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SUNDRY NOMINATIONS—1961

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HEARINGS
BEFORE THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
UNITED STATES SENATE

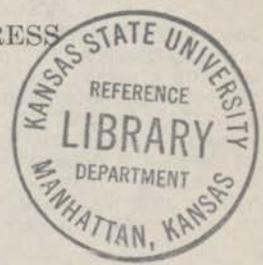
EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

NOMINATIONS FOR

- CIVIL AERONAUTICS BOARD
- COMMERCE DEPARTMENT
- FEDERAL TRADE COMMISSION
- INTERIOR DEPARTMENT
- INTERSTATE COMMERCE COMMISSION
- UNITED STATES COAST GUARD



MARCH 8, 14, 15, AND 22, 1961

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SUNDRY NOMINATIONS—1961

WEDNESDAY, MARCH 8, 1961

U.S. SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee was called to order, pursuant to notice, at 10 a.m., in room 5110, New Senate Office Building, Hon. John O. Pastore presiding.

NOMINATION OF HICKMAN PRICE, JR., OF MICHIGAN, TO BE AN ASSISTANT SECRETARY OF COMMERCE

Senator PASTORE. This hearing will please come to order.

The first matter on the agenda this morning is the nomination of Hickman Price, Jr., of Michigan, to be an Assistant Secretary of Commerce.

This committee is honored this morning with the presence of its two distinguished Senators from that State, Mr. McNamara and Mr. Hart.

Mr. Price, you may come forward.

We have a biographical sketch of Mr. Price that we will insert in the record at this point.

(The biographical sketch of Mr. Price follows:)

BIOGRAPHICAL SKETCH OF HICKMAN PRICE, JR.

(Designated by President Kennedy to be Assistant Secretary of Commerce for Domestic Affairs)

Hickman Price, Jr., was born August 14, 1911, in Nashville, Tenn.

He was educated in Taft School, Philips Exeter Academy, and Columbia University, and in 1932-34 was associated with his father in wheat farming in the Texas Panhandle.

Joining the Bankers Trust Co., in New York, in 1934, Mr. Price was associated with the institution until 1941.

He was with the Foreign Economic Administration and predecessor agencies in 1942-45, serving in a variety of assignments. He was Chief of the American Economic Mission to the Belgian Congo; member of the Economic Mission to South Africa; joint Anglo-American representative, Middle East Supply Center, Addis Ababa, and Chief of the Neutral Countries Division, Bureau of Areas.

Mr. Price was named executive assistant to the president, Graham-Paige Motors Corp., Detroit, in 1945, and from 1945 to 1952 was vice president and director of the Kaiser-Frazier Corp. He served as treasurer of the corporation in 1945-46 and subsequently was executive vice president and director of the Kaiser-Frazier Export Corp., and an officer in foreign subsidiaries—Canada, Netherlands, and Israel.

From 1952 to 1956, Mr. Price was president and director of Willys-Overland Export Corp., and Willys-Overland of Canada, Ltd., and from 1954 to 1956 was vice president of Willys Motors, Inc.

In 1956-59, Mr. Price was managing director of Willys-Overland do Brazil at Sao Paulo, and from 1959 to 1961 was executive vice president and director of Mercedes-Benz do Brazil at Sao Paulo.

Mr. Price has been decorated by the Belgian and Brazilian Governments for his work and has received special citations from the British and South African Governments.

Mr. Price is married to the former Margaret Bayne, and they have two children—Hickman III and Marston.

Senator PASTORE. Before we hear from our two distinguished Senators, I will ask you about your biographical sketch. Is there anything that you want to add to it or is it complete?

Mr. PRICE. It is complete.

Senator PASTORE. Mr. McNamara.

STATEMENT OF HON. PATRICK V. McNAMARA, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator McNAMARA. Thank you, Mr. Chairman.

You have made reference to the biographical sketch, which has all the pertinent information.

I am very happy to appear here with the most distinguished nominee from the State of Michigan who has indicated his willingness to accept a very high and responsible position in our Government. I think we are extremely fortunate in having men such as Hickman Price participating in Government, and I am happy to be here this morning and I highly recommended him in every way possible for the nomination to which he has been named.

Thank you very much.

Senator PASTORE. Mr. Hart.

STATEMENT OF HON. PHILIP A. HART, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator HART. Mr. Chairman and members of the committee, I simply say, "Amen" to even so stark a thing as a biography, I think it speaks eloquently of the reasons why we think this nomination is an outstanding one. I am satisfied that you will be satisfied after examining Mr. Price. I certainly hope so.

Thank you.

Senator PASTORE. Mr. Price, a member of the staff has handed me a manual of orders which more or less delineates your duties and your responsibilities. You are familiar with them of course?

STATEMENT OF HICKMAN PRICE, JR., OF MICHIGAN, TO BE AN ASSISTANT SECRETARY OF COMMERCE

Mr. PRICE. Yes, sir.

Senator PASTORE. I understand that you have already participated in some of the work in the Department as of now?

Mr. PRICE. Yes, sir; for 3 weeks.

Senator PASTORE. It has come to my attention also that you have been designated as a member of the subcommittee by the Cabinet level committee on this textile situation.

Mr. PRICE. Yes, sir.

Senator PASTORE. Mr. Price, I am not going to interrogate you on that as of now, because, after all, it is a very complex and a very broad

field which has to be analyzed and studied thoroughly. It is my fervent hope that you will give it the attention which it deserves.

A further question, Mr. Price. Is there anything in your accepting this responsibility, with reference to your financial affairs, which would be inimical to the public interest?

Mr. PRICE. No, sir.

Senator PASTORE. Are you prepared to submit to this committee, as other nominees have, a listing of your financial holdings?

Mr. PRICE. Yes, sir.

Senator PASTORE. You have not done that as yet, have you?

Mr. PRICE. I have handed it to the General Counsel of the Department of Commerce, and we will see that you will receive copies thereof.

Senator PASTORE. And you will remove from yourself anything which might be in conflict with your responsibilities in the post that you are to assume?

Mr. PRICE. Yes, sir.

Senator PASTORE. Mr. Schoepfel?

Senator SCHOEPEL. Mr. Price, I notice that you are to be assigned as the Assistant Secretary on Domestic Affairs.

Mr. PRICE. Yes, sir.

Senator SCHOEPEL. Briefly what does that encompass?

Mr. PRICE. It encompasses the following Administrations and Bureaus: Business and Defense Services Administration, the Bureau of the Census, the Office of Business Economics, the Patent Office, and the National Bureau of Standards.

Senator SCHOEPEL. Your responsibility will be in connection with these various and sundry units in relation to your own department?

Mr. PRICE. Well, all of those Bureaus and Administrations are part of the Department of Commerce.

Senator SCHOEPEL. That is what I understand. But you are in charge of all of those separate units within your department?

Mr. PRICE. Yes, sir.

Senator SCHOEPEL. I note with some interest that during the years 1932 to 1934 you were in the Panhandle section of Texas.

Mr. PRICE. Yes, sir.

Senator SCHOEPEL. Therefore you have some sympathy with what those fellows have to go through down there?

Mr. PRICE. From personal experience.

Senator SCHOEPEL. I note that you have had some experience, also, in several years of business connections in Brazil, which should stand you in very good stead with relation to the responsibility of Government in trade relations in foreign countries.

I note that you have received decorations from the Belgian as well as Brazilian Government, and also a special citation from the British Government and the South African Government. You are generally conversant with many of the problems that would develop in those areas, are you not?

Mr. PRICE. Yes, sir.

Senator SCHOEPEL. I think that those are all the questions that I have, Mr. Chairman.

Senator PASTORE. Prior to coming to Government, Mr. Price, with whom were you associated?

Mr. PRICE. I was executive vice president of the Mercedes-Benz in Brazil.

Senator PASTORE. I understand that you had to make a very personal sacrifice to assume this responsibility.

Mr. PRICE. Yes, sir; it was some considerable reduction in compensation.

Senator PASTORE. Would you care to talk about it?

Mr. PRICE. Well—

Senator PASTORE. I think it is always salutary and commendatory for the record to show what personal sacrifice is being made by certain individuals who assume the responsibility of coming down here at great personal sacrifice. I think it is always good for the record to show it. I realize that possibly it may shock your modesty, but I think that you ought to talk about it.

Mr. PRICE. All right, sir.

My reduction in net earned income, after taxes, was 90.3 percent. In other words, I am working for a net of 9.7 percent of my past compensation, which I am very pleased and proud to do at this particular time in our Nation's history.

Senator PASTORE. You are still going to leave it for the great mathematicians to figure out what that comes to. [Laughter.]

What is the loss in dollars that you will sustain?

Mr. PRICE. Approximately \$100,000 a year, plus the loss of a lifetime contract.

Senator PASTORE. Mr. Scott?

Senator SCOTT. I don't think I have any question, Mr. Chairman, except to comment that Mr. Price is undoubtedly worth it, but he is costing us a lot in taxes coming down here. [Laughter.]

I am delighted to have evidence of his willingness to serve and willingness to sacrifice. It is a great compliment to Mr. Price, and it is also evidence that the Commerce Department will benefit from the type of talent which the Government certainly needs and welcomes.

Senator PASTORE. Are there any further questions?

Senator SCOTT. No, sir.

Senator PASTORE. Mr. Thurmond?

Senator THURMOND. Mr. Chairman, I don't have any questions. I would simply like to say that I think our Government is fortunate to obtain the services of such an outstanding citizen. I would like to compliment him upon being willing to sacrifice, from a financial standpoint, to such an extent as he is doing in order to serve his country.

I want to say further that I have received information about him—I never met him but I have received information from most reliable people who tell me that he is an outstanding and able man, and that we are very fortunate to have him in our Government.

Mr. PRICE. Thank you very much, Senator.

Senator PASTORE. Senator Bartlett?

Senator BARTLETT. Mr. Chairman, I have no questions. I will only say that had I entertained any doubts as to the qualifications of this nominee, which I did not, they would have been resolved by the warm support given him by the two Senators from Michigan. And I will add that I am glad I came to this meeting because I can report to my grandchildren that I saw in visible form a man who made over a hundred thousand dollars a year and who came down here at such a sacri-

fice, and I doubt not that there will be other occasions when he appears before congressional committees when he will be in doubt as to the advisability of the course he took. [Laughter.]

Senator PASTORE. Mr. Price, on July 2, 1960, the Senate agreed to Senate Resolution 338, which resolved that it is the sense of the Senate that individuals appointed to administrative and policymaking posts should be willing to serve for a period long enough to permit them to contribute effectively to their assigned tasks, and that it is the sense of the Senate that nominees appearing before its committees shall indicate their willingness to serve as long as the President desires.

Have you any observation to make with reference to that?

Mr. PRICE. Yes, sir, I have.

I have cut all of my ties, I have entered into a mutual cancellation of contract, and I am prepared and desire to remain with the Federal Government for as long as it wants me.

Senator PASTORE. Thank you very much.

Are there any further questions of Mr. Price?

[No response.]

Senator PASTORE. Thank you very, very much, Mr. Price. We wish you the best of luck.

Mr. PRICE. Thank you.

NOMINATION OF ROBERT T. MURPHY, OF RHODE ISLAND, TO BE A MEMBER OF THE CIVIL AERONAUTICS BOARD

Senator PASTORE. The next matter on the agenda is the nomination of Mr. Robert T. Murphy, to be a member of the Civil Aeronautics Board for the remainder of the term expiring December 31, 1966.

Mr. Murphy, we have your biographical sketch—not that the members of this particular committee need it, because we have been familiar with you and your quality of work for a long time. At this time I shall have it inserted in the record.

(The biographical sketch of Mr. Murphy follows:)

BIOGRAPHICAL SKETCH OF ROBERT T. MURPHY

Legal resident: 2 Bayberry Road, Narragansett, R.I.

Age 45: Born, Providence, R.I., March 5, 1915.

Married: Anna L. Meenagh, 1940; Trinity College, 1935.

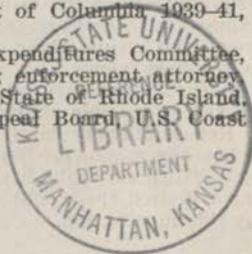
Children: Robert T., Jr., 19 (Georgetown University, class of 1963); Brian P., 17, Gonzaga High School; Richard J., 15, Gonzaga High School.

Graduated LaSalle Academy, Providence, R.I., 1932; Providence College (A.B.) 1936; president, Providence College Debating Union; Georgetown University Law School (LL.B.) 1940. Staff member, Georgetown Law Journal, 1938-40; award winner Georgetown Law Club Debates, 1940.

Admitted to the bar of the District of Columbia (1939), and to the bar of the State of Rhode Island (1941). Member of the bar association of the District of Columbia, the American Bar Association, Federal Bar Association, American Judicature Society and the Counsellors; admitted to practice before Supreme Court of the United States, 1946; admitted to practice before numerous Federal administrative boards and agencies.

Engaged in active private practice of law, District of Columbia 1939-41, 1945-56; in Rhode Island, 1941-42.

Served as chief counsel, U.S. Senate Campaign Expenditures Committee, 1944-45 (Senator Theodore Francis Green, chairman); enforcement attorney, Office of Price Administration, 1943-44; tax attorney, State of Rhode Island, 1942-43; designated as a public member, National Appeal Board, U.S. Coast Guard, 1952-56 (security cases).



Special counsel, U.S. Senate Interstate and Foreign Commerce Committee, 1956-61, assigned to Aviation Subcommittee, 1957 to date; participated in drafting of Federal Aviation Act of 1958, and numerous other aviation studies and legislation.

Participating lecturer, District of Columbia Bar education program; member of various bar committees, including Committee on Public Information of American Bar Association (administrative law section).

Senator PASTORE. Before we come to one of your sponsors, Mr. Pell my illustrious colleague, I would ask you if there is anything further that you would like to add to the biographical sketch.

Mr. MURPHY. No; I don't believe so, Senator.

Senator PASTORE. The committee will now hear from Mr. Pell.

STATEMENT OF HON. CLAIBORNE PELL, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Mr. PELL. Mr. Chairman and gentlemen; it is a great pleasure for me to be here in company with another Rhode Islander, a very distinguished one, too. It gives me great pleasure to introduce here Mr. Robert Murphy, to be a member of the Civil Aeronautics Board. It is very fitting indeed, too, that President Kennedy has selected Mr. Murphy for this particular position of real importance to our administration and country. Rarely has any individual brought to the Civil Aeronautics Board such an extensive wealth of personal ability and experience in the field of administrative law, aviation law, and the aviation field generally. I am sure that Mr. Murphy will, in his new capacity, if approved by you gentlemen, continue to be a source of great pride to all Rhode Islanders, and to all persons who have had the pleasure to know and work with him during his extensive career in government service.

I deem it a particular honor to have the opportunity at this early stage of my own senatorial career to come here today to support wholeheartedly President Kennedy's choice of this outstanding native son of Rhode Island to serve as a member of the CAB.

Thank you.

Senator PASTORE. Thank you very much, Mr. Pell.

Now I shall read for the record two letters received by the committee with reference to this nomination from Mr. John Fogarty, Congressman from Rhode Island; and Mr. Fernand J. St. Germain, Congressman from Rhode Island.

(The letters referred to follow:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 7, 1961.

DEAR MR. CHAIRMAN: It is a distinct pleasure for me to make this presentation to your committee in support of the nomination of Robert T. Murphy for appointment as a member of the Civil Aeronautics Board.

Mr. Murphy has been a close friend of mine for the past 30 years. It seems but a short time ago that I had the privilege of attending school with Bob and studying under the brothers at LaSalle Academy in Providence, R.I. In the classroom in those days, we were taught to be men of clearly defined principle; men who adjust their views to those principles and then act in conformity with those views. To be men whose minds and hearts are attuned to their country's laws; men who would be big enough, brave enough, and bold enough to value principle above expediency and to place honor above success.

Robert Murphy has been one of the greatest exponents of that teaching that I have ever known. He truly has exemplified that training throughout his long and dedicated public life. No wonder is it that his stature and accomplishments have invited the confidence of the President of the United States as evidenced by this nomination.

A sincere and honest man and a person of unimpeachable integrity, Robert Murphy is, in my opinion, one of the best qualified and competent men ever recommended for appointment to a major position in the executive department. I sincerely urge his favorable consideration by your committee.

With kindest personal regards,
Sincerely yours,

JOHN E. FOGARTY, *Member of Congress.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 7, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Interstate and Foreign Commerce Committee,
New Senate Office Building, Washington, D.C.*

DEAR SENATOR MAGNUSON: It is an extreme pleasure for me to write in behalf of Robert T. Murphy, Esq., whom President John F. Kennedy has nominated to become a member of the Civil Aeronautics Board.

Mr. Murphy is a fellow-attorney and alumnus, well-known to me, as he is to so many of the Members of Congress, both in the House and Senate, and he has established a meritorious record of unselfish devotion and dedicated public service.

I sincerely believe that Mr. Murphy's background and experience will bring to the Civil Aeronautics Board all of the qualifications necessary for the effective discharge of the duties of that office.

Yours sincerely,

FERNAND J. ST. GERMAIN.

Senator PASTORE. And now I think there is no more qualified man on this whole committee, and one who has had a greater opportunity to appraise the qualifications of our distinguished nominee, and who I invite for interrogation—Mr. Mike Monroney.

Senator MONRONEY. Thank you very much.

I have, during my many years on this committee, sat through and witnessed the nomination of many men for high position to great responsibility in Government.

I can say without fear of challenge that none has ever been considered or made by the President that has so completely met the unanimity of support of all who will have business before the commission, that their business is to be handled by, as has Bob Murphy. Throughout the time that this nomination has been pending I have heard from every part of the aviation industry, from the mechanics to the pilots to the airline presidents to the municipal authorities who deal with airports and with all other phases of aviation, both general and commercial.

Certainly I know the dedication, the fairness, the judicial temperament and also the expertise that Mr. Murphy has exemplified as the counsel for the Aviation Subcommittee.

The act which controls the Civil Aeronautics Board and its kindred agency, the FAA is a great deal of the handiwork of Bob Murphy through many, many years of acquisition of information as to why it was necessary and as to the form in which it was finally prepared and passed, as he had so greatly contributed to its writing.

You rarely find a man that you have such great respect for, all phases of his personality, his character, his ability and his knowledge of the position that he is to fill.

I have always hoped in the reorganization of Congress that Congress would, in its staffing procedures develop men in our staffs who were

as competent as those who can be brought into the executive department.

The appointment of Bob Murphy certainly exemplifies the fact that we have reached this point in the selection of our most able to head important sectors of the executive department.

I certainly congratulate the President on obtaining his services, and aviation in general in being able to have a man who will be sitting as a judge over so many important facets of this great and growing and dynamic industry.

Senator PASTORE. Thank you very, very much.

As he has another engagement, we will invite Mr. Hartke to join in the accolade.

Senator HARTKE. I would like to join with my colleagues. I would like to associate myself with the remarks of the distinguished Senator from Oklahoma. I think he said so well what I would like to say, that Mr. Murphy will do a fine job.

I congratulate the President, the Senate, and the country for having him.

Thank you, Mr. Chairman, for your courtesy to me.

Senator PASTORE. Mr. Schoeppel?

Senator SCHOEPEL. Mr. Chairman, I want to say to our staff member here that I am delighted indeed that the President has seen fit to beckon him to this responsible and important position. You have served this committee admirably and well. You should carry to your responsible position, as I view it, many things which would be very helpful in expediting the work on that important Civil Aeronautics Board. I need not remind you, of course, that you have observed here from time to time some of the problems that confront all of us with reference to some of the delays that come about probably because of extra heavy loads or a lack of expeditious handling of some of the applications. Many times we get requests from people who are interested, and who wonder why there are delays. I am sure you will carry into that responsible position a sympathetic understanding. If and when a matter comes before you in a semijudicial capacity, when we make inquiry you will probably say, "I know what they have in mind, and they are probably wondering where this thing is and when it is going to be decided; not how, but when." I am sure that you will be in a position down there to assist greatly in expediting those important decisions. I commend you.

It has been a pleasure personally for me to have worked with you, as I know it has the other members of this committee.

Mr. MURPHY. Thank you very much, Senator.

Senator PASTORE. Mr. Thurmond?

Senator THURMOND. Mr. Chairman, in order to avoid repetition, I would simply like to associate myself with the fine remarks of the able and distinguished Senator from Oklahoma. Mr. Murphy is a man of splendid reputation. He is a hard worker. He is able. He has had plenty of valuable experience, and I am sure that he will be a credit to our Government in this important position. I wish him much success in his new undertaking.

Mr. MURPHY. Thank you very much, Senator.

Senator PASTORE. Mr. Scott?

Senator SCOTT. Mr. Murphy, I am very happy to join in what has been said here by other Senators, to wish you success and to say that your peculiar advantage in moving to this job by reason of your previous experience with this committee is certainly a very good omen for your continued success in public office. I am very glad to join in this expression of approval, this era of good feeling. It occurs to me that this is a very good day for confirmations to come up.

Mr. MURPHY. Thank you very much.

Senator PASTORE. Senator Bartlett?

Senator BARTLETT. Mr. Chairman, only a couple of weeks ago, in using a few simple nouns, verbs, adjectives, and adverbs in praise of a new flower in honor of Alaska, I made the "Wind on Capitol Hill" department in the New Yorker. If I were to use the words that I could readily command in favor of Bob Murphy, there would be so many purple passages that they would have to create a new department in the New Yorker. So I shall restrain myself and content myself by saying that I think this is an extraordinarily wonderful appointment for the entire country.

Mr. MURPHY. I appreciate that very much, Senator.

Senator PASTORE. Mr. McGee.

Senator MCGEE. I will not make any speeches on Bob Murphy this morning. I am taking leave at this moment from another committee, which is still in session. There is no controversy on Mr. Murphy. I don't need to be here. He doesn't need my vote. I came here only long enough to see him put through the paces and pay tribute to him and to tell him of my high respect.

Mr. MURPHY. Thank you very much, Senator McGee.

Senator PASTORE. I have been asked by both Mr. Smathers and Mr. Magnuson, our distinguished chairman, to observe for the record that this nomination pleases them very, very much; that they have the highest confidence in the selection made by the President; and that they take this occasion to congratulate the President, and to congratulate you, Mr. Murphy, to wish you felicitation and the best of luck in your new endeavor.

For myself, it is hardly necessary for me to say anything at all. I have been associated with you for a long time. As a matter of fact I dare take some credit for your appointment as counsel to this committee. I have recognized your abilities for a long, long time. You have a very delightful family, and I wish to you and all yours many years of success, happiness and good health.

Mr. MURPHY. Thank you very much, Mr. Chairman.

Senator PASTORE. Is there any interest that you have which will be inimical to your public trust?

Mr. MURPHY. No, there are not, Senator. I do not own any stocks or bonds in any aeronautical enterprise, and I have no other business, vocation, or employment at the present time that would interfere in any way with the discharge of my duties at the Board should this committee and the Senate choose to confirm me.

I might add that in my years in private practice I have never represented any airline or aeronautical enterprise at any time.

Senator PASTORE. I understand that whatever your financial holdings are, you have made a statement to the committee?

Mr. MURPHY. I have filed a statement with the committee, with Mr. Baynton, our chief counsel.

Senator PASTORE. Are there any further questions?

(No response.)

Senator PASTORE. There being none, the committee will now go into executive session.

(Thereupon, at 10:35 a.m., the subcommittee was adjourned to the consideration of other business.)

SUNDRY NOMINATIONS—1961

TUESDAY, MARCH 14, 1961

U.S. SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee was called to order, pursuant to adjournment, at 11:25 a.m., in room 5110, New Senate Office Building, Hon. Warren G. Magnuson presiding.

NOMINATION OF PAUL RANDALL DIXON, OF TENNESSEE, TO BE A FEDERAL TRADE COMMISSIONER FOR THE UNEXPIRED TERM OF 7 YEARS FROM SEPTEMBER 26, 1960

The CHAIRMAN. The committee will come to order.

The committee has before it today the nomination of Paul Randall Dixon, of Tennessee, to be a Federal Trade Commissioner for the unexpired term of 7 years from September 26, 1960. We have the biographical data submitted by Mr. Dixon. We also have the nomination of Philip Elman, of Maryland, to be a Federal Trade Commissioner for the unexpired term of 7 years from September 26, 1956. We will place Mr. Dixon's biographical data in the record in full.

(The biographical sketch of Mr. Dixon follows:)

PAUL RANDALL DIXON

Age: 47. Born: September 29, 1913, at Nashville, Tenn.

Family and background: Father, James David Dixon (deceased); mother, Sarah Munn Dixon; both native-born Tennesseans. Three brothers and one sister. Married Doris Busby, a college classmate, 1939. Two sons, David Leslie, 13, and Paul Randall, Jr., 10.

Education: Public schools, Davidson County, Tenn. A.B., Vanderbilt University, 1936. LL.B., University of Florida, 1938.

Early career: Assistant football coach, University of Florida, 1936-38. Member of bar of States of Tennessee and Florida. In July 1938 accepted appointment as trial attorney on staff of Federal Trade Commission. With exception of war years, continued on staff of Federal Trade Commission until accepting appointment in February 1957 from Senator Estes Kefauver, chairman of the Senate Antitrust and Monopoly Subcommittee, to serve as counsel and staff director of that subcommittee.

Military service: Active duty with the Navy, 1942-45. Entered the Navy as lieutenant (j.g.) on staff of Chief of Naval Operations. Served overseas as assistant to the commanding officer, Naval Operating Base, Palermo, Sicily. Twenty-three months duty outside limits of continental United States. Participated in occupation of Africa and in invasion and occupation of Sicily. Entitled to wear three battle stars. Presently lieutenant commander, USNR (Ret.).

