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TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

In the Matter of:

COMMITTEE ON THE PROVISIONS FOR
THE DELIVERY OF LEGAL SERVICES

Pages 1 through 54

Place Anaheim, California

Date November 7, 1985

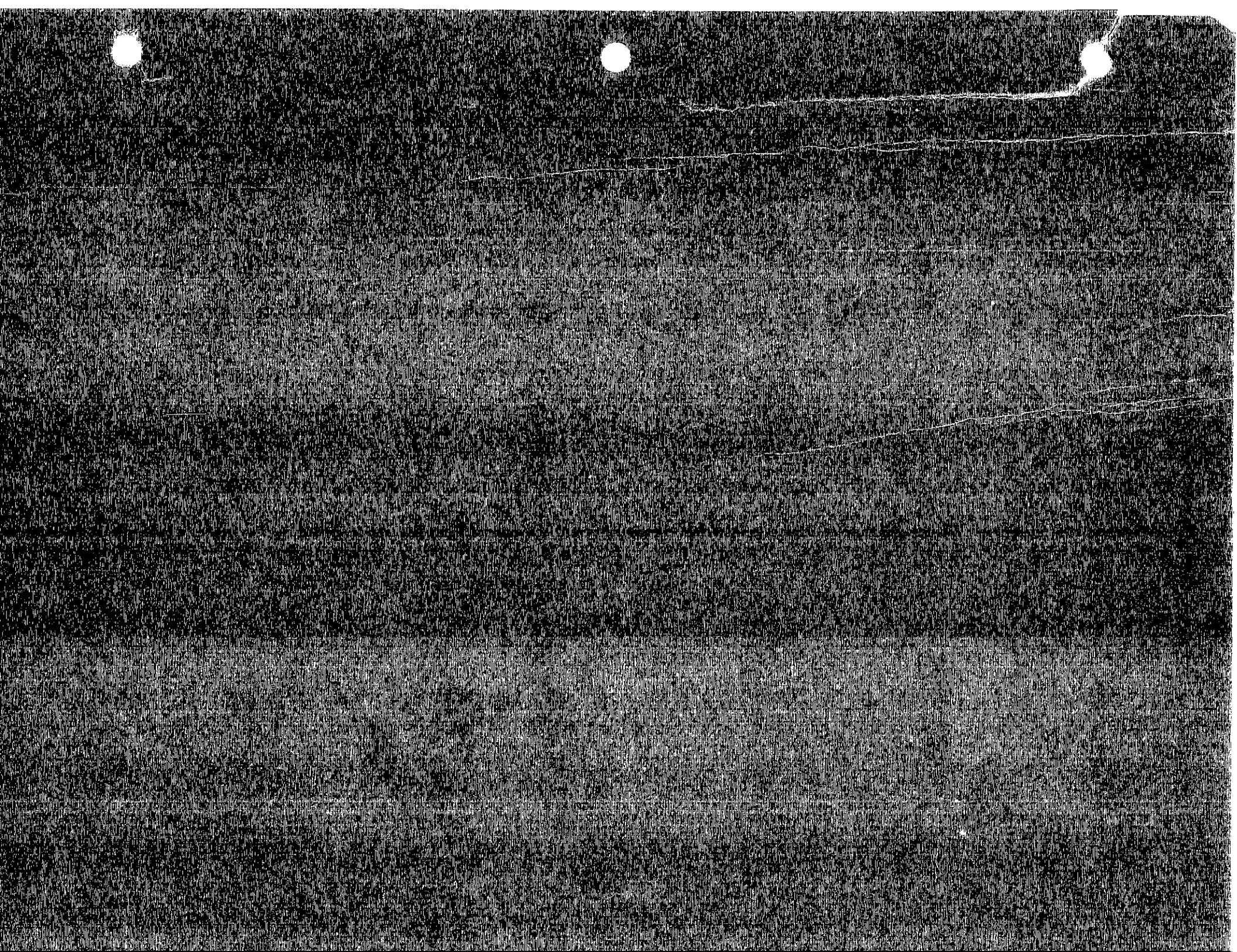
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LEGAL SERVICES CORPORATION

In the Matter of:)
)
COMMITTEE ON THE PROVISIONS)
FOR THE DELIVERY OF LEGAL)
SERVICES)

Thursday,
November 7, 1985

Holiday Inn
1850 S. Harbor Boulevard
Anaheim, California

The above-entitled matter began at 3:35 p.m.

P R O C E E D I N G S

1
2 MR. VALOIS: On the record.

3 The committee will be in order.

4 This is a meeting of the Committee for the
5 Provisions of the Delivery of Legal Services.

6 The first item -- let the record show that all of
7 the members of the committee are here with the exception of
8 Leanne Bernstein.

9 The first item is the approval of the agenda. May
10 I have a motion on that?

11 MS. MILLER: I make that motion.

12 MR. VALOIS: And a second please.

13 MS. BENAVIDEZ: I second it.

14 MR. VALOIS: All in favor of approving the agenda
15 say, aye.

16 (Aye.)

17 MR. VALOIS: The agenda's approved.

18 The second item is approval of the minutes. It's
19 been called to my attention that on page 8 of the minutes in
20 the first paragraph in the beginning of the second sentence,
21 the term -- the board -- should be changed to read --
22 several committee members, and I accept that change.

23 Now, we have a motion on approving the minutes of
24 September 5, 1985. Is there a second to the motion?

25 MS. MILLER: I second it.

1 MR. VALOIS: All those in favor of approving the
2 minutes as amended say, aye.

3 (Aye.)

4 MR. VALOIS: The minutes are approved.

5 Where are the minutes from Tallahassee? They're
6 not done yet.

7 MR. RATHBUN: No, they're not. The transcript was
8 received last week.

9 MR. VALOIS: The third item on the agenda is
10 discussion on the interest on lawyers' trust accounts
11 program, and I'm going to it over to Mr. Rathbun for
12 introduction of the speakers.

13 MR. RATHBUN: Good afternoon, Mr. Chairman.

14 As you're aware, the provisions for the Provisions
15 for the Delivery of Legal Services Committee met on
16 October 18 in Tallahassee, Florida to begin a review on the
17 interest on lawyers' trust account program. At that
18 meeting, the committee was provided an update on LSC's IOLTA
19 program from the office of field services.

20 The report from OFS outlined the original goals of
21 the IOLTA initiative, as well as LSC's financial commitment
22 to date -- that being 26 grants totalling \$744,643.

23 In Tallahassee, the committee was also provided
24 with testimony from numerous organizations involved in the
25 development, implementation and administration of IOLTA both

1 in the State of Florida and nation wide.

2 LCS's review of IOLTA will continue here today in
3 the State of California. California was a recipient of an
4 implementation grant from the LSC in 1983 and is currently
5 the largest operational IOLTA program in the country.

6 We have here today representatives from the Legal
7 Services Trust Fund Commission and the Legal Services Trust
8 Fund Program, as well as representatives from the government
9 of the City of Santa Ana and the Legal Aid Society of Orange
10 County. I've asked each gentleman here to introduce
11 themselves.

12 MR. GREGG: I'm George Gregg. I am the community
13 preservation manager for the City of Santa Ana.

14 MR. COHEN: I'm Bob Cohen, and I'm the executive
15 director of the Legal Aid Society of Orange County.

16 MR. MANDEL: Mr. Chairman, my name is Joseph
17 Mandel, and I'm the chair of the Legal Services Trust Fund
18 Commission of the State Bar of California.

19 MR. CORDOVA: My name is Leroy Cordova. I'm the
20 director of the Legal Services Trust Fund Program of the
21 State Bar of California.

