# NOMINATIONS—JULY–SEPTEMBER

# HEARINGS

BEFORE THE

## COMMITTEE ON COMMERCE

## UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

JULY 28, 1976

RICHARD B. OGILVIE, TO BE A MEMBER OF THE BOARD OF DIRECTORS, U.S. RAILWAY ASSOCIATION; DAVID A. CLANTON, TO BE A COMMISSIONER, FEDERAL TRADE COMMISSION

AUGUST 24, 1976

JOSEPH R. FOGARTY AND MARGARETA E. WHITE, TO BE MEMBERS, FEDERAL COMMUNICATIONS COMMISSION

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SEPTEMBER 24, 1976

RICHARD G. QUICK, TO BE A COMMISSIONER, INTERSTATE COMMERCE COMMISSION



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# NOMINATIONS—JULY–SEPTEMBER

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**WEDNESDAY, JULY 28, 1976**

UNITED STATES SENATE,
COMMITTEE ON COMMERCE,
*Washington, D.C.*

The committee met at 9 a.m. in room 5110 of the Dirksen Senate Office Building; Hon. Vance Hartke presiding.

## OPENING STATEMENT BY SENATOR HARTKE

Senator HARTKE. Good morning. The purpose of this hearing is to review the nomination of Gov. Richard Ogilvie of Illinois to serve on the board of the U.S. Railway Association. Governor Ogilvie has been selected by the President from a list of qualified individuals recommended by the National Governors' Conference pursuant to section 201 of the Regional Rail Act. He has been named to replace Governor Scranton who has decided to commit his full attention to his duties as U.S. Ambassador to the United Nations.

The U.S. Railway Association was established by Congress to formulate a plan for the reorganization of the bankrupt railroads of the Northeast and Midwest region, and to create the Consolidated Rail Corporation for the purpose of operating rail services on the lines of the bankrupt railroads.

Since the startup of ConRail on April 1 of this year, the main functions of the Association have been (1) to provide Government financial assistance to ConRail by purchasing its securities, and (2) to monitor ConRail's financial performance. Since the Association is directed by the Regional Rail Act to purchase ConRail securities on an "as-needed" basis, the Board has an important function in assessing ConRail's financial needs so that securities can be purchased at the time and in the amount necessary to make ConRail a profitable, self-sustaining rail corporation. The Association must also be capable of evaluating when such funding is not needed. Clearly, these evaluations must be made as objectively as possible, free of direct political influence.

Congress placed the responsibility for providing financial assistance and monitoring financial performance in a newly created, independent body, the USRA, in order to insulate the Government's investment decisions for ConRail as far as possible from the political process.

Congress believed that once the political decision had been made to establish ConRail and provide Government assistance to get its operations underway, any decision about the timing and amount of governmental assistance should be made free from direct political influence. It is essential that decisions respecting the financial needs

of ConRail be made irrespective of the Government spending philosophy of the particular administration.

The importance of an independent Board cannot be emphasized enough. If ConRail is to succeed, what is needed now is the impartial judgment of a banker who will provide sufficient funds and at the same time protect the Government's investment and conserve Government funds. The time for political maneuvering in the USRA by the administration is over.

This is not to say that the administration is not to have an important role in the implementation of the final system plan and the Government's investment in ConRail. The Regional Rail Act provides that the Government is to be represented on the USRA Board by three Government officials—the Secretary of Transportation, the Secretary of the Treasury, and the Chairman of the Interstate Commerce Commission.

In addition, the Board's Finance Committee is given considerable powers to review the Association's financing decisions and under extraordinary circumstances to effectively postpone the implementation of those decisions in order that the decision can be reviewed by Congress.

Nevertheless, while the Finance Committee may have the power in extreme circumstances to second-guess the Board, we expect the Board to act wholly independently in the first instance.

The Finance Committee's representation is heavily weighted in the administration's favor. The act provides that the committee is to consist of the Chairman of the Board of USRA and the Secretary of Transportation and the Secretary of the Treasury.

The administration's participation in the USRA process must be limited to the role outlined for it in the act. The Secretary of Transportation, for example, is but 1 member of an 11-member Board, and but 1 member of a 3-member Finance Committee. It is necessary that his participation in the process be exercised proportionately. In spite of the considerable role of the Government officials on the Board, I am concerned that the present administration is intent on increasing its influence over the Board beyond that mandated in the act. Congress cannot tolerate any additional efforts to limit the independence of the Board.

Governor Ogilvie, I have no doubt but a man of your integrity, experience and strength of mind will have no difficulty whatever in exercising your responsibilities independently, and in withstanding whatever pressures are placed upon you to relinquish your independence.

I merely want to emphasize again to its current members, as I did when each of them was questioned by this committee 2 years ago, to you, and to the administration, Congress' intent in establishing an independent USRA.

Senator Percy would like to make a statement on your behalf.

## STATEMENT OF HON. CHARLES C. PERCY, U.S. SENATOR FROM ILLINOIS

Senator PERCY. Mr. Chairman, there is really nothing I should have to tell you about Governor Ogilvie, because fortunately our States are so overlapping in news media that what goes on in Indiana

is well-known in Illinois, and what goes on in Illinois is well-known to you.

It is a great pleasure to be here to present to you a long-time friend of several decades.

Throughout public life together, we have worked in tandem, and I have had an opportunity to observe Richard Ogilvie and his tremendous performance through the years to such an extent that I have no hesitancy in saying to you, Mr. Chairman, that this nomination by the President to the Board of Directors of the U.S. Railway Association would be a credit to the President, and a credit to the Railway Association.

I am happy to strongly support the nomination of Richard Ogilvie, who has an incisive, penetrating mind, and whose services to his government and to the field of transportation will be immense.

I believe you will find him one of the most able and distinguished and helpful colleagues on this Board.

It is all too often that a man who leaves the governorship is sometimes forgotten or sometimes remembered for all the wrong things he did. It is an unusual case to have a governor who has grown in stature, who has gained the respect and esteem of people in this country, and particularly his own constituents in Illinois, since he left office.

When he held office, people didn't fully appreciate what he was accomplishing and doing. Since he has now left office and his work can be looked on in proper perspective, we see he had the courage, the vision and decisiveness to do what was right for his State, and he provided an example and a source of inspiration for other Governors to follow.

Dick Ogilvie first ran for elective office in 1962, in his successful bid for Cook County sheriff. His record as a forceful combatant against organized crime and gambling is well known and speaks for itself.

The nonpartisan Chicago Crime Commission lauded him at the end of his term for his widely acclaimed suppression of organized gambling.

In November 1968, Richard Ogilvie was elected Governor of Illinois. During the campaign, he called for sweeping changes in the Illinois constitution, a proposal that was approved in the general election. He also advocated an overhaul of the executive branch of the State government, particularly in the areas of transportation and public safety.

In one of his first speeches as Governor, Dick Ogilvie stated, "We must always bear in mind the human needs that make public office a special kind of trust . . . I am prepared to face the challenge . . . Our product is service and our goal is to improve the quality of life for everyone in Illinois."

I think we could just change that to Indiana or any other State. I think it is one of the finest brief statements I have seen as to what our whole purpose is in public service.

I find this statement to be completely in accord with Dick Ogilvie's actions as Governor of Illinois. During his tenure in office, he demonstrated an acute awareness of the often complex problems in the relationship between State and local governments and the Federal bureaucracy. I feel strongly that Governor Ogilvie's administrative capabilities have been clearly demonstrated, and I feel, just as strongly,

that he would be an asset to the board of directors of the U.S. Railway Association.

For this purpose, I am very pleased to introduce you to him today, though I know that you know him well.

Thank you.

Senator HARTKE. Thank you, Senator.

You are to feel complimented to have such an outstanding Senator give you such a wonderful buildup. I want to thank him for his fine words. I know he has other affairs to go to.

We appreciate your presentation this morning.

## STATEMENT OF RICHARD B. OGILVIE

Mr. OGILVIE. Mr. Chairman, I would like to thank Senator Percy. I am very grateful for the very complimentary remarks. Also, I know he stayed up quite late last night, and I appreciate him being here this morning so bright and early.

Senator HARTKE. Do you have any statements you would like to make, Governor?

Mr. OGILVIE. No, sir, I do not.

Senator HARTKE. Section 711(d) of the Regional Act provides that members who are selected from the list of individuals recommended by the National Governors' Conference may not have any employment or other direct financial relationship with any railroad.

According to your financial statement, you have no direct financial holding in any railroad, nor are you directly compensated by a railroad.

However, you are a partner of one of the Midwest region's leading law firms which may, from time to time, find itself in a direct financial relationship with one or more railroads.

Does your law firm represent any railroads?

Mr. OGILVIE. I made inquiry, Mr. Chairman, and the only representation that we can identify is a part of Commonwealth Edison. We are essentially utility practitioners. They have a feeder line which moves coal to one of their plants, but it is really insignificant, I think.

Senator HARTKE. All right.

The Justice Department has advised us that it is their opinion that you should excuse yourself from any of the firm's dealings or actions which might involve a direct financial relationship with any railroad, and isolate your compensation arrangements from any such relationship.

Will you make a commitment to this committee that you will excuse yourself from any such dealings or relationships?

Mr. OGILVIE. I certainly will.

In the unlikely event something so substantial should develop, I would have to resign from the USRA, but I don't see that happening.

Senator HARTKE. The financial statement has been filed with the committee and it is available, and the biographical information will be made a part of the record at this time.

[The biographical sketch follows:]

### BIOGRAPHICAL SKETCH OF RICHARD B. OGILVIE

Address: residence, 1500 N. Lake Shore Drive, Chicago, Ill.; office, One First National Plaza, Chicago, Ill.

Date and place of birth: February 22, 1923—Kansas City, Mo.

Marital status: married February 11, 1950 to Dorothy Louise Shriver.

Names and ages of children: Elizabeth Buell Ogilvie, age 21.

Education: Yale University 1941–42—B.A., 1945–47; Chicago-Kent College of Law—J.D. 1947–49.

Employment record: Lord Bissell & Kadyk, associate attorney, Chicago, Ill., 1950–54; U.S. Dept. of Justice, Assistant U.S. Attorney, Chicago, Ill., 1954–55; Lord Bissell & Brook, partner, Chicago, Ill., 1955–58; U.S. Dept. of Justice, Special Assistant to the Attorney General, Criminal Division, Chicago, Ill., 1958–60; Stevenson, Conaghan, Hackbert, Rooks & Pitts, partner, Chicago, Ill., 1960–62; sheriff of Cook County, Ill., Chicago, Ill., 1962–66; president, Board of Cook County Commissioners, Chicago, Ill., 1966–69; Governor of Illinois, Springfield, Ill., 1969–73; Isham, Lincoln & Beale, partner, Chicago, Ill., 1973 to present.

