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## HEARING

BEFORE THE

### COMMITTEE ON HUMAN RESOURCES

### UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

CECILIA DENOGEAN ESQUER, OF ARIZONA, STEVEN L. ENGELBERG, OF MARYLAND, HILLARY DIANE RODHAM, OF ARKANSAS, RICHARD ALLAN TRUDELL, OF CALIFORNIA, AND JOSEPHINE MARIE WORTHY, OF MASSACHUSETTS TO BE MEMBERS OF THE BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION

FEBRUARY 7, 1978

Printed for the use of the Committee on Human Resources

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## NOMINATION

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TUESDAY, FEBRUARY 7, 1978

U.S. SENATE,  
COMMITTEE ON HUMAN RESOURCES,  
*Washington, D.C.*

The committee met, pursuant to notice, at 9:10 a.m. in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman), presiding.

Present: Senators Williams, Kennedy, Eagleton, Cranston, and Javits.

The CHAIRMAN. The committee will come to order.

This morning the Human Resources Committee meets to consider the nominees to the Legal Services Corporation.

As the nominees to the Legal Services Corporation are arriving, I would like to say that the background and experiences of each of the nominees indicate a commitment to providing legal services to the poor. Their professional activities and practical involvement in community organizations show an awareness of and a sensitivity to the problems of disadvantaged Americans.

Knowing the legal system and using their legal skills has undoubtedly given them the requisite insight into the needs of poor people for quality legal services. The Legal Services Corporation Amendments of 1977, recently signed by the President, created a stronger and more viable program that will enable the Corporation to provide for better service delivery.

This should be an exciting period of growth for the Corporation and I am certain that the nominees are anxious to share the excitement and contribute to that growth.

### STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DeCONCINI. Thank you very much. I will be very brief.

I am pleased to be here today. I praise President Carter for his nominating fine people.

Mr. Chairman, I am honored to support the nomination of Cecilia Esquer for the Board of Directors of the Legal Services Corporation. Cecilia has been an active member in national, State, and local politics. She was a delegate-at-large on the Democratic National Committee. She is also known as a hardworking, fair advocate of Chicanos and women's rights, with a rare ability to divorce issues from personalities.

After teaching Spanish in Arizona schools at the junior high level and university level, Cecilia entered law school in 1975, and upon graduation last spring, she joined the Arizona attorney general's office

as an assistant attorney general with special assignment to the Department of Education. Cecilia has been active in the Maricopa County Legal Aid Society for 2 years and is currently serving as that body's vice president.

The Board of Directors of the Legal Services Corporation will find Cecilia to be cooperative, but not passive, perceptive but not obstructive, willing to represent fresh ideas without leaving tradition behind her

It is a great pleasure to see this type of individual nominated by President Carter, and I am sure the other nominees are just as qualified, but my personal knowledge of Cecilia's background gives me a great joy to see that she is being considered for this Corporation Board.

Mr. Chairman, thank you very much. I appreciate your indulgence and that of the committee at this time.

Senator EAGLETON. Thank you, Senator DeConcini; we appreciate your introduction.

The statement of Congressman Udall, who could not be here, will be made a part of the record at this point.

[The following was received for the record:]

STATEMENT OF REPRESENTATIVE MORRIS K. UDALL (D.-ARIZ.)  
BEFORE THE U. S. SENATE COMMITTEE ON HUMAN RESOURCES  
ON THE CONFIRMATION OF CECILIA ESQUER  
TO THE LEGAL SERVICES CORPORATION BOARD  
FEBRUARY 7, 1978

Mr. Chairman, it is an exciting opportunity to be here today in support of the nomination of Cecilia Esquer.

Ms. Esquer's membership on the Board of Directors of the Legal Services Corporation is indeed unique in several ways. Ms. Esquer is the first Arizonan to serve on the Board. She is the first Hispanic, and she is among the first women.

These "firsts," moreover, are but a partial indication of the unique perspective that Ms. Esquer brings to the Legal Services Corporation. In a relatively young career, Ms. Esquer has already distinguished herself as an educator and a legal counsel.

I am confident she will make an outstanding contribution in protecting the legal rights of poor people in all sections of the United States.

I am proud to associate myself with her nomination.

Senator EAGLETON. I will yield at this time to Senator Bumpers of Arkansas to make a reintroduction of one of the nominees for the Legal Services Board.

**STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE  
STATE OF ARKANSAS**

Senator BUMPERS. I just wanted to introduce Hillary Rodham, who is an outstanding woman in our State.

The Legal Services Corporation, as you know, sometimes comes into disrepute. I hear all sorts of things about their appropriation when it is debated on the floor, about how bad they are, and I think everybody would like to see the image of Legal Services improved. Hillary is a

friend of longstanding and the greatest thing I can say about her is that my son liked her better than any professor he had in law school and she has—

Senator EAGLETON. Is she an easy grader?

Senator BUMPERS. Not according to him.

She has considerable achievements. She is an outstanding lawyer. She has developed respect in our State which, as far as I am concerned, in the legal profession is unprecedented. I am really personally honored that the President chose a woman of such outstanding abilities to serve on the Legal Services Corporation Board because I personally like the Corporation. I think it serves a very fine purpose and I would say that she will be a great entree to me to find out just what, if anything, is wrong with the way this Corporation has been functioning.

I appreciate this opportunity, Mr. Chairman, to come down and say these few words.

Senator EAGLETON. Thank you, Senator, very much.

The CHAIRMAN. Senator Cranston, we have had two of the nominees introduced by Senators from the States from which they come and I see that Mr. Trudell is from California.

Do you have anything to say?

Senator CRANSTON. Yes. I am pleased to introduce Richard Trudell to the committee and all those interested. He resides in Oakland, Calif., where he is executive director of the American Indian lawyer training program. He received his law degree from Catholic University here in Washington in 1972. He has been a director of the fellows program for the Robert F. Kennedy Memorial on whose board of directors he currently serves.

He is a member of the ABA section on individual rights and responsibilities, the National Legal Aid and Defender Association and the American Indian Bar Association.

He has been deeply involved in both supporting the development of Indian attorneys and examining critical legal questions that affect Indians. I am pleased that President Carter has nominated to the Board a Californian who brings such a rich and meaningful background to this important post.

It is a pleasure to see you at that table this morning.

I would like also to say a word of welcome to an old friend and associate, Steve Engelberg. I am delighted you are here, Steve. As we all know, Steve was Senator Mondale's legislative assistant during the critical period of the formative work and activity on legal services. We spent many hours in discussions and strategy sessions and legislative sessions. I can think of no one, except the Vice President himself, who would be a finer, more qualified member of this Board.

It is good to see you, Steve.

STATEMENT OF NOMINEES TO BE MEMBERS OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION: CECILIA D. ESQUER, STEVEN L. ENGELBERG, HILLARY D. RODHAM, RICHARD A. TRUDELL, AND JOSEPHINE M. WORTHY; ACCOMPANIED BY ALICE DANIEL, GENERAL COUNSEL, LEGAL SERVICES CORPORATION, AT THE REQUEST OF SENATOR JAVITS

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

Ms. Daniel, I have a question for you. Will you explain to us why it is that interim appointments were made only a few days before Congress reconvened when the present Board members had been sitting and voting since July 1977, and we understand that these nominees who were appointed as members of the Board in recess appointments are now serving? I would just like to know under what authority, as the statute would seem to call for a successor being appointed and qualified. Can you give us the position on that subject?

Ms. DANIEL. Thank you, Senator Javits.

Of course, I can't say why the nominations were made because that action was taken by the Office of the President. I have been advised that the Office of Legal Counsel of the President has looked into the legality and propriety of the President's action and is assured that it was correct.

There were recess appointments made, but none of these people have acted pursuant to those appointments or taken any official actions of any kind. The recess appointments were followed by regular nominations and those are the nominations that are before you for hearings this morning.

Senator JAVITS. You say they have not acted. Neither have they been sworn in?

Ms. DANIEL. Correct.

Senator JAVITS. But they did get recess appointments. Do they draw any salary?

Ms. DANIEL. No. Members of the Board of the Corporation do not get any salary.

Senator JAVITS. Or expenses?

Ms. DANIEL. The bylaws of the Legal Services Corporation authorize the members of the Board of Directors to receive per diem compensation for their services, and reimbursement for travel, subsistence, and other expenses necessarily incurred in connection therewith. The nominees have not received any per diem compensation. The Corporation will pay the expenses they incurred in connection with this hearing.

Senator JAVITS. I would like very much to request that the legal basis for these appointments be stated as a matter of record, not that, as you point out, it is material as to these nominees, but that it is a question of the legal basis for any precedent. I request that the agency obtain or give us a legal opinion as to why the administration considered these appointments justified.

If you cannot, as you said, because it is the President's problem—

The CHAIRMAN. Would the Senator yield on that?

Senator JAVITS. Of course.

The CHAIRMAN. I think what you request should come not from the Legal Services Corporation but from the Department of Justice. As a matter of fact, telephone conversations have indicated that there is a basis for these reappointments and a letter will follow with a detailed explanation. Perhaps that letter is on its way here right now.

Senator JAVITS. Thank you, Mr. Chairman.

Then, I would ask unanimous consent that if the request is not honored—the chairman has already made it—that it be made and that the legal opinion be made a matter of record.

Thank you so much, Mr. Chairman.

[The following was subsequently supplied:]

THE WHITE HOUSE

WASHINGTON

February 6, 1978

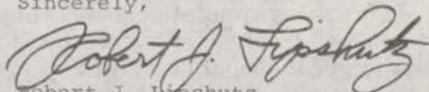
Dear Senator Williams:

I am advised that the Human Resources Committee will hold a confirmation hearing on February 7th for the five individuals nominated by the President to serve as Members of the Board of Directors of the Legal Services Corporation. In connection with that hearing, I am advised that a question has arisen as to the propriety of the recess appointments to the Board made on January 19, 1978 by the President.

The January 19, 1978 recess appointments were followed by the formal nomination of these same individuals on January 26, 1978. In my opinion the recess appointments were entirely proper and legal. And, I have received from the Department of Justice a formal opinion confirming that it was within the President's power to make the recess appointments to the Board of the Corporation; the opinion concludes that the appointments were not illegal and did not constitute an abuse of Presidential power.

I am available to brief you on this matter should you so desire.

Sincerely,



Robert J. Lipshutz  
Counsel to the President

The Honorable Harrison A. Williams  
Chairman  
Committee on Human Resources  
United States Senate  
Washington, D.C.

[From the Congressional Record—Senate, Mar. 20, 1978]

NOMINATION TO BOARD OF DIRECTORS OF LEGAL SERVICES CORPORATION

Mr. JAVITS. Mr. President, there is an important point that needs to be addressed in respect of the nominees that are before the Senate today.

I refer to the fact that on January 19, 1978, before the Senate reconvened for the 2d session of the 95th Congress, recess appointments were made by the President to the Board of Directors of the Legal Services Corporation.

In my judgment, Mr. President, there is some doubt as to whether the recess appointments were in order because: First, the five incumbents had not resigned, as such, indeed, they had continued to serve even though their terms had expired in July, 1977; and second, the recess appointment power of the President may not apply to directors of the Legal Services Corporation, since it may be that they are not "officers" of the United States.

During our hearings on the nominees—the President did submit their names for Senate confirmation on January 26—I requested the opinion of the Justice Department on this matter and, in turn, referred that to the Library of Congress, American Law Division, for analysis and comment.

In the view of the legislative attorney who looked into this, there is "a significant question about the propriety of the recess appointments made by the President under the vacancies clause to the Board of the Corporation." I submit for the Record correspondence from Robert J. Lipshutz, Counsel to the President, to the chairman of the Human Resources Committee (Senator Williams), the Justice Department opinion on the recess appointments, and the Library of Congress analysis of this opinion.

Mr. President, while I believe it is important to have this material before the public and while I happen to agree with the conclusion of the Congressional Research Service that some question does exist about the propriety of the recess appointments, I want to emphasize that this does not reflect on the quality of the nominees themselves. I have examined the nominees' records and statements and find them characterized by a deep concern for the legal needs of the poor. This should be the overriding consideration in passing on these nominees. I am quite confident that the President has sent the Senate some highly qualified, capable, and sensitive nominees, and I recommend to my colleagues that they approve the nominations without further delay.

The material follows:

THE WHITE HOUSE,  
Washington, February 6, 1978.

HON. HARRISON A. WILLIAMS,  
Chairman, Committee on Human Resources,  
U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: I am advised that the Human Resources Committee will hold a confirmation hearing on February 7th for the five individuals nominated by the President to serve as Members of the Board of Directors of the Legal Services Corporation. In connection with that hearing, I am advised that a question has arisen as to the propriety of the recess appointments to the Board made on January 19, 1978 by the President.

The January 19, 1978 recess appointments were followed by the formal nomination of these same individuals on January 26, 1978. In my opinion the recess appointments were entirely proper and legal. And, I have received from the Department of Justice a formal opinion confirming that it was within the President's power to make the recess appointments to the Board of the Corporation; the opinion concludes that the appointments were not illegal and did not constitute an abuse of Presidential power.

I am available to brief you on this matter should you so desire.

Sincerely,

ROBERT J. LIPSHUTZ,  
Counsel to the President.

DEPARTMENT OF JUSTICE,  
Washington, February 6, 1978.

Re Legal Services Corporation.

## MEMORANDUM FOR MICHAEL CARDOZO, ASSOCIATE COUNSEL TO THE PRESIDENT

I am responding to your inquiry of February 2 as to whether the holdover provisions of the Legal Services Corporation Act precluded the President from making recess appointment to the Board of Directors of the Legal Services Corporation after the terms of the members expired but while they were serving as holdovers. It is our conclusion that these provisions do not affect the President's power to make recess appointments.

Section 2 of the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 379, 42 U.S.C. (Supp. V) 2996c(b), provides that the term of Office of the members of the Board of Directors of the Corporation is three years, except that five of the members first appointed are for a term of two years.<sup>1</sup> The subsection continues "Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified." According to the information furnished to us, President Ford appointed five members of the Board for terms of two years beginning on July 14, 1975, which terms expired on July 13, 1977. No new appointments to those positions were made by the President by and with the advice and consent of the Senate during the first session of the 95th Congress. On January 19, 1978, prior to the opening of the second session of the 95th Congress, the President made recess appointments to those positions pursuant to Article II, section 2, clause 3 of the Constitution. That clause provides in pertinent part:

"The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate . . ."

The exercise of the power to make recess appointments thus presupposes the existence of a vacancy. One of the directors replaced by the President asserts that despite the expiration of his two-year term on July 13, 1977, the position was not vacant, because under the statute he continued to serve until his successor has been appointed and qualified.

It has been the view of the Department of Justice, going back to the Attorney General's opinion of 1880 (16 Op. Atty. Gen. 538), that where the statutory term of an officer has expired, the interim filling of his position, either by a court appointment (United States Attorney) or by a holdover provision, does not fill a vacancy in the constitutional sense.

There are various methods designed to provide for the temporary performance of the duties of an officer after he has resigned or his term has expired. Among them are the temporary appointments by the court as in the case of U.S. Attorneys and Marshals (28 U.S.C. 546, 565), or holdover clauses as in the cases of United States Attorneys and Marshals (28 U.S.C. 541(b), 561(b)), or territorial judges (48 U.S.C. 1424(b), 1614), and of most, if not all, regulatory commissions. Such a temporary performance after the expiration of the incumbent's statutory term, however, does not "fill" the vacancy. The office remains vacant and the President has the power to make appointments to it during the recess of the Senate. Were it otherwise the Senate could perpetuate in office an officer serving under a holdover provision by failing to confirm his successor. Moreover, Congress could deprive the President of his constitutional power to make recess appointments by the passage of legislation providing for the interim filling of the office. See *Peck v. United States*, 39 Ct. Cl 125, 134 (1904).

The above views reflect the position of the Department of Justice since 1880. At that time the Attorney General ruled that the President had the power to make a recess appointment to the office of a United States Attorney although the position was then being temporarily filled by a court appointment pursuant to what is now 28 U.S.C. 546. The Attorney General stated:

"\* \* \* The authority given to fill the office to the circuit justice is an authority only to fill it until action is taken by the President. The office in no respect ceases to be vacant in the sense of the Constitution because of this appointment for the reason that the appointment itself contemplates only a temporary mode of having the duties of the office performed until the President acts by an appointment.