22 MR. RATHBUN: We will begin with a presentation
23 from Mr. Mandel.

24 MR. VALOIS: Gentlemen, we're glad to have you
25 here, and we look forward to hearing from you.

1 MR. MANDEL: Thank you, Mr. Chair, members of the
2 committee.

3 I've read the materials relating to the convening
4 of this particular meeting and hope that between
5 Mr. Cordova and myself that we can respond to whatever
6 questions any of you may have that will help you in
7 fulfilling your mission, which is -- I gather it is
8 primarily a fact gathering and information gathering task.
9 We hope to be able to provide you with whatever information
10 you may request concerning the IOLTA program in California.
11 In that regard, I encourage you, not that you necessarily
12 need such encouragement, but I do encourage you to interrupt
13 me or Mr. Cordova at any point in the course of our remarks
14 so that we can make certain that your time is well used and
15 that we're providing the kinds of information that you
16 really require.

17 Perhaps, a little history is in order. California
18 following the example set by our sister state Florida first
19 studied this issue, I believe, as far as the mid 1970s, but
20 actually had encouraged legislation to be introduced in the
21 state legislature in early 1981. When the legislation was
22 introduced in the state senate, it was introduced in the
23 form of a voluntary program. At that time in 1981, things
24 were still rather dynamic and uncertain and following the
25 introduction of the legislation and amended form of the

1 legislation was considered by the state legislature which
 2 converted the California program from a voluntary program to
 3 a mandatory program -- that is any lawyer within the State
 4 of California who receives or disburses funds belonging to
 5 his or her client under the mandatory features of the
 6 program, would be required to comply with the various
 7 requirements of the legislation enacting the IOLTA program
 8 in California. That legislation was passed by the state
 9 legislature in the latter part of 1981 and was signed by the
 10 governor in late 1981 and became effective in early 1982.

11 MR. VALOIS: I'm going to accept the invitation to
 12 interrupt.

13 MR. MANDEL: Please, sir.

14 MR. VALOIS: Was any consideration given in the
 15 legislature or prior to the time of its passage that more
 16 than just lawyers' trust accounts should be subjected to
 17 this. For instance, in California, I guess you have some
 18 sort of abstract scheme for real estate. What happens to
 19 real estate escrow money? How is that handled?

20 MR. MANDEL: I think the answer to your question,
 21 although I'm certainly not an expert on legislative history
 22 is that the legislature was focusing on lawyers handling
 23 client's monies because the whole legislative concept was in
 24 response to funding cutbacks or potential cutbacks from the
 25 Legal Services Corporation, and I think this was what

1 triggered the focus on lawyers' handling of trust fund
2 monies as compared to other professionals and organizations.

3 MR. VALOIS: I think most lawyers will agree it's
4 a professional responsibility of lawyers to provide services
5 and I suppose to that extent money that belongs to clients
6 which is in lawyers' hands is easily drafted for that
7 purpose, but I think most of us believe that the
8 responsibility to provide services to the poor is broader
9 than simply being a lawyer's responsibility or even that
10 small part of the community of people in the United States
11 who are clients of lawyers.

12 Have you all done anything about other types of
13 trust accounts to see if that could not be included into
14 your program?

15 MR. COHEN: If I may just add --

16 MR. VALOIS: Please.

17 MR. COHEN: I was around at that time when we were
18 putting the legislation together. The year following the
19 enactment of the Legal Services Trust Fund Act -- the
20 legislature was again approached with a bill which would
21 have earned interest off of escrows -- money which in some
22 states which is held by attorneys but in California which is
23 mostly held by title companies.

24 The legislature declined to act on that for
25 several reasons. One of the most prominent reasons was

1 banking opposition.

2 MR. VALOIS: Banking opposition. Was there --

3 VOICE: Can I interrupt, please? I'm having
4 trouble hearing. I don't know if the mikes are open, or
5 you're not speaking into them.

6 MR. VALOIS: Yes. I don't know either.

7 Continue.

8 MR. COHEN: We had estimated just from the way
9 money was earned in other countries -- commonwealth
10 countries -- that the potential of earning funds off of
11 escrow funds is far greater than the potential off of
12 lawyers' funds.

13 The question, of course, was right would Legal
14 Services have to use that money for the provision of legal
15 services, and the bill that's introduced channelled 80
16 percent of the money for construction of low income homes
17 and 20 percent of the money for legal services relating to
18 housing matters.

19 MR. VALOIS: Has there -- has there been any
20 effort since then to broaden the -- broaden to other types
21 of trust accounts that you're aware of?

22 MR. COHEN: Not that I'm aware of.

23 MR. VALOIS: Okay. Thank you.

24 Mr. Mandel?

25 MR. MANDEL: Thank you, sir, and I will

1 encourage Mr. Cohen. As he indicates, he's much older than
2 I am, and he's been around a lot longer than I have been.
3 So, if it comes to legislative history, I would encourage
4 him to interrupt if that would not displease the members of
5 the committee.

6 MR. VALOIS: Not at all.

7 MR. MANDEL: Fine.

8 Not surprisingly with the enactments of the
9 legislation effective at the beginning of 1982, being a
10 state with now an excess of 90,000 lawyers, one or two
11 perhaps and maybe even a few more than that, were -- felt
12 somewhat agrieved by the program and it's mandatory nature,
13 and lawyers being lawyers, there were two principal pieces
14 of litigation that were introduced -- one in Los Angeles
15 County and one in San Diego County -- challenging the
16 constitutionality of the program and particularly, the
17 mandatory feature.

18 I raise that because during the pendency of that
19 litigation, the state law board of governors which is the
20 public body created by the constitution of the State of
21 California which was given the responsibility by the state
22 legislature to implement the IOLTA program, felt that its
23 hands were tied so long as the uncertainties existed that
24 were presented and posed by that particular litigation.

25 While the litigation was ongoing, however, the

1 board of governors was not paralyzed. They did appoint a
2 committee to try to develop appropriate rules to implement
3 the legislation as enacted by the State of California. That
4 committee worked diligently during 1982 and established a
5 set of proposed rules which in accordance with the
6 legislation was published for comment by the public and was
7 subjected to two public hearings -- one in the northern part
8 of the state, and one in the southern part of the state.

9 Ultimately, those rules were adopted. In early
10 1983, the board of governors decided to create and appoint
11 members to what is now known as the Legal Services Trust
12 Fund Commission, a body of 25 persons, 17 of which are
13 lawyers, the other 8 of which are members of the public,
14 that is nonlawyer members of the public, and that 25 person
15 commission was vested with responsibility for overseeing the
16 program that had been created by the legislature and to
17 oversee it in accordance with the rules promulgated by the
18 board of governors.

19 Commencing in approximately March 1983, the body
20 of lawyers in the state received written communication
21 advising them if they didn't already know about it, of the
22 adoption of the program, of its mandatory nature and
23 providing them with significant quantities of background
24 data, forms to fill out indicating whether -- to indicate
25 whether the individual lawyer was or was not one who

1 received and disbursed client funds, advising the lawyer if
2 he or she did fall within the category of those covered by
3 the statute how to go about establishing the necessary trust
4 fund account at his or her financial institution of choice
5 and otherwise, making clear what the obligations of the
6 lawyers were as compared to the obligations of the financial
7 institution.

8 Monies began to -- actually, the requirement was
9 that the lawyers covered by the legislation begin to remit
10 or begin to establish the necessary accounts at their
11 financial institutions and the financial institutions begin
12 to remit funds effective March 1, 1983 with an established
13 outside date for implementation of May 31, if I'm not
14 mistaken, 1983, and monies began to be received by the state
15 bar, remitted from the financial institutions handling these
16 trust fund accounts during the calendar year 1983.

17 Again, all of this was happening while the
18 litigation was pending. In the early stages of that
19 litigation a Superior Court judge or a trial court judge in
20 San Diego agreed with the complainants or the petitioners
21 concerning the constitutionality of the lack of
22 constitutionality of the program or at least its mandatory
23 feature.