Government experience: In addition to above answer, member of Advisory Council on Intergovernmental Relations 1971–73; member of President's Ad Hoc Committee on the Status of Puerto Rico 1973–75.

Memberships: American Bar Association; Illinois State Bar Association; Chicago Bar Association; Law Club, director; Legal Club, director; Masonic Fraternity, 330; Pace Institute, director; Gateway House, director; Chicago Association of Commerce and Industry, director; John Howard Association, director; U.S.O. Chicago, director; Leadership Council for Metropolitan Open Communities, director; Illinois Childrens Home and Aid Society, director; Campaign for Yale, national co-chairman; Chicago Crime Commission, director; Americans for Effective Law Enforcement, director; Institute for Congress, director; Commission on the Status of Public General Hospitals, director; WTTW (Public Television), director.

Political affiliations and activities: delegate to the National Republican Nominating Conventions, 1968, 1972 and 1976; director, United Republican Fund.

Contributions (To the best of my recollection and from available records): President Ford Committee, $500; United Republican Fund, $524; Paul Randolph Campaign Committee, $25; Lola Flamm Campaign Committee, $50; George Lindberg Campaign Committee, $25; Jane Barnes Campaign Committee, $50; Ihrig-Anderson Campaign Committee, $50; Betty Lou Reed Campaign Committee, $75; Mary McDonald Campaign Committee, $100; Virginia MacDonald Campaign Committee, $50; Republican Women Power, Illinois Style, $110; Republican Women Candidate Committee, $100; Republican National Finance Committee, $225; Illinois College Young Republicans, $20.

Honors and Awards: Honorary doctorates from: Milliken University, Lake Forest University, Chicago-Kent College of Law, Illinois Weslayan College, Lincoln College, Mac Murray College.

Published writings: None.

Qualifications: I feel that I am qualified for membership on the board of the United States Railway Association for the following reasons: (a) Education—Trained as a lawyer; (b) Executive experience—Extensive service in the direction and administration of large governmental entities; (c) Corporate experience—Service as a director of public corporations including service on the board of a major railroad company (Illinois Central RR).

Senator HARTKE. Let me point out that as far as USRA is concerned, and in particular the Board of Directors, I have been with them and followed them for quite some time. It is a matter which is of deep concern to me personally.

We have had an excellent relationship between the Congress and the USRA, and I find that their work has been in accordance with the overall direction of the Congress in relation to the effectiveness of the act.

We have had some conflicts between the DOT and the USRA, and for this reason, I was especially concerned about the attempt by the DOT to exert an influence over USRA—a situation which the Congress had carefully and studiously planned to avoid. Congress itself did not wish to involved in any type of influence over them.

But the Transportation Secretary has consistently sought to force their opinion upon the board.

I have no doubt about your integrity, experience, and strength of mind, but I would like to have some type of understanding before any action is taken as to whether you would exercise your responsibilities independently of any type of pressure that might come from the DOT or the administration, especially in view of the fact that we really need an independent organization in the USRA if we are going to have the type of railroad system this country needs.

Mr. OGILVIE. Well, I think I can answer you best this way.

Senator Percy said I have had a long-time interest in transportation and, among other things, managed to get through our legislative process a $900 million bond issue; $600 million went to highways, $200 million for urban and mass transit, which included our support of the railroads in our State, and $100 million for airports.

So when the invitation came to be a participant in the USRA. I welcomed it because it was an opportunity for me to continue my interest.

And I can give you my assurance that I will have uppermost in my mind the fact that we are serving the people in this country first. That will be my dedication.

We will have an independent cooperative voice, of course, with the other members of the Board.

I might say, too, I have not had the opportunity to have some appreciation of these problems you are talking about until this morning, when I breakfasted with Arthur Lewis.

That was my first information about some of the complications he has encountered.

I would say they trouble me.

Senator HARTKE. I think Arthur Lewis has demonstrated the complete independence we are seeking, and also demonstrated the time of leadership you so seldom find in most of these agencies that you hope you will find, but never really see.

Senator Stevenson has arrived.

Do you have any statement or comment?

Senator STEVENSON. Thank you, Mr. Chairman.

I apologize for arriving late, but I do want to take advantage of this opportunity to welcome an old friend and constituent, former Governor Ogilvie of Illinois, to this committee, and to recommend him to the Committee.

I know Governor Ogilvie very well. We stand on opposite sides of the fence.

I have the greatest respect for him. He has always subordinated partisanship to public interest. He has served with great distinction not only as Governor, but also as sheriff of Cook County.

His business experience is as a senior partner in one of the Nation's finest law firms, and based on that long and distinguished record, Mr. Chairman, I think he is very well qualified by experience, by character—he has certainly manifested independent judgment in the past—to serve as a member of the Railroad Association Board.

I am glad to welcome an old friend and to have this opportunity to commend him most highly to you, sir.

Senator HARTKE. Thank you, Senator Stevenson.

Let me ask you, Governor, in your discussions with the Executive Office of the President, were there any special views or any kind of conditions attached to the nomination for which you are now embarking?

Mr. OGILVIE. None whatever.

Senator HARTKE. Did you have any conversations with the Secretary of Transportation prior to your appointment?

Mr. OGILVIE. Not about this, no, sir.

Senator HARTKE. You know that this is a position which is not considered a full-time position, but with your full-time law practice, the fact you will be in Chicago in a limited role that USRA has, are you willing to attend the Board meetings when called and dedicate the necessary time and effort to making sure that the Association can meet adequately the issues that it faces?

Mr. OGILVIE. Yes, sir.

Senator HARTKE. I understand the staff of the USRA has provided you with materials describing the requirements of the Regional Rail Act and authorities and duties of the Board.

Have you had a chance to review those?

Mr. OGILVIE. Very cursorily.

Senator HARTKE. Searchingly.

You have had a chance to familiarize yourself?

Mr. OGILVIE. Cursorily, not searchingly.

Senator HARTKE. OK.

Have you had any chance to observe the new ConRail setup which is really the result of the USRA's planning?

Mr. OGILVIE. Somewhat, yes, sir.

Senator HARTKE. As a Governor, I would hope, and as a member actively engaged in the political structure from the election side—which is one which I find really, generally speaking, much more understanding and probably more diligent frequently, than those who have never had the experience of running for public office—ConRail seems to be an item which, generally speaking, may be in the public arena, as looked upon with somewhat of a question mark, but I find that people who run for office really are more responsive to the public needs frequently than those who merely have been anointed and appointed.

Mr. OGILVIE. I had a very spirited conversation at dinner last night at the White House with a lady who expressed a rather derogatory opinion of those who have been elected, and I would say you and I see eye to eye on that point.

Senator HARTKE. What I wanted to say, would you make a commitment to the Committee if you were confirmed you will meet with state officials as well as Federal officials, because state officials have been complaining somewhat that they have not been brought into the conversations and into the decisionmaking process to the extent they would like.

Mr. OGILVIE. You asked about conversations with others. I did have a conversation with Governor Bowen and also with Governor Ray, both of whom asked me if I would make myself available for this and they made a special point of what you are suggesting, that they would like to see a governor, one that they knew, who would be representative of their concerns.

Senator HARTKE. There is also the Conference of States on Rail Reorganization.

Are you familiar with that?

Mr. OGILVIE. No, sir, I am not.

Senator HARTKE. I would hope you would meet with them also, because they, too, are very interested in what is going on in these affairs.

I have no further questions for you this morning.

Thank you.

Mr. OGILVIE. Thank you very much.

[Whereupon, at 9:30 a.m., the meeting was adjourned.]

# NOMINATIONS—JULY–SEPTEMBER

WEDNESDAY, JULY 28, 1976

UNITED STATES SENATE,
COMMITTEE ON COMMERCE,
*Washington, D.C.*

The committee met at 2:35 p.m. in room 5110, Dirksen Senate Office Building, Hon. Frank E. Moss presiding.

## OPENING STATEMENT BY SENATOR MOSS

Senator Moss. The subcommittee will come to order.

Today we are considering the nomination of David A. Clanton of Virginia to be a member of the Federal Trade Commission for the unexpired term ending September 26, 1976, and the seven-year term commencing on that date.

Mr. Clanton has worked with the members of the Commerce Committee for 5 years and thus we are well acquainted with him.

Perhaps it would be appropriate for me to read from a letter which Chairman Magnuson, Senator Pearson and I received from the former minority staff director of the Commerce Committee who we also hold in high regard.

In his letter which I will place in the hearing record in full Mr. Art Pankopf said:

> Mr. Clanton is very able and bright. He is highly intelligent, possessing a keen legal mind. He is an extremely hard worker and unselfishly devotes himself to whatever task is assigned to him. Mr. Clanton gives unsparingly of himself both in time and effort as demonstrated by the excellence of his work product which is sizable. In over four years' employment as minority counsel to the House Committee on Merchant Marine and Fisheries and almost seven years of service with your Committee on Commerce as minority counsel and staff director, I know of no individual who has been more dedicated in the discharge of his duties in the public interest or more hard-working than David A. Clanton.

Let me add that I subscribe to Mr. Pankopf's assessment.

[The letter follows:]

BETHESDA, MD., *July 26, 1976.*

Hon. FRANK E. MOSS,
*Chairman, Consumer Subcommittee, Committee on Commerce, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR MOSS: I wish to convey to you my strong personal support for the nomination of David A. Clanton of Virginia to be a Federal Trade Commissioner for the unexpired term of 7 years from September 26, 1968, vice Lewis A. Engman, resigned; and for the term of 7 years from September 26, 1976.

The President submitted Mr. Clanton's nomination to the Senate on Monday, July 20, 1976. It has been referred to the Committee on Commerce and a hearing has been scheduled on this nomination at 2:30 p.m. on Wednesday, July 28, 1976.

I have known Mr. Clanton for more than six years, and I have had the privilege of working with him in a professional capacity for approximately five of those six years. Mr. Clanton joined the Minority Staff of the Senate Committee on Com-

merce on April 8, 1971. He served continuously in that capacity until the beginning of 1976. It was during this same period of time that I had the pleasure of serving as Minority Counsel & Staff Director to your Committee on Commerce. In this capacity I worked closely with Mr. Clanton, and as a result of this close working relationship, I came to know and to appreciate the high caliber of professional talents and skills which he consistently demonstrated.

Thus, without any equivocation whatsoever, Senator Moss, I can state that Mr. Clanton discharged his duties as Minority Staff Counsel with distinction. As a result, I can further state that, in my opinion, he possesses all the attributes and qualifications which should enable him to undertake and to discharge with similar distinction the post to which he has been nominated.

Mr. Clanton is very able and bright. He is highly intelligent, possessing a keen legal mind. He is an extremely hard worker and unselfishly devoted himself to whatever task is assigned to him. Mr. Clanton gives unsparingly of himself, both in time and in effort, as demonstrated by the excellence of his work product, which is accomplished in the most meticulous manner possible. In over four years of employment as Minority Counsel to the House Committee on Merchant Marine & Fisheries and almost seven years of service with your Committee on Commerce as Minority Counsel & Staff Director, I know of no individual who has been more dedicated in the discharge of his duties in the public interest or more hard working than David A. Clanton.