"\* \* \* The office is not the less vacant, so far as his power of appointment is concerned, when the only power conferred upon any one else is a power to make an appointment which shall entitle the appointee to serve until an appointment is made by the President, and no longer." 16 Op. Atty. Gen. 539-540. (1880).

<sup>1</sup> The members of the Board are appointed by the President with the advice and consent of the Senate. 42 U.S.C. 2996c(a).

In an analogous situation arising at the same time in another judicial district, Mr. Justice Woods, sitting in circuit, came to the same conclusion as the Attorney General. *In re Farrow*, 3 Fed. 112, 116-117 (C.C. N.D. Ga., 1880).

The Justice position has been the same concerning holdover provisions, such as the one here involved. The Department has held that those provisions do not fill the vacancy but that they merely provide for a temporary method of insuring the performance of the functions of the office after the expiration of the term of the incumbent; hence they do not prevent the President from exercising his constitutional authority to make recess appointments. In 1950, the Deputy Attorney General advised the White House that the President had the power to make recess appointments to the Interstate Commerce Commission and the Reconstruction Finance Corporation, although the officials whose terms had expired were serving under holdover provisions. The Department's analysis in 1960 of bills containing holdover provisions with respect to several independent agencies concluded that those provisions would not interfere with the President's power to make recess appointments. Again in 1972, this Department advised the Interstate Commerce Commission that the holdover provisions of the Interstate Commerce Act did not preclude the President from making recess appointments.

*Peck v. United States*, 39 Ct. Cl. 125, *supra*, cited by the General Counsel of the Legal Services Corporation, does not hold to the contrary. It stands only for the proposition that where there is no present vacancy one cannot be created by a recess appointment. (At pp. 135-137). The Presidential practice is full in accord. For example, a United States Attorney cannot be removed during his statutory term by giving a recess appointment to a successor, the reason being that there is no vacancy to be filled. Accordingly, the President must first remove the incumbent. Where, however, a United States Attorney holds over, or serves under a court appointment, a vacancy exists. The president therefore can make a recess appointment which has the effect of removing the incumbent who is merely serving on a temporary basis. That rule governs here.

LEON ULMAN,

*Deputy Assistant Attorney General, Office of Legal Counsel.*

THE PRESIDENT'S POWER TO MAKE RECESS APPOINTMENTS TO FILL VACANCIES ON THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION

The purpose of this report is to analyze whether or not the President of the United States has the power to make appointments to the Board of Directors of the Legal Services Corporation when the United States Senate is in recess.

The Legal Services Corporation was created by the Legal Services Corporation Act, Public Law 93-355 (1974), subsequently amended in part by Public Law 95-222 (1977). The purpose of the Corporation, as set forth in Section 1003 of the Act, is to provide "financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." To that end Congress established a "private nonmembership nonprofit corporation", which is Federally funded to carry out the program of providing legal services in a fashion specified in the Act.

The members of the Corporation's Board of Directors are appointed by the President, with the advice and consent of the Senate; however, the Directors are, under the Act, deemed not to be officers or employees of the United States. Section 1004 of the Act, which provides for the organization of the board of Directors, provides in pertinent part:

Sec. 1004. (a) The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States.

"(b) The term of office of each member of the Board shall be three years, except that five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified. The term of initial members shall be computed from the date of the first meeting of the Board. The term of each member other than initial members shall be computed from the date of termination of the preceding term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

"(c) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States.

"(d) The President shall select from among the voting members of the Board a chairman, who shall serve for a term of three years. Thereafter the Board shall annually elect a chairman from among its voting members.

"(e) A member of the Board may be removed by a vote of seven members for malfeasance in office or for persistent neglect of or inability to discharge duties, or for offenses involving moral turpitude, and for no other cause. [Emphasis added.]

It should be noted that the Act itself makes no provision for a recess appointment to be made by the President. And, a review of the legislative history indicates that the Congress did not address any understanding about recess appointments in the committee reports which accompanied the measure. See, House Report No. 93-247, 93d Cong., 1st Sess. (1973); Senate Report No. 93-495, 93d Cong., 1st Sess. (1973); House Conference Report No. 93-1039, 93d Cong., 2d Sess. (1974); and Senate Conference Report No. 93-845, 93d Cong., 2d Sess. (1974).

On January 19, 1978, the day before the convening of the 2d Session of the 95th Congress, the President made recess appointments to positions on the Board of Directors of the Legal Services Corporation, pursuant to Article II, section 2, clause 3 of the U.S. Constitution, the Vacancies Clause. At that time five members of the Board of Directors were serving as holdovers.

The question arises as to the power, in the absence of express statutory authority, of the President, alone and without the advice and consent of the Senate, to appoint members of the Board of Directors when the Senate is in recess.

The President of the United States has a constitutional power to fill certain vacancies under Article II, Section 2 of the U.S. Constitution, which provides in pertinent part:

"The President . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

"The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."

It is well established that the Appointments clause requires that "Officers of the United States" must be appointed in the manner specified by this clause, either by the President of the United States, by and with the advice and consent of the Senate or by the President alone, the head of a department, or a court of law, and the creation of an "Office" with an alternative form of appointment is violative of the Appointments Clause. *Buckley v. Valeo*, 424 U.S. 1 (1975).

Because the President is required by the provisions of Article II, Section 3 to ". . . Commission all the Officers of the United States," it is a well established procedure that for "Officers of the United States", the President nominates the Senate confirms, the President issues a Commission, and thereupon the person assumes "Office." The Commission is clearly a necessary requisite before the "Office" is assumed. *Marbury v. Madison*, 5 U.S. 299 (1803). But, the Vacancies Clause permits the President to directly issue Commissions to "Officers" to fill vacancies during the recess of the Senate, when presumably, Senate confirmation would not be possible.

Regarding the Board of Directors of the Legal Services Corporation, there are several issues raised under the Appointments Clause and the Vacancies Clause.

The first matter of consideration is what constitutes a "vacancy" within the meaning of the Vacancies Clause. It is a well accepted view of the phrase "Vacancies that may happen" has been interpreted to mean "vacancies which happen to exist." Appointments During Recess of Senate, 16 Op. Atty. Gen. 522 (1880); Executive Authority to Fill Vacancies, 1 Op. Atty. Gen. 631 (1823); and see, Matter of Farrow, 3 Fed. 112 (C.C. Ga. 1880). Thus, where a vacancy in office exists prior to Senate recess and continues to exist without nomination, or with nomination but without Senate action, the President may issue a temporary Commission under the Vacancies Clause.

Under Section 1004(b) of the Legal Services Corporation Act members of the Board of Directors serve for three years and ". . . shall continue to serve until a successor to such member has been appointed *and qualified*." [Emphasis added.] As used in several other statutes governing Federal agencies and other "officers", such a "holdover" provision permits a member to continue to serve until a valid designation of a successor has been completed.

However, it does not appear that a holdover provision would prevent the President from making recess appointments under the theory that there was technically no vacancy during the period that the "Officer" continues to serve under a holdover provision. The Department of Justice specifically addressed this question in its "Memorandum For Michael Cardozo, Associate Counsel to the President, Re: Legal Services Corporation," dated February 6, 1978. In that memorandum, the Department of Justice addressed the issue of "whether the holdover provisions of the Legal Services Corporation Act precluded the President from making recess appointments to the Board of Directors of the Legal Services Corporation after the terms of the members expired but while they were serving as holdovers."

The Department of Justice memorandum concludes that holdover provisions "do not affect the President's power to make recess appointments." In reliance upon *In Re Farrow*, *supra*, and the Attorney General's opinion "Appointments During Recess of Senate," *supra*, the Justice Department expresses a well accepted view that an "office" is no less vacant for purposes of the recess appointments clause simply because there has been a temporary performance of the duties of the office until the President acts to make an appointment.

Moreover, the reading of *Peck v. United States*, 39 Ct. Cl. 125 (1904) by the Department of Justice in a manner consistent with the above also appears to constitute a long accepted interpretation. Peck appears only to stand for the proposition that the improper appointment of an officer does not create a vacancy by means of advancement from one office to another. But there, no vacancy existed because no position of office was authorized, and the question did not involve a "holdover" provision.

For "Officers of the United States" completion of the appointment process occurs upon the issuance of the Commission by the President.

But not all "Officers of the United States" serve for terms of years established by statute. Cabinet department secretaries serve indefinitely, until the appointment of a successor. Under those circumstances, there is technically no "vacancy" since the Office continues to be filled, until the commission of a new officer terminated the tenure of the previous officer.

Thus, a statutory holdover provision would permit "Officers" to be appointed either as recess appointments or as appointments made with the advice and consent of the Senate. Either type of appointment would "qualify" a successor upon the issuance of a valid Commission.

If, for example, a member of the Board of Directors who had served for three years had not resigned, it would not appear that any less of a vacancy would exist under the Vacancies Clause, assuming its applicability, than with a cabinet Secretary who continued in Office after the swearing in of a new President until the designation of a new Secretary.

In short, it would seem that if the Vacancies Clause applied to the Legal Services Corporation, a "vacancy" within its meaning would exist even though a Director whose term expired continued to serve. When the term expires, the position would appear to become "vacant" even though a person continues to serve as Director under the holdover provision.

But the determination that "holdover" provisions of statutes permit recess appointments by the President under Article II of the Constitution is not dispositive of the question of whether Article II recess appointments can be made to the Board of Directors of the Legal Services Corporation. If it were dispositive, the analysis of the Department of Justice, as reflected in its memorandum of February 6, 1978, would be controlling.

There is, however, another important consideration which was not addressed by the Department of Justice memorandum. That issue is whether the Vacancies Clause applies to members of the Board of Directors of the Legal Services Corporation.

The Vacancies Clause would seem to apply only to vacancies in "Office", as that term is used in the Constitution. The manner of filling vacancies during recess is that the President issues a commission, with the clear implication that it is a commission to "Office." The juxtaposition of the Vacancies Clause after the

Appointments Clause clearly suggests that the Vacancies Clause was intended to establish a constitutional means of providing continuity in the performance of duties of "Office" during periods where the Senate could not act. The Vacancies Clause must be read together with the Appointments Clause, because the two Clauses apply to the same subject—appointment of "Officers." It follows that the Vacancies Clause (as well as the Appointments Clause) is not applicable to those who are not "Officers," as that term is used in the Constitution.

The fact that the Legal Services Corporation Act provides that members of the Board of Directors are ". . . not, by reason of membership, . . . deemed officers or employees of the United States," does not necessarily establish for the purposes of the Constitution whether such members are "Officers," but it does express an intent of the Congress. Unfortunately, there are no apparent judicial decisions which determine, whether under these circumstances or even closely analogous circumstances, directors of a corporation, such as this, are "Officers."

The language of the Legal Services Corporation Act is not unique, however. The Communications Satellite Act of 1962, Law 87-624, 76 Stat. 419 (1962) contains similar provisions. On October 25, 1962 in an opinion captioned "Communications Satellite Corporation," Attorney General Robert F. Kennedy determined that the incorporators of the Communications Satellite Corporation were not "Officers" in a constitutional sense simply by virtue of the fact that the legislation provided for their appointment by the President by and with the advice and consent of the Senate. In reliance on the Congressional intent, Kennedy determined that the incorporators and the directors were not "Officers." However, as that opinion noted in footnote 2, the President did make recess appointments of the incorporators without express statutory authority and apparently under the Vacancies Clause.

"Thus there appears to have been no intention on the part of the originators of the legislation to create directors who would be officers of the Government but rather an intention to dissociate the Government from the directors." Opinion of the Attorney General of the United States (October 25, 1962), at 7.

But in finding that the members were not "Officers", Kennedy failed to explain how recess appointments of these non-"Officers" could be made under the Vacancies Clause, leaving open the possibility that non-"Officers" might also be appointed under the Vacancies Clause.

The fact that this problem has been sufficiently unclear and legally unresolved is further demonstrated by the situation which occurred in 1972 with the Corporation for Public Broadcasting, under a statutory provision similar to that of the Legal Services Corporation. See, 47 U.S. Code Section 396. We understand that a recess appointment to the Board of Directors of that corporation was made in December 1972 by President Nixon. However, it appears that at that time concern for the legal status of that appointment caused the new Director not to vote on corporate questions, even though the Commission from the President had been delivered.

Despite the existence of precedent for a recess appointment under the Vacancies Clause to a corporation like the Legal Services Corporation, the status of such an appointment is unresolved in its effect. It does not appear that any legal dispute has ever been raised that would resolve the matter.

There are a number of considerations which obviously might be argued on either side of the question. Congress did not intend by the language of the Act that that Board members would be officers or employees of the United States. Congress apparently understood the necessity of providing for a means of removal in the statute, since the impeachment clause under Article II, Section 4 only applies to "Officers." Therefore, in further evidence of Congressional intent that Board members are not "Officers" under the Constitution, Congress provided that the Board members could be removed by a vote of the Board for reasons specified in Section 1004(e).

On the other hand, the statute says that the Board members "by reason of such membership" are not deemed "officers," leaving open the possibility that they might be deemed to be "Officers" for some other reason such as a constitutional reason.

We are left, therefore, with the task of determining what constitutes an "Officer" under the Constitution. Until *Buckley*, the only court precedent which directly dealt with the question was *United States v. Mount*, 124 U.S. 303 (1888), which vaguely defined an "officer" as one who was in the service of the United States. Other cases tried to define officer in a generic sense. See for example, *Matter of Hathaway*, 71 N.Y. 238 (1877); and *McArthur v. Nelson*, 81 Ky. 67 (1883).

*Buckley v. Vaeleco*, supra, however, required a much closer scrutiny at the functions performed by the individual in question. In that case a review of the functions of the Federal Elections Commission resulted in the determination that the provisions of the statute which provided for appointment by means other than Presidential appointment with the advice and consent of the Senate violated the Appointments Clause because the members of the Commission performed functions as "Officers."

*Buckley* held, quite clearly, that for persons performing functions required by the Constitution to be performed by "Officers of the United States," those persons must be appointed to "office" in accordance with Article II, Section 2:

"We hold that these provisions of the [Federal Election Campaign] Act, vesting in the [Federal Elections] Commission primary responsibility for conducting civil litigation in the courts of the United States for vindicating public rights, violate Art. II, § 2, cl. 2, of the Constitution. Such functions may be discharged only by persons who are 'Officers of the United States' within the language of that section.

"All aspects of the Act are brought within the Commission's broad administrative powers: rulemaking, advisory opinions, and determinations of eligibility for funds and even for federal elective office itself. These functions, exercised free from day-to-day supervision of either Congress or the Executive Branch, are more legislative and judicial in nature than are the Commission's enforcement powers, and are of kinds usually performed by independent regulatory agencies or by some department in the Executive Branch under the direction of an Act of Congress. Congress viewed these broad powers as essential to effective and impartial administration of the entire substantive framework of the Act. Yet each of these functions also represents the performance of a *significant governmental duty exercised pursuant to a public law*. While the President may not insist that such functions be delegated to an appointee of his removable at will . . . none of them operates merely in aid of congressional authority to legislate or is sufficiently removed from the administration and enforcement of public law to allow it to be performed by the present Commission. These administrative functions may therefore be exercised only by persons who are 'Officers of the United States.'" [emphasis added] *Buckley*, supra, at 140-141.

This excerpt suggests that "broad administrative powers" such as rulemaking, advisory opinions and determinations of eligibility for funds are functions constitutionally required to be performed by "Officers", because Congress viewed these broad powers as "essential to effective and impartial administration of the entire framework of the Act."

The precise holding in *Buckley* did not focus on these "powers" separately, for the Commission, there, possessed a broad panoply of powers. But the Court suggested that at the point at which functions are "sufficiently removed from the administration and enforcement of public law" they might be vested in non-"Officers."