24 That, obviously, was met with an appeal to the
25 Court of Appeal, the intermediate court in the State of

1 California.

2 MR. VALOIS: Is that the Carroll case?

3 MR. MANDEL: Yes, sir.

4 MR. VALOIS: Is that -- was that -- did they seek
5 certiorari on that?

6 MR. MANDEL: Yes, they did and certiorari was
7 denied by the United States Supreme Court. So, it is now --
8 not only for all intents and purposes, but it is a final
9 judgment in which the constitutionality of the program has
10 been upheld, but it took a bit of time. As you can
11 appreciate, the wheels of justice do move slowly and until
12 such time as the board of governors felt that the outcome
13 was almost a certain success for the program, the board of
14 governors felt obliged, and I think we can all recognize the
15 reasons for their thinking, to withhold the disbursement of
16 funds, notwithstanding the funds were being collected and
17 the program was otherwise being implemented.

18 Finally, in the early part of 1985 following the
19 favorable decision of the Court of Appeal in California, the
20 board of governors authorized the initial disbursement of
21 funds -- funds that had been collected commencing in the
22 earlier part of 1983, and the first distributions of funds
23 covering about a full year period exceeded seven million
24 dollars. The funding year runs from July 1 to June 30. It
25 disburses monies realized during the preceding 12 month

1 period and for the period commencing July 1, 1985 and ending
2 June 30, 1986. The amount of monies to be disbursed to the
3 eligible programs is in excess of \$10 million dollars.

4 MR. VALOIS: Mr. Cohen, do you have an estimate as
5 to what the yield would be if the banking industry had not
6 been successful in protecting these title company escrow
7 accounts?

8 MR. COHEN: Well, that question was asked by
9 various state senators at the hearing on the viability of
10 the same kind of approach used in escrow and none of the
11 bankers gave very much of an answer except to state that
12 they invested the money in overnight funds, and that they
13 did not pay any interest.

14 Based on what happens in other countries such as,
15 Canada, Australia, that amount -- the amount of money they
16 raised from the real estate transactions is almost 90
17 percent of the total that they raised and if that held true
18 in California, the amount raised would be quite
19 considerable.

20 MR. VALOIS: Mr. Mandel?

21 MR. MANDEL: Fine, sir.

22 While Mr. Cohen was speaking, it gave me an
23 opportunity to recall that the implementation of the program
24 which I described including the mailings to members of the
25 bar apprising them of their obligations was funded in part

1 by the \$25,000 grant forthcoming from the Legal Services
2 Corporation, and I think it ought to be said even though it
3 goes without saying that the -- that those connected with
4 the California program are extremely appreciative of that
5 financial support, and it helped to increase the levels of
6 lawyers complying with the program. Although, that is
7 clearly an ungoing effort, it is very difficult with a
8 population of over 90,000 lawyers to make certain that each
9 of them reads his or her mail, particularly, when it has a
10 state bar return address on it and otherwise to determine
11 who is failing to comply -- who should comply and whether
12 the noncompliers are doing it by reason of inadvertence,
13 ignorance, lack of understanding or philosophical aversion.

14 MR. VALOIS: Did you see in Florida a form which
15 you return with your bar dues, and you check a box that
16 says, either you do or you don't maintain a trust account?

17 MR. MANDEL: Yes, we -- we've seen and looked at
18 lots of different forms. We got such a favorable response
19 initially and such a large percentage of lawyers adhering to
20 the program, and it is such a politically sensitive program
21 in the developmental stages that we were somewhat concerned
22 about including any statement on the bar dues form which
23 goes to every lawyer in the state, and we have -- we are now
24 examining this question at the commission level, but our
25 present inclination with the data base that we have is to

1 try to identify which we believe we can do, those lawyers
2 who are not presently part of the program and to them, send
3 a communication just to them so that we don't have complying
4 attorneys feeling that they're being beaten upon when
5 they're -- when they're do getters, but we are extremely
6 sensitive about the various approaches to try and maximize
7 the participation in what is a mandatory program.

8 The success of the program is one of -- is a
9 source of great pride to all of connected with the program.
10 As I indicated, we have \$10.4 million dollars -- thereabouts
11 -- being disbursed in the physical year 1985 and 1986. We
12 are quite confident, particularly, given the figures in this
13 stage of the physical year that the amount we will have to
14 disburse in the physical year commencing July 1, 1986 and
15 ending June 30, 1987, will be substantially in excess of the
16 \$10.4 million dollars. So, this is a significant source of
17 money in achieving the objective that was set down by the
18 California legislature in adopting this program. It is a --
19 to our way of thinking -- a wonderful adjunct to the monies
20 that are forthcoming from Legal Services Corporation to
21 those of our recipients who are also legal services
22 corporation grantees.

23 It is a wonderful development within the State of
24 California, and I think a good example for other states
25 throughout the nation in terms of achieving the ultimate

1 objective of making certain that every citizen, irrespective
2 of economic standing, has access to the justice system,
3 albeit not always equal level of quality or quantity but at
4 least we can strive to achieve that objective and that these
5 funds and that the funds that you disburse and funds
6 obtained from other sources such as, private foundations and
7 the bar in large, will be extremely helpful in achieving
8 that ultimate objective.

9 MR. VALOIS: I received about an hour ago a copy
10 of Senate Bill 713, currently, your chapter, 789, and I
11 don't know what this -- this is a copy of a sessions law or
12 this is the way California statutes are arranged but in
13 section 6216(b)(2), there's a reference to any county in
14 which there's no qualified legal service projects providing
15 services state bar shall reserve, etcetera.

16 Is there any such county in California that does
17 not have a legal services provided?

18 MR. MANDEL: I do not believe so, sir.

19 MR. VALOIS: Do all of the funds go directly to
20 existing legal services programs, or have you done anything
21 to create or divert these funds to private attorneys who are
22 interested in providing legal services at some reduced fee
23 basis?

24 MR. MANDEL: The legislation as you will note,
25 having it in front of you, is quite specific in spelling out

1 the details of the program. It requires the program to
2 disburse funds to legal services providers and to support
3 centers as defined in the legislation. They in turn have
4 certain requirements and limitations upon the manner in
5 which they disburse those proceeds but --

6 MR. VALOIS: Legislation under your rules and
7 regulations?

8 MR. MANDEL: Well under the legislation, itself.

9 I think it's important to understand that the
10 California legislature in the statute that you are alluding
11 to, Mr. Chair, has quite specifically enumerated the details
12 of the program, and it has delegated to the state bar of
13 California through the board of governors, the right and
14 obligation to develop rules after a full public hearing to
15 implement that legislation. The state bar board of
16 governors in turn has established the legal services trust
17 fund commission to assist in implementation of the program
18 such as developing application forms, reviewing
19 applications, monitoring and evaluating recipients and
20 otherwise making certain that the monies are used in the
21 manner in which the legislature has stated that they are to
22 be used.

23 The level of discretion, obviously, reduces as one
24 proceeds down that hierarchy and although we get some knotty
25 problems from time to time, neither the legislature nor the

1 board of governors has addressed. For the most part, the
2 commission is trying to make certain that the legislation is
3 adhered to rather than engaging in second guessing of what
4 the legislature has done.

5 MR. VALOIS: Do I understand what you say, and
6 again, I regret to say I've only had a brief opportunity to
7 read the legislation and the rules, that none of the
8 California IOLTA funds go to such things as voucher systems
9 or co-payment matters or private bar involvement?

10 MR. MANDEL: Well, I hope this is responsive.
11 Basically, and with respect to the monies to be disbursed,
12 85 percent of the monies after reduction for the rather
13 modest administrative costs are disbursed to providers of
14 direct legal services.

15 MR. VALOIS: Which are defined as somebody who as
16 incorporated the definition 6213 --

17 MR. MANDEL: That's correct.

18 MR. VALOIS: -- qualified legal services project.

19 MR. MANDEL: That's correct. It's a nonprofit
20 California corporation engaged in the rendition of legal
21 services to civil indigents in the State of California.
22 That's really a combination of two sections.