Recent career: As counsel and staff director of the Senate Antitrust and Monopoly Subcommittee from February 1957 to date, assisted the subcommittee in developing and focusing the attention of Congress and the public on a large number of important and difficult problems in the field of restraints of trade,

such as the problem of administered prices in many major industries, including steel, automobile, oil, bread, and drugs.

Other activities: Methodist, Mason, member of ATO college social fraternity, and member of alumni board of directors of Vanderbilt University.

The CHAIRMAN. We have with us today two of our colleagues, Senators Kefauver and Gore of Tennessee. We will be glad to hear from you.

**STATEMENT OF HON. ESTES KEFAUVER, A U.S. SENATOR FROM
THE STATE OF TENNESSEE**

Senator KEFAUVER. Mr. Chairman and my colleagues on the committee, I am glad to be here with my able colleague, Senator Gore, to recommend very highly the confirmation of Paul Rand Dixon to be Chairman of the Federal Trade Commission.

I have known Mr. Dixon since back in the thirties, when he was an all-southern halfback with a school that was a rival of my college. He had an outstanding career at Vanderbilt, and later as an assistant coach at the University of Florida, and in the law class of our colleague, Senator Smathers, I believe.

Shortly after that Mr. Dixon came to Washington to be an attorney for the Federal Trade Commission. He became one of the outstanding senior attorneys of the Federal Trade Commission. His service with the Federal Trade Commission was only interrupted by the time he served outstandingly in the U.S. Navy, coming out as a lieutenant commander.

In the first part of 1957, when I became chairman of the Antitrust and Monopoly Subcommittee, I considered a number of people to be chief counsel and staff director, and my decision was definitely Mr. Dixon for that position.

He has a good mind; he is a man of integrity; he is a hard worker; he is fair; he knows how to get along with people. He has a good philosophy about competition and antitrust, and he has a broad understanding of antitrust laws. It is my opinion that he will make an excellent Chairman of the Federal Trade Commission.

I could speak about his work in detail with my committee over a period of 4 years, but I think most of you Senators are familiar with the excellent record that he has made, and his ability to get at the facts and to ferret out the main issues in any antitrust problem.

Thank you very much.

The CHAIRMAN. Thank you, Senator Kefauver.

Are there any questions of Senator Kefauver?

(No response.)

Senator KEFAUVER. I wrote you a letter, Mr. Chairman, some time back, which I would like to have made a part of the record.

The CHAIRMAN. We will make your letter a part of the record.

(The letter follows:)

FEBRUARY 27, 1961.

HON. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR MAGGIE: It is a pleasure for me to write to you in behalf of Rand Dixon, a fellow Tennessean, who has been nominated by the President for the chairmanship of the Federal Trade Commission.

In my estimation, Rand Dixon is the finest choice that possibly could have been made. He has an extremely well-related background and is very highly

regarded as a capable and conscientious attorney. His work with my Subcommittee on Antitrust and Monopoly has given him ample opportunity to demonstrate many fine qualities of leadership that will certainly be put to good use as the top official of the Federal Trade Commission.

I am hopeful that your committee will act early and favorably on Mr. Dixon's nomination.

Kindest personal regards,

Sincerely,

ESTES KEFAUVER, *U.S. Senator.*

The CHAIRMAN. Senator Gore, we will be glad to hear from you.

STATEMENT OF HON. ALBERT GORE, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator GORE. Mr. Chairman and members of the committee, I concur in the statement which Senator Kefauver has just made. In my view, the nomination of Mr. Dixon is a very fitting and outstanding one. It is not always that nominees whom we have the duty to consider have had a background of experience so pointed and so fitting for the position for which they are nominated.

I would like to say that Mr. Dixon has one additional qualification, but suggest that that raises some doubt. He was a classmate of my wife in law school at Vanderbilt University. That is all to his credit, but I have heard some rumors that she gave him a little assistance, and I am not sure how he is going to get along just now.

The CHAIRMAN. He is a classmate of pretty near everybody. [Laughter.]

He never came very far north.

Senator GORE. I wholeheartedly endorse this nominee and recommend him in the highest of terms to this committee.

The CHAIRMAN. Thank you, Senator Gore.

Are there any questions of the Senator from Tennessee?

The Senator from Florida?

Senator SMATHERS. I have no questions.

I am sure that the able junior Senator from Tennessee does not consider it a disqualification that Mr. Dixon happened to get some scholastic help from the junior Senator's wife. My observation is that the junior Senator has been getting a good bit of help from his wife, too. [Laughter.]

Senator GORE. I acknowledge it, and let the record show it.

The CHAIRMAN. Yes; it had better show it, so he can bring it home with him.

Senator SMATHERS. Mr. Chairman, would this be the appropriate time for me to echo what has been said by both the Senators from Tennessee?

Speaking of Mr. Dixon as a man, it has been my privilege to know him since 1936. He was an outstanding student. He learned so much in law school, with the benefit of Mrs. Gore, that he was able to help some of us students at the University of Florida, which we doubly appreciate.

He was a fine athlete; he was a fine man. He was an excellent coach. He has a lovely family. He is a man of honor, a man of integrity, and a very industrious young man. I am satisfied that in this very responsible position that he will act with responsibility, with reasonableness, and at the same time, I think will put meaning into

laws which we have on the books in this very important area of economic assistance.

I am delighted to join with them in endorsing the nomination of Paul Rand Dixon for this job.

The CHAIRMAN. I thank both of you, and appreciate your coming. Mr. Dixon, we would be glad to have you come forward.

For the purpose again of the record, we will put Mr. Dixon's biography in the record in full. Mr. Dixon is 47 years old. He comes originally from Tennessee. We have heard about his education and his dubious classmates. [Laughter.]

He also has had some military service. He is a lieutenant commander, so now he has a connection with the chairman in the Reserve. He was a great football player, so he has another connection with the distinguished Senator from Kansas, another football player, Senator Smathers, and the Senator from Washington.

Senator ENGLE. And can't we have the record show that the distinguished chairman was also a great football player?

The CHAIRMAN. That is a matter of opinion.

Senator SMATHERS. It is a matter of opinion and memory.

The CHAIRMAN. I think the significant part of Mr. Dixon's biography is that he did serve in the Federal Trade Commission as a trial attorney. How long did you serve there?

STATEMENT OF PAUL RANDALL DIXON, NOMINEE FOR THE POSITION OF CHAIRMAN OF THE FEDERAL TRADE COMMISSION

Mr. DIXON. I went there in 1938, Mr. Chairman, and I served originally in a little division they called Radio and Periodical, which was administrative handling of deceptive advertising cases.

Then I believe I went to the Navy from that post.

I came back in 1945 and went to the trial staff and I served there until 1957.

The CHAIRMAN. And then in 1957 you came up to the Hill and served in the Senate Antitrust and Monopoly Subcommittee.

Mr. DIXON. That is correct.

The CHAIRMAN. And you have been active on that committee since, up to date?

Mr. DIXON. That is correct.

The CHAIRMAN. You did most of the staff work on the different hearings and inquiries of that committee in the field of restraints of trade; is that correct?

Mr. DIXON. I was responsible to correlate it, sir. That was my responsibility.

The CHAIRMAN. And that was the drug industry in one instance?

Mr. DIXON. That was one of them.

The CHAIRMAN. The steel industry?

Mr. DIXON. That is correct, sir.

The CHAIRMAN. And the oil industry?

Mr. DIXON. That is correct.

The CHAIRMAN. And also briefly in the automobile industry?

Mr. DIXON. They are four of the areas we have been in. We have been in many others.

The CHAIRMAN. I want to ask you this question. You understand, I am sure, the basic purpose of the Federal Trade Commission. It is to maintain, of course, free competitive enterprise, based upon the fact that we think that is the keystone of our economic system, and to prevent it being stifled or fettered by monopoly, or unfair trade practices or anything of that nature.

The Bureau of the Budget, in a 152-page report, says in effect that the actions of the Commission to date have not been so good, and commends many changes. I am wondering if you are familiar with that report?

Mr. DIXON. I have not read it in detail, Senator. I have glanced at a little summary of it very quickly this morning. But I certainly agree that the Federal Trade Commission's processes certainly can be improved.

The CHAIRMAN. And then Judge Landis, in his report to the President, mentioned the so-called Howrey Reorganization Plan of 1954. Are you familiar with that?

Mr. DIXON. I was there, sir.

The CHAIRMAN. You were there?

Mr. DIXON. Yes, sir.

The CHAIRMAN. That recommended some changes?

Mr. DIXON. Yes, sir.

The CHAIRMAN. I might say to you, Mr. Dixon, that our staff has been quite familiar with these reports, and in a very informal way they pretty much agree with some of the suggestions made in the Landis report. Not all of them, necessarily, but some of them, and the Bureau of the Budget report, of which you probably have a copy.

We have had most of the commissioners of the independent agencies before this committee.

Every member of the committee, of course, is deeply concerned with what we call the regulatory lag, and this holds true in the ICC, the FCC, the Federal Trade Commission, CAB, the Federal Power Commission, and the others.

I am wondering, having worked with the Federal Trade Commission in your capacity on the Hill, whether you have any ideas as to administrative reorganization which might, we hope, cut down this regulatory lag. Last year, I found out, the average in most commissions for a decision in controversial cases was about 18 months.

Mr. DIXON. Mr. Chairman, I do have several suggestions in that area, and I am very cognizant of the same problem you are because, working here with the Antitrust and Monopoly Subcommittee I suppose we have seen on that subcommittee many of the same type complaints that you and the other Senators have received in your office. I know of several examples where cases have taken extensive time from the time that they were called to the Commission's attention until the final action of the Commission.

I am very aware of the problem there that has been highlighted by, I believe, Dean Landis' report in the so-called Bureau of Investigation where it might appear that papers are being worn out by handling them a little bit too much.

I am also very much aware of the protracted litigation period. That is actually when issue is joined and we go into the adversary proceeding.

I recently availed myself of some of the personnel structure presently at the Commission, and I found out that there are presently at the Commission about 15 hearing examiners. I would perhaps hazard the guess that they may be today some 3 years or so behind on their docket. If ever there was proof of the statement that justice delayed is justice denied, we have a pretty good example of it right here.

I have seen hundreds of letters where small businessmen write to various Members of the Senate and say, "This is all good and well that this is being tried, but I went out of business last year." And this has taken place while cases are being handled in due course under the present Commission proceedings.

I would suggest, sir—and of course if confirmed I will be one of the members of the Commission; I will be its chairman—that I hope to make recommendations to the Commission, the other Commissioners, and I hope that they will go along with some of these suggestions, and I hope that they will be able to improve upon them before we finally adopt them.

I would think that within the framework of the Federal Trade Commission we can do a great deal about centering some of these problems, centering them so that they won't be in various hands. Perhaps from the standpoint of centering enforcement, centering some of the better people who have been in investigations down at the level where it starts, where it is planned, where it is executed, at one place.

I would hope also to be able to suggest to my fellow Commissioners that we pattern some of our rules of practice a little bit nearer those of the Federal rules of civil procedure.

For instance, I see no reason why, after we figure out the time element, we could not adopt a rule; and we have the right under the basic act to make our rules—I think it would be consistent with the APA Act; I think it would satisfy the fullest due process also—to where we might perhaps issue our complaints, setting the initial hearing down for a time, place, and a date certain where that complaint will be heard until completed, and no appeal will lie until the case comes to the Commission.

This happens in the courts. We can do it at the Federal Trade Commission. There are cases down there which may run 5, 6, or 7 years after the complaint was issued.

The CHAIRMAN. I have one here, and I don't suggest the controversy in the case, but I do suggest that the time it has taken is almost unthinkable. This is the National Congress of Petroleum Retailers in the matter of the Texas Co. They applied to the Federal Trade Commission for investigation and opening of a docket against the Texas Co. in December 1956.

In 1957, 10 months later, the Federal Trade Commission issued the complaint.

In January 1958, the Retail Gasoline Dealers Association of Michigan applied to the FTC for relief in the same type of case.

In February 1958, 2 years later, they had the first hearings on the *Norfolk* case.

In May 1958 they asked for additional evidence from the Michigan people.

In June 1958 they had a conference between the Chairman and the Retail Gasoline Dealers of Michigan to urge speed.

In June 1958 the Norfolk hearings were reopened.

In October 1958 they had more hearings.

In 1959 they had hearings in the District of Columbia.

In August they had a hearing in Detroit. And in October 1959 they had another hearing in the District of Columbia.

In September 1960 the Norfolk hearing was reopened. And in September of 1960 they held hearings in New York City. These were recessed at the end of September, to resume again on April 2, 1962, which was the next free date of the examiner.

Mr. DIXON. I think you have a typical example of the problem right in your hand.

Something has got to be done about that, because nothing is being decided one way or the other under such hit-and-miss procedures.

The CHAIRMAN. I suppose I could pick out a few more.

Mr. DIXON. You could. You could pick out some that I participated in, and I could tell you that the problem is on its face bad enough, but if you participate in one—let me try to describe briefly how that could happen.

If you had the responsibility as the attorney in charge of that complaint before the Commission, you would try to get a date set down to begin the case under the present procedure. Here are these 15 Hearing Examiners down there, loaded up to their ears, and so you would try to get some period. We would say, "I have a 10-day or 5-day period over yonder" somewhere. It may be 6 months, it may be a year; so you have to take it.

Then you take this first bite at the cherry, you might say. Then you get to the end of that time and the examiner says, "Let's recess a minute." They go off the record and he says, "When do you want to come back here?"

The attorney will say, "I would like to go next week or in two weeks."

The Examiner will look at his schedule and he commiserates about his problems, and his next open day is in 6 months, and then they go to the respondent's counsel. And if there is more than one, the problem is multiplied because he may be in court that day or have something else. And so before you get through talking about it long, the next bite is 6 months or a year or beyond.

We must solve that problem. Today, at the Federal Trade Commission, for example, Mr. Chairman, I believe the record might show that about 80 percent of those cases are settled. Under the present procedures the Hearing Examiner is in that proceeding. This fouls his docket up. I would hope, there being no reason for him to be there, that because if it is settled he merely accepts it and writes an initial decision which the Commission has to approve or disapprove, that we can bypass that procedure. I see no reason why he can't be taken out of that so that he is free to do his job, and let that come straight on to the Commission, perhaps set up some office in the General Counsel's office, as an assistant, because under the APA he is the adviser to the Commission anyway. It would not do injustice to the APA to put a man in that position and relieve the hearing examiner of it and get on to the important jobs of his position.

The Eisenhower administration, the Budget Bureau, was very kind to recommend some \$1½ million increase for this agency. You have been passing laws here, for instance, on wool, fiber, and the textile field. Each time this puts another burden on this Commission. We do need more help to do this job.

The CHAIRMAN. I hope if and when you are confirmed that you will do this: I happen to handle the appropriation for the Federal Trade Commission in the Senate. I have asked them time and time again for the past 8 or 10 years: "Are these bottlenecks and this regulatory lag caused by the fact that you do not have enough examiners?"

Mr. DIXON. It is certainly so, sir.

The CHAIRMAN. They continue to say that they will get along with what the Budget recommended, and at no time have I ever recommended to the full committee, or failed to recommend, a little amount of money to add up to more examiners or to at least beef up the administrative procedures.

Four years ago I recommended extra money in the field that you were in, in radio and television, which you are familiar with.

Mr. DIXON. Yes, sir.

The CHAIRMAN. You and I have talked about this. It wasn't until—let's be frank—the Harris committee started over there that they started to do something about that. I am hopeful, with your past experience in the radio and periodical field, that the money that was given to them for that purpose, which is in the budget again, I believe, would be used to do that sort of thing. But I think that the Commissions have hesitated to tell the Congress and the Appropriations Committee, if the Budget Bureau hasn't recommended it, that they may need a small extra amount for the kind of help that can do this sort of job because the cost to the public is tremendous when they don't do it.

Mr. DIXON. Mr. Chairman, one lesson I have learned up here, working with the Senators that I have had the privilege of working with, is that this is the exact thing that must be brought here. If the Senate and the House is to do its job, it must be given this type of information, because yours is the responsibility to regulate it. We are but a tool down there. We are but your tool. If we don't do it, I say you ought to abolish this place; you ought to get rid of it and invent something new. Because under the present system, it is not working as good as the people are entitled to have it work.

If our hearing examiners are up to their neck and 3 years behind, commonsense dictates to me that we ought to have enough money where these things can be expeditiously handled.

We should not bleed papers to death. We should get on to the problem and get it behind us.

It would be my hope to pull the beginning date and the ending date together, at least to participate and get my fellow Commissioners to share in that burden.

The CHAIRMAN. I think that you will find all the members of this committee wholeheartedly behind you in trying to do something about this.

Along the same line, the Federal Trade Commission finally, after some urging, established a pilot operation. They happened to establish it in the Seattle office of the Commission where the idea was to have the attorneys in that particular office who investigate a case

carry the case to its ultimate conclusion, including the drafting of complaints, negotiating stipulations and consent orders, and actually trying those cases which are litigated, when the director in charge out there said that in his judgment the attorney handling the matter was qualified to follow through with the case.

This is a sort of a pilot operation—I don't know if you are familiar with it—which has been in process for a few months. The theory and the hope was that we would be able to service the small man in the particular area so he wouldn't have to have all the expense which sometimes he can't afford, to come all the way here. In other words to put more responsibility on the attorneys in the field.

Mr. DIXON. Mr. Chairman, I think under the present procedure of the Federal Trade Commission that it was a good experiment.

I would hope to center this whole thing in one place, to plan it and execute it. I think that what you are saying is correct. In the past this Federal Trade Commission has been a traveling bureau. A lot of these troubles are due to the fact that you go here, go there, and go there, hold 2 days hearings here, skip over and hold 2 days there. We are very close together in America today. There is not much excuse to spend all of the tremendous money jumping around the United States when, it seems to me, a case could be set down at a logical point.

If the case were to have its setting in the great Northwestern part of the United States, it would be rather useless to set the case down here. Set it down there, hear it until it is complete, and then we would have our job done.

I think that we can take the necessary steps.

The CHAIRMAN. The Securities and Exchange Commission inaugurated this procedure, and they think it has worked very well for them.

The National Labor Relations Board to some extent has done the same. And the Bureau of the Budget, after looking at this, has recommended that this be followed.

Mr. DIXON. There is no doubt that perhaps we can segmentize ourselves some way along the same line. My great desire is to bring together what the experiment was attempting to do: investigation and trial, so that the man who conceives the cause of action builds it and then executes it. And that is what was attempted right there.

I would like to do that on a Commission-wide basis. That is about what it is.

The CHAIRMAN. I would suggest, of course, that you look at this pilot operation, and at the Securities and Exchange Commission which has valuable experience in this matter. I am sure they will go along with recommending that it be done.

I have three questions: Will you submit for our files a list of your financial holdings so that we can lay to rest any possible concern about a conflict of interest?

Mr. DIXON. I will send you my mortgage. [Laughter.]

The CHAIRMAN. We have a letter here from you that says there is no conflict, which we will place in the file.

I am sure that as a football coach you didn't accumulate much?

Mr. DIXON. No, sir; I had to work in the vineyards.

The CHAIRMAN. And I know that working for Senator Kefauver you didn't accumulate much. [Laughter.]

And going to school with Senator Smathers you wouldn't accumulate much, either.

Last July the Senate passed a resolution which I will read in full:

SENATE RESOLUTION 338

It is the sense of the Senate that individuals appointed to administrative and policymaking posts should be willing to serve for a period long enough to permit them to contribute effectively to their assigned tasks, and it is the sense of the Senate that nominees appearing before its committees shall indicate their willingness to serve so long as the President desires.

What is your thought on your length of service?

Mr. DIXON. Mr. Chairman, I consider the chairmanship of the Federal Trade Commission a distinct honor and privilege to have been offered to me. It is the highlight, I might say, in my professional career. I enter it with every full intention to serve out my term. I know of nothing that I would rather work at. I think I am equipped to make a contribution here, and I do not go there with any idea of serving any short period of time and jumping to something else. I intend to serve my term fully.

The CHAIRMAN. Thank you.

I have another question, because the law itself requires it.

I want you to state for the record your politics. Are you a Republican or a Democrat?

Mr. DIXON. I am a Democrat, sir; have been all my life. My great grandfather would turn over in his grave if I admitted to anything different.

The CHAIRMAN. Are there any questions by the members of the committee?

The Senator from South Carolina?

Senator THURMOND. Mr. Chairman, I don't have any questions. I would like to say for the record that Mr. Dixon has served as trial attorney on the staff of the Federal Trade Commission. He served as counsel and staff director of Senator Kefauver's subcommittee. He has a very enviable record. He is well qualified for the position, and I think our Government is fortunate to obtain his services.

Mr. DIXON. Thank you, Senator.

The CHAIRMAN. The Senator from Kansas.

Senator SCHOEPEL. First, Mr. Dixon, let me say that I am glad that you have accepted this responsibility.

Mr. DIXON. Thank you, sir.

Senator SCHOEPEL. I think that you bring into this Commission much needed experience and background which will be most helpful down there, and I appreciated the opportunity of sitting down and discussing with you on one occasion the problems that we are confronted with when we hear from our constituents and representatives of business.

I don't know of anybody who is better qualified than you to see the necessity of proper handling of the various interests that are entitled to be heard.

Therefore I think that you will make a very fine contribution down there, and I am glad for your appointment.

I want to speak, first, of one question that Senators and Members of the House are confronted with many times.

Many matters are before these departments, and they have been pyramiding because they have been dragging out so long. We get

any number of letters every month asking us to make inquiry in the respective departments as to why this and why that—not going to the basic decision that is to be made—I am sure you know that. But do you have any objection to Members of Congress inquiring as to the status of any matters before your agency?

Mr. DIXON. I have no objections.

Senator SCHOEPEL. Do you feel that that is a good way of discharging a Congressman's or a Senator's responsibility when his constituents might want to know when some case will be heard, or what is holding it up, or when can a decision be expected? When Congressmen or Senators call you they are only trying to do something for their constituents.

Mr. DIXON. This is practically a matter of public record. It certainly should be available to the Members of the Congress.

Senator SCHOEPEL. I notice here with reference to the Budget Bureau's recently mentioned study, especially of the Federal Trade Commission, it mentions the relationship of the Commission with other governmental agencies. Probably because of the unpleasantness arising out of a certain battery additive case, that the Bureau of Standards is reported reluctant to do analytical testing for the FTC. Do you think this committee could be of help in this matter?

Mr. DIXON. I think that reasonable men ought to be able to perform their public responsibilities. Certainly the Bureau of Standards is one of the principal sources for expertise in our Government. The Federal Trade Commission to my knowledge in the past has used it quite extensively.

I hope to look into the matter immediately, sir, to see what the problem is and see if we cannot resurrect a good, sound, working arrangement.

If it cannot be worked out that way, I certainly am going to ask for all the help I can to see that we do work it out.

Senator SCHOEPEL. I appreciate your views on that.

Is the Department of Agriculture, so far as you know, now referring cases under the Packers and Stockyards Act of 1958 to the Commission?

Mr. DIXON. I have no knowledge on that.

Senator SCHOEPEL. I understand there were no referrals in 1959, and I merely wanted to ask you about that, if you had any knowledge of it?

Mr. DIXON. I have none at present.

Senator SCHOEPEL. I note that there has been some inquiry made on this other subject that I want to ask you about.

What do you think—if you have gone into it sufficiently—of the Bureau of the Budget's recommendations that offices of the Small Business Administration be used to educate businessmen about the laws administered by the FTC?

Mr. DIXON. That is the first time I have had that called to my attention. I don't know how they could do a very good job of educating them unless they had some expert knowledge, which I assume they could acquire or obtain somewhere. But I think the Federal Trade Commission ought to be capable of educating the small businessman on FTC laws. I would certainly hope we should be able to do that.

Senator SCHOEPEL. Finally, Mr. Dixon, as in the old game of foot-

ball, where you give and take in accordance with the rules of the game, you will give it everything you have got, and I am sure that experience will not be anything but good down in the ball game that you are in now.

Mr. DIXON. This I subscribe to fully, sir.

Senator SCHOEPEL. No further questions.

The CHAIRMAN. Senator Cotton?

Senator COTTON. I have a few questions.

I was very much interested in your statements about the need of some means of increasing the efficiency, effectiveness, and speed of the Federal Trade Commission's activities. I wonder, is it your intention to change the organization of the Commission, to provide new names for bureaus, to consolidate bureaus, or to create new bureaus to perform the duties and functions that have heretofore been performed by the existing bureaus?

Mr. DIXON. I think that it will be necessary to redesignate some names. I think that it will be necessary to redesignate functions of some.

What I was trying to say, Senator Cotton, was this: Today, if you as a Senator receive a complaint from your State, from a given small businessman, that says, "This is happening to me," and it would appear to you that this would be questionable under one of the various statutes that the Federal Trade Commission is supposed to enforce, it would go to the Federal Trade Commission and probably lodge eventually in the Investigation Bureau. At that Bureau level a decision would have to be made as to how to proceed on it, whether to proceed, you might say, administratively, looking toward a short answer, or looking toward ultimate trial. If that decision is made it would have to eventually pass along down through a project attorney, perhaps, and then eventually out to the field.

Eventually it would get to some attorney somewhere in some field office who would begin to build the case. At that stage that man would have to comprehend the case which he had in mind ultimately bringing. He would have to, in effect, conceive the theory. He would then try to put it together. He would then make a recommendation that would come the torturous route back to the chief project attorney and then over to the chief and over to the head of the Bureau and then, if it is agreed that there is a cause of action, by way of the Executive Director down to the Trial Bureau, who then in turn passes it along to a given attorney who then looks at the file and says, "That guy who investigated that didn't know anything about it anyway; he doesn't know as much as I do." So he gets on an airplane and goes and does the same thing over again.