How *Buckley* might apply to the Legal Services Corporation is difficult to resolve. The Corporation operates on direct Federal appropriations, makes grants to recipient organizations who provide legal services, establishes standards for grants and contracts and carries on other functions. It has many of the traditional attributes of a Corporation, but lacks many of the characteristics of a Federal agency. Its chief function consists of administering a grant program to recipient organizations—some private, some governmental—which provide legal services to the indigent. These functions are certainly not of the same character as those prosecutorial, regulatory, and judicial functions carried on by the Federal Elections Commission. But, *Buckley* does not attempt to draw a precise line.

Congress, in creating the Legal Services Corporation, obviously intended that the Corporation would be removed, at least a step, from actual governmental operations. After all, money appropriated might easily be ultimately utilized to finance litigation in which the Federal Government was an adverse party or to finance the presentation of litigation interests adverse to those of the Federal Government.

Thus, the purpose and the nature of the organization is quite different from the purpose and nature of the Federal Election Commission. *Buckley* appears to have contemplated this unique type of Federal organization:

"Congress may undoubtedly under the Necessary and Proper Clause create 'offices' in the generic sense and provide such method of appointment to those 'offices' as it chooses. But Congress' power under that Clause is inevitably bounded by the express language of Art II, § 2, Cl. 2, and unless the method it

provides comports with the latter, the holders of those offices will not be 'Officers of the United States.' They may, therefore, properly perform duties only in aid of those functions that Congress may carry out by itself, or in an area sufficiently removed from the administration and enforcement of the public law as to permit their being performed by persons not 'Officers of the United States.' *Buckley*, *supra*, at 138-139.

Under *Buckley* it is possible that "offices", in a generic sense, may be created with any means of appointment (including appointment in conformity with the mode or pattern in Article II, Section 2) so long as the functions performed are "... sufficiently removed from the administration and enforcement of the public law" as to permit their being performed by persons not "Officers", within the meaning of that term as it is used in the Constitution.

The Legal Services Corporation has no authority to prosecute violations of law. And, it might be argued that the functions of the Corporation are not "significant" governmental duties exercised pursuant to public law. Accordingly, there is substantial doubt that the Corporation, serving as what might be viewed more as an "agent" on behalf of the Congress, carries on functions which might be vested with "Officers of the United States."

And, if it is legally permissible that the functions of the Corporation be performed by a Board of Directors who are not "Officers", then a recess appointment under Article II, Section 2 is arguably unauthorized (vacancy or not).

As can be seen, there is little guidance in the legislative history of the Act or from established judicial interpretation which definitely resolves the questions raised here. We believe some of the implications flowing from the reasoning in the recent *Buckley* decision raise a significant question about the propriety of the recess appointments made by the President under the Vacancies Clause to the Board of Corporation.

Resolution of the questions raised here may require even clearer guidance from the Congress or the Courts.

ROBERT D. POLING,  
*Legislative Attorney, American Law Division.*

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a motion to reconsider en bloc the vote by which the nominations were confirmed be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I so move.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Senator JAVITS. I have just one other question—by the way, I am impressed with the youth of the nominee, which I think is great. I am one of the people, like Senator Williams and Senator Eagleton and others, who worked hard for the Legal Services Corporation, and I think this is very refreshing.

I might say to the nominees in a case like this, I think the one thing we learned out of the War on Poverty was how important dignity was to the poor, and this gives them dignity. Aside from the Community Development Corporations, this is probably the premier program, for me, that we have all struggled for for so long. I hope that each of you will feel that you have friends here and whether you come to me or any of the others of us, let us know what is going on, on issues of morale, on issues of outreach, and so on. We are very interested and we are your friends. We are anxious to see this really work and work well. We certainly shed a lot of blood in the process.

The only other questions were submitted to me by the American Jewish Committee and they asked that I ask them of you. I don't think you are in a position to answer them off the top of your head, but I would like to put these on record and ask if you will be kind enough to think them over and then answer them.

The questions are as follows: What is the extent of your concern for the adequacy of legal services to nonminority poor? Obviously, they are thinking of the Jewish poor.

How do the nominees think the Legal Services Corporation ought to respond to situations in which there are conflicts of interest between different groups of poor people, and the community legal services office elects to represent one group against another? End of question.

This is a very difficult thing in my own city, where you have areas which are heavily populated by minorities, like blacks and those of Puerto Rican origin and also by orthodox Jews. It can get very antagonistic, unhappily, and I say this with tears in my heart, but this is so. That is a very pertinent question.

Last, I am asked to ask you, and again, I would like your answers in writing: How do you feel about making Legal Services offices available for the handicapped? This has been raised by the chairman, Dr. Viscardi, of the White House Conference for the Handicapped. There are questions of ramps and other problems. I think I would know your answers, but anyhow, we would like to have them of record as a basis for your outlook as you go into this particular job.

Senator EAGLETON. Do you want the answers, Senator, from all five?

Senator JAVITS. I would like that because they are each nominees. We will write you a letter personally asking you these same questions, and then, I ask unanimous consent the answers be in the record.

Senator EAGLETON. They will be made part of the record.

Senator JAVITS. Thank you, Mr. Chairman, for your very great courtesy. I deeply appreciate it.

Senator EAGLETON. Thank you, Senator Javits.

The CHAIRMAN. You have been twice nominated to these positions?

This is a recess appointment. We have just had a letter arrive from Mr. Lipschitz who has indicated that on January 19, the nominees were recess appointments. The date is December 12 for the recess appointments. We then received a notice, January 19, of the nominees to the Legal Services Corporation.

Be that as it may, there was a formal nomination, not a recess nomination and that is what we are considering today. So whatever occurred before in the recess, we now have you formally nominated and that nomination did reach us while the Senate was in session. You are now before us, so I don't think we have to dig deep into the Constitution to clarify the legality of your nomination. You are all set as far as I can see on this record.

By the way, during the recess did you have an opportunity to become familiar with the Legal Services Corporation? You were not yet on the Board?

Mr. ENGELBERG. No.

The CHAIRMAN. You certainly were not, at that point, involved with the Corporation. Do you have a general assessment of the current level and quality of legal services which are being provided by the Corpo-

ration? Do you have opinions on that issue? Could we just go down the line from left to right?

Ms. WORTHY. The quality of Legal Services has been great. It has served me very well.

The CHAIRMAN. Has it served you very well?

Ms. WORTHY. And clients in my community. I have seen it in operation and I think it is very fine.

Mrs. ESQUER. I'm Cecilia Esquer and I really am very pleased to be here. I think that as a board member in Maricopa County of a Legal Services program I am very aware of the great difference that the formation of the Corporation has made to the availability of legal services to a greater portion of poor people. I am glad to become a part of the Corporation so that we can continue working to bring good legal services to more poor people who are still unreached by the current program.

Mr. ENGELBERG. Mr. Chairman, my familiarity is more with the operation of the Corporation in Washington and its relationship to the Congress and the executive branch. I think based on my observation, it has been a tremendous success and really a tribute to Senator Cranston, yourself and others who fought for this legislation. I think that getting the program out of the executive branch and putting it in an independent corporation from the point of view of funding and independence has worked really better than any of the people who created this legislation intended. That is mostly my familiarity, Mr. Chairman.

Ms. RODHAM. My personal experience and anecdotal information would lead me to agree about the quality of service that has already been expressed. I don't yet have an opinion because I have not had an opportunity to learn as much as I want to really give you a statement about anything more than that, so it has to be very personal at this time. I am satisfied with what I know, but I don't know enough to express any greater opinion.

Mr. TRUDELL. In general, I have been pretty much satisfied with the quality of Legal Services. I do have some questions regarding Indian programs. I have had the opportunity to visit all the existing Indian programs that have been funded by the Corporation. There are some communities that have received some assistance. Although my primary interest has been in the Indian area, I have also had the opportunity to visit other programs that do not focus on Indian area. I think that the record speaks for itself as to what the Corporation has done and what the program did under OEO Legal Services.

The CHAIRMAN. Do you have any suggestions that you might want to present to us on how you feel improvements could be made and whether an expanded role should be given to the Legal Services Corporation? Do any of you have anything on your minds that you would like to express to us with respect to how the Corporation can improve the performance of its mission? Does anybody want to comment?

Ms. RODHAM. Would you invite us back in 6 months?

The CHAIRMAN. I think that probably would be the way we should proceed. When you are in office and working on many issues, I am sure you will learn more about the Corporation's operations and have opinions on how it can be improved and how its role should be ex-

panded. We will look forward to your return to this committee. It will be helpful to us.

Senator Cranston has been intimately involved in the creation of this necessary service to people who need legal counsel. I am going to turn to Senator Cranston for a more complete and comprehensive review with you.

Senator CRANSTON. Thank you very much.

I would like to say that I believe the appointments of individuals to the Board of Directors of the Legal Services Corporation is a critically important matter, not only because of the vital function filled by the Legal Services Corporation in providing equal access to our judicial system for all citizens, but also because of the almost unique independent status of the agency.

Congress established the Legal Services Corporation in 1974, as an independent public corporation in order to free this program from the constraints of the political arena, which were causing considerable difficulties in connection with the program.

Members of the Board of Directors of the Corporation serve, as you know, for fixed 3-year terms. They may be removed from office only for cause under extraordinary circumstances. Unlike many of the nominations which come before this committee, Legal Services Board members do not serve as counselors or advisers to the President, but as independent individuals responsible for the establishment of policy and direction for an important and, in the past, highly controversial agency.

Because of this independence, I view these nominations today much in the same way that I would judicial nominations. It is our obligation to examine closely the qualifications and background of each nominee. All of the nominees should be committed to the concept of complete program independence from political interference and control. This is, after all, the touchstone of the Legal Services Corporation Act.

I expect that each member of the Board of Directors will be committed to assuring the independence of Legal Services lawyers in representing a client no matter how controversial a particular case may be.

I firmly believe that all Board members should understand and be committed to the principle which underlies the Legal Services program; that is, that it is in the national interest that the poor have full access under law to comprehensive and effective legal services.

I also believe that the integrity of the attorney-client relationship is fundamental to our legal system and that it is the task of the Legal Services Corporation Board to preserve and protect that relationship for the poverty clients served by its program.

I also believe that it is important that board members have demonstrated concern for and sensitivity to the legal needs of the poor. And finally, I believe it is absolutely vital that the board include representatives of the client community. I believe that the absence of such representation is a major deficiency of the composition of the existing Board and I have sponsored a provision in the new legislation which mandates placement of client representatives on the Board of Directors.

I am pleased that President Carter has nominated an individual representing the client community, Ms. Josephine Worthy. And I am also pleased that three of the five nominees are women, which is a pleasant step forward.

The composition of the present board is both all male and all attorneys. By moving ahead with these nominees we can carry out our own intent now shared by the President that this Board be representative not only of the organized bar and legal education, but also of legal services attorneys, client community, organizations involved in the development of legal assistance to the poor and women and minority groups.

I have quite a few questions that I want to go into with you and I would appreciate it if you each respond to these questions, starting from left to right and go across the table.

First, how much time are you prepared to commit during your term to the business of the Legal Services Corporation?

Ms. WORTHY. Senator, I am prepared to commit as much time as it needs. If I had not been I would not have accepted this nomination.

Mrs. ESQUER. Being not very familiar with how often the Board meets and the various committees that meet and work with corporations, I also am willing to devote the amount of time necessary to make sure that my responsibility as a Board member is carried out. I think that in my employment the attorney general of Arizona has shown a commitment by allowing civic duty leave for me to perform the services that are necessary on the Board.

Senator CRANSTON. Ms. Daniel, who is legal counsel, is present. Could you give an estimate of how much time is going to be required?

Ms. DANIEL. By statute, the Board is required to meet four times a year. Up until now it has met approximately six times a year. In addition, each member of the Board will be on at least one committee and the committees meet approximately—each committee meets before each board meeting. In addition, of course, there is time involved in reviewing materials in preparing for the meetings and advising staff. So it is perhaps a few weeks of work, all told.

Senator CRANSTON. Steve?

Mr. ENGELBERG. I think I know a little more than maybe the other nominees since I have worked with the Corporation. and I realize that it would be a fairly substantial commitment of time and I was prepared to do that. I agree with everyone else that we, legally, as any Board of Directors, certainly have a duty to be on top of things and I am certainly prepared to spend whatever time it takes.

Ms. RODHAM. My principal intention, and I think that of all the other nominees, has been for a number of years, the improvement of access to legal services by people who are unable to afford it. I think all of us are committed to do whatever it takes to try to push that forward in addition to whatever our responsibilities on the Board require.

Mr. TRUDEL. I am prepared to contribute whatever time is necessary. I do feel that if you are going to effectively carry out the responsibilities of a Board member it is going to require that each Board member visit some programs throughout the year to sensitize yourself to what the needs are.

Senator CRANSTON. Let me start with you and work back across the table from that side now.

What other commitments do you have that would affect the time you can devote to the Corporation?

Mr. TRUDELL. One hundred percent of my time is spent working with Indian communities, primarily through lawyers and law students as travel court advocates since a number of reservations have operating travel courts. So, in conjunction with that, I don't see how my involvement with the Corporation would be taking away from that.

Senator CRANSTON. Although that is fulltime it won't impinge upon the time you need for this?

Mr. TRUDELL. No.

Ms. RODHAM. I am employed as a private attorney and that is a fulltime job, but I have resigned as a member of the board of one of our local legal service corporations and anticipate being able to make the time without very much impingement. I have other outside activities but this in my principal obligation.

Mr. ENGELBERG. Senator, I am a partner in a small law firm in Washington. But other than that, I do not have many other outside activities. I discussed my nomination with my partners and have a clear understanding from them that I would be able to take the amount of time that is required.

Mrs. ESQUER. I am employed as an assistant attorney general in the State of Arizona, and prior to accepting the nomination I met with the attorney general of the State of Arizona and he has committed to giving me time off to perform the duties for the Corporation that is necessary. I only have one other local board of directors that I serve on and it is a community organization which works with people that are members of the client community of legal services also, so that they would coincide to some degree.

Ms. WORTHY. As of right now, I am unemployed so I will be able to schedule my time that is needed.

Senator CRANSTON. That is one virtue of unemployment.

Let me go back now starting with you. Will you have time, and do you intend to visit various legal services programs to learn how they operate and what problems and needs they have?

Ms. WORTHY. That was one of the things that is very important to me. Being a client, representing clients, I feel that I am going to have to visit different programs to talk to other clients so that I can be a good representative on the Board.

Mrs. ESQUER. I also plan to take time to visit the programs across the Nation. I know that some programs have really strong areas that I think would be helpful to my understanding as a Board member, and I would like to be able to see the different programs and the different regions in operation. It would be really helpful.

Mr. ENGELBERG. Yes; Senator, I would plan to do that. And, as Dick said, I think it is very important for any Board member to get some first-hand exposure.

Ms. RODHAM. I would agree with that also.

Mr. TRUDELL. I will continue to visit programs. In fact, I rather enjoy it most of the time. It gives you the insights that you really need to remain sensitive.

Senator CRANSTON. Do you have the time to meet with representatives of legal services programs, client organizations and bar associations to get their feelings?

Mr. TRUDELL. I have been involved in organized bar activities for the past 5 years. I don't really have the opportunity to visit all the existing legal services programs that have been funded by the Corporation.

Ms. RODHAM. I would hope that would be a continuing part of our responsibilities to meet with those groups. I think of it as the principal constituency in many ways for legal services.

Mr. ENGELBERG. Yes; Senator, I would and I do think it is important.

Mrs. ESQUER. I think it is important also, and with the organized bar I think it is important to secure their continuing cooperation with the legal services program.

Ms. WORTHY. I feel that the continuation is very important also. I will have the time to work for it.

Senator CRANSTON. I have two questions I want to submit to you for written answers. I will tell you what they are now. One: Why do you wish to serve on the Board? And, two: What do you think will be the nature of the contribution that you can make to the Board? Think about that and we will send them to you in writing.

Are you familiar with the extent to which the need for legal services is not met throughout the country, both in communities with legal services programs and those without any programs?

Ms. WORTHY. I can't say that I am fully familiar. I think there is about 10 million people that are not being served by legal services. Now, there is more of a need out there that should be met.