23 MR. VALOIS: That definition would exclude the
24 county bar association --

25 MR. MANDEL: That's correct.

1 MR. VALOIS: -- someplace in Northern California
2 that has a program of supporting lawyer referral or private
3 attorney involvement.

4 MR. MANDEL: It excludes it if that program is
5 merely a component of the county bar association and the
6 overall activities and purpose of that entire association.
7 It is not primarily the rendition of civil legal services to
8 indigents. Now county bar association programs have and
9 indeed they'd been encouraged, to take a program -- a pro
10 bono program or a legal services element of the entire
11 association and if otherwise appropriate, to house that in a
12 separate California non-profit corporation thereby, allowing
13 that particular entity to seek to become eligible under the
14 requisite rules and the legislation.

15 In addition, of the 85 percent of the monies that
16 go to the direct legal service providers, they other 15
17 percent going to support centers, backup centers, as defined
18 in the legislation, but of the 85 percent that goes, 10
19 percent of that is set aside, again by the statute, not by
20 our action -- 10 percent of that amount is set aside for pro
21 bono programs within each county. So that the legislature
22 was mindful of the desirability of encouraging volunteer
23 involvement of the organized bar and that is why 10 percent
24 of that 85 percent is set aside specifically for that
25 purpose.

1 Now, an applicant can demonstrate that it
2 qualifies both as legal services provider, thereby, being
3 eligible for the lion's share of this particular pot, and it
4 can also demonstrate it has a pro bono program if it can
5 meet the requirements of the pro bono sections of the
6 legislation.

7 I believe at present we have 88 recipients that
8 are direct legal services providers in the State of
9 California, and I believe we have 16 so-called support
10 centers which share in the 15 percent of the overall pie.
11 Of the 88, something in the nature of 28 are also recipients
12 of Legal Services Corporation funds, although, that 28
13 probably receives in excess of three quarters of the dollars
14 that we distribute to legal services providers in the State
15 of California. So, the numbers of dollars that the Legal
16 Services Corporation grantees are receiving from our program
17 proportionately far exceed the numbers of programs, and
18 that's, I suppose, to be expected given the -- several of
19 the smaller programs that exist throughout the state that
20 are not Legal Services Corporation grantees but nonetheless,
21 are eligible under the legislation to receive trust fund
22 monies.

23 MR. VALOIS: Section 6219 refers to a permissive
24 -- permissive objective being to assist disadvantaged law
25 students, and I'm curious since I've never seen that in

1 this area before. Has that ever been used to your
2 knowledge?

3 MR. MANDEL: Let me ask Mr. Cordova to respond to
4 that question. I think the answer is that there is one law
5 school that does do that. As you'll note in the earlier
6 parts of the section, there is -- there is a special
7 provision relating to law school programs in the definition
8 from 6213 which enables a law school that has a -- a program
9 which meets the requirements of the legislation, to apply
10 for trust fund monies even though it is quite clear that a
11 law school as a whole does not have as its primary purpose,
12 the rendition of legal services to indigents, but perhaps,
13 Mr. Cordova can enlighten the committee as to how McGeorge
14 Law School has gone about dealing with section 6219.

15 MR. CORDOVA: I don't believe there is a qualified
16 legal services project that is using the funds in the way
17 provided by 6219 but McGeorge Law School which receives
18 funds as a qualified clinic under the statute, does. It has
19 such a program underway right now.

20 You may or may not be aware that McGeorge Law
21 School is also a recipient of Legal Services Corporation
22 funds under its grants to laws school and legal clinics.

23 MR. VALOIS: But do they use the funds that they
24 get from you all in a clinical manner or have they actually
25 engaged in some scholarship --

1 MR. CORDOVA: Both. They use them to support the
2 clinical services as well as the scholarships to
3 disadvantaged law students.

4 MR. COHEN: I would just add for our program that
5 we do make work opportunities available for law students,
6 and we do use some trust fund money for the --

7 MR. VALOIS: That's permitted under the statute,
8 isn't it.

9 6220 essentially says that an attorney in private
10 practice who serves indigent people may use the services of
11 a provider. What does that -- how is does that work in
12 practice?

13 MR. CORDOVA: That refers to the qualified support
14 center services which are one category of provider -- of
15 recipient under the trust fund and what this says is that if
16 the trust fund provides money to a support center that deals
17 in health issues in California, an attorney in private
18 practice is part of -- is in a pro bono program -- may ask
19 for and receive the services of that support center in
20 connection with those services of its own -- the health
21 question or whatever the area of law is.

22 MR. VALOIS: So that would be one area that I was
23 asking about earlier in which a private attorney, while he
24 may not get funds as such under IOLTA to assist indigents
25 get research assistance or something like.

1 MR. MANDEL: Correct.

2 MR. VALOIS: Do any of the members on the
3 committee have any questions?

4 Mr. Mandel, I guess we're back to you.

5 MR. MANDEL: Well, again, I hope that that has
6 provided something of a background synopsis to help you in
7 discharging your responsibilities. I obviously could go on
8 at greath length with the details of the legislation, but
9 I'm not sure that would be productive. Perhaps, I could ask
10 Mr. Cordova if he wanted to add anything or if the committee
11 has no further questions at this time, we'd be glad to sit
12 and as the other two gentlemen provide their testimony, if
13 questions arise and you want to pose them to either of us,
14 we'd be pleased to respond.

15 MR. VALOIS: Thank you.

16 Mr. Cordova?

17 MR. UDDO: Mr. Mandel, let me just ask you one
18 question. Do you know what percentage of lawyers are
19 involved in having already set up their trust fund?

20 MR. MANDEL: Well, let me give you -- and
21 Mr. Cordova, correct me if my memory is inaccurate. I think
22 we have at present approximately 47,000 lawyers covered by
23 the program -- either their law firms are covered and
24 therefore they are covered, or they are individually covered.

25 There are at this point, an unascertainable number

1 of lawyers who are exempt from the program. All public
2 lawyers, law school faculty, corporate counsel, if you will
3 -- and it is that data that we are now in the process of
4 compiling to determine how many are left after you exclude
5 those two categories, and it's that group that will receive
6 the next written communication from the commission trying to
7 inquire as to why they are not complying and in the most
8 genteel fashion suggesting that they do comply.

9 MR. VALOIS: Mr. Cohen?

10 MR. COHEN: If I can just give you a very brief
11 overview of what the trust fund means to us and what we do
12 with the money that we receive from the state fund.

13 During the 1985-1986 calendar year, the Legal Aid
14 Society of Orange County for its -- the services it provides
15 within Orange County will receive a little over \$389,000
16 from the Legal Services Trust Fund. That represents
17 approximately 23 percent of our budget. That money is used
18 in a fashion very similar to funding that we received from
19 the Legal Services Corporation. There was some discussion
20 early on when we received the money if we should establish
21 separate service priorities for those funds, and we
22 determined that we would not.

23 The one distinction that we make between state bar
24 funds and legal services funds is that if someone comes to
25 the legal aid society and is economically eligible for our

1 services but does not provide proper documentation to show
2 appropriate status to be served with the Legal Services
3 Corporation funds, we serve that person through our state
4 bar program. That has become a very important component for
5 us and as Mr. Gregg and I will explain, the services
6 primarily provided to persons are in the area of land-lord
7 tenant.

8 Basically, our program has three priority service
9 areas -- family law, government benefits and land-lord
10 tenant, and if I may give you just a brief history of what
11 is happening in the area of Santa Ana with landlord tenant,
12 you can better understand why they state bar funding is so
13 important to us.

14 A few years ago, and George can better speak to
15 this than I can, the city of Santa Ana determined that one
16 of its priority areas was to improve the housing stock
17 within the city of Santa Ana. It wanted to assure safe and
18 decent housing for all residents of the city, and it wanted
19 to do it within such a way without unduly victimizing
20 tenants who were renting substandard units. It was and is a
21 very complex problem.