Senator Moss, my knowledge of the nominee, David A. Clanton, has not been limited solely to that gained in a professional capacity, I also have had the pleasure of knowing Mr. Clanton socially, including having the pleasure of his company in my home on several occasions. Consequently, Mr. Clanton is more than just a former professional colleague to me. Rather, in addition to being a person who I hold in high professional esteem, he also is a personal friend who I respect for his personal integrity and high moral character.

Perhaps the best evidence of the very high regard in which I hold Mr. Clanton is that on some occasions when it was necessary for me to be out of town while employed on the Committee staff, it was Mr. Clanton to whom I looked to assume my duties in my absence. This, as I am confident former Senator Cotton would vouch for, David did with distinction and dedication.

Accordingly, Senator Moss, I have no reservations whatsoever, in commending Mr. Clanton to you and your colleagues on the Committee and to express my wholehearted support for favorable action upon his nomination to be a Federal Trade Commissioner. There is no doubt whatever in my mind that David A. Clanton will assume the duties of a Federal Trade Commissioner with the highest degree of public and moral commitment. As demonstrated by the manner in which Mr. Clanton has undertaken and has discharged other responsibilities, I am confident that he likewise will discharge his duties as a Federal Trade Commissioner with singular distinction and honor.

I therefore consider it a personal privilege to express to you my wholehearted support for the nomination of David A. Clanton to the Federal Trade Commission. The Federal Government and the Nation will be well-served by confirmation by the Senate of so able a nominee as David A. Clanton to be a Federal Trade Commissioner.

With warmest personal regards and very best wishes, I remain.

Respectfully yours,

ARTHUR PANKOPF.

Senator Moss. Mr. Clanton has been an extremely effective member of our staff. He is well acquainted with the obligations of the committee legislatively, and he also knows a great deal about the FTC, since we have jurisdiction over the work of that Commission and oversight of the Commission.

I personally think it is probably the most important Commission we have as far as consumer matters are concerned.

Therefore, I am very sensitive to the fact that we should have outstanding people chosen to serve on that Commission.

Dave Clanton has, of course, worked directly with Senator Griffin and I would ask him if he would like to introduce the nominee or make any comments at this point.

## OPENING STATEMENT BY SENATOR GRIFFIN

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

This is a very important occasion for me and for David Clanton and members of my staff, many of whom are gathered here in this hearing room today.

In a way, I feel that my presence here is almost superfluous—because all of the members and staff of the committee know David Clanton as well as I do.

Indeed, if he "belongs" to anyone, I think he "belongs" to the Committee on Commerce. It has been my good fortune to have him serve twice on my personal staff. But it was here that he developed the skills and the expertise that have qualified him for appointment to the FTC.

During nearly 5 years of service on the staff of this committee, as the chairman has already pointed out, he has been deeply involved in the legislative issues that have been handled by this committee in a variety of fields—including the FTC, to which he has been appointed.

His background includes work on legislation relating to auto safety, consumer affairs, communications, product warranties and energy policy, just to name a few areas. This has given him a breadth and depth of knowledge enjoyed by few nominees to any Federal regulatory agency.

More importantly, during his tenure both as a legislative assistant on my staff and as minority staff counsel to this committee, David Clanton has demonstrated extraordinary talent, intelligence, integrity and capability.

Unfortunately for me, the White House also found out how competent he is and has taken him away from service on my staff. We shall hate to see him go, but we are glad to see his talents being recognized and are glad that he is going to have an opportunity for this very important service.

I feel very good about it and I congratulate him. I am delighted to present him to the committee and to say that he should be confirmed without delay. I hope that the committee will see fit to report his nomination favorably to the floor.

Senator MOSS. Thank you. I have a statement from Senator Baker which will be inserted in the record.

[The statement follows:]

STATEMENT OF HON. HOWARD H. BAKER, JR., U.S. SENATOR FROM TENNESSEE

Mr. Chairman, it is a pleasure for me to support approval by the Commerce Committee of the nomination of David A. Clanton to be a member of the Federal Trade Commission.

During his five years of service as Minority Staff Counsel to this Committee, David has consistently provided me and the other members of the Committee's minority with the information and assistance which we need to make judgments on legislation affecting the many diverse areas of the Committee's jurisdiction, including statutes and proposals affecting the Federal Trade Commission.

Throughout this time I have been impressed with Mr. Clanton's integrity and his serious, efficient approach to what has become an increasingly heavy workload borne by the Committee's minority staff.

I am pleased that the President has recognized Mr. Clanton's ability, and I am certain that he will prove a dedicated and efficient member of the Federal Trade Commission.

The Senator from Alaska, Senator Stevens.

Senator STEVENS. I am just happy to be here and I second the comments of my colleague from Michigan.

It is a very rewarding thing to see members of the staff who do their work and distinguish themselves get recognition as Mr. Clanton has.

Senator Moss. Thank you.

Mr. Clanton, you have submitted a biographical statement and answers to certain questions concerning potential conflicts of interest. and answers to 22 policy questions concerning the FTC.

These will be placed in the hearing record.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF DAVID A. CLANTON

Address: 1600 S. Eads, Apt. 506N, Arlington, Va.

Date and place of birth: May 31, 1944, Santa Barbara, Calif.

Marital status: Single.

Education: B.A.—Business Administration, Andrews University, Berrien Springs, Mich. (1966); J.D.—Wayne State University Law School, Detroit, Mich.—Cum Laude (1969).

Employment record (Dates of employment, employer, position):

June 1967 to September 1967, William R. McFadden, Esq., Detroit, Mich, law clerk.

June 1969 to April 1971, U.S. Senator Robert P. Griffin, Washington, D.C., special assistant.

April 1971 to January 1976, U.S. Senate Committee on Commerce, Washington, D.C., minority staff counsel.

January 1976 to present, U.S. Senator Robert P. Griffin, Washington, D.C., legislative assistant.

My government experience is set forth in my answer to the previous question.

Memberships: Member of Michigan Bar—admitted to practive before Wayne County Circuit Court, April 1970; admitted to practive before Federal District Court for Eastern District of Michigan, April 1970.

Political affiliations and activities: 1975 to present—member of the Arlington County Republican Committee; 1975—chairman, Friends of Dorothy Grotos Committee (I also contributed $100 to this committee in connection with her contest for a seat on the Arlington County Board).

Honors and awards:

Wall Street Journal Award for academic excellence in major field; Andrews University, 1966.

Silver Key, Wayne State Univeristy Law School, 1969.

William D. Traitel Scholarship, Wayne State University Law School, 1969.

Clarence M. Burton Memorial Scholarship, Wayne State University Law School, 1969.

Graduate Professional Scholarship, Wayne State University Law School, 1968.

Article Editor, Wayne Law Review, (1968–69).

Published writings: Comment, "Extradition: Concurrent Jurisdiction and the Uncertainty of Prosecution in the Requested Nation," *Wayne Law Reveiw* 1181 (1968); Note, "Taxation—Form over Substance—Covenant Not to Compete," *Wayne Law Review* 691 (1968).

Qualifications: If confirmed, I believe that the experience I have acquired as (1) an assistant to Senator Griffin, and (2) as a staff counsel for nearly five years on the legislative committee which overseas the activities of the Federal Trade Commission should enable me to perform effectively and independently as a member of the FTC.

Senator Moss. Additionally, we have received a financial statement which will be retained in the committee's files and is available for public inspection of anyone who has an interest or reason for wishing to examine it.

You indicate you do not have any stocks or bonds and your assets are limited to a savings account, cash and personal property such as your automobile and other personal property; is that correct?

## STATEMENT OF DAVID A. CLANTON

Mr. CLANTON. That's correct.

Senator MOSS. Your sole source of income over the past 3 years has been your salary and interest on your savings; is that right?

Mr. CLANTON. That's right, Mr. Chairman.

Senator MOSS. Your answers to the written questions appear to be very satisfactory to me, but I have several additional questions that I would like to ask.

I first should invite you, if you wish, to say anything that you would like to say about your candidacy and selection.

Mr. CLANTON. Mr. Chairman, I would like to make a few brief remarks.

It is difficult to express adequately my feelings about being here today. This is my first time on the other side of the table. And, it is a great pleasure and a great honor to have that opportunity.

I would like especially to thank Senator Griffin for being here and for his very kind and thoughtful remarks. I really owe an awful lot to him because he gave me the opportunity to come to Washington in the first place and get the experience I have acquired. His counsel has been extremely valuable and I have much regret leaving because of the association I have had with Senator Griffin.

I also would like to express my thanks to the committee and to the staff for the courtesies they have extended over the years. It has been a very pleasant association and, if I am confirmed, I look forward to a good working relationship in the future.

In addition, I want to emphasize, the special responsibility that exists—particularly at this time—with respect to service on the independent Federal regulatory agencies. There is a great degree of responsibility entrusted to members of these agencies to discharge their duties as fairly, impartially and independently as possible.

I certainly will pledge to do that to the best of my ability.

Senator MOSS. Thank you.

You recognize that the jurisdiction of the FTC is rather broad and has a heavy workload before it now. Is this dismaying to you in any way?

Mr. CLANTON. Well, I think it is a great challenge. I look forward to it in that respect.

The Commission is involved in a number of activities that can be very useful in promoting an open, competitive market and protecting consumers. It certainly does have a very heavy workload from what I have been able to determine so far. But, I look forward to the opportunity of being involved in these matters very much.

Senator MOSS. In answer to a question concerning consumer product information, you discussed the need for consumers to have such information available if they are to make a sound purchasing decision.

You may be aware that several such initiatives are underway in Government today in this area.

We have in this committee a bill which would establish a program in the FTC to develop uniform methods of product testing.

The Department of Commerce has proposed a voluntary mechanism under which manufacturers would make such information available to the public.

79-717—76——2

The Commission has the ability on its own initiative to select certain products and, by rule, promulgate test protocols and to require the manufacturers of such product to make the information publicly available.

In each case the objective is to develop a method by which the consumer can better compare competing products beyond brand name, warranties and other features.

Which of these methods do you think can accomplish the most good in this area?

Mr. CLANTON. Mr. Chairman, I am familiar with the legislation you refer to, which is pending before the committee. Its objective is very commendable. One of the important missions of the Commission is to make sure that the most useful, understandable information is available to the public.

At the same time, I am also aware that the increased authority granted to the Commission in the legislation that you helped sponsor, the Magnuson-Moss act, has given it more flexibility in requiring the disclosure of needed information. And, I know the Commission has established a program for affirmative disclosure of such information.

At this point, I would prefer to see what the Commission can do with its existing authority. With the limited resources available to the Commission, this authority should be directed more specifically to preventing unfair or deceptive practices.