It seems to me logically that the beginning and execution of these things should be centered somewhere; that we have many tools in the Commission that have not been used too much in the past. One is the outright legislative grant in section 6, your power from the Congress, which says this Commission can seek, can demand, at least of corporations, evidence. They can demand it. We can use that tool to get a great deal of information without this torturous route.

We can on the other hand use a very shortcut method by putting these things together, and then sending to the field to say we need this

and we need that. And the man doesn't have to worry about why. He merely has to worry about getting it and getting it back.

I do very definitely conceive that these things will have to be blended together in a different approach.

Senator CORRON. I am very interested in that. It shows that you, doubtless because of your former connection with the Federal Trade Commission, and your work on Senator Kefauver's committee, have already in mind some pretty definite things about the Commission; is that right?

Mr. DIXON. I have certainly been giving some attention, some thinking on it. I wish I could have thought about it more, but we have been pretty busy over there on the subcommittee. But I will tell you this: My idea of doing this, sir, is to make that Commission the tool that you would expect it to be.

Senator COTTON. That, too, is reassuring.

But in view of the fact that you have more definite knowledge of what you intend to do than perhaps many appointees, I am interested in, and I think the committee should know, some of these things that you definitely have in mind. For instance, would you change, replace the Bureau of Investigation and the Bureau of Litigation?

Mr. DIXON. Let me put it this way, sir.

When you say "I": Reorganization Plan No. 8 gave to the President of the United States for the first time the power to designate a permanent Chairman. That I shall be if confirmed if I understand it correctly.

The Chairman has certain rights. When you get to organization and plan, I can suggest and hope that I can sell some ideas to other Commissioners. I can say to you what I think should be done, which I am honestly doing. I cannot assure you—

Senator CORRON. Let me interrupt you. I understand that, and I am not seeking to embarrass you in any way with your colleagues that you expect to serve with. My question merely is, you do have some definite recommendations in mind, and I was after them, I assure you.

Mr. DIXON. I would be very happy to talk about those.

For instance, today there is this Bureau of Investigation, as it is called today. I have talked briefly about that as the center of the Commission today, although they do not follow it and execute it and try the case. They do not have the experience of trial and error. If they find it out, it is by reading it somewhere. I want to take the best supervisory brains from that group, mold them with the trial, so that they can conceive the cause of action at that level, build it and execute it. That does not play down the importance of the Investigation Bureau, because there will still be left the many field offices that we have, where information can be obtained and obtained quickly, and it takes men of good caliber to do it. So far as the public is concerned, when there is a field office in the city of Chicago, New York, Atlanta, or Seattle, this is the Federal Trade Commission. This is who the public contacts. It takes men of good balance and good ability to run those. This does not contemplate replacing them. It merely contemplates speeding up the process.

The present Bureau of Litigation encompasses everything. What we call restraint, what we call deception, in fabrics and wool. I

would say to you that it seems sensible to me to make three enforcement bureaus here: one, deception; one, restraint; and a new bureau, which we have never had before, one in this new fabric fur, wool, and textile field, because you have been passing laws pertaining to these, and a great deal of money is necessary. This is a quasi-legislative grant that the Commission performs. They define terms. This is an outright regulatory function. This is about as near as they get to regulation that I know of there.

Then we have inspectors in that group. They are really investigators-inspectors, who go in to see if the label is right, right on the site. If it isn't, then they prosecute. That should be a bureau.

Deception, deceptive practice, should be one; restraint should be one.

We already have the Economic Bureau. We have got to do something to make that bureau more virile. It has not been, sir. Once this was a vigorous bureau. We must do something to make this bureau serve the public a little better.

We have a Bureau of Consultations today that does two things, so far as I can understand it: trade practice conferences and industry guides. This should be maintained. I think it would be well to call it what it is, because that is good approach. That is the equitable approach of trying to bring an industry together, to persuade them to do something voluntarily. This is a good objective, but that objective is no good, sir, unless you very quickly follow and get the fellow who doesn't go along. Because if you take one bad apple and put it in the barrel, it will pollute the whole group. We have got to make that one work better.

I do not conceive any very basic differences. It is regrouping of the tools we have, sir.

Senator COTTON. I was rather interested because when I was on the Appropriations Committee in the House and served on Independent Offices it happened to be my particular job to work on this matter of appropriations for the Federal Trade Commission. I followed some of these through the years. I gather from what you say that it is your present idea that the Bureau of Investigation would be retained but some of its functions taken away from it, and that the Bureau of Litigation would be split up into two or three other bureaus.

Mr. DIXON. Today it fundamentally is split up. It has just one head but is split up anyway. At the Commission level we ought to be able to look at one man and say why. Where is that thing? What is that business that has been there 2 years. He shouldn't be able to point at three other people and say it is this man's fault. I think we ought to be able, when you ask me to come up here to tell you what happened at that place where a man sent a case down in 1960, we ought to be able to answer you.

The CHAIRMAN. Let's take a case. For instance, when an investigator now submits a complete file along with recommendations, the case is reviewed by the branch manager and his assistant; by the project attorney; by the chief project attorney; by the director of the Bureau of Investigation and his two assistants; by the trial attorney and by his superiors; by the legal adviser; by the assistant director;

by the associate director and director of the Bureau of Litigation, before it is ever forwarded to the Commission.

Mr. DIXON. That very well describes it. What I have been trying to say is that if we can take these men who are doing these things, and we can put them right here, then the trial man and that man who has had all this vast experience in building these things, put them together so that they don't have to argue after the fact but argue during the fact, and then make them be the senior members of that section that carries that case on through, sir, we can center responsibility.

The CHAIRMAN. The result of this has been that over 40 percent of the so-called project attorney's cases are over a year old, where only 20 percent of the cases in the field offices are a year old, which I think is an indication of something of what you are talking about.

Mr. DIXON. We must utilize the field offices to get things quickly. We must utilize fully the powers to get things formally. But they must be secured quickly. And I would suggest to you, as Mr. Landis has suggested, bills have been introduced which would empower this agency to issue preliminary injunctions. Think of that. Think of the people who after the complaint comes and the case goes to trial and 5 years passes, of the harm that has happened and the small businessmen who have gone bankrupt and don't have enough money to hire a lawyer to sue for treble damages.

On good cause being shown, if the Commission does its job initially, they should be able, I would think, to exercise the judgment to issue a preliminary injunction if it is subject to judicial review.

Senator COTTON. What happens, for instance, to Mr. Sheehy and Mr. Hill, these men who have been the heads of these two bureaus? Do you have any intentions about them? Are they going to continue to be in the picture? Will some of their duties be taken away from them? I am trying to get down to brass tacks so that I can understand this.

Mr. DIXON. I will say to you quite honestly and frankly here, Senator Cotton, that I have not come to any definite determinations on whom I will recommend to the other Commissioners to head these bureaus. Under the duties and powers of the Chairman of the Federal Trade Commission I can only recommend, but they must approve. So if I said to you I was going to put someone there today, I would not be correct.

The CHAIRMAN. You are against Parkinson's law, aren't you?

Mr. DIXON. I am against Parkinson's law.

Senator COTTON. I won't take the time, but I want to make sure that I understand these things. This is the last time some of them will have a chance to know about this. What you say is very good and eloquently expressed. Out of all this verbiage I want to know just how you feel about these things, if you care to indicate it. Do you believe that the activities of the Bureau of Consultation, for instance, should be decreased or expanded?

Let me make plain what I mean by that. This matter of at least minor infractions of the law, of getting the trade together and getting them voluntarily to cease a practice, to cease and desist a practice that seems to the Commission to be against public policy, to do that in the beginning rather than to start in with legal proceedings; do you think that sort of practice should be expanded or decreased?

Mr. DIXON. I thought I made myself clear on that. Certainly that should not be decreased. It should never be decreased. What that is thrusting against, Senator Cotton, is the age-old hope that we can get people to regulate themselves. And mixed with it is what I interpret as fundamental equity. Rather than hit and miss, you try to clear up an industry practice.

This is the function of that so-called bureau. I will certainly expect to continue it, sir.

Senator COTTON. I am very glad to hear you say that. In the matter of voluntary agreement, I have in mind a Commission press release dated March 2, 1961, which states:

The Bureau of Consultation had written to some 40 cosmetic manufacturers requesting them to discontinue simultaneously any improper foreign origin representation for domestically made products.

I suppose that means calling it French powder when it was made here instead of France. I don't know how many cosmetic manufacturers there are, but this method of sending a letter to a group of them and accepting in return some letter from individual manufacturers that they would comply with this or that, do you feel that that is as good or as safe an approach as to get them all together, everybody in that field, and openly and jointly in each other's presence agree to a course of conduct?

Mr. DIXON. Some people might accuse you of participating in a conspiracy if you did it. But I say this to you: Worthwhile objectives would dictate, it seems to me, to get these false and deceptive means out of our stream of commerce, because they are harming the ethical man who doesn't do it, and they are misleading and taking advantage of the consuming public.

Bringing them together certainly has its advantages, sir. I don't know what prompted the decision by the Commission to do it by letter in that case. I would say that in the past when they have developed what is called trade practice conference rules, they brought the industry together. They had protracted ex parte hearings. They came up with a group of rules which they would recommend and circulate and get comments, and then the Commission would issue them.

And then they would ask the parties to subscribe to them. If that is what happened there, what had taken place is something in advance of it. Perhaps they had already adopted the rules and then they sent the letters out and asked them to subscribe to them.

Senator COTTON. I have in mind also the *Niehoff* case, and other instances at least in which it has seemed that the Commission moved to deal with one offender without reaching the other offenders under section 2(d) and 2(e) of the Robinson-Patman Act.

For instance, this matter of a company which provides a certain service to Woodward & Lothrop, that sends in a demonstrator for his services, and furnish money if it is a money matter, for someone to demonstrate an article which they sell. They do it at Woodward & Lothrop, and presumably under the Robinson-Patman Act if they give Woodward & Lothrop that service they should also give it to Hecht's or Lansburgh's, or whatever other customers there are.

Under the *Niehoff* case the Supreme Court said some things about the Federal Trade Commission that I would say makes your responsibility as Chairman and the responsibility of the Commission very

grave. In the opinion the Supreme Court stressed the expert understanding and the competence of the Federal Trade Commission, and indicated that although allegedly illegal practice may appear to permeate an industry—

whether such appearance reflects fact and whether all firms in the industry should be dealt with in a single proceeding or should receive individualized treatment are questions that call for discretionary determination by the administrative agency.

That recognizes a rather arbitrary power on the part of the Federal Trade Commission.

What I am interested in obtaining from you, because of your knowledge here and your responsibility, I want to make sure how you feel about the handling of that. Would the handling of Robinson-Patman Act matters on an industrywide basis be consistent with the basic intent of this legislation, which is to preserve free competition? How do you feel about moving for a cease-and-desist order on one competitor, without moving toward the others, without dealing with the whole field?

Mr. DIXON. In section 2 of the Clayton Act, we have (a), (c), (d), (e), and (f) sections to deal with. You refer to one or two of them, either advertising allowances or services. They are prescribed by Congress as being illegal, predicated upon the fact that if injuries have occurred flowing from them, that those people who have been injured have the right to sue for damages.

If the Federal Trade Commission begins to proceed administratively, the damaged person has no right. This we must recognize. But I think that we should explore at the Federal Trade Commission, using all of our ingenuity to see if we might be able to devise some kind of a procedure against a group, realizing fully the difficulty of joining parties. Still I think we should explore that.

Then at the same time I think we should give extreme consideration to the desirability of perhaps moving into the very dangerous area of looking at them administratively. But I certainly assure you we shall look at that from that standpoint, because by the roll of the dice you pick the so-called respondent in a case, even though he may be a transgressor and should be brought to bar, and if you bring him to bar he is still the only one in an industry brought to bar, and that is the problem you are staring at and that is what the Court is talking about there.

How can you get people to do that. You have all heard—and Senator Kefauver listened to this—on S. 11 more than any other piece of legislation that has been up here for a long time. Everybody will usually walk out when you mention that piece of legislation. But in these areas of price discrimination there has grown up in all these industries, such as food, which, is in a transgression period, this problem.

Still there is some competition, but it is tightening up every day to where fewer and fewer control it. They all engage in the practices of the *Niehoff* case. At least they are reported to engage in them. If you proceed singly, you will find them saying, "I am doing this in good faith." And they point in good faith at somebody. If you look at the whole industry, they are all pointing at each other and if you look at the center, nobody is standing there. The small business-

man is disappearing, grocery stores, filling stations, milk dairies, you name them all, and if they aren't gone yet they are going to go if we don't stop it somewhere.

The desirability of doing this at one time should be our overall objective. If we are intelligent enough, if we have gotten the right tool to do it formally, we will do it. We will try to do it the best way we can.

Senator COTTON. I thank you for that statement. I gather from that that you do have plans for dealing with practices which violate the Robinson-Patman Act on more than an industrywide basis, unless a company-by-company basis. In a nutshell that is your plan.

Mr. DIXON. Yes, sir.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. If there is no objection, we will recess the committee until 9:30 a.m. tomorrow morning.

(Thereupon, at 12:30 p.m., the committee adjourned until 9:30 a.m. the following day, March 15, 1961.)

SUNDRY NOMINATIONS—1961

WEDNESDAY, MARCH 15, 1961

U.S. SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee was called to order, pursuant to adjournment, at 9:30 a.m. in room 5110, New Senate Office Building, Hon. Warren G. Magnuson presiding.

NOMINATION OF PAUL RANDALL DIXON, OF TENNESSEE, TO BE A FEDERAL TRADE COMMISSIONER FOR THE UNEXPIRED TERM OF 7 YEARS FROM SEPTEMBER 26, 1960—Resumed

The CHAIRMAN. The committee will come to order.

Mr. Dixon, we would like to have you come forward.

When we recessed yesterday, the Senator from New Hampshire was asking some questions of the nominee. I think he has some further questions to ask.

Senator COTTON. I have some, Mr. Chairman. I will go through them as rapidly as possible.

I believe, Mr. Dixon, that when we recessed yesterday you had just been indicating, if I understood you correctly, that you have some plans in mind for dealing with practices which violate the Robinson-Patman Act on more of an industrywide basis than company-by-company basis, which would avoid the problem, for instance, of the *Niehoff* case and other similar instances.

Mr. DIXON. I have tried to leave this impression with you, Senator: that certainly I would hope that if I am confirmed by the Senate that with the other commissioners that would be at the Commission, that we could sit down and take a realistic view of this situation, and if we can in any way take joint action formally we can do it that way. But if we find ourselves where we have to proceed individually, case by case, then I think it is incumbent upon us to use all of the intellect that we have to try to approach this thing on an industrywide basis.

Senator COTTON. Do you believe that the Commission should have additional statutory powers to issue interlocutory cease and desist orders?

Mr. DIXON. Sir, I noted with a great deal of interest, while I served here with the Antitrust and Monopoly Subcommittee, that such bills

have been introduced, both in the House and the Senate. I notice that in Mr. Landis' recommendations that he recommended that. Based on all my experience, sir, I think that it would be worthwhile for the Congress to consider such legislation. I have personally observed the innumerable case instances where small business people have actually disappeared from the American scene while litigation processes are taking place.

Senator CORRON. Why don't the provision of section 13 of the Federal Trade Commission Act give the Commission ample and adequate power with respect to interlocutory injunctions of dealing with advertising which could lead to public injury?

Mr. DIXON. If I understand it correctly, and remember it correctly, that came into the Federal Trade Commission Act with the Wheeler-Lea amendment in 1938, and it deals with foods, drugs, devices, and cosmetics that are harmful, per se. And it would only apply in those cases, sir. So you are pinpointing a very specific limited power, as I understand it, at the Commission. It has been used rather sparingly by the Commission. The aphrodisiac cases were the first, where a preliminary injunction order was obtained and immediately thereafter they disappeared.

Senator CORRON. In general the expanded use of interlocutory and injunctive action by administrative agencies, for instance, judicial agencies, or by anybody else, can, if carried to an extreme, or if enforced too ardently, put parties in the position of having a case decided against them and then having to come in and prove that they are innocent, rather than to follow the tradition of jurisprudence that you are considered innocent until you are proven guilty.

What do you really feel about some more power, in addition to the present rather extensive powers being invested in the Federal Trade Commission, to let the Federal Trade Commission really establish business rules in a rather arbitrary way? Do you or do you not think that additional powers on interlocutory decrees should be dealt with very carefully and in a reserve fashion both by the Congress and by the Commission?

Mr. DIXON. Sir, I would like to attempt to answer the first observation that you made.

If I understand the interlocutory preliminary injunction, whether it be issued by the court or whether it would be issued by the Commission, if the Congress so created the power to do so, it could only be issued upon a justifiable showing where there would, in my opinion, be imminent injury. It would be inevitable. The record would nearly have to speak of it on its face at that stage, and it would only withstand judicial review if such a showing had been made.

I would not understand that merely because such an injunction might have been issued that this would reverse the proceedings into a show-cause action because the burden would still be upon the body to prove what was basically at issue in the complaint.

If you will recall, the empowering section of the Department of Justice I believe is contained in section 15 of the Clayton Act. Here that body—it is one of the sections in the Clayton Act, I may be wrong—the empowering section is 15—in one of the sections of the Clayton Act where it is believed that an antitrust law is about to be

violated, the Justice Department can seek the court's power to preliminarily enjoin it on a proper showing.

The Federal Trade Commission has been granted the right to issue permanent injunctions. That is the greatest of all powers. They have not as yet been granted the right to issue a preliminary injunction, except under, as you pointed out, section 13, where they can go to the district court and seek the aid of the court to issue such an injunction.

What the bills before the Congress, and what Mr. Landis talked about, is to grant to this body of experts to whom you have entrusted this statutory duty, this same type of power. It is not an arbitrary power, sir, it is a power which can only be used sparingly and in those cases where the facts would justify such an issuance.

Mind you, I only make this casual observation: I would think that if such an injunction were issued, that due process would really be speeded up. I can't imagine anyone who would not want to get rid of the issue that really had to be decided.

The CHAIRMAN. Could I ask this question: You mentioned, Senator Cotton, and Mr. Dixon, that there were bills before the Congress. Are there bills before the Senate?

Mr. DIXON. I believe there is one. It was introduced rather late last year. I know there was one in the House of Representatives.

The CHAIRMAN. They would go to the Judiciary Committee. I will ask the Senator from Tennessee, do you know of any such bill before the Judiciary Committee?

Senator KEFAUVER. We had one filed last year. I am not certain about that now.

The CHAIRMAN. Those bills would of necessity go to the Judiciary Committee rather than this committee, because of the court procedures involved.

Excuse me.

Senator COTTON. The matter of the bills is not important. Perhaps I should not have mentioned it. I was only trying to get the feeling of the gentleman who is going to be Chairman of this Commission, on the subject matter which is covered by them. There was a bill, I believe, in the House, by Congressman Patman, and in the Senate by our colleague from Tennessee, at one time.

Senator KEFAUVER. That was last year, but I am not certain about this year.

Senator COTTON. At present, as I understand it, Congress, with some apparent intention, has under section 13 restricted the use of interlocutory injunctive processes to matters dealing with drugs, foods, and cosmetics, that, as you have well phrased it, on the face of it are or are likely to be injurious to the public.

What I am trying to get at—and I think I have your answer and that it is in the affirmative, but I want to make sure that I understand it—you feel that it would be wise to extend that power to other matters than those to which it is now restricted. And in addition to that, I want to make sure: is it your understanding and would it be your policy, as Chairman, that this interlocutory decree be used in ex parte proceedings?

Mr. DIXON. Ex parte proceedings?

Senator COTTON. Yes. Without a preliminary hearing in which the people affected shall have the opportunity to appear. This interlocutory decree, if you were granted that power?

Mr. DIXON. The Federal Trade Commission today must have reason to believe that its laws are being violated now. That information can be secured in many ways. One of those ways of course could be the formal way, through the use of section 6 of the act, for instance. Then, having reason to believe that the act has been violated, it issues its complaint. At that stage the Commission in my opinion would have to probably adopt a rule, say, of show cause why not a preliminary injunction should not be issued, and that would be decided at that time. And based upon that hearing of show cause, then the Commission would have to act, and that would have to stand up, sir, under judicial review.

Senator COTTON. Then if it should not be otherwise indicated by the Congress in some act which should be passed, the possible act that we are now discussing, would it be your conception of the safe and fair and reasonable procedure of the Federal Trade Commission that no interlocutory decree that might hereafter be authorized should be issued by the Commission without citing the people affected before the Commission, and to give them a chance to show why such decree should not issue?

Mr. DIXON. I think in due process and to stand up under review that would be necessary. You would have to have a show-cause proceeding.

Senator COTTON. I noted with some interest—and this I just mention in passing—that the Landis report recommended that the Commission should consult with the President of the United States before selecting any particular area on which to concentrate activities of the Commission.

The CHAIRMAN. Senator Cotton, I will read that part so the record will be clear. I think you stated it right. I quote from the Landis report:

The responsibility for concentration on a particular area should be the responsibility of the Executive and not the Federal Trade Commission. that is the recommendation.

Senator COTTON. There, by inference, it would mean that if a particular area were to be concentrated on, if you believed in that recommendation of the Landis report it would necessitate some prior consultation with the President of the United States, or those empowered to deal with you in his behalf. Would that be your policy?

Mr. DIXON. Senator Cotton, I have read this report. I have also read a great deal of the comments and following statements that have been made by both Mr. Landis and the President since that report has been issued.

I believe, if I understand it correctly, that what Mr. Landis is attempting to do in regulatory agencies is certainly worthwhile.

If I understand it correctly, I understand that after the Congress passes the laws and invests this authority that the executive branch, the President, has the responsibility to see that they are carried out. The executive branch, in determining whether these are being carried out, I suppose within the desire of the Congress and of the

basic law and authority that it has, I think what Mr. Landis has in mind is a centralizing of some method of obtaining information concerning these agencies where, I would assume, that the executive branch then would be in a better position in judging the budget, in the President making his economic message to the Congress and suggesting where the law should be supplemented or where functions perhaps should be changed from one to the other.

I believe, if I understand it correctly, that is the type of information that is being sought by the President, and I see nothing wrong about it.

Senator COTTON. That answer is interesting, but it doesn't seem to me to be an answer to my question.

I am sure that you will put whatever interpretation on the Landis report that you see fit. I am trying to find out what that interpretation is.

The Landis report indicates that in the opinion of the framer of the report, it is the responsibility of the President of the United States to determine what fields shall be concentrated upon by the Federal Trade Commission. To me that is a recognition, (1), that the Federal Trade Commission has some extremely arbitrary and some extremely delicate powers.

(2) that the concentration on some particular field is a matter of far-reaching public policy; and

(3) that in the opinion of the Landis report, which may or may not be correct, that the President should be informed and consulted, in a sense, before any radical changes are made or new departures are made in concentrating on certain areas.

What I want to know is whether you feel that that is the meaning of the report, and whether you agree with it or not. It is not clear to me from your answer what you do feel about it.

Mr. DIXON. I am not sure that I understand what the report really means in all of its ramifications because much has been said since the report. Certainly the basic section of the Federal Trade Commission is section 5, and that says:

Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared unlawful.

That is just about as broad as you can state it. So when you say this Commission has this broad authority, you are quite correct, sir. I agree with you.

Senator COTTON. Thank you.

Mr. DIXON. Now, let's look at an area that has recently come before the subcommittee that I have been serving on. I believe Senator Kefauver in mid-1959, in the general price study that this subcommittee had been conducting in the pricing field, turned to something called identical bids to the Government. We went to the TVA, and there we gathered as a matter of record its experience. It was after that that the Justice Department asked for the grand jury and the ultimate case was brought which has been publicized quite well.

When we sought this experience, we not only got electrical equipment but we got their experience which duplicates, insofar as the record is concerned, identical prices, sometimes to the fourth and fifth decimal point: cement, steel, commercial salts, insecticides, chemicals.

We found this also true in five communities. The chairman then instructed us to seek this type of information from the Defense Department, which is the biggest purchaser of all in the Government.

We have now obtained that under a type of agreement where we didn't want this room full. We wanted it where the Congress could look at it and get a meaningful approach to the problem. I believe we asked for all their experience over \$25,000 in a selected group. Frankly, they were the larger and more important industries to our economy.

That information has been received and it will make another telephone book about this size when it is printed.

This will be sent to both agencies in enforcement, Justice and Federal Trade. From the Justice Department standpoint they have the criminal approach, if they can prove intent.

For years at the Federal Trade Commission and at the Department of Justice, case after case against price fixing in many of these industries have been brought, and they have resulted in orders of injunction: cement, steel, rigid conduit, wire cable, gypsum. I could name them by the dozens.

Those orders are on the books, and yet prices go right on being identical. So the problem is self-evident.

When Mr. Landis says that information should be brought there, I very well understand it. I think it is incumbent upon these two agencies to move where they are most effective, without duplicity, using the best tool that the Congress has against this problem to determine whether we might find out if these are abuses, or not, of our competitive system.

That seems to me rather sensible in a way. Somewhere, someone must gather such information. I know not why, if the Congress—certainly this committee is entitled to that information but my experience in following Senators around up here, in about 18 hours a day you don't have quite enough time to do all the things that I see that fall into this category.

I don't see anything wrong with it, sir. And I have read in the paper very carefully that there is no intention to say what you have got to do; what they are looking for is information.

Senator Corron. I am impelled to say this to you, sir. You have some very fine experience. You quite obviously have very fine ability. I was in accord with my colleagues on the committee and complimented you on your background. I am not impressed by a situation where as simple and direct a question as I have just asked wouldn't have a simple and direct answer.

I agree with you in all that you have said; I agree that there is a lot of wickedness in the world; I agree that there are practices that are incumbent upon this very Commission to clean up; I agree as to the importance of the work; I agree that you have duties to perform in connection with the Department of Justice. But what I was inquiring was your interpretation of the Landis report which you yourself have mentioned several times, which to me says—and all I want to know is what it says to you—to me it says that before you embark and concentrate on the activities of this powerful Commission in a particular field, that the President of the United States, who really has the responsibility, shall be notified and consulted.