22 Very basically, in cooperation with the Legal
23 Services Corporation and the City of Santa Ana, the legal
24 aid society has developed a program where it will represent
25 an unlawful detainer defense -- persons who are economically

1 eligible for our services where they have a meritorious
2 claim relating to habitability -- that is their dwelling
3 does not comply with the requirements of law, and they can
4 assert a defense to an unlawful detainer based on nonpayment
5 of rent, where the rent is exorbitant given the conditions
6 of the premises which are being rented.

7 MR. VALOIS: Do we have the same license to
8 interrupt you?

9 MR. COHEN: Of course.

10 MR. VALOIS: Tell me why those people -- why our
11 funds can't be used for that purpose?

12 MR. COHEN: Your funds, as a matter of fact, are
13 used and if you'll give me the liberty of distributing an
14 article from August 29, 1984 announcing the use of your
15 private funds. At that time, Donald Bogart visited the
16 county and initiated a pilot program for the use of LSC
17 funds in direct contract basis to provide unlawful detainer
18 defenses.

19 The program was exceptionally well received and
20 for our part, we have made our Legal Services Corporation
21 money available to -- we're appropriate -- litigate with the
22 attorneys that you fund and in all cases, work in
23 conjunction with them. We refer cases to them.

24 One problem area -- one gaping whole in the plan
25 was that in faithfully obeying the requirements of the law,

1 we could not refer to the private attorneys, nor serve
2 ourselves anyone who could not present appropriate
3 documentation of their status in this country.

4 MR. VALOIS: Okay. So, the clients served by
5 these funds are not eligible because they're illegal aliens.
6 Is that what you're saying?

7 MR. COHEN: Yes.

8 MR. VALOIS: Is the money used for legal services
9 or moving people from one place to another?

10 MR. COHEN: I think George will address because
11 city money is used for that but one problem that the city
12 wanted to avoid -- and then I'll let George explain the
13 program is the notion that people would be protected against
14 the practices of slum lords if they were documented, but if
15 a slum lord happened to rent to someone who was not
16 documented, they would receive no legal services -- in
17 effect, opening up the city for virtually free practices
18 when someone was undocumented as opposed to the harsh
19 realities of litigation where someone was documented. We
20 could not -- the program could not be effective unless it
21 had its companion element funded by the state bar, and
22 George, maybe you could explain --

23 MR. VALOIS: George, will you please tell us what
24 your title is again and precisely -- tell us what you do?

25 MR. GREGG: What I do exactly and that's kind of a

1 long story but basically, my title is community preservation
2 manager for the City of Santa Ana. I'm responsible,
3 essentially, for enforcing the building and zoning codes in
4 the City of Santa Ana and a number of other related kinds of
5 sanitation codes.

6 The City of Santa Ana has a population of
7 approximately 219,000 by the last official status. Our
8 estimates based on some surveys we've done and some data
9 gathered by the police department which puts out population
10 -- actually, the population is much closer to 300,000 or a
11 little over 300,000.

12 MR. VALOIS: George, you've got inspectors that go
13 around and inspect dwellings?

14 MR. GREGG: That's correct.

15 MR. VALOIS: And they come back and report to you
16 or to somebody that some of these dwellings are unfit?

17 MR. GREGG: That's correct.

18 MR. VALOIS: What are your choices other than
19 putting up a sign that says the dwelling's uninhabitable and
20 nobody can enter until it becomes habitable? Do you have
21 any power to require the landlord to make it fit for human
22 habitation?

23 MR. GREGG: Yes, we do move actively against the
24 landlords to require that. Unfortunately, that is sometimes a
25 very time consuming process, and we have some situations

1 where we are forced through the safety of the individuals
2 involved to have to have them relocated.

3 We got together with the legal aid society and the
4 feedback foundation here in Orange County which is a
5 provider of social services and developed a program where we
6 could inject some city money -- law grant monies -- into
7 the program which would actually provide for the physical
8 relocation expenses provided that those individuals -- like
9 Bob said, you have -- case -- proceed against the landlord
10 and collect those monies and return them to this --
11 basically, a revolving kind of a fund.

12 MR. VALOIS: How many unfit dwellings are there in
13 Santa Ana?

14 MR. GREGG: Our problem is it's very difficult or
15 impossible for me to give you an exact answer on that. We
16 have a problem because we've had a large influx of
17 undocumented individuals in Santa Ana over a number of
18 years. We have approximately 70,000 dwelling units in Santa
19 Ana, legally permitted dwellings. We have a very large
20 percentage of those that have had legal occupancies added on
21 to them. They've been subdivided from a single family
22 dwellings into duplexes -- supporting houses.

23 We have a real problem with occupied garages where
24 individuals are actually living in garages or in sheds --

25 MR. VALOIS: Let me tell you how happy I am to

1 have you two guys at the table at the same time. This has
2 sort of been a pet project or concern of mine -- trying to
3 figures out how it is that money funnelled from one
4 government source goes to an attempt to correct problems
5 which are in the domain of another government, in this case,
6 the City of Santa Ana, and I've always been very curious as
7 to how we've created this problem.

8 MR. GREGG: We -- for the code enforcement
9 operation, itself, and my salary and my inspector's salary,
10 all those related expenses are in no way funded by any
11 federal money.

12 MR. VALOIS: I understand that.

13 MR. GREGG: That's all general fund.

14 MR. VALOIS: I understand that, but it's within
15 the power of the City of Santa Ana, I think, if I understand
16 what you do correctly -- by condemnation, by ordering people
17 to clean them up and so forth.

18 MR. GREGG: Yes, sir, that is correct and that's
19 what we're in the process of doing.

20 MR. VALOIS: And then one of the our grantees is
21 collecting money albeit from another source than us to do
22 what they have to do, because you haven't done what you're
23 supposed to do. I mean that's an over simplification,
24 obviously, but that's the whole -- one of the problems and
25 one of my pet interests.

1 MR. COHEN: I think there's a big area of overlap
2 where the powers that the city exercises are very much
3 complimentary with the powers that we are exercising. To
4 the extent that our program has been successful, and I can
5 tell you that both the LSC funded part of the program -- the
6 pilot part, the part that we found and the part funded
7 through the state bar have been successful. We have settled
8 numerous cases. The ones that we had litigate, we have been
9 successful in litigating and getting rent reductions.

10 In one case, your pilot program got a zero rent
11 outcome after a trial.

12 To the extent that we are successful, George's
13 work is a lot easier and the extent that George is working
14 -- our work becomes easier. After we have examples of what
15 the law requires and that the law will be enforced, we can
16 with rather minimal effort settle matters on a fair basis
17 and meet the mutually desirable goal from our perspective
18 and the city's perspective of improving the housing stock
19 for all citizens and in our case, especially low income
20 residents.

21 George, if I may say, is completely overburdened
22 with the task. It's just far too much to do, far too few
23 persons doing it. Similarly, legal aid is -- could not meet
24 the entire need -- come close to meet the entire need, but
25 we can start a program that working together, we can

1 encourage persons to provide suitable housing for low income
2 persons as well as others and just for your information from
3 what we've discovered, and I think George can back me up on
4 this or correct me if I'm wrong -- that the housing that our
5 clients live in costs every bit as much as the housing that
6 others live in. You're looking at \$500 a month rents -- not
7 uncommon in Santa Ana.

8 MR. GREGG: We typically find rents in the \$450 --
9 \$500 range for a garage with no bathroom and no kitchen
10 facilities in it. It's not unusual at all.

11 MR. VALOIS: Bob, I interrupted you somewhere
12 along the line. I'm not sure where you were.

13 MR. COHEN: Well, if it were not for the state bar
14 trust fund, the program could not work effectively, and
15 we've used this money along with the city money that
16 they've made available for relocation. We honored the lien
17 that the city puts on funds that they provide to people who
18 have to relocate and with combining all these sources of the
19 city funding, the state bar funding, the LSC pilot project
20 and our basic LSC grant, we've been able to make a real
21 effort toward eliminating a problem for all of us.