Mrs. ESQUER. I think I have seen some statistics in some of the legal services reports, but I am more aware of the status of that in the State of Arizona where I have served on the Legal Services Board, where the third largest populated county in the State is receiving no legal services at this time. I think from that perspective, if that is the situation in Arizona, this must be the situation in other States in the country I think.

Mr. ENGELBERG. Senator, because of the very lean funding that the program had for many years, I think the problem of coverage is obviously severe. I think it has gotten a lot better thanks to the Congress, in the last couple of years. But there is still major areas of the country which are not served.

Ms. RODHAM. In addition to that problem, I think there is still an educational one. There are still large numbers of people who do not realize they have some rights to legal services. They do not understand their entitlement under this law should be exercised. I think that is one of our other responsibilities as well, to make sure that they know what they should ask for.

Mr. TRUDELL. As I pointed out, my experience to date has been primarily with Indian programs, and the fact there are only eight programs that are funded by the Corporation, not including the State of Nevada which does receive some money for the Indians in Nevada, if that is indicative of other areas of the country as well as other ethnic groups, then I don't think much more has to be said than to agree that it has to be met somehow.

Senator CRANSTON. Another question I will submit to you in writing, but I will just tell you now what it is: I would like you each to give us a brief outline of the extent to which legal services programs in your own communities are adequate or inadequate to meet service needs.

Let me start now with another question to you, Richard. Do you believe that the determination of client eligibility should be left to the discretion of local legal services programs so long as they comply with maximum income eligibility guidelines set by the Corporation and utilized the factors that are set out in the act?

Mr. TRUDELL. I don't think it should be left solely up to them. I think insight from clients should be given more deference than it has. In an earlier question asked regarding involvement of more nonlawyers on the Board, I really endorse that. I think that in some situations lawyers have a tendency to make mountains out of molehills.

Senator CRANSTON. The local board does have to be one-third clients, so they will have input right there.

Mr. TRUDELL. I think maybe in some areas they should go beyond a bit. There again, I would use the Indian situation in terms of making sure that they have input into the Board, given the fact that there are very few Indian attorneys in the country.

Ms. RODHAM. As of this time, I favor local control over eligibility within guidelines that are set by the Corporation. I think that the circumstances vary from one locality to another enough so that, for instance, the area I am most familiar with now, that of rural Arkansas where many people are land poor with considerable land assets, we would hate to see them translate into money in order to purchase legal services since it is all they have in the world, may be a very different situation than what would be faced in an urban environment and I would continue to favor local control over eligibility.

Mr. ENGELBERG. I agree with that. I think that local control within the obvious guidelines the Corporation would have to set under the law is important.

Mrs. ESQUER. I also feel very strongly about the local boards with their constituents making those decisions.

Ms. WORTHY. I would also feel very strongly about the local board's clients having a vote.

Senator CRANSTON. Richard, do you believe that there should ever be interference by the Legal Services Corporation board with the professional representation provided by a program staff to an eligible client when engaged in cases permitted by the act?

Mr. TRUDELL. No; I don't. I don't think there should be if you are going to protect the attorney-client privilege that does exist providing that the client is represented.

Ms. RODHAM. Off the top of my head, the only reason I could think of for interference would be in order to protect the client from an attorney's incompetence. I think that would call for interference, not really be grounds for it.

Mr. ENGELBERG. I would agree with Hillary's answer, Senator.

Mrs. ESQUER. I think that is probably one of the most important responsibilities that we have, is to insure that a poor person who receives legal counsel with the Corporation has the same protection that a person who receives representation at his own expense.

Ms. WORTHY. I feel as long as the client is being represented, that his legal needs are being met. I do not feel it should be—

Senator CRANSTON. Steve, I am going to start with you this time. Do you believe that you as a Board member would have the right to examine the case files of a legal services program without the prior knowledge and voluntary written consent of the client?

Mr. ENGELBERG. I would think not, sir. I think it would require the prior knowledge and consent of the client if it is a case file.

Ms. RODHAM. I would agree with that, Senator. I think that any kind of information that we would require should be gotten through channels that make the client fully apprised of why we want it, what we are going to do with it, and I think that one of the dangers we always have to guard against is that there not be any kind of looking over the shoulder and interference into a client's personal business where we don't belong. It wouldn't happen in my office. Why should it happen in a legal services office?

Mr. TRUDELL. I would agree both with Hillary and Steve.

Mrs. ESQUER. Since the Corporation is merely the funding agency for the local program I think it would be inappropriate unless there was written consent.

Ms. WORTHY. As a client, I would be very upset if that would happen without my consent.

Senator CRANSTON. Let me get back to Steve with a related question. Do you believe that anybody, including local board members or evaluators have a right to look at the files without the client's consent?

Mr. ENGELBERG. No; I think not, Senator. Again, I think there are legitimate statistical information that can be obtained by either the Corporation of the local Board protecting attorney-client privileges, and I think that anything of that nature, as Hillary said, it wouldn't happen in a private law firm; it shouldn't happen in a publicly funded law firm.

Ms. RODHAM. I would assume, Senator, that the other members of the legal services office would have access to the files as they would in my office, and that the only thing that I could see being guarded against, again, would be the incompetency of a particular attorney. In a case where a client might be unwilling to admit that or might not understand it, it could be protected against by the colleagues of that particular attorney so that the files would not have to be opened to persons who did not share the privilege.

Mr. TRUDELL. I, again, would agree with Hillary. However, for evaluation purposes I think if there is something that should be looked at permission should be sought out first and if you are not successful then it remain as it is.

Mrs. ESQUER. I feel that in every instance you would need permission from the client, even at the local Board level to have a Board member look at the records.

Ms. WORTHY. I would have to agree with that. I do feel that we should have permission from the client. I would like, being in that position, to give mine before you would look into my records.

Senator CRANSTON. Now I have some questions that are only for the attorneys, and I will skip you for a while, Josephine, on these. I will ask that you submit answers in writing. We will give you the written questions. But, just so you are aware of them now: First, what prior involvement have you had with legal services programs; second, what contacts have you had since your nomination was first announced with legal services programs in your home communities or elsewhere; third, what organizations concerned with the poor have you been involved in; and, finally, the nature of your involvement in that?

Now, some that I would like you to answer at this time and I will start this time with you, Cecilia. Do you believe that the legal services programs should provide the full spectrum of professional representation to the clients they represent?

Mrs. ESQUER. Is this in civil cases, or—

Senator CRANSTON. Would you provide the full range of legal help needed by clients?

Mrs. ESQUER. Yes; I do believe that. I think that it is necessary because the funding is limited. I think that it is necessary for the local Boards to set up priorities so that they can use the funds most effectively to meet the needs of the client community and of the individual client. I think that if you just open the door to every single person that comes in the door it may not lead to the best organization, but I think a local board is probably in the best position to make those decisions.

Mr. ENGELBERG. I think that is right, Senator. I think that it is a very tough issue, as you know, and it seems to me primarily that you have to look to the local Board, but then you get into the question of is there appropriate, meaningful client representation on the local Board. But, my gut feeling and with the stuff that we have gone through when I worked in the Senate was that if you had a representative local board then essentially they have to pretty much call the shots consistent with the legislation.

Ms. RODHAM. I would agree with that. I think a legal services client deserves full representation from his or her attorney that any other private citizen does.

Mr. TRUDELL. I would also agree with that. I guess the only caveat is to hold yourself out to be able to assist or resolve most problems requires a great deal of expertise in many areas. If you have the resources to develop expertise that is one thing. If you don't, then I think you should let the client know that you don't have the expertise.

Senator CRANSTON. Do you believe that legal services programs should seek, by appropriate means, to secure reform of laws and regulations which are unresponsive to the needs of the poor?

Mrs. ESQUER. That's also a very difficult question because these issues generally arise in the representation of an individual client and I think that each attorney with the advice and assistance of the supervisory attorneys have a duty to do what is necessary to insure that their client is represented in the best possible manner. And if this includes reform litigation then I think that that is proper, if they considered the needs of the client, the needs of the client community, I think I would be very much for that.

Mr. ENGELBERG. I think that is a very good answer, Senator, because I think it is important that any attorney must serve his client, his or her client, and I think that you don't want to go for the home run kind of law reform case if you can assist the client short of that. On the other hand, I would hope to see, again, consistent with the legislation, legislative and executive advocacy which you can deal with on a larger scale. But the tendency should not be to always go for the major cases.

Ms. RODHAM. I would agree with that but I would also add that I hope that there has not been any discouragement that has in any way filtered down to the legal services over the last few years that would make them opt for the single case solution when they did not need to,

or when it wasn't the appropriate route. I think the board needs to be sure to get the message across that we are not discouraging any other alternatives, executive, legislative or reform litigation, as well as expecting that the individual case responsibilities be met.

Mr. TRUDELL. I think reform litigation has probably been more critical to Indian people than probably any other group primarily because they come under so many laws and the agencies that are responsible for providing services, primarily the Department of the Interior, they have only been responsive when they have been pressured by legal services as well as the private services.

Senator CRANSTON. Do you believe that legal services, Cecilia, should represent their clients in seeking to expand their legal rights and entitlements regardless of whether the prospective defendant is a private party or a Government entity?

Mrs. ESQUER. Let's see if I understand your question correctly. Are you asking me that as a Board member would I discourage bringing actions against Government agencies?

Senator CRANSTON. Should the program seek to expand their legal rights and entitlements regardless of whether it is a private party or a Government entity that you have to deal with?

Mrs. ESQUER. I don't think it should make any difference. I think again, my basic premise is that a poor person is entitled to the same type of legal assistance as a person who pays for his own legal defense, so I think that would encompass it. I would not distinguish between the agencies.

Mr. ENGELBERG. I have never seen it make a difference to an attorney in private practice. It certainly should not make a difference to legal services attorneys.

Ms. RODHAM. I agree with that.

Mr. TRUDELL. I also agree with that. I feel that if a person is eligible to receive a service then he or she should be entitled to full access to the legal system.

Senator CRANSTON. Regardless of whether the defendant is going to be a Government agency or a private person? You have all understood that was part of the question?

Ms. RODHAM. Yes.

Mr. TRUDELL. Yes.

Senator CRANSTON. Do you believe, and I will start with you this time, Hillary, that a legal services lawyer funded by the Federal Corporation should vigorously pursue cases against the Federal Government even if they embarrass the Government or arouse people in Congress if the lawyer feels that the case is meritorious?

Ms. RODHAM. Yes; I agree. I think that is the conservative position. Senator. I think that the Government needs to be held accountable. At least my father never trusted the Government always to do 100 percent right, and I don't see why a legal services attorney should be any different. I think that if there is a case that needs to be pursued it should be pursued, and regardless of what embarrassment it might cause. I think that the reform litigation that has been successful over the last decade has now become such a part of the fabric of Government and life that we can't even remember a lot of the embarrassment that was there, and it wasn't that well founded in many instances.

Mr. TRUDELL. I agree with Hillary. If you could trust the Government, Indians would not occupy the status they do in society now. I think that in most instances if Indians are going to receive full access to the legal system it is going to be through programs such as the Legal Services Corporation.

Mr. ENGELBERG. I agree with both Hillary and Dick.

Mrs. ESQUER. I think, if anything, in litigation that involves the Federal Government it probably should be especially vigorously pursued because the Federal Government in its many programs to assist the poor touch the poor, maybe more, on a daily basis than some private organizations. So I think it is necessary to maintain a good relationship with the Federal Government and I think one of the best ways to do that is to have vigorous litigation over disputes.

Senator CRANSTON. Thank you very much. I would like to say that though I am in the Government, and specifically in the Senate, I welcome your answers to the question.

Hillary, do you agree that it is a legal services' attorney's right and responsibility in consultation with his or her client to selected the forum, remedy, and strategy which is most appropriate to the client's need?

Ms. RODHAM. Yes. I can't even think of anything further to say about that.

Mr. TRUDELL. I agree with Hillary.

Mr. ENGELBERG. I agree.

Mrs. ESQUER. That was very well phrased.

Senator CRANSTON. Now I have a matter of some questions I want written answers to just from Hillary and Steve. I will read them and then will submit them to you in writing.

Do you agree that Board members ethically must avoid any conflict of interest, even if not strictly within the act prescriptions? Would you enter a case or negotiations where an opposing party is represented by a legal services attorney? Will your law firm take such a case while you serve on the Board?

Do any of you now represent or have you represented any client in litigation or negotiations against a party represented by a legal services attorney? For example, a local government unit, school district, or finance agency. And, if so, will you terminate any relationship that still exists to such a client regarding any ongoing controversy?

I will give you those in writing.

Now, some questions for a nominee in public practice, and that is you, Cecilia. As an assistant attorney general for the State of Arizona you are responsible for defending the State in actions fought against it, right?

[Mrs. Esquer nods head.]

Senator CRANSTON. Do you perceive any conflicts of interest arising from your position in the attorney general's office of the State of Arizona, in any decisions as a member of the Board of Legal Services Corporation affecting any legal services programs in the State of Arizona?

Mrs. ESQUER. Will that be a written answer?

Senator CRANSTON. No; I would like you to answer that now, if you can. If you prefer to answer it in writing, you can.

Mrs. ESQUER. Either way. That has been something that we have discussed in the attorney general's office.

Senator CRANSTON. Suppose you answer that in writing and indicate how you would handle such a conflict.

Do you believe that it is appropriate for legal services attorneys to litigate against State governments?

Mrs. ESQUER. My feeling is the same as the Federal Government. The State government affects poor people on a daily basis and I think if there is anything that needs to be corrected that is probably the best forum to correct it once the administrative remedies are exhausted.

Senator CRANSTON. Do you believe that there should be any restrictions imposed upon such litigation?

Mrs. ESQUER. Absolutely not.

Senator CRANSTON. If a client's rights are being, or may in the future be violated by the actions or proposed actions of a governmental agency do you believe it appropriate for legal services programs to seek to have agency policy, or regulations, or proposed policy or regulations changed through nonadjudicatory advocacy before that agency?

Mrs. ESQUER. Do you mean the Corporation on the national level, or the local legal services?

Senator CRANSTON. Local.

Mrs. ESQUER. I think that, if at all possible, it should be through consultation—meet and confer—and I think the last resort should probably be the legal process, formal litigation because the time involved in litigation is very long often times, and those problems would not get resolved.

I feel that State government, in some cases, is very responsive to correcting any inadequacies.

Senator CRANSTON. Hillary, let me say that because your husband is attorney general of Arkansas, there would be at least the appearance of conflict of interest of the same sort so I will submit the same questions to you in writing.

Ms. RODHAM. That's fine.

Senator CRANSTON. Now, Josephine, just a few questions for you. Would you describe briefly how you came to be a member of the board of directors of the western Massachusetts legal services program?

Ms. WORTHY. Yes. I was a client at that time and we needed representation from our neighborhood. I served on the board. And I was the person chosen to serve on the board at that time.

Senator CRANSTON. What contribution do you hope to make personally to the legal services program in this new responsibility?

Ms. WORTHY. I feel right now I am making a contribution just being a client to bring information from the client community to the Board so that the Board will be able to make decisions for clients, seeing that our local boards are client represented, seeing that areas that are not being serviced right now would start being serviced for people just like myself. There are probably a lot of other things that I would have to look into.

Senator CRANSTON. Do you feel that client participation on local boards is very important?

Ms. WORTHY. Very important. The program is all about clients and I feel clients should be there making decisions, helping the Board make decisions.

Senator CRANSTON. Do you have any thoughts on how clients' participation in legal services programs can be developed further than it is now?

Ms. WORTHY. Are you talking about the local program?

Senator CRANSTON. Yes.

Ms. WORTHY. Clients can be very informative.

Senator CRANSTON. What can we do to get them more involved, or is there a need to do that?

Ms. WORTHY. I think you need to do that.

Senator CRANSTON. How can this participation be expanded?

Ms. WORTHY. It is going to take some work in the neighborhood to get people more involved in serving on the board, or it is going to take probably an information kind of program to let people know really what legal services are. There are still a lot of people, as one of the other members said, that do not know about legal services, that do not know that there is a big corporation sitting up here making decisions, and I can speak about that because I have had people come to me and ask me what is the corporation all about and what is that. That's after they read it in the paper, the fact that I had been nominated to the Corporation.

I think that information about the program should be brought into the community.

