.

17 So, I'm presuming that that task that was set out
18 there was something that was expected to be performed
19 by the local programs. And I'm, obviously, dwelling on
20 this, but I'm curious to how you assure twenty letters
21 from clients per week? --

22 MR. CARLISLE: Well, I think --

23 MS. BERNSTEIN: --unless you turn them away or make
24 them a free requisite to serve delivery.

25 MR. CARLISLE: I don't know. But I will tell you

1 my recollection is correct. F.L.S. was so structured at
2 that time that its Board of Directors was controlled and
3 its sole source of funding, if my recollection is correct,
4 was from the local programs. It was not the other way
5 around.

6 And I did not accept the position or presidency of
7 that position until that was changed.

8 MR. VALOIS: Another question. Have you put
9 together a package model or something that you mailed to
10 the other states which are in the embryonic stage of
11 their I.O.L.T.A. program?

12 MR. CARLISLE: Yes.

13 MR. VALOIS: If you don't mind, send me a copy. I'm
14 particularly interested in your ideas about how it is
15 in North Carolina. For instance, we go from fifteen to
16 twenty-five percent. Now, in New Hampshire, they go
17 from thirty-five to fifty-one, and so forth. But what
18 does it take?

19 MR. CARLISLE: Well, Bill Kennedy can probably tell
20 you better than I can, but since I have to have -- I was
21 involved in their process quite a bit, I know one thing
22 that they did was when they got to the point where
23 their level of participation was staggering, they went
24 to a second drive, if you will, to recoup. They were
25 able to obtain their two Senators, their U. S. Senators,

1 as Honorary Co-chairman of this effort. And in New
2 Hampshire, I believe two or three Congressmen were also
3 involved in the process, along with bar leaders who were already
4 involved in the plan. Arthur England went up and made a
5 speech and did the kick-off speech. And, if any of you
6 have heard Arthur's talks, they are very imaginative.
7 The one I recall the best was the imaginary argument on
8 the constitutionality of interest on trust accounts
9 before the United States Supreme Court.

10 He gave that at our first National I.O.L.T.A.
11 conference and he played all the parts, including the
12 part of the Justice of --

13 MR. VALOIS: Let me direct a question. How are
14 you going to get from twenty-one percent to thirty-one
15 percent in Florida?

16 MR. CARLISLE: By a lot of hard work. The most
17 effective method of recruiting people to the Interest
18 on Trust Accounts Program is to have one attorney talk
19 to another attorney particularly to the one who is
20 responsible for the management of the particular firm,
21 if it be a management committee, or managing partner, and
22 so forth.

23 The problem now is attorneys. And the problem is
24 overcoming their objections in three or four basic
25 areas. The first is the (INAUDIBLE: mind set) if you

1 will. It's not proper. I don't want to do it. I
2 philosophically oppose to this.

3 And the reason you got to do this, you got to
4 sit down and explain the constitutional aspects.

5 And second, the most important one, in my opinion,
6 is the favorable consideration that the attorneys and
7 firms receive because the banks regard trust accounts as
8 compensation balance. And there's a whole list of the
9 things that attorneys get starting with no service
10 charges, free checks, free checking for their employees,
11 immediate credit on incoming checks without being held
12 for five or ten business days, whatever the bank might
13 impose, favorable loan treatment such as better terms,
14 less collateral, reduced interest rates, and the like.

15 And that is one of the main arguments that are
16 mandantory, by the way, that eliminate that, although
17 I think that's a perception that is more real than
18 imagined. But it is one that I, frankly, encountered
19 with some attorneys to say, "Hey, we just borrowed
20 \$800,000 from the bank to furnish our new office in
21 this wonderful building."

22 And he's going to take that into consideration that
23 he's going to have to pay five-and-a-half percent or
24 five-and-a-quarter, whatever, on that account.

25 And the third objection is the philosophical opposition

1 to some of the things that the money is used for. Now,
2 I think those -- and the fourth one is just, you know,
3 apathy and inability to change. We've always done it
4 this way. Why should we do it some other way.

5 MS. SWAFFORD: I was just picking up on what you
6 said that you encountered opposition because of
7 philosophical use. What are some of the uses?

8 MR. CARLISLE: On the biggest splash we had in
9 Florida was called the Florida Clearing House for
10 Criminal Justice, not to be confused with the National
11 I.O.L.T.A. Clearing House. But this organization, one
12 of its functions was to obtain counsel for the death-row
13 sentence inmates for -- after they had exhausted all
14 their appeals and when they became under a death warrant.

15 As you may or may not know, we have over two hundred
16 prisoners on death row in Florida today. And our
17 Governor, Mr. Graham, has made it a practice during his
18 term of office to sign approximately two death warrants
19 a month. And so every time one of these happens, then
20 you have the urgent appeal on behalf of that person.
21 And the Interest on Trust Accounts Program gave them,
22 I think, the first grant was \$7,500 to assist them in
23 recruiting pro bono counsel to assist these people.

24 And I'm very proud to say that the Florida Bar
25 recognized that it was the Bar's obligation to provide

1 counsel for these people, no matter how heinous their
2 crime, to exhaust all remedies to make certain that when
3 the ultimate penalty was imposed that it was not a
4 mistake.

5 MS. SWAFFORD: When every remedy has been exhausted.

6 MR. CARLISLE: That's correct. And what has evolved
7 from this, with the support of our funds initially, is
8 that the Bar took this up as a project and even one
9 award for now. We have gotten state funding. We have
10 in the Attorney General's Office. And I can't think of
11 the name of it. Help me, Pat, what is the name of it?

12 MR. EMMANUEL: It's the Office of the Capital
13 Collateral Representatives.

14 MR. CARLISLE: And it's funded by the State, and
15 there is a Director, and they now do this. But it
16 started with -- and that had to be the biggest, the most
17 criticized grant that the Foundation has ever made with
18 I.O.L.T.A. funds, principally because of the other
19 activities of that particular organization because
20 I think it was opposed to Capital Punishment and they
21 were politically active in imposed guidelines.

22 That wasn't what we gave the money for, and that
23 wasn't what they used the money for. But that was our
24 biggest splash.

25 Some of the folks with the Florida Bar Bureau don't

1 think that we ought to give grants to the Florida Rural
2 Legal Services because they help poor people who work
3 for farmers. And their attorneys say, you know, "I don't
4 want to offend that client because it's your client and,
5 therefore, I don't want to be in your program."

6 MR. WENTZEL: Couldn't before the Legislature,
7 the new setup here, couldn't they put restrictions on
8 the funds? Couldn't they alter the percentages of
9 how the funds are used and that sort of thing?

10 MR. CARLISLE: Interest on trust accounts?

11 MR. WENTZEL: Yes.

12 MR. CARLISLE: They certainly, in my opinion, could
13 not do that because this is a Court rule program and
14 these funds are controlled by the Florida Supreme Court.

15 They have merely designated the Florida Bar
16 Foundation to do this job. The Court has required the
17 Florida Bar Foundation, for example, to restructure its
18 Board of Directors and include two -- the Chief Justice
19 and two judicial appointees in that 24-member group.
20 And if the Court entered an Order tomorrow, they could,
21 I assume, abolish the program if that would be
22 or they could say that some other organization or the
23 Florida Bar as it is in California. Or they could
24 establish their own Board or Commission, whatever.
25 But I believe because of separation of powers at the

1 State level that the Legislature could not do that.

2 Now, that is not to say that the State banking
3 authorities or the Federal banking authorities either
4 by legislation or renovation might not place restrictions.

5 MR. WENTZEL: Through that route, though, the
6 Legislature could have used(?) that.

7 MR. CARLISLE: I think that would have an impact,
8 but I don't think they could restrict the use of the
9 fund. Of course, the Florida Bar Foundation is a
10 Florida not-for-profit corporation, as is Florida Legal
11 Services and all the L.S.C. grantees, and all the
12 locally Legal Aid Societies that are operated by the
13 bar associations, and all of our grantees basically
14 are Florida (INAUDIBLE: not-for-profit? ____).

15 MR. WENTZEL: Thank you.

16 MR. CARLISLE: So I assume the Legislature could
17 regulate those corporations by general law in such a
18 way that (INAUDIBLE) restricted. I (don't?) think they
19 have that power.

20 MR. VALOIS: In the ensuing weeks, you'll be hearing
21 from Mr. Rathbun, and I would appreciate if you will
22 start assisting him and start collecting a data from
23 all the I.O.L.T.A. and I.O.T.A. Programs to give us a
24 comparison to see what we can do to multiply it further.
25 And I'm very interested in that subject. Mr. Rathbun will

1 be in contact with you. I thank you for coming and
2 appreciate your participation and assistance. Good luck.

3 MR. CARLISLE: Thank you very much. And I hope that
4 North Carolina will find a way to increase their
5 participation, at least fifty percent.

6 MS. BERNSTEIN: I have one additional question.
7 When the Clearing House first received the grant from
8 the Corporation, I presume you're aware of the grant
9 assurances that were a part of that grant process. And
10 one of them was, it will comply with the Legal Services
11 Corporation Act as amended in rules, regulations,
12 quality, guidelines, instructions, and other directives
13 issued thereunder.

14 One of those, and then an additional assurance, is
15 that it will restrict the use of Corporation funds to
16 activities permitted by organizations who exempt from
17 taxation under Section 501 through 3.

18 If an organization is receiving money from the
19 Florida Bar Foundation -- and I realize that you're --
20 because you're -- the Clearing House is kind of one
21 removed from the actual grant to the programs
22 except that you're wearing two hats, so you had a
23 relationship with the Florida Bar Foundation as well.
24 But is there anything in terms of the education that
25 the Clearing House has done to encourage programs or

1 or encourage foundations that are setting this up to
2 draft assurances or regulations regarding the grantees
3 that would ultimately get funds to use that would make
4 sure that they were, in fact, in compliance with 501(c)(3)?

5 MR. CARLISLE: That's kind of a complicated question.
6 I think that the answer is that the Clearing House
7 provides models. The package that we send out that we're
8 going to send you contains the language of the of a rule
9 that's going to be adopted by the Court. It contains
10 the letter that you write a copy -- the letter that
11 you write to the Internal Revenue Service requesting
12 their private letter ruling in supporting the memorandum
13 letter law. It contains the letter that you write to
14 the Federal Reserve Board, Federal Bank Board for the
15 approvals. It contains model letters to banks and other
16 financial institutions, outlining the program and telling
17 you how it works.

18 It contains model letters to lawyers and law firms
19 to get the program started. Model programs before the
20 State local bar associations and other groups, and that
21 sort of thing.