22 MR. VALOIS: George, is enough effort coming from
23 your side of the transaction, from the city fathers and your
24 staff and -- to reduce the problem so that it doesn't have
25 to have money thrown at it to solve it.

1 MR. GREGG: Yes, we are moving forward very
2 rapidly in that area. I'll give you some examples.

3 I came to the City of Santa Ana four years ago to
4 operate a department that consisted of, I think about four
5 other individuals with a budget of some \$300,000 general
6 fund money. My budget last year was \$1.9 million, and we
7 have a staff of about 45 individuals that are operating just
8 in the code enforcement area. So, we've dramatically
9 expanded our efforts -- the city funded efforts to address
10 the problem.

11 We're looking at a three to five year kind of time
12 frame before we'd be in a maintenance type status where we
13 wouldn't have to -- we've dealt with the bulk of the
14 problem.

15 MR. VALOIS: Does someone have to get a license
16 before he engages in renting out a dwelling? Does he have
17 to get any permit or anything?

18 MR. GREGG: The only requirement is a business
19 license in the city of Santa Ana, and it's considered to be
20 a business.

21 MR. VALOIS: Is that tied in to your department
22 somehow? Do you know when somebody gets a license to rent
23 out rooms?

24 MR. GREGG: I have access to the data but in
25 California, it's -- the business license is essentially a

1 revenue tool and not a regulation kind of a --

2 MR. VALOIS: It's a state license?

3 MR. GREGG: No, sir.

4 MR. VALOIS: A city license?

5 MR. GREGG: A city license -- a business license.

6 MR. VALOIS: Do other members of the board have
7 some questions? I hate to dominate the --

8 MS. SWAFFORD: Mr. Chairman, this is not a
9 question that really relates to this subject, but it's just
10 a question of curiosity. If you said such substandard was
11 \$450 a month for rent, what would an adequate house or
12 apartment of two bedrooms -- what would that rent for?

13 MR. GREGG: Surprisingly, very, very close to the
14 same amount of money -- in the \$500 to \$600 range. There's
15 not a dramatic difference and that's caused, I believe, to a
16 great extent by this influx of undocumented individuals that
17 we have that. It's so important that we be able to have
18 some legal way to provide legal services for them. There's
19 a tremendous housing demand. We have a vacancy ratio of
20 less than 1 percent in Orange County as a whole.

21 MS. SWAFFORD: Are you getting -- let me ask one
22 other question of Mr. Cohen. Are you doing any community
23 education there?

24 MR. COHEN: Because of our budget cutbacks in, I
25 believe it was 1982, we terminated our community education

1 activities as a separate unit. We do work with community
2 groups that work on the same issues -- I mean to let them
3 know what we're doing and to let them know how to
4 appropriately use our resources, but we have -- we do not
5 have a separate community education unit now.

6 We plan to reinstate our community education
7 activities as a separate unit in our next year's budget.

8 MS. BERNSTEIN: Bob, just in order to be fair,
9 I've just got to say that beginning every sentence -- you
10 know -- every program begins every sentence -- no matter
11 what year we're in -- with because of the budget cutback.
12 What was your budget in 1981, and what is your budget today?
13 And add in all the special grants you've just gotten.

14 MR. COHEN: It's hard to add in all those special
15 grants that we've just gotten. We haven't quite figured
16 that out yet, but let me give you a thumb nail sketch.

17 Back in 1981, I believe at one point, we were
18 receiving about \$800,000 -- in the area of \$800 -- over
19 \$800,000 in legal services.

20 MS. BERNSTEIN: And weren't you one of the lowest
21 funded programs in the whole country.

22 MR. COHEN: Let me -- let me finish. In addition,
23 to the money we received from the Legal Services Corporation
24 at that time, we were receiving county revenue sharing
25 funds in about -- in the amount of about \$320,000 and

1 subsequently, the following year our LSC funding went down
2 to \$596,000 and the county was opting out of funding social
3 service agencies with its revenue -- so, we were getting it
4 from both sides.

5 We had to take reductions from the county, and the
6 county has stopped funding our general program but continues
7 to fund our Older Americans Act Program and at that time, we
8 had a budget of a little over a million dollars.

9 Now, I must acknowledge that LSC since the 1980
10 census has moved rapidly toward equalizing. From our
11 perspective, we would like you to even move faster, but you
12 have made up that loss.

13 MS. BERNSTEIN: But where you were -- you were
14 being funded at something like \$4.00 something a poor
15 person back in 1981, and you're now at \$7.80, and the board
16 has been on record as not being happy to not be able to help
17 you more.

18 MR. COHEN: Yes, but it was that one year that we
19 had to make a choice about how to curtail our activities.
20 Once you make that choice in reestablishing your program,
21 everytime you establish a new position, you have to balance
22 need for legal services against community education, and you
23 have to make that decision and to be very frank with you,
24 when you don't have a community education unit which is
25 separate from your legal services unit, the pressure that

1 comes from staff and from board generally comes in the area
2 of expanding legal services as opposed to expanding
3 community education. They just see the need day in and day
4 out, and they ask the basic question of why do we need more
5 community education when we can't begin to meet the needs of
6 legal services from people who walk in and the basic answer
7 we still give to people is no, or we provide them a very
8 basic kind of service. So, I --

9 MS. BERNSTEIN: I didn't mean to be contentious
10 with you, but it does paint a somewhat skewed picture when I
11 know that your program personally has been the recipient of
12 a lot of --

13 MR. COHEN: And we very much appreciate it, and
14 I'm perfectly happy to acknowledge it, and we're very happy
15 that you're moving toward equalization.

16 Unfortunately, we were cut from Orange County at
17 the same time you were raising --

18 MS. BERNSTEIN: Of course, we had no --

19 MR. COHEN: No. You had no control over it, and
20 you saved us from absolute disaster by increasing those
21 funds.

22 MS. SWAFFORD: On the same subject, I kind of tend
23 to agree with Ms. Bernstein in that I just wish that -- over
24 and over we do hear a statement prefaced by, well, since the
25 cut, and you know, obviously, in your case, you're getting

1 more money now than you did before the cut.

2 MR. COHEN: Getting more money from the Legal
3 Services Corporation and --

4 MS. SWAFFORD: It does tend, though, to give sort
5 of a somewhat skewed picture of what the situation really
6 is.

7 MR. COHEN: Well, I'm sorry. I did not mean to do
8 that.

9 MS. SWAFFORD: Well, I guess that we just heard it
10 so much. Just about everywhere we go, you know, we hear
11 this.

12 MR. VALOIS: Bob, do you account for the money
13 that you receive from IOLTA back to IOLTA? Do you send them
14 a report as to how you spent it and who you spent it on?

15 MR. COHEN: We certainly do. If there's something
16 wrong with our report, we hear about it right away from
17 Leroy. So, he keeps very close track of how we spend our
18 money.

19 MR. MANDEL: Again, the statute is quite clear
20 about the requirements imposed upon the implementing bodies
21 to require certified audits and certain contacts -- account
22 reports and certain contacts and to engage a monitoring and
23 evaluation function.

24 MR. VALOIS: Who does the monitoring?

25 MR. MANDEL: The state bar legal services trust

1 fund commission and it's agents and deputies.

2 MR. VALOIS: How frequently is that done?

3 MR. MANDEL: Well, we're now in the process of
4 implementing -- developing and implementing the monitoring
5 program. Indeed, this very day we have a committee of the
6 commission that is visiting a program in the northern part
7 of the state for purposes of starting to fact gather the
8 same sort of thing that you're engaged in, so that we can
9 have a monitoring program that is not duplicative of what
10 you do with respect to those recipients of trust fund monies
11 that are also LSC grantees that won't unduly burden our
12 other recipients, particularly, the small organizations but
13 will nevertheless allow us to discharge our responsibility
14 as set forth by the state legislature to make sure that the
15 funds are being used for the purposes that they were
16 designed for and are not being used for any of the
17 statutorily prescribed purposes.