If that is not your policy, fine. I just want to know.

Mr. DIXON. The reason perhaps why I said what I did is this: Yesterday, in the *Wall Street Journal*, there was an article that recites that the White House, the President, has asked for monthly reports from these agencies, and this is quoted, "of their principal activities during the preceding month, and pending for the period immediately ahead."

That means to me just what it says, that they want to know what have you done last month, and what do you have pending next month. That means to me that they are trying to find out what exactly is happening in these agencies.

I don't interpret that as saying that they are saying what you have to do or not do in the agencies. They are asking for the information, sir, and I believe that is the way I interpret the question you asked me.

Senator COTTON. Would it be your policy as Chairman of the Federal Trade Commission, before inaugurating sweeping changes, new policies, or concentrating in new fields, to consult in advance with the President of the United States?

Mr. DIXON. Before making what, sir?

Senator COTTON. Before inaugurating new policy, making any sweeping changes in the organization of the agency, or concentrating in new fields or concentrating in greater degree in the present fields of endeavor.

Mr. DIXON. Senator, the President made a speech where, if I understand it correctly, he has certainly declared war on the inertia that is existing in our Government regulatory agencies. He certainly spells it out. It is my intention to keep him fully advised of what I think can be done to make these agencies more meaningful to carry out their legislative responsibility. I do so intend to keep him informed.

Senator COTTON. Do you intend to advise him before or after you do it?

Mr. DIXON. I intend to advise him before, sir.

Senator COTTON. Thank you. I thank you very much.

Now—

The CHAIRMAN. I think we ought to put in the record at this point more of the paragraph of the Landis report dealing with this subject. I only read one sentence of the report. There he suggests close contact between the Executive and the Federal Trade Commission, because of the fact that the Federal Trade Commission simply cannot cover all areas of trade in which unfair practices are brought to their attention; it must concentrate on specific fields. They say:

This involves an issue of policy of which the Executive should not only be aware but which should be keyed to whatever overall program is then the administration's prime concern.

Mr. DIXON. That is correct.

The CHAIRMAN. It says "the Executive." I assume when we speak of the Executive we mean the President. But it would seem to me that this would go further, and it would suggest a liaison with the Department of Justice, which is the executive in all these matters because they ultimately get into part of them anyway.

Mr. DIXON. That is correct. It is certainly my intention to work as closely as I humanly can with the Assistant Attorney General in Charge of Antitrust—I believe Mr. Loevinger. I believe it is quite

incumbent upon these two agencies to work as they have in the past. I think the liaison has worked very well in the past. There may have been an occasional breakdown, but every effort has been made to keep them from duplicating efforts. That is what I am talking about.

Senator CORRON. I want to ask you two or three more questions and they have to do with the report of the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary to S. 231.

The record should show as a compliment to you that in the letter of transmittal the distinguished Senator from Tennessee, the chairman of the subcommittee, complimented you for your splendid work and for your work in helping to prepare this report. He said:

I want to acknowledge with appreciation the efforts beyond the ordinary call of duty of Paul Rand Dixon, chief counsel, and Dr. John Blair, chief economist, both in the work of the hearing on which the report is based and in the assistance they rendered the committee in the preparation of this report.

As one who helped prepare the report, I feel that I must ask you a couple of questions about it. The report states, on page 168—

Mr. DIXON. Which report is that, sir?

Senator CORRON. That is the "Administered Prices of Automobiles." I am reading from the report:

The *U.S. Steel* and *International Harvester* cases state the traditional and familiar legal proposition that size alone is not enough to violate the Sherman Act. In any intelligent approach, with the exception of the law, such a proposition would be attacked as absurd and without merit.

Do you believe that in the field of the law the proposition that size alone is not enough to violate the Sherman Act should be "attacked as absurd and without merit," in the words of this report?

Mr. DIXON. We had before us there, when that report was written, some of the best economic brains, scholars, that we called before that subcommittee.

When the Sherman Act was passed in 1890, section 2 of the report challenged monopolies or attempts to monopoly. I think that what is meant there, sir, is this: If you were the only manufacturer in the United States of a product which was widely used and sold to the consuming public, it would be rather absurd to say that you did not have the monopoly. It would be rather absurd to say that you did not. But, although section 2 actually challenged that, when the *United States Steel* case was brought and the *Harvester* case was brought after that, as I recall it the Justice Department decided to test the *Steel* case on size alone, just as the law had stated it. The court rendered its opinion and said size alone was not enough; in effect you had to show abuse. And this has been confirmed to where I say to you that the state of the law is just about as we have stated there, although if you read it by itself, and if you view it separately, it would lead one, I think, perhaps to say that.

Senator CORRON. Have you finished?

Mr. DIXON. Yes, sir.

Senator CORRON. I was interested in your own philosophy in connection with this. Do you believe, regardless of what the law is or is not, that size alone can constitute a violation of section 5 of the Federal Trade Commission Act as an incipient violation of section 2 of the Sherman Act?

Mr. DIXON. I do not, sir. I think this: That it is well founded in our way of life that today we must show, under the Federal Trade Commission Act, that there is an abuse. It would have to fall within one of those tests: unfair methods of competition or unfair. And if you could not make a record showing why it is unfair, it would not withstand judicial review which must have substantial evidence behind the finding before it will stand up.

Senator CORRON. Thank you, Mr. Dixon. That very plain statement of yours anticipates the next point I was going to raise, and saves time, because on page 169 of the same report, the next page, I find the words:

It would appear that the courts have extended the classic abuse theory to where a recognition of size and power may be the abuse in themselves.

Do you believe that the court decisions have reached the point of so extending the abuse theory?

Mr. DIXON. They are approaching it, sir. When it is viewed in all of its ramifications—I don't know whether that is quite an accurate statement or not because you can't just walk into the court and say, "Look here, this company has got every bit of this business; therefore, it is dangerous, there is no competition; therefore, this is not good for the public; break them up." Or restrain them somehow.

I think that if they are challenged whatever theory you challenge them under, you have to illustrate where this harm comes from, the set of circumstances you are talking about. It has to be harmful to some of the stream of commerce or to the public somewhere. And if you can't prove it, you are not going to do anything about it, unless the Congress changes the law.

Senator CORRON. You have stated your conception about the matter of size alone. Just to make the record complete, may I ask this question: Do you believe that size and power should be held to be a violation of section 5 of the Federal Trade Commission Act as an incipient violation of section 2 of the Sherman Act?

Mr. DIXON. There is very little difference between size and power. Monopoly is power in and of itself. Power is the power exercised. So I think the facts must be looked at. That could only be determined upon how the power was used. Was the power abused?

Senator CORRON. In other words, mere size and power would not be enough?

Mr. DIXON. I do not think so, sir.

Senator CORRON. What are your views as to the propriety of bringing so-called test cases to attempt to extend the present limits of the Federal Trade Commission Act to cover situations which are not unlawful under existing precedents which are criticized by economic theorists?

Mr. DIXON. I am very cognizant of many theorists. I also try to be practical along with it. I say this, sir: During the 4 years that I have sat as counsel for the Antitrust and Monopoly Subcommittee, many, many very learned people have been before us; many of our principal enforcement officers, various Chairmen of the Federal Trade Commission, the Commissioners, the Assistant Attorney General in Charge of Antitrust and his assistant, and I have asked many of them this question: Could they suggest a manner of strengthening section 5 of the Federal Trade Commission Act, other than perhaps changing the

words "in commerce" to "affecting commerce" and no expert has ever been able to improve upon that law.

So far as saying do I intend to bring test cases, do I intend this, I think that you, the Members of Congress, are fully aware of the problems of our free competitive enterprise, and certainly I think it is practically not very honorable to say that we have got a free enterprise system if we don't have competition.

In other words, freedom, there can be no freedom unless there is competition or a chance for competition. We are, and do have, a realistic problem. Concentration is growing every year. The last report that was based upon the 1954 census figures showed it. Another one is going to be issued shortly based on the 1958 census.

These do bring problems to America, as do a lot of other things bring problems to America. But you can't just go off on slogans and things and say this is wrong and this is good. These things must be veiwed, Senator.

On the other hand, the Federal Trade Commission does have the basic authority to question many of these things that must be troubling the Congress.

If you call them a test case, if it is a new theory or something, certainly the law is there. The responsibility is there. If a majority of the Federal Trade Commission, as it will ultimately be constituted, believes or has reason to believe a law that they are sworn to enforce is being violated, they are dutybound to issue a complaint and test it. Every case they bring is a test. It is a test until it is won or lost.

I do quite succinctly and honestly say to you that I am not sure that the full powers of the Federal Trade Commission have been tested. Unfair method of competition was tested for a number of years until they found out it wasn't very effective because you could be the only seller and you could do anything you wanted to and you couldn't harm anybody because you didn't have competition.

Nor was there any test of how it affected the public. And so in 1938 Congress amended this law and you added those other tests in there: Unfair or deceptive acts or practices.

What is unfair, sir. Congress very wisely, in my opinion, followed the American way rather than just saying this is unfair and this is and this is. Congress passed a law in the general language, leaving it to an orderly development of the court system under the doctrine of inclusion and exclusion where we built up a body of law. What is unfair will have to be developed by trial and error.

Senator COTTON. Mr. Dixon, my question was just this simple: You are going into a new job with a big challenge. You have very wisely said to the staff of this committee that you have some real concepts of the job that has to be done at the Federal Trade Commission to make it more effective and so on. I thing it is highly proper that members of the committee should find out and be told some of the specific things you aim to do. I think it is not only our province but your duty.

What I am getting at is just this: You and I know, as simple men of ordinary experience in life, a man will go into the Commission, and this is perhaps what you should do. You may have in your mind some fields in which the Commission should accomplish some things, expand its power, and use that power for the public good.

We all know that you expand power by test cases in any kind of a Commission of this kind. It may well be that you should do this, or perhaps you shouldn't. All I am asking is just this plain, simple question: do you, today, before you enter upon your duties, have in mind some specific directions in which you wish to expand the power of the Federal Trade Commission by test cases and by directing your attention to doing that very thing? It seems to me that is a perfectly simple question. If you have some specific direction or avenues in mind, I wish you would tell us about them. I might be thoroughly in accord with them. But I want to know if you do have some definite aims in mind of that kind, and if so, what.

Mr. DIXON. The Federal Trade Commission, by the edict of Congress is one of those rare administrative agencies where we are both investigator or eventually judge. I say to you in all honesty, I go there with no preconceived notions that anyone is today violating the law. I have reasons to believe, I could say, that when I view a set of facts that I have the competency to say as to whether it will violate one of the laws that we have, at least to the point of challenging it. But challenging, sir, is far removed from final judgment because once you challenge and it goes to adversary proceedings, the theory must withstand the contest. Then I think I will be able to answer your question a little more fully.

All I can say to you is that I believe I am cognizant of the responsibility; I believe I understand the law. I intend, to the best of my ability, to honorably enforce it, honestly, where the facts are, and let the chips fall where they may, sir.

Senator CORTON. Very well, sir.

Very quickly—this report also states, on page 94:

In its early days advertising undoubtedly performed for this industry—the automobile industry—

its socially desirable function of expanding the market.

It goes on to say after the automobile had been established and accepted, it is doubtful whether advertising expanded the market, but it was just used in the contest in splitting up the existing market. But it uses the term "socially desirable."

Do you consider it proper for members of the Federal Trade Commission to decide cases on the basis of their opinions as to what is socially desirable?

Mr. DIXON. Socially desirable?

The Federal Trade Commission decides them on law, and not on what might be socially desirable. What is in the public interest might have some bearing on that.

Senator CORTON. You were one of the authors of this report?

Mr. DIXON. Yes.

Senator CORTON. It is in this report that this is set up, this discussion about dealing with it on the basis of what is socially desirable. That is why I asked you the question.

Mr. DIXON. That sentence doesn't read the way that I understood the question, Senator.

Senator CORTON. I beg your pardon. I read it from the report.

Mr. DIXON. Yes, sir. But I didn't understand it when I tried to answer it [reads]:

In its early days advertising undoubtedly performed for this industry its socially desirable function of expanding the market.

As I understand what is meant there by socially desirable, I would think it is desirable in our whole society to expand and grow in any industry in America. I don't believe that without advertising much of our mass media would have been able to have been accomplished.

I mean by this that if you made the best mousetrap in America, if you didn't tell somebody about it you might not sell it.

On this particular thing that you are talking about here, I think this caused the subcommittee a great deal of trouble. It was written; and I participated in it because I reviewed it and I accepted the responsibility once I had reviewed it as the subcommittee did when they issued it.

The industry, I believe, got the impression, and much of the advertising community, that advertising itself was being questioned. That was not the intention, and I believe the chairman of the committee must have written maybe 40 or 50 letters stating that to various people. Certainly I share that view.

What had been illustrated here in these automobile hearings was this: That automobile market sharers were very sensitive to price; not so much to promotion. Every hundred-dollar difference in the price had been proven to be reflected in a number of automobiles. And what was being talked about here was advertising in that vein.

But this certainly does not apply to advertising as such and it was not so intended.

Senator CORSON. The purpose of my question has nothing to do with automobiles and isn't confined to advertising. In this report it was indicated—and you were one of the authors of the report—in the discussion it said in the past automobile advertising was socially desirable in that it was expanding the market, which is a good thing. Then it goes on to say that apparently that time has ceased and advertising has become a mere matter of dividing up existing markets between automobile manufacturers.

The point I am trying to make and what I am trying to get at is this: In my understanding the Federal Trade Commission is charged with the duty of preventing false and misleading advertising, to keep advertising honest. But whether advertising is designed to effect a social improvement by expanding the market, or whether it is just promoting competition and dividing up the market, wouldn't seem to me to be a concern of the Federal Trade Commission whether it is the automobile field or some other field. And more, I am interested to know whether you, as a participant in this kind of language, I would like to get into the record whether you consider it proper for the Federal Trade Commission to decide cases on the basis of what they think is socially desirable, or whether it should be confined to the strict enforcement of the law on fair trade practices, on honest advertising, and so forth down the line.

Mr. DIXON. I can answer that quite succinctly for you—only in accordance to the law, sir. Socially desirable has nothing to do with it, and that complete paragraph, where that sentence applies there, I think spells it out a little bit more.

The Federal Trade Commission, with respect to advertising, has the fullest of all responsibilities. Here in this area is the consumer most sensitive. Here is another illustration: A false advertisement is an excellent tool of monopoly, you see, just like price discrimination. If I tell a lie about my product, I take advantage of you, my competitor, who tells the truth. If I continue, this may acquire a monopoly in this market; a substantial share of the market.

Not only does it have that effect on competition, but it influences the public who may believe it and buy, and it not be true. This is one area that the Federal Trade Commission must be vigilant and do everything that it can, using all of its imagination and all of its tools to wipe this out. And it must be done, sir, in accordance with the law, and not in accordance with somebody's social idea, if I understand your question, what some man may desire should be the law or socially desirable.

Senator Corron. And that is your own conviction?

Mr. Dixon. That is my conviction.

Senator Corron. If you don't want to answer this question, I am not sure about this question and I don't want you to hesitate to tell me it is none of my business. This particular language that I have been reading about socially desirable, did you write that?

Mr. Dixon. No, sir; I did not write that. But I do not disown it, because this is a large staff we have, and the preparation of this type of report, as you Senators know, is quite a lengthy job.

But this statement in its entirety, the next sentence beyond what you were reading, reads: "Through advertising, buyers were made aware of the existence and the usefulness of this new form of transportation."

In other words, in its early days advertising was a function of expanding, undoubtedly performed for this industry a desirable function of the expanding market. That was the context it was written in.

The question here was once everybody accepted automobiles and they were here to stay, what function then, so far as price and market shares are concerned, does advertising play when you compare it and study it in comparison with the actual price, rather than spend, we will say, \$5 million for advertising, if the same was reflected in price decreases, that that would more effectively affect the market than advertising.

This was and has been long viewed by many economists as one of the criticisms that they made when they studied market shares. This was the position within which this came into this report.

Senator Corron. Just one more question, and I will take another minute of time, and I thank you for your patience and your answers.

Is it your conception or philosophy that the Federal Trade Commission, the theory and not just the technical law which creates it and under which it works, that the theory behind it justifies in any way, directly or indirectly, its seeking to regulate business practices?

Mr. Dixon. It is not the regulator, as I understand, in the sense of telling somebody in advance what they can do or cannot do unless it is voluntary.

On the other hand, by the case-by-case method, it must inevitably have some sense of regulation upon commerce, only where there has been a transgression.

Senator COTTON. There is a marked difference between either punishing or by orders and injunctions preventing and causing people to cease and desist from business practices that (1) endanger the public, or (2) are unfair practices and stifle competition. That is one thing. But the other thing is by the issuance of decrees and orders, the prosecution of cases, to set up procedure and to regulate what industry shall do, is a matter of regulation and not just simply to prevent any wrongdoing.

Is your theory confined to preventing wrongdoing or does it extend to the Federal Trade Commission having the duty to go a little further and regulate?

Mr. DIXON. Are we talking now about after you have challenged a case and you come to the end and you have found a law violation? Is that the setting?

Senator COTTON. I am talking about the ultimate order to be attained. You can attain it by writing letters to—

Mr. DIXON. This is an informal process.

Senator COTTON. To people in business and suggesting to them, or by inference, that if they do something they may have to show why. You can do it by interlocutory decrees if you have that power, insofar as you have it. You can do it by the prosecution of cases. You can do it before, after, or all along the way.

But I am not talking about the procedure. I am talking about the ultimate aim. Do you believe it is the aim of the Federal Trade Commission to prevent wrongdoing and to stop wrongdoing and to punish wrongdoers, or is it also an agency set up to regulate business practices?

Mr. DIXON. It is a quasi-legislative and quasi-judicial agency. It is quasi-legislative in such functions as the Wool, Fur, and Textile Fiber Acts, where they define terms. That is regulatory in its broadest sense. Yes, sir, in that area they will regulate. Without any force of law, there is some degree of regulation in trade practice conferences, the industry equity approach of trying to solve problems that seem to be admitted to exist in the industry. That is regulation by persuasion, let us call it.

Where there is a violation of the law, where the Commission has reason to believe it has happened, and they issue a complaint, then it is judicial edict. It isn't regulation; it is an order which says you shall stop. You might strain it a little bit and say that is a form of regulation, but it is a form of stopping something that was unfair.

Senator COTTON. I wonder if you realize the significance of what you just said. I am very much predisposed in your favor. I like you, I like your appearance, but I am bound to say to you that even though I came in here absolutely expecting to vote for your confirmation, I regard what you have just said as an extremely dangerous doctrine, something that I fear in this Government.

Mr. DIXON. Sir, it has been there all this time down there. This is an attempt to exercise the congressional responsibility of enforcing those laws and statutes that repose there.

There are two ways to do this: One is the informal approach, and the other is the formal approach. They both have the same objective.

You say that this is a form of regulation; I say it is a form of enforcement. I don't quite understand the word "regulation" if you are using it in the sense of the Federal Power Commission, the CAB, or ICC. It is quite different than the Federal Trade Commission. I would rather adopt the words this is enforcement of the laws of Congress, is what it is.

Senator COTTON. I thank you and I think I understand your philosophy. At least, I fear that I do.

Senator BUTLER. Mr. Chairman, may I ask one question?

The CHAIRMAN. Yes.

Senator BUTLER. Senator Schoeppel has asked me to propound this to Mr. Dixon.

The CHAIRMAN. All right.

Senator BUTLER. Mr. Dixon, the question is this: Your work with the Subcommittee on Antitrust and Monopoly has been much concerned with the so-called administered prices. In your judgment, did those hearings reveal areas in which the Federal Trade Commission can undertake enforcement activities without the need for additional legislation?

Mr. DIXON. Without prejudging anything, sir, I think they raise some very serious problems which need to be studied very carefully, evidence sifted, more evidence added to it, and then laid beside the congressional responsibility contained in that act, to determine whether they should be challenged or not. I have no prejudgment, because we will need much more facts than we have here at this date.

Senator BUTLER. Thank you.

The CHAIRMAN. Mr. Dixon, in 1956 we had a series of TV and communications hearings in this committee. We have them all the time; they are almost continuous, due to the various problems in this new and growing industry. At that time I raised the question about fraudulent and deceptive practices in advertising on radio and television and the responsibility of the Federal Trade Commission in this particular area. After prolonged and very extended correspondence, the Commission recognized its role in this field and set up a special monitoring department on the basis of funds that I also recommended in the Appropriations Committee. For the first 2 years very little was done about it, but then when the quiz scandals and payola scandals, with which you are familiar, broke, we again in the Appropriations Committee reminded the Federal Trade Commission of this particular role that they had accepted after this long negotiation with them. They again embarked upon a program which I believe, if it had been effectively pursued earlier, might have precluded a lot of the things that had since happened. But that is water over the dam.

Is there any question in your mind as to the responsibility of the Commission in this particular area of fraudulent and deceptive practices in advertising, insofar as radio and television is concerned?

Mr. DIXON. None whatsoever. The law could not any more pinpoint the responsibility than it does.

The CHAIRMAN. Of course, you probably can't answer this question until later. I don't put all the blame on the Federal Trade Commission in the past because there was a question of adequate staff, because

this is a real big field involving advertising, and I suppose you can't take into consideration a given field of our economic activity; it is pretty much a specific case involving consumer products, mainly.

I will ask you, if you will take a look at that, if and when you get down there, and call the matter to the attention of the committee here, as well as the Appropriations Committee. I think you are starting in the House this week.

Mr. DIXON. I understand that, sir.

The CHAIRMAN. Another question that arose in those hearings and in the correspondence and meetings was the respective responsibilities of the Federal Communications Commission and the Federal Trade Commission in this field. The best we could do with it at that time was to hope there would be a liaison established between the two Commissions, because the responsibility does necessarily overlap. I am wondering whether or not you have any ideas on the continuation of that liaison arrangement which more or less adds up to the fact that the Federal Trade Commission develops the data for the FCC. The abuse may be called to your attention by the FCC, or vice versa. But there has to be, to carry this out, a real day-to-day liaison on this new medium of communications.

Mr. DIXON. I would hope that they would have something similar to that underway down there now. But if it is not, I assure you that it will be done, because sensible enforcement can only be attained in that manner.

The CHAIRMAN. As far as this committee is concerned, we have a continuing group of problems with television and radio in many fields. The other day when the new Chairman of the Federal Communications Commission was before the committee we got into the question of programing. Everyone had different ideas. Consistent with programing is the advertising that goes with it. I think it is the general feeling of the committee, without specifically pointing out specific advertising on television or radio, that it can be improved.

Mr. DIXON. Yes, sir.

The CHAIRMAN. There is more opportunity for deceptiveness, I think, in this field than in the printed matter.

Mr. DIXON. I imagine that—thinking back to when I first went with the Commission—we had all the principal radio stations, and on selected basis all the radio scripts sent to the Trade Commission.

Television, I imagine, will be a little more difficult and will take a little more ingenuity. But certainly some kind of a sensible program must be worked out in this area.

The CHAIRMAN. I think you get the view of everything that has happened in the last 18 months, and there is a great deal of cooperation. But it is a continuing effort on the part of the Federal Trade Commission and the liaison with the Federal Communications Commission which is responsible for the licensing of these people.

Mr. DIXON. Should I be confirmed by the Senate, sir, I assure you that such continuing liaison will be maintained and continued.

The CHAIRMAN. The impact of deceptive advertising, be it television or radio, turns out to be much greater than it does in any other media, I would say.

Mr. DIXON. It is direct. It is probable that the consumer is more sensitive to this approach than to any other means.

The CHAIRMAN. And I must say that the present Commission in the past few months has done a very good job of it.

I think you might explore further the idea of the monitoring, whether or not you should eliminate as much duplication as you can on monitoring. You have to do some and the Federal Communications Commission has to do some. You will get a lot of help from private citizens, because they monitor all day long.

Mr. DIXON. Yes, sir; they do.

The CHAIRMAN. Including members of this committee, sometimes.

Some of it is pretty much on the borderline. I think this is a field that you have to get into almost immediately or follow through what has been done, what is going on down there.

We posed the same question to the new Chairman of the FCC, and I think he entirely agrees with your concept of it.

Another matter: This committee has been very much interested in what we call rating services. You are familiar with the rating services?

Mr. DIXON. I know of it.

The CHAIRMAN. Last year we turned over to the FTC the information that the committee accumulated. Mr. Kintner, the Chairman, informed the committee that a field investigation would be conducted with reference to this subject. The Senator from Oklahoma had some short hearings on the matter, both here and in New York. Recently the committee was informed that the investigation was still going on, and was hopeful that it would be completed in the very near future. I am not going to ask you whether you are familiar with what is being done, because you are not down there yet, but I do hope that you will expedite this matter so that we might have the benefit of the information that the Federal Trade Commission has been accumulating.

Mr. DIXON. If confirmed, I certainly will do that.

The CHAIRMAN. In response to some questions from the Senator from New Hampshire, you pointed out that there was delegated by the Congress of the United States certain regulatory powers that the Commission must execute. This is not cases that are brought to your attention, or violations, but a delegation to you of authority to regulate certain industries in this country. This is the delegation in the Fur Products Labeling Act, in the Textile Fiber Products Identification Act, in the Wool Products Labeling Act, and in the Flammable Fabrics Act. In these cases you must make regulations for the industry.

We delegated you that power and that responsibility. These were all passed by this committee and by the Congress, and they are in the nature, of course, of consumer protection laws.

Do you have any ideas regarding the present activities of the Federal Trade Commission in the enforcement and regulatory directives under these four acts?