22 And I think the answer is, the Clearing House is
23 not in the business of telling a State agency, which
24 is what we're dealing with here, that they have to do
25 anything. We're suggesting to them that this is the way

1 it's been done and ended up successfully in another
2 jurisdiction. And these same problems have been
3 encountered elsewhere. And here's how another group in
4 another jurisdiction has solved the problem. And you
5 know, I -- it's not any of the Clearing House business.
6 We're dealing with responsible state agencies, with
7 lawyers, with Courts, bar foundations, with state legal
8 aid boards. And no wonder -- I'll never forget the
9 first time. And I was told by one of our Justices at
10 the first meeting in which they were on the Board.

11 We want you to spend this money for legal services
12 to the poor and administration of justice and law
13 students. Don't you try to build a bureaucracy. Don't
14 you build any buildings. Don't you hire yourself a
15 big staff. You collect this money and you grant it
16 responsibly, but get it out to render legal services
17 to the poor.

18 MS. BERNSTEIN: Is there a state-auditing agency
19 in the State of Florida?

20 MR. CARLISLE: Yes, we have a State Auditor, Mr.
21 Elliston, who is about to retire. He's in the Executive
22 Office.

23 MS. BERNSTEIN: What you're saying, as you
24 characterized it, the funds that are collected through
25 I.O.L.T.A. are state funds?

1 MR. CARLISLE: I'm not only characterizing them.
2 I'm telling you that's one of our arguments in this
3 lawsuit. And one of the arguments in the lawsuit is
4 that we're exempt on the 11th Amendment in the state
5 agencies. The Florida Bar has been held by the then
6 Fifth Circuit to be a state agency by means of by-laws
7 in deciding the case.

8 It's a public agency and, therefore, they're public
9 funds. And they're under the control of the Supreme
10 Court.

11 MS. BERNSTEIN: Is Florida an integrated bar?

12 MR. CARLISLE: Yes, ma'am.

13 MS. BERNSTEIN: That would have some pertinence to
14 that argument. If it's not an integrated bar (INAUDIBLE)
15 then it's not -- then the argument would not necessarily
16 be --

17 MR. CARLISLE: Yes, but you still have Court rule,
18 and the Court is a state agency. And where they created
19 these boards, like in Minnesota, I'm sure those are
20 state agencies. And where they're designated a foundation
21 -- oh, that's an integrated bar. Illinois is not
22 integrated, is it?

23 They have a separate 501(c)(3) foundation or what-
24 ever it might be called. Maryland is voluntary legisla-
25 tive and they have a separate agency.

1 Either way you use the foundation, I think by the
2 fact that the Court, as does in Florida, controls that
3 agency. And the Court also -- the Court has to approve
4 any amendment to our Charter. We can't change the
5 Charter by-laws without -- We can't change the Charter
6 without the Court and the Bar and the Foundation.

7 MS. BERNSTEIN: Thank you.

8 LADY: Your program in North Carolina is administered
9 by the State bar?

10 MR. VALOIS: Yes.

11 MR. CARLISLE: Some states, California and North
12 Carolina, are the two ... by the state bar.

13 MR. VALOIS: Thank you very much. Appreciate that.
14 Let's take about an eight- or nine-minute break now.

15 (Whereupon, a break was had at this time.)

16 MR. RATHBUN: Mr. Townsend and Mr. Sanders. These
17 gentlemen are representatives of the Okaloosa
18 Bar Association. We ask that you address the Committee.

19 MR. TOWNSEND: Mr. Chairman and members of the
20 Committee, I am Ron Townsend, and I'm President of the
21 Okaloosa Law and Bar Association for the 1985-86 year.

22 We have with us today a Mr. Sanders, who is a member
23 of our local bar association and even pastor of our
24 Okaloosa Legal Aid which is a non-profit corporation,
25 and Mr. James Moore, who is a practitioner member of our

1 local bar association for a number of years and is able
2 to speak and answer questions as well.

3 I want to thank the Legal Services Corporation and
4 this Committee for allowing us the opportunity to come
5 and
6 before you this morning/ Mr. Rathbun, in his letter of
7 invitation.

8 It is my understanding that we were asked to come
9 before you to address a question raised in Mr. McCullum's
10 letter having to do with how we can decrease the cost
11 of taxpayers, increase local participation, and increase
12 the legal services to the needy.

13 We have a proposal that some of you might have seen
14 that Mr. Sanders will be addressing shortly. For a lack
15 of a better term, a joint venture type effort in our
16 local program.

17 We have in Okaloosa County - Okaloosa County Legal
18 Aid, which is a program composed of about eighty percent
19 of our bar members. We have roughly 120 to 130 bar
20 members. I don't know the exact count. Now we just
21 had about five people to get the bar results back last
22 week.

23 MR. VALOIS: When you say you have a program, are
24 you talking about an existing program?

25 MR. TOWNSEND: Yes, sir.

MR. VALOIS: In other words, eighty percent of the

1 lawyers --

2 MR. TOWNSEND: Don't hold me to eighty percent.
3 But it's somewhere in that ballpark.

4 MR. VALOIS: Tell me about the existing program.

5 MR. TOWNSEND: The existing program that we have
6 is a completely voluntary program. We do not have
7 mandatory participation. The program began under --
8 the Legal Aid Committee established, I believe, in 1965.
9 Now, this was before my time in Okaloosa County, so I
10 can't really address a lot of the history. And the
11 Okaloosa County Legal Aid, Inc. was formed before I
12 came to Okaloosa County.

13 The program -- we have a panel of volunteer attorneys.
14 We have at the present time a full-time paralegal who
15 administers the program, does the intake and screening
16 and contacts the voluntary members of the panel of
17 attorneys for their rotation day.

18 In the past, of course, I was going to address is --
19 was the problem we have with the funding. And in the
20 past, we have gotten to the point where we had no
21 money. We have had excellent participation by local
22 people. For example, about three years ago, I believe
23 it was three or four years ago, we faced a crisis of
24 whether we were going to have anybody to man the office
25 for us. The local Junior Service League adopted as one

1 of their voluntary community service projects to staff
2 the office for us until we could get funded.

3 Another form we had several attorneys to reach
4 into their little pockets and pull out -- to dance to
5 the tune of about \$1,000 to assist in carrying the
6 program through until we could get other funding available.

7 The program that Mr. Sanders is going to address
8 specifically -- and he is the immediate Vice-President
9 and has been dealing with this matter for quite some time,
10 program perimeters and that sort of thing.

11 The program is in existence, and we do still have
12 a paralegal, and have some questions coming up about
13 whether or not we will be funded or not.

14 MR. VALOIS: By whom?

15 MR. TOWNSEND: I.O.L.T.A. We have been receiving
16 I.O.L.T.A. funds for, I believe, two years. Is that
17 correct? Three years. And we have requested funding
18 again for this year. And again, the second time, they
19 questioned the staff attorney position. I believe it's --
20 it's my understanding that the screen committee has
21 denied that request. I believe Mr. Sanders will address
22 that to you.

23 The proposal itself that I think falls before the
24 Committee today was the result of a specific situation,
25 and our efforts to try to resolve that situation in an

1 effort that would respond in the best possible manner
2 to increase the participation to provide more of the
3 services and to reduce the cost of the taxpayer.

4 The proposal was a talking proposal. It was not
5 a firm proposal. I've had a chance to review, and I'm
6 sure that you've seen some things in there that are
7 in need of change. But it was a proposal that we
8 thought we could take to Legal Services of North Florida
9 with regard to a discussion of possible joint venture.

10 The County has a program and in the past assisted
11 us tremendously by providing office space for our
12 paralegal. By administering the funds for us by taking
13 our own funds according to , I believe the
14 general revenue in the county and then paying the
15 expenses out of that particular designated account.

16 So we received a tremendous assistance from the
17 County in that regard. And, as I understand, the County
18 will continue under this joint effort if we were to
19 adopt it.

20 MR. VALOIS: I've read your proposal, and I read
21 what appears to be a summary submitted. Basically,
22 you're talking about -- How many people in the County?

23 MR. MOORE: Population of the County?

24 MR. VALOIS: Yes.

25 MR. MOORE: 136,000.

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1 MR. VALOIS: And do you know what the population
2 of eligible clients would be, more or less?

3 MR. MOORE: Anywhere from ten to twenty percent.
4 For the record, my name is James E. Moore.

5 MR. VALOIS: That's somewhere between 13,600 and
6 27,200. You're talking about office space, a paralegal,
7 and folks -- What's your history on the budget need
8 and --

9 MR. MOORE: If I could before that time, Mr. Sanders,
10 I'll go ahead and --

11 MR. VALOIS: How are you, Mr. Sanders?

12 MR. SANDERS: Fine. We, again, express our appreci-
13 ation. Historically, for the past two years, I budgeted
14 for an order of \$18,000.00. Along the order of
15 \$18,000.00. The last time we requested approximately
16 \$15,000.00 for staff attorney for the purpose of
17 expanding the program. That was the second request.

18 MR. VALOIS: This is in addition to the fifteen.

19 MR. SANDERS: Yes, sir. That was the second
20 request which was addressed to the Florida Legal
21 Services as the screening agent.

22 And to respond to one of Mrs. Bernstein's previous
23 questions, it was rejected for the second time. We
24 are intimately familiar with the local level with the
25 funding process and are in a position to address some of

1 the conflicting interest concerns that have been
2 expressed here because we've been through it.

3 This, again, is what you're talking about when
4 you're talking about the local participation and the
5 local experience which, in my incidents, expand from
6 1964 to date when I was part of the Task Force in
7 Orange County which implemented and
8 the program of local bar participation. And you've heard
9 here described as a national model, which it is.

10 And we hope to come before this Board and give you
11 not only our experience in Okaloosa County but hopefully
12 some answers to the question of how can we fulfill the
13 need to expand the participation of local attorneys
14 and their impact on the problems and concerns and
15 difficulties. Because truly, the gratest promise and
16 greatest of fulfilling the requirement of Legal Aid
17 with additional concept with most private attorneys
18 through legal argument.

19 Now, back in 1969, Senator Everett Dirkson, on
20 an occasion when we first started out with the program,
21 he commented: Let the humble lawyer -- let the little
22 man . He has the interest and outcome. He has
23 the talent. He has the treasurer. There are so many
24 of them. Let him do it. So the job will be done.

25 We're asking you to give us the tools to do the job.

1 And the comments were about a very specific problem which
 2 we have and political activity problem that
 3 you previously expressed that Mr. Carlisle addressed,
 4 and I believe is pending before you, Mr. President,
 5 in the agreement of information of request.

6 MR. VALOIS: Excuse me. Mr. Sanders, I am very
 7 interested in what you can tell us about how to expand
 8 legal services. Whatever private fuss you've got with
 9 the Florida Bar, I'm not going to get involved in. And
 10 this Committee doesn't have any jurisdiction to do so
 11 in the first place.