I certainly would not want to rule out the need for additional legislation, but I believe the Commission has enough authority to do a good job in that area.

Senator MOSS. We have a vote now and it is going to be necessary to recess.

I have additional questions that are in writing here. I wish you would furnish an answer to them. I think that would be satisfactory for the record.

Mr. CLANTON. I would be happy to do so.

Senator MOSS. If you could do that, that would be fine.

We will stand in recess and we will consider you in the next executive session.

Mr. CLANTON. Thank you very much.

[Whereupon, at 2:45 p.m., the hearing was adjourned.]

[The questions and answers referred to follow:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

*Question 1.* You have worked with this Committee in the drafting of the Magnuson-Moss Act and you were on the staff when the Committee considered amendments to the FTC Act which were passed by the Senate earlier this year. From your past observations, are there any other areas in which you think the FTC Act should be further amended in order to enhance the FTC's ability to enforce its mandate?

Answer 1. In addition to the legislation that you refer to, I believe the Senate-passed measure regarding pre-merger notification would be very useful to the Commission in support of its antitrust enforcement program. Beyond that, I want to see how effectively the Commission is performing in carrying out the new responsibilities entrusted to it before determining whether additional legislation is needed.

*Question 2.* In the last Congress and again in this Congress, the Committee has reported legislation which would establish a grant mechanism for the establishment of mechanisms to resolve consumer controversies. The bill as reported places the granting authority in the Federal Trade Commission. Some have suggested

placing the granting power in the Office of Consumer Affairs or the Department of Justice. Do you have any thoughts on these alternatives?

Answer 2. Because the Commission's functions are primarily of an investigative, adjudicative or quasi-adjudicative nature, I believe that it would be more advisable to place this new grant authority in another department or agency that has more experience in administering such programs, such as HEW or the Department of Justice.

*Question 3.* As Chairman Collier has stated, the Commission has a rather full plate before it at this time. As the plate is cleaned off, in what areas do you think the Commission should move, in consumer protection, in rulemaking and in antitrust enforcement?

Answer 3. As you indicate, the Commission has a considerable number of important matters before it. From a general standpoint, I support the Commission's increased emphasis on antitrust enforcement and I believe that its new rulemaking authority should be utilized as effectively as possible. However, until I have had a chance to examine the Commission's programs and priorities on a first-hand basis, I am reluctant to make any specific recommendations.

*Question 4.* In the interests of Equal Employment opportunities, let me pose the following question. None of the Commissioners has a female attorney-advisor on his personal staff. Former Chairman Engman did and that individual is currently Acting Director of the Bureau of Consumer Protection, but I also note that no Bureau Director in recent memory has been a woman. Do you have any views on the ability of women to serve in these types of positions? What are the criteria that you will use in your selection of a personal staff?

Answer 4. I am confident that there are qualified women who could ably serve as Bureau Director or in other key posts in the Commission. And, I hope there will be an early opportunity to bring more women into these positions.

As for selection of my personal staff, the principal criterion will be their qualifications for assisting me in performing my responsibilities. In that regard, I would certainly welcome the opportunity to consider qualified women as well as individuals from minority groups.

*Question 5.* One of the written questions dealt with the subject of *ex parte* communications and you expressed your commitment to abide by the Commission's rules. Let me go one step further, however. Many times a firm may be under investigation or the Commission may have a proposed trade regulation rule which has not yet been formally proposed, and those subject to the investigation or the draft proposed rule want to get in a few words with the Commissioners. These are not *ex parte* contacts in the traditional sense, however, they do lead to public distrust when they are conducted behind closed doors. Would you be willing to make a public log of all such contacts and seek out other points of view when these outside parties try to lobby you?

Answer Yes. I intend to keep a log of outside contacts regarding matters under consideration by the Commission and I would certainly seek out other viewpoints in such cases.

## Responses to Policy Questions

*Question 1.* What should the policy of government be in reducing economic concentrations in industries dominated by a handful of large corporations or in discouraging the growth of giant conglomerate firms whose structure is not economically justified by efficiencies of scale?

Answer. Where large, highly concentrated industries and giant conglomerates are concerned, Government antitrust agencies should be especially diligent in carrying out their responsibilities. Such industries and firms not only have a significant impact on the economy, but a greater potential exists for the presence of anti-competitive market forces. These market conditions should be monitored and examined very carefully for possible antitrust violations. Admittedly, that task has been complicated by the lack of adequate information about the performance of particular business segments within highly diversified enterprises. For that reason, the FTC's line-of-business reporting program should help provide some much-needed data for evaluating the structure and behavior of specific industries. In addition, the proposals now pending before Congress to enhance review of mergers before they are consummated, should enable the government to respond in a more timely and effective manner to prevent acquisitions, which may substantially reduce competition.

*Question 2.* If economic evidence is adduced that in a given industry high concentration is the direct cause of a lack of price and/or quality competition, and that significant reduction of concentration would cause prices to drop significantly, do you believe that the FTC has sufficient authority for the issuance of a complaint?

Answer. Although I would hesitate to express a legal opinion on this specific issue without the opportunity for further research, the broad authority of the Commission under section 5 of the FTC Act and other statutes would appear to be sufficient to reach virtually all types of anti-competitive market conditions, whatever the cause.

*Question 3.* What are your views on the possible economic relationship between advertising and price and/or quality competition?

Answer. Advertising that is informative and accurate can be a very important device in helping to promote price/quality competition. On the other hand, it has been argued that certain types of advertising practices may contribute to a lessening of competition. The extent to which that may occur is currently the subject of litigation in the FTC's breakfast cereal case.

*Question 4.* What are your views on the economic relationship between consumer products information and price/quality competition. What do you believe is a proper role for the FTC to play in assuring that more product information is available to the consumer at the point of sale and in advertising?

Answer. For competition to work effectively, consumers need access to complete, accurate and readily understandable information about the products they purchase. Congress recently has given the FTC some specific authority to promote that objective with respect to warranties under the Magnuson-Moss Warranty-FTC Improvements Act and with respect to the energy costs of autos and other major consumer products under the Energy Policy and Conservation Act. In addition, the Commission can play a key role in this area by moving against unjustified restrictions on advertising, such as the curbs on advertising of prescription drugs which were struck down recently by the Supreme Court in *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.* The FTC also has authority to require affirmative disclosure of material information when necessary to protect consumers from being misled by unfair advertising practices.

*Question 5.* Many economists have stated that concentration above certain levels is inherently inconsistent with the existence of effective competition and thus, competitive prices for consumers. How do you feel about this?

Answer. Although I am not an economist, I am aware that there are some strong differences of opinion among economists about this issue. At the present time, I am not sufficiently familiar with the economic arguments and evidence on both sides of this issue to express any kind of categorical judgment. I would question, however, any sweeping generalization which fails to take into account the nature of the industry involved or other factors affecting competition. It also would be helpful, as I indicated in my answer to question 1, to have more relevant information about the market structure and performance of various industries.

*Question 6.* While the Federal Trade Commission has a mandate both in the areas of consumer protection and competition, how do you think the Commission should go about assessing where to invest its resource?

Answer. The Commission's recently adapted program planning, increased use of cost-benefit analysis, and periodic program evaluation should be helpful in indicating the most effective areas for the expenditure of its resources. I strongly support efforts to continue and build upon this process. I also agree with the Commission's increased emphasis on antitrust enforcement activity because of its overall importance to the general economy. It should be pointed out that this has been accomplished without any absolute decrease in funding for other activities. Furthermore, I support pending Congressional efforts to provide separate and higher authorization levels for antitrust enforcement programs which the Commission is responsible for administering.

*Question 7.* As a consumer, what are your views on advertising? In particular, what are your views on messages directed toward children? Do you think it is the responsibility of the Federal Trade Commission to apply a different standard in regulating children's advertising?

Answer. My reaction as a consumer to advertising depends on the ad and the media used. It can be helpful, but at times it also can be irritating, uninformative, and downright misleading. Advertisers have a special responsiblity to keep from exploiting the vulnerabilities of children, particularly where health and safety matters are at stake. The Commission should judge children's advertising by a

different standard of fairness than would apply in the case of adults and it also should give special consideration to the effects of all types of advertising on children.

*Question 8.* Do you believe that advertising can be deceptive, not only through the making of affirmative misrepresentation but by failing to disclose significant information? Can deception be accomplished through half-truths as well as untruths? What are your views on the use of affirmative disclosure, corrective advertising, restitution?

Answer. Advertising that fails to disclose material information or contains half-truths can be as deceptive as deliberate untruths. In fact, such advertising may be more harmful in some instances—because it contains elements of truth—than outright deception.

For effective enforcement, the Commission should have a broad range of remedies available, including those mentioned in the question.

*Question 9.* There is now pending before Congress legislation which would create by statute an independent consumer advocate who would have no regulatory authority but would be directed to intervene in both informal and formal proceedings before regulatory agencies to advocate the consumer point of view. Do you support such a concept?

Answer. Yes, I can support such a concept, although I believe there are some deficiencies in the pending legislation. For example, there appears to be little justification for the numerous exemptions written into the legislation. And, I believe there should be more specific requirements for establishing priorities so that the proposed agency's resources are focused on those activities having the most beneficial consumer impact.

I also believe that it would be desirable to continue to explore other approaches for expanding public representation, including proposals (a) to create an independent consumer advocacy office within each agency and department and (b) to expand compensation for public participation in agency proceedings.

*Question 10.* Consumer class actions in the federal courts have been advanced as a desirable means by which consumers cheated out of relatively small sums can band together and thereby afford attorney's fees in order to seek a remedy through the federal courts. What are your views on actions available to consumers by allowing the aggregation of claims in order to meet the minimal jurisdictional limit in federal courts?

Answer. I support the objective of making available adequate legal remedies that are within the financial reach of all consumers. An important step in the direction has already been taken by the passage of the Magnuson-Moss Act which a) authorized the FTC to seek redress in Federal Court on behalf of consumers and b) permitted aggregation of claims to meet minimum federal jurisdictional requirements in private class suits for breach of warranty. That legislation also imposed certain threshold requirements on the amount of claims that can be aggregated. However, before permitting aggregation of claims for jurisdictional purposes in other areas, it would be desirable to have more experience with respect to the impact of these new provisions on consumers and the Federal courts.

*Question 11.* What do you believe is an advertiser's responsibility to make publicly available documentation to substantiate advertising claims?

Answer. I firmly believe that documentation of advertising claims should be available to the public on a reasonable basis and in a readily understandable form.

*Question 12.* What are your views on such creditor remedies as holder in due course, prejudgment, garnishment, cognovit notes, and other advantages to third-party holders of commercial paper?