Mr. DIXON. I think that so far as that delegation is concerned, the Federal Trade Commission should be commended on the job that they have done so far. I think that as they have accumulated, this has become a major function of the Federal Trade Commission.

After the regulation was done, then the enforcement, the policing, is there. Inspectors must go in regularly into these manufacturing

and wholesale plants and retail plants to see if, actually, for instance, the label is proper. Where it is found not to be so, then it is necessary to clean up that situation because that is violative of the law.

I think, as I tried to stress yesterday, that this work at the Commission, I believe, is so important and has reached such a proportion that it would be well to make a bureau out of this work, making them self-sufficient.

The CHAIRMAN. It is a specific field of delegation of responsibility to the Federal Trade Commission. In fiscal 1960, in the textile and fur programs—just the two—you had a Chief of the Division, 6 attorneys, 1 chemist, 1 textile assistant, 1 technologist, 3 examiners, 9 clerical people, and 14 field inspectors—a total of 36 nationwide.

Most of the work, from my information, was done here in the District of Columbia. I don't like to appropriate more money than I have to, but I just don't see how you can do the job with 14 inspectors in this broad field, and secondly, I don't see how these people can do the job and do it from the District of Columbia.

My suggestion, and I don't know whether the committee will agree with me or not, whether you get more inspectors or not, they should be decentralized to the areas in which the products are manufactured and sold, rather than the District of Columbia.

Mr. DIXON. Was your information 1960?

The CHAIRMAN. Fiscal 1960.

Mr. DIXON. That is pretty recent. I agree with you. I would have thought that perhaps with all the various field offices that we maintain around the United States, that some of these men would be stationed there.

The CHAIRMAN. Some of the inspectors are in the field, that is true.

Mr. DIXON. But actually be right there on the site, working there.

The CHAIRMAN. And a minor technical violation could just as well be handled in the field office. Say a retail merchant had no intent to violate the law, but you were called upon to tell him that this wasn't the way, that this is not the interpretation of the regulations. It should be done in the field office—

Mr. DIXON. It would seem so.

The CHAIRMAN. Of which you have several, instead of getting everybody down here, requiring them to come down here with lawyers at great expense.

Mr. DIXON. It certainly would be the desire, if ever we can use the informal process that we use, if we get the results. The object is to get these things stopped.

The CHAIRMAN. Obviously you have one chemist, one technologist, and one textile assistant. Yesterday the question was raised whether or not there was sufficient liaison between the Bureau of Standards and the Pure Food and Drug Administration. Obviously you can't do it with this workshop. You have to rely upon someone else to do the real research and examination job for you.

Mr. DIXON. I would agree, sir. I certainly do.

Senator COTTON. Mr. Chairman, in view of the fact that the chairman mentioned the question of the Senator from New Hampshire, I wish the record to show that the questions I was asking about the regulatory policies of the Commission had no reference to the specific acts.

The CHAIRMAN. I have some communications from the fur producers, of which there are several in my area. They are quite pleased with the work that has been done in that area, under the Fur Labeling Act. Apparently it has been a fairly good job.

Mr. DIXON. That has been my general understanding.

The CHAIRMAN. Of course, they are anxious to know whether you intend to continue that job, and I am sure from your testimony here that you do.

Mr. DIXON. I certainly do, sir.

The CHAIRMAN. One more. In the chart of the Federal Trade Commission, under the General Counsel there is an Office of Export Trade. What has the Federal Trade Commission to do with export trade?

Mr. DIXON. The Webb-Pomerene Act. Actually, this is going way back for me. I have thought about it many times. This is the office where, if the protection of the Webb-Pomerene Act, in doing business outside of the United States, is asked for, information must be filed there; this is the function of that Office.

If on the other hand such is without the protection of Webb-Pomerene, it is a question of enforcement.

So I think that that bureau, that little section, has been just about placed everywhere in the Commission at one time or another. I think, frankly, that it more properly belongs down in the enforcement branches where they can work hand in hand.

The CHAIRMAN. I wondered how it got under the General Counsel?

Mr. DIXON. I suppose in just trying to find someplace to put them.

The CHAIRMAN. Well, see if you can put it in the proper place.

Mr. DIXON. I will probably put it in the enforcement branch.

The CHAIRMAN. This sounds a little like Parkinson's law.

If there are no further questions, we will place in the record some letters on behalf of the nominee, from Mr. Ferguson and Mr. Bird, and any other communications we may have.

(The letters follow:)

WASHINGTON, D.C., February 14, 1961.

HON. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: I have learned that the President has appointed Mr. Paul Rand Dixon to be Chairman of the Federal Trade Commission.

While I was a member and Chairman of the Commission I knew Mr. Dixon well. He was one of our ablest lawyers. I feel sure that if his nomination is confirmed by the Senate he will be an excellent Chairman.

Sincerely yours,

GARLAND S. FERGUSON,
Attorney at Law.

WASHINGTON, D.C., February 8, 1961.

HON. WALTER G. MAGNUSON,
Interstate and Foreign Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR: I note that the President has named Rand Dixon to serve as Chairman of the Federal Trade Commission and that his nomination is now pending before your committee.

I have known Mr. Dixon since 1934 and have the highest respect for his legal abilities and his personal integrity. He has ably served the Federal Trade Commission as a staff attorney and similarly as counsel to the Senate Antitrust and Monopoly Committee where he has made an excellent impression on all sides.

Mr. Dixon and I are not of the same political party, but in my judgment, this appointment is one of the best this administration has made to date.

If there is any additional information that I can furnish to you or the members of your committee in respect of this nomination, I shall be delighted to do so. I hope the committee will report his nomination favorably and without delay.

Very truly yours,

ROBERT J. BIRD.

The CHAIRMAN. Are there any further questions of the nominee? (No response.)

The CHAIRMAN. Thank you very much, Mr. Dixon.

Mr. DIXON. Mr. Chairman, before I go, I don't know how this misunderstanding came between Senator Cotton and myself, but I notice he is gone. For the record I would certainly like to state that the Federal Trade Commission does not do a regulatory function in the sense of a public utility agency. It is an enforcement agency primarily, and that is what the law created it for.

I can understand regulation in the sense where you must come before some public utility board and ask for decisions on everything you do. Down there responsibilities are invested to enforce certain acts, and that is what we are trying to do.

Also, before leaving, Senator, may I thank you for your indulgences, and I want to thank Senator Kefauver, Senator Gore, and Senator Smathers for the nice things they said about me.

The CHAIRMAN. Thank you very much.

Off the record.

(Discussion off the record.)

The CHAIRMAN. The committee will recess at this time and will hear Mr. Elman later.

(Whereupon, at 10:55 a.m., the committee was adjourned.)

SUNDRY NOMINATIONS—1961

WEDNESDAY, MARCH 22, 1961

U.S. SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee was called to order, pursuant to adjournment, at 10 a.m., in room 5110, New Senate Office Building, Hon. Warren G. Magnuson presiding.

NOMINATION OF HON. FRANK P. BRIGGS, OF MISSOURI, TO BE ASSISTANT SECRETARY OF THE INTERIOR FOR FISH AND WILDLIFE

The CHAIRMAN. The committee will come to order.

We have a long agenda here today, with several nominations. We are going to first hear the nomination of Frank Briggs, of Missouri, to be Assistant Secretary of Interior for Fish and Wildlife. This is a post that was held by Mr. Ross L. Leffler, of Pennsylvania, who resigned on February 17.

Both Senators from Missouri are here to introduce their colleague from Missouri, and our former colleague in the U.S. Senate.

We will be glad to hear from you, Senator Symington, on this nomination.

STATEMENT OF HON. STUART SYMINGTON, U.S. SENATOR FROM THE STATE OF MISSOURI

Senator SYMINGTON. Thank you, Mr. Chairman.

Mr. Chairman, I have a short statement. May I read it?

The CHAIRMAN. We will be glad to hear it.

Senator SYMINGTON. I am grateful for this opportunity to present our former colleague, Frank P. Briggs, of Missouri, who has been nominated to be Assistant Secretary of the Interior for Fish and Wildlife.

President Kennedy has made an outstanding choice. Conservation and outdoor sports of field, stream, and forest have been a lifelong interest of Senator Briggs; and he has received national recognition for his work in this cause.

Frank Briggs has been a member of the nonpartisan Missouri State Conservation Commission since 1947. He has been chairman four times, and is the first person to be appointed to three terms on the commission, in itself a real tribute to his outstanding record.

Frank Briggs attended Central College in Missouri; and also the

University of Missouri, receiving a bachelor of journalism degree from the latter in 1915.

Following graduation, he worked for several newspapers in Missouri and Oklahoma. Since 1924 he has served as editor and publisher of the Macon, Mo., Chronicle-Herald. In 1958 he received his second distinguished public service award from the University of Missouri Journalism School.

The distinguished record of Senator Briggs in journalism has been matched by his fine record of public service.

He was mayor of Macon from 1930 to 1933, and served in the Missouri Senate from 1933 to 1945. From there he was appointed to the U.S. Senate to fill the unexpired term of President Truman, who had resigned from the Senate to become Vice President.

Senator Briggs' record and experience eminently qualify him for the position to which he has been nominated and I would respectfully request that this great committee give favorable consideration to this nomination.

In conclusion, Mr. Chairman, as all of us know, Senator Briggs is one of the great Senators, not only a great citizen of Missouri, but also of the Middle West. I congratulate the administration in being wise in getting him to come down here for further public service.

Inasmuch as I have told the Armed Services Committee that I would be over there to establish a quorum, I must leave Senator Briggs in your hands.

The CHAIRMAN. Thank you, Senator Symington.

Now our other distinguished Senator from Missouri, Senator Long, is here. We will be glad to hear from you.

STATEMENT OF HON. EDWARD LONG, U.S. SENATOR FROM THE STATE OF MISSOURI

Senator LONG. I have a very brief statement I would like to read at this time on behalf of Senator Briggs.

Frank Briggs' record speaks for itself. As indicated by my senior colleague from Missouri, Senator Briggs is a leading Missouri newspaper publisher. He is a former U.S. Senator from Missouri. He is the only man who has ever been appointed to three 6-year terms on the Missouri Conservation Commission.

Senator Briggs has a long record of public service. The facts I have mentioned above, as indicated by Senator Symington, represent only a portion of his career. I have known Frank Briggs for many years. I have worked with him in Rotary, I have worked with him in the Missouri State Senate. He is a man who believes in the programs of conservation. He is a man who enjoys the practical fruits of the fish and wildlife program. I know of no one who enjoys hunting and fishing more than Frank Briggs.

When Senator Briggs was nominated as Assistant Secretary of the Interior for Fish and Wildlife I made this statement: "No better appointment could possibly have been made." I stand before this committee and repeat that statement at this time.

The CHAIRMAN. Thank you, Senator Long. We will incorporate your letter, endorsing Senator Briggs, in the record at this point.

(The letter follows:)

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
March 17, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR: Thank you for your letter in connection with the nomination of Frank P. Briggs from my home State of Missouri to be Assistant Secretary for Fish and Wildlife, Department of the Interior.

Mr. Briggs is one of the distinguished citizens of our State. He served in our State legislature for many years, and at one time served as Member of the U.S. Senate. At the present time he is chairman of the Missouri Conservation Commission and has been a member of that commission for a number of years. I am delighted to recommend him to you and to your committee for this appointment.

My plans are to be present at the hearing on his nomination next week, and at that time I will have a short prepared statement to be in the record.

Kindest personal regards.

Sincerely,

EDWARD V. LONG,
U.S. Senator.

The CHAIRMAN. Senator Briggs, we are going to put your biography in the record in full. I think both Senators from Missouri have covered a part of your career, and to some of us older Members of the Senate you are known. As a matter of fact, Senator Briggs, I will say to the other Members here, when he was in the Senate he served on the Interstate Commerce Committee. In those days there were two separate committees, one the Commerce Committee and the other the Interstate Commerce Committee. They were put together under the Reorganization Act. So he knows the work of this committee. And, of course, his avocation has been in this field to which he has been appointed.

I understand that Mr. Kimball is here, the executive director of the National Wildlife Federation, who has a short statement on the nominee.

**STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE DIRECTOR,
NATIONAL WILDLIFE FEDERATION**

MR. KIMBALL. Mr. Chairman, I am Thomas L. Kimball, executive director of the National Wildlife Federation, representing 50 affiliate organizations in 49 States and the District of Columbia, having over 2 million sportsmen conservationist members.

I welcome this opportunity to testify on behalf of Mr. Frank P. Briggs as Assistant Secretary for Fish and Wildlife. In my previous service in conservation work I served as director of the Arizona Fish and Game Department and the Colorado Fish and Game Department. During this period I have known and actively worked with Mr. Briggs in the conservation field of endeavor.

As chairman of the Executive Committee of the International Association of Game and Fish and Conservation Commissioners it was my privilege to serve with Mr. Briggs, who demonstrated a keen insight on the national conservation issues being considered at that time.

As has been mentioned, Mr. Briggs has served for 15 years on the Missouri Conservation Commission, which is recognized by both sportsmen and professional wildlife managers as one of the most progressive and successful operations in the proper management of renewable resources.

The fact that Mr. Briggs has been reappointed three times by different Governors to serve his State in the conservation field is indicative of the esteem in which he is held by the sportsmen of his State and the confidence placed in him by the appointing authorities.

I know him to be completely honest and fair in his dealings with both personnel and the resource, and it is my humble opinion that he will serve effectively and well in his new assignment as Assistant Secretary of the Interior, Fish and Wildlife.

Thank you, Mr. Chairman.

The CHAIRMAN. We appreciate that statement, Mr. Kimball.

Are there any questions?

Senator BUTLER. May I ask one?

The CHAIRMAN. Certainly.

Senator BUTLER. Senator, I don't believe that your Department would have any jurisdiction over what I am about to say to you, but I hope that you could give it some consideration.

The Chesapeake Bay, indeed the coastal waters of Virginia and Maryland, are now suffering an oyster blight. Whether any research can be done or is in contemplation on that, I don't know. I don't know if it would come within the purview of your duties. If it does, I would certainly appreciate anything that you could do to alleviate the situation.

STATEMENT OF HON. FRANK P. BRIGGS, NOMINEE TO BE ASSISTANT SECRETARY OF THE INTERIOR FOR FISH AND WILDLIFE

Mr. BRIGGS. Thank you, Senator. It does come within the purview of commercial fisheries, and research is already underway to try to combat that.

Senator BUTLER. It is quite a serious situation. Also, I think it goes to our crabs. Crabs have been very scarce lately.

Mr. BRIGGS. I am not conversant with that, but I do know that they are seriously trying to find a remedy for that blight.

Senator BUTLER. Thank you ever so much.

The CHAIRMAN. Thank you, Mr. Kimball. I appreciate your coming.

Senator Briggs, there are many matters, of course, which the committee could discuss with you, matters of importance and problems that are now down in the Department in your shop. They would entail a long discussion. The committee, of course, is deeply interested in the operation of that branch of the Department of Interior because it was responsible for creating a new level for commercial fisheries and fish and wildlife in the Department some time ago, in the 84th Congress.

At that time we were hopeful that the Assistant Secretary of Interior for Fish and Wildlife, Commercial Fisheries, would assume a post at a high policy level so that he would have not only the responsibility but the influence to do some of the things we thought should be done in the field of fisheries, particularly in the international field.

When you were here in the Senate, we would find the United States negotiating with other countries in fishery matters, conservation treaties or commercial treaties with a representative that was the head of a department in the Department of Interior. He would be sitting

across the table, in most cases, from a Cabinet officer or a Minister of Fisheries.

Obviously he had two strikes against him before he started the negotiations. It was our hope that in creating this Assistant Secretary of Interior job, we would raise the level of this post to a point where, in negotiations, it would have some influence and be able to determine some policy when dealing with cabinet members from other countries.

Since that time we have had more international problems. They are becoming even greater and more acute. And I think your background, knowing you as I do, is consistent with what we are trying to accomplish.

We have a very important matter coming up in about 18 months, the reopening—if we decide to reopen, or any one country does—the North Pacific Pact, which includes Japan, Canada, and the United States. Of course, there is no use trying to talk about conservation of fish in the North Pacific unless Russia becomes a party to it.

Russia has beefed up or stepped up her fishing operation worldwide, particularly in the North Pacific, to almost an alarming rate in the past 2½ to 3 years. The Russian fleet in the Bering Sea today numbers over 54 big, modern ships, compared to our old ones. We have this salmon problem with Japan which is involved in the treaty, and it involves Asian salmon and North American salmon.

And so these international problems are becoming great. Russia is a party to the North Atlantic Treaty, and as far as we know lives up to it. The most important place for it is in the Pacific because the whole salmon area is there, and they are land fish. These are matters in which I think you are going to have to have the blessing of not only the Secretary but the President himself to keep this at that high policy level in these negotiations.

We have economic problems in commercial fisheries. I need not discuss the tuna problem with you. You have the background on that. I suppose you will be hearing about the order issued the other day which will allow Russian crab to come into the United States freely.

Mr. BRIGGS. That is the wrong tense of the verb "will be."

The CHAIRMAN. In the foreign field, the job has just got to be that kind of job in order for us to stop trading horses for rabbits. And the conservation of the natural resources of the sea is important to the whole world.

I know the committee has confidence in you in regard to our domestic problems, our wildlife, things of that kind, because you have had a great background and a distinguished record in that field. I want to wish you well down there. I am sure the rest of the committee does.

We won't go into detail now, because you will be hearing from the committee, but we will also be looking to you for a lot of advice. You are familiar with how the committees must get advice and have to rely upon the people we put in these departments.

I hope that at all times you consider that this particular job, which you probably have already found a little about, has got to be at that high policy level or our fisheries, commercial and otherwise, are in jeopardy.

Are there any questions?

Senator SCHOEPEL. Senator Briggs, by reason of your having been in the Senate and also on this committee, and also in the positions which you occupied in your department in our sister State and neighbor to the east of Kansas, you are well and favorably known in that area. I know that you can bring to this important post an understanding of some of these problems and move ahead. I understand that you have been in the Department of Interior for some time.

Mr. BRIGGS. About 4 weeks.

Senator SCHOEPEL. In that connection, you have of course familiarized yourself with many of the activities and responsibilities that you are assuming, have you not?

Mr. BRIGGS. I have in a small way; yes, sir.

Senator SCHOEPEL. Some of the things which have been outlined by the chairman have been matters of great importance to this committee in the final establishment of this position of great responsibility. I have every reason to believe that you will do an excellent job and I am glad to see you here.

Mr. BRIGGS. Thank you, sir.

The CHAIRMAN. I want to add, don't let the State Department swallow you up. They don't know too much about fish, and fish have always been orphans with them. That is why this job was created.

Senator Butler?

Senator BUTLER. I have no questions at this time.

The CHAIRMAN. The Senator from Florida?

Senator SMATHERS. Only, Mr. Chairman, to echo what you have said. I am glad that the appointment of Senator Briggs has come over. We have a number of problems in our State of Florida with respect to fish, particularly as they pertain to shrimp and things of that kind.

We look to you and we know that you will certainly take a great interest in those problems. I am glad that you with your experience will be there, because knowing what the State's problems are, and knowing what the Senator's problems are, I feel confident that you will give those problems as we present them to you the good attention which I think they deserve.

I am delighted with your appointment.

Mr. BRIGGS. Thank you, Senator.

The CHAIRMAN. Senator Briggs, we have two questions which I am sure you can answer briefly but they must be asked for the purpose of the record. The Senate last year passed a resolution, 338, in which it said:

It is the sense of the Senate that individuals appointed to the administrative and policymaking posts should be willing to serve for a period long enough to permit them to contribute effectively to their assigned tasks, and that it is the sense of the Senate that nominees appearing before its committees shall indicate their willingness to serve so long as the President desires.

What are your views on that? I mean your own views about your tenure of service?

Mr. BRIGGS. I accept the position on that basis.

The CHAIRMAN. Senator Briggs, I don't think this is of much concern in your department, but we must ask all nominees to submit for the files a list of financial holdings in case there is any conflict of interest in your job.

Mr. BRIGGS. I know of none, but if there is any question, I own a newspaper and farm; that is about all I own.

The CHAIRMAN. Why don't you send us a letter and we will put it in the committee's files?

Mr. BRIGGS. I shall be glad to.

The CHAIRMAN. Just in case somebody might suggest that you are going to plant a lake on that farm with some fish.

Mr. BRIGGS. I will be glad to do that, Senator.

The CHAIRMAN. Charles Jackson?

STATEMENT OF CHARLES JACKSON, ON BEHALF OF THE NATIONAL FISHERIES INSTITUTE

Mr. JACKSON. Mr. Chairman and members of the committee, my presence here indicates the utmost confidence in Senator Briggs. I speak on behalf of the National Fisheries Institute, which is the largest group of commercial fishery representation in the country. We hope he will be speedily confirmed. We want to pledge him our utmost cooperation.

Thank you.

The CHAIRMAN. Thank you, Mr. Jackson.

There are several other people who would like to appear here on behalf of the nominee, particularly from the various organizations, the wildlife organizations and commercial organizations, but we will leave the record open and they can put their statements in the record in full.

If there are no further questions, thank you very much.

Mr. BRIGGS. Thank you, Senator, for your very kind treatment.

(The biographical sketch of Mr. Briggs follows:)

BIOGRAPHICAL SKETCH OF MR. BRIGGS

President John F. Kennedy appointed Frank P. Briggs of Macon, Mo., newspaper publisher and former U.S. Senator from Missouri, as Assistant Secretary of the Interior for Fish and Wildlife on February 7, 1961.

Mr. Briggs was born in Armstrong, Mo., on February 25, 1894, the son of Thomas Hale and Susan Almyra Ryle Briggs. He was educated at Central College and the University of Missouri, graduating from the School of Journalism at the University in 1915.

Mr. Briggs served on newspapers at Fayette, Moberly, and Trenton, Mo., and at Shawnee, Okla., and has been editor and owner of the Macon Chronicle-Herald since 1924. He has twice received the University of Missouri School of Journalism distinguished service in journalism award.

His public service has included 4 years as mayor of Macon, 1930-33, and 12 years in the Missouri State Senate, including four terms as president pro tem of that body. He is likewise a past president of the Missouri Associated Dailies.

Mr. Briggs has been a member of the Missouri Conservation Commission continuously since 1947, is now serving his third 6-year appointment, and has been four times chairman of the commission. He served 2 years in the U.S. Senate after being appointed by Gov. Phil Donnelly in January 1945, to fill the vacancy created when Senator Harry S. Truman resigned to become Vice President.

Mr. Briggs and Catherine Allen Shull were married May 28, 1916. They have five children: Thomas Frank, Eugene Allen, Darlene Ruth, Betty Barbara, and Dorothy Catherine. Three of the five children are in newspaper and journalism pursuits, like their father.

The CHAIRMAN. Next is the nomination of Philip Elman, of Maryland, to be Federal Trade Commissioner for the unexpired term of 7 years, beginning September 26, 1956. This is a vacancy created

by the resignation of Edward Tait, Republican, of Pennsylvania. This post was held under a recess appointment by Edward K. Mills, Jr., of New Jersey, who resigned on March 1.

Mr. Elman, we will put your biographical statement in the record in full.

(The biographical statement of Mr. Elman follows:)

PHILIP ELMAN

Born March 14, 1918, Paterson, N.J.

A.B., College of City of New York, 1936; LL.B., Harvard, 1939 (member of editorial board, Harvard Law Review).

Married: Ella M. Shalit of Fargo, N. Dak., December 21, 1947.

Children: Joseph (11), Peter (9), Anthony (6).

Residence: 6719 Brigadoon Drive, Bethesda, Md. (domiciled in Maryland since 1951).

Admitted to bars of District of Columbia, New York, and U.S. Supreme Court.

Memberships: District of Columbia Bar Association, American Bar Association, Federal Bar Association, Harvard Law School Association.

Editor, "Of Law and Men" (papers and addresses of Felix Frankfurter, 1939-56).

Employment: 1939-40, law clerk to Judge Calvert Magruder, U.S. court of appeals, Boston, Mass.; 1940-41, attorney, Federal Communications Commission; 1941-43, law clerk to Mr. Justice Frankfurter, U.S. Supreme Court; 1943-44, assistant chairman, Balkan Area Committee, Office of Foreign Economic Coordination, State Department; 1944-45, attorney, Solicitor General's Office, Department of Justice; 1945-46, legal adviser, Office of Military Government, Berlin, Germany (on temporary detail from Department of Justice); 1946 to date, assistant to the Solicitor General.

Has had principal staff responsibility in the Solicitor General's Office for handling of antitrust and trade regulation cases in the Supreme Court, and has argued and briefed a large number of such cases before the Court, including *Fed. Trade Comm'n v. Anheuser-Busch, Inc.*, 363 U.S. 536; *Maryland & Virginia Milk Producers Assn v. U.S.*, 362 U.S. 458; *Klor's Inc. v. Broadway-Hale Stores*, 359 U.S. 207; *International Boxing Club v. U.S.*, 358 U.S. 242, 348 U.S. 236; *Fed. Maritime Board v. Isbrandtsen Co.*, 356 U.S. 481; *U.S. v. Shubert*, 348 U.S. 22; *U.S. v. Morton Salt Co.*, 338 U.S. 632.

The CHAIRMAN. I see that you were born in New Jersey, and there is a familiar note here: You come from Harvard Law School.

STATEMENT OF PHILIP ELMAN, OF MARYLAND, NOMINEE TO BE
A FEDERAL TRADE COMMISSIONER

Mr. ELMAN. Yes, sir.

The CHAIRMAN. And you are married to a young lady from Fargo, N. Dak., where the chairman was born.

Mr. ELMAN. I am glad to hear that, sir.

The CHAIRMAN. You live in Maryland and you have been practicing law here, is that correct?