12 Have you ever applied for a grant from us, the
 13 Legal Services Corporation?

14 MR. SANDERS: Your Honor, three times. Three times
 15 we have applied. And, indeed, on occasions and
 16 Mr. Carlisle's comment. There is a grant presently before
 17 I.O.L.T.A. that has not only been submitted for the
 18 lesser amounts of the 18,000 plus the

19 It's been approved. Now, we are one,
 20 if the money is ever delivered which is subject to some
 21 problems, of course, depended upon the last action.

22 We are potentially one of your .

23 MR. VALOIS: Ms. Bernstein says that you haven't
 24 applied to Legal Services Corporation.

25 MR. SANDERS: Not to Legal Services. I'm sorry -- to

1 I.O.L.T.A.

2 MR. VALOIS: Have you every applied to Legal
3 Services Corporation for a grant?

4 MR. SANDERS: No, we have not. We are hopeful,
5 perhaps after a consideration approach on
6 an implement on system could be
7 considered. I have no argument with Florida Bar.
8 Pat Emmanuel is very . And so with respect
9 to all of us, our concern is to answer your questions,
10 sir. How do you know the twenty-one percent which,
11 incidentally, look at the breakdown. You will find
12 county-by-county for the Florida Bar Foundation. You'll
13 find twenty-one percent of it is Nineth
14 Judicial Circuit of Orange County.

15 The reason for that is because back in 1964, we
16 put together a program which reached out and did what
17 their -- which challenged us to do. And when I stood
18 up and implemented the mandantory requirement, because
19 I was the buy that took the bull by the horns, and
20 whatever, they in December of 1979 and got doing
21 it has marshalled the efforts, the talents, the treasury
22 of humble lawyers who doesn't have contact to get the
23 job done.

24 The answer is: How do you get participation if you
25 don't do it with compulsory. You don't do it with .

1 You do it by having a just cause and listen and then
2 through our endless profession, basically you and I,
3 because we have interest in justice in that cause.

4 MR. VALOIS: So that's --

5 MR. SANDERS: Let me --

6 MR. VALOIS: Look at --

7 MR. SANDERS: --give you the breakdown. You'll find
8 that, for instance, you've counties where you have
9 nine percent participation and eight percent partici-
10 pation. If you look at the areas of bar participation
11 and compare that to the activitiy of the local lawyers,
12 you'll find that there is a correlation and, therefore,
13 any program that addresses the question of why the staff
14 or the staffs of L.S.C. as regard to the lawyers as
15 the problem, instead of a program that after twenty
16 years and billions of dollars we're still having a
17 statement that there is has in the constructive
18 sense. And these are constructive and are
19 intended to be so. Causes us to pose the question:
20 How do we at long last up to twenty years marshal that
21 lawyer participation and lawyer support. That's what
22 we'd like to address.

23 MR. VALOIS: Okay, please do.

24 MR. SANDERS: Basically, sir, the problem really
25 as we perceive it at this time is there is a basic

1 difference in philosophy. And as long as that basic
2 difference exists, there will be great difficult in
3 securing that active and the participation, not
4 only lawyers, but the public as a whole.

5 In 1964, when this program was first started out
6 in the Offices of the Economic Opportunity, Earl Stanley
7 Guard was Director at that time made the statement.

8 The law reform is the (lands--) of the alleged.
9 As active practitioner, of course, we know that the
10 genus of our system is individuals, case by case, dealing
11 with individual problems that people of immediate
12 individual needs, and it's not really fair to say to
13 those people, "Wait. Let us divert resources to other
14 activities so that more may be left later."

15 And we regret that they're urgent need and justified
16 expectation.

17 As long as there is an underlying staff program
18 by us, and a view toward utilizing the system for these
19 so-called reform activities instead of focusing on a
20 , you will have great difficult not only
21 here but everywhere. support and
22 humble lawyers, but the voter who perceives this as
23 a direct assignment and not democracy. Any time you
24 will endeavor to lobby Congress, even on matters within
25 the very limited practice of political activity that is

1 not prohibited by the Act, we have a problem. When you
2 step beyond it and use funds for a controversial
3 subject like the death penalty, for instance, or for
4 controversial subjects like allowing the Florida
5 Legislature to take away the local moneys from our
6 we apparently, one of the plans of detentions, a program
7 currently contemplated through L.S.C. now through Florida
8 Legal Services. Then, again, you're all the loyal
9 opposition or the greatest untapped resources, if you will.
10 Scratches our head. Because I work in the Orange
11 County delegation in order to help develop that local
12 funding service for local needs.

13 We manage to convince our County Commissioners and
14 our Legislative delegation to have once
15 it was filed. You have the ability to utilize the
16 County Commissioners and to add money to your
17 local filing fee and to utilize it through County office
18 for the purpose of funding. We fought and we
19 struggled for that and we got it through the Legislature
20 of the State of Florida. And we've been using it
21 in Orange County and other counties have been using it.

22 And now we find a program, at least according to
23 the L.S.N.F. application which indicates that in
24 developing that funding source, lobbying the Legislature
25 to divert it to grantees is L.S.C. grantees is

1 contemplating.

2 The difficulty is that the staff, because they have
3 a disposition to law reform, and to a different approach
4 to Legal Aid, still conceive, even after all these years,
5 the local lawyers to be problems to part of the solution.

6 And I suggest, most respectfully, these ,
7 in of the mandate 1977 so long now unresolved
8 under public law 95-222, contemplating the establishment
9 and expiration by the grants still.

10 What we desperately need in this State, what the
11 Bar needs, is direction from this Board that you, alone,
12 have got the power to really make it stay, will get the
13 two parties together and set them down and say, "This
14 is a reasonable proposal. Let's get on with the show.
15 Let's go out and do something that will do what Congress-
16 man suggested and what Senator Dirkson
17 conceived and what we all conceive as the true purpose
18 of this program back when we started, which was to help
19 individuals.

20 We've done our best to put together a program.
21 It has a lot of merits that I -- Specifically, I would
22 like to, if you don't mind, perhaps we can address those.
23 We're trying to get that proposal. It is a proposal.
24 And I must tell you that L.S.N.F., the real -- I believe
25 the real problem is the problem of control.

1 MR. VALOIS: If we're talking about the same document,
2 which is called An Initial Draft of O.C.L.A. Proposal
3 to L.S.N.F., not approved by the Board. Is that what
4 we're talking about?

5 MR. SANDERS: That is what we're talking about.

6 MR. VALOIS: I have read it and the -- your
7 philosophical differences are obviously in the document.
8 So I don't know where we're going, I guess, is what I'm
9 saying. I can understand the rest of your proposal.
10 I understand the whole thing. But, for instance, you
11 would exclude suits against the County, as I understand
12 it.

13 MR. SANDERS: Why now, sir? They are basically
14 1983 actions. Now attorneys fees are and, therefore,
15 a fee producing case. And your L.S.C. grantees are
16 prohibited by a Federal Law . In addition,
17 there is an additional component. First, they are
18 covered by adequate provisions made elsewhere. And the
19 whole purpose of what we're trying to do is find favorable
20 in a cost-efficient manner. Therefore, why not
21 exclude those things whether they're --

22 MR. VALOIS: Do you have a County Housing Authority
23 or anything like that?

24 MR. MOORE: We have several housing authorities
25 generally run by the cities. There is a nice little

1 housing authority, Crestview Housing Authority, Fort
2 Walton County.

3 MR. VALOIS: To quote another famous philosopher,
4 Beaugo: "We have met the enemy, and it is us."

5 I know, in talking to Program Directors across the
6 country, that a very substantial amount of their
7 resource is spent in dealing with County Housing Author-
8 ities, and City Housing Authorities, and so forth, over
9 a tenant dispute.

10 How would that be handled in your county if this
11 proposal would be approved?

12 MR. SANDERS: I'm not aware that we have a County
13 Housing Authority. Hopefully --

14 MR. VALOIS: You wouldn't have a problem about
15 suing the City?

16 MR. SANDERS: Assuming that it was not a fee-producing
17 pay source. The real difficulty which you have is if
18 it arises to the point that we're looking at collection
19 actions or civil rights actions producing, of course,
20 and it's already .

21 MR. VALOIS: I'm not sure that every action against
22 the City Housing Authority -- and Jim is more of an
23 expert in that field than I am -- arises to the level
24 of a 1983 action with the fees collectible under the
25 1985, I guess it is.

1 MR. SANDERS: I quite agree, sir. Hopefully once
2 again, those that do not rise at that level, will not
3 be in a (quote) "We're the enemy." (unquote) concept.

4 One of the real difficulties which we have and in
5 marshaling the local resources to solve legal problems
6 is the adversarial mind---(?) and the comments in view
7 that we are still engaged in the war on poverty with
8 an adversarial approach.

9 MR. VALOIS: I agree with that philosophy entirely.

10 MR. SANDERS: I can think of no one better than
11 someone like the and county administrator who has --
12 he's not directly involved with these authorities.
13 Nonetheless, there's tremendous prestige and power and
14 a lot of practical impact to sit down and sit two folks
15 with a scuffling act and solve something short of
16 litigation. I think that's part of what we're looking
17 for. And I mean that is what we need more of.

18 And I don't see that is a purpose. But we have
19 done our best to work something out that has .

20 MR. VALOIS: The problem with that, which has been
21 suggested is that we were to fund the sister funds to
22 get two folks in the same state and straighten this
23 stuff out. We worry about whether or not that constitutes
24 lobby and that sort of thing dealing with members of
25 City Council.

1 MR. SANDERS: Not members of the City Council.
2 Members of the Housing Authority.
3 dispute their program and also funded , incidentally,
4 from that component which would be available and which
5 we would submit to this Board as a promising method of
6 exploring as alternative.

7 MS. BERNSTEIN: Do you know whether that legal filing
8 fee derives any of its funds from the H.U.D. ?

9 MR. SANDERS: No.

10 MS. BERNSTEIN: Are you aware of any moneys that
11 are available to the State of Florida to the lay programs?

12 MR. SANDERS: No, ma'am. Our program has not .

13 MS. BERNSTEIN: As I understand, I'm getting into
14 this area, I'll be frank in my newness to it but as I
15 understand it, with the

16 programs in terms of providing grants to
17 entities to provide services regarding housing problems.
18 I was just going to suggest from your interest in
19 getting into this area that would be another area to
20 apply to. This proposal that you have suggested here,
21 that was made to North Florida?

22 MR. SANDERS: (INAUDIBLE)

23 MS. BERNSTEIN: And that would be for the utilization
24 of twelve-and-a-half percent private attorney involvement
25 funds?

1 MR. SANDERS: If that were to be utilized in that
2 function or through pilot program, however, under the
3 provision you have the pilot program, I think -- I didn't
4 bring that section of the Act with me -- but I'm not
5 sure.