Answer. As a general observation, I believe that the use of these defenses and remedies by creditors should be judged by different standards in transactions involving individual consumers than in dealings between commercial entities. The Commission's action concerning the holder-in-due-course rule represents an attempt to balance the equities in this regard, although there are some aspects of this matter that may need further clarification and refinement. The Commission is also engaged in proceedings to determine the effects and lawfulness of other practices, including those referred to in the question. While I support the Commission's action to investigate these practices, I am reluctant to comment on them until I have had an opportunity to review the complete record.

*Question 13.* How will you avoid *ex parte* communications or the appearance of *ex parte* communications?

Answer. To avoid *ex parte* communications, or the appearance of such contacts, I will faithfully abide by both the letter and spirit of the Commission's rules

governing this matter. After more than 7 years of employment in the Senate, nearly 5 of which I served as a staff counsel to this Committee, I am keenly aware and mindful of the need to avoid any kind of improper conduct or any conduct which creates the appearance of impropriety.

*Question 14.* What are your views of the relationship between FTC activities and the condition of the general economy? How can the FTC be effective in helping control inflation and unemployment, for instance?

Answer. In my opinion, the FTC's basic mission is to preserve a healthy, competitive economy through vigorous enforcement of the antitrust and consumer protection laws entrusted to it. Through these efforts the Commission can make an important contribution in helping to reduce inflation and stimulate employment opportunities. In this regard, the Commission's recent efforts to examine public as well as private rules which may preclude effective price competition should continue to be emphasized and strengthened.

*Question 15.* What is your position on the desirability of the FTC's collecting and *making public* on a current basis individual company data, under some standardized industrial definitions, approximating the SIC, of company profit performance in segments of business accounting for $10 million or more in assets or in annual sales?

Answer. This question suggests an information-gathering system similar to that contained in the FTC's line-of-business reporting program. Such a program, as I have previously indicated, should help to provide a more accurate picture of the market structure and performance of major industries. That type of information seems essential if we are to have a rational and effective antitrust enforcement program. As for making public individual company profit data, I would want to be guided by the applicable laws on this subject and to evaluate very carefully both the circumstances under which such information would be disclosed and the competitive effects of disclosure before expressing a judgment.

*Question 16.* Will you seek to increase the amount of information that the Commission will make available to the public on the current profit performance of individual major companies in their various operations, under the SIC (or some standardized industrial classification)?

Answer. My answer to this question is essentially the same as my answer to the preceding question. Furthermore, it should be noted that the Congress has on several occasions included language in the FTC appropriations bill prohibiting Commission employees from releasing individual company data obtained under the line-of-business program.

*Question 17.* Last year the FTC was given authority under the Magnuson-Moss Act to award expenses for participation in FTC proceedings in certain limited circumstances. Is it your view that such fees should only be awarded to those who can present both a new "perspective" on the issue before the FTC as well as new "factual" information?

Answer. I don't believe the Act contemplates any such limitation. Obviously, in view of the limited resources available, primary consideration should be given to those participants who can make the most significant contribution. But, the law does not require a particular type of presentation—only that the interest involved "would not otherwise be adequately represented;" that representation of such interest "is necessary for a fair determination of the rulemaking proceeding taken as a whole;" and that the person "cannot afford to pay the cost" of making oral presentations. These determinations must be made on a case-by-case basis.

*Question 18.* Do you believe that it was the intention of the Congress in enacting this participation reimbursement provision to have unrepresented viewpoints represented at proceedings, to advocate in a vigorous manner an unrepresented view, whether or not such person had new factual contributions to make?

Answer. Yes, since if doubt should exist on this point, it should be resolved in favor of encouraging the greatest possible public participation.

*Question 19.* In the handling of the monies under the citizen participation provision, the Commission has established very low dollar ceilings for fees for public participants. In view of the objective of the Congress in giving the public an equal footing in the proceeding, do you believe that the Commission should increase these ceilings so that the talent which may be employed by public participants can be reimbursed at a level more nearly equal to that which industry participants are being paid by private funds?

Answer. Without having had an opportunity to evaluate this program on a first-hand basis, I am unable to say what an appropriate ceiling should be. However, to the extent that it is necessary to assure effective representation, I believe that fees for public participants should have some relation to private levels of

compensation. At the same time, it would be difficult for the Commission to justify from a public policy standpoint, the payment of fees based on some of the high private fee schedules currently in effect today. In addition, the level of reimbursement for public participants is subject to a practical limitation—the amount of funds appropriated by the Congress for this purpose.

*Question 20.* What are your views on the Robinson-Patman Act?

Answer. The Commission is responsible for enforcing the Robinson-Patman Act which is intended to prevent unjust price discrimination and predatory pricing practices. I support the purposes of that Act and, as a member of the Commission, I would seek to have it enforced as effectively as possible. I am also aware of the criticism that has been directed at the wording of the Act as well as its enforcement. To the extent that deficiencies exist, the objective should be to improve the statute and make it more workable.

*Question 21.* Do you feel that structural and behavioral characteristics of any U.S. industries have been of significance in the apparent inability of fiscal and monetary authorities to achieve a greater degree of stability in the economy than has been the case?

(*a*) If so, what sort of role do you believe the Federal Trade Commission should play in meeting this problem?

Answer. While I believe that the current state of the economy is better than the question seems to suggest, the presence of anti-competitive conditions in key industries could certainly hamper fiscal and monetary policies to improve the economy. Therefore, it is appropriate that special attention should be given to those areas of major significance to the economy as a whole, such as the FTC is currently doing with its investigations of the energy, food and health industries.

*Question 22.* What type of economic evidence do you feel is essential in evaluating the legality under the antitrust laws of a given (a) horizontal, (b) vertical, or (c) conglomerate merger?

Answer. To the extent of my knowledge and background concerning this subject, I believe that the following information would be necessary in evaluating the actual or potential anti-competitive effects of a horizontal, vertical or conglomerate merger:

For horizontal mergers, I would want information about the level and trend of concentration in the markets involved, the market shares of the firms, the ease of entry into the markets both before and after the merger, and the effects of prior mergers by the acquiring company;

For vertical mergers, similar evidence would be required, including the extent to which competitors may be foreclosed from key sources of supply or important customers; and

For conglomerate mergers, evidence as to the economic strength of the firms involved and the resulting impact on each other's markets would be particularly important;

It should also be pointed out that any evaluation must be made in the context of an appropriately defined market or markets.

# NOMINATIONS—JULY–SEPTEMBER

TUESDAY, AUGUST 24, 1976

U.S. SENATE,
COMMITTEE ON COMMERCE,
*Washington, D.C.*

The committee met at 10 a.m. in room 5110, Dirksen Senate Office Building, Hon. John O. Pastore presiding.

## OPENING STATEMENT BY SENATOR PASTORE

Senator PASTORE. This morning we are meeting with reference to the nominations of Joseph Fogarty and Margareta White to be members of the FCC. There is, however, another unrelated matter that I would like to discuss first.

[Unrelated testimony was received by the Committee on the Scheduling of the 1976 Presidential Debates.] [1]

Senator PASTORE. Now, we will consider the nominations of Margareta White and Joseph Fogarty to be members of the Federal Communications Commission. I am very happy to see that my distinguished colleague, Senator Byrd, is here to introduce Mrs. White.

## STATEMENT OF HON. HARRY F. BYRD, JR., U.S. SENATOR FROM VIRGINIA

Senator BYRD. Thank you very much, Mr. Chairman, gentlemen of the committee. I am pleased——

Senator PASTORE. I have to go before another committee and introduce a Rhode Islander. I will be back as soon as I can. Mr. Moss will take the Chair.

Senator MOSS. You may proceed, Senator Byrd.

Senator BYRD. Thank you, Mr. Chairman, and gentleman of the committee. I am pleased to introduce to you and to this committee Mrs. Margareta White, a distinguished citizen of the Commonwealth of Virginia, who has been nominated by President Ford to be a member of the FCC.

Mrs. White was born in Sweden, and spent her younger years in California. So Virginia cannot claim her as a native. But it is as a Virginian that she has made her mark as a competent professional communicator and a dedicated public servant. She has served with distinction and as assistant press secretary to the President and Director of the White House Office of Communications for the past 18 months.

[1] See Waiver of Equal Time Law and the 1976 Presidential Debates, hearing Serial No. 94–107.

As a newspaper publisher, I know something of the great effort she has put into seeking to expand the dialog between Government and the media and to restore confidence in our democratic institutions. She has been a special help to the small newspapers and broadcast stations who do not have day-to-day representation in Washington. And I know this committee has received correspondence from the president of the National Newspapers Association and the president of the National Broadcast Editorial Association, Mr. Ted Powers of Roanoke, Va., testifying to her contributions to expanded communications on behalf of a better informed public.

Prior to coming to the White House, Mrs. White for 2 years served as Assistant Director of the U.S. Information Agency. She was awarded the USIA superior honor award as recognition of her contributions to the Federal agency charged with communicating America's policies and culture to other countries. Mrs. White's successful career is more fully described in her biographical sketch.

One of her former employers is our own distinguished colleague, Senator Barry Goldwater of Arizona, who had hoped to be present today. Because it was impossible for him to be here personally he has conveyed his highest esteem for Mrs. White through a letter which I have been asked to deliver in his behalf. I would ask the committee, Mr. Chairman, if Senator Goldwater's letter can be made a part of the record.

Senator Moss. The letter will be made a part of the record. I have it before me here and it will be placed in the record.

Senator BYRD. I thank the members of the committee for the opportunity to say these words in behalf of Mrs. White.

[The letter follows:]

UNITED STATES SENATE,
*Washington, D.C., August 23, 1976.*

Hon. JOHN O. PASTORE,
*Chairman, Subcommittee on Communications, U.S. Senate,*
*Washington, D.C.*

DEAR JOHN: It is with regret that I am unable to be with you this morning as you meet Mrs. Margareta White who is under consideration by your committee for the position of Commissioner of the Federal Communications Commission.

It has been my pleasure to know this most capable young woman for more years than she would like to remember and I have found her to be nothing but of the highest caliber. She comes from a well qualified background in the field of communications in which she has now spent eighteen years, and it is without hesitation that I offer her to you for your complete consideration for this position.

With best wishes.

BARRY GOLDWATER.

Senator Moss. Thank you, Senator Byrd. We do appreciate your coming to introduce Mrs. White to the committee this morning. And we are pleased that she is before us so that we can go quickly on with our hearing.

Now, I had understood there were to be two nominees who were to heard this morning. The other nominee who will be before us this morning is Mr. Joseph R. Fogarty. Is Mr. Fogarty here?

## STATEMENT OF JOSEPH R. FOGARTY

Mr. FOGARTY. Yes, sir.

Senator Moss. Would you come up here and be seated also, Mr. Fogarty. We are pleased to have Mr. Fogarty also before us. And we,

of course, are well acquainted with Mr. Fogarty, who has worked with the committee over a long period of time.

In order to have the record complete, I would ask Mr. Fogarty, do you have any statement or biographical matter that we could put in the record at this point before we proceed?