Senator CRANSTON. Thank you all very much for your patience and for your responses. I will do what I can to move the nominations along as swiftly as possible. It will be helpful if you get your written answers back as fast as possible. I am very confident the Board is going to do very well with your guidance. It is a pleasure to have seen each and all of you. Thank you very much.

[The prepared statements of Mr. Trudell, Ms. Worthy, and Mrs. Esquer, and résumés of the nominees along with additional material supplied for the record follow:]

STATEMENT OF RICHARD TRUDELL, NOMINEE FOR THE BOARD OF  
DIRECTORS FOR THE LEGAL SERVICES CORPORATION

Mr. Chairman and members of the committee, my name is Richard Trudell and I am pleased to have the opportunity to appear before you as one of President Carter's nominees to sit on the Legal Services Corporation's Board of Directors.

I am presently the Executive Director of the American Indian Lawyer Training Program and have been active in organized bar activities for the past five years.

Being of Native American descent and coming from an impoverished background, I know what it feels like to be taken for granted and to be denied certain rights and access to certain institutions because of the color of your skin or because you do not possess the necessary resources. However, my personal background has provided me with many invaluable life experiences and has instilled in me the kind of sensitivity one needs to successfully work with and for the disadvantaged.

During the past few years I have had the opportunity to visit many impoverished areas in the United States. Although my primary interest has been the plight of Native Americans, I have had a great deal of exposure to the legal exigencies of various ethnic groups. In light of my experiences and compassion for the disadvantaged, I welcome the opportunity to work toward strengthening and expanding the efforts of the Legal Services Corporation, and to insuring that quality legal representation is provided to the poor in an effective and economical way.

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It has long been recognized and subscribed to by the legal profession that every person is entitled to due process and equal protection of our laws. However, this will only occur when everyone is assured of access to the legal system. In many instances, legal service programs have given access to the disadvantaged for the first time. It must be the goal of the Congress and the legal profession to make sure that no one, regardless of their status in society, be denied access to the legal system. If anyone is denied access because they do not possess the necessary resources this country must be viewed as being hypocritical and not committed to practicing what it preaches.

I look forward, if confirmed, to working closely with the legal services community toward the fundamental goal of providing legal representation to every poor person who needs it and to insuring that the disadvantaged have equal access to the legal system. I am deeply committed toward meeting the legal needs of the poor and appreciate the opportunity to serve on the Legal Services Corporation's Board of Directors.

Thank you very much for your time and interest in the work of the Legal Services Corporation.

## RICHARD A. TRUDELL

On January 19 President Carter appointed Richard Trudell to the Board of Directors of Legal Services Corporation.

Richard A. Trudell, 35, was born in Sioux City, Iowa. He is a member of the Santee Sioux Tribe of Nebraska. He was educated at the University of South Dakota and at San Jose State College, where he received a B.S. degree in accounting in 1969. He served two years in the U.S. Navy.

Trudell attended Catholic University School of Law in Washington, D.C., received a J.D. degree in May 1972, and was admitted to the State Bar of Nebraska that same year. He is a member of the American Bar Association and serves as a council member of the ABA's Section on Individual Rights and Responsibilities. Other professional memberships include the National Legal Aid and Defender Association and the American Indian Bar Association.

After graduation from law school, Trudell served as director of the Fellows Program for the Robert F. Kennedy Memorial in Washington, D. C. He is currently a member of the Memorial Board of Directors.

Trudell resides in Oakland, California, where he is executive director of the American Indian Lawyer Training Program, Inc. -- a non-profit corporation which he co-founded in 1973. AILT projects include: 1) a fellowship program for Indian attorneys 2) a law associates program for recent Indian law graduates 3) an Indian Tribal Court Advocate Training program 4) a research and writing project in Indian law 5) the Indian Law Reporter, a monthly legal periodical.

STATEMENT OF  
JOSEPHINE MARIE WORTHY

BEFORE THE  
U.S. SENATE  
COMMITTEE ON HUMAN RESOURCES

IN THE MATTER OF  
THE LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

February 7, 1978

Mr. Chairman. Members of the Human Resources Committee.

I am sure that there is a traditional presentation which is made by nominees seeking the consent of the Senate. I, however, guess that I am not the "traditional" nominee. It is seldom that someone with my background is given the privilege of serving in a decision making capacity on a governmental body such as the Legal Services Corporation's Board of Directors.

My presence here today is, in my opinion, due jointly to the leadership displayed by many of the members of this Committee and the sensitivity of the current Administration. In July, 1975, many of you were members of the Senate Committee on Labor and Public Welfare. When you reviewed the makeup of the initial governing body of the Legal Services Corporation, you passed a resolution which said that it was your belief that, "... the Committee has a responsibility to advise as well as consent in nominations submitted by the President and does therefore hereby express its strong belief that future nominations should take account of the need for inclusion on the Board of non-lawyers, women, and members of the client community.

I am a woman, a non-lawyer, black and a member of the client community.

Today, two other women, one of them a fellow member of an ethnic minority, come before you for confirmation. Your efforts have been rewarded and I think the entire client community will benefit as a result. You have recognized the ability of low income people to speak for themselves, the desirability and appropriateness of our being a part of decision making which impacts our lives and the invalidity of organizations which do not include women at their top levels.

I am obviously pleased to come before you as a prospective member of the Legal Services Corporation Board of Directors. But, I recognize that the most important point is that poor people, be it myself or someone else, should always be part of that body.

Legal Services has a special meaning to me. I have experienced situations in my personal life where the availability of this resource made an essential difference. I have helped my friends and neighbors to make use of our local program and I have seen the positive impact which resulted. In my community, people with common problems have been brought together to exercise their basic legal rights. The result has been the removal of major barriers to their ability to lead normal lives.

The intervention of our local legal services program has broken down discriminatory hiring practices by a local public housing authority. The arbitrary suspension of students, without cause and without any due process, has been ended. The failure of local agencies to provide interpreters for non-English speaking persons has been addressed. The illegal withholding of statutory benefits from the elderly has been substantially reduced. All of these things are the results of actions taken through our local program. I could describe more that the community, using the resource which is legal services, has seen accomplished. I can only guess at the number of evils which have been prevented by the presence of this program.

My family, my friends and my community have all benefited from the wisdom of the Congress in establishing the legal services program as an independent body free from political interference.

Yet, if I am confirmed by the Senate, I will strive to have legal services programs accomplish even more.

I say this because I know that there are more than ten million low income people in this country who have never had the advantage of being within the geographic area of any legal services program. I will, therefore, join with other members of the client community in seeking a truly adequate level of funding for the Corporation this year and in the years to come.

I will seek more funds not only to provide for more representation by attorneys and paralegals but because I know that we low income people want to rely on ourselves to solve critical problems. But, often we do not know how. If there were more preventive

legal educational programs conducted by legal services personnel, I feel that we could avoid many of the crisis which constantly beset us. We could then make self-help rather than dependency our way of life.

I would also seek more in the way of client involvement in the affairs of the local legal services programs. Your recent amendments to the Corporation's legislation have spelled out significant new roles for the client community in the setting of program priorities and increased our participation on the local governing bodies. I am sure, however that there are other things which we, as individual clients and as groups of concerned people, can do. We want to continue and improve the efforts of programs to get to the causes of problems. There has been too much attention paid to the surface evidence of these problems and not enough done in the way of long range/long term problem solving. I will, if confirmed, seek to insure that the programs actively reach out to all segments of the client community and direct services to the most pressing needs in a fashion which will benefit the greatest number of people.

If I am confirmed there are other issues, related to the administration of justice, which I shall hope to see the community and legal services programs address. For example, there are currently many attempts to alter the way in which the courts are used. This is, in my opinion, a fit subject for joint examination by low income people and legal services attorneys. Similarly, there are questions which need to be addressed concerning the formula by which local programs are funded and the problems of insuring that the representation being provided is of the highest possible quality.

I would also explore the appropriateness of my being a vehicle by which the client community can bring to the attention of the Lady and the Gentlemen of the Senate issues which we feel to be of particular merit. One such issue relates to those attorneys and judges who have demonstrated an appreciation of the problems of the poor and who deserve consideration for elevation to the federal bench. As you might assume, poor people will be particularly interested in addressing the problem which sees less than five percent of that federal bench occupied by minorities or women.

I see the Legal Services Corporation and the programs it funds as a primary resource in

the efforts of poor people to live normal productive lives and to give to our children that which all parents desire, i.e. dignity and self respect. If you decide to confirm me, I shall gladly join with the other members of the Board, the members of the National Clients Council and other low income groups, as well as the dedicated and committed attorneys, paralegals and other workers in our local programs who have done so much in the past and recognize how much has yet to be done.

I thank you for this opportunity to come before you and your consideration of my nomination.

## JOSEPHINE WORTHY

Josephine Worthy, 43, of Holyoke, Massachusetts, is youth director of Bethlehem Baptist Church and president of TOETFERT Housing Project Tenants Association. She is on the Advisory Board of the Office of Children's Services of the Massachusetts Department of Social Services. From 1974 to 1976 she was a family counselor at Holyoke Street School.

Worthy is also a member of the Mayor's Youth Committee in Holyoke, on the Board of Directors of the Holyoke Y.W.C.A., and a member of the Western Health Planning Council.

She is a former member of the Board of Directors of Western Massachusetts Legal Services, Inc.

Statement of Cecilia D. Esquer, Nominee for the Legal Services Corporation Board of Directors, before the Senate Committee on Human Resources Tuesday, February 7, 1978

Mr. Chairman, members of the Committee on Human Resources:

The events which have brought me before this highly respected body of elected representatives of American citizens have been unpredictable, challenging, overwhelming at times, but most of all a positive sign that individual citizens can share in the continuation of our Nation's efforts toward insuring liberty and justice for all.

Despite the many positive experiences I had as a teacher during the eight years I was in the classroom, I felt more needed to be done to insure that all of our students were given an equal opportunity to become a contributing force in our society. So I became involved in our Nation's political process and found myself catapulted from the position of precinct committeeperson to a member-at-large of the Democratic National Committee by the McGovern-Fraser reforms.

The work of great leaders, like Martin Luther King, Jr., President John F. Kennedy, Senator Hubert H. Humphrey, Cesar Chavez and Senator George McGovern inspired me to strive for the improvement of the plight of the poor and the oppressed in our country. The changes achieved by the civil rights litigation of the 1960's, and the strong encouragement from my husband, Elias, and our two children, Andrea and Marcos, gave me the courage to endure the three-year ordeal at the Arizona State University College of Law.

As a third-year civil intern in our law school clinical program, I became acutely aware of the dire need for free legal services for poor people. As a board member of a local legal services program, I was also made aware of the need to insure not only free legal services, but competent legal services as independent from outside interferences as those legal services offered at client expense.

The creation of the Legal Services Corporation went a long way toward assuring the independence necessary to render effective legal services to our Nation's poor. We can now concentrate on the goal of providing "equal access to the system of justice in our Nation."

Mr. Chairman, members of the Committee on Human Resources, I feel very humble and gratified that I am being afforded this opportunity to personally participate in our Nation's efforts to achieve this noble goal.

Thank you very much.

R E S U M E

Cecilia D. Esquer  
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Tempe, Arizona 85282

Home phone: (602) 966-5743  
Office phone: (602) 271-3943

Birthdate: May 18, 1942  
Married, 2 children (11, 7)

EDUCATION

Law School Arizona State University College of Law, Tempe,  
Arizona. J.D., May, 1976.

Academic Honors: American Jurisprudence Award,  
Family Law

Activities: Student Bar Association; Volunteer  
in Tax Assistance (VITA); El Grupo - Chicano  
Law Students Association; Council on Legal  
Education Opportunity (CLEO) Selection  
Committee; CLEO Tutorial Committee; Board of  
Directors, Valle del Sol, Inc. (1972-75); Board  
of Directors, Maricopa County Legal Aid Society;  
Member-at-Large, Democratic National Committee  
(1973-77); Executive Committee, National  
Association of Latino Democratic Officials;  
Executive Committee, Democratic Party of  
Arizona (1973-76).

Graduate Arizona State University College of Liberal Arts,  
Tempe, Arizona. Master of Arts (Spanish),  
December, 1965

Pima College, Tucson, Arizona. Certificate for  
EPDA Summer Institute in Guadalajara, Jalisco,  
Mexico, from June 26, 1972, to July 28, 1972,  
Mr. Henry Oyama, Director. (Institute for  
training bilingual educators)

Under- Arizona State University College of Education,  
Graduate Tempe, Arizona. Bachelor of Arts (Business  
Education), June, 1963

Academic Honors: United Business Educators Association "Outstanding Business Education Student" Award

Activities: Pi Omega Pi, National Business Education Honorary, President; Alpha Pi Epsilon, National Secretarial Honorary, Project Chairman; Business Administration Council, Secretary; College of Education Academic Council

EMPLOYMENT

- 8/77-Pres. Assistant Attorney General, Attorney General of Arizona, 200 State Capitol Bldg., 1700 West Washington, Phoenix, Arizona 85007, Rod McDougall, Chief Counsel, Civil Division.
- 3/77-7/77 Law Clerk, State Department of Education, temporary appointment, David Rich, Assistant Attorney General.
- 9/71-6/72 Faculty Associate, Foreign Language Department, Arizona State University, Tempe, Arizona, one-year appointment, Dr. Quino E. Martinez.
- 9/70-6/71 Spanish Teacher, Evening Division, Mesa Community College, Mesa, Arizona, Dean Roger Worsley.
- 8/65-2/66 & Spanish Teacher, McClintock High School, Tempe, Arizona, William Boyle, Principal.
- 9/68-1/70
- 8/66-6/68 Spanish Teacher, Baker Junior High School, Tacoma Public Schools, Tacoma, Washington, Carl Dellaccio, Foreign Language Coordinator.
- 2/65-7/65 Teacher of Typewriting, General Business, Spanish and English to high school students, Arizona State Tuberculosis Sanatorium, Tempe, Arizona, Mrs. Dougherty, Head Teacher. (Part-time while attending graduate school).
- 9/64-2/65 Secretary, ASU Mathematics Department, part-time while attending graduate school. Dr. Evar Nering, Chairman.
- 9/63-6/64 Business Education and Social Studies teacher, Ray District High School, Kearny, Arizona, Bob Chastain, Superintendent.

- 1959-1963 Secretary, part-time while attending undergraduate school, Marketing Department, ASU, Dr. William A. Nielander (deceased), Chairman.
- 1959-1963 Various secretarial jobs during the summer including work in law offices, engineering firms, investment company, refrigeration company, and other types of businesses.

#### ORGANIZATIONS - CURRENT

American Bar Association, State Bar of Arizona,  
Maricopa County Bar Association

Board of Directors, Maricopa County Legal Aid  
Society (1975- ); Board of Directors, Valle del  
Sol, Inc. (1978- ); KTAR-TV Minority Advisory  
Committee, (1977- ).

#### RESEARCH AND WRITING

With Liberty and Justice for Some: Chicanos, the  
Immigration and Naturalization Service and Civil  
Liberties

No More Good Men to Serve? The Implications of  
Wood v. Strickland, 95 S.Ct. 992 (1975) [Liability  
of individual school board members]

The Chinle School Problem: Education, Taxation,  
Representation (Indian Law paper)

#### SPECIAL AREAS OF INTEREST

School law, poverty law, civil rights

#### SPECIAL QUALIFICATIONS

Fluent in Spanish

#### REFERENCES

Will be furnished upon request

(January, 1978)

ADDENDUM

Married to: Elias Y. Esquer

Professor (Spanish, Chicano History) - Foreign Language Department, Mesa Community College, Mesa, Arizona (1970 - Present)

Member, Tempe Union High School Board of Trustees (1970-1976), President (1976)

National Education Association (NEA) Special Committee on Resolutions (1977 - Present)

NEA Finance Committee (1975 - 1977)

NEA Indo-Hispanic Task Force (1971 - 1973)

NEA Chicano Task Force Chairman (1974 - 1975)

Chairman, Victory Acres Neighborhood Redevelopment Project Area Committee (1975 - Present)

## RESUME

STEVEN L. ENGELBERG

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 Washington, D.C. 20036  
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Home

4813 Grantham Avenue  
 Chevy Chase, Maryland 20015  
 301-652-0993

Born March 15, 1942 at Memphis, Tennessee

Married, with two children

Education:

College: University of Michigan, 1959-63, A.B. with high distinction and high honors in political science.