6 MS. BERNSTEIN: Well, I didn't know whether or not
7 under the Legal Services regulations, each of our
8 individual grantees is required to spend twelve-and-a-half
9 percent involved in the program.

10 I'm presuming that this would qualify under it
11 even if there were a situation in which you would be
12 taking only some cases and not other cases. As I
13 understand it varies purposes across the country we have
14 for the private attorney. We have got a program that
15 contract with an attorney through the Indian
16 Law. And they wouldn't be taking other types of cases
17 so there is no requirement that everyone that has a
18 contract would take the full of the cases that
19 the progress would be.

20 Are you aware of whether or not in terms of when
21 you got the -- as I understand, you got grants from
22 I.O.L.T.A.

23 MR. SANDERS: Correct.

24 MS. BERNSTEIN: When were you given the grants?
25 I'm going to get a copy of the assurances that were

1 passed up here. But was there any occasion given to
2 you at that time that you should or should not use
3 certain types of cases? Or are there restrictions on
4 the elibility of client or -- Were you told anything
5 about the monitor process?

6 I'm trying to look at it from the grantee's
7 perspective to see what kind of strings are attached to
8 the money.

9 MR. SANDERS: To answer your question, of course,
10 I specifically look to some interest because of the
11 public funds comment that was made. Because this is one
12 of the other difficulties that members of private bar
13 have in this problem. They also support our constitution.
14 And even if the resolved, there would be a
15 great problem with the Florida Constitution because of
16 public financial.

17 And so, specifically, you're addressing the question
18 of whether the limitation of Title 42, Section 2996(f),
19 which limits utilization of claims where incorporated.
20 And the answer to that question is, and that is one of
21 the reasons why incorporated in that
22 proposal because I believe until such time as moneys
23 which are public funds no longer necessity
24 where it is the Legislature and not
25 the Supreme Court which makes provisions for public

1 moneys to be expended with all the accounted for.

2 Under our separation of power provisions of our
3 which prohibit absolutely one branch from every
4 utilizing one power to appropriate another unlike another

5 . That there will be great problems not only
6 at the attorneys looking at that approach which gives
7 us complete liberty to avoid that limitation and be
8 correctly . But also a feeling of very
9 unease. I rather suspect by the public general who
10 have some difficulty. And I'll confess, I don't
11 in answering the question. How can the Supreme Court
12 which can deal with ethical problems and say it is
13 ethical to put your money in a program like this.

14 make aware of when funds will
15 become the property of fiduciary offense, and what
16 point, and where they will go in Florida
17 These moneys should be given instead for private
18 organizations and disbursed by them, but nonetheless
19 we're going to say that the purpose of dealing with this
20 section of public for the purpose of for
21 the public.

22 I think the taxpayers and the Legislature do have
23 a right to .

24 MR. VALOIS: That's not terribly unlike this
25 problem. We're spending public money although we're in

1 private corporation. And all of us are employed
2 privately. So that's not unlike this particular
3 organization.

4 MR. SANDERS: But the Congress of the United States
5 has made the and has made certain limitations
6 upon the expenditures that . In the interest
7 of the taxpayer and in the interest of
8 Federal, and in the interest of the profession, of the
9 rights of individuals to have free access to the
10 political without being used to that.
11 And a variety of other things. And also in the interest
12 of the -- make sure as Mr. Justice MacDonald did,
13 indicate this money goes, not the lobbying of the
14 Legislature, but to help the individual.

15 The Congressman spoke to that the
16 Legislature, as I pointed out, in your to try
17 to the bars of a . The Legislature in
18 Florida and bankers and I.O.L.T.A., the bankers .
19 And one of the reasons why you have such a small parti-
20 cipation by bankers is they've got, many of them, in a
21 on the Supreme Court that does not
22 attorney to do this but the Statute of
23 the State of Florida says it is lawful to do that with
24 the money. It is public money that should go into
25 the school trust fund for the State of Florida Foundation.

1 MR. VALOIS: Let me ask you some questions about
2 your proposal.

3 Have either you or Florida Legal Services made
4 any kind of study of -- aid study in Okaloosa County?

5 MR. SANDERS: To respond to your question, which
6 you will recognize attorneys .

7 MR. VALOIS: Any way you want to.

8 MR. SANDERS: First of all, sir, of course, it is
9 difficult for me to speak for what L.S.N.F. has done.
10 However, on information and belief, L.S.N.F. received
11 a Director at some period of time to go in or
12 or four or five counties in Florida. That directive
13 emanated from . It was not
14 supported notwithstanding the requirements of the
15 Federal law and Federal regulation by any means with
16 a source of backward planning, and that one failed.
17 Appropriations then began to be made to open a program
18 through I.O.L.T.A. in competition with the I.O.L.T.A.
19 Program.

20 MR. VALOIS: Have you made any studies?

21 MR. SANDER: I participated in the assessments.
22 I indeed -- it was requested by L.S.N.F. a year ago
23 on an urgent basis and --

24 MR. VALOIS: Tell me what you did, and what you
25 found out.

1 MR. SANDERS: Basically -- I'm sorry. I keep doing
2 that, Mr. Chairman. Basically, the procedure, if the
3 question is addressed -- first, the procedure and then
4 the . The procedure that we followed -- I've just
5 been elected -- and the first question I asked our
6 paralegal was, "Where are we?"

7 She pulled out all of and statistical
8 information accumulated and in the several years we've
9 been operating under the I.O.L.T.A. Program. I went
10 over and analyzed it, utilized it, familiar as I've
11 had over the years. I then sat down. I worked with her.
12 And I then went to Mr. , who was the County
13 Administrator. Our county is a county program. Faye
14 Hodges is a college-trained paralegal. She is a county
15 employee. Much of the referrals which she received
16 through H.R.S. and a variety of other instrumentalities
17 of local government. Mr. Sadler is very knowledgeable.
18 We struggled with it. We finally came up with a detailed
19 proposal which was then incorporated in our budget and
20 applications to I.O.L.T.A.

21 That is the procedure which was followed after,
22 of course, my consultation with Mr. Joe which
23 was at the time President of the Bar Association and in
24 in conjunction with the Corporation
25 Board of Directors and the Bar Corporation.

1 Our findings were very interesting. Basically,
 2 they were dictated by geography as well as by grants.
 3 And our granting a loan. a whole
 4 bunch of money because there is a large bay that runs
 5 East and West through the county and adjacent
 6 And Highway 85 runs North on one end. Highway 331
 7 crosses the tailend of the bay there and runs up on
 8 the other part.

9 Geographically, we're pretty well off. In addition,
 10 socially and economically. The southern end of both
 11 counties are referred to as the Strip on
 12 He can speak a lot better
 13 than I can because I've been but the bar
 14 population of personnel who are not on duty with the
 15 armed forces is pretty large facility in the area
 16 are usually many of them in the northern portion.

17 We have looked at the distributions of the attorneys,
 18 not unexpectedly. There are a heck of a lot more terms
 19 in the southern part of Okaloosa County and in the
 20 southern part where the business activity and the
 21 construction and the population density is in the North.

22 One of the problems we will experience was that
 23 we were actually having to take members of our voluntary
 24 panel to serve the Crestview area which is a small
 25 community at the end of , the northern part

1 of the county in Fort Walton, and actually dispatched
2 them or sent them.

3 Our requirement and needs in the Crestview area
4 in the northern part of the county, because some fairness
5 to our volunteers in Crestview, there were so many
6 lawyers and yet demographically there was a disproportion
7 in that area.

8 This is one of the reasons why we were urgently
9 attempting to get a staff attorney. But the problem
10 was, we discovered an inherent obligation. I say that
11 in person because I went through the process, although
12 we up through the I.O.L.T.A. grant committee. An
13 inherent prejudice against local bar associations,
14 totally inconsistent with the urgent need to enlist
15 their voluntary support division. can not
16 control the treasury and --

17 MR. VALOIS: Just specifically, a couple of
18 questions. How many cases do you handle in about a
19 twelve-month period if you want to pick a ?
20 When I was talking about needs, I mean what kind of
21 cases, if you can break those down, approximately how
22 many cases do you handle?

23 MR. SANDERS: Regrettably, I don't have total figures.
24 I brought just about everything else. Let me give you
25 basically -- let's look at the categories, if you will.

1 MR. VALOIS: Fine.

2 MR. SANDERS: All right. And looking at of
3 categories. I think that the first and by far the
4 largest that you have is distinguished from cases is the
5 problem of where do I go to local agencies for assistance
6 that is already available?

7 And if you will take the bulk of that, and this
8 is off the top of my head, I would say thirty to forty
9 percent of the applicants that deal with a legal aid
10 program as people come to a lawyer to solve the problem
11 and yet the social agencies already are placing people
12 how to do it.

13 And training a paralegal is a direct cooperation
14 with those agencies. Then going from there, we had a
15 deal of consumer problems. The reason for that, again,
16 is because we have large -- we have Egland Airforce Base.
17 We have . You would be surprised the number of
18 law income servicemen or their families or separated
19 wives who will have problems with the used, with a
20 lemon, with, you know, your variety their, which the
21 end. It's not separation or .

22 Right after that, the landlord-tenant has probably
23 the next highest category, and for some reason have a
24 tremendous housing market. Well, basically, what I should
25 say is a problem with the housing market. A local condition

1 if you will, a lot of trailers, some of them left behind
2 that people sell them and bought up and live in the trailer
3 parks, just a dispute between the residents of the
4 trailer and the owner of the trailer park, waiting to
5 happen because, I guess, military persons will come and
6 advanced and left the trailer when they go to the next
7 post.

8 The best that I can tell you, sir,
9 throughout the detailed information.

10 MR. VALOIS: Do you have applicants for your
11 positions if your proposal were to be accepted or
12 adopted or compromised, or whatever?

13 Do you have applicants of people available?
14 Attorneys?

15 MR. SANDERS: We do not. That proposal, upon its
16 face, we would continue to use the L.S.N.F. staff.
17 Indeed, some of the local staff are . We are
18 not consultant in that matter. Nonetheless, one
19 of them I happen to represent. She's a former client of
20 mine. I like her. And we have dealt with, in our
21 proposal, reasonable assurances, even though we ask
22 Ellison(?), "Please don't go forward with your recruiting
23 effort in your county."

24 We realized that they were about to open .
25 Please don't go forward because you're making a decision,

1 the decision of citing in your office which is probably
2 not provident to the best interest of the Court. You're
3 also not consulting with us, which the law requires you
4 to do.

5 Nonetheless, as I say, how can () special.

6 MS. BERNSTEIN: Have you (INAUDIBLE) --

7 MR. SANDERS: No, ma'am, I'm not.

8 MS. BERNSTEIN: I just wondered if you were aware
9 of the that the going on regarding the
10 American Bar Foundation or the American Bar Association,
11 National I.O.L.T.A. Clearing House Advisory Committee?
12 I presume a national organization that would unify
13 efforts across the country regarding I.O.L.T.A.

