

1 (No response.)

2 MR. CRAMTON: The pending proposal is to submit  
3 a budget request in accordance with Option Number 2 in the  
4 amount of approximately \$216,800,000.

5 All those in favor, please say aye.

6 (Ayes.)

7 MR. CRAMTON: Those opposed?

8 (Nays.)

9 MR. MONTEJANO: Mr. Chairman -- I would probably  
10 abstain. Why don't I just abstain for right now?

11 MR. CRAMTON: Very well. We will now have a show  
12 of hands.

13 All those in favor of the motion, please raise your  
14 right hand.

15 (Show of hands.)

16 MR. CRAMTON: Mr. Kutak, Mr. Smith, Mr. Thurman,  
17 Mr. Stophel, and Mr. Broughton.

18 Those opposed?

19 (Show of hands.)

20 MR. CRAMTON: Mr. Ortique, and Mr. Montejano has  
21 abstained.

22 MR. MONTEJANO: Yes.

23 MR. CRAMTON: Very well. Does that complete the  
24 report of the Committee on appropriations?

25 MR. STOPHEL: Yes.

1 MR. MONTEJANO: Mr. Chairman?

2 MR. CRAMTON: Mr. Montejano?

3 MR. MONTEJANO: Has the motion been voted upon and  
4 passed, is this correct?

5 MR. CRAMTON: Yes.

6 MR. MONTEJANO: In order to fully support the action  
7 of the Board, I may not always agree with the Board, but when  
8 a decision is made, I will certainly support it wholeheartedly,  
9 so I will now change my non-vote into a yes vote.

10 However, I think it should be noted to the Congress  
11 that there is support and strong support for the higher sum  
12 of money.

13 My abstention or possibly Revius' no vote should  
14 not be attributed simply as a vote that is a negative in a  
15 sense, but rather a constructive vote that we think we should  
16 have more and can use more money and as soon as we have the  
17 support and capability, I think we should ask for more money,  
18 even if it means a supplementary request.

19 I think the Congress should be aware that our  
20 positions are not negative. On the contrary, they are very  
21 positive.

22 We just feel we can do more.

23 MR. CRAMTON: I think the record is clear. The  
24 President and other spokesmen for the Corporation can report  
25 to the Appropriations Committee that the Board of Directors

1 is unanimously in favor of an appropriation of at least  
2 \$216,800,000 and that two members of the Board might have  
3 preferred a larger appropriation request for Fiscal Year  
4 1978.

5 Is that not a correct statement?

6 MR. ORTIQUE: There is no question about it at  
7 all. I just feel that I cannot in good conscious vote for  
8 that level when I feel that we are at the point where we can  
9 ask for the highest increase at this time.

10 I am sure that in times to come we will be asking  
11 for an increase over the amount that my colleagues have voted  
12 for today, but I doubt seriously if we will be asking for  
13 an increase in that proportion.

14 That being true, I am convinced that we need to  
15 seek the highest amount possible and even with the strong  
16 arguments that the President has made and which I respect  
17 a great deal, I still feel that the time will come when  
18 my colleagues will join with me in seeking these higher  
19 funds.

20 At that time I will welcome them joining with me.

21 5:00 p.m.

22 MR. CRAMTON: Converting an appropriation request  
23 to \$216 million to an actual appropriation or an amount near  
24 that will not be an easy task. We will need not only the  
25 effort of the members of the staff and the Board, but the

1 support of all of the people in the United States who support  
2 legal services.

3 Just a word of recent history. Last year the House  
4 Appropriations Committee reported only \$110 million in  
5 response to our request for \$125 million.

6 MR. STOPHEL: \$140 million.

7 MR. CRAMTON: That is right. The Senate reported  
8 \$125 million and we got the \$125 million out of conference  
9 in large part because of the services of Senator Hruska,  
10 who is no longer around.

11 The reactions of the House Appropriations Committee  
12 was not entirely clear to an increase which is 73 percent  
13 larger than the current appropriation.

14 MR. RAY: Mr. Chairman, I would like to note that  
15 the field programs are not going to go off in the corner and  
16 pout.

17 We are going to be working very closely with you  
18 and members of the staff and the clients counsel and everyone  
19 else who has addressed this issue today to accomplish what  
20 you have just adopted.