18 MR. VALOIS: Proscribed by the California statute?

19 MR. MANDEL: Proscribed by the statute, itself,
20 yes. The statute again, being quite specific about what
21 activities are proscribed as well as setting forth with
22 considerable specificity what kinds of criteria the
23 applicant must meet in order to be within the definition of
24 a qualified program.

25 MR. VALOIS: Bob, never having seen your reporter

1 and having any idea about what kind of accounting system you
2 have, is there there any attempt made to allocate overhead
3 to these funds to separate the ones that come from us and
4 can't be used for the -- program?

5 MR. COHEN: Yes, we very carefully do that. We
6 separate out staff that is specifically on the trust fund.
7 Should someone be handling a case that is not LSC eligible
8 who is not a trust fund employee, he or she has to log his
9 time and the accounting records reflect that that is to be
10 paid out of the trust fund. We're very careful about
11 separating --

12 MR. VALOIS: What all do you include in that kind
13 of overhead allocation other than salaries?

14 MR. COHEN: We would include all elements of our
15 overhead -- are monthly payment for rent or mortgage as the
16 case may be now, and all other expenses on down to our
17 library.

18 MR. VALOIS: Do all of your folks keep time
19 records for whatever they're involved with?

20 MR. COHEN: At present, no -- only where we have
21 people mixing their time between the two programs, and we
22 try to limit that to as few persons as possible. We are
23 looking at a time where that may be required, but we haven't
24 completely set up such a system.

25 MS. BERNSTEIN: How do you handle the out -- and

1 the intake when a client comes in. I'm interested in --
2 when a client comes into a program and just having seen the
3 -- in San Diego and the elaborate computer system in terms
4 of splitting a client in five directions depending on which
5 program is going to be able to handle it whether it's a
6 volunteer program or the lawyer referral program or their
7 program or --

8 It's an amazement how one decides at the initial
9 level that you've still got enough funds in X account to
10 take on that client. I mean you have a computer print out
11 where you call up the screen and say, you know, well, we've
12 got X dollars left, and therefore, we can take on this fund.

13 MR. COHEN: I wish we had the computer printout,
14 but let me tell you how we handle that presently, and I hope
15 next year we would be able to tell you and the trust fund
16 that we have computerized the whole operation but basically,
17 where a person does not present us with the proper
18 documentation to receive LSA funding, there is a box on the
19 application which is checked state bar funded. That person
20 is interviewed by a paralegal that is funded through the
21 state bar and is -- and his or her case is handled by an
22 attorney who is funded by the state bar.

23 In those few instances -- and we're not talking
24 about a large number -- in those few instances where those
25 persons are not available, we do time logging. When we do

1 referral of such a person, we have the same -- virtually the
2 same referral sources now -- the cause of the state bar --
3 that we had for our LSC.

4 One of the big -- of very large assistance to our
5 program is Amicus Publica. Amicus Publica was also funded
6 by the state bar, and they handle matters in a companion
7 way, so that if they receive a referral from someone's
8 who undocumented, their money is allocated from the state
9 bar as opposed to any legal services money.

10 Our lawyer referral service is fee --

11 MS. BERNSTEIN: Now, wait a minute.

12 You're paying for the administration costs. I
13 thought you told me yesterday that for the administration
14 costs Amicus Cure --

15 MR. COHEN: Publico.

16 MS. BERNSTEIN: -- publico -- for -- as part of
17 your PAI expenditure.

18 MR. COHEN: Yes.

19 MS. BERNSTEIN: And that seems to me then if
20 they're doing undocumented alien cases -- it seems to me
21 that the accounting involved there in your pay for the
22 administration -- their total administration costs --

23 MR. COHEN: No, not the total. We pay -- I believe
24 they have a budget of about a \$120,000 annually, and I think
25 this year or maybe it's \$130,000 -- we will be allocating

1 them somewhere in the neighborhood of \$80,000. So, they
2 have a significant amount of money from the state bar so
3 that they can handle those problems and like I said, they're
4 not that great in number.

5 MR. VALOIS: Any other member of the panel have
6 any questions?

7 MS. BERNSTEIN: Oh, I have some more question, but
8 I thought --

9 MR. VALOIS: You have some more questions.

10 MS. BERNSTEIN: Are we -- I'm sorry. I apologize
11 for missing the beginning of the presentation. I had a
12 couple of questions of Mr. Cordova, if that's all right.

13 MR. VALOIS: Oh, I'm sure.

14 MS. BERNSTEIN: I just wondered could you give us
15 some of your background?

16 MR. CORDOVA: How far back?

17 MS. BERNSTEIN: Take it as far back as you'd like.
18 I'm --

19 MR. VALOIS: She knows better than to ask me that
20 question.

21 MR. CORDOVA: Prior to coming to the State Bar of
22 California in January of this year, I was the executive
23 director and president for state county's legal services and
24 president of California. Prior to that, I was the executive
25 director of Colorado Ruling Services in -- based in Denver,

1 Colorado and had previously been a staff attorney and a
2 managing attorney with that program and somewhere in there,
3 I had about a year and a half with the Colorado attorney
4 general's office.

5 I graduated from the University of Denver, College
6 of Law.

7 MS. BERNSTEIN: Okay. Did you have anything --
8 did you work on the legislation to get the IOLTA effective
9 in this state?

10 MR. CORDOVA: No. Unfortunately, I wasn't part of
11 that group.

12 MS. BERNSTEIN: Do you think there's a problem --
13 this is something we explored in Florida a little bit, and
14 it's always fair to explore here too -- if you think there's
15 a problem in the persons with legal services ties, and I
16 don't know who the commission is that actually makes the
17 decisions as to which entities will receive IOLTA funds in
18 California. Are you -- I -- while I've been in here, you
19 didn't give us a list of who's on the commission but maybe
20 you did already. Did you?

21 MR. CORDOVA: No, I didn't.

22 MR. MANDEL: I think I provided information about
23 the composition of the commission in terms of size and the
24 division between lawyer members and nonlawyer members.

25 MS. BERNSTEIN: The lawyer members -- are any of

1 the lawyer members, members of boards of directors in any
2 legal services programs before or staff attorneys of legal
3 services programs?

4 MR. MANDEL: If I'm not mistaken, three of the
5 members of the board served as directors of legal services
6 programs -- three out of the 25.

7 MS. BERNSTEIN: The question that we heard a
8 little bit in Florida is the conflicts of interest problem
9 in terms of when there is a decision making responsibility
10 and obviously someone has another kind of vested interest in
11 -- in having some increased funding. It seems to me that
12 that's a problem that I don't know how you deal with it.

13 MR. MANDEL: Let me see if I can respond. One --
14 the fact that some of our board members serve on boards of
15 legal services programs, we believe to be a positive
16 feature, because it provides us with what we think is a
17 relevant insight into lots of the problems we confront.

18 You are correct that from time to time matters
19 come before the commission that pose a conflict of interest
20 to one or more of those three individuals, but we find that
21 it is extremely easy to deal with that conflict because each
22 of the individuals makes it absolutely clear publicly that
23 he or she serves on the board of an affected or potentially
24 affected program, and he or she asks that the record reflect
25 an abstention on any particular vote. So, I think you are

1 technically quite correct, but I think the members of our
2 commission --

3 MS. BERNSTEIN: I think the whole program's ahead
4 of Florida on that.

5 MR. MANDEL: Well, we'd like to think we're ahead
6 of Florida on a lot of things but let the record show we're
7 appreciative of what Florida did to assist in getting the
8 IOLTA program off the ground in California and to become as
9 successful as we think it is, but I think your point is well
10 taken, but I think you have to examine it not in the
11 abstract but in the reality, and we really have not -- have
12 not confronted a real problem with that.