14 MR. SANDERS: Regrettably, ma'am, I still remember
15 after the 1964 -- '69, members of the American Bar
16 Association walked the Halls of Congress in opposition
17 to us in our attempt to secure the drafting on the Act,
18 as I anticipate or a number of incidents and bringing
19 to light some of these abuses that resulted in the
20 American Bar Association which walked the
21 Halls in opposition of this. And that's all that I can
22 say. Therefore, I'm not .

23 MR. VALOIS: According to your voluntary scheme,
24 how would quality of work be monitored? Who would
25 monitor the work of this eighty percent?

1 MR. SANDERS: One would hope that there would be a
2 number of sources. First of all, would have been
3 which is one of the nice things about it. Your program,
4 with the people to accept the presence of attorneys to
5 accept the presence of our Legal Aid.

6 As a practical matter, I can speak for Mr. Emmanuel,
7 although we asked him to be here, our President of and
8 during my tenure. A tremendous amount of my time went
9 into resolving that very problem. I've been dealing with
10 questions of the applications of guidelines. But this
11 dealing with the assistance of practitioners.

12 The former problems in which you have, and one of
13 the wonderful things about our continuing aid, in fact,
14 it also is under local of the control we have
15 It is the opportunity to develop the C.L.E. Program
16 which the could use to run the members of the
17 bar through to give the training that is
18 essential to reduce the burden because it was a burden.
19 And thus far, we do not like the volunteers willing
20 to carry the burden. We do have some ideas.

21 When it's your time, I also hopefully
22 if we can enlist, although not the county attorney
23 in our effort, especially with county participation.

24 We have some hopes there. But I'm talking -- I
25 can represent that.

1 MR. VALOIS: Who put this proposal together? Did
2 anybody other than lawyers?

3 MR. SANDERS: No, sir. I can, however, say this
4 was in response to

5 One of us And our purpose
6 And that F.L.S.N. participated in a proposed resolution
7 and principal of that . And this was one
8 exception because the proposal that our their

9 Ron Brooks, F.L.S.N. Mr. McClain was present
10 and a number of other people hammered out to such a
11 degree that at least in principle Mr. McClain commented
12 that it sounds reasonable.

13 I suggest that you -- that, therefore, in a sense,
14 although the specific proposal that you have before
15 you outlines the guidelines of what are we going
16 to do? And how are we going to do it? I that
17 you hammer it out. And it took to each of our
18 respective bars and said now recommend the

19 Our Board of Directors agreed. Our Board of Directors
20 empaneled the committee, weeks and weeks of work, staffing
21 this, and working, and coordinating the local and
22 local folks put it together.

23 Regrettably was unable to convince
24 their Board of Directors that they should explore the

25 . We sent some down to L.S.N.F.
presented this to them. They were going to staff and

1 study it. No response. It's been submitted to them and
2 there is no response.

3 MR. VALOIS: Any questions?

4 MS. SWAFFORD: In the event that this should be
5 approved, and I'm not sure that we have the authority
6 to do, what kind of plan are you going to do? You've
7 obviously encountered a lot of opposition. What kind of
8 plan do you have to make it work?

9 MR. SANDERS: What opposition are you --

10 MS. SWAFFORD: Well, the North Legal Services
11 there.

12 MR. SANDERS: The first thing that I would respect-
13 fully respond to that is if we are ever going to invest
14 in our effort, we need to make a to invest both
15 us and them because we have met each other and we are not
16 the enemy. We are engaged in a common program of common
17 interest to the administration. note that there is
18 fifty percent. And then there is the county administrative
19 sitting in between for the first year.

20 MS. SWAFFORD: Would there be five votes on the
21 Board -- that make up the Board. Would it be --

22 MR. SANDERS: And, therefore, with them voting
23 only in the event of a tie vote. When you structure it
24 that way, you hope that when you have attorneys from
25 L.S.N.F. and you have attorneys from your local bar, and

1 you are both dealing with the subject of mutual interest
 2 for the administration of justice to serve the purpose,
 3 that hopefully the county representative is not going
 4 to have to vote very often. However, if he does, there
 5 is a mechanism. why that can be done.

6 The program is terminable at the end of the year.
 7 It's an experimental test. It's a method of trying to
 8 get two folks together, each with radically different
 9 views, and say if -- well, I think a common expression
 10 is if you try it, you might like it.

11 And in the meanwhile, the county -- it's a county
 12 program -- the county is going to have to have the
 13 employees. They are shield and sovereign
 14 immunity. how to get to
 15 the cost of this program for us. already
 16 set up. The computer program cost a number of their

17 and I think may know very little additional program
 18 and the county has an active interest in a legal aid
 19 program that will work. I rather suspect that the
 20 ultimate result will be and I think that
 21 probably is what Congress was talking about in 1977 which
 22 a mandate, a study to , with a view toward
 23 a model which involves both staff and
 24 voluntary panel. That is really what we need if we
 25 are going to enlist and support the Act of and .

1 Preserve the benefit of the and consistency of
2 the staff to deal with recurrent problems of poverty
3 that occur over and over, preserving at the same time the
4 and the variety, bankruptcy in that area.
5 A single staff, no matter how many people you put on
6 it, would be able to have .

7 MR. MOORE: The criteria the question
8 about whether we have ever applied to L.S.C. I think
9 there was an application by a program from L.S.C. back
10 six or seven years ago that was denied.

11 MR. VALOIS: Do you know why it was denied?

12 MR. MOORE: As I understand the reason and terms
13 entrusted to me is that we didn't ask for enough money.

14 MR. WENTZEL: How much did you ask for?

15 MR. SANDERS: I wasn't around ---

16 MR. MOORE: It was a significant amount because
17 we our program for years. From donations from the
18 county. Less than \$10,000.00 or on that approximate
19 range. In our it was indicated that we
20 didn't make a large enough application. I don't remember
21 specifically.

22 MS. SWAFFORD. Why did you not then reapply and
23 ask for more money?

24 MR. MOORE: We didn't feel that that was the way
25 we should run our program. If that's what we needed to

1 run our program, then that's what we wanted. Quite
2 truthfully, that's exactly it.

3 MR. WENTZEL: I'm not sure I got it. I mean you're
4 asking about your needs, your needs analysis. Could you
5 go through for me on the record of the methodology you
6 used when you did that?

7 MR. SANDERS: We took that our program
8 accumulated. The cases, the assignment, calls the
9 general subject of those. I then conferred
10 with the paralegal and asked them about referring cases
11 out to the attorneys. We analyzed the and
12 consulted the local. We took a local demographic
13 community and the very special problems. We looked at what
14 Florida Legal Services had distributed, a demographic
15 analysis that was presumed.

16 We quickly found that that had little validity
17 and count purported income. And we have an awful
18 lot of servicemen on the bases that have reported income
19 but they also have. And, therefore, there
20 wasn't a base that were really reliable. They
21 were just frustrated about that. And, therefore, we do
22 what so many attorneys do. We approximate and go by
23 and do our best and talk to everybody in the county about
24 -- what their experience is and practice.

25 And then ultimately produce a justification submitted

1 with our I.O.L.T.A. application.

2 MR. WENTZEL: Two grants under I.O.L.T.A.

3 MR. SANDERS: Correct.

4 MR. WENTZEL: What, again, was the amount of those
5 grants?

6 MR. SANDERS: Approximately \$18,000.00, sir. The
7 first grant was a number of smaller grants. The second
8 grant was .

9 MR. WENTZEL: What grants?

10 MR. SANDERS: The two years immediately next
11 proceeding this one, sir, which would be 1984-85.

12 MR. WENTZEL: Okay, was there any monitoring of
13 how you used those funds. And was there any oversight
14 on how to use those funds?

15 MR. SANDERS: From I.O.L.T.A.? Or from anyone?

16 MR. WENTZEL: I.O.L.T.A., or anyone else.

17 MR. SANDERS: I assure you, sir, Mr. had
18 a very active interest in how we use the funds. They
19 were incorporated in the county budget -- with the
20 budget. Each item of the budget was submitted to I.O.L.T.A.
21 went into the county under cost detail, a line by line,
22 and within that line and the expenditure of the counting
23 from there.

24 Now, in terms of -- if your question is addressed
25 to how those funds were used in terms of individuals who

1 were served guidelines and things of that nature.
2 Again, no, I.O.L.T.A. did not monitor. Yes, the President
3 of Okaloosa County qualify. The corpor-
4 ation was non-profit . It was . The
5 President of each to work actively with the
6 paralegal to make sure that the guidelines which had been
7 adopted by the and Okaloosa County .
8 First, I'd like to respond in answer to your question.
9 Perhaps if I

10 MR. WENTZEL: Did I.O.L.T.A. ever monitor the --

11 MR. SANDERS: No.

12 MR. WENTZEL: You have objected to that monitor.

13 MR. SANDERS: No. I would have felt far more
14 comfortable with public monitor the funds and
15 that was and in practical sense, that was
16 exactly what was happening and this was one of the
17 because monitoring one of the funds is -- if
18 they are public money, perhaps appropriate in the hands
19 of a public agency. And, of course, the county has
20 monitored.

21 MR. WENTZEL: Thank you.

22 MR. VALOIS: Anything else? Mr. Moore?

23 MR. MOORE: No.

24 MR. VALOIS: Thank you very much for coming. I
25 appreciate it.

1 MR. VALOIS: Gayle Kinney, ladies and gentlemen.

2 MS. KINNEY: Mr. Chairman, thank you very much for
3 affording me the opportunity to address. I sat through two
4 days in your meetings and just sat and listened and didn't
5 have the opportunity to speak before you. So I consider
6 this to be quite an honor.

7 For the record, I'll introduce myself again. I am
8 the Executive Director of the New Hampshire Bar Association
9 and I am also the Executive Director of the New Hampshire
10 Bar Foundation. And the New Hampshire Bar Foundation,
11 by the Supreme Court Order, is the entity which administers
12 I.O.L.T.A. Programs. So I'm very interested in I.O.L.T.A.

13 Here, I feel like I'm greeting old friends. It's
14 nice to see all of you. It's a pleasure, after having
15 gotten to know you for a short time in New Hampshire.

16 Ironically, a short five-day vacation in Florida,
17 allows me this opportunity. I didn't know that you were
18 going to be down here. When I found out, I couldn't
19 resist the opportunity to come back and see you again.