21 MR. CRAMTON: I am sure that you will.

22 MR. RAY: Even though the sum is not the cost of  
23 the Superdome.

24 (Applause.)

25 MR. BROUGHTON: That is Ortique's project.

1 MR. ORTIQUE: You should not have made that point.

2 (Laughter.)

3 MR. RAY: We will go after it like Hell.

4 MR. ORTIQUE: I think that the point should be  
5 made that the Board was unanimous in support of \$216 million,  
6 but that the higher figure was certainly my position.

7 I believe that the Board will be telling the  
8 President or the Chairman will be saying the truth, if he  
9 says that.

10 MR. STOPHEL: We will certainly make that point,  
11 those of us who will appear.

12 MR. CRAMTON: Does this complete the report on the  
13 Committee of Appropriations?

14 MR. STOPHEL: Yes.

15 MR. ORTIQUE: If they want me to document my  
16 position, I will certainly be able to do so.

17 MR. STOPHEL: Thank you very much.

18 MR. COOK: Mr. Chairman?

19 MR. CRAMTON: Please make it brief, Mr. Cook.

20 MR. COOK: I just wanted the Board to know that  
21 I do not leave this room tickled and cracked up over the  
22 action of the Board.

23 I am not tickled and not very pleased with it.

24 VOICE FROM THE AUDIENCE: I want to support what  
25 Mr. Cook said and I would like to say something else, Mr.

1 Chairman.

2 STATEMENT OF  
3 WILHELM JOSEPH

4 MR. JOSEPH: I am Wilhelm Joseph and I represent  
5 a program in North Mississippi. I am serving 400,000 poor  
6 people and I have 5 offices.

7 I try to do an impossible task.

8 I think what you people here sit and represent is  
9 a great example of contradiction. The bunch of you there  
10 are rich and middle class and white males predominately who  
11 sit here and purport the interests of poor people and make  
12 decisions -- and I believe you made your decision in Executive  
13 Session, but what is the contradiction really there?

14 Whom do you feel responsive to? When you walk out  
15 of here, if you had voted no dollars, what would you fear?  
16 Who would you fear? Nobody.

17 No clients here. You do not serve responsible  
18 clients. You are lawyers and they do not come to you and  
19 give you money.

20 I will tell you one thing. If you were voting here  
21 today on a Judicare program, there would have been an organi-  
22 zed articulated lobby of the American Bar Association and  
23 similar groups and you would know that when you walk out of  
24 this room and if you did not do right, that you would be  
25 considered by your corporate clients and other clients and

1 all those folks.

2 But when you walk out of here, you will realize that  
3 you voted on a motion and only two folks voted against it.  
4 These two people are from the South where the area is needed  
5 most.

6 There is contradiction. It is ridiculous. You will  
7 walk out of here and not care. If you had 500 angry clients  
8 armed, then there probably would be a different vote here  
9 today.

10 MR. CRAMTON: Is your report completed, Mr. Stophel?

11 MR. STOPHEL: Yes.

12 MR. CRAMTON: Mr. Thurman, do you have a report  
13 from the Committee on Provision of Legal Services?

14 MR. THURMAN: How much time do I have? What is  
15 good lawyering? What is an effective and efficient legal  
16 services program?

17 The Bar over the years has done a very poor job in  
18 trying to answer this question. We have Martindale Hubbell  
19 with its ratings, and if any of you know about it, it leaves  
20 a great deal to be desired.

21 This has been a matter --

22 (Commotion as people leave the  
23 room.)

24 MR. CRAMTON: You may go ahead. We are having a  
25 very noisy exodus. Some of us, however, ave staying power

1 to hear you out.

2 (Continual commotion.)

3 MR. THURMAN: What is a successful legal program?  
4 This has been of great interest to many of us. Well, that is  
5 in effect what we are trying to do with this study of both  
6 alternative and supplemental delivery systems.

7 Now I just want to bring you up to date briefly  
8 on what has happened because I have been very pleased and  
9 quite amazed at the progress that has been made during this  
10 past year.

11 A year ago we had a great many questions about how  
12 we were going to go about accomplishing this study that  
13 Congress mandated us to make.