13 MR. COHEN: If I might just point out that our
14 program unlike Florida or any other of the IOLTA programs
15 that I know about, really has very little discretion in how
16 the money is distributed. Early on we viewed discretion as
17 being something that was very expensive and creating
18 uncertainty. So, instead of vesting the state bar with
19 discretion as how the money would be distributed, there were
20 created categories of service providers, and it was assured
21 that quality services would be provided, and money was
22 distributed according to support that the providers in
23 general -- according to support that the providers received
24 from other sources.

25 MS. BERNSTEIN: That's interesting too. In -- you

1 worked on the legislation.

2 MR. COHEN: Yes.

3 MS. BERNSTEIN: This is kind of, you know, if you
4 were in at the ground level, you got a leg up kind of
5 approach rather than the -- it's we want to encourage
6 everybody in the state to serve the poor and therefore,
7 we're making this competitive grant so that --

8 MR. COHEN: No. I think there's a big difference,
9 and I can tell you what our focus was when we put this
10 together -- that grants should not be of particular benefit
11 to any program; that they should be equally divided in
12 accordance with the number of poor persons in the various
13 areas, and it should get out to programs serving the poor
14 without an inordinate amount of delay. We wanted the
15 program to be -- to work fast, to work well and to work
16 without controversy.

17 MS. BERNSTEIN: Automatic --

18 MR. COHEN: Yes.

19 MS. BERNSTEIN: Automatic rather than --

20 MR. COHEN: And we spent the years -- we started
21 this back in 1977 -- the years before the legislation was
22 enacted working out a formula that would work afterwards
23 without creating a lot of conflict.

24 MR. VALOIS: Your statute is fairly specific.
25 6216 proscribes the form -- the distribution formula, and

1 it's based on a county basis based upon the latest census
2 figures or latest -- yes, census figures.

3 MR. COHEN: Yes.

4 MR. MANDEL: Let me also note that the formula as
5 you note is quite specific. The state bar trust fund
6 commission views one of its tasks as getting the word out to
7 any entity that conceivably satisfy the criteria to qualify
8 for monies. So, that we try to publicize to the best of our
9 ability the existence of the program and the existence of
10 the monies so that anybody who can fit within the criteria
11 can file an application and if demonstrated that it meets
12 the criteria can qualify for a distribution of funds in
13 accordance with the formula that the legislature has
14 proscribed.

15 MS. BERNSTEIN: I don't know whether you're
16 actually familiar with the demographics enough to know the
17 answer to this question. If you don't know, it's okay with
18 me.

19 I'm wondering if you know whether the poverty
20 population has shifted substantially since the 1980 census?

21 MR. MANDEL: Well, let's see what I do know. I
22 think there are about 2.6 million poor people within the
23 State of California, and again, I'll encourage the experts
24 to correct me if I misspeak.

25 I think it is clearly the case that the percentage

1 of those poor in Southern California has increased during
2 that period of time. I think that's for a variety of
3 reasons, but I believe the influx of Hispanics from south of
4 the border, Mexico, Central America, must impact upon that
5 demographics within the state, itself.

6 I'm not sure what other data we have that would be
7 responsive to your question.

8 MS. BERNSTEIN: Well, if you're -- if your
9 statute, you know, relates it to the census, you know,
10 you're stuck with a 10 year gap, and the reason I'm asking
11 is because this is something that, you know, you've got a
12 state wide level, and we're dealing with a national level
13 which is a difficult situation when we don't -- you know
14 even if we were allowed to use the 1980 census figures and
15 proportion equally, the 1980 is not 1985, and it's not 1986.

16 MR. MANDEL: No. I think we agree with your
17 criticism. It would be nice if the computer age had reached
18 the point where one didn't have to wait every 10 years to
19 more accurately reflect the legislative intent, but I think
20 until that day arrives, this legislation says what it says,
21 and we're kind of adhering to it or trying to.

22 MR. VALOIS: Well, let me ask you to give me an
23 estimate, and you might have the number off the top of your
24 head, or you may find the question difficult.

25 Of all the funds you receive, what percent of them

1 goes to matters involving entitlements, public authority
2 matters -- in other words, involves service to a client in
3 which the other side is a governmental agency, a social
4 service agency, a public authority of some sort and so
5 forth, as compared to private -- a dispute between an
6 eligible client and a private individual or a commercial
7 enterprise?

8 MR. COHEN: Well, if you want to guess, it would
9 be about a third.

10 MR. VALOIS: A third.

11 MR. COHEN: Mostly in the area of social security
12 or welfare benefits.

13 MR. VALOIS: Have you -- now, that I've gotten you
14 that far, can you break down the other two thirds into some
15 categories for us?

16 MR. COHEN: I'll try. About a third of our cases
17 are family law and about 20 percent involve some housing
18 disputes and the rest break down into consumer and tort
19 defense, those kinds of areas, and you'll have to forgive me
20 if I'm 10 percent off on the figures.

21 MR. VALOIS: Would the housing disputes involve
22 the sort of thing that we were describing earlier with Gregg
23 where there is some public authority that has some police
24 authority in the matter, or is it mostly unfit dwellings?

25 MR. COHEN: Mostly, that is the type of dispute

1 that when we have a request for service, we will provide an
2 in depth service, yes.

3 MR. VALOIS: I would add your -- that 20 percent
4 to the one-third that you gave me at first -- because they
5 all relate to some -- where there is some authority involved
6 someplace, but that's a matter of definition.

7 MR. COHEN: Well, it's against a landlord that we
8 -- those actions, and --

9 MR. MANDEL: Mr. Chair, it just reminded me that
10 the housing disputes handled for example, by the Legal Aid
11 Foundation of Los Angeles over the last several years
12 represents some of the most outstanding legal work that that
13 fine organization has ever engaged in and primarily, it
14 related to so-called rip off artists in the south central
15 part of the city of Los Angeles -- people who would prey on
16 unsuspecting poor people, engage in alleged activities --
17 home improvement kinds of activities and extract through a
18 fraudulent manner second trust deeds on their homes with
19 exorbitant payment terms and then engage in foreclosure
20 proceedings and deprive people of their -- of their homes
21 and often substantial equity that's been built up in the
22 homes given what's happened to real estate values in
23 California, and so, those are housing disputes of those
24 kinds that certainly do not involved governmental entities
25 for which Legal Aid Foundation has received well deserved

1 credit both from the media and other circles.

2 MR. VALOIS: Accept to the extent that licensing
3 is required and all of that for such rip off artists.

4 MR. MANDEL: Yes. Typically, if they were busy
5 ripping off the Legal Foundation clientele, they didn't
6 bother to stop at City Hall and obtain that business
7 license.

8 MR. COHEN: We do a lot of law enforcement work,
9 and we do it on behalf of poor people. That's because
10 government can't do it for everyone all the time.

11 MR. VALOIS: Which gets back to my theme that if
12 government did, you wouldn't have to.

13 MR. COHEN: In part, yes.

14 MR. VALOIS: Does any other member of the panel
15 have any questions?

16 I thank you both -- you all for coming.

17 We have no other questions. If you have anything
18 further to tell us, we'd be glad to hear from you, but I
19 appreciate very much your coming and being as specific as
20 you have been. Thank you very much.

21 That is the last item on our agenda, and the -- do
22 I have a motion to adjourn, and we shall stand.

23 MR. UDDO: I move.

24 MS. BENAVIDEZ: I second it.

25 MR. VALOIS: Thank you.

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Off the record.

(Whereupon, at 4:53 p.m., the meeting was concluded.)

REPORTER'S CERTIFICATE

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DOCKET NUMBER:

CASE TITLE: Committee on the Provisions for the Delivery

HEARING DATE: November 7, 1985

LOCATION: Anaheim, California

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the LEGAL SERVICES CORPORATION and that this is a true and correct transcript of the case.

Date: November 18, 1985

Steve Hopkins

Official Reporter
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