20 First, I wanted to provide to each one of you a
21 little memento of New Hampshire I.O.L.T.A. Program and
22 also your visit to New Hampshire last week. I have copies
23 of the New Hampshire Law Weekly, which covers your visit.
24 And I want to make sure that each one of you has a copy
25 and, in addition, to make sure that you don't forget

1 New Hampshire and I.O.L.T.A. This is a pen that says,
2 "I.O.L.T.A., a participant in the public interest with
3 ."

4 But specifically, my purpose is to stress and as
5 you heard over and over again in New Hampshire, I think,
6 New Hampshire cares very, very deeply about the delivery
7 of legal services to the poor people. And as such, we
8 also care very, very deeply about our I.O.L.T.A. Program,
9 about the I.O.L.T.A. concept nationally because we believe
10 that the two go hand-in-hand.

11 To back up for a minute, New Hampshire was the
12 second state in the nation, after Florida, to have an
13 operational I.O.L.T.A. Program. We opened our doors,
14 again collecting money on January 1, 1983.

15 In May, of 1985, the New Hampshire Bar Foundation
16 received a \$10,500 grant from the Legal Services Corporation
17 an implementation grant for our I.O.L.T.A. Program. And
18 specifically this is being used for I.O.L.T.A. recruitment.
19 And in New Hampshire, in our second stage of I.O.L.T.A.,
20 we did about the first twenty percent on our own.
21 We needed some assistance. And I also very graciously
22 gave grant.

23 Interestingly, in the Law Weekly that I gave you,
24 some of the fruits of that grant, and it's just by
25 coincident, are indicated in this issue of Law Weekly so

1 that you can see when we do have new recruits, we list
2 them on the front, as you can see. And we have the
3 financial on the front page. And an honor roll -- we
4 also always have on our inside page information on how
5 simple it is to join the I.O.L.T.A. Program or to
6 participate.

7 And each time it's a little bit of peer pressure
8 or role modeling, or whatever, each time you see somebody
9 saying on the front page who you respect, and then you
10 can turn to the inside and see how simple it is for
11 your participation. Then we get more people to join.

12 So, you can see we, with I.O.L.T.A., not only
13 about your visit, but you can see what we're doing
14 with the L.S.C. money.

15 Interestingly, this list represents -- I haven't
16 counted the number of law firms, but I added it up and
17 it represents approximately 75 to 80 individual lawyers
18 who are now participating in I.O.L.T.A. and you'll
19 note the recent wave of recruitment. And that's
20 four percent of our eligible attorneys.
21 So that represents -- figure it out, Mr. Chairman --
22 and we're very excited about the possibility of getting
23 about fifty percent plus.

24 I would be happy to answer some specific questions
25 about New Hampshire I.O.L.T.A. Program and what our

1 specific experience is, but I did want to talk very,
2 very briefly about the history of our program and
3 how it came to being an expressly interest and put a
4 little more global context in terms about the I.O.L.T.A.
5 group and the I.O.L.T.A. concept.

6 Start with the history. New Hampshire started
7 to talk about the needs for new sources of funding for
8 civil legal services for the poor people in the Fall of
9 1981. And, obviously, we did that because we knew the
10 L.S.C. folks were coming. The Bar Association put
11 together what we called a blue ribbon emergency task
12 force to make recommendations about the bar leadership
13 about what ought to be done and what the Bar should do
14 -- the organized Bar should do in New Hampshire to
15 address the legal services coming crisis which
16 precipitant by the twenty-five percent from the cutback
17 that began as of January, 1982, to the L.S.C. Program
18 in New Hampshire.

19 Several offices were closed. Staffing was cut
20 back. The needy people were -- ended up on a waiting
21 list or getting informational pamphlets trying to assist
22 them in how to proceed rather than actually having
23 access to attorney consultation and representation
24 because of a cutback.

25 And so we have some serious concerns about that.

1 The tax folks came back after several months and
2 had several recommendations. But the number one
3 recommendation, and the one they stressed the most,
4 probably was that I.O.L.T.A. Program ought to be made
5 in New Hampshire to provide supplemental funds
6 to help ease the funding prices, and to just help us
7 to begin to meet it knowing that was only a drop in
8 the bucket still. But the strong recommendation was
9 that the Bar's energy for 1982 ought to be put into
10 I.O.L.T.A. at least in part to help what we consider
11 to be the crying on that need of New Hampshire's poor
12 people.

13 So we wasted no time. The bar leadership received
14 that recommendation in January. It conducted informational
15 and educational, what I call informational-educational
16 bliss.

17 In the Spring of that year of I.O.L.T.A. at the
18 Bar's annual meeting in June, the I.O.L.T.A. concept
19 was put forward to the low membership for a membership
20 growth and the membership based on the education that
21 had gone over Spring and, overwhelmingly, voted to
22 endorse the I.O.L.T.A. program.

23 The Supreme Court was petitioned during the
24 Summer. And the Supreme Court held its oral argument
25 in September. And, on November 24, 1982, the day before

1 Thanksgiving, the Court issued an Order creating an
2 I.O.L.T.A. Program which would be operational to open
3 up the doors and begin collecting money January 1, 1983.

4 The exciting thing is that it took us eleven
5 months from the time the first word of I.O.L.T.A. or
6 the germination of the seed of the idea to the time
7 that the Supreme Court issued its Order on November 24.

8 Now, Florida, as I understand, took a year.
9 What we did, we just, without shame and totally copied
10 all that Florida did, learned everything that Florida
11 -- or learned from Florida, learned from what they
12 have suffered through without having to suffer through
13 the same pitfalls. They paved the way for all of us.

14 We really led the Florida Justice Institute with
15 all the information they could give us so that we could go
16 through the process within an eleven-month period of
17 time.

18 And we're very, very proud of the fact that we
19 were second in the nation to actually open our doors.

20 The Bar Foundation -- we collected money for
21 most of 1983 and made our first grant award effective
22 January 1, 1984 of \$123,300.00. The New Hampshire Bar
23 Foundation has made a committment to spend approximately
24 ninety percent of I.O.L.T.A.'s grants each year on
25 delivery of civil legal services to the disadvantaged

1 with the remaining ten percent to be awarded going to
2 what they call public education about the law and
3 legal system.

4 Now, the civil legal services to the disadvantaged
5 in New Hampshire doesn't necessarily mean the L.S.C.'s
6 definition of poverty being 125% of the Federal poverty
7 standard.

8 But, nonetheless, our commitment is to ninety
9 percent will be used for that purpose.

10 During the time that we were developing our
11 I.O.L.T.A. Program, L.S.C. also, I think, distinguishes
12 and deserves our thanks for it's own efforts to
13 governing I.O.L.T.A.

14 As Dan Rathbun reported to you in December of 1982,
15 the L.S.C. Board and the L.S.C. support initiative is
16 to facilitate interest through the I.O.L.T.A. funds
17 and I.O.L.T.A. Programs across the country. And as
18 Dan said, or if he read, to pursue I.O.L.T.A. as a
19 supplement to continue several committees to the civil
20 legal services to the poor.

21 And, again, I expressed it as a supplement to
22 continue Federal commitment. And that was very
23 important to the organized Bar that we work in a
24 partnership in that way.

25 It is also very important to the organized bar to

1 understand that I.O.L.T.A. can never be more than a
2 supplement. It could not be replaced to L.S.C.
3 dollars. But the reason we work so well in partnership
4 and conduct these programs across the nation is because
5 of that partnership where there was a unanimity of
6 purpose in where we were going with I.O.L.T.A.

7 ^{represented and}
8 In 1982-83, L.S.C./put out what I call the A.B.A.
9 Circuit Conference, the National Conference of Bar
10 Association, the National Conference of Bar Presidents
11 and other A.B.A. functions representing a corporation
12 and really creating an aura of L.S.C. private bar
13 partnership on I.O.L.T.A. And, as I said before, a
14 real unanimity of focus and that was a frontage to
15 leverage private resources for the sick and the poor
16 people across the country who have unmet civil legal
17 needs.

18 And to try to develop a source of I.O.L.T.A.
19 dollars which can be used in combination with Federal
20 dollars, L.S.C. dollars, to serving the need of the
21 poor people.

22 Now, one of the reasons that I wanted to talk
23 to you this morning is that whether it's a fact or
24 not, there is a little bit of concern in the private
25 bar circles and the saying, "Walk in fear, folks,"
that the corporation was set up years ago and that there

1 may be a shift in at the corporation level in
2 view of I.O.L.T.A. And, whether it's true or not, I
3 think it's healthy to at least talk about what the
4 perception is and whether it is wrong. And I hope it
5 isn't and could be corrected quickly and I.O.L.T.A.
6 will continue with our partnership efforts.

7 are bound about town, so to speak
8 on L.S.C. wanting to gain control of the I.O.L.T.A.
9 funding and to be able to put L.S.C.-related restrictions
10 on I.O.L.T.A. grants, which are state grants given by
11 the state entities to local resources across the
12 country.

13 One of the things that was about -- and
14 again I wanted to just bring this out just to clear
15 the air. I don't want to get into and precipitate
16 really about whether it's true or not.

17 MR. WENTZEL: When did you start these rumors?

18 MS. KINNEY: When did I start these rumors? L.S.C.
19 budget form H2, which is part of the 1982 refunding
20 package, which went out to the field programs. There
21 was talk that L.S.C. staff, anyway, was wanting to take
22 the line down at the bottom of the application, which
23 lists other sources of funding -- take the I.O.L.T.A.
24 line and move it up to this top half, which is agreeing
25 about , which lists L.S.C.-related sources of

1 funding with the idea being that if these were considered
2 the same or the same offices as the L.S.C.-related
3 dollars that, perhaps -- and, again, it's just a worry
4 out there, but I wanted to bring it out because I think
5 if the report could bring worries like that, we don't
6 want them to fester to a surface -- that dollar for
7 dollar, in the L.S.C. dollar, the field program I'm
8 about to get and specifically talking about getting
9 in the coming year, could be subtracted from the basic
10 field grant.

11 I'm sure that's not the case. But it's something
12 since, you know, Florida has been specifically talking
13 about a private bar circle and I wanted to bring
14 that out.

15 The other concern is that just in terms of -- that
16 there may be some confusion about I.O.L.T.A. dollars
17 being spent if I.O.L.T.A. entities on a state-by-state
18 basis and there are at least or there will -- well, now
19 there are at least thirty-eight different entities
20 are not using all the restrictions that are contained
21 in the Act or possibly funding clients who may be
22 ineligible in accordance with the restrictions of
23 the Act. But somehow that that -- and that is something
24 that is going to destroy the positive partnership we
25 have had up to this point.

1 The I.O.L.T.A. money is state money. Whether
2 it's public or private is not really the issue. It's
3 not money that comes under the Act, and it's not money
4 that's appropriated by virtue of the Act to carry out
5 the purpose of the Act.