Phi Beta Kappa; Phi Kappa Phi; vice-president of Pi Sigma Alpha, National Political Science Honorary; William Jennings Bryan Prize, 1963, given to outstanding student in political science, Angell Scholar.

Legal: Harvard Law School, 1963-66, LL.B., Cum Laude.

Project Chairman, Harvard Civil Liberties Research Service; Study of Parole Revocation Procedure of the U. S. Parole Board for Professor James Vorenberg, then Chief of Office of Criminal Justice, U.S. Department of Justice; Represented Harvard Law School as student assistant at Middlesex County (Mass.) District Attorney's Office.

Georgetown University Law Center, 1966-68, LL.M. and Certificate of Proficiency in Trial Advocacy (E. Barrett Prettyman Fellow in Georgetown Legal Intern Program)

Member of Committee planning the D.C. Bar's Criminal Practice Institute (1967 and 1968)

Employment Experience:

September, 1974 - present	Partner--Price, Grove, Engelberg & Fried, P.C.
February, 1973 - August, 1974	Attorney, Washington, D.C. Law firm of Amram, Hahn & Sandground.
January, 1969 - January, 1973	Legislative Counsel to Senator Walter F. Mondale.
July, 1968 - January, 1969	Assistant to Under Secretary of Transportation, Hon. John E. Robson.
September, 1966 - July, 1968	Represented indigents in criminal and civil matters in the District of Columbia courts as Georgetown Legal Intern.
Summer, 1965	Student Assistant, U.S. Attorney Office, Southern District of N.Y.
Summers, 1963, 1964	Student Assistant, Civil Rights Division, U.S. Department of Justice

Teaching Experience:

Fall, 1968 - <sup>Feb. 1972</sup> <del>present</del>	Adjunct Professor, Georgetown University Law Center (Seminar in Poverty and Administration of Civil Justice)
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Admitted to Practice:

U.S. District Court for the District of Columbia (December, 1966)

U.S. Court of Appeals for the District of Columbia Circuit (January, 1967)

*Brief Maryland Court of Appeals  
Dec., 1975*

Publications:

Law and Tactics in Exclusionary Hearings, Coiner Publishing Co., 1969, (one of six authors).

Pre-Trial Criminal Commitment to Mental Institutions: The Procedure in Massachusetts and Suggested Reforms, 17 Catholic University Law Review 163 (No. 2, Winter 1967)

References: On request

Name: Hillary Rodham S.S.No. 353-40-2536

Address: Home: 5419 L Street  
Little Rock, Arkansas 72205

Business: Rose, Nash, Williamson, Carroll,  
Clay & Giroir  
720 West Third Street  
Little Rock, Arkansas 72201

Personal Background: Born October 26, 1947; Chicago, Illinois  
Age: 30

Education: B.A. with High Honors, 1969  
Wellesley College, Wellesley, Mass.  
President, College Government; Vida  
Dutton Scudder Scholarship for Graduate  
Studies

J.D., 1973  
Yale Law School, New Haven, Connecticut  
Barristers' Union Prize Trial; Director,  
Barristers' Union; Original Board of  
Editors, Yale Review of Law and Social  
Action; Yale Legal Services; Participant  
in Special Program in Law and Psychiatry  
sponsored by the Yale Law School, the  
Yale Child Study Center and the Yale  
Medical School; Law Clerk for New Haven  
Legal Assistance Association; Research  
Assistant for Prof. Joseph Goldstein,  
Yale Law School, for book he authored  
with Drs. Anna Freud and Al Solnit,  
Beyond the Best Interests of the Child.

Professional  
Experience:

2/1/77-present Associate in Litigation Division of  
Rose, Nash, Williamson, Carroll, Clay  
& Giroir, Little Rock, Arkansas.

8/74-1/31/77 Assistant Professor of Law, University  
of Arkansas School of Law; Director,  
University of Arkansas Legal Aid Clinic,  
Texarkana Prison Project and Cummins  
Prison Projects, Fayetteville, Arkansas.

8/74-present Private Practice of Law, Fayetteville,  
Arkansas

Page two

9/75-present

Reporter for the Federal Court of the Eastern District of Arkansas Speedy Trial Planning Group.

1/74-8/74

Counsel, Impeachment Inquiry Staff, House Judiciary Committee.

6/73-1/74

Staff attorney with Children's Defense Fund, Cambridge Massachusetts and Washington, D.C.; Legal Consultant to the Carnegie Council on Children, New Haven, Connecticut, funded by the Carnegie Foundation, New York City.

Publications:

"Children Under the Law", Harvard Educational Review, January, 1974.

"Children's Policies: Abandonment and Neglect", Yale Law Journal, June, 1977.

Report of Panel on Justice, Southern Regional Conference on Humanities and Public Policy, May, 1976.

Handbook on Legal Rights for Arkansas Women.

Book Review of All Our Children for Public Welfare, (to be published in next issue).

Affiliations:

Organizer and Board Member, Northwest Arkansas Legal Services, Inc.

Founder and Board Member, Arkansas Advocates for Children and Families.

Institute of Judicial Administration, Juvenile Justice Standards Project, National Drafting Committee on Pre- and Non-court Handling of Juvenile Problems.

Governor's Commission on the Status of Women.

American Bar Association

Arkansas Bar Association

LAW OFFICES OF  
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OF COUNSEL:  
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 14746 MAIN STREET  
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VIRGINIA OFFICE:  
 DANIEL G. GROVE  
 4085 CHAIN BRIDGE ROAD, SUITE 203  
 FAIRFAX, VIRGINIA 22030

February 10, 1978

The Honorable Harrison A. Williams, Jr.  
 Chairman  
 Senate Committee on Human Resources  
 4230 Dirksen Senate Office Building  
 Washington, D.C. 20510

Dear Mr. Chairman:

The following are my responses to questions submitted by Senators Javits and Cranston at the February 7, 1978 confirmation hearing for nominees to the Legal Services Corporation Board of Directors.

Senator Javits submitted three questions:

Q-1. What is the extent of your concern for the adequacy of legal services for non-minority poor people?

Answer: The Legal Services Corporation Act makes it clear that all poor people must have access to the programs authorized by that legislation. While I have seen no evidence to indicate that non-minority poor people are being discriminated against by the Legal Services Corporation or its grantees, I certainly will be very sensitive to such an issue if it should arise in the future.

Q-2. How do you think the Legal Services Corporation ought to respond to situations in which there are conflicts of interest between different groups of poor people and a community legal services office elects to represent one group against another?

Answer: In the first instance, I believe that any conflicts of interest between different groups of poor people, should be resolved by the local governing organization of each of the Corporation's grantees. It is my understanding that every effort has been made by the Corporation to resolve such disputes in this manner in the past, and it is also my understanding that for the most part, these conflicts have been adequately handled by the local governing

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The Honorable Harrison A. Williams, Jr.  
Chairman  
February 10, 1978

Board of a particular grantee. However, in the event that this type of conflict does require a policy decision by the Corporation's Board of Directors, I would certainly make every effort to help develop fair and equitable policies to resolve such conflicts at the local level.

Q-3. What is your view of the need to improve the access of handicapped persons to local legal services program offices?

Answer: I believe it is vitally important for the Legal Services Corporation to ensure access of handicapped persons to legal services programs. It is my understanding that the Corporation is subject to the provisions of the Rehabilitation Act of 1973, which prohibits discrimination against handicapped persons in any federally funded program, and it is also my understanding that the Corporation's staff is now in the process of preparing guidelines and regulations for its grantees to ensure compliance with this legislation.

The Corporation's Board of Directors must take every step possible to ensure compliance with existing legislation prohibiting discrimination against handicapped persons.

The following are my answers to the questions submitted by Senator Cranston:

Q-1. Why do you wish to serve on this Board?

Answer: I have been involved with the Legal Services program, both directly and indirectly, since graduating from law school in 1966. From 1966 through 1968, I was a member of the Georgetown Legal Intern Program, and part of my duties in that program consisted of serving as a staff attorney in several different District of Columbia neighborhood Legal Services offices.

From 1969 through early 1973, I was a legislative assistant to Senator Walter F. Mondale, and in that capacity, I assisted the Senator in working on a number of issues involving the Legal Services program, including assisting him and others in the development of the Legal Services Corporation legislation.

I have also done some consulting work for the Legal Services Corporation, primarily assisting them in the submission of their budget for FY 1977. On an informal basis,

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I have also advised members of the Corporation staff on later budget submissions.

Based on this prior experience, I have a strong professional interest in the work of the Legal Services Corporation. But more important, as an attorney, I am strongly committed to the concept of equal justices under law, and I believe that service on the Corporation's Board of Directors will enable me to make some contributions to improving access to justice for those Americans who have been denied this access in the past.

Q-2. What do you think will be the nature of the contribution you will make to the Board?

Answer: Based on my prior experience with the Legal Services program, I believe that my primary contribution to the Board will be in the area of developing the Corporation's annual budget, and assisting the Corporation in its relationship with the Congress and other government agencies.

Q-3. Do you agree that Board members ethically must avoid any conflict of interest, even if not strictly within the Act's proscriptions?

Answer: Yes.

Q-4. A. Would you enter a case or negotiations where an opposing party is represented by a Legal Services attorney?

B. Will your law firm take such a case while you serve on the Board?

Answer: Because of the nature of my own practice, it is very unlikely that I personally will be involved in such a case. However, based on my understanding of the Canons of Ethics and the role of the Legal Services Corporation Board, I do not believe that there would necessarily be a conflict of interest under either of the circumstances outlined in this question. But I am aware of the potential that a conflict of interest could arise, and I will take every step possible to avoid even the appearance of a conflict. In other words, if there is any question of a conflict of interest arising, I will consult with the Corporation's General Counsel, and if there is even the slightest appearance of such a con-

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flict, I will disclose the conflict to the Board and isolate myself from any Board decision affecting such a case, or take whatever other steps deemed appropriate.

I have instituted a reporting system within my law firm to ensure that I am informed of any future cases involving Legal Services attorneys on the other side.

Q-5. Do any of you now represent, or have you represented, any client in litigation or negotiations against a party represented by a Legal Services attorney, for example, a local government unit, school district, or finance agency?

If so, will you terminate any relationship that still exists to such a client regarding any on-going controversy?

Answer: To the best of my knowledge, I do not presently represent any client in litigation or negotiations against a party represented by a Legal Services attorney. However, as an associate of a law firm that I am no longer affiliated with, I did do a limited amount of work on one case involving commercial issues, where a Legal Services attorney was representing the opposing party.

To the best of my knowledge, the law firm with which I am presently affiliated now represents one client in litigation against a party represented by a Legal Services attorney. In the past, this law firm has been involved in a few isolated cases in which a Legal Services attorney represented the opposing party.

As indicated above, I do not believe it is necessary to terminate my law firm's relationship in the one existing case involving a Legal Services attorney.

Q-6. A. What prior involvement have you had with Legal Services programs?

B. What contacts have you had, since your nomination was first announced, with Legal Services programs in your home communities or elsewhere?

Answer: As to my prior involvement with Legal Services programs, I have answered that question in number 1 above, dealing with the issue of why I wish to serve on the Corporation's Board.

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The only contact I have had with Legal Services programs since my nomination was first announced are several congratulatory notes received from friends of mine, who are now serving as Directors of Legal Services programs funded by the Corporation.

Q-7. A. What organizations concerned with the poor have you been involved in?

B. What was the nature of your involvement?

Answer: From 1966 through 1968, I was a member of the Georgetown Legal Intern Program, and I represented indigent defendants in criminal and civil cases in the District of Columbia. In that capacity, I served on a part-time basis as a staff attorney in several District of Columbia neighborhood Legal Services offices.

Other than that, I am presently a member of the Steering Committee of the Washington Lawyers' Committee for Civil Rights under Law, and although that organization is primarily concerned with civil rights issues, there is some overlap with organizations concerned with the poor.

Q-8. A. Do you believe that it is appropriate for Legal Services attorneys to litigate against state governments?

B. Do you believe that there should be any restrictions imposed upon such litigation?

Answer: I believe that it is appropriate for Legal Services attorneys to litigate against state governments; indeed, any restrictions against such litigation would violate the Canons of Ethics.

Q-9. If a client's rights are being or may in the future be violated by the actions or proposed actions of a governmental agency, do you believe it appropriate for Legal Services programs to seek to have agency policy or regulations or proposed policies or regulations changed through non-adjudicatory advocacy before that agency?

Answer: I believe it is appropriate for Legal Services programs to seek to have agency policy or regulations

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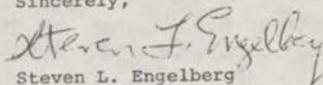
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February 10, 1978

or proposed policy or regulations changed through non-adjudicatory advocacy before a particular agency, so long as such representation is consistent with the Legal Services Corporation Act.

If you need additional information, please let me know.

Sincerely,

  
Steven L. Engelberg

SLE:ir

RESPONSE TO QUESTIONS FROM SENATOR JAVITS  
BY HILLARY RODHAM, NOMINEE TO THE BOARD OF  
DIRECTORS, LEGAL SERVICES CORPORATION

1. What is the extent of your concern for the adequacy of legal services for non-minority poor people?

I am concerned with the adequacy of legal services for all poor people.

2. How do you think the Legal Services Corporation ought to respond to situations in which there are conflicts of interest between different groups of poor people and a community legal services office elects to represent one group against another?

My opinion about the appropriate response, if any, would depend on the facts of the particular case.

3. What is your view of the need to improve the access of handicapped persons to local legal services program offices?

I favor improved access, when necessary, for handicapped persons to legal services program offices.

RESPONSE TO QUESTIONS FROM SENATOR CRANSTON  
BY HILLARY RODHAM, NOMINEE TO THE BOARD OF  
DIRECTORS, LEGAL SERVICES CORPORATION

1. Why do you wish to serve on this board?

I have worked with a variety of legal services programs since I was a student at the Yale Law School. When I served on the faculty of the University of Arkansas School of Law at Fayetteville, Arkansas, I started the first legal clinic the state ever had and have continued to work with the newly funded legal services corporations now serving the state as a private attorney. I am interested in the future of legal services and dedicated to improving access to our legal system for all poor people.

2. What do you think will be the nature of the contribution you will make to the Board?

I believe my experiences in legal services will benefit the Corporation. I am not sure as yet what specific contribution I will make but expect to work hard to ensure the Corporation's success at achieving its objectives.

CRANSTON/RODHAM, page 2

1. Do you agree that board members ethically must avoid any conflict of interest, even if not strictly within the Act's proscriptions?

Yes

- 2A&B. Would you enter a case or negotiations where an opposing party is represented by a legal services attorney?

Yes. I do not consider my role on the national board as a representative of the local boards and attorneys setting policies and taking cases throughout the country and, therefore, do not perceive any conflict. Each case, of course, will be evaluated on its own merits.

3. Do any of you now represent, or have you represented, any client in litigation or negotiations against a party represented by a legal services attorney, for example, a local government unit, school district, or finance agency? If so, will you terminate any relationship that still exists to such a client regarding any on-going controversy?

No. No.

CRANSTON/RODHAM, page 3

- 1A. What prior involvement have you had with legal services programs?

While in law school, I worked with both the Yale Law School Legal Services and the New Haven Legal Assistance Association. When I joined the faculty of the University of Arkansas School of Law at Fayetteville, Arkansas, I assumed responsibility for all clinical programs. These included two programs of prison legal assistance, funded by the state and federal governments. In addition, I began a legal clinic staffed by law students which was the only legal assistance program in that part of the state. In fact, in 1974 there were only three legal services programs in the entire state. I was able to obtain increased funding for the legal clinic from the Arkansas Bar Association and later began negotiations with the Legal Services Corporation regional office at Atlanta to fund a program in Northwest Arkansas. I served on the Board of the Northwest Arkansas Legal Services Corporation, Inc. until my recent resignation.