14 We have an advisory panel of 23 people. There has  
15 been unusually good attendance at these advisory panel meetings.  
16 Some of you in the meeting here are members of the advisory  
17 panel.

18 We have had representatives from legal services  
19 programs and we have had them from the private bar. Inci-  
20 dentally, we have two new representatives from the private  
21 bar.

22 The numbers represented there before were very  
23 small. We have Bob Mazurke, a former president of the  
24 Bar Association, and a great believer in legal services for  
25 the poor.

1           We have Tom Johnson, who heads up the ABA consort-  
2 ium on legal services.

3           We have representatives from the academic community  
4 and from the research community and also from members of  
5 the Board itself.

6           You will recall in September that on the 7th of  
7 September we had over 100 proposals from various parts of  
8 the country for these experimental programs.

9           By November, after a lot of careful study, 19 of  
10 these proposals had been approved. These were the success-  
11 ful ones: The grant applications and then the negotiations  
12 went on between the Corporation and the successful ones,  
13 making sure that these proposals conformed to the Act and  
14 the regulations and the design that had been set up and, of  
15 course, the financial limits.

16           All of these were funded for a period of one year  
17 and one was funded as of November 1 because they were all  
18 pretty much ready to go. Seventeen of them were funded as  
19 of last week, January 1, and one was postponed until February  
20 1. That is a total of 19.

21           Let me just very briefly take 2 or 3 minutes to  
22 show you how we can break down these various 19 programs.

23           Eleven will supply a full range of services. The  
24 alternatives to the existing staff programs will be that.  
25 Eight of them will test ways of supplementing the staff

1 programs with membership in the private bar.

2 In another breakdown, eight of these are Judicare  
3 and five are contracts with private law firms and four are  
4 prepaid legal services at five sites.

5 Three are closed panel and one a voucher program.  
6 Another is a pro bono.

7 As far as the grantees are concerned, seven went  
8 to funded staff programs and four have gone to new non-profit  
9 organizations and one to a community action agency and two  
10 to bar associations and one to a private insurance company  
11 and one to a state-wide prepaid, and three to private law  
12 firms.

13 Glee Smith will tell you about one in Kansas.

14 About geography, they are scattered in 14 states,  
15 one each in Massachusetts, Connecticut and Virginia, Illinois,  
16 Kansas, and two in Minnesota, Georgia and Alabama, Florida,  
17 Tennessee, Colorado, Utah, and five in California and one  
18 in Oregon.

19 Another further breakdown -- seven are urban and  
20 nine are rural and four are mixed.

21 At the last meeting that we had since the November  
22 Board meeting, we examined the question of how to measure the  
23 four primary performance criteria that had been decided on  
24 at the earlier meeting.

25 I mean cost of services -- I will not have time

1 to give you any detail, but we did explore it at length,  
2 whether it be per client or per case or type of case.

3 Then the quality of services -- how do you measure  
4 the quality of legal services?

5 I hope we are going to come out of this study with  
6 something that will be of great benefit to the legal pro-  
7 fession as a whole.

8 What are the objectives in the case? Was it  
9 achieved by this lawyer? How about client satisfaction and  
10 that relates into the third of the measuring devices:

11 Attorney characteristics by peer review and the  
12 quality of particular activities and how good were the plead-  
13 ings and so on.

14 The third measurement was client satisfaction.  
15 There was the question of the general attitude of the client,  
16 the outcome of the case, and what were the client expectation  
17 and the number who have returned and so on.

18 Fourth, you found the most nebulous and most  
19 difficult of all to evaluate. It was the impact of legal  
20 services availability.

21 I am talking about access, client education, and  
22 prevent of law and class actions and appeals and so on.

23 Bringing you right up to date, the letter of Tom  
24 Ehrlich as of January 10, he sent out a letter to various  
25 possible contractors, which was a solicitation for the project

1 reporting system and this ties into all of the programs and  
2 not just these 19, but rather 300 programs.

3 It also involves data collection and it was asking  
4 for bids on reporting these various things.

5 Later they will ask for another portion of this  
6 work.

7 If you want to see it in a little more detail, we  
8 have a proposal and we will tell Congress what we are going  
9 to do along this line because Congress asked us to do it by  
10 this summer.

11 We will have to give them a progress report by  
12 that time, but you will find it on pages 54 through 57 of  
13 the information that has been sent out to you.

14 I cannot take very much credit for what has been  
15 happening so far. It is Tom Ehrlich and his staff in Wash-  
16 ington that has been doing the job. I think it is an amazing  
17 job in the period of time that it has taken.

18 MR. CRAMTON: Thank you very much for that interest-  
19 ing report, Sam.

20 Are there comments or questions?

21 MR. BROUGHTON: Is your Committee set up the same  
22 as it was when you reported the other time?

23 MR. THURMAN: Yes, we had 21. Now we have 23  
24 members on the advisory panel with the addition of Bob  
25 Mazurve and Tom Johnson.

1           It was thought there was not enough practicing  
2 lawyers. We had input from all the legal services community,  
3 but we have added two more practicing lawyers and three of  
4 us from the Board sit on there.

5           It is Marshall, Revius, and myself. I have attended  
6 all the meetings and I have tried to keep pretty close track  
7 of what is going on.

8           MR. SMITH: Mr. Chairman?

9           MR. CRAMTON: Mr. Smith?

10          MR. SMITH: Mr. Chairman, I want to mention briefly  
11 that I have had some first hand contact with one of those  
12 19 projects.

13          It is a project with seven rural counties in Kansas.

14          MR. BROUGHTON: Is that pre-paid legal services in  
15 Southwestern Kansas?

16          MR. SMITH: Yes. That is a going corporation and  
17 has been for a few years, state-wide, providing prepaid legal  
18 services to subscribers.

19          The Board of Directors of that Corporation submitted  
20 the proposal which ultimately was accepted as one of the 19  
21 grants and created a public division.

22          They wanted to do this in seven rural counties as  
23 a demonstration. They have established an office and worked  
24 out a good plan with the bar associations in each of those  
25 counties. They have a really gung-ho project going. There

1 is a lot of enthusiasm among lawyers and you might be glad  
2 to know that all of their materials are being printed in both  
3 Spanish and English.

4 The radio announcements are bilingual. One of the  
5 seven counties has a heavy migrant worker population. This  
6 is where Mr. Montejano's mother was born -- in Kansas.

7 They have had meetings with each bar association.  
8 They give people who qualify the opportunity to use any lawyer  
9 of their choice in seven counties. The bill would be sub-  
10 mitted through prepaid legal and be paid out of the grant.

11 It offers a real interesting alternative method in  
12 our part of the country because it has not been tried before  
13 and the people who are the recipients of that seem to be  
14 enthusiastic about it.

15 It has only been underway about 10 days, but I  
16 would report a great deal of enthusiasm and I think we all  
17 have great hopes that it will be a very successful demonstrat-  
18 ion project.

19 They are using valid Medicaid cards as an apparent  
20 qualification that the family has a Medicaid card. If they  
21 have not qualified for a Medicaid card, there are very explicit  
22 instructions printed. They can go to an office in their home  
23 county and with a relatively simple application, they can  
24 establish qualifications.

25 MR. KUTAK: Sam, how much tie-in does this program

1 have with the on-going programs?

2 I mean, for example, whether there is any exposure  
3 by the regional offices as to what is happening?

4 Or is this something separate and apart of the  
5 organic institutional operation of the Legal Services Corporat-  
6 ion?

7 MR. THURMAN: Tom, can you answer that?

8 MR. EHRLICH: It is very much part of it in the  
9 sense that the project as a whole is part of Charles Jones'  
10 office of Field Services.

11 The monitoring and viewing is all built into the  
12 on-going effort. It does, of course, take special staff to  
13 do the kind of analysis that Sam spelled out in terms of the  
14 criteria for performance and the comparability for staff  
15 attorney programs.

16 But we view the project reporting system and  
17 demonstration projects as part of this on-going operation.  
18 It is not often the corner.

19 MR. KUTAK: I am confident that as the experiments  
20 and models operate, they are going to profit only to the  
21 extent that they can change, if change is required, and it  
22 would be a pity if charge were given 19 projects at complet-  
23 ion date with results that he had no input in and they were  
24 all nice theories, but had no relationship to what could have  
25 been on-going and beneficial practice.

1 I am very glad to hear all of this.

2 I think that it would be rather interesting, Mr.  
3 Chairman, if at some time during our next two or three Board  
4 meetings, we might have the same kind of overture towards a  
5 dialogue -- we do not get a dialogue of the ground -- but we  
6 had a suggestion of one with the Regional Directors -- could  
7 we get this with the projects?

8 Again, it would be an interesting experience to be  
9 -- to have our thinking going on and not just be confronted  
10 with the results at the end as to what inputs we might be  
11 able to make.

12 MR. THURMAN: That is a good suggestion.

13 MR. CRAMTON: Any more comments or questions?

14 VOICE FROM THE AUDIENCE: I have a question.

15 MR. CRAMTON: Yes, sir.

16 VOICE FROM THE AUDIENCE: I have a question on the  
17 report.

18 MR. CRAMTON: I have forgotten your name.

19 MR. MOORE: I am George Moore of the New York City  
20 National Planning Council.

21 STATEMENT OF  
22 GEORGE MOORE

23 MR. MOORE: I heard Mr. Thurman say that the  
24 activities of the lawyers would be reviewed by their peer  
25 group at the end of this experiment.

1 MR. THURMAN: That is one of the suggestions.

2 MR. MOORE: Okay. One of the suggestions. What  
3 I did not hear was to what extent the client group would be  
4 involved in the evaluation of the client satisfaction, which  
5 I think is of utmost importance.

6 MR. THURMAN: That is one of the four measuring  
7 devices, as you know and we spend a good deal of time on  
8 that as to whether you get that from personal interviews or  
9 questionnaires. I could not say, but a good deal of attent-  
10 ion certainly is going to be based on that.

11 In fact, as you recall, I mentioned that also  
12 constituted a good part of the second test of the quality  
13 of the performance -- the quality is part of the success.

14 MR. CRAMTON: But he is saying get it from clients.

15 MR. EHRLICH: Yes, it will be gotten in that way.

16 MR. MOORE: Information from the client, but is  
17 that information going to be secured by peer group to the  
18 client -- the client representatives?

19 That is the question I am asking. The lawyers'  
20 performance is going to be evaluated by a peer group of  
21 attorneys.

22 MR. THURMAN: Right.

23 MR. MOORE: The satisfactions of the client who  
24 has received that service -- are they going to be evaluated  
25 by the peer group?

1 MR. THURMAN: By client on client?

2 MR. MOORE: Right. That is the question.

3 MR. THURMAN: Without any question you will have  
4 to have that. Do you mean rather than having an attorney  
5 interview clients?

6 MR. MOORE: I did not hear that in the report and  
7 I thank you.

8 MR. THURMAN: I did not mention it, but it is a good  
9 point.

10 MR. CRAMTON: If that completes the report of the  
11 Committee on Provision of Legal Services, then we now come  
12 to Item No. 6, which is a further report by the Committee  
13 on Regulations dealing with the extension of Authorization  
14 and possible changes in the Legal Services Corporation Act  
15 of 1974.

16 Mr. Kutak?

17 MR. KUTAK: Let me give the Board a little setting  
18 so one can appreciate the problems confronted.

19 This is a different assignment of your Committee  
20 on rules and regulations and yet it is a very natural and  
21 logical outgrowth of it.

22 As we try to interpret the law by way of reasonable  
23 regulations, we obviously began to learn an awful lot about  
24 not only the regulation process, but the needs that may come  
25 to mind for amending the law.

1           It sort of turns on each other. The only thing I  
2 am concerned about is whether I have inherited the job which  
3 will never end. I hope that is not the case.

4           In any event --

5           MR. BROUGHTON: That might concern us as well.

6           MR. KUTAK: Yes. In any event, what we are now  
7 faced with is a responsibility by law to come to at least  
8 one level of proposal which is the authorization period of  
9 our Act expires and we must come to the Congress this year  
10 with a recommendation for the extension of that authorization.

11           MR. THURMAN: Should we vote on whether we want to  
12 extend it or not?

13           MR. EHRLICH: We have already done that.

14           (Laughter.)

15           MR. KUTAK: So we have that phase. We have the phase  
16 of extension of authorization. I hope that my brother Pritchard  
17 is listening clearly because I am speaking loudly because I  
18 need his help on this.

19           MR. PRITCHARD: Yes, I am.

20           MR. KUTAK: At the same time, in drafting the  
21 regulations, we have also uncovered or identified what might  
22 be described in the parlance of the legislation technical  
23 perfecting amendments -- things that need cleaning up and  
24 surely would have been probably picked up, had we had the  
25 bill drafted under the more leisurely and deliberate processes

1 than it was.

2 There was then a third kind of category and these  
3 are substantive policy type of issues which we have resolved  
4 as best we can in the drafting of regulations, to comply with  
5 the law.

6 But now we have a chance, or indeed others have  
7 the chance, to open the question up again in reconsidering the  
8 law itself.

9 A very quick example would be the back up center  
10 question. I think we have made the law work in a way that  
11 is sound and acceptable, but as I think Lord Develon once  
12 said, the printed word is not necessarily the last word.

13 There is a chance to reconsider the printed word.

14 So we have that level of exploration to discuss.

15 Mr. Chairman, we have come to you with a two-fold  
16 strategy here.

17 One is to ask the Board if it would like to adopt  
18 a set of guidelines, a set of directions, if you please,  
19 which would pertain, without being specific, to any kind of  
20 suggestion that might be offered or entertained or proposed  
21 by anyone who would actually draft the bill and put it in  
22 the hopper or recommend to someone to draft it and put it in  
23 the hopper.

24 These guidelines would be at least broad directions  
25 from us as to what we at least feel should be recognized and

1 adhered to.

2 I think they serve a value because there will be  
3 times when you, Mr. Chairman, or indeed our President, Tom  
4 Ehrlich, may be called on to respond to suggestions for  
5 amendments and surely they will come and surely we can expect  
6 them.

7 We can surely say that consistent with our philosophy  
8 I can give you this guidance or therefore what we have done  
9 is this.

10 At our last Regulations Committee Meeting, we  
11 thrashed out a set of proposed guidelines and I will give  
12 you the buzzwords of them.

13 Then you can catch the flavor.

14 Certainly the first guideline would be that the  
15 values and principals articulated in the preamble to the  
16 Legal Services Corporation Act must be maintained. Those  
17 were pretty good resolutions or pretty good principles and  
18 in a sense we, in no way retreat from them.

19 You recall what they are. They include high  
20 quality service and independent non-partisan behavior and  
21 matters of that kind.

22 The second principle which would be equally  
23 compelling, or as I should say, the second guideline equally  
24 compelling to me is that legal service clients should have  
25 the same rights to advice and representation in civil matters

1 as other clients.

2 You might say that is one of those categorical  
3 imperatives that nobody can argue with, yet it needs ex-  
4 pression and it needs recognition and we think that it ought  
5 to be expressed in these guidelines.

6 Naturally we cannot do all things for all persons  
7 all at once.

8 That, at least, was our view just a few minutes  
9 ago. Therefore, priorities need to be established along  
10 the services that can be rendered within the resources that  
11 are available.

12 However, the parity of rights and the recognition  
13 of their priorities need to be expressed.

14 The third guideline expressed not only by not only  
15 our actions but expressed by witnesses' views today is that  
16 to insure accountability and responsiveness, clients should  
17 be represented in the decision making process, both on the  
18 level of the programs and on the level of the Corporation.

19 The fourth guideline is that the Corporation should  
20 have maximum flexibility to carry out its basic purposes  
21 and that we, therefore, should not get in a sense strung up  
22 or tied down by any rigid set or fixed course of action as  
23 long as we are able to recognize and achieve the end of  
24 this mission.

25 The fifth proposed guideline is that in represen-

1 ting and advising clients, the legal service lawyers should  
2 be subject only to those restrictions that are imposed on  
3 all other attorneys by the applicable code.

4 Those, of course, are the ethical constraints and  
5 rules of procedure recognized by any litigant in any pro-  
6 ceeding.

7 Finally, the last guideline would be that legal  
8 service attorneys should not be subject to restrictions on  
9 their personal activities unless those restrictions are  
10 necessary in the carrying out of their obligations, or --  
11 and I should finish the entire thing -- their obligations  
12 and the obligations of their programs to provide legal  
13 assistance to eligible clients or to maintain public confidence  
14 in the integrity and independence of the program.

15 If you notice, those guidelines are sort of like  
16 an inverted pyramid. They are very broad at the beginning  
17 and perhaps a little broad at the end, but they start with  
18 the concept of legal services and end at the point of the  
19 lawyer.

20 MR. CRAMTON: That sounds like a double inverted  
21 pyramid to me.

22 (Laughter.)

23 MR. THURMAN: I looked at the pyramids once and  
24 they did not look like that.

25 (Laughter.)

1 MR. KUTAK: I would urge this Corporation to ignore  
2 those side comments.

3 I would urge the Corporation to adopt these guide-  
4 lines, which are consistent with our philosophy and which  
5 certainly are supportive of our belief as directed, if you  
6 will, toward ourselves and our officers to use as directives.

7 But more importantly, to communicate to members of  
8 Congress and their staffs and their constituents, those  
9 essential philosophies and ideas which will continue to  
10 strengthen and protect the programs which we have offered.

11 MR. CRAMTON: Mr. Kutak, I hesitate to interrupt  
12 you, but our colleague, Mr. Montejano, has to leave very  
13 shortly to go to an appointment and will not be able to be  
14 here tomorrow.

15 I wonder if you might depart from your more orderly  
16 presentation of this to very quickly get an expression of  
17 his views before he has to leave?

18 MR. KUTAK: I always put the horse before the  
19 cart.

20 MR. CRAMTON: Mr. Montejano?

21 MR. MONTEJANO: Very briefly, I strongly support  
22 all of the amendments which have been recommended by the  
23 staff, both procedural and substantive.

24 I think that states my position.

25 MR. KUTAK: Rudy, I will be finished in three

1 minutes on the regs, because I think the principles are more  
2 important than the technicals, because we could argue long  
3 and hard.

4 I think the technicals can be quickly summarized.

5 First of all, we have the guidelines. The second  
6 thing is that we have some of these technical amendements,  
7 most of which, and in fact, all of which, came up as a  
8 result of our drafting of the regulations.

9 The first technical amendement would permit legal  
10 assistance to defendants in criminal cases when the defendant  
11 is charged with an offense involved with hunting, fishing,  
12 trapping, or gathering fruits of the land and the defense  
13 asserted involves rights flowing from a treaty with Native  
14 Americans.

15 If you recall when we got into that question in  
16 Chicago, we had the most articulate presentation of that  
17 to try to be done by way of regulation. We felt we could  
18 not because of the law and we decided to try to change the  
19 law.

20 Now we are trying to recognize that unique situat-  
21 ion which we have with Native Americans who are really  
22 prosecuted for what really in the past has been processed in  
23 a civil context.

24 It is a persuasive reason and I would offer it  
25 as a technical amendement.

1           The second one would make clear that the Corporation  
2 reserves exclusive authority to assure compliance of recipients  
3 and their employees with provisions of the Act.

4           We think that is implicit, but we get into the  
5 business of who has the final -- not the final say, but the  
6 first say and we hope that it can be said that it is the  
7 Corporation.

8           The third technical amendment adds a new sub-  
9 section, which is 1006(g) that provides that an attorney  
10 may appoint an attorney employed by a recipient to represent  
11 an indigent client only if the court appointment is made  
12 pursuant to a policy applied generally to all lawyers practic-  
13 ing in that jurisdiction.

14           This would avoid again that frightful situation  
15 that people have told us that because they are legal aid  
16 lawyers, they are being exploited by courts.

17           MR. THURMAN: Would that mean that the legal  
18 services attorney would then be paid?

19           MR. KUTAK: It really means that if the others  
20 serve for compensation, then the Corporation should be  
21 reimbursed for that.

22           MR. CRAMTON: Program.

23           MR. KUTAK: Program.

24           MR. STOPHEL: That word ought really to be  
25 generally rather than equally because a number of jurisdictions

1 has a list of lawyers for appointments which are made are  
2 those which have less than five years practice or something  
3 like that.

4 MR. KUTAK: Good point. We will pick it up.

5 MS. DANIEL: And also there is one point that the  
6 words to provide assistance without compensation should be  
7 dropped because in some jurisdiction or many jurisdictions  
8 some compensation is provided, but it is so minimal, such as  
9 \$5 or \$10 per case, so it is simply the principle that we  
10 should be dealing with in the same terms as anyone else.

11 MR. KUTAK: The final one is simply an amendment  
12 that permits us to cut off the maintenance of records after  
13 five years, which is consistent with practices as I am advised  
14 of the GAO.

15 MS. DANIEL: Since the time this has gone out to  
16 the Board, we have been advised by GAO that three years would  
17 satisfy them.

18 If we do get that in writing, I would recommend that  
19 we change this to three years.

20 It would not prevent us from keeping them -- but  
21 it would give us the discretion.

22 MR. KUTAK: Yes, it would be consistent with GAO  
23 policy.

24 MS. DANIEL: Yes.

25 MR. CRAMTON: Very well.

1 MR. KUTAK: With your permission, Mr. Chairman,  
2 I would move for purposes of discussion, the adoption of  
3 those guidelines and the approval of the recommendations for  
4 the technical amendments to the Board.

5 MR. CRAMTON: Do we want to separate those and  
6 have the guidelines first?

7 MR. STOPHEL: I would like to separate them.

8 MR. KUTAK: I move the adoption of the guidelines  
9 for the consideration of the Board at this point.

10 MR. MONTEJANO: Seconded.

11 MR. CRAMTON: Very well. Mr. Kutak has moved and  
12 Mr. Montejano has seconded the adoption of the proposed  
13 guidelines for consideration of the Legal Services Corporation  
14 Act and amendments thereto.

15 Mr. President, do you have some comments?

16 MR. EHRLICH: I think that a set of guidelines  
17 is really essential in terms of the processes that we are  
18 going to be going through.

19 The number of times that various people may be  
20 asked or called to testify is unknown, but it clearly is  
21 a number.

22 While I can say, of course, that my own opinion  
23 is that this seems to be at a minimum that there ought to  
24 be from the Board a statement of guidelines, such as these  
25 by which the Congress can at least get the Board's judgement

1 overall of the Act quite apart from any specific technical,  
2 let alone substantive recommendation or change.

3           These were done in consultation with project people  
4 and clients and others and it seemed to us to be the best  
5 we could do.

6           MR. KUTAK: And of course this was discussed at  
7 our meetings and sessions.

8           MR. STOPHEL: As I understand Number 2 of the  
9 principles or guidelines, that relates to the present  
10 restrictions on certain types of cases.

11           Am I correct that is what that principle is designed  
12 to put us on record as saying that we ought -- or we think  
13 they ought to be changed and all restrictions should be  
14 removed from all types of cases?

15           MR. EHRLICH: It honestly is not aimed at saying  
16 any particular piece of legislation or any provision in the  
17 statute ought to be changed.

18           I do not think these ought to be interpreted, nor  
19 would we expect to say to Congress, "Therefore, it is clear  
20 beyond a question ~~that~~ these have to be done."

21           These are the kinds of principles that we would  
22 like to follow. That is, namely that legal services clients  
23 should have the same rights to advice and representation  
24 as other clients.

25           MR. BROUGHTON: Does not that run in fact counter

1 to some restrictions in the original Act that certain cases  
2 should not be involved?

3 MR. EHRLICH: If some says that clearly a specific  
4 kind of restriction would limit the advice and representat-  
5 ion, then sure.

6 But we do think there is a difference in talking  
7 about a specific consideration and a general approach.

8 What we are trying to do here is to say to the  
9 Congress that we are trying to establish a general approach  
10 without saying that anybody would not say in any particular  
11 case there might be offsetting considerations to exclude  
12 something.

13 That is why I separated the substantive provisions  
14 from the guidelines.

15 MR. STOPHEL: I am having difficulty seeing any  
16 of the provisions except Number One, which says that the  
17 preamble is good and that we agree with it and swear to up-  
18 hold -- it seems to me that each of these goes to a specific  
19 substantive amendment, Tom.

20 Perhaps I am wrong and I hope so, but number three  
21 goes to a point that one of the Senators almost asked us if  
22 we were not ashamed for coming up there and being confirmed  
23 since no ladies nor clients were involved.

24 We had nothing to do with appointing ourselves  
25 and here we go saying that the Corporation ought to have