Mr. FOGARTY. Mr. Chairman, I have submitted biographical data and a net worth statement to the committee along with memoranda of law which I received from both the Justice Department and the General Counsel of the FCC.

Senator MOSS. And that will be made part of the record.

[The biographical sketch and letters follow.]

BIOGRAPHICAL SKETCH OF JOSEPH R. FOGARTY

Address: Residence—915 Emerald Drive, Alexandria, Va.; Domicile—28 Bliss Mine Road, Middletown, R.I.

Date and place of birth: January 12, 1931, Newport, R.I.

Marital status: Married to Joan Baxter Fogarty.

Names and ages of children: John Baxter Fogarty, September 8, 1958; Anne Walker Fogarty, February 17, 1960; Katherine Maura Fogarty, June 1, 1961; Mary Elizabeth Fogarty, December 31, 1962; Brendan Joseph Fogarty, January 7, 1965; Megan Joan Fogarty, March 8, 1968.

Education: College of the Holy Cross, Worcester, Mass. A.B., June 1953; Boston College Law School, Boston, Mass., J.D., June 1959.

Employment record: United States Navy, June 1953–September 1959, honorable discharge, Lieutenant (senior grade); law firm of Enos & McCarthy, Lowell, Mass., September 1959–Summer 1960, general practice of law; law firm of Moore, Virgadamo, Boyle & Lynch, Newport, R.I. Summer 1960–January 1964, general practice; staff of the the United States Senate Committee on Commerce, Washington, D.C., January 1964–present.

Government experience: Staff of United States Senate Committee on Commerce.

Memberships: (1) Licensed to practice before the Bar of the: United States Supreme Court, United States Court of Military Appeals, Federal District Court for the District of Rhode Island, Supreme Judicial Court of the Commonwealth of Massachusetts, Supreme Court of the State of Rhode Island; (2) Member of the Bar Association of the Commonwealth of Massachusetts and the Bar Association of the State of Rhode Island.

Political affiliations and activities: I am a registered Democrat and have contributed modest amounts of money for several years to the Democratic Party and to Democratic candidates on the National, State and local levels. I was also elected for a period of two years to the Middletown, R.I. Democratic Town Committee before coming to work in the Senate.

Honors and awards: I was graduated with honors from high school and with distinction from the United States Naval School of Justice.

Published writings: I was a contributor to the literary journal at the College of the Holy Cross.

Qualifications: I have worked as Staff Counsel for the Senate Commerce Committee for nearly 13 years and have served most recently as Communications Counsel to the Subcommittee on Communications. In this capacity, I have developed considerable expertise in areas of telecommunications which come under the regulatory jurisdiction of the Federal Communications Commission.

ALEXANDRIA, VA., *July 29, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Committee on Commerce,*
*Washington, D.C.*

DEAR MR. CHAIRMAN: In accordance with your directions, I am enclosing the opinion of Ashton Hardy, General Counsel of the Federal Communications Commission, concerning potential conflict of interest or any other legal barrier to my becoming a member of the Federal Communications Commission.

Mr. Hardy raises the question of whether or not two of the stocks held by my wife, Joan B. Fogarty, could present a possible conflict of interest. They are American Telephone & Telegraph Company and General Electric Company.

I have consulted with my wife with respect to these possible conflicts of interest and she is prepared to divest herself of all of the stocks which she holds in American Telephone & Telegraph Company and General Electric Company should I be confirmed as a member of the Federal Communications Commission.

I am, with best wishes,

Sincerely yours,

JOSEPH R. FOGARTY.

Enclosure.

FEDERAL COMMUNICATIONS COMMISSION,
*Washington, D.C., July 28, 1976.*

JOSEPH R. FOGARTY,
*Alexandria, Va.*

DEAR MR. FOGARTY: This is in reference to your correspondence dated July 26, 1976, in which you asked for an opinion concerning potential conflict of interest or any other legal barrier to your serving as a member of the Federal Communications Commission. The financial and other data submitted with your letter have been reviewed.

It would appear that two of the stocks listed as held by your wife could present possible conflicts of interest; they are American Telephone & Telegraph Company and General Electric Company. Section 4(b) of the Communications Act of 1934, as amended, (47 U.S.C. 154(b)), has very sweeping scope and breadth in its prohibitory language. However, its prohibitions have never been held to apply to anyone other than either a member of this Commission or an employee of this Commission. In the circumstances where financial interests in companies described in Section 4(b) are held by your wife or members of your immediate family, the general "Conflict of Interest Statute", 18 U.S.C. 208 sets forth the governing principles in such cases. Separate and apart from Section 4(b) of the Communications Act, you would still be prohibited from participating in any matters affecting those companies in which you or members of your immediate family have a financial interest unless, upon disclosure, it is determined that the financial interest can be regarded as not so substantial to be deemed likely to affect the integrity of your services within the meaning of 18 U.S.C. 208(b).

The question of whether the financial interests of your immediate family would permit such a determination is one upon which the Office of General Counsel cannot appropriately comment. Since you would be serving as a Presidential nominee, this question would, under Title 18 U.S.C. 208(b) be one for resolution by the President.[1] However, the legislative history of this provision, as evidenced in particular by the letter of Deputy Attorney General Katzenbach to Senator Jackson during Congressional consideration of Public Law 87–849, dated June 20, 1962, (Hearings, Conflict of Interest, Senate Committee on the Judiciary, 87th Cong., 2nd Sess., pp. 95–99) fully describe the applicable standards:

". . . Although section 208 includes spouse and minor children, it permits exclusion from its coverage of interests which are not so substantial as to be likely to affect, or which are too remote or inconsequential to affect, the integrity of the service of an official. This exclusion, it seems to me, would rule out the property holdings of most spouses or minor children as financial interests which the committee might consider as possible subjects for divestiture. This would be particularly true with respect to the separate property of a spouse, which normally is not subject to any control or inter vivos property rights of his or her marriage partner.

"In my opinion, only in an exceptional case would a financial interest of a spouse or child be deemed to be a disqualifying financial interest within the purview of Section 208. Ownership by a spouse of a controlling interest in a corporation transacting business with the Department of Defense could not, perhaps, be ignored. Also, in a situation which the nominee exercises legal control over the property of his spouse, the interest of the spouse could be considered a financial interest within the contemplation of section 208 unless excluded by the exception of nonsubstantial interests. However, such situation, in my opinion, would be the exception, rather than the rule. In the ordinary case, a property holding of a spouse or minor child would seem to come within the subsection (b) exclusion."

Finally, the Communications Act prohibitions described above would be effective only upon your assumption of the office of Commissioner and the actions

[1] While the President's authority to make such a determination under sec. 208(b) has been delegated by Executive Order No. 11222, to the head of an agency with respect to specified Presidential appointees, such determination with respect to FCC Commissioners are still made by the President through his counsel.

required thereunder need not be taken immediately upon confirmation of your nomination by the Senate. However, since such matters may well be raised at your confirmation hearing, it would be appropriate to advise the Senate Committee of your intentions in this regard.

Sincerely yours,

WERNER K. HARTENBERGER,
(For Ashton R. Hardy, General Counsel).

DEPARTMENT OF JUSTICE,
*Washington, D.C., August 23, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce, U.S. Senate,*
*Washington, D.C.*

DEAR MR. CHAIRMAN: We have been advised that your Committee wishes the opinion of the Office of Legal Counsel concerning potential problems under the Federal conflict of interest laws or other legal impediments to the service of Mr. Joseph R. Fogarty as a member of the Federal Communications Commission, the position for which he has been nominated. We are pleased to respond.

The principal conflict of interest statute involved is 18 U.S.C. § 208(a). It provides, under penalty of criminal sanctions, that an officer or employee of the Executive Branch or of an independent agency of the United States may not participate personally and substantially in a particular matter in which, to his knowledge, he, his spouse, minor children, or organization in which he is serving as an officer, director, trustee, partner, or employee has a financial interest, unless the officer or employee first obtains an appropriate exemption pursuant to 18 U.S.C. § 208(b).

In addition, 47 U.S.C. § 154(b) provides that no employee or member of the Commission may hold stocks, bonds, or other securities of or otherwise be interested in any corporation subject to the provisions of Chapter 5 of Title 47 or which manufactures or sells apparatus used in wire or radio communication or furnishes services or apparatus to a company engaged in such communication. This statute, unlike 18 U.S.C. § 208(a), applies only to securities held by the employee or member, not by his spouse or minor children.

We have been furnished with a copy of the biographical and financial materials Mr. Fogarty has submitted to your Committee. From the statement of net worth included in these materials, it appears that the only securities owned by Mr. and Mrs. Fogarty (and, presumably, their children) are listed common stocks in eight companies having an approximate market value of $21,800. These stocks are held solely in Mrs. Fogarty's name. Among the securities are 200 shares of stock worth approximately $11,550 in AT&T, a company that is subject to extensive regulation by the Federal Communications Commission.

Because 47 U.S.C. § 154(b) does not apply to securities held by a spouse of a Commissioner, Mrs. Fogarty's holdings, including the AT&T stock, pose no obstacle to Mr. Fogarty's service under 47 U.S.C. § 154(b). However, Mr. Fogarty would be required by 18 U.S.C. § 208(a) either to disqualify himself in any particular matter involving AT&T or any other company in which his wife owns securities or to seek an appropriate exemption pursuant to 18 U.S.C. § 208(b)(1).

Section 208(b)(1) provides that the official responsible for the appointment of the officer or employee involved may grant a waiver if, after full disclosure, he determines that the financial interest involved "is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." The President is responsible for the appointment of Members of the Federal Communications Commission, but he has delegated the power to grant exemptions under 18 U.S.C. § 208(b)(1) to the heads of the departments and agencies with respect to "any appointee of the President subordinate to or subject to the chairmanship of the head of a department or agency." *See* Executive Order 11222, Section 503. Although we understand that the Federal Communications Commission has taken a different view in the past, it is our opinion that members of the Commission are "subject to the chairmanship" of the Chairman of the Commission within the meaning of this delegation. *See also* 47 U.S.C. § 155(a). The power of exemption under 18 U.S.C. § 208(b)(1) with respect to Mrs. Fogarty's holdings therefore rests with the Chairman, who is the "head of the agency" for purposes of section 503 of Executive Order 11222.

It may be that it would be impracticable for Mr. Fogarty to secure a waiver from the Chairman under 18 U.S.C. § 208(b)(1) on a case-by-case basis in each separate matter involving AT&T because of the number of issues involving that company which come before the Commission. In this connection, we have taken the position in the past that a waiver may properly be granted under 18 U.S.C. § 208(b)(1) with respect to all situations in which certain security holdings might give rise to a financial interest under section 208(a) if the official responsible for granting the waiver concludes that the financial interest, in whatever context it might arise, is not so substantial as to be likely to affect the integrity of the services of the specific employee involved.