6 When L.S.C. developed its partnership and was
7 giving out developmental grants implementation grants,
8 one of the things that was said, it wanted each
9 applicant to demonstrate that they had a commitment
10 to sending X-percentage that we talked about shouldn't
11 be eighty percent. It should be two-thirds. Or what
12 should it be? But a certain -- that applicant -- and
13 New Hampshire Bar was an applicant -- had to demonstrate
14 that commitment to serving poor people with their money,
15 with a great percentage of the money.

16 That language and -- again, I don't have access
17 to the complete paper trail. Perhaps Ms. Bernstein
18 does, but certainly your office would directly.

19 My recollection is that there was nothing in there
20 that was very specific about what the definition of
21 poor was. And there was nothing in there, and certainly
22 nothing in the grant initiative or the grant announce-
23 ment that New Hampshire responded to that said, "We
24 pledge to follow the Act in all its specificity and
25 all regulations and requirements and restrictions in

1 making I.O.L.T.A. grants in New Hampshire as a condition
2 of getting \$10,500.00 by I.O.L.T.A. implementation.'

3 We totally pledge to follow the Act with how
4 we spent that-- how the Bar Foundation spends that
5 \$10,500.00. But we don't necessarily expect that each
6 one of our grantees is going to follow the Act, nor
7 do we require them to. If the people that we give
8 I.O.L.T.A. money to are also L.S.C. grantees, we
9 certainly expect that they are going to follow the
10 Act specifically.

11 And I think you folks especially with your new
12 monitoring efforts are doing an excellent job in making
13 sure that the grantees will follow the Act. But that's
14 really none of our business and none of our concern.
15 It's not the concern of the Bar Foundation for I.O.L.T.A.
16 and people across the country how you regulate L.S.C.
17 funding programs and their compliance with the Act.
18 And so if we get into that fuss about I.O.L.T.A.
19 entities also having a responsibility for following the
20 law of the rules and regulations of the Act, I believe
21 that we're going to get into problems which would be
22 detrimental to the partnership, which I think up to
23 this point has been very, very healthy.

24 We want to continue to cooperate. And, actually,
25 I'd like to say specifically, there is nothing

1 than working with you directly in North
2 Carolina so that we can move New Hampshire and North
3 Carolina together to the fifty percent mark plus as
4 far as I.O.L.T.A. participation is concerned. But we
5 don't, as we're doing now, and as we're continuing to
6 work together as I hope we will. I surely hope you
7 will. We don't want to get into control issues.
8 We don't want to see hostility arising between
9 appropriation and the Florida Bar on the issue of
10 I.O.L.T.A. We don't want to see field programs
11 experience a dollar-for-dollar decrease for every
12 I.O.L.T.A. dollar that they receive.

13 We don't want there to be any confusion about
14 how the L.S.C. Act fits into the I.O.L.T.A. grant aging
15 process on a state-by-state basis, because it doesn't.

16 What we do want to do is continue to work with
17 you to leverage all the private dollars possibly
18 to serve needy people so that L.S.C. funded programs
19 can better serve their version and your version of
20 needy people. And so that non-L.S.C. funded programs
21 can serve their version of needy people which also meet
22 the definition of the local I.O.L.T.A. grant-making
23 authority about what is needed and what it's for.

24 It may not be the same, but I don't think that
25 any of us, and especially you folks who are totally

1 committed to equal acts of justice for the poor people.
2 I don't think that any of us would have any quarrel
3 about the fact that the combined I.O.L.T.A.-L.S.C.
4 resources are, in fact, really going to serve needy
5 people. And we should rejoice in the fact that we're
6 working together and combining our efforts to serve
7 the needy as opposed to any kind of argument about rules
8 and regulations.

9 I'm here to urge that we have a continuation of
10 that very cooperative and healthy partnership of
11 I.O.L.T.A. and to the extent that if there are any
12 contentions or rumors and concerns about what is
13 going to happen and what the Corporation's attitudes
14 are towards I.O.L.T.A. and whether it will be used and
15 put forward that we can dispel them and then continue
16 to get on about the business about getting dollars
17 L.S.C. and I.O.L.T.A. And I thank you
18 for that opportunity.

19 MR. VALOIS: Thank you very much. The next speaker
20 before the Committee will be a representative from
21 Legal Services of North Florida from this area.

22 MR. McLEAN: Thank you. Hi, Mr. Chairman, how
23 are you?

24 MR. VALOIS: Please tell us who you are for the
25 record.

1 MR. McLEAN: I'm Jack McLean, Deputy Director
2 of Legal Services of North Florida. Sitting with me
3 at the table is Kris Knab, who is the Director of
4 Litigation.

5 And I want to welcome the Committee to our City.
6 I have a report. I've never appeared before an L.S.C.
7 Board or Committee, so I appreciate the opportunity.

8 The purpose of appearing before the Committee
9 today, if I understood it from the notice, is to talk
10 about I.O.L.T.A. and how it affected our program, and
11 to identify some of the uses of those funds in our
12 program with the exception of the program.

13 We have received funding from I.O.L.T.A. beginning
14 in 1981 -- well, actually beginning in 1982. Initially
15 we got \$7,000.00 of those funds primarily were to
16 assist us in a pro bono coordinator and involving
17 closer linkages between the private bar and our program.

18 Our program provided a little background to the
19 Committee in terms of the program size and the graph
20 that gives you a field to the program, and also
21 provided some information in terms of some of the cases,
22 the private cases, that we've handled, and some of
23 the numerical data.

24 In 1983, we received basically about \$41,000.00;
25 and then in 1984, we received \$90,000.00. Primarily,

1 most of these funds have gone to increase the partici-
2 pation in working relationships between the private
3 bar and the program as well as to replace some of
4 those funds lost during the reduction in 1982.

5 In fact, if you look at the receipt of I.O.L.T.A.
6 funds, they have gone a long ways toward making up
7 some of the initial loss back in 1982.

8 With the initial cuts in 1982, we actually had
9 to close our office in Panama City, which is in Bay
10 County. And I think we've provided a map for you.
11 You can identify that direct from Tallahassee,
12 basically about Southwest.

13 With the receipt of I.O.L.T.A. funds, we were
14 able to -- Initially the Board made a decision to
15 actually, because of the request from the Bay County
16 area, to open the office up again. And at the time
17 we did that, we have basically just kind of taken ...

18 Actually with the addition of I.O.L.T.A.,
19 beginning in 1983, we were able to get an attorney
20 and a legal assistant in that office to begin a decent
21 level of service to the clients in Bay County and
22 surrounding counties.

23 With the receipt of funds in 1984, we were
24 actually able to open and establish an office in the
25 Okloosa-Walton County area. And those funds enabled

1 us to hire basically two attorneys and a support person.

2 Prior to the opening of that office, we were
3 circuit-riding to those counties. But the attorney
4 assigned to that spent, we calculated, about six
5 percent of the time basically on the road in traveling
6 between those places. That provided necessary data to
7 present to I.O.L.T.A. And, in fact, what we needed
8 there was an office to cut down on the travel time
9 so we could spend our time more interactive with
10 clients as opposed to traveling to locate the clients.

11 So, essentially, I.O.L.T.A. has enabled us to --
12 would have better linkages, I think, quickly with
13 the bar. If you look at the chart, you will see that
14 we've gone from a , geographically, to in
15 terms of a number of private attorneys working with
16 us from about a hundred -- I think, initially, we
17 had 152. We had a slight fall-off to about 144. And
18 now, currently, we're about up to 244 attorneys that
19 are participating in the area.

20 If you look at the map, you will see that this
21 is basically a rural program and kind of spread out
22 across essentially about 12,000 square miles. And
23 you will note that the attorneys, that is the licensed
24 attorneys in the area from county to county -- Leon
25 County, where you have the heaviest population of about

1 1,000. And some counties, like Wakulla, if you look
2 at it, there are practically no attorneys at all who
3 are licensed. So we go from anywhere from as low
4 as zero up to about 1,000 attorneys in our area.
5 And our recruitment pattern, in terms of private bar
6 involvement, actually kind of matches up with that
7 category.

8 If you look at our program and the nature of
9 involvement, I think we're real proud of it. We're
10 real proud of the amount of hours we've been able to
11 get from our attorneys in terms of working on the
12 cases. I think it's high. Our overall recruitment
13 is about fifteen percent. A lot of our attorneys
14 in our area are licensed bar practitioners and members
15 of our panel. I might add that the national average
16 is only about ten percent. So we feel very proud of
17 that.

18 And if you look at the number of donated hours
19 that we actually have, which has gone up, we had last
20 year over \$120,000.00 in terms of the value of the
21 service that our local attorneys have provided to
22 clients in our area.

23 I think that's a demonstration of a close working
24 relationship that we've had with the majority of the
25 Bar Associations and the private attorneys in our area.

1 And I think that's a credit to our Board of Directors
2 and to I.O.L.T.A. and to the Directors of the Corporation
3 in terms of signaling a stronger working relationship
4 between the private bar and to set out delivery
5 programs.

6 As I said before, very critical to that has been
7 the expansion of services into Bay County and into
8 Fort Walton County. I think, without I.O.L.T.A. funding,
9 we would not have been able to do that. In fact, with
10 the non-receipt of I.O.L.T.A. funds, because of the
11 Glasier litigation, our Board is wrestling with a very
12 serious problem about what we can do now. It is back
13 to continue to delivery of services in Bay County and
14 in Walton County. And it has come up with some
15 alternative to try to deal with that. And those have
16 been the heart of alternatives that we are all faced
17 with. And, hopefully, the Federal Court will rule
18 favorably so that we can get on with the business of
19 continuing to deliver services to our clients.

20 Now, that's a quick and brief overview in terms
21 of what I.O.L.T.A. has meant to us. It's about ten
22 percent of the program in terms of the funding source,
23 and ten percent of anything is significant. And I
24 think it's really significant in terms of our clients,
25 particularly in the Western portion of our service

1 delivery area.

2 MS. BERNSTEIN: How long have you been the Program
3 Director?

4 MR. McLEAN: Since 1977.

5 MS. BERNSTEIN: When did you implement your
6 time record?

7 MR. McLEAN: System?

8 MS. BERNSTEIN: Uh-huh.

9 MR. McLEAN: We've had that time record system
10 in place now for a good two-and-a-half years. We've
11 been refining it. We think it's pretty good now.

12 MS. BERNSTEIN: Do you have a lot of trouble
13 with ?

14 MR. McLEAN: We have so many in the
15 because of review and more paper work
16 and more time.

17 MS. BERNSTEIN: (Inaudible)

18 MR. McLEAN: Yes.

19 MS. BERNSTEIN: How much time does it take to
20 find out -- I appreciate this because we're struggling
21 with this on a national level. We have got programs
22 that run the gambit that are served by criteria but
23 recognize the efficiency of running the office and
24 utilizing programs that are completely resistant to
25 the idea of ever having any time record kept due.