Mr. ELMAN. I have been with the Federal Government in Washington since 1940, sir.

The CHAIRMAN. That is right after you got out of Harvard?

Mr. ELMAN. Yes, sir.

The CHAIRMAN. You have been an attorney for the Federal Communications Commission, and you have spent some time as a law clerk to Mr. Justice Frankfurter?

Mr. ELMAN. Yes, sir.

The CHAIRMAN. And you have been Assistant Chairman in the Office of Foreign—this is really a title—Assistant Chairman, Balkan

Area Committee, Office of Foreign Economic Coordination, State Department.

What does that mean?

Mr. ELMAN. Mr. Chairman, I can't answer.

The CHAIRMAN. You spent 2 years on that?

Mr. ELMAN. No; it was actually less than a year. It was from 1943 to 1944. It was from the summer of 1943 to the spring of 1944. I left there because the organization was abolished by order of President Roosevelt. I don't know if there was any connection between my being there and its abolishment, but it is no longer in existence. That was one of the agencies within the State Department that was consolidated within the Foreign Economic Administration, which has also since been abolished. It was part of the wartime organizational structure of World War II.

The CHAIRMAN. If it hadn't been abolished I think we would have Mr. Ellender look into this matter.

Then you served in the Solicitor General's office, Department of Justice, and you were legal adviser in the Office of Military Government, Berlin, Germany, in 1945 and 1946. Were you in the service?

Mr. ELMAN. No, sir; I was detailed to the War Department by the Department of Justice.

The CHAIRMAN. Didn't they have enough lawyers in the service to do that job?

Mr. ELMAN. I went over to Germany with Judge Fahy. He took me along as his personal assistant.

The CHAIRMAN. You were an assistant to the Solicitor General from 1946?

We can understand that one. The rest of them are a little bit vague.

Mr. Elman, you heard the statement I read about the Senate resolution, did you not?

Mr. ELMAN. Yes, sir; I did.

The CHAIRMAN. Can you give us a statement on that?

Mr. ELMAN. I intend to serve out my full term.

The CHAIRMAN. That will be 7 years from 1956. That would be to September 25, 1963?

Mr. ELMAN. Yes, sir.

The CHAIRMAN. What are your politics?

Mr. ELMAN. I am not a member of any political party, sir.

The CHAIRMAN. You have voted, haven't you?

Mr. ELMAN. I certainly have.

The CHAIRMAN. How have you voted? I don't want to ask you how you have voted. That is your business.

Mr. ELMAN. I can tell you, Mr. Chairman.

Mr. ELMAN. I can tell you, Mr. Chairman. Over the years I have voted for candidates for public office of both parties. Sometimes candidates for public office who have no party affiliation.

The CHAIRMAN. Do you consider yourself a Democrat or a Republican?

Mr. ELMAN. I consider myself a political independent.

The CHAIRMAN. You want the record to stand that way?

Mr. ELMAN. I have nothing to apologize for.

The CHAIRMAN. I did not say anything to apologize for. I did not suggest that.

Mr. ELMAN. That is the actual truth.

The CHAIRMAN. There are a lot of political independents.

Mr. ELMAN. That is the most accurate description I can give you, sir.

The CHAIRMAN. But the law provides that—of course I don't think that particularly violates the law, but there has always been some question in this committee about the role of so-called independents, whether or not they violate the spirit of the law. The Federal Trade Commission Act and the other Commission acts were specifically written that the policy of the party in authority should be transferred and permeated to the workings of the Commission, if and when terms expire, or when there are vacancies.

Technically, it says of course that there shall be no more than a majority of one political party.

Do you have any conflict of interests that you know of in this very important job?

Mr. ELMAN. No, sir. I have filed with the committee a financial statement.

The CHAIRMAN. Yes; you did, and that is in our files.

You were here the other day when Mr. Dixon was being interrogated about questions of general policy?

Mr. ELMAN. Yes, sir.

The CHAIRMAN. You heard his answer? Would you say that your views as to the responsibilities of the Federal Trade Commission would be somewhat similar to those of Mr. Dixon?

Mr. ELMAN. I would say, Mr. Chairman, that I understood Mr. Dixon to express a very strong determination to see to it that the Commission acts effectively, expeditiously, and fairly. I certainly share in that determination and will do everything I can to further that.

The CHAIRMAN. By that I don't mean that you should "me too" everything. But generally speaking, he talked about the role of the Federal Trade Commission, and the energetic role that it should have in carrying out the intent of the act, which is the protection of the consumer in this country.

Mr. ELMAN. Certainly, Mr. Chairman, the provisions and policies of the statutes creating the Commission and giving it the responsibility for protecting the public against unfair and deceptive trade practices, that responsibility I will meet to the full extent of my ability.

The CHAIRMAN. Of course the basic purpose of the Commission is the maintenance of free competitive enterprise, too. The job of course is to keep that alive and still protect the consuming public, and that is the real purpose of the Federal Trade Commission.

Mr. ELMAN. Yes, sir.

The CHAIRMAN. Have you been watching what the Commission has been doing in a general way?

Mr. ELMAN. In a very general way. My job in the Department of Justice has not brought me into any direct contact with the operations of the Federal Trade Commission, except insofar as the Federal Trade Commission cases reach the Supreme Court.

The CHAIRMAN. You have been with the Government a long time. You are familiar with what we, for lack of any other term up here, deplore, and it is a continuing thing, this regulatory lag in agencies.

Mr. ELMAN. Yes, sir.

The CHAIRMAN. Have you any ideas about the Federal Trade Commission, which is just as bad as the rest of them?

Mr. ELMAN. Mr. Chairman, I believe that delays in the disposition of matters before the administrative agencies, and the Federal Trade Commission in particular, raise a very serious problem to which the Commission should give urgent consideration.

I am familiar with the studies which have been made on this subject by various committees of Congress, by scholars, by persons like Judge Prettyman, and I think there is a lot of room for improvement and I certainly think we ought to move in that direction.

The CHAIRMAN. There is a recent budget report on the administrative procedures?

Mr. ELMAN. Yes, sir.

The CHAIRMAN. I imagine there will be a reorganization bill coming up, too, which this committee will take a look at. I think we all have the same objective, to see what we can do about the regulatory lags which just seem to get worse in the Commissions rather than better, and the Federal Trade Commission is no exception, despite the real good intentions of many of the fine members in the past who have tried to do something about it.

Mr. ELMAN. Yes, sir. Mr. Chairman, I think we will have to move very quickly in that area.

The CHAIRMAN. But working as much as you have in Government, you ought to be able to go down there and make some good suggestions, because you surely know where the obstacles and the problems lie in Government.

Mr. ELMAN. I hope to be able to make a contribution there, Mr. Chairman. I have given that subject considerable thought and I have discussed it in a rather preliminary way with the new Chairman, Mr. Dixon. I believe that the committee can expect the Federal Trade Commission to come forward with constructive action very soon.

The CHAIRMAN. You heard the questions I asked Mr. Dixon—and this reflects the opinion of many members of this committee—in the radio and television field.

Do you share somewhat similar views as to the necessity for further action along that line?

Mr. ELMAN. I believe that there is an investigation which is now in progress, and I think that that investigation should be brought to a conclusion as soon as possible, and that the Commission should take whatever action is required in the public interest.

The CHAIRMAN. You are familiar with the lack of liaison in Government departments surely, because of your service in Government departments.

The Federal Trade Commission, in this field, to be effective at all, has got to have a real liaison, a working liaison with the Federal Communications Commission. I am sure that you realize that.

Mr. ELMAN. Yes, I am sure I do. I know the new Chairman of the Federal Communications Commission. I know that on both sides there is a determination to maintain and to improve the liaison procedures. I think that is also true with respect to liaison between the Federal Trade Commission and the Department of Justice where I have been, the Antitrust Division. I should think that that would be

true also of other agencies such as the Food and Drug Administration and the Bureau of Standards and the rest.

The CHAIRMAN. Are there any questions by the members of the committee?

Senator Butler, of course, comes from Maryland.

Senator BUTLER. I would like to say to Mr. Elman that I am very sorry that I did not have the opportunity to introduce you to the committee, which was my purpose.

Apparently the word did not get to the chairman that that was my desire.

Mr. Elman, I understand that your father is very sick and that you would like to get away.

Mr. ELMAN. That is quite all right. I am here to answer any questions the members of the committee have.

Senator BUTLER. I had in mind to make a very detailed statement in connection with your nomination. Suffice it to say that I wholeheartedly support you. I know of no man who has been appointed by the President of the United States who is better qualified to carry out the duties to which he has been appointed.

Mr. ELMAN. Thank you very much, Senator. I appreciate that.

Senator BUTLER. I wish you great success in your endeavor. I know that you will be completely fair in discharging your duties. I think the Commission will have a very valuable addition.

Mr. ELMAN. Thank you very much, sir.

The CHAIRMAN. Are there any further questions?

Senator SCHOEPEL. Yes. I would like to ask a few questions.

I take it that you have not registered as a Democrat or as a Republican, have you?

Mr. ELMAN. No, sir. I have never done so in my life.

Senator SCHOEPEL. What is that?

Mr. ELMAN. I have never done so.

Senator SCHOEPEL. But you have always exercised your God-given right in this country to vote?

Mr. ELMAN. I have always voted whenever I could. There were some problems in connection with absentee voting when I lived in the District of Columbia. I have always exercised independent judgment.

Senator SCHOEPEL. Mr. Elman, I want to ask you a few questions. You recognize that the Department that you are going into, that you are here for confirmation, is a creature of the U.S. Congress?

Mr. ELMAN. Yes, sir.

Senator SCHOEPEL. Do you recognize that as a cardinal starting point?

Mr. ELMAN. I don't think there can be any argument about it.

Senator SCHOEPEL. When you received this designation for your appointment, had you committed yourself in any way, directly or indirectly, to any definite policies other than what is stated in the statute with reference to your Commission?

Mr. ELMAN. Senator Schoepfel, I can't conceive of anyone being appointed to a position of this sort having fewer commitments, intellectual, financial, or otherwise, than I bring to this position. My only commitment is to do this job as well as I can, as fairly as I can, as effectively as I can, and to carry out the law as it is enacted by Congress.

Senator SCHOEPEL. No one can have any quarrel with your position on that. Frequently Members of the Senate, as well as the House, have communications or receive requests from their constituents as to some matters that have been in these departments, and yours is no exception, I will guarantee you that, as you will find out.

Do you have any objection to a Senator or Congressman making inquiry as to the status of any case or proceeding or matters before your Department relative to where it is and what the situation is, without inquiring as to decisions that must be made of a quasi-judicial nature?

Mr. ELMAN. Senator Schoeppel, I think there is a very clear, well-understood distinction between inquiries as to the status of a matter and inquiries which may have the effect, although perhaps not intended, of influencing the judgment of the Commission on a matter which is before it in its quasi-judicial capacity.

I think the courts, the Congress, and the bar are in agreement that inquiries which may possibly have the effect of perverting the judgment of a quasi-judicial agency are just as improper as inquiries of the same nature addressed to a court. But in regard to inquiries as to the status of a matter, I think there, too, is general agreement that that type of communication to the clerk of a court or to a secretary of a commission, so long as it does not in any way carry any improper implications as to how the matter should be dealt with by the agency, or the court, that type of inquiry can be made by any member of the public, and certainly a Member of the Congress acting in his capacity of determining the status of such a matter is guilty of no impropriety whatsoever.

Senator SCHOEPEL. I am glad to hear you say that, because once in a while we get one of these timid souls or someone suggesting from the outside that if a Congressman or a Senator makes inquiry down there, then lo and behold, that is for the purpose of indicating what great weight and authority he may have on some committee up here to influence some legislation.

You do not harbor those kinds of views at all?

Mr. ELMAN. Senator, I believe that a member of an agency should have the same ethical and moral standards in this connection as those which govern a judge.

A Federal judge is not so easily influenced in his judgment, and I do not think a member of an agency should be, either, where it is a simple inquiry as to the status of a matter which has no connection whatsoever with its determination.

Senator SCHOEPEL. Some of these inquiries are based, of course, on some of these lags that we find in some of these departments. I know personally, for myself, any department that I call, they can spread it on the record, give it to the newspapers, do whatever they want with it. When people come to me and make inquiry of me and say to me, "Senator, can you check with a certain department in Washington wherein I have had my matter down there for months and months,"—some for a year or 2 years—"and find out what is going on?"

I think that is a legitimate inquiry as to what is happening and where the thing is so that you can honestly and fairly report to a constituent.

Some of this has been as a result of some of these lags that have come about. You recognize the merit of that, and the very thing that you were asked by the chairman a while ago. I hope that you can do something about it, with your background and experience, and you certainly ought to be able to, to eliminate some of those long-drawn-out and undecided matters.

I know a lot of times by the rules under which you are operating, and the laws which we pass ourselves, that we add additional responsibilities to these independent agencies, and to that extent increase your load.

But it would be a salutary thing if we could somehow bring some of these matters to decisions and get them behind us, so that we would not have a lot of the inquiries that unfortunately are directed to us.

Mr. ELMAN. Senator, as you have stated, it is a general matter. It is not limited to specific occasions. If that general problem can be solved on a general basis, as I hope and will make every effort myself to do, then I should hope also that one of the incidental benefits of eliminating the regulatory lag would be to eliminate some of the pressure that is being put on Members of the Congress to make inquiries of us of the sort you have described as to the status of cases that have been there a long time.

Senator SCHOEPPLE. Thank you very much.

The CHAIRMAN. Senator Smathers?

Senator SMATHERS. Mr. Elman is an obviously astute and qualified lawyer. I would like to ask your opinion as a lawyer whether or not you believe, in the light of the Federal Trade Commission Act which says that not more than three of the Commissioners shall be members of the same political party, and of the fact that we already have three Democrats appointed on this Commission, that the fact that you are a political independent satisfies the legal implications as you understand them, of this act?

Mr. ELMAN. Senator, it may perhaps be difficult for me to be objective and detached and give you a legal opinion as to that, being personally and directly concerned.

The CHAIRMAN. You probably should have been nominated for General Counsel.

Mr. ELMAN. The statute, as I read it, simply says no more than three members of the same political party. Since I am not a member of the political party involved, I, myself, see no problem.

Senator SMATHERS. Then it is conceivable, in your interpretation, that we could have three members of the Democratic Party on this Commission, and no members of the Republican Party, and still satisfy the implications and intentions of the act, because the other two would be political independents?

Mr. ELMAN. I would assume that if Congress had intended that there should be representation on this agency of members of both of the major political parties, and intended to exclude members of other political parties, minority parties or independents, it would have so provided.

The provision does not say it shall be a bipartisan agency. It provides simply that no more than three persons shall be members of the same political party, to prevent any one political party from gaining a monopoly, shall I say, over the members of the Commission?

So I do think there is a legal difference between the provision that is in the law and the one that you indicated Congress might have enacted but did not.

Senator SMATHERS. So it is your legal opinion that the law having not said that three of them would be of one political party and two of the other major political party, thereby makes it possible for this Commission to be made up of three Democrats and two politically independents, so to speak, without doing violence to the statute?

Mr. ELMAN. I see no violence at all to the statute in such a composition of the Commission.

Senator SMATHERS. Thank you.

Senator BUTLER. Mr. Elman, if the law was not such as you have outlined it, a man who is an independent would be barred from holding office, wouldn't he?

Mr. ELMAN. He would be barred from holding office at any time when there were three members of the same political party on it.

Senator BUTLER. Which would be just as unconstitutional as you could get?

Mr. ELMAN. In a sense I am a representative of a minority group in this company, the Mugwump Party.

Senator BUTLER. I understand these are all horseback opinions?

Mr. ELMAN. I can only say that if I thought there was anything illegal in this appointment, I could not have accepted it.

Senator BUTLER. It occurs to me that we are taking a large class of American citizens and telling them they can't hold any political office by appointment of the President.

Senator SMATHERS. That is not the question.

The question is whether the law is unconstitutional. That is another matter. I think your statement is excellent. I am just asking you not as to the constitutionality of the law but whether or not by your being a so-called political independent, whether or not we are violating the intentions of this law as it is written, not whether the law is unconstitutional.

Mr. ELMAN. If I may continue to express a curbstone opinion as a lawyer, if, for example, I were a member of the Prohibition Party, I could not imagine that there would be any violation of the letter or the spirit of the statute in my being appointed to the Commission.

It seems to me again as a lawyer, it is an a fortiori proposition, that I am an independent and not a member of any political party. So that I, to the extent that I am qualified to express an opinion on this thing, and am not barred by the conflict of interest statute—

The CHAIRMAN. But you had to register to vote, didn't you?

Mr. ELMAN. In Maryland there is a procedure known as the decline. It is a shorthand way of expressing a declination of party affiliation. When I appear on election day I am tagged as a decline.

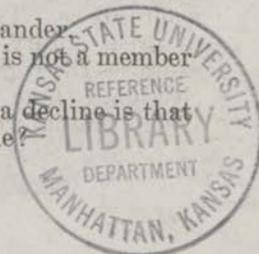
Senator Butler, of course—

The CHAIRMAN. To be tagged a decline you have to suggest that you are a decline, don't you?

Senator BUTLER. He registers like any other Marylander.

Mr. ELMAN. I registered as a person, a citizen, who is not a member of any political party.

Senator BUTLER. And the only penalty he faces as a decline is that he cannot participate in a primary election, is that true?



Mr. ELMAN. Yes, sir.

Senator BUTLER. So that you are a registered voter in Maryland?

Mr. ELMAN. Yes, sir.

The CHAIRMAN. You have never voted in a primary?

Mr. ELMAN. No, sir.

The CHAIRMAN. In all your life you have never voted in a primary election?

Mr. ELMAN. I feel I should hang my head in shame, Senator.

The CHAIRMAN. I don't know. Didn't you have any interest in the Maryland primaries? As a citizen you say you are a "decliner," but you are a citizen.

Didn't you have an interest in the primary?

Mr. ELMAN. Senator, one pays a price for one's convictions, and I have had to pay the same price you have indicated for my being a political independent.

The CHAIRMAN. I think maybe the reverse might be true, that those who profess a party affiliation may be paying the price and letting the decliners stay home and they do the work.

Mr. ELMAN. Perhaps the Maryland State Legislature may want to consider that point of view.

The CHAIRMAN. But the record stands that you never voted in a primary.

Mr. ELMAN. So far as I can recall.

The CHAIRMAN. All right.

Senator SMATHERS. You would recall it if you had voted, would you not. You say so far as you can recall. Certainly your recollection is not such that you wouldn't recall it if you had?

Mr. ELMAN. I think I can amend my statement and say I have never voted in a primary.

The CHAIRMAN. Any further questions of the nominee, Mr. Elman, for the Federal Trade Commission?

Senator LAUSCHE?

Senator LAUSCHE. No.

The CHAIRMAN. The Senator from Texas?

Senator YARBOROUGH. No questions.

The CHAIRMAN. Any further questions?

Senator SMATHERS. No. I would like to make the observation, I am delighted to see the broadminded attitude of my Republican friends who do not want to avail themselves of what I think is the implied intent of the law, that there would be three members of this Trade Commission who would be of one major political party, and the other two would be of the other political party. So, when we get independents in here, obviously talented and experienced as this man, and the Republicans do not mind, I congratulate them on the vision and the wisdom which they are showing and the willingness not to be partisan about this matter.

Senator BUTLER. Well, this Republican, may it please the Senator from Florida, believes that every citizen has a right to be what he wants to be. This nominee is a very honorable man. He's a man of great ability. If he doesn't want to get into party conflict but exercises the right to vote for one or the other candidate in a general election, I think that's his business. I don't see how the law could be fashioned that would prevent such a man as Mr. Elman being qualified

to take office. And I think if it was so fashioned you would run into greater evils than you would of having a majority on a Commission of one party.

The CHAIRMAN. No one suggests here that the nominee shouldn't have every right to be perfectly independent under the laws of his State to do what he can do under those laws in voting.

Senator BUTLER. And at the same time sit on a regulatory commission.

The CHAIRMAN. Yes. But if this were a Democratic vacancy he wouldn't be qualified under the spirit of the law. We would have to appoint a man who says, "I am a Democrat," to get a majority.

Mr. ELMAN. Senator, if I may interject myself into this discussion. I don't think that the law requires that there be three Democrats on the Commission, or three Republicans. I would think—

The CHAIRMAN. Now, wait a minute, you are getting us all wrong. We are talking about the law, not about your right to vote.

Mr. ELMAN. Yes, sir.

The CHAIRMAN. And your right to vote is one thing and your appointment is another thing. The law says that the Commission should be—the spirit of the law in all legislative history is that there should be a majority of the party in authority, and not more than a majority.

Senator BUTLER. The law doesn't say that.

The CHAIRMAN. I said the spirit of the law.

Senator BUTLER. They could all be independent.

The CHAIRMAN. Technically they could all be independent, sure. But we have discussed this on many occasions.

Now, the question I asked you, if you studied this law, as you say you have, if this were a Democratic appointment, there are three Democrats now, if this were a Democratic vacancy and you were an independent, would you think legally you would be violating the spirit of the law by putting two Democrats and one independent to make up the majority?

Mr. ELMAN. Senator, I must draw a distinction between what you refer to as the spirit of the statute and what the understanding of the Congress is as to what it should mean in practical operation, and the language of the statute. The language—

The CHAIRMAN. I didn't ask you about the language. I said would you violate the spirit of the law?

Mr. ELMAN. Well, as to the spirit of the statute I really feel that I have no competency to express that.

The CHAIRMAN. You better get into the spirit of the statute if you are going down there [laughter] being a technical lawyer, otherwise you should be General Counsel.

Mr. ELMAN. Senator, I hope I will not, by my record as a member of the Federal Trade Commission, be characterized as simply a technical lawyer.

The CHAIRMAN. A what?

Mr. ELMAN. I hope you will not find, after I have served on the Federal Trade Commission, that I am simply a technical lawyer. If you will call me a lawyer, I will be proud, but not a technical lawyer in any derogatory sense.

Senator SMATHERS. Mr. Chairman, may I supplement what you say right here on this point. I think the whole purpose of this appointing members to a Commission who are identifiable with respect to political party is for the purpose of generally ascertaining their sort of economic beliefs, presumably the Republicans more conservative, the Democrats we'll say more liberal. Therefore, when you bring a person up here to put him on a Commission you can sort of get some idea as to the general persuasion of the Federal Trade Commission by virtue of their political association in the past.

Now, when a man comes up and says, "I'm a political independent," why, then, of course, as the chairman says, it is violative somewhat of the spirit of the law in that we don't know just exactly where you stand economically, so it leaves us in a position of not knowing exactly which way in point of fact you are going to go in the economic philosophy which this Commission will express.

Now, that is the difficulty. It might be we could have five members; the technical question would be, If two are politically independent, would that be violative of the statute. If I would ask you this question, Is a political independent a member of a party? He is not a member of a party, obviously, but it says not more than three members shall be of the same political party. Well, then, obviously it would be impossible, as the Senator from Maryland says, to have everybody up here a political independent, because then we would violate the statute as written. So, that is the whole purpose of it. It makes a little more difficulty for us. That was the only thing.

I am delighted. I just hope that my friend from Maryland will be equally charitable when I bring up a politically independent man from Florida.

Senator SCHOEPPEL. Mr. Chairman, might I say since my distinguished colleague on this committee, Senator Smathers, whom I have a great admiration for, excuses the great tolerance on the part of the Republican members of this committee, I am more concerned about how a man's philosophical thinking is with reference to the functioning of this committee and the committee responsibilities and the functioning of this type of a Commission. That is what concerns me. I happen to be of the Republican Party. I vote in the primaries. Anybody else who doesn't want to do that forgoes something in my State. Maryland has this peculiar—as I find out for the first time today [laughter]—this arrangement, that is all right for Maryland to have, but I wanted to be sure when I asked you the question whether you had registered, I understood you to say no.

When you voted in a primary? I understood you to say no. Obviously I can well understand my colleagues on the other side here wondering just how this situation has come about.

I want you to do a good job down there, and I want you to remember one thing as far as I am concerned. I believe in the separation of powers, the honest equitable approach to the separation of powers. I want nobody to come in here with some preconceived policy decisions and get on a Commission and then violate that concept. That is what I am concerned about.

You have answered the question, as far as I am concerned, to my satisfaction.

Senator LAUSCHE. Mr. Chairman.

The CHAIRMAN. The Senator from Ohio.

Senator LAUSCHE. The statute provides that not more than three of the Commissioners shall be members of the same political party. I cannot see how that language can be construed to mean either in letter or spirit that three of them must be of the same political party. If the Congress intended that they shall be of the same political party, I assume that it would have stated in this language their intention. At least three of the Commissioners shall be of the same political party. That is how the language would read—at least three shall be of the same political party—but it reads, not more than three of the Commissioners shall be members of the same political party.

In my opinion if two were of one political party, two of another, and the fifth member of a third political party, the statute would be met.

Mr. ELMAN. That is also my understanding, Senator.

The CHAIRMAN. The Senator from Texas, have you any questions?

Senator YARBOROUGH. I have no questions. I think the qualification sheet shows that this appointee has unusual qualifications for Federal service on one of these boards, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Elman.

Mr. ELMAN. Thank you.

Senator BUTLER. Mr. Elman, I hope your father is better.

The CHAIRMAN. We will place in the record in full a letter from the junior Senator from Maryland, Mr. Beall.

Mr. ELMAN. Thank you for your courtesy.

(The letter from Senator J. Glenn Beall follows:)

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
March 10, 1961.

HON. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR: It is a pleasure to recommend Mr. Philip Elman for appointment as a member of the Federal Trade Commission.

With his background and experience, Mr. Elman is excellently qualified for this assignment.