- 1B. What contacts have you had, since your nomination was first announced, with legal services programs in your home communities or elsewhere?

Since my nomination, I have spoken with representatives of two of the Arkansas projects.

- 2A&B What organizations concerned with the poor have you been involved in? What was the nature of your involvement?

In addition to my involvements as a legal intern, attorney and law professor in legal services programs, I have worked with a number of private organizations concerned with the poor: Washington Research Project, Washington, D.C. (legal intern); Children's Defense Fund of the Washington Research Project, Cambridge, Massachusetts and Washington, D.C. (staff attorney); Carnegie Council on Children, New Haven, Connecticut (legal consultant); Arkansas Advocates for Children and Families, Little Rock, Arkansas (board member).

CRANSTON/RODHAM, page 4

- 1A. Do you perceive any conflicts of interest arising from your husband's position as Attorney General of the state of Arkansas and any decisions as a member of the board of Legal Services Corporation affecting any legal services programs in the state of Arkansas?

No. I do not perceive any conflicts.

- 1B. How would you handle such conflicts?

If any conflicts were to arise, I would either abstain from any decision affected by the conflict or decide on the basis of the best interests of the Board, my primary responsibility.

- 2A. Do you believe that it is appropriate for legal services attorneys to litigate against state governments?

Yes.

- 2B. Do you believe that there should be any restrictions imposed upon such litigation?

No.

3. If a client's rights are being or may in the future be violated by the actions or proposed actions of a governmental agency, do you believe it appropriate for legal services programs to seek to have agency policy or regulations or proposed policies or regulations changed through non-adjudicatory advocacy before that agency?

Yes.



**LEGAL SERVICES CORPORATION**  
 733 Fifteenth Street, N.W., Washington, D. C. 20005 (202) 376-5100

Thomas Ehrlich  
 President  
 E. Clinton Hamberger, Jr.  
 Executive Vice-President

February 16, 1978

BY HAND

Honorable Alan Cranston  
 229 Russell Senate Office Building  
 United States Senate  
 Washington, D.C. 20510

Dear Senator Cranston:

This is to supplement the answer I previously submitted to Question No. 2 that you propounded during the hearings on February 7, 1978, concerning the President's nominations for membership on the Board of Directors of the Legal Services Corporation. Question 2 asked: "Would you enter a case or negotiations where an opposing party is represented by a legal services attorney?"

I am very sensitive to the importance of not only avoiding conflicts of interest in my capacity as a member of the Board of Directors of the Legal Services Corporation but also of avoiding the appearance of conflict. I have made known my association with the Board of Directors not only to my firm but also to the legal services attorneys here in the state, so that if it ever were to occur that a member of my firm were representing a party opposed to a client represented by a legal services attorney, I would be able to assure the legal services attorney that he or she should pursue the client's interest as vigorously as possible.

Very truly yours,

Hillary Rodham

RESPONSES TO QUESTIONS FROM SENATOR JAVITS  
BY CECILIA ESQUER, NOMINEE TO BOARD OF DIRECTORS,  
LEGAL SERVICES CORPORATION

1. What is the extent of your concern for the adequacy of legal services for non-minority poor people?

I am concerned with the delivery of services to all poor people on an equitable basis. The local legal services boards must establish priorities to insure that the resources of the office are allocated fairly and reasonably.

2. How do you think the Legal Services Corporation ought to respond to situations in which there are conflicts of interest between different groups of poor people and a community legal services office elects to represent one group against another?

Where a conflict of interest exists between groups of poor people, it is important for local boards to decide which group shall be represented. These decisions require the exercise of independent professional judgment. A local board is in the best position to decide what is in the best interest of clients.

3. What is your view of the need to improve the access of handicapped persons to local legal services program offices?

I am committed to the policies of the Rehabilitation Act of 1973.

RESPONSES TO QUESTIONS FROM SENATOR CRANSTON  
BY CECILIA ESQUER, NOMINEE TO BOARD OF DIRECTORS,  
LEGAL SERVICES CORPORATION

1. Why do you wish to serve on this board?

I am committed to the expressed goal of the Corporation to ensure that legal services are available to poor people.

2. What do you think will be the nature of the contribution you will make to the board?

My membership on the board of directors will lend an added perspective to the board. As a former member of a local governing board, I am familiar with the problems encountered by local programs. In addition, the presence of minority women on the board will enhance the credibility of the Corporation.

- 1A. What prior involvement have you had with legal services programs?

I served on the Maricopa County Legal Aid Society (MCLAS) Board of Directors for the last two years, including one year as a second vice-president.

I also completed a one semester law school civil internship in a clinical program which provided free legal services to the residents of Guadalupe and Victory Acres.

- 1B. What contacts have you had, since your nomination was first announced, with legal services programs in your home communities or elsewhere?

In addition to a congratulatory note from the Project Advisory Group, I have received informative materials from the Corporation offices and attended a meeting of the Arizona Statewide Legal Services Project. I also met a person who works with the Reginald Heber Smith Program while he was visiting the MCLAS program.

- 2A. What organizations concerned with the poor have you been involved in?

Valle del Sol, Inc.; Guadalupe Organization; United Farmworkers.

CRANSTON/ESQUER, page 2

2B. What was the nature of your involvement?

Valle del Sol, Inc. - I served on the Board of Directors from 1972-75. Valle del Sol, Inc. is a private non-profit corporation which has components in education, narcotic prevention, health, and family counseling. In the area of education, it has provided technical assistance to school districts in a variety of subjects including desegregation; bilingual programs; cultural enrichment programs; community-school relations, and parent involvement programs.

Guadalupe Organization, Inc. (G.O.) - I have worked on a volunteer basis with G.O. since 1968. My involvement with G.O., a private-non-profit corporation, began when I was a teacher and sought G.O.'s help to reduce the high drop out rate in our high school. Since then I have assisted in fund-raising efforts to support G.O. projects.

G.O.'s members are residents from the Town of Guadalupe, a community of Yaqui Indians and Mexican-Americans. Guadalupe has an unemployment rate of approximately 30 percent with more than 50 percent of its residents earning incomes below the poverty guidelines.

G.O.'s activities led to the incorporation of the Town of Guadalupe which assures that the tri-lingual, tri-cultural attributes of the community will be subject to the wishes of the local residents and not to the whims of the surrounding metropolitan centers.

United Farmworkers, Inc. (UFW) - From 1971 through 1973, I actively supported the efforts of the UFW to improve the working conditions for farmworkers.

CRANSTON/ESQUER, page 3

- 1A. Do you perceive any conflicts of interest arising from your position in the Attorney General's Office of the State of Arizona and any decisions as a member of the Board of Legal Services Corporation affecting any legal services programs in the State of Arizona?

I do not anticipate any conflicts of interest arising from my position in the Attorney General's Office. The Legal Services Corporation, is a funding agency and is not involved in litigation which may arise between a client of a local legal services program and a state agency represented by the Office of the Attorney General.

- 1B. How would you handle such conflicts?

If an action were brought against a state agency which I represent as an Assistant Attorney General because I was a member of the LSC Board, I would request the case be handled by another Assistant Attorney General.

- 2A. Do you believe that it is appropriate for legal services attorneys to litigate against state governments?

Yes. Legal services attorneys are required to represent their clients zealously within the bounds of the law. No distinction should be made between private versus public representation.

- 2B. Do you believe that there should be any restrictions imposed upon such litigation?

Any restrictions imposed upon such litigation should be the same as those imposed upon the private bar.

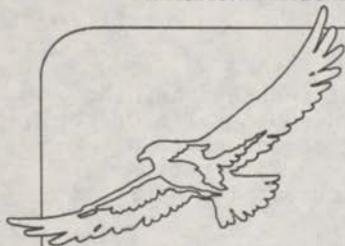
3. If a client's rights are being or may in the future be violated by the actions or proposed actions of a governmental agency, do you believe it appropriate for legal services programs to seek to have agency policy or regulations or proposed policies or regulations changed through non-adjudicatory advocacy before that agency?

Yes.

# American Indian Lawyer Training Program, Inc.

A NON-PROFIT CORPORATION

Richard Trudell  
Executive Director  
Judge William R. Rhodes  
President



February 9, 1978

Honorable Harrison A. Williams, Jr.  
United States Senate  
352 Russell Senate Office Building  
Washington, D.C. 20510

Re: Confirmation Hearing for  
Nominees to sit on Legal  
Services Corporation's  
Board of Directors

Dear Senator Williams:

Enclosed are my responses to questions raised during the confirmation hearing held on Tuesday, February 7, 1978. My responses are addressed to the questions raised by Senators Cranston and Javits.

If additional information is needed, please don't hesitate to request such information at your convenience.

Respectfully,

*Richard Trudell*  
Richard Trudell

Enclosure  
RT:gp

25-426 74

RESPONSES

of

RICHARD TRUDELL  
Attorney  
Oakland, California

to

Questions for Nominees to Legal Services Corporation  
Board of Directors

February 9, 1978

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The following are my responses to questions raised by Senators Javits and Cranston at the confirmation hearing held on Tuesday, February 7, 1978.

QUESTION 1

*What is the extent of your concern for the adequacy of legal services for non-minority poor people?*

RESPONSE

My concern for the delivery of legal services to the disadvantaged applies equally to everyone in need of legal representation, regardless of race or economic status. Everyone is entitled to equal access to the legal system. Congress and the legal profession must work in concert to ensure that no one is denied legal representation on the basis of his or her status in society.

## QUESTION 2

*How do you think the Legal Services Corporation ought to respond to situations in which there are conflicts of interest between different groups of poor people and a community legal services office elects to represent one group against another?*

## RESPONSE

In controversies which require public legal representation for both parties, legal services programs must assure that each side is adequately represented. However, a legal services program cannot and should not represent both sides. If two groups or individuals are eligible for a legal services program's service, the program's board should make a decision as to who will be represented by the program and should assist the other side in securing competent, independent representation.

## QUESTION 3

*What is your view of the need to improve the access of handicapped persons to local legal services program offices?*

## RESPONSE

The facilities of a legal services program must not hinder or discourage the handicapped from seeking its services. If structural changes are necessary to accommodate the handicapped, they must be made.

## QUESTION 4

*Why do you wish to serve on this board?*

## RESPONSE

I have always been and will continue to be committed to the proposition that everyone, regardless of status in society, is entitled to equal access to the legal system. In my view, the Legal Services Corporation must keep this proposition foremost in mind. I want to ensure that the Legal Services Corporation is responsive to the legal needs of every citizen.

## QUESTION 5

*What do you think will be the nature of the contribution you will make to the board?*

## RESPONSE

Given the fact that I am of Native American descent and that I have worked for and with the disadvantaged, I feel that I can bring to the Legal Services Corporation sensitivity to the needs of the poor, experience in working with poor people, commitment to improving their status in society, and concern about their plight.

## QUESTION 6

- A. What prior involvement have you had with legal services programs?  
B. What contacts have you had, since your nomination was first announced, with legal services programs in your home communities or elsewhere?*

## RESPONSE

- A. None.  
B. I have received one phone call congratulating me on being nominated to sit on the Legal Services Corporation's Board of Directors.

## QUESTION 7

- A. What organizations concerned with the poor have you been involved in?  
B. What was the nature of your involvement?*

## RESPONSE

- A. I have been involved with the Robert F. Kennedy Memorial, a private operating foundation which focuses on the educational rights of the disadvantaged, and the American Indian Lawyer Training Program, which focuses on strengthening the Indian legal community and facilitating the development of Indian law.  
B. I serve on the Robert F. Kennedy Memorial's Board of Directors and have worked for the Memorial. I also serve on the American Indian Lawyers Training Program's Board of Directors and am presently employed by the program.

## QUESTION 8

- A. Do you believe that it is appropriate for legal services attorneys to litigate against state governments?
- B. Do you believe that there should be any restrictions imposed upon such litigation?

## RESPONSE

- A. Yes, if the client is eligible for legal representation from a legal services program and has a legitimate claim against a governmental entity, his or her right to due process and equal protection of the law must not be watered down merely because the defendant is the state government.
- B. No, a wrong is a wrong regardless of who commits it.

## QUESTION 9

*If a client's rights are being or may be in the future violated by the actions or proposed actions of a governmental agency, do you believe it appropriate for legal services programs to seek to have agency policy or regulations or proposed policies or regulations changed through non-adjudicatory advocacy before that agency?*

## RESPONSE

Yes, if possible. Preventive law should be practiced when and where appropriate.

#

Senator Javits - Questions for Nominees to the Legal Services Corporation Board of Directors

1. WHAT IS THE EXTENT OF YOUR CONCERN FOR THE ADEQUACY OF LEGAL SERVICES FOR NON-MINORITY POOR PEOPLE?

It is my belief, understanding and experience that legal services is a resource available to all low income people. I strongly support the concept of priority setting by the client community and the local programs and the pursuit of those goals which benefit low income people to the greatest extent possible. I reject the idea that poor people should be considered as this faction or that, minority or non-minority. It is this type of thinking which keeps low income people from identifying their common problems and working to resolve them.

2. HOW DO YOU THINK THE LEGAL SERVICES CORPORATION OUGHT TO RESPOND TO SITUATIONS IN WHICH THERE ARE CONFLICTS OF INTEREST BETWEEN DIFFERENT GROUPS OF POOR PEOPLE AND A COMMUNITY LEGAL SERVICES OFFICE ELECTS TO REPRESENT ONE GROUP AGAINST ANOTHER?

The Congress, based on its experience with other government grant programs, has required that each local program be governed by local people. I, therefore, believe that the Legal Services Corporation should not attempt to undermine the purpose of the Congress by interfering in local matters such as the one suggested in this question.

The Corporation does, in my opinion, have a responsibility to set broad policy guidelines for these local boards to follow. Therefore, I think the Corporation board members should establish a policy requiring that all local programs, to the degree possible, develop additional free resources to be used by eligible clients in conflict situations involving individuals or groups.

I believe that many legal services programs have already developed such arrangements with private bar groups, law schools, etc. It is also my understanding that, in those areas where more than one legal services grantee exists, there have been cooperative arrangements worked out. An example of this is the program in New York City where all of the local programs have agreed to provide representation, without regard to geographic boundaries, so that there will be no denial of service when conflict situations arise.

Senator Javits - Questions and Answers  
Paged 2

3. WHAT IS YOUR VIEW OF THE NEED TO IMPROVE THE ACCESS OF HANDICAPPED PERSONS TO LOCAL LEGAL SERVICES PROGRAM OFFICES?

My response to the first question is my basic response to this one. I strongly believe that legal services should be available to all low-income persons who require such assistance.

However, in the case of the handicapped, I think some additional concerns must be met. I have worked with emotionally disturbed children and their parents. I did not become truly effective in this until I received training. I think it would be helpful if the staffs of legal services programs could receive some sort of training to better enable them to understand the stress under which the handicapped and their families exist.

*Josephine Worthy*

Senator Cranston - Questions for Nominees to the Legal Services Corporation Board of Directors

1. WHY DO YOU WISH TO SERVE ON THIS BOARD?

Legal Services has been important to me, to my family, my friends and my community. I have seen many of the serious problems which effect all poor people addressed by legal services and some effective solutions found.

I would like to serve on the Legal Services Corporation Board so that I might do whatever I can to bring this vital resource to as many people as possible.

Also, I think that my being on the Board will show all those involved with legal services that this is truly a program for low income people. This program effects the lives of poor people. In our eyes, in any program which directly impacts us, we should be a part of the decision making process at every level.

I think my written statement provides a partial answer to this question. I am including a copy of that statement with these responses.

2. WHAT DO YOU THINK WILL BE THE NATURE OF THE CONTRIBUTION YOU WILL MAKE TO THE BOARD?

I hope to bring to the Board that which only a low income person can provide. That is, the first hand experience of what being poor in this country really means.

I want the Board to know about the tenant who lives in a building owned by an influential landlord. A landlord who, when faced with the tenant's attempt to assert basic rights, contacts the family's social worker - who in turn contacts the school teacher. I think the Board must understand how that tenant/parent feels when the child returns from school with the information that the teacher will not sign the form verifying continued school attendance unless the parent stops bothering the landlord. The Board should understand that the food allowance for that child can be withdrawn if that form is not signed. I want the Board to understand what that does to the dignity of that child and that parent. The Board should know what that assault does to the willingness of a low-income person to continue to seek justice.