If the AT&T holdings are not covered by an appropriate waiver, granted either on a case-by-case basis or in the comprehensive form just discussed, Mr. Fogarty would have to disqualify himself in all Commission matters involving AT&T. Since this would presumably constitute a sizable portion of the Commission's work, Mrs. Fogarty may wish to consider disposing of her AT&T stock in the event that the Chairman declines to issue a comprehensive waiver or a series of separate waivers applicable to at least most Commission proceedings which involve AT&T. As we have pointed out above, 18 U.S.C. § 208(a) would also require Mr. Fogarty to disqualify himself or seek an appropriate exemption in a particular matter involving any other company in which his wife owns securities where the company is subject to regulation by the Commission.

Mr. and Mrs. Fogarty's remaining assets—consisting of cash, savings bonds, residential real estate, life insurance policies, and various items of personal property—would not be likely to give rise to any conflict of interest problems under 18 U.S.C. § 208 or 47 U.S.C. § 154(b).

We are not aware of any other potential conflict of interest problems or other legal impediments involved in the service of Mr. Fogarty in the position for which he has been nominated.

Sincerely,

MARY C. LAWTON,
*Deputy Assistant Attorney General,*
*Office of Legal Counsel.*

Senator MOSS. The opinions that the committee received from the FCC and the Department of Justice, indicate some possible conflict of interest problems stemming from your wife's ownership of stock in A.T. & T. and General Electric and in this regard I understand you have advised the committee that if you are confirmed, your wife is prepared to dispose of the stock in question; is that correct?

Mr. FOGARTY. Yes, Mr. Chairman, I have written to the chairman of the committee, Mr. Magnuson, and advised him that my wife has agreed that in the event I am confirmed, she will divest herself immediately of all shares she holds in both A.T. & T. and General Electric.

Senator MOSS. Are you aware of any other interests or relationships that might raise a potential conflict of your serving on the FCC?

Mr. FOGARTY. No, I am not sir.

Senator MOSS. How long have you served with the Commerce Committee as a professional staff member?

Mr. FOGARTY. I have been a professional staff member on this committee, Senator, for approximately 13 years.

Senator MOSS. And during that time have you been particularly concerned with the communications field?

Mr. FOGARTY. Since the retirement of my predecessor Mr. Zopple I have been the communications counsel to the committee, that is approximately 14 months.

Prior to that, I was involved in East-West trade, and other legislative activities for the committee.

Senator MOSS. Had you prepared any particular statement you would like to make for us?

Mr. FOGARTY. Senator, I have a very short statement but I had hoped——

Senator MOSS. Would you like to have it in the record?

Mr. FOGARTY. I had hoped to read it when Senator Pastore was present.

Senator MOSS. We could probably delay that. I think he will be back shortly. It was a little bit of a surprise to me that he had to withdraw for a few moments.

Mr. FOGARTY. I have also Senator, submitted written responses to the committee's questions. I would be very happy, if you wished, to either elaborate on my answers or respond to any other questions the committee may have.

Senator MOSS. I am glad you volunteered the information. I wanted to ask you if you had replied to the regular standard written questionnaire that we ask candidates to respond to.

Mr. FOGARTY. In addition to that Senator, I responded to numerous questions which the staff proposed inquiring into my views with respect to telecommunications.

Senator MOSS. The responses that you have prepared and submitted to us will be printed in the record and we may not need to go over them unless there is any particular answer that we want elaboration on.

Mr. FOGARTY. Yes, sir.

[The questions and answers referred to follow:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

*Question 1.* In your judgment, what is the appropriate relationship between the FCC, an independent regulatory agency, and the Congress?

Answer 1. The FCC is an independent regulatory agency created and impowered by the Congress to execute and enforce the provisions of the Communications Act of 1934, as amended. The Commission must, therefore, interpret the law as passed by the Congress and develop and implement policies to work the will of the Congress in the field of communications. However, the FCC should not usurp the legislative power of the Congress in the guise of regulatory fiat. I believe that the Commission should be progressive in the effort to obtain maximum effectiveness for the people from the use of telecommunications, always aware that the guidance of the Congress should be sought in cases where the Commission has no clear mandate to act.

*Question 2.* In thc past, the FCC has submitted its legislatuve proposals to the Office of Management and Budget (OMB) for clearance before transmitting such proposals to the Congress. Do you believe that his procedure is appropriate?

Answer 2. I believe that the FCC should submit its legislative proposals directly to the Congress and simultaneously give notice of these proposals to the Office of Management and Budget.

*Question 3.* The Senate has passed "sunshine" legislation which would require the regulatory agencies to open their meetings to the public, unless a vote of the agency decided to close consideration of a particular matter. Are you in favor of opening agency meetings to the public?

Answer 3. I am in favor of opening agency agenda meetings to the public unless for good and substantial cause a majority of the Commission votes otherwise.

*Question 4.* Citizen participation in the regulatory process is essential for public confidence in the regulatory product. Would you favor an FCC procedure for reimbursement of expenses incurred by citizens groups or individual citizens who participate in Commission proceedings?

Answer 4. Citizen participation ln the regulatory process is, of course, absolutely necessary if the Commission is to be truly responsive to the needs of the people. Such participation costs money and frequently citizens groups cannot afford the financial outlay. I support in principle the procedure to encourage citizen participation in the regulatory process which was incorporated in S. 641, the "Consumer Food Act of 1976" which passed the Senate earlier this year. The Act authorizes the regulator to award reasonable fees to a citizens group if that

group represents an interest which would contribute substantially to a fair determination of the proceeding and, except for the participation of the citizens group, that public interest would not otherwise be heard. I want to add, however, that, as I understand the Communications Act, the Commission has the primary responsibility for representing and protecting our interests as citizens. However, if the Commission needs help to meet this responsibility, then I favor some form of reimbursement of citizens groups who appear before the FCC, who contribute substantially to the development of the docket, and who cannot afford to pay their own way.

*Question 5.* The FCC has adopted policies allowing competition in selected areas of common carrier communications—terminal equipment and specialized common carrier services. What are your views on competition in these areas; are you in agreement with these policies? Do you have views on the appropriate relationship between the FCC and state regulatory agencies in developing and implementing telecommunications common carrier policies?

Answer 5. I am aware that the FCC has adopted policies allowing competition in selected areas of common carrier communications and I believe that private enterprise and the public have benefited thus far from this limited competition. Some regulated common carriers have raised serious questions as to the future economic impact of expanded competition in the common carrier field. The issue is now before the Congress in the form of legislation pending before both the Senate and the House. I agree that the public policy issues should be resolved by Congress with all parties being heard but I think that the FCC should continue to implement its policy of common carrier competition unless the Congress directs otherwise. I believe that the joint board approach is a proper procedure for the FCC and state regulatory agencies to utilize in developing and implementing telecommunications common carrier policies involving both Federal and state jurisdiction.

*Question 6.* The FCC has had a very difficult time resolving major common carrier rate increases. Are you satisfied with the FCC's approach to tariff changes? Do you see any alternatives?

Answer 6. The Congress recently passed S. 2054, tariff procedure legislation which should help the FCC to expedite resolution of these rate cases. Under the new law the Commission will be allowed a more reasonable time—up to five months to suspend a proposed rate increase while the FCC makes a determination as to the reasonableness of the proposed tariff. More importantly, the FCC will now have the authority to grant immediately a partial rate increase where the increase is obviously warranted. Also, the new computer model which the Commission is developing to monitor the elements that establish the carrier's rate base, should help the Commission to expedite decisions in these major common carrier rate cases.

*Question 7.* Since 1972, the FCC has been implementing a policy of "open entry" in satellite communications. Do you believe that this is the best regulatory approach for realizing the benefits of satellite technology? Are there any alternative approaches which you might have the Commission consider?

Answer 7. Critics of the FCC's policy of "open entry" in satellite communications allege that the policy has been a deterrent to the development of our domestic satellite communications system. I would want to study the policy and its effect on the growth of satellite communications carefully before deciding to recommend an alternative approach involving either a domestic monopoly, or in the case of international satellite communications, a sole designated entity to represent the interests of the United States.

*Question 8.* Some have characterized FCC restrictions on the development and operation of cable television systems as based on a policy of insuring the continued viability of over-the-air broadcasting. Do you agree with this characterization? What are your views as to the appropriate regulatory approach to cable?

Answer. There is nothing wrong with a policy of insuring the continued viability of over-the-air broadcasting. However, the Commission in my view also has a mandate to promote the best use of telecommunications technology in order to make available to all the people of the United States an efficient communication service. I thinkthe policy of the FCC should be to encourage the growth of the cable industry through enlightened regulation while at the same time protecting the legitimate rights of over-the-air broadcasters.

*Question 9.* Please state your current views on the role and importance of "localism" in commercial broadcasting. Do you believe the current structure of broadcasting adequately serves the interest of "localism"? What alternatives might you consider?

Answer. I believe that the local commercial broadcaster has an obligation to ascertain the requirements of the community being served including the ethnic, cultural, religious, educational and humanistic needs of the people. Then the broadcaster must make a dedicated effort to satisfy these needs. Whenever "localism"—the satisfaction by the licensee of community needs—is discussed, we must also consider the relationship between the commercial networks and the local commercial broadcasters. I think the FCC made a valuable contribution to the development of "localism" by the adoption of the prime time access rule. A local licensee can no longer sit back and relay network programming all day long. The local broadcaster now must provide some alternative programming which will satisfy local needs. The local station does a disservice to the public, however, if local programming consists merely of syndicated quiz shows used as fillers until the network programming resumes. I think in order for "localism" to work the FCC must encourage the local licensees to cooperate with citizen groups to ascertain what the community really needs and then try to provide that type of programming.

*Question 10.* Equal employment opportunity in broadcasting is of long standing and still pressing concern. As a Commissioner, would you vote to deny the license renewal of any station that is shown to have discriminated against minorities or women in its employment practices? Should the FCC take an active rule in reviewing the EEO performance of all licensees regardless of the size of their markets or the number of their employees?

Answer 10. It would be injurdicious for me to say now how, if confirmed, I will vote in the future. However, if a licensee through a consistent course of conduct demonstrates an insensitivity to, and callous disregard for the rights of minorities or women, the license should be revoked. The buck stops somewhere. In my view, the FCC, EEOC, the Civil Rights Commission, the Justice Department, the networks, CPB and PBS all have an obligation in varying degrees to make certain that licensees in every market large or small comply with the Civil Rights law of the land.

*Question 11.* There is a desire on the part of many segments of our society to broaden access to the broadcast media, both in terms of stimulating a wider range of views and ideas received by the listeners and viewers and allowing more opportunities for self-expression. What are your views with respect to these concerns; do you see any regulatory measures which might be desirable and appropriate to meet such concerns?