1 When you -- I see that it comes into the docket
2 clerk in Tallahassee flow chart. How much time does
3 the docket clerk actually spend on your particular
4 circumstances?

5 MR. McLEAN: In accounting for the time record?

6 MS. BERNSTEIN: Uh-huh.

7 MR. McLEAN: Probably accounting and putting --
8 in all, twenty hours a month -- twenty or twenty-four
9 hours a month is the last total.

10 MS. BERNSTEIN: Okay, so half a week.

11 MR. McLEAN: Half a week. It really hasn't been
12 as much time as initially anticipated.

13 MS. BERNSTEIN: Are you familiar or actually
14 physically able to here. You're not on a
15 computerized system with attorneys? I know that there
16 are different ways of doing it, but yours is actually
17 time slips.

18 MR. McLEAN: They are time slips that go into
19 the docket clerk. The docket clerk then keyboards
20 that into a computer system and then produces the
21 management report at the end of the month.

22 MS. BERNSTEIN: Okay, I may -- I suppose --
23 This is not exactly our committee's mailing and
24 if we may be in touch with you for some guidance --
25 some help? We're trying to see how we can best approach

1 other programs with this.

2 You were involved with the state support plan
3 for getting the reauthorization or to support the
4 authorization of the corporations and , and
5 so forth. Is it true that ?

6 MR. McLEAN: Given the dates that you mentioned
7 earlier, I would have been Executive Director.

8 MS. BERNSTEIN: Okay, do you feel that it's
9 appropriate for a legal services program, for a legal
10 services grantee, to, for instance, oppose the amendment
11 to H.R. 63 by representing the National
12 to try to solicit clients, let's say, to oppose that?

13 MR. McLEAN: I'm not sure what that amendment was.

14 MS. BERNSTEIN: Well, it was equivalent to legal
15 services program in providing participation .
16 In other words, it wasn't on an appropriation question
17 as to whether or not the corporation had any conflict.

18 It was on the question of what are the appropriate
19 restrictions on the corporation .

20 MR. McLEAN: Actually I didn't really come
21 prepared to address some of the things that might
22 have happened.

23 MS. BERNSTEIN: Well, I'm just asking whether or
24 not you think that is appropriate?

25 MR. McLEAN: Well, certainly the law has changed.

1 And it's clear now that it's not appropriate to be
2 engaged in those type of activities. But certainly if
3 you try to do that, it's a much more restricted ... given
4 the new regulations that we have.

5 And our program, as I hope many programs, will
6 attempt to abide by the regulations and the laws that
7 are passed in Washington and implemented by this
8 particular Board.

9 MS. BERNSTEIN: I'm concerned with this because
10 I'm not entirely positive that things have changed
11 entirely since 1981. And I'm not saying that your
12 program or the State of Florida -- I'm just saying
13 as a whole because we're getting testimony regarding
14 lobby regulations, that it's important for us to
15 loosen the lobby regulations who oppose, who can't
16 and won't abide by the law. And that seems to me
17 that it's the tail wagging the dog.

18 But I'm concerned with this whole approach of
19 getting involved with what is or is not a proper
20 restriction for Congress to place on the program
21 either from the program's standpoint or for the
22 corporation standpoint in that it seems to me that
23 the congressional prerogative there is to place the
24 restrictions and seems to me that the people agree to
25 take the money there is a responsibility to abide by it

1 rather than trying to influence them not to place the
2 restrictions.

3 And going back to a and concerned in
4 terms of the I.O.L.T.A. fund committee and I.O.L.T.A.
5 funding is, at least in my perspective, that if we,
6 in fact, gave the grants on the idea that the funds
7 would be leveraged throughout the United States for
8 the benefit of the poor persons that we are given the
9 fiduciary responsibility to see that the service is
10 provided.

11 And, in fact, the I.O.L.T.A. organization decided
12 that those were not the clients that we're going to
13 direct the service toward. Those were not the issues
14 that were going to be taken care of, or those were not
15 the restrictions that we're going to be taking care of.
16 Then to some extent it's not a technical violation by
17 the grant commission that we're going to abide by the
18 Act.

19 Then at least it seems to me that our purpose in
20 providing those funds has been avoided because,
21 obviously, we're concerned with leveraging funds for
22 the funds that Congress has designated.

23 I just wondered if you felt the programs really
24 should be in the business of trying to get rid of
25 restrictions or securing money to serve clients that

1 Congress has decided or not appropriate with Federal
2 or private money to serve.

3 Now, I'm not questioning it as a bill. But I
4 don't question -- I think every attorney has a personal
5 duty to not turn away clients. But that's the difference
6 in whether you've got state action and when you accept
7 State and Federal funds.

8 MR. McLEAN: That's broad for a question. Let
9 me try to answer it this way. Congress certainly has
10 the right to restrict this program and the use of this
11 fund. Now, how do we get information in terms of how
12 to draw those restrictions is, perhaps, where you may
13 have a difference of opinion.

14 If, in fact, it is a vacuumed and pure world
15 where Congress is sitting three-hundred-plus members
16 -- five-hundred-plus members and making regulations,
17 then in that pure sense of the word, yes, Congress would
18 have the right.

19 If Congress then turns to, as it must, frankly,
20 to other members of society as to how th4 program is
21 working, how it's functioning, how it's interfacing
22 with other programs and with other developmental
23 entities and private entities, then I think, quite
24 honestly, that the clients who are the beneficiary
25 of this program ought to have access to Congress in

1 terms of how those regulations are structured. Now
2 how that access for the client is structured, I'm not
3 sure.

4 But as I see basically in the State of Florida,
5 we got to take the migrant program, which has been a
6 real concern. If the Farm Bureau is going to express
7 its concern about how migrant clients are served, it
8 seems only fair that Congress actually have a balanced
9 picture and a balanced view of how migrant clients
10 benefited from the program.

11 To that extent, I think Congress should have both
12 sides in the final analysis to accomplish the fact of
13 whether restrictions are needed and whether it's not.
14 But I don't think that you're going to have a balanced,
15 fair legal system if you're going to allow only one
16 group to have access in terms of how the Legal Services
17 Corporation Act is structured.

18 MR. VALOIS: Let me ask you a couple of questions.
19 Looking at your geographical service areas you've got
20 on Page 1 of your handout you gave us, are there any
21 other grantees in this service area, any other legal
22 service programs?

23 MR. McLEAN: No, sir.

24 MR. VALOIS: Who serves the migrants in that
25 area?

1 MR. McLEAN: The migrants are served by the
2 State program receiving migrant funding. And that is
3 Florida Rural Legal Services.

4 MR. VALOIS: Do they have any offices in your
5 service area?

6 MR. McLEAN: No. In some cases where you identify
7 problems, basically -- in Quincy, which is Gadsden
8 County on that map there -- when there have been
9 identified program problem, we contacted Florida Rural.
10 And they have used our office at the point of intake
11 and discussions with clients in attempting to resolve
12 the problem.

13 MR. VALOIS: In view of this , do you
14 serve any migrants in the program other than what you
15 might call referrals to somebody else?

16 MR. McLEAN: If the migrant's problem, to answer
17 you candidly, is a problem that we, traditionally,
18 will see as a poor client, we will provide services,
19 yes. If it involves something that we don't know
20 anything about --

21 MR. VALOIS: Such as?

22 MR. McLEAN: Well, peonage statutes, all those
23 kinds of issues, we don't do. And we refer those to
24 Florida Rural. If they come in to our office specific-
25 ally and if they are staying outside of the employer's

1 environment, staying in a traditional housing situation
2 like other clients that we have, and they have the
3 landlord-tenant problem, we would provide services.

4 MR. VALOIS: Other than the peonage statute,
5 what other areas are you not prepared to handle?

6 MR. McLEAN: About the program? That we're not
7 prepared to handle?

8 MR. VALOIS: Uh-huh.

9 MR. McLEAN: Probably dealing in any kind of
10 labor dispute -- wage, labor dispute between the
11 migrants and the employer and issues dealing with their
12 legality in terms of being in the particular area,
13 deportation and those types of issues. We are not
14 capable of doing them.

15 MR. VALOIS: Okay. Thank you very much for
16 coming.

17 MR. McLEAN: Thank you very much.

18 MR. VALOIS: Our President, Patrick Emmanuel, has
19 asked for three minutes.

20 MR. EMMANUEL: Florida Bar appoints the majority
21 of the Board of lawyer legal services in Florida. We
22 appoint the majority of the Board of legal services
23 who are appointed. The President, at any time -- and
24 I'm that right now -- and always several past presidents
25 serve on the Board of Directors of the Florida Bar

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1 Foundation. We don't pass by the grant and our Board
2 of Governor does not. We are knowledgeable though,
3 generally, about it. We approve their program. We
4 think the Foundation is doing a good job.

5 I have some concern here that maybe there is
6 some question about how we do things and why we do it.
7 That goes to the limited extent, the comments in relation
8 to New Hampshire, because I'm not that knowledgeable.
9 I think the Foundation is doing a good job. I think
10 we're doing it properly. I think we're doing it
11 faithfully with good programs. I think that is really
12 the Bar Foundation's role. And we certainly hope to
13 cooperate with you and your board and your committee.

14 I want to make it clear. The Florida Bar
15 Foundation works with the Florida Bar. And the Florida
16 Bar is well at ease with what that Foundation does.

17 MR. VALOIS: Thank you very much.

18 MR. BERNSTEIN: Along those lines is just a concern
19 for the record to enlighten us, other than the person
20 doing the job to do the transcript, that we just have
21 the state support plan and the assurances that I referred
22 to put in the record so there is no misunderstanding.

23 MR. VALOIS: Well, you'll have to provide them to
24 Mr. Rathbun.

25 We have reached two points -- the end of our

1 agenda and lunch, and both of which are equally important.

2 I want to thank all of you for coming and for
3 helping us to enlighten -- Most of the members of
4 the Board will be advised about this Committee's work.
5 And we are very much interested in I.O.L.T.A. And
6 Mr. Rathbun will be contacting some of you in the
7 immediate future. I think I proposed to do some sort
8 of study about where we are in I.O.L.T.A. at this
9 point and time, and this is the natural place to start
10 in Florida. Where we go after that, I don't know.

11 I think most of you heard the expression of support
12 certainly from L.S.C. and from me. And there is no
13 questions but that we need I.O.L.T.A. funds and
14 probably need a lot more of them.

15 Nothing further if I can have a motion to adjourn.

16 MS. MILLER: I move to adjourn.

17 MR. WENTZEL: Second.

18 MR. VALOIS: All those in favor?

19 PANEL: (Unanimous response).

20 MR. VALOIS: Thank you very much.

21 * * *