With all good wishes, I am,

Sincerely yours,

J. GLENN BEALL.

NOMINATION OF JOHN W. BUSH, OF OHIO, TO BE AN INTERSTATE COMMERCE COMMISSIONER FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 31, 1964¹

The CHAIRMAN. The committee now has the nomination of John W. Bush, of Ohio, to be Interstate Commerce Commissioner for the remainder of the term expiring December 31, 1964. This is a vacancy resulting from the resignation of Anthony F. Arpaia, Democrat, of Connecticut.

Mr. Bush, we will be glad to hear from you.

Mr. BUSH. Mr. Chairman, thank you.

The CHAIRMAN. Sit right down, Mr. Bush.

We will place in the record in full your biography and I'm sure the distinguished Senator from Ohio, who is familiar with the back-

¹ This is the vacancy resulting from the resignation of Anthony F. Arpaia, Democrat, of Connecticut.

ground of your work, which is mainly in Ohio, will be glad to make a statement in your behalf to the committee.

(The biography of John W. Bush follows:)

JOHN W. BUSH

Born: September 17, 1909, Columbus, Ohio.

Father: William Hayden Bush (deceased); born Pulaski, Va.

Mother: Esther Brushart Bush (deceased); born Portsmouth, Ohio.

Wife: Mary Elizabeth Van Doren Bush (deceased).

Children: Two daughters: (1) Mrs. Jan Jennings, 605 South Anderson, Urbana, Ill. (Mrs. Richard L.); (2) Miss Emily Bush, student, University of Michigan, 1525 Washtenaw, Ann Arbor, Mich.

Religion: Episcopalian.

Grade and high school: Portsmouth, Ohio; graduated from Portsmouth High School in 1927.

College: Graduated from Virginia Polytechnic Institute, degree in business administration, 1931 (B.S.).

EMPLOYMENT RECORD

Standard Oil Co. of Louisiana, 1932-37 (Arkansas Division).

Member, Portsmouth City Council, two terms beginning 1941.

Resigned council membership to accept Democratic nomination to Congress, Ohio, Sixth District (not elected).

Associated with uncle, Mr. T. K. Brushart, as gasoline distributors, Portsmouth, Ohio, 1937-49.

President, National Association of State Purchasing Officials, 1954.

Years 1949-57, State purchasing agent for State of Ohio in Gov. Frank J. Lausche's cabinet.

Years 1957-58, president of John W. Bush, Inc., doing business and tax consulting work.

President of Ohio System, Inc., of Portsmouth, Ohio, a tax and accounting firm, founded by J. W. Bush in 1946.

Chairman of the board, Old Judge Food Corp., St. Louis, Mo.

Member of the board of directors of R. C. Williams & Co., Inc., a wholesale and institutional food concern of New York City (American Exchange).

Named director of commerce in Governor Di Salle's cabinet, January 12, 1959.

Senator LAUSCHE. Well, I have known Mr. Bush for, I would say, 16 or 18 years. He was a member of my administration, acting in the capacity of State purchasing agent. In that capacity as a purchasing agent he bought goods and commodities for the State of Ohio in the millions of dollars. He was an able purchasing agent, honest and industrious.

I present to you Mr. Bush.

The CHAIRMAN. We will also put in the record a letter from the present Governor of Ohio, Mr. Di Salle, regarding Mr. Bush, and Senator Young has stated to the committee that he has no objection to his nomination.

Let the record so show.

(The letter from Governor Di Salle follows:)

THE STATE OF OHIO,
OFFICE OF THE GOVERNOR,
Columbus, March 20, 1961.

HON. WARREN G. MAGNUSON,
U.S. Senator,
Senate Office Building, Washington, D.C.

DEAR SENATOR: It is my understanding that John W. Bush will be before your committee for a hearing on his confirmation as a member of the Interstate Commerce Commission.

It gives me a great deal of pleasure to inform you that I have known Jack Bush for many years, but my closest contact with him has been during the past

2 years when he served as director of commerce for the State of Ohio. He has, during this period, demonstrated an excellent ability for public service. He is competent, objective in his approach to the problems before him. He has a fine concept of what action is in the public interest. He had a strong sense of loyalty, obligation to duty, and I am certain that he would face his duties with the deepest possible concern for the public good.

I felt, because of my close relationship with him, that it was an obligation on my part to let you know of my experience with him.

My best personal wishes to you.

Sincerely,

MICHAEL DI SALLE, *Governor.*

The CHAIRMAN. Now, Mr. Bush, you have worked in government in the State of Ohio and in other private capacities dealing in some respects with government. If you had been here the past 46 days, with all these nominations in independent agencies, you would have found the same questions had been proposed to all of them.

Maybe you haven't any present ideas on the matter, but I'm sure from your record of activities that you would know about regulatory legislation and bureaucratic redtape, that keeps cases in the ICC going on, we could give you a horrible example, some of them years. The mean average is not very good.

Now, in all fairness to the ICC, in the postwar years their work has increased a great deal. It has been almost exploding, the growth of transportation in this country, in all modes of transportation in the common carrier and private carrier field. We are always hopeful when we have a nominee up here that when he gets down there he will see what he can do to put his shoulder to the wheel, to see if we can't simplify and expedite some of these administrative procedures so that cases can be decided within a much shorter period of time than now exists.

I know that you are going to find yourself in deep, and some days you will wonder if you haven't woven a spider web around yourself that you can't get out of. After all, in the rate field alone I understand there are 89,000 rate cases field at the ICC. I don't know whether they have been indexed or codified. So, you are going into a maze of work, a maze of activity, but we are hopeful that you can lend yourself to the desire of the other Commissioners to see if you can't do something to expedite and make more efficient this important, very important Commission, that probably has more to do with the economy of the United States as a single Commission than any office in Government. There's no use asking you in detail about it.

You will find when you get down there, however, a report from the General Accounting Office on this matter, and a report from the ICC practitioners who took a good long look at it. There will probably be some reorganization bills sent up from the executive department, and we are going to look to you for some advice because you are coming in fresh and may be able to take a more objective look at some of these proceedings down there.

I have no further questions of the nominee. He has a very fine background. I can ask him this question, Are you a Republican or a Democrat?

Mr. BUSH. I am a Democrat, Senator, and I have never missed voting in a primary.

The CHAIRMAN. You voted in primaries?

Mr. BUSH. Ever since I was 21.

The CHAIRMAN. Will you file for the record—I will ask you this question. When you were nominated for this job, you were naturally concerned and looked over whatever holdings you may have or investments, whether there would be a conflict of interest.

Mr. BUSH. I have.

The CHAIRMAN. Have you so found?

Mr. BUSH. I have no conflicts of interest of any kind, and I intend to file—

The CHAIRMAN. File a statement for the benefit of the committee.

Mr. BUSH. Yes, sir.

The CHAIRMAN. Thank you.

Now, any further questions?

Senator SCHOEPEL. Mr. Bush, I would like to ask you a few questions here. You have been designated to serve on this important Commission. As the chairman pointed out, it is an important Commission. A lot of work down there; a lot of responsibilities down there; and the impact that it has upon the economy and those who you regulate is terrifically important.

In your interviews preceding your selection as one of the Commissioners on the ICC, were you asked as to your judgment as to whether the Chairman of the Commission should be rotated and elected by the members of the Commission or that he should be designated by the Chief Executive?

Mr. BUSH. No, sir, Senator, I was not asked that question nor did I hear any discussion of it during the interviews that you speak of.

Senator SCHOEPEL. You know now, of course, that the Chairman of that Commission is rotated.

Mr. BUSH. Yes, I do.

Senator SCHOEPEL. Until it's changed officially or otherwise, you would abide by that decision and judgment.

Mr. BUSH. I certainly would.

Senator SCHOEPEL. You will accept this appointment and this confirmation on this basis; is that true?

Mr. BUSH. I certainly do.

Senator SCHOEPEL. Now, let me ask you this, what do you regard as the proper relationship between the Commissioners of the Interstate Commerce Commission and, say, the Chief Executive? Do you recognize that your Department is a creature of the Congress of the United States rather than of the executive department?

Mr. BUSH. I recognize it as an arm of the legislative branch of our Government.

Senator SCHOEPEL. And that it fits into the scheme of things along that general line of approach; do you not?

Mr. BUSH. Yes, I certainly do.

Senator SCHOEPEL. Now, as I have indicated to other gentlemen preceding you here this morning, and on other occasions, I feel very strongly about this: Members of the Congress, Senate or the House, often make inquiry with reference to calls or with reference to requests by their constituents as to the status of a matter in some of these departments. If you are confirmed, and you will be, if a Member of Congress makes inquiry, do you see anything improper in that so long as he doesn't go to the merits of the matter that's within the bosom of the Commission?

Mr. BUSH. I certainly do not see anything improper, Senator. In fact, I would welcome it. In the position I held in Senator Lausche's, then Governor Lausche, cabinet, and also in Governor Di Salle's cabinet, as the director of the department of commerce, many times members of our State legislature, representing their constituents, felt it desirable, or felt it their duty to ask such a question as you have outlined. I welcomed it. Even the discussion that might go with it very often helped to create a better understanding of the problems and the wishes of the people who are represented by the members of the legislature.

Senator SCHOEPEL. Have you ever practiced before this Commission?

Mr. BUSH. No, sir; I have not.

Senator SCHOEPEL. So, you come in fresh and new and find out what the responsibilities are under your sworn duty when you are finally sworn in.

Mr. BUSH. I certainly do.

Senator SCHOEPEL. I have no further questions.

The CHAIRMAN. I have some questions here that relate to the question of public interest. I might sum them up just in one sentence because you haven't been down there, but I have found that a general fault, I think, in the ICC in this whole problem of national transportation and the development of a national transportation policy, when a case comes before the ICC they are apt to decide the case within the narrow confines of the facts in that particular case.

Because of the volume of work, one panel will decide a case over here, another one over there, and this goes on and on. Pretty soon you have a patchwork of decisions that don't add up to a sum total goal for a national transportation policy.

I think when we talk about public interest, which you could make a definition of, that's what the Commission is there for, that any of the new Commissioners such as yourself have got to say, well, all right, this is what the facts are in this given case. We lay that over here. Not let's go further and see how this decision affects the whole, the national transportation policy, and other modes of transportation.

I think that because of the volume of work the ICC has a tendency to be getting away from this broad approach to some goals in national transportation policy. We are headed for some crisis in it, there's no question about that. In the common carrier field, which is the heart of the national transportation policy, we are headed for a crisis there, and the Surface Subcommittee here, the Subcommittee on Surface Transportation, knows that there are some danger signals about—not the encroachment—but the growth of private carriers as it affects common carriage, the heart of a national transportation policy.

These individual cases you have got to, after you are through with all the basic facts in the particular case, temper your decision, modify it or look at it to see whether it fits into the national policy. How does it affect another mode of transportation that is an integral part of the whole. Now I may be charitable in suggesting that because of the volume of work it has been difficult sometimes to do, but I think we have got to sit down and do that in this whole field of transportation.

Transportation now accounts for one-fifth of the gross national product in this country and the private and social investment of the average citizen in transportation is becoming greater and greater per person every year. We have a fine system within the modes of transportation, but we are heading for trouble unless we can have some real goals in the national transportation policy.

I am hopeful that you will look at that because it is a challenge to anybody going down there.

One other question I wanted to ask you is—there has been a hopeful sign in these Commissions in the past 2 years and I think even more so now of a delegation of more authority into the field in cases. With the growth of transportation in the trucking and inland waterways and in the smaller business field, it seems to me that you ought to encourage that because this business of coming down to Washington with the expense of trying a case and the time it takes, many of these things could be delegated to the field. Beef up the field offices. I think you will find a climate for that down there.

Mr. BUSH. If I may state at this point, Mr. Chairman, I read with great interest the work that the Commission and the present Chairman have done along the line of delegation of authority, particularly this year. It seems to be the only answer to the tremendous volume of work.

Yesterday I talked with the Chairman about this very matter. He said, we are on the right track as far as delegation of authority is concerned. May I point out that my administrative experience, as opposed to legislative or legal experience, might very well fit in with that, and in summary I would say that now we are on the right track, as far as delegating authority is concerned. The other half of the job is to make it work.

I think that ties in with your overall statement that you can't create a hodge-podge. Authority has to, in the long run, be delegated and then brought together in a broad policy that will work. I think we can make it work.

The CHAIRMAN. We are the only country that I know of in the world that has escaped nationalization of transportation. Every country in the world to some degree has nationalized some of their main forms of transportation, or all of it. We have tried to keep it a free, competitive enterprise. That has caused some little problems, I agree, but practical problems. We must start to shape up a solid national transportation policy in which every case will fit into the pattern.

Mr. BUSH. I am aware of that. I agree with you.

The CHAIRMAN. All right. Are there any other questions?

Senator SMATHERS. I would like to just ask you this question, Mr. Bush.

Do you have, at the present time, any information with respect to the deterioration of the business of the certificated carriers as opposed to the private carriers?

Mr. BUSH. Yes, Senator Smathers, I have been reading, particularly in the last 6 weeks, as much as I could read about the problems of the common carrier, where it is headed, versus the problems of the private or contract carrier.

Senator SMATHERS. We are having a hearing at 2 o'clock this afternoon in this room on that particular problem and if you have not yet

been sworn in or given duties, why, you might sit in and we'll educate you some more on that.

Mr. BUSH. I would be delighted to hear more.

Senator SMATHERS. Are you aware at this moment of the general position of the railroads in the country, their financial conditions?

Mr. BUSH. Yes.

Senator SMATHERS. You have some awareness of it?

Mr. BUSH. Yes, I have.

Senator SMATHERS. It is your judgment that they are in good shape or bad shape?

Mr. BUSH. It is my judgment that they need a great deal of improvement to be considered to be in good shape.

Senator SMATHERS. Do you have any preconceived disposition as to this talk of mergers which we hear going about with respect to certain railroads, and that is a delicate question. I just want to know whether you have any preconceived opinion on it?

Mr. BUSH. No, sir, I have no preconceived opinion on it. I know that it is a matter of tremendous importance and cannot be ignored or bypassed.

Senator SMATHERS. Are you familiar with an act or a report which was filed by the Subcommittee on Surface Transportation and approved by the full committee and later came to be known as the Transportation Act of 1958?

Mr. BUSH. Yes, sir.

Senator SMATHERS. Have you had the opportunity to read the report which accompanied that proposed legislation?

Mr. BUSH. No, sir. I have not read all of it. I have read parts of that and parts of the so-called Doyle report.

Senator SMATHERS. I would just merely say to you that the Doyle report, while being good and is broad in scale, while the report which accompanied the 1958 Transportation Act was about legislation that was translated into law. It was given the approval of the Senate and the Congress, and I would suggest to you that in your operation it would be infinitely more beneficial to be acquainted with what the general feeling of the members of this committee and the Congress is, than it would be of what some fellow who is able, but who has no relation except as we give it to him with the Government, what he might recommend.

Mr. BUSH. That is why I mentioned that I had read some of both. I realize the importance.

Senator SMATHERS. I particularly call your attention to a statement which appeared on page 2 of that report where we talk about rates, and you will find as you serve on this Commission that the rate structure and the arguments that revolve around rates are just about as complicated as I presume the arguments that revolve around the best system of guidance for a Polaris missile—it is really difficult.

However, the committee did state in that report, and, as a matter of fact, legislation was tailored along that line, I will recall this one sentence to you:

Rates of the carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation giving due consideration to the objectives of the national transportation policy declared in this act.

You will run across the statement frequently made that each method of transportation should be given the right to enjoy its inherent advantages. Have you ever heard that word in connection with that?

Mr. BUSH. I have a note here in my pocket, rates of a common carrier shall not be held up to a particular level to protect the traffic, and so forth.

Senator SMATHERS. You have got it right there?

Mr. BUSH. I realized that this subject is a very important one.

Senator SMATHERS. We felt that was very important in this matter in whether or not we were going to have a free, sort of a free enterprise, but nevertheless regulated system of transportation. We tried as much as we could to get away from some of the umbrella-type activities of the ICC.

Mr. BUSH. Right.

Senator SMATHERS. And you go to this job, I am certain, not only to serve your country but to make some improvements in this particular field.

Mr. BUSH. I certainly do.

Senator SMATHERS. All right.

Mr. BUSH. As far as the question of time is concerned I expect to remain on the job. I hope to do a good enough job to be reappointed, Mr. Chairman.

The CHAIRMAN. But, Mr. Bush, I am sure you would agree with me that if rates are destructive to another method of transportation, that they should not be allowed?

Mr. BUSH. I copied this down because I wondered why I was getting so many letters from truckers and truckers' wives, and I thought there must be something I had better look into and find out the reason. I imagine that is it.

The CHAIRMAN. What we are trying to say is we want the public to have the best possible rates, but we need all these modes of transportation, we need them all strong. We have separated the methods in the common-carrier field, and we cannot have destructive rates by any mode of transportation that would be destructive to another mode of transportation.

Of course, there is where you reach the fine point of interpreting the ratemaking rules.

Senator SMATHERS. May I state right there, I think that this shows you how complicated this matter can get.

We felt, and it was in the report, that obviously the final consideration has to be what is in the public interest. However, as long as the public interest can be served, we did not feel it was proper under some conditions to maintain what you might call a competitive mode which could not in point of fact stand on its own feet without the protection of Government. If you took that out and still could provide the public with the same amount or equivalent amount of services, then the inherent advantages would come in of each particular mode, and that is the general philosophy of the act as we understand it. Always keeping in mind what was in the public interest. How could they get the best service.

Senator LAUSCHE. Mr. Chairman, will the Senator from Florida again read the language of the law on what we are discussing?

Senator SMATHERS. It says:

Rates of the carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation giving due consideration to the objectives of the national transportation policy declared in this act.

That is what we wrote, and, of course, by that we meant the objectives of the National Transportation Act is to have, as the chairman said, a strong transportation system which serves the public. So all those have to be weighed and balanced, and it is a complicated proposition.

Mr. BUSH. Yes.

Senator LAUSCHE. Well, that in effect means that giving due consideration to the purposes and intent of the National Transportation Act, nevertheless, no protection shall be given to other industries when under the law one applicant is entitled to relief on the basis of his operations and the general interest of the country.

Now, will you carry into effect the law as you understand it to be, if you are approved?

Mr. BUSH. I certainly will, Senator.

Senator SMATHERS. All right, sir. I have no other questions.

The CHAIRMAN. Well, you will run into a lot of cases and I think what you will have to look at is if any rate is filed that is not compensatory to cost that might be destructive to another mode of transportation, there the decision has to be made in light of the national transportation policy, and then you will run into the constant controversy as to what are costs. We could be here until next Labor Day figuring that out in some cases.

Senator LAUSCHE. May I ask a question?

What are these telegrams and letters that are being written to you as a prospective member of a commission?

Mr. BUSH. They were addressed to me as a member, rather than a prospective member, Senator.

Senator LAUSCHE. What is the nature of them?

Mr. BUSH. The nature of them basically—let me say basically they are all from truckers or wives of truckers who own one or two trucks and who feel that there is some problem which they don't fully understand about the ratemaking activities of the Commission, and they generalize a great deal. I would be glad to show you some of them.

Senator LAUSCHE. How many of them have you received?

Mr. BUSH. Probably 40 or 50, even though I have not been confirmed.

Senator LAUSCHE. Are they written much in the same form?

Mr. BUSH. Pretty much.

Senator LAUSCHE. Does it look as if the source of forming the letter is one common source?

Mr. BUSH. Not one common source, because they come from different parts of the country, but one general idea; yes, sir.

Senator LAUSCHE. It is a general idea. Are they different in form?

Mr. BUSH. Yes.

Senator LAUSCHE. Or is the form rather identical?

Mr. BUSH. They are different enough that I could say they are not just from one source.

Senator LAUSCHE. What do they ask you to do?

Mr. BUSH. Nothing specific; only to think of their best interests when it comes time to study the phase of ratemaking that will pertain directly or indirectly to an individual trucker.

Senator LAUSCHE. When did you start getting those communications?

Mr. BUSH. About the time the wire service carried the fact that I was nominated to be a member of the Commission.

Senator LAUSCHE. How long after the story was carried did you start getting the letters?

Mr. BUSH. Well, I would say 2 or 3 weeks.

Senator LAUSCHE. That is all.

Senator SMATHERS. That is all, Mr. Chairman.

The CHAIRMAN. Any further questions?

Senator SCHOEPEL. No further questions.

The CHAIRMAN. Thank you, Mr. Bush.

Mr. BUSH. Thank you, Mr. Chairman.

NOMINATION OF WILLIAM H. TUCKER, OF MASSACHUSETTS, TO BE AN INTERSTATE COMMERCE COMMISSIONER

The CHAIRMAN. We have the nomination of Mr. Tucker, William Tucker, of Massachusetts.

Gentleman, this is Mr. Tucker.

Mr. Tucker, we will place your biography in the record in full.

(Biography of William H. Tucker follows:)

BIOGRAPHY OF WILLIAM HUMPHREY TUCKER

William H. Tucker was born in Boston, Mass., September 8, 1923. He attended Boston public schools and was graduated from Roslindale High School in 1941. Following military service, he attended Boston University College of Liberal Arts, 1945-47, entering the School of Law at Boston University in 1947 under the accelerated program. He served as an editor of the Boston University Law Review and graduated in 1949, LL.B., cum laude.

Mr. Tucker entered military service in 1942 and served as a parachutist in a parachute infantry company with the 505th Parachute Regiment of the 82d Airborne Division. He was overseas from April 1943 to September 1945 and received credit for the 82d Airborne campaigns in Sicily, Salerno, Normandy, Holland, Ardennes, and central Europe.

He was with the parachute invasion assault groups in the drops at Salerno, Normandy, and Holland. During the Battle of the Bulge, Mr. Tucker was wounded. He is mentioned in the Cornelius Ryan book on Normandy, "The Longest Day." He was discharged with the rank of sergeant.

Mr. Tucker became a member of the Massachusetts bar in 1949, and has been admitted to practice before the Federal court, U.S. Supreme Court, and the Interstate Commerce Commission. He has been engaged in the practice of law since 1949, and has been a practitioner before the Interstate Commerce Commission and other Federal and State regulatory tribunals as well as all courts in Massachusetts. He has served as general counsel for municipalities, furniture and paper mill companies, as well as corporations engaged in transportation.

Mr. Tucker has been active in veterans and civic organizations. He was national president of the 82d Airborne Division in 1953-54 and commander of Post No. 102, American Legion, Massachusetts, 1954. He has been active in fund raising for retarded children and served as president of the Athol, Mass. Kiwanis Club in 1960.

In 1959, Mr. Tucker received an award as the outstanding young man in his community from the U.S. Junior Chamber of Commerce area organization.

Mr. Tucker has maintained an active interest in aviation. He is a licensed private pilot and sport parachutist. In 1959 he represented the Commonwealth of Massachusetts at the meeting of the International Parachuting Commission in Paris, France, and was instrumental in bringing to the United States the 1962 world parachuting championship. He served as director of the 1960 National Air Rally in Orange, Mass., and is currently a director of the Parachute Club of America, and a member of the National Aeronautic Association.

Mr. Tucker is married to the former Caroline E. Aitken of Boston, Mass. and has two daughters, Karen, age 11, and Sandra, age 8. He resides at 685 Spring Street and is a member of the Methodist Church. Mr. Tucker is a Democrat.

The CHAIRMAN. Mr. Tucker comes from the Boston University Law School and has a very distinguished war record. He has been practicing law in Massachusetts since 1949 after the war, and has been a practitioner before the ICC and other State and regulatory tribunals, as well as the courts in Massachusetts. He has been general counsel for municipalities and private industry in the area, as well as some corporations engaged in transportation.

The rest of it is a personal biography regarding some of his other activities in the Legion field and he is a sport parachutist.

Mr. TUCKERMAN. Yes, Mr. Chairman.

The CHAIRMAN. And you participated up there in Orange?

Mr. TUCKER. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Tucker says he is a Democrat.

We will also place in the record letters from the two Senators from Massachusetts: Senator Saltonstall, who is glad to approve your nomination, and a letter from Senator Benjamin Smith also is in approval.

Also a letter from the New England Council. Mr. Colson was going to come and testify, but we will put his statement in the record in full.

(Letters of Senator Saltonstall, Senator Smith, and the New England Council follow:)

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
March 21, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce, U.S. Senate.

DEAR WARREN: I have your letter regarding William H. Tucker. I have no objections to this appointment and am glad to approve.

While I have just met Mr. Tucker myself, I have received very good reports about him from people in his hometown of Athol, Mass.

Sincerely,

LEVERETT SALTONSTALL, *U.S. Senator.*

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
March 21, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Interstate and Foreign Commerce Committee,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: As I have to attend a meeting tomorrow morning which was arranged some time previously, it is not possible for me to present to the committee William H. Tucker, to be an Interstate Commerce Commissioner.

Mr. Tucker, a Massachusetts citizen, has distinguished himself as a man of energy, intelligence, and a great capacity for work. I believe he is determined to do a fine job as a member of the Interstate Commerce Commission. I am glad to ask the committee's thoughtful consideration of him.

Sincerely,

BENJAMIN A. SMITH II.

STATEMENT BY CHARLES W. COLSON, COUNSEL FOR THE NEW ENGLAND COUNCIL

Mr. Chairman, the New England Council appreciates very much the opportunity which you have afforded to us to speak briefly on behalf of President Kennedy's nominee to the Interstate Commerce Commission, Mr. William H. Tucker of Athol, Mass.

The New England Council was established in 1925 at the behest of the six New England Governors. It provides today a number of services to the New England States, including its function as secretariat for the New England Governors Conference. It is made up of representatives of industry, labor, the State

governments, educational, and farm groups. The council is concerned solely with regional development and with improving the New England economy.