Answer 11. I believe that there should be broader access to the broadcast media, both in terms of stimulating new views and ideas as well as providing greater opportunities for self-expression. Scarcity of spectrum still restricts what can be accomplished in this regard. VHF drop-ins, the growth of cablecasting and the promotion of public broadcasting by attaining UHF-VHF parity will ameliorate the scarcity of spectrum problem and make it possible to attain these goals.

*Question 12.* The Fairness Doctrine requires broadcasters to afford reasonable opportunity for the presentation of contrasting views on controversial issues of public importance which they cover in their programming. The Doctrine also requires that broadcasters affirmatively cover such issues in the first instance. As a Commissioner, would you vote to deny the license renewal of a station that did not comply with this latter obligation?

Answer 12. Again, I respectfully suggest that it would be improper for me to state how I will vote on any issue should I be confirmed. Nevertheless, if the Fairness Doctrine survives—and I think it should—then I would expect broadcasters to initiate coverage on their own of contrasting views on controversial issues. However, in a Fairness Doctrine case, before the death knell is rung by revoking the broadcaster's license, I think justice requires a showing of conscious contempt for the law on the part of the licensee.

*Question 13.* Some have stated the Fairness Doctrine and Section 315 of the Communications Act of 1934 impose obligations on broadcasters which discourage discussion of important issues and unduly burden broadcast licensees. What are your views in this regard?

Answer 13. Broadcasters are public trustees of the airwaves. The Fairness Doctrine and Section 315 merely require the licensees to afford reasonable opportunity for the discussion of conflicting views on issues of public importance and to treat candidates for public office fairly. I do not consider that these requirements place an undue burden on broadcasters.

*Question 14.* Are you satisfied with the current relationship between the FTC (Federal Trade Commission) and FCC in the area of advertising regulation?

Do you believe the FCC should be more active in the regulation of the quantity and the content of broadcast advertising?

Answer 14. I think a good relationship exists between the FTC and the FCC in the area of advertising regulation. Although there has been some intramural feuding between the two agencies, I think each has a special expertise, and working in consort they can do an effective job in the effort to eliminate deceptive advertising on radio and television. The FTC has the resources to determine whether a particular advertisement is deceptive to the public and the FCC has the statutory authority to compel the licensee to desist from deceptive use of the airwaves. I would encourage a close working relationship between designated staff members of both agencies in order to make the process of eliminating deceptive advertising more effective.

*Question 15.* What are your views on the appropriate standards for broadcast license renewal proceedings where competing applications have been filed? Are you in favor of extending the present three-year broadcast license term?

Answer 15. The term of the broadcast license be it three years or five is not so important as is the requirement that the Commission maintain constant surveillance of the licensee to insure that the broadcaster is adequately serving the needs of the broadcast public. I believe the broadcaster who lives up to the obligation to serve the public, should get a plus at renewal time, but if there are competing applications filed, I think the Commission owes it to the parties and the public to grant them a hearing before reaching a determination.

*Question 16.* The FCC is charged with allocating and managing the limited electromagnetic spectrum among many competing civilian users. What general principles do you believe the Commission should apply in meeting this mandate? Do you have any views on the various proposals before the FCC to drop-in additional channels in the VHF portion of the spectrum? There are increasing complaints concerning interference with television reception and increasing demand for spectrum by citizens band operators. Do you have any views as to possible solutions to these problems?

Answer 16. Competition grows daily for use of the spectrum. Land mobile, CBers, ham radio operators, hobbyists, special and safety licensees UHF and VHF broadcasters all have legitimate demands. The Commission must weigh these competing demands and allocate the spectrum in the public interest. I believe legislation similar to that introduced by Senator Barry Goldwater, S. 3033, would be helpful in eliminating radio frequency interference which now plagues many citizens in their enjoyment of television and radio and the use of home electronic entertainment equipment. Finally, I endorse the experimental study by the Commission of the VHF drop-in proposal and I hope that this study will verify that these additional stations can be activated without undue interference with existing broadcast facilities.

Senator Moss. For the record, you would come to the FCC as a member of the commission with what party affiliations?

Mr. FOGARTY. I am a registered Democrat, Senator.

Senator Moss. In your home State?

Mr. FOGARTY. In the State of Rhode Island.

Senator Moss. In the home State of Rhode Island. Also for the record, if confirmed will you be willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so, and are you willing to provide such information as is requested by such committees?

Mr. FOGARTY. Yes, sir.

Senator Moss. Now, Mrs. White, I would like to ask these two questions of you too.

For the record would you come to the FCC with what party affiliation?

## STATEMENT OF MARGARET E. WHITE

Mrs. WHITE. Republican. From the Commonwealth of Virginia.

Senator Moss. And also for the record, if confirmed will you be willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested

to do so, and are you willing to provide such information as is requested by such committees?

Mrs. WHITE. I will, sir.

Senator MOSS. Now, Mrs. White, have you also answered the written questions that we normally send out to nominees before they come for a hearing and have those been provided to the committee?

Mrs. WHITE. That is correct.

Senator MOSS. And I have these questions and answers before me and they will be made a part of the record.

[The questions and answers referred to follow together with the nominees biographical data and conflict of interest opinions:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

*Question 1.* The FCC is an independent regulatory agency, not part of the Executive Branch. If confirmed, would you be able to exercise independent judgment free from Executive influence or interference?

Answer. Yes. I am fully aware that the FCC is an independent regulatory agency, created by the Congress. As a Commissioner, I will faithfully seek to carry out the FCC's mission with independent judgment, guided only by the facts, the public interest and my own conscience. I would not be responsive to improper influence or interference from any source.

*Question 2.* In the past, the FCC has submitted its legislative proposals to the Office of Management and Budget (OMB) for clearance before transmitting such proposals to the Congress. Do you believe that this procedure is appropriate?

Answer. It is my understanding that the OMB clearance process with respect to legislative proposals submitted by regulatory agencies aims chiefly to assess federal expenditures and to assure that bills submitted to the Congress by one agency properly take into account the interests and concerns of other affected agencies. Hence, the submission of FCC legislative proposals to OMB for review and comment is appropriate to ensure that Congress has all the relevant information from the Executive Branch and other regulatory agencies as a basis for its judgment. Nonetheless, it may be desirable for agencies to be able to communicate, at least on an informal basis, their legislative suggestions directly to the Congress without "clearance."

*Question 3.* The Senate has passed "sunshine" legislation which would require the regulatory agencies to open their meetings to the public, unless a vote of the agency decided to close consideration of a particular matter. Are you in favor of opening agency agenda meetings to tne public?

Answer. Those who are familiar with my work during the past ten years know that I have been a staunch advocate both outside and within the government for openness and, in particular, for the implementation of the letter and spirit of the Freedom of Information Act. Yet, I recognize, as did the Congress in passing the FOI Act, that open deliberations can inhibit the free and frank exchange of ideas and opinions within the government or result in premature disclosure of incomplete action which could adversely affect both public and private interests.

Open meetings can contribute to citizen participation in and understanding of the governmental process. Since I have had no experience with FCC agenda meetings, I am not in a position to balance the relative benefits of open or closed meetings. However, I believe it is most appropriate that Congress debate the merits of opening meetings of all regulatory agencies to the public. I will, of course, comply fully with the letter and intent of any law Congress enacts in this area.

Public confidence in government and the integrity of government officials depends today more than ever upon the latter being open in their communications, available to the public and willing to take initiatives to inform the public concerning the governmental process. I am pleased to note that the FCC has taken initiatives in this area through regional meetings and *en banc* meetings in Washington. I look forward to participating in these sessions which seek to encourage public involvement in the decisionmaking process.

*Question 4.* Citizen participation in the regulatory process is essential for public confidence in the regulatory product. Would you favor an FCC procedure for reimbursement of expenses incurred by citizens groups or individual citizens who participate in Commission proceedings?

Answer. I agree that it is essential that citizen participation in the regulatory process be encouraged. One purpose is to ensure public confidence and trust in the regulatory product, as the question notes. Equally important, citizen participation contributes to the Commission's understanding of the public's views and thereby help ensure that the regulatory product indeed is responsive to the "public interest, convenience and necessity."

I am sympathetic to the need to reimburse citizen groups or individuals whose participation in the regulatory process is required or necessary to ensure that the public interest is served but for whom the expenses of participation would impose a hardship.

However, I am not familiar with the magnitude of the problem, the costs involved, nor how to determine fairly who might qualify for reimbursements. My initial reaction is that it would be preferable for the Congress to address itself to this issue on a government-wide basis and to provide the necessary funding to support any legislation permitting reimbursements.

*Question 5.* The FCC has adopted policies allowing competition in selected areas of common carrier communications—terminal equipment and specialized common carrier services. What are your views on competition in these areas; are you in agreement with these policies? Do you have views on the appropriate relationship between the FCC and state regulatory agencies in developing and implementing telecommunications common carrier policies?

Answer. At a time when the American people are showing an increasing awareness and concern over the burdens and costs of government regulations and over-regulation, I believe the public welcomes careful experiments to give the marketplace an opportunity to demonstrate whether the public interest can be achieved with fewer controls.

With the rapid technological advances in the common carrier field and the expanding consumer demands for specialized communications services during the past decade, the FCC has adopted policies to open the market to competition in two limited fields—terminal equipment and private line services.

I recognize that this regulatory area involves extremely complex and interrelated issues to which I need to devote considerably more time and study. My current understanding is that proponents of competition in these limited areas argue that it will serve the consumer by promoting innovation and flexibility in equipment and services, responsiveness to small and specialized markets not attractive as profitable to the telephone industry, lower prices and a heightened consumer responsiveness on the part of the total industry. Opponents claim that the result will be a reduced quality of telephone service and higher rates for residential telephone customers.

Although the FCC has completed some preliminary research which suggests that competition in these areas can realize innovation and lower costs for the consumer without undermining telephone service, it is my understanding that the Commission has not yet reached any conclusions on the long term economic implications of competition. I will want to have available the results of such studies as well as all other pertinent information before coming to a personal conclusion.

It is important to note that the FCC action is limited in scope. America's common carrier communications system has served the nation well, and I see no reason to question continued reliance upon a single integrated network to provide the basic facilities for public telephone service.

So far as the FCC's relationship to the state regulatory commissions is concerned, it is my understanding that the Act assigns interstate ratemaking responsibility to the FCC and reserves local ratemaking authority to the states. Obviously there is overlap, with the same equipment being used for local telephone service and interstate calls. Hence, FCC actions to accomplish its statutory mandate of assuring a nationwide communications network have important implications for state regulatory programs and policies. Therefore, I believe it is essential that there be a constructive and continuing dialogue between the FCC and the state agencies to ensure that the FCC can accomplish its mission without unnecessarily intervening with state interests.

*Question 6.* The FCC has had a very difficult time resolving major common carrier rate increases. Are you satisfied with the FCC's approach to tariff chagnes? Do you see any alternatives?