Senator Cranston - Questions and Answers

Page 2

You can't make good decisions about services to poor people if you don't have the basic information about our lives. I think I can bring that experience to the Board with the help of groups such as the National Clients Council with its broad membership across the country and its concern for the justice issues which the Corporation must be considering.

NOTE:

I am aware of the fact that the following questions were not addressed to me but for the record I would like to respond anyway.

3. WHAT PRIOR INVOLVEMENT HAVE YOU HAD WITH LEGAL SERVICES PROGRAMS?

I have been affiliated with my local legal services program as a client and as a member of the program's local advisory body. Although I no longer serve in that capacity, I am still active through the referral of persons in need of legal assistance and through the program's bringing to my attention youths and their families who need the services which I provide either through my role at the Holyoke Street School or the Baptist Youth Fellowship.

4. WHAT CONTACTS HAVE YOU HAD, SINCE YOUR NOMINATION WAS FIRST ANNOUNCED, WITH LEGAL SERVICES PROGRAMS IN YOUR HOME COMMUNITIES OR ELSEWHERE?

As I indicated previously, I have had on-going contact with my local legal services program, a branch office of the Western Massachusetts Legal Services, Inc. Recently, I have attended meetings of that program's Board of Directors so that I might learn more clearly the problems and the accomplishments of the recent past in areas other than my own. I have also had letters and telephone calls from clients in various parts of the country and from program directors in the state in which I live.

I have had extensive contact, both prior to and subsequently, with the National Clients Council which is, as you know, the primary vehicle for the gathering of community input from around the country. In addition, at the invitation of the Council, I attended the 1977 Annual Meeting of the National Legal Aid and Defender Association. The membership and staff of these two organizations have made me aware of the current legal services situation and assisted me in developing my thoughts on accountability and communications mechanisms should I be confirmed.

Page 3

5. WHAT ORGANIZATIONS CONCERNED WITH THE POOR HAVE YOU BEEN INVOLVED IN?

Since 1968, I have been involved in efforts to improve the community in which I live. I have been a member of a number of organizations, some of which were formal and some loose associations of people with a common purpose.

Currently, I am the vice president of an organization dealing with the problems of tenants of low income public housing. At one time, I was the President of this organization. Similarly, my interest in housing prompted me to be active in my city's Model Cities program and I have served on that agency's Board of Directors.

The problems of young people in most low income communities is a prime concern for all of us. Much of my activity within the community has been directed at this problem. Currently, I am a volunteer counselor working with children who have been unable to adapt or benefit from the normal educational environment.

*Josephine Worthy*

HARRISON S. WILLIAMS, JR., N.J., CHAIRMAN  
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United States Senate

COMMITTEE ON HUMAN RESOURCES  
 WASHINGTON, D.C. 20510

February 24, 1978

SENATOR  
 WILLIAMS, N.J.  
 1978 FEB 27 AM 11:04

Richard A. Trudell, Esquire  
 American Indian Lawyers  
 Training Program  
 319 McArthur Boulevard  
 Oakland, California 94610

Dear Mr. Trudell,

Attached is a copy of a letter I have sent to each of the five nominees for the Legal Services Corporation Board of Directors. As the letter indicates, I am concerned about responses to written questions I had submitted to the three nominees on the issue of whether they would represent a client against a legal services attorney during their tenure on the national board.

I did not pose this question to you initially because of my understanding that the nature of your employment would not entail litigation against legal service attorneys. However, at this point, I would like to ask that you also answer each of the questions set forth in the attached letter.

In order to resolve this matter as soon as possible, if you have no objection, it would be helpful for you to give your responses verbally (and then followup in writing) by calling collect to Suzanne Martinez, at 202-224-9181.

Thank you very much for your cooperation in this matter.

Sincerely,

*Alan Cranston*  
 Alan Cranston

Enclosure

bcc: Honorable Williams, Jr.

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN  
 JENKINS WANDOLFE, W. VA.  
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 S. I. HAYAKAWA, CALIF.

## United States Senate

COMMITTEE ON HUMAN RESOURCES  
 WASHINGTON, D.C. 20510

February 24, 1978

(This letter was sent to  
 Cecilia Esquer, Hilary Rodham,  
 and Steve Engelberg)

Dear

Thanks very much for your written responses to the questions I submitted to you on February 7.

I am, however, concerned over your response to the question regarding representation of a client in a case or negotiations against a legal services attorney.

I recognize that such representation by a member of the Legal Services Corporation Board of Directors would probably not be in violation of the ABA Canons of Ethics since disclosure of the relationship to the parties involved would generally be sufficient to comply with the requirements of the Canons. However, I am deeply concerned about the potential detriment to the legal services program which might result from the appearance of members of the national Board of Directors -- the overall policy-makers and the embodiment of the leadership of the entire program -- in actual individual cases against local legal services programs.

My concerns about this type of activity and its effects upon the legal services program are as follows: First, I am concerned about the impression made on a client of a legal services program in seeing his or her attorney in the courtroom facing a member of the national Board. Although a sophisticated analysis of the relationship between that local legal services program and the national Board would obviously reveal the Act's protection of a local program attorney from interference in actual case management, I feel there is a substantial potential for misunderstanding and development of mistrust on the part of a client in such a situation. I have discussed this with client representatives who agree with this analysis.

Second, I am concerned about the chilling effect -- or potential for such effect -- that such litigation might have on local project attorneys. Again, my concern is not that a

national Board member might act in a retaliatory way against a particular local program as a result of courtroom encounters, but that permitting national Board members to litigate against local programs could create the appearance or potential for conflicts. Particularly troublesome is the possibility that a legal services attorney in such a situation might be, even subtly, influenced in terms of the conduct of the case by the possibility that the opposing counsel might some day generalize from this situation in deciding broad policy issues on the Board. (I believe that similar concerns -- and more direct conflict-of-interest questions -- would apply with respect to local board members litigating against legal services attorneys.)

I do not feel that these problems can be resolved merely by indicating a willingness to withdraw from cases where there is an actual conflict of interest. The Canons of Ethics would, of course, require such withdrawal. The issue which I am concerned about involves the broader problems -- especially relating to the appearance of fairness -- generated by national Board members litigating against legal services attorneys.

Obviously, a simple solution would be a commitment of all Board members not to engage in litigation against legal services program attorneys during their tenure on the Board. However, there is no such general Corporation policy at this time and this commitment was not required of national Board members previously confirmed. Accordingly, I am posing the following additional questions to you as part of the confirmation process:

1. Do you believe that there is a need for the Legal Services Corporation Board of Directors to promulgate a formal policy dealing with representation by national Board members (as well as guidelines for such representation by members of the boards of local programs) against legal services attorneys?
2. If a formal policy were adopted by the Board of Directors with respect to such representation by national Board members, would you be prepared to abide by such a policy?
3. Do you believe that you would have a conflict of interest in discussion and/or adoption of such a Board policy if the effect of the adoption of such a policy would cause you to terminate your membership on the Board of Directors or to resign from your employment, or would significantly reduce the volume of cases you are likely to take as a private attorney during your tenure on the Board of Directors?

4. Without reference to individual cases or clients, what would be the effect of adoption of such a Board policy on your present employment or practice of law?

I would appreciate very much your responses to these questions as soon as possible.

Sincerely,

Alan Cranston

cc: Honorable Harrison A. Williams, Jr.  
Honorable Jacob K. Javits

WYBORN A. WILLIAMS, JR., N.J., CHAIRMAN  
 ANDRUS, PA. W. VA.  
 FELL, N.J.  
 KENNEY, MASS.  
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## United States Senate

COMMITTEE ON HUMAN RESOURCES  
 WASHINGTON, D.C. 20510

February 24, 1978

Ms. Josephine Worthy  
 15 North Summer Street  
 Holyoke, Massachusetts 01040

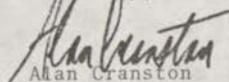
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Thank you very much for your cooperation in this matter.

Sincerely,



Alan Cranston

Enclosure

bcc: Honorable Williams, Jr.

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United States Senate  
 HARRISON A. WILLIAMS, JR., N.J.

COMMITTEE ON HUMAN RESOURCES  
 WASHINGTON, D.C. 20510

1978 FEB 27 4:11:05

February 24, 1978

Hilary Rodham, Esq.  
 Rose, Nash, Williamson, Carroll,  
 Clay & Giroir  
 720 W. 3rd Street  
 Little Rock, Arkansas 72201

Dear Ms. Rodham,

Thanks very much for your written responses to the questions I submitted to you on February 7.

I am, however, concerned over your response to the question regarding representation of a client in a case or negotiations against a legal services attorney.

I recognize that such representation by a member of the Legal Services Corporation Board of Directors would probably not be in violation of the ABA Canons of Ethics since disclosure of the relationship to the parties involved would generally be sufficient to comply with the requirements of the Canons. However, I am deeply concerned about the potential detriment to the legal services program which might result from the appearance of members of the national Board of Directors -- the overall policy-makers and the embodiment of the leadership of the entire program -- in actual individual cases against local legal services programs.

My concerns about this type of activity and its effects upon the legal services program are as follows: First, I am concerned about the impression made on a client of a legal services program in seeing his or her attorney in the courtroom facing a member of the national Board. Although a sophisticated analysis of the relationship between that local legal services program and the national Board would obviously reveal the Act's protection of a local program attorney from interference in actual case management, I feel there is a substantial potential for misunderstanding and development of mistrust on the part of a client in such a situation. I have discussed this with client representatives who agree with this analysis.

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I do not feel that these problems can be resolved merely by indicating a willingness to withdraw from cases where there is an actual conflict of interest. The Canons of Ethics would, of course, require such withdrawal. The issue which I am concerned about involves the broader problems -- especially relating to the appearance of fairness -- generated by national Board members litigating against legal services attorneys.

Obviously, a simple solution would be a commitment of all Board members not to engage in litigation against legal services program attorneys during their tenure on the Board. However, there is no such general Corporation policy at this time and this commitment was not required of national Board members previously confirmed. Accordingly, I am posing the following additional questions to you as part of the confirmation process:

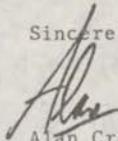
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- 3 -

4. Without reference to individual cases or clients, what would be the effect of adoption of such a Board policy on your present employment or practice of law?

I would appreciate very much your responses to these questions as soon as possible.

Sincerely,



Alan Cranston

cc: Honorable Harrison A. Williams, Jr.  
Honorable Jacob K. Javits

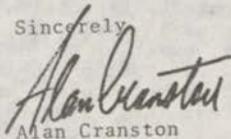
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Alan Cranston

cc: Honorable Harrison A. Williams, Jr.  
Honorable Jacob K. Javits

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## United States Senate

COMMITTEE ON HUMAN RESOURCES  
 WASHINGTON, D.C. 20510

February 24, 1978

Steve Engelberg, Esq.  
 Price, Grove, Engelberg & Fried, P.C.  
 Suite 404  
 2033 M St., N.W.  
 Washington, D.C. 20036

Dear Steve,

Thanks very much for your written responses to the questions I submitted to you on February 7.

I am, however, concerned over your response to the question regarding representation of a client in a case or negotiations against a legal services attorney.

I recognize that such representation by a member of the Legal Services Corporation Board of Directors would probably not be in violation of the ABA Cannons of Ethics since disclosure of the relationship to the parties involved would generally be sufficient to comply with the requirements of the Cannons. However, I am deeply concerned about the potential detriment to the legal services program which might result from the appearance of members of the national Board of Directors -- the overall policy-makers and the embodiment of the leadership of the entire program -- in actual individual cases against local legal services programs.

My concerns about this type of activity and its effects upon the legal services program are as follows: First, I am concerned about the impression made on a client of a legal services program in seeing his or her attorney in the courtroom facing a member of the national Board. Although a sophisticated analysis of the relationship between that local legal services program and the national Board would obviously reveal the Act's protection of a local program attorney from interference in actual case management, I feel there is a substantial potential for misunderstanding and development of mistrust on the part of a client in such a situation. I have discussed this with client representatives who agree with this analysis.

Second, I am concerned about the chilling effect -- or potential for such effect -- that such litigation might have

on local project attorneys. Again, my concern is not that a national Board member might act in a retaliatory way against a particular local program as a result of courtroom encounters, but that permitting national Board members to litigate against local programs could create the appearance or potential for conflicts. Particularly troublesome is the possibility that a legal services attorney in such a situation might be, even subtly, influenced in terms of the conduct of the case by the possibility that the opposing counsel might some day generalize from this situation in deciding broad policy issues on the Board. (I believe that similar concerns -- and more direct conflict-of-interest questions -- would apply with respect to local board members litigating against legal services attorneys.)

I do not feel that these problems can be resolved merely by indicating a willingness to withdraw from cases where there is an actual conflict of interest. The Canons of Ethics would, of course, require such withdrawal. The issue which I am concerned about involves the broader problems -- especially relating to the appearance of fairness -- generated by national Board members litigating against legal services attorneys.

Obviously, a simple solution would be a commitment of all Board members not to engage in litigation against legal services program attorneys during their tenure on the Board. However, there is no such general Corporation policy at this time and this commitment was not required of national Board members previously confirmed. Accordingly, I am posing the following additional questions to you as part of the confirmation process:

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I would appreciate very much your responses to these questions as soon as possible.

Sincerely,



Alan Cranston

cc: Honorable Harrison A. Williams, Jr.  
Honorable Jacob K. Javits

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN  
 JERHINGS RANDOLPH, W. VA.  
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 S. I. HAYAKAWA, CALIF.

## United States Senate

COMMITTEE ON HUMAN RESOURCES  
 WASHINGTON, D.C. 20510

February 24, 1978

Cecilia Esquer, Esq.  
 1720 E. Palmcroft  
 Tempe, Arizona 85282

Dear Ms. Esquer,

Thanks very much for your written responses to the questions I submitted to you on February 7.

I am, however, concerned over your response to the question regarding representation of a client in a case or negotiations against a legal services attorney.

I recognize that such representation by a member of the Legal Services Corporation Board of Directors would probably not be in violation of the ABA Canons of Ethics since disclosure of the relationship to the parties involved would generally be sufficient to comply with the requirements of the Canons. However, I am deeply concerned about the potential detriment to the legal services program which might result from the appearance of members of the national Board of Directors -- the overall policy-makers and the embodiment of the leadership of the entire program -- in actual individual cases against local legal services programs.

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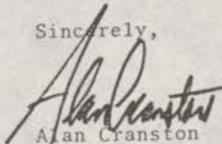
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4. Without reference to individual cases or clients, what would be the effect of adoption of such a Board policy on your present employment or practice of law?

I would appreciate very much your responses to these questions as soon as possible.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan Cranston". The signature is fluid and cursive, with the first name "Alan" being more prominent and the last name "Cranston" written in a smaller, more connected script.

Alan Cranston

cc: Honorable Harrison A. Williams, Jr.  
Honorable Jacob K. Javits

## THE BAR ASSOCIATION OF SAN FRANCISCO

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February 8, 1978

Senator Harrison Williams, Chairman  
 Committee on Health & Welfare  
 Senate Office Building, 4233 Dirksen  
 Washington, D.C. 20015

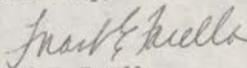
Dear Senator Williams:

We write in support of the nomination of Richard A. Trudell to the Board of Directors of the Legal Services Corporation.

As a fellow and a director of the Robert F. Kennedy Memorial Fellowship Program and as the Executive Director of the American Indian Lawyer Training Program, Mr. Trudell has developed a wealth of experience that will make him a valuable asset to the Legal Services Corporation. He is well grounded in the problems faced by eligible clients and understands the unique problems of delivering quality legal services in a variety of urban and rural contexts. As an American Indian, he will bring an important perspective to the Corporation.

We urge the United States Senate to act favorably on Mr. Trudell's nomination.

Yours truly,

  
 Frank E. Farella  
 President

FEF:kp

Senator CRANSTON. The hearing stands adjourned.  
[Whereupon, at 12:01 p.m., the committee was adjourned, subject  
to the call of the Chair.]