Several months ago, the council, aware of a vacancy on the Interstate Commerce Commission created by the resignation of a member from the New England States, considered the qualifications of several candidates who had expressed an interest in the position. Among these candidates was Mr. William H. Tucker whose nomination is before you today. Our investigation of Mr. Tucker's background revealed qualifications and experience which would suit him well for the responsibilities of an Interstate Commerce Commission Commissioner. It would be presumptuous for me to discuss these with you since you are as familiar with Mr. Tucker's qualifications as are we at the New England Council. I should like to say, however, that we consider it of utmost importance that a qualified citizen of New England be confirmed for this vacancy.

The New England States are beset with a multitude of transportation problems. Our region's industrial growth depends upon the maintenance of a sound transportation system in the region. While we are no different from any other area of the country in this respect, we do have specific problems peculiar to our region.

We consider it, therefore, of vital importance that a man with firsthand knowledge of these problems and with experience in dealing with them serve on the body which administers national transportation policies which have a profound effect upon the region. Moreover, we believe it to be sound national policy to staff the Interstate Commerce Commission with representatives from various sections of the country—not in order that they may grant special favors or concessions for their region but rather that the Commission may thoroughly represent the broad spectrum of transportation problems in our country. Only in this way can the Commission truly discharge its responsibility with respect to national transportation as a whole.

Based, therefore, upon our interest in the New England region and upon our conviction that Mr. Tucker is ably qualified to assume the duties of the position for which he has been nominated, the New England Council commends to you for favorable consideration his nomination.

The CHAIRMAN. Now, you heard the question asked of the other prospective members of these Commissions. This is for a 7-year term. When does it expire—the term will not expire until December 31, 1967, so it is practically a full 7-year term.

Have you any statement to make about your proposed length of serve in this Commission?

Mr. TUCKER. I intend to serve out the full term, if confirmed, Mr. Chairman.

The CHAIRMAN. As far as you know, barring unforeseen personal things, you intend to serve your full term?

Mr. TUCKER. That is right, Mr. Chairman.

The CHAIRMAN. Now, the chairman doesn't wish to go into any more general questions. I think you heard our discussion with Mr. Bush?

Mr. TUCKER. Yes, Mr. Chairman.

The CHAIRMAN. Regarding regulatory lags, expedition of work down at the Commission, and many of the problems that you will find in the Commission—but I am sure you also have some knowledge of that because you have served as a practitioner before the Commission and also you have more than a passing interest in the field of transportation.

Mr. TUCKER. I have, Mr. Chairman.

The CHAIRMAN. And your answers to the questions that we asked Mr. Bush would be generally about the same, would they not?

Mr. TUCKER. Yes, they would. They would be generally the same, Mr. Chairman.

The CHAIRMAN. The Senator from Kansas, do you have any questions?

Senator SCHOEPEL. Just one or two questions, Mr. Tucker.

You heard the questions which I asked of Mr. Bush?

Mr. TUCKER. Yes, Senator.

Senator SCHOEPEL. You were present here in this hearing room when I asked those, were you not?

Mr. TUCKER. Yes, sir.

Senator SCHOEPEL. Would your answers be generally as Mr. Bush answered those questions?

Mr. TUCKER. Yes, they would, Senator.

Senator SCHOEPEL. With reference to the rotation of the Chairman of the Commission, and this Commission being an arm of the Congress of the United States?

Mr. TUCKER. I quite agree with Mr. Bush, Senator.

Senator SCHOEPEL. And do you hold the same views that he expressed with reference to inquiries made by members of Congress under the conditions which I stated?

Mr. TUCKER. Under the conditions which you stated I believe that inquiries by Members of Congress would be perfectly legitimate and proper, Senator.

Senator SCHOEPEL. I believe I have no further questions.

The CHAIRMAN. The Senator from Florida?

Senator SMATHERS. I don't believe I have any questions.

You heard the general discussion about the 1958 act?

Mr. TUCKER. I did, Senator.

Senator SMATHERS. If you have not had an opportunity to read the report and the act, why, I would appreciate your so doing?

Mr. TUCKER. I will, Senator.

Senator SMATHERS. All right. Thank you. I have no further questions.

The CHAIRMAN. The Senator from Ohio, have you any questions?

Senator LAUSCHE. No questions.

The CHAIRMAN. Well, Mr. Tucker, if you have anything you wish to add to what has been said here we will leave the record open for a few days and you can place it in the record.

Mr. TUCKER. Thank you for that privilege, Mr. Chairman.

The CHAIRMAN. If not, we appreciate your waiting here and appreciate your coming to testify.

Mr. TUCKER. Thank you.

The CHAIRMAN. Thank you very much.

NOMINATIONS OF THE FOLLOWING COAST GUARD OFFICERS FOR PROMOTION TO THE PERMANENT RANK OF REAR ADMIRAL IN THE COAST GUARD: CAPT. DONALD M. MORRISON, CAPT. IRVIN J. STEPHENS, CAPT. NED W. SPROW, AND CAPT. JAMES A. ALGER, JR.

The CHAIRMAN. If the committee will bear with me here this morning before we go into executive session, we have nominations of some Coast Guard captains for promotion to the rank of rear admiral. We have four, actually, Capt. Donald M. Morrison, Capt. Irvin J. Stephens, Capt. Ned W. Sprow, and Capt. James A. Alger, Jr.

Captain Stephens and Captain Alger are both here.

Is Admiral Richmond here?

Admiral RICHMOND. Yes, sir.

The CHAIRMAN. Will you come forward, please, and bring both the captains with you?

Admiral, the committee would like to know generally the duty status of the two captains here, or all four, and when they are promoted, if and when they should be promoted to rear admiral what would be their duty status then. I mean, how do you intend to use them at the higher rank?

Admiral RICHMOND. Mr. Chairman, in January of this year a board of five flag officers of the Coast Guard selected from the list of captains of the Coast Guard the four officers whom they believed best fitted for promotion to the rank of rear admiral to fill existing vacancies which will become open at the end of this fiscal year due to retirements.

The CHAIRMAN. Let me ask this: This will not add to the total number?

Admiral RICHMOND. No, sir.

The CHAIRMAN. If these four are promoted?

Admiral RICHMOND. That is correct, sir.

The four biographical sketches are before the committee of all of these officers.

Captain Morrison, who is presently the chief of staff of the 12th Coast Guard District with headquarters at San Francisco, will be promoted as of February 1 to fill a vacancy, and is under orders to proceed to Washington to become Chief of the Office of Operations.

Captain Sprow, presently chief of staff of the 13th Coast Guard District at Seattle, Wash., who will also be promoted as of February 1 to fill an existing vacancy, is under orders to proceed to the 11th Coast Guard District, Headquarters, Long Beach, to be the district commander for that district.

Captain Stephens, here today and available for questioning by the committee, is presently chief of staff at the 17th Coast Guard District, Headquarters, Juneau, and he is under orders, when promoted, to proceed to Washington to relieve Admiral Jewell, who will retire on the 30th of June. Admiral Jewell is presently Chief of the Office of Merchant Marine Safety, Coast Guard Headquarters.

Captain Alger, also here today, presently the Assistant Superintendent of the Coast Guard Academy, is under orders to relieve Admiral Thiele, now Engineering Chief, but that statutory position and title has been eliminated and Captain Alger will relieve Admiral Thiele as Chief of the Office of Engineering.

The CHAIRMAN. Will Admiral Thiele retire?

Admiral RICHMOND. Admiral Thiele is retiring. Actually, the vacancy that Captain Alger is taking was a vacancy that we knew about at the time of the board, which is the retirement of Admiral Eskridge, who is presently in the 12th district. Admiral Thiele's vacancy has just come up within the last few days.

The CHAIRMAN. But Captain Alger will become the so-called Engineering—

Admiral RICHMOND. Chief of the Office of Engineering, yes, sir.

The CHAIRMAN. You will recall, Admiral, we had this little controversy about the continuation of the Engineering Division in the Coast Guard, and I think you testified that you were going to keep it in an engineering status; and this is the place that Captain Alger will take?

Admiral RICHMOND. That is correct, sir. And Captain Alger is, I think, very well fitted for this job.

The CHAIRMAN. Well, he has been in engineering most of the time, hasn't he?

Admiral RICHMOND. A great deal of the time.

He has also been in our controller division which is, as you can recognize, very closely allied to the requirements of engineering. I mean, the cost elements are a very definite part.

The CHAIRMAN. We will place the biographies in the record in full, all four of them.

I want the committee to know that the other two would have been here but they were so situated that I didn't think it was necessary to have them come.

(Biographies of the four nominees follow:)

CAPT. DONALD MCGREGOR MORRISON, U.S. COAST GUARD

Donald McGregor Morrison was born on December 4, 1906, at Glens Falls, N.Y., the youngest of three children of John R. and Mary Burch Morrison. He received his early education at Vancouver, British Columbia, Canada, where he was graduated from King George High School in 1925. He attended the Universities of Chattanooga (Tenn.) and Washington (Seattle), enrolling in the latter's Naval ROTC unit.

He left college to work as a civil service employee with the U.S. Army Corps of Engineers in a survey project of the Tennessee River. In 1928, he entered the U.S. Coast Guard Academy at New London, Conn., as a cadet and was graduated and commissioned an ensign on May 15, 1931.

Subsequently he advanced in rank to lieutenant (jg.), May 15, 1934; lieutenant, May 15, 1936; lieutenant commander, June 15, 1942; commander, November 1, 1942; captain, August 6, 1951.

From the Academy he was assigned first to training aboard the cutter *Haida* at Seattle, then the cutter *Snohomish* at Port Angeles, and in August 1931, was given a permanent station aboard the cutter *Tallapoosa*, based at Juneau, Alaska. Transferred in March 1934, he served as navigator aboard the cutters *Gresham* and *Seneca*, respectively, both based at Mobile, Ala. At decommissioning of the *Seneca* in 1935, he was assigned as student engineer aboard the cutter *Pontchartrain* stationed at New York City. With that vessel he served on the 1936 and 1937 international ice patrol. During the Ohio-Mississippi River flood of 1937, he was assigned temporarily to assist the Coast Guard flood relief forces at Cairo, Ill.

In April 1938, he reported to the cutter *Northland* at Seattle to serve as engineering officer during her last Arctic cruise from the west coast. After decommissioning of the vessel at Oakland, Calif., he instructed licensed merchant marine personnel in marine engineering at the Maritime Service Training Station at Government Island, Alameda, Calif.

He accompanied the *Northland* when recommissioned in June 1939, to Boston to assist in outfitting the vessel for the second Byrd Expedition to the Antarctic. With the eruption of hostilities in Europe, in September 1939, the *Northland* was withdrawn from the expedition and returned to Alameda. The following May, he sailed with the cutter to the New York Navy Yard, where she was fitted for special duty in Greenland. He served then as her engineering officer and later executive officer until May 1941.

During the next 2 years he was assigned to the Cooper Bessemer Corp., at Grove City, Pa., as machinery inspector for 180-foot buoy tenders, the Marine Iron & Shipbuilding and Zenith Dredge companies at Duluth, Minn., to supervise the installation of machinery, tests and trial runs of the new 180-foot tender class vessels. At completion of these vessels, he was assigned Coast Guard

representative in the Office of Inspector of Machinery, U.S. Navy, at the Fairbanks-Morse Corp., Beloit, Wis., during the building of diesel engines for the heavy duty "Wind" class icebreakers. He had the additional duties of training Naval and Coast Guard personnel in the operation of engines used in submarines, destroyers, and Coast Guard icebreakers.

In August 1943, he became engineer officer of the attack troop transport U.S.S. *Cambria* (APA-36) during her conversion at the Todd Hoboken plant. He served as her executive officer in the Pacific war campaigns of Majuro in the Marshalls, Kwajelein, and Eniwetok. In April 1944, he was reassigned to the troop transport U.S.S. *General M. C. Meigs* (AP-116), then being built at Kearney, N.J. After commissioning, he served as her engineer officer while the vessel engaged in transporting troops from Norfolk, Va., to the Mediterranean.

In September 1944, he was assigned as training officer and later as executive officer at the Coast Guard Training Station, Groton, Conn. He next served as executive officer and then as commanding officer of the attack troop transport *Joseph T. Dickman* (APA-13) from August 1945 until her decommissioning in March 1946. He first joined the *Dickman* at Eniwetok in the Marshall Islands, Pacific war zone. While he was aboard here, the *Dickman* was one of the first transports to return a large number of recovered allied prisoners of war from the Philippines to the United States, and participated in the magic carpet program of returning military personnel from the Pacific war zone.

From March 1946 to June 1949, following World War II, he served as Chief, Marine Engineering Section, then Chief, Engineering Division in the 14th Coast Guard District office at Honolulu. Transferred to the 17th Coast Guard District office at Juneau, Alaska, next he served as Chief, Engineering Division and as aide to Ernest Gruening, Governor of Alaska.

From September 1952 to July 1954, he commanded the cutter *Bibb* (WPO-31), based at Boston, serving on ocean station (weather patrol) duty in the North Atlantic. He was then assigned to the Naval War College at Newport, R.I., for a year's course of instruction in naval warfare. Completing the course in July 1955, he became Chief, Shore Units Division at Coast Guard Headquarters. In June 1958, he was assigned as special assistant to the commandant, and in June 1959, was assigned as Chief, Operations Division at the 5th Coast Guard District office in Norfolk, his current duty. In June 1960, he was ordered to San Francisco to assume his present post as deputy commander, western area.

Having served in all theaters of war, Captain Morrison has the following World War II campaign service medals and ribbons: American Defense with A; Asiatic-Pacific Area; European-African-Middle Eastern Area; World War II Victory.

Captain Morrison is married to the former Betty Israel of Dayton, Wash. They have two children, Donald McGregor, Jr., and Permelia Ann.

Captain Morrison is a member of the American Society of Naval Architects and Marine Engineers.

CAPT. IRVIN JUNIOR STEPHENS, U.S. COAST GUARD

Irvin Junior Stephens was born son of Irvin E. and Emma B. Stephens on May 1, 1910, at Dayton, Ohio, where he graduated from Steele High School in 1928. While attending the Citizens' Military Training Camp at Fort Thomas, Ky., during the summer of 1927, he won a gold medal (known as the national commander's award) for being the best trained and disciplined of 1,800 boys gathered at the camp.

He entered the U.S. Coast Guard Academy, New London, Conn., with an appointment as cadet on July 26, 1929, and was graduated with a bachelor of science degree and a commission as ensign on May 16, 1932. At the Academy he was manager of the football team in 1931, secretary-treasurer of the Athletic Association for a year, and circulation manager of the cadets' 1932 annual of *Tide Rips*.

Advancing through the various officers' billets he was appointed to rank of lieutenant (j.g.), May 16, 1935; lieutenant, November 16, 1938; lieutenant commander, June 26, 1942; commander, December 21, 1943; captain, August 26, 1952.

After the Academy, he served his first assignment aboard the cutter *Tahoe*, stationed at Oakland, Calif. This was the homeport for two other vessels in which he served during the following assignments, the lake class cutter *Shoshone* from September 1932 to April 1935, and the cutter *Ariadne* until April 1937. During his next assignment as navigator aboard the cutter *Northland*, stationed

at Seattle, he served in Northern Pacific, Alaskan, and Arctic waters. A re-assignment in October 1938 sent him to the U.S. Maritime Training Station at Oakland, Calif., to serve as instructor in navigation.

In January 1941, he was designated aide to Secretary of the Treasury Henry M. Morgenthau, Jr., in Washington, D.C. In June and July of 1943 of World War II, he acted as observer aboard the cutter *Modoc* on Greenland patrol, then reported to duty as Coast Guard liaison officer to the Navy Submarine Chaser Training Center at Miami, Fla.

From November 1943 to February 1945, he commanded the destroyer *Merrill* (DE-392) on convoy escort operations in the Atlantic and the Mediterranean. He was awarded the Navy Commendation Ribbon for "display of expert seamanship, outstanding professional skill, and excellent ship handling" involving the hazardous transfer in the Atlantic on February 12, 1945, of a badly injured seaman from a merchant vessel under bad weather and sea conditions. He received a Bronze Star in lieu of a second Commendation Ribbon for meritorious service during his command of the destroyer on Atlantic convoy escort duty. A V on his ribbon indicates combating attacks from enemy submarines on a convoy in the Mediterranean. From March to August 1945, he served as executive officer of the troop transport U.S.S. *Freeman* (AP-143) in the Pacific theater of war.

From September 1945 to October 1950, he served as Chief, Administrative Management Division, at Coast Guard Headquarters in Washington. There followed next his command on the cutter *Winnebago* out of Honolulu until April 1952, and an assignment in San Francisco as planning and readiness officer on the staff of the commander, western area, until August 1953. He then reported again to Coast Guard Headquarters to serve under the Chief of Staff (Assistant Commandant of the Coast Guard).

In February 1959, Captain Stephens received orders, pending further orders, for transfer to duty as Chief, Operations Division, in the 17th Coast Guard district office at Juneau, Alaska. In May 1960, he became Chief of Staff of that district.

In addition to the Navy Commendation Ribbon and Bronze Star, Captain Stephen's World War II campaign and service medals include: American Defense, American Area; European-African-Middle Eastern Area; Asiatic-Pacific Area; World War II Victory. He also has the United Nations Service Medal; Korean Service Medal; National Defense Medal.

Captain Stephens is married to the former Mary Jane Park of his hometown, Dayton, Ohio. They have two daughters, Janita Kay, 12, and Christina Gail, 9. Their home address during Captain Stephen's recent assignment at headquarters has been 3404 North Emerson Street, Arlington, Va.

CAPT. NED W. SPROW, U.S. COAST GUARD

Ned Weckesser Sprow was born to the late Mr. Benjamin J. and Mrs. Minnie B. Sprow on July 4, 1909, in Bryan, Ohio. After graduating from Bryan High School, he passed a competitive examination for entry into the U.S. Coast Guard Academy at New London, Conn., and was appointed a cadet on August 13, 1928.

He was graduated from the Academy with a commission of ensign in the U.S. Coast Guard on May 15, 1931. He received a bachelor of science degree in marine engineering. Subsequently he advanced in rank to lieutenant (junior grade), May 15, 1934; lieutenant, December 6, 1936; lieutenant commander, June 26, 1942; commander, December 1, 1943; captain, January 21, 1952.

On his first assignment he served 2 years out of New London and New York City with the destroyer *Shaw* of the destroyer force operated by the Coast Guard between 1924 and 1934 in an all-out suppression of smuggling. From June 1933 to December 1937, he served with the cutter *Calypto* out of several ports, including New York City, San Diego, and Baltimore. In January 1938, he reported to the cutter *Chelan* at Boston, whose patrols often carried her into the icy regions of the north.

From November 1939 to July 1941, he was stationed aboard the cutter *Hamilton*, based at Norfolk, Va. He was ordered next to Alameda, Calif., where he first was instructor at the Maritime Service Training Station there until the responsibility for training maritime personnel was transferred from the Coast Guard to the War Shipping Administration in the fall of 1942 during World War II. He then became training officer at the Alameda Coast Guard Training Station.

Between September 1943 and February 1945, after assisting her in the outfitting and commissioning stages, he commanded the Coast Guard-manned patrol frigate U.S.S. *Coronado* (PF-38) in various campaigns of the Pacific theater of war. He was awarded a Navy Letter of Commendation and Ribbon with a Combat Distinguishing Device for meritorious services covering an episode during the Philippine campaign when the *Coronado* rescued survivors from and salvaged the S.S. *Antoine Saugrain* following its torpedoing by Japanese aircraft enroute to Leyte on December 5, 1944. Under Captain Sprow's direction his ship rescued 226 of troops and crew who had jumped overboard under the torpedo barrage, and two other vessels rescued the remaining 187. He ordered an LT craft to tow the *Antoine* despite advice and opinions that she could not be salvaged. The tow was successfully conducted for 24 hours under enemy aircraft shells when a torpedo finally sank her.

After completing work with the outfitting and commissioning detail for the Coast Guard cutter *Chautauqua* assigned him in March 1945, he commanded the cutter in the Pacific until September 1946. The following month he reported to Coast Guard Headquarters in Washington, D.C., as Chief, Military Morale Division. In August 1952, he became commanding officer of the cutter *Anderscoggin*, based at Miami, Fla.

From September 1952 to May 1955, he served as Chief, Aids to Navigation Section in the 1st Coast Guard district office at Boston, Mass. For the next 2 years he was Chief, Personnel Division at the 14th Coast Guard district office at Honolulu. In August 1957, he became Chief, Aids to Navigation Division, at Coast Guard Headquarters in Washington, D.C. In May 1960, Captain Sprow became Chief of Staff, 13th Coast Guard district with office in Seattle, Wash.

In addition to the Navy Commendation Ribbon (V), Captain Sprow's World War II campaign and service medals and ribbons include: American Defense Service (star); American Area; Asiatic Pacific Area (4 stars); Philippine Liberation (2 stars); Philippine Independence; World War II Victory; and the Philippine Republic Presidential Unit Citation Ribbon. He also has the National Defense Service Medal covering the Korean war period.

Captain Sprow married Beulah P. Greenlaw of New Jersey. They have two children, Ned W. II, 18, and Jill G., 14.

CAPT. JAMES A. ALGER, JR., U.S. COAST GUARD

James Albert Alger, Jr., was born on July 9, 1910, at Brookline, Mass., the son of James Albert and Marjorie Hill Alger. His father retired from the U.S. Coast Guard as a rear admiral on March 1, 1943.

James Albert, Jr., graduated from Virginia Polytechnic Institute (Blacksburg, Va.) with a bachelor of science degree in electrical engineering, then immediately after, on July 13, 1931, he entered the U.S. Coast Guard with a commission as ensign.

Advancing through various officers' billets he was appointed lieutenant (junior grade), May 16, 1935; lieutenant, July 1, 1939; lieutenant commander, October 2, 1942; commander, June 6, 1945; captain, November 1, 1955.

EARLY ASSIGNMENTS—PRE-WORLD WAR II

He served his first assignment as assistant engineer aboard the cutter *Saranac* in the gulf division. Between May 1932 and May 1933, he served in the engineering departments aboard the destroyers *Upshur* and *McDougal*. These were of the New York division of the old destroyer force operated by the Coast Guard on the Atlantic seaboard between 1924 and 1934, to suppress smuggling of liquor into the United States. He then served for 6 months as assistant engineer aboard the cutter *Mendota* out of Norfolk, Va., and in December 1933 transferred back to New York to become engineering officer in the destroyer *Hunt*.

From July 1934 to December 1935, he was engineering officer of the cutter *Algonquin*, stationed at Woods Hole, Mass., then served for nearly 2 years aboard the cutter *Chelan* out of Seattle, Wash., in the North Pacific and Alaskan waters.

From October 1937 to July 1938, he served aboard the cutter *Cayuga* out of Boston, Mass., then was assigned to the Office of the Engineer in Chief at Coast Guard Headquarters, Washington, D.C.

WORLD WAR II

He remained at headquarters until February 1942 of the war, when he was given command of the cutter *Dione*, operating out of Norfolk on submarine patrol and rescue and assistance work.

From April to June 1943, he commanded the cutter *Gresham*, stationed at New York City.

After a course of study at the Submarine Chaser Training Center in Miami, he served on convoy escort duty with the Atlantic Fleet as commanding officer of the destroyer *Mosley* (DE-321) from September 1943 to May 1944, then the destroyer *Lovee* (DE-325) until October 1944. As a result he was awarded a Navy Commendation Ribbon and Metal Pendant.

Transferred next to the Coast Guard yard at Baltimore, Md., he first served in an engineering capacity, then as planning officer from September 1947 to December 1948. From January to June 1949, he was assigned as commanding officer, Coast Guard precommissioning detail, during the conversion of Navy seaplane tenders (AVP's) *Absecon*, *Chincoteague*, *Coos Bay*, and *Matagorda* to Coast Guard (WAVP's) or ocean station (weather patrol) vessels at the Philadelphia and Charleston, S.C., Navy Shipyards. After commissioning of the *Chincoteague*, he commanded the cutter out of Norfolk, Va., for a year.

In May 1950 he was ordered to Coast Guard Headquarters to duty as Chief, Budget Division. Reassigned in September 1953 to the Coast Guard yard, Curtis Bay, Md., he served there as planning officer until February 1956. He then took command of the cutter *Taney*, stationed at Alameda, Calif.

In June 1957, he transferred to the Coast Guard Academy, New London, Conn., to serve as engineering maintenance officer with additional duties of commanding officer, enlisted personnel, and security officer. On July 1, 1959, he became Assistant Superintendent of the Academy, his current assignment.

In addition to the Navy Commendation, Captain Alger's World War II medals and ribbons include American Defense, American Area Campaign, European-African-Middle Eastern Area with one star. He also has the National Defense Medal.

Captain Alger is married to the former Julia Isbell, of Nashville, Tenn.

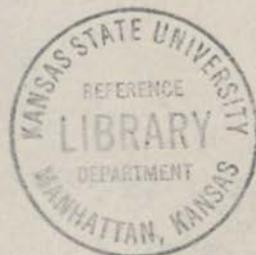
The CHAIRMAN. Unless the two captains who are here have anything to add to the record, I think the record is clear as to what their status will be and where you intend to put them if and when they are confirmed for rear admiral.

Senator SCHOEPEL. I have no questions.

The CHAIRMAN. Thank you all very much.

All right, the committee will go into executive session.

(Thereupon, at 11:55 a.m., the committee was adjourned, to reconvene in executive session.)



RECORDS OF THE BOARD OF TRUSTEES

At a meeting of the Board of Trustees held on the 15th day of January, 1892, at the University of Chicago, Illinois, the following resolutions were adopted:

Resolved, That the sum of \$10,000 be appropriated for the purchase of books for the University Library, to be paid out of the income of the fund known as the "Book Fund."

Resolved, That the sum of \$5,000 be appropriated for the purchase of books for the University Library, to be paid out of the income of the fund known as the "Book Fund."

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