ORDER FOR RECOGNITION OF SENATORS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, following the remarks of the distinguished Senator from South Dakota (Mr. McGovern) under the order previously entered, the following Senators be recognized, each for not to exceed 15 minutes, and in the order stated, prior to the order for the recognition of Mr. Mansfield under the order originally entered: Mr. Bellmon, Mr. Saxbe, and Mr. Hansen.

The VICE PRESIDENT. Without objection, it is so ordered.

What is the will of the Senate?

Mr. MONDALE. Mr. President, I would like very briefly to observe that the pending business is the Legal Services Corporation Act on which we have been prepared to vote now for 2 days.

Mr. JAVITS. Mr. President, will the Senate proceed to the bill that has sought the floor?

I would hope either that something might occur so that we might act, or that, if we have what I call a filibuster by amendment, we might invoke cloture, pursuant to the motion filed a few minutes ago.

Before us is an act to establish an Independent Legal Services Corporation.

We would like to be assured, as far as possible, that the concept of legal services consistent with the Canons of Ethics for those in this country who need those services. If the law and the Constitution are applied to them as it is to others in American society, they will then have the opportunity to take their case to the courts of the land to seek justice.

The measure pending before the Senate is the result of several years of compromise. It enjoys a broad bipartisan support. The measure was reported out of the Labor and Public Welfare Committee unanimously. And, as has been shown in the record, Mr. Laird of the White House, has written to us arguing for the Senate act on this measure.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. MONDALE. I yield.

Mr. JAVITS. Mr. President, I am advised that there are 68 amendments in print by some Senators. There is no time limitation on the bill.

We have analyzed approximately 20 of those amendments, beginning with amendment No. 777 and going down to amendment No. 796 inclusive.

I state these facts for the Record, as I said the other day in this body, I do not indicate that we are here. We are perfectly willing to debate any amendment which any Senator has to offer.

Again, I wish to repeat the fact that this has been very thoroughly debated and discussed in February and March 1973, and before in terms of the existing program I think that we have gone a long way in the Senate to work with the administration in trying to come to a satisfactory bill, serving all rights of those concerned.

Mr. President, for the Members of the Senate who may be interested, I am advised that there is a very interesting analysis of the concept of a legal services corporation by the former president of the American Bar Association. That analysis was given in testimony before a subcommittee of the House of Representatives early this year, in February and March 1973.

I think it might be illuminating to have the opinion of the then president of the American Bar Association on the proposal to establish a corporation. We have said before that the American Bar Association does support passage of the Senate Labor and Public Welfare Committee bill.

I ask unanimous consent that a copy of a letter to me from the present president of the American Bar Association, Mr. Chesterfield Smith, together with the testimony of the former president of the American Bar Association, Robert W. Meserve, which is incorporated in the record, fully complies with the Association's insistence on assuring the independence of lawyers for the poor to provide professional legal services to clients. I urge that the legislative committee action on S. 2686 now before the Senate be of a character consistent with the Canons of Ethics.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. HERMAN. Mr. President, it is indeed our honor to announce to the committee for the Record two of the resolutions that we have been asked to prepare for the consideration of the Senate.

The first resolution states that the American Bar Association has been considering the proposed legislative program of a national legal services corporation. That the American Bar Association has been considering the proposed legislative program of a national legal services corporation and has three occasions adopted policy positions in support of this concept. I am pleased to inform you that during the debate on the amendment, as reported, fully compiles with the Association's insistence on assuring the independence of lawyers for the poor to provide professional legal services to clients.

The American Bar Association has long been interested in the creation of an independent nonprofit corporation to provide professional legal services to clients. I urge that the legislation be of a character consistent with the professional independence of lawyers for the poor to provide professional legal services to clients. I urge that the Senate consideration of this amendment seek to restrict the independence of lawyers for the poor to provide professional legal services to clients.

The American Bar Association has long been interested in the creation of an independent nonprofit corporation to provide professional legal services to clients. I urge that the legislation be of a character consistent with the professional independence of lawyers for the poor to provide professional legal services to clients. I urge that the Senate consider this amendment as a character consistent with the professional independence of lawyers for the poor to provide professional legal services to clients.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. HERMAN. Mr. President, I wish to inform you that a letter to me from the present president of the American Association on the proposed legislation to establish a national legal services corporation, Robert W. Meserve, which is incorporated in the record, fully complies with the Association's insistence on assuring the independence of lawyers for the poor to provide professional legal services to clients. I urge that the Senate consider this amendment as a character consistent with the professional independence of lawyers for the poor to provide professional legal services to clients.

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enact a legal service corporation of a design consistent with the foregoing principles and the need to maintain full and adequate legal services effort.

I am proud to report to you that not a single member of our house of delegates spoke against the resolution and that it was adopted unanimously by voice vote.

The task which this committee commences with these hearings on legislation to establish a national corporation is both critically important. By the time the committee has well on the obvious fact that continued debate without resolution on the important issues involved would seriously damage the program and perhaps critically obstruct the continuation of the legal services movement.

The current status of the program has to be a matter of great concern to Congress, the administration, the bar, and most importantly, the poor who have derived so much benefit from the services which it has provided. In February 1971 the Ash Council on Executive Organization recommended the corporation structure to the President and virtually every concerned and informed constituency agreed, in principle, with that recommendation. Since that time, the program, its lawyers, and clients appear to have the responsibility of convincing the public of the continuing availability of legal services to the poor in its 8-year history.

The pendancy of the legislation and the controversy over its provisions have resulted in a rudderless course in national program administration. Crucial decisions and policy directives have been postponed because of the uncertainty. As the organized bar was recently disbanded by the Office of Economic Opportunity after not having been convened since April 1971. The future of the program in our current posture must be viewed as a most serious crisis by all concerned.

Now I would like to turn to some of the immediate threats that are facing the program in your effort to design the structure of the national corporation. The three discrete division issue of the composition of the Board of Directors of the Corporation is one where my authority from the association leaves me little opportunity to provide leadership in resolving this issue, the association’s board of governors concluded that it was more political than professional and should be left to the political process to determine. I am sure that I speak for the association, however, in expressing the hope that a majority of the board be lawyers.

The other issue decided upon must offer a framework through which the lawyers employed by program grantees can serve clients to the extent of professional obligations employed by program grantees can serve clients to the extent of professional obligations. The responsibility of the American Bar Association and the ethical mandates of the bar in the jurisdiction where the client is located is critical. According to the criticisms, neglect the legitimate needs of clients in order to pursue the corporate reform. A look at the record may help to put this matter in better perspective.

The Office of Economic Opportunity has released statistics that indicate that the program is serving approximately 7 million clients per year. This breakdown of representation indicates further that approximately 42 percent of the matters Involve consumer and job-related problems, 10.5 percent are housing problems, 9 percent involve Government welfare programs, and 20 percent are justifiably complex. These statistics would seem to accurately reflect the legal problems experienced by the poor and the areas where assistance is most needed. Statistics also indicate that 83 percent of the matters handled by legal services lawyers are disposed of without litigation.

The California rural legal assistance program has been recognized as one of the most effective programs. According to the critics, the program covers the gamut of the criticisms of legal services programs generally, and conducting public interest projects. Without the State, the Commission concluded:

"[T]he operations of CRLA as conducted presently and within the past, are not those programs which meet the standards and applicable standards of professional responsibility. The Commission finds that CRLA has been discharging its duty of providing legal assistance services under the Economic Opportunity Act of 1964 in a highly competent, efficient and exemplary manner and as a necessary part of the Federal poverty law."

With regard to the so-called law reform activities of legal services programs, it is often overlooked that the mandate from Congress and a review of the program by the General Accounting Office specifically recognizes reform as a legitimate program activity.

The report of the Committee on Labor and Public Welfare of the Senate on the National Legal Services Corporation Amendment of 1967 noted:

"Yet the legal services program can scarcely keep up with the volume of cases in the communities where it is active, not to speak of places waiting for funds to start the program. The committee concludes, therefore, that the cases and law reform, should be given to test cases and law reform."

As you know, there has been a good deal of controversy surrounding the operations of the Legal Services program. Unfortunately, the criticism, most of which is unfair and overgeneralized, seems to get more public attention than the excellent client service which more than 2,300 lawyers currently employed by the National Association of Legal Service Programs, Inc. and their grantees can provide their previously established clients a day-to-day basis. We have heard the outcry against "law reform" activities of poverty lawyers who, according to the criticisms, neglect the legitimate needs of clients in order to pursue their own agenda of social and institutional reform. A look at the record may help to put this matter in better perspective.

The Commission finds that CRLA has been serving the clients of the program. The committee concludes, therefore, that the cases and law reform, should be given to test cases and law reform.

Finally, President Nixon in his message to the Congress furnishing the legislation for the establishment of a national legal services corporation stated:

"While it is important to inculcate the corporate structure so that public funds can be properly channeled into the field, it is equally important for the receiving end to be able to use the money efficiently, wisely and without unnecessary or encumbering restrictions."

"The legal problems of the poor are of sufficient scope that we should not restrict the rights of their attorneys to bring any that there will. Only in this manner can we maintain the integrity of the adversary process and fully protect the attorney-client relationship so central to our judicial process."

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As noted in the previously quoted association's resolution, there is a need for a higher level of appropriations for the national corporation. At the 1975 million dollar requested in the administration's budget for the coming fiscal year, there will be a further contraction rather than an expansion in services.
thought might be given to authorizing funds for the transitional phase of the program to assure no diminution in services.

In advancing these accomplishments the American Bar Association reaffirms its deep concern with the problem of providing legal services to indigents and to persons of low income. The experience has shown that the power to veto legal services programs is highly undesirable because experience has shown that the power to veto legal services programs is highly undesirable because of the unfilled need for legal services, particularly as to persons of low income, and that the organized bar has an urgent duty to develop methods and to develop more effective methods for meeting the public need for adequate legal services.

Whereas, The organized bar has long acknowledged its responsibility to make legal services available to all who need them, and whereas this Association has been a leader in discharging this responsibility; and

Whereas, The organized bar, under the leadership of the National Legal Aid and Defender Association and of this Association, has extended legal services to indigents for more than three quarters of a century, and there are now approximately 2,0000 legal aid offices and committees rendering these services, and

Whereas, Individual lawyers traditionally have rendered service without charge to those for whom they cannot pay; and

Whereas, Such limitations impair the ability of legal services programs to respond to the needs of those who need legal services.

Now, Therefore, Be It Resolved, That the American Bar Association reaffirms its deep concern with the problem of providing legal services to indigents and to persons of low income, and whereas the experience has shown that the power to veto legal services programs is highly undesirable because experience has shown that the power to veto legal services programs is highly undesirable because of the unfilled need for legal services, particularly as to persons of low income, and that the organized bar has an urgent duty to develop methods and to develop more effective methods for meeting the public need for adequate legal services.

Further Resolved, That representatives of the American Bar Association be authorized to express the concern of the Association as to the effect of the aforesaid amendment. (Reports of the ABA, 1970, p. 162)

The above resolution was adopted on the 19th of August in 1969 directed at public criticism of legal services lawyers by public officials. The American Bar Association supports and continues to encourage every lawyer in the exercise of his professional responsibility to represent any client or group of clients in regard to any cause no matter how unpopular; and

Further Resolved, That the American Bar Association deploys any action or statement by any government official who attempts to discourage or interfere with the operation of an independent and adequately funded organization which provides legal services to the community because the lawyers associated therewith, or any lawyer good faith and in the confines of ethical conduct, zealously represents clients in matters involving claims against a government entity or individuals employed thereby.

(Reports of the ABA, 1970, p. 162)
Be It Further Resolved, That representa-
tives of the American Bar Association des-
signified to the Congress that the support to
the expansion of legal services ef-
forts and establishment of a national legal
services corporation, the resolution adopted by
voice vote.

Whereas, There is a continuing need for
legal services for the poor; and
Whereas, The funding for these programs has not gone up since 1970 in spite of the
increase in demand and operating expenses; and,

Whereas, This Association continues to
stress the need for adequate legal services to the
poor and the need for vial and in-
dependent programs to provide this repre-
sentation.

Now, Therefore, Be It Resolved:
1. The United States government should increase the level of funding of legal serv-
ices for eligible clients so that they can provide
adequate legal services to eligible clients and
to prevent a serious deterioration of the quality and quantity of service because of in-
creased expense and mounting caseloads.

2. Government at all levels and lawyers
from both the public and private sectors should take every step necessary to insure that legal services remain independent from
political pressures in the cause of representing
clients.

3. Congress of the United States should enact a legal service corporation of a design consistent with the foregoing principles and the need to maintain full and adequate legal services for the poor.

In addition to the above resolutions, the Board of Governors in October 1970, au-
thorized, through Hon. Bishop L. B. Ross, to com-
unicate to OEO Director Donald Rumsfeld the
Association's concern regarding a proposal for
administrative reorganization of the Legal Serv-
ces Program. A copy of that letter is
attached.

AMERICAN BAR ASSOCIATION,
Office of the Executive Director, October 16, 1970.
Re legal services program, the Office of Eco-

nomic Opportunity.

Hon. Donald Rumsfeld,
Office of Economic Opportunity,
Washington, D. C.

DEAR Mr. Rumsfeld: You will recall that I
wrote to you on October 3, expressing my
concerns regarding the proposal for admin-
istrative reorganization of the Legal Services Program currently under consideration by the
Agency.

The proposed reorganization plan was ex-
tensively discussed by the Board of Governors of the American Bar Association at its Fall
Meeting in Chicago on October 15 and 16. The
Board has authorized me to inform you of the
Association's reiteration of the recom-
mandations made in the February, 1969
memorandum to then Secretary Finch and to
Senator Scott and especially the follow-
ing: "Should an independent office in the
Executive Branch not be feasible at this time, and if an OEO type of agency is to be con-
tinued, the existing program could remain
within that structure, provided it becomes
administratively independent from the exist-
ing Community Action Program."

Independence of the Legal Services Program
and its establishment as a National Empha-
sis Program with public and private com-
mittee firmly established at the national level have
been sought since the inception of the pro-
gram. Representatives of the organization who
have championed the need for such
independence before Congress and program
administrators and at the highest level of
administration; the Association which
reaffirmed its support of the expansion of legal
services programs; the Board of Governors
which took action before the appropriate committees of the states; and
February 1973, the House of Delegates of the
American Bar Association reaffirmed its sup-
port of the expansion of legal services ef-

sions program with policy and responsibility,
for adequate legal services to eligible clients
and because they could not afford it.

Mr. MEEDS. But I assume you would have
objection if it went beyond advice. If he were
told which cases he could appeal.

Mr. Mesz Cov: I think that would be very
dangerous. It would be quite outside of my
responsibility. I would not want a commit-
tee of my partners to tell me if I could ap-
peal a case for a wealthy client.

Mr. Messaver. As a matter of fact, it would be
a violation of the code of ethics.

Mr. MEEDS. It would be, Congressman.

Sincerely.

EDWARD L. WRIGHT.

Mr. HAWKINS. Thank you for a very ex-
cellent and clearcut statement. It is cer-
tainly one which I think speaks rather elo-
cently to the subject that we have before this
commitee.

The Chair is going to yield its time to its
member, Mr. Meeds.

Mr. MEEDS. Thank you very much, Mr. Chair-
man.

My communications to you, Mr. Messaver,
for your statement and my communications to the American Bar Association for its long-
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I have also felt that the present funding of the program only permitting the program going into certain areas, and not experimenting with other areas. I think the problem of merely being poor ought to be dealt with too. I am not sure it can be dealt with in the present framework of the OEO organization, but I think there ought to be funds to permit the OEO to deal with the problem on a more limited basis. Therefore, I think the funds are now inadequate and will be in the future where normal increments are taken into account.

Mr. MEADES. Thank you very much.

Mr. STEIGER. I appreciate very much.

Mr. HAWKINS. Mr. Steiger.

Mr. STEIGER. Mr. Chairman.

I welcome these hearings as an opportunity for Members of Congress, the administration, and all interested parties to work together in strengthening the Legal Services program.

A great deal of justifiable criticism has been directed to Federal programs which are wasteful and inefficient. It is unfortunate, therefore, that the most stringent attack on any Federal agency has been reserved for one of the Government's most successful endeavors—the Legal Services program.

Ironically, this opposition has largely been generated by the very professionals—counsels of law—whose predecessors in the Bar of the State of Colorado have served as a constant reminder that in our democratic system, just grievances can be resolved within the system rather than in the streets.

And yet today the very existence of the program hangs in the balance. To insulate the program from recurring political attacks, President Nixon has strongly endorsed the concept of a nonprofit Legal Services Corporation.

The Congress must now act its legislative will. The Congress must have a truly independent, professionally administered, and capable of delivering high quality legal services program. The program grows and we must act rapidly. President Meserve, we know of the deep commitment of the American Bar Association to the Legal Services program, and your support goes to the program and not necessarily to any particular individuals. The selection of the individuals to operate that program will be a useful body.

We would hope that the test-case concept to me seems pretty vital to a legal services program. Would you give me your judgment about the consequences of a development that the program will continue and the objectives will continue to be met?

Mr. MESSAVE. Well, I think the prior administrators have found the advisory council to be a useful mechanism. I understand that the Attorney General of the United States, and the Attorney General of the State of Colorado, have worked closely with the program. I think it would be a useful body.

Mr. STEIGER. What is the impact of the decision for test and settlement cases and the OEO legal services program?

Mr. MESSAVE. Well. I would say the issues may be more easily resolved and the program staffed to do that. I think the test-case concept to me seems pretty vital to a legal services program,

Mr. STEIGER. I am going to ask about the legal services program and the OEO legal services program.

Mr. MESSAVE. I would hope that the people in what I consider to be the test case and the OEO legal services program and the restricted cases would be brought to the attention of the court and people of the United States is there any reason to believe that the OEO or the OEO legal services program is there any reason to believe that the OEO or the OEO legal services program is

Mr. STEIGER. I appreciate very much what I think is a very good response to my question.
and your real commitment, as with the commitment of the American Bar Association. Thank you.

Mr. FORD. Mrs. Chisholm? Mrs. CHISHOLM. Thank you.

I have two brief questions. First of all, in terms of the espousal of equal justice under the law, there is a stipulation about the disagreements that the corporate法宝 have a certain type of representation outside the scope of the interests of other people. That is not a legal concept which is not yet implemented.

Mr. MESSER. I think I have already, if I may say so, answered your question, Congresswoman. I feel that the poor person in our society ought to get the same kind of legal representation in every area as the rich person can get. I think the only way that can be done is through the legal services program. The lawyer who is committed to that ought to be able to ameliorate his condition and see to it that the guarantees of the Constitution of the United States are available to all citizens of all classes of economic well or lack of it. Mrs. CHISHOLM. Thank you.

One more brief question.

The Code of Professional Ethics in the field of law is analogous to the Hippocratic Oath taken by men in the field of medicine? Mrs. CHISHOLM. I think the Code is much more extensive and detailed. The Hippocratic Oath, as I understand it—and, of course, I am not a doctor—is a general statement of professional standards. The Code of Professional Ethics is a very detailed thing. The Code of Legal Ethics is far more detailed. It deals with many more situations. It is also a much more comprehensive code, expressing in generalities which must be interpreted by the court from time to time. It is more analogous to the differentiation perhaps between the Ten Commandments or the Sermon on the Mount on one hand or the Constitution of the United States on the other.

Mrs. CHISHOLM. Thank you.

Mr. HAWKINS. Mr. Clay has yielded his first set of questions to the gentleman from Michigan.

Mr. FORD. I would like to go back to this question of a test case. That is not a legal term but it is a legal concept. It is a test case taken up at cocktail parties and in coffeehouses and other places where lawyers get together and they say there is a certain type of litigation going on and if this is decided it will set some things in perspective and therefore it becomes a test case when viewed from a professional standpoint by lawyers outside the courtroom.

But as the lawyer or client or individual involved in the case, the words "test case" mean a different thing.

That case is only important to him as to how it ends up with respect to his rights, whether they are his or somebody else's. The fact it will set the pattern for something else to happen is irrelevant; isn't it?

Mr. MESSER. I would not say it is strictly irrelevant. I would agree generally with him that the problem is serving the interests of an individual client.

Mr. FORD. From the professional point of view, does the lawyer have any right in determining how he should proceed with that client's case at any given time to take into consideration the interests of the corporation, the interest of the shareholders, or the test case that will affect the rights of other people?

Mr. MESSER. Yes, I think he does. I think it affects the rights of that client, but I think it also affects the rights of society generally and he has a right to take that into consideration.

My office was hired many years ago—long before I was a partner in it—to bring certain litigation on behalf of a corporation involving the constitutionality of the social security law in the Revenue Acts.

It ligated that question to the Supreme Court of the United States, I think at all times, to bring the case in which it was conscious and wanted us to proceed in that case as counsel representing the individual whose case was the only case that could bring that type of test case for that individual but also as a test case involving for a multitude of clients in such a position the constitutionality of one with which the client wanted the case instituted in the first place.

Mr. FORD. But you would agree with me that there is an outside the scope of the interest of the people bringing the suit in that case had decided that from their point of view this was a test case that they could not, if it was a legal services case, bring pressure to stop.

Let us put it as far as a regulation. What would be the effect of the lawyer's professional standing if we attempted to impose on him that once someone identifies this as a test case you are thereafter barred from representing that individual in the normal course of his legal services. That is far more detailed. The Code of Legal Ethics does not, if this was a legal services case, bring pressure to stop.

Mr. FORD. If you would agree that any attempt to characterize cases and put a restriction on legal services lawyers would be outside the scope of what is considered in the Code of Professional Ethics?

Mr. MESSER. Yes, I think the interests of the individual client may include the fact that he is not the only person in the situation. If the client would come to me and say he wanted to drop the case, I could not say, "No, you must proceed because it is a test case.

Mr. FORD. It works both ways?

Mr. MESSER. Yes, Mr. FORD. You in your statement make reference to the Code of Professional Ethics in the field of law, which is more analogous to the differentiation perhaps between the American Bar Association, that is far more detailed. It is far more a provision that allowed one of these groups of professional organizations that had been included in the legislation as prospective recommenders of members of the bar. It really came down to the point where it became apparent to us that not even a simple provision that allowed one of these professional groups to submit several names and let the President take anyone he wanted would be sufficient for him.

It had to be the privilege of rejecting all of them and reaching outside in effect. This was a very desirable thing. The Code of Professional Ethics in the field of law, with special problems of providing representation for something that should have a national scope then it takes on a different dimension.

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Mr. FORD. Isn't the tradition so strong in this case that the American Bar Association as such has carried forward. Mr. FORD. Last year when we had the legislation before the House I think we are up as long as anything else that was negotiated with the White House during the course of the conference. That specific issue of once you decide there are going to be lawyers on the board who decide who a lawyer is, and is not a lawyer in there was a very desirable thing. The Code of Professional Ethics in the field of law, which had been included, several groups of professional organizations that had been included in the legislation as prospective recommenders of members of the bar. It really came down to the point where it became apparent to us that not even a simple provision that allowed one of these professional groups to submit several names and let the President take anyone he wanted would be sufficient for him.

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of some people who have demonstrated interest and expertise would probably get a person like yourself in trouble with the American Bar Association.

Mr. Meserve. I don't know. One of the bills suggested that the President of the American Bar Association, ex officio, be a member of the board of the corporation. I don't know what I can do or what restrictions there are on my power in that regard. I haven't had anybody come to me and say I did a wrongful thing in appointing somebody to a committee in which they had shown no interest before, but I think the practice of appointing people who we would nominate would be people who had a demonstrated interest in the field and who had capacity and character and were well informed.

Mr. Hawkins. There is a Democratic caucus set for 10. Some of the Members are a little apprehensive about coming. If you care to stay, I will get back to you for further questions.

Mr. Benetees. I just want to commend the President of the American Bar Association on a very fine statement.

I was happy to learn that this association which in the past has been identified with a more conservative outlook is joining us in this particular issue in the belief that the human rights of education, health, and legal services should be extended equally to all Americans.

Mr. Meserve. Thank you very much. I think it is true liberalism. I think it works both ways.

Mr. Hawkins. The Chairman would like to announce that due to the speed with which we were forced into moving with, because of the stragulation and mass murder of Legal Services, we are going to appoint a subcommittee of Mrs. Mink and Mr. Steiger to reconcile any conflicting views in the bill sponsored by Mr. Meeds and the bill sponsored by Mr. Steiger. The committee will hold a meeting of the public hearings, which others will be invited to present their views.

It is the intent of the subcommittee to draft a bill just as rapidly as possible and present it to the full committee. We hope to get a bill on the desk of the President before the end of the session. If such a service program has been established, we will act rather fast. I see this as a public notice so that no one will be taken by surprise.

Mr. Fonfara. I have two other questions, one at least, so that I may remain to ask some additional questions, you may.

Mr. Fonfara. I just thought you ought to know that there has been floating around here what hereofere has been intended to be a secret document called congressional strategy on OEO which is a coldblooded Madison Avenue-type campaign to slaughter OEO in a manner that will maximize the efforts with a minimum of political pain to the people responsible for them.

One of the interesting observations that you should be made aware of is that in laying out the specific strategy to be followed they deal with Legal Services by first recognizing that they have one additional problem of it and they better be careful about handling legal services because what they may get away with here, the only constituency interested is the professional body of support with where there is a professional body of support.

Obviously, you represent a principal part of that constituency of support.

Whoever did this is more sophisticated than I on the makeup of these committees. One of the tactics is to steer the legal services corporation into the judicial committees.

Later on, it says, "* * * steering it into the judicial committees has the advantage of preventing what is a more conservative reception, one likely to be more sympathetic to the administration point of view. It would be easier to bring it off this time because one, the administration wants it and two, there is no OEO legislation pending to which it can be attached.*"

At the time this was written, the committee that is now holding the hearings had not yet been named. And I think the rest of the document is apparent that the intention of at least the person writing this was that by in any way ending up there and leave legal services with no place to go and Congress would be forced with either the expiration of legal services, that there would be a conservative-labor vein.

Now, if Congress were to pass a bill, of legal service program would float to the Congress and go to the judicial committee and logically we would have a more conservative legal services program.

I call this to your attention because I had not realized that we were dealing with this kind of activity in a conservative-labor vein.

Mr. Mesavage. I have not, either. I want to say that I am sure this committee will deal with it in a vein which is neither liberal or conservative and look to the preservation of the public good. That is our attitude.

In response to the Chairman's remarks, I would say that an association anxious to cooperate in any way we can with the operations of this subcommittee in considering any specific legislation which may be considered, so that we can cooperate.

I assure you that I am not acquainted with that document to which you refer and obviously had no part in it.

Mr. Fonfara. Mr. Steiger. One further question: There has been some speculation that the OEO administration might consider using the legal services program over to the American Bar Association.

Has that been raised with the ABA?

Do you have any comment?

Mr. Mesavage. That has not only been raised with the ABA, but on first impression raises my hackles. I don't imagine the ABA can run a government operation as the OEA. As far as I can now consider it, it seems to me to be a very unwise suggestion. I don't think the ABA is constituted to run a program as administrators. I think that this ought to be apart from any existing organization. I surely hope the ABA would have an input but we are not trying to build an empire, I assure you.

Mr. Fonfara. Mr. Meservy, you have shown the high level of professional integrity of the association in presenting your views to this committee. We thank you.

Mr. Mondale. Mr. President, I normally do not object or disagree with what the Senator from New York says. However, I wish to point out that there are not 66 amendments. There are 72.

Mr. Javitts. Mr. President, I thank the Senator from Minnesota for his correction. I am very pleased to stand corrected.

Mr. Helms. Mr. President, I ask unanimous consent that during the consideration of this bill, my legislative assistant, Mr. James P. Lucifer, be permitted the privilege of the floor.

The Vice President. Without objection, it is so ordered.

Mr. Helms. Mr. President, I would like to direct a question to the Senator from New York. Would the Senator from New York advise the Senator from North Carolina approximately on what days public hearings were held on the bill this year?

Mr. Javitts. Mr. President, the Senator from New York advised the Senator from North Carolina that no hearings were held this year on this particular measure.

If the Senator desires it, I could give him, on his time or on my own time, the days of the hearings dealing with measure held during the year. There were 16 of them.

Mr. Helms. That was prior to my arrival in the Senate. Does the Senator have any information as to whether either the distinguished Senator from Tennessee (Mr. Brock) or the Senator from North Carolina was invited to the closed executive session of the subcommittee and committee at which time this measure was drafted and finally approved?

Mr. Javitts. Mr. President, I did not hear the question.

Mr. Helms. Mr. President, the point that the Senator from North Carolina would make is that the Senator from Tennessee (Mr. Brock) and the Senator from North Carolina were not even given the good faith a measure which we think to be superior to the one now pending before the Senate. We were given short shrift on this. Insofar as we know, speaking only for the Senator from North Carolina, introduced, of the so-called anti-poverty program and also the Office of Economic Opportunity, it went to our committee.

Any other committee could at any time have sought to assert jurisdiction and could have blocked OEO from the floor if it had desired to do so. Apparently there was no desire to do so.

I would appreciate it if the Senator would advise me if he or any of his colleagues requested a hearing from the Committee on Labor and Public Welfare to which the bill was not referred, as I am not personally aware of any.

Mr. Helms. Mr. President, what was the question of the Senator?

Mr. Javitts. Mr. President, I wonder in what form, at what time, and under what circumstances, if at all, the authors of the bill which was referred to the Judiciary Committee sought a hearing before the Committee on Labor and Public Welfare. I would be very much interested in getting that answer.

Mr. Helms. Mr. President, I will endeavor to furnish the Senator a copy of a letter written by the Senator from North Carolina in this connection on tomorrow. I do not have the letter with me on the floor at the moment. I did not anticipate that there would be this discussion.

Let me ask the Senator from New York this question: Would the Senator from
Mr. HELMS. Let me finish this line of questioning, if I may.

I still do not fully understand the position of the distinguished Senator from New York, and I am sure he will forgive me for not being able to hack through the "verbiage to which I acknowledge that this is unusual." 

Does the Senator feel that this bill would pass the muster of the Committee on the Judiciary?

Mr. JAVITS. I have no idea. I just would not personally object to the enactment of this measure, if the committee thinks it is a necessity.

Mr. HELMS. Would not the Senator be willing to resolve any doubt about it, since there is considerable doubt about this measure, certainly on my part and on the part of others? Would not the Senator feel that inasmuch as there have been no hearings this year, and there are several freshmen Senators who have come to this body as of last January—I know the Senator does not want those of us who are new in the Senate to feel that we were not given no opportunity to sit in on the construction of this measure. I am perfectly willing to take the Senator’s word about his own judgment as to the worthiness of this bill. I know he is sincere. It may not be to my liking. We won't pass judgment on that. But I still say that this is unusual procedure, for the Senate to deny an opportunity, at the time of the drafting of a bill, to provide input. That is what the Senator from North Carolina takes exception to.

Mr. JAVITS. Mr. President, I have no desire to instruct my colleague in the way in which legislation is handled in the Senate, but I know of no situation—Mr. HELMS. Mr. distinguished colleague does not need to.

Mr. JAVITS. I know of no situation in which, if Senators feel they would like to appear before a committee, testify before a committee, and present whatever ideas they may have to a committee, including my Committee on Labor and Public Welfare, that they would be denied that right, or have been denied that right, that I would like to know about that, if the Senator claims that in this case. But if the Senator claims that in the executive session process by which legislation comes to the floor, especially when no rights whatever have been lost—the Senator has every right to propose anything he wishes on this bill. Any committee has the right to move to send this bill to that committee. No one’s rights have been shut off at all.

Mr. HELMS. That is true. I would say to the Senator, that is precisely why there are 67 amendments, 76?

Mr. JAVITS. Seventy-odd.

Mr. HELMS. Seventy-odd amendments. We are trying to bring to this bill a state of perfection which we think does not exist at this time. And yet what did I just hear from our distinguished colleague on this bill? That we are filibustering by amendment. That is simply not so, Mr. President. We are exercising a legitimate process, the only process left to us.

The Senator’s point would be absolutely valid if there had been public hearings on this bill. But there were not. And I frankly wonder why there were not public hearings.

Mr. JAVITS. May I point out to my colleague that in the last two Congresses, hearings were held on the legal services program.

Mr. HELMS. But I was not here.

Mr. JAVITS. I understand, sir. But you were not here when lots of laws became law that you are subject to, just as I am. We have spent billions and billions of dollars of public money while the Senate was not here to think about it. Before I was here, too. You simply cannot reverse the tide of history.

Mr. HELMS. I believe the Senator is straying from the subject, but do not let me interrupt him.

Mr. JAVITS. I think I would rather let the Senator speak than I. I think I have answered the question. The fact that the Senator was not here, it seems to me, is not directly relevant to the situation, as he has lost no rights of any kind to have his side heard.

Mr. HELMS. I hope my distinguished colleague will not misunderstand me, because I am sure he knows the affection in which I hold him.

Mr. JAVITS. I reciprocated.

Mr. HELMS. But could the Senator tell me why this was done in executive session?

Mr. JAVITS. As far as I know, this bill was not marked up in executive session. But even if it was, the important point here was that we had discussed and considered this bill for over 2 years, and that fare has had jurisdiction over antifare had we had a bill voted which had much of this in it.

Finally we got to the point where the administration wanted the bill out, and we moved it. This was something which, as I say, was one of those almost classic examples of trying to get together with the administration on a bill, at least with respect to passing his bill in the Senate.

But again, whether the administration liked the bill or not—and apparently the administration certainly is willing to see that legislation that has received the Senator's attention— interferes with the administration's statement. It does not cut off any Member of this body. The Senator has every right to push any amendment he wishes. Even cloture will not cut him off. He has a number of colleagues. The colleagues together have time in which to debate every amendment within the time which the rule gives them, and if there are enough Senators who are enlisted in the fight, they can handle 67 amendments. Every Senator has an hour. We have found that even in the cloture debate the cloture rule could take as much as a week, if Senators wished to use their time and if there is adequate respect for the effort to amend the bill.

In view of the fact that we are at the end of the session, that this is a measure which has, at long last, come into some kind of balance where it can become law, and the fact that it has been discussed and considered and looked into by most eminent authorities—I have just inserted in the Record the statement of the former President of the American Bar Association, regarding the necessity for such legislation and my own bar association in New York and many others in...
the country have passed on the matter—it is late, and my friends feel that the time has come to act.

Mr. HELMS. Just 1 more minute, and then I shall be through, and you gentle-

men can have it.

The question remaining in my mind. I keep hearing about the American Bar Association. As far as I know, the American Bar Association was not elected to the United States Senate. The Senator from New York was, the Senator from California was, and the Senator from North Carolina was, but the role of the American Bar Association is purely advisory as far as I am concerned. They may be right upon occasion, and they may be wrong upon occasion. But if they are so interested in this legislation, why did it not go to the Committee on the Judiciary? Why was it sent to the Labor and Public Welfare Committee where it was acted upon?

Mr. HELMS. The Senator will forgive me if I—I think I have almost exhausted the subject, but I have the greatest respect for the Senator and, if he wishes, I will answer the question.

The Economic Opportunity Act, the so-called poverty program, has been in the constant jurisdiction of the Committee on Labor and Public Welfare from the beginning. This goes back almost a decade. One of the elements of the Economic Opportunity Act is the legal services program. Hence, when the matter involved amendments with respect to the extension of the Economic Opportunity Act of 1964, the amendments have invariably been referred to the Committee on Labor and Public Welfare. That is the reason for this measure and the reason why the committee reported the bill.

I repeat, had any other committee sought to assert jurisdiction over the measures already in operation of the Senate which are practiced, the procedure would have permitted that committee to seek to have it referred. But that did not happen in this case.

That is the best information I can give the Senator.

Mr. HELMS. I thank the Senator from New York and, let me say, I have enjoyed the discussion.

Mr. JAVITS. I thank my colleague from California. I wrote a letter to the Senator from North Carolina (Mr. HELMS) in response to a query from him about the Judiciary Committee and its possible jurisdiction in this measure. Mr. Tunney is the chairman of the Subcommittee on Representation of Citizen Interests. I have discussed this with him, and he has made it plain that he would not have that referred to that committee and, hence, to his subcommittee. It is well recognized that the Committee on Labor and Public Welfare has this jurisdiction.

It so happens that my colleague from California was in the chair as Vice President, I yield the floor. Mr. HELMS. I would simply also—


dicate in his letter of July 6 that the Committee on Labor and Public Welfare had referred the bill to the Committee on the Judiciary and it was defeated by an overwhelming vote.

The chairman of the subcommittee that would be most likely to have jurisdiction, if this matter were to be referred to that committee is my colleague from California Mr. Tunney. He is chairman of the Subcommittee on Representation of Citizen Interests. I have discussed this with him, and he has made it plain that he would not have that referred to that committee and, hence, to his subcommittee. It is well recognized that the Committee on Labor and Public Welfare has this jurisdiction.

At the conclusion of the aforementioned order, the Senate will proceed to the consideration of concurrent resolutions ordering the House of Representatives to concur in the Senate amendments to the national defense authorization bill.

On tomorrow there will be yeas-and-nays votes on motions, amendments, and final passage, hopefully, of the supplemental appropriations bill.

I yield the floor, Mr. President.


duced 45 A.M.

Mr. CRANSTON. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9:45 a.m. tomorrow.

The motion was agreed to; and, at 8:05 p.m., the Senate adjourned until tomorrow, Wednesday, December 12, 1973, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate December 11, 1973:

NATIONAL LIBRARY OF MEDICINE

The following-named persons to be Members of the Board of Regents, National Library of Medicine, Public Health Service, for a term of 4 years from August 9, 1973:

Joseph Francis Volker, of Alabama, Jack Malcolm Layton, of New Jersey, term expired.

John William Kaufman, of New Jersey, vice President, William O. Baker, term expired.

Adoption of budget: Mr. JAVITS is recognized by the Vice President for an unlimited period to discuss the adoption of the budget.

Mr. JAVITS. The Senate has the pleasure to be recognized by a real genuine Vice President of the United States.

Mr. President, I should like to say on the matter of the Judiciary Committee and its relationship to a role on the legal services bill, as the Senator from New York has said, since passage of the Economic Opportunity Act in 1964; the Committee on Labor and Public Welfare has had jurisdiction over anti poverty programs. It has the legal services program. The Judiciary Committee has never had jurisdiction.

A recommittal motion was made last year, when legal services corporation legislation was on the floor, to refer the bill to the Committee on the Judiciary and it was defeated by an overwhelming vote.

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At the conclusion of the aforementioned order, the Senate will proceed to the consideration of the Special Prosecutor bill.

On tomorrow there will be yeas-and-nays votes on motions, amendments, and final passage, hopefully, of the supplemen-


tal appropriations bill.

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The House met at 10 o'clock a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

The Lord will give grace and glory; no good thing will He withhold from them that walk uprightly.—Psalms 84: 11.

O Lord, our God, unto whom all hearts are open, all desires known and from whom no secrets are hid, bless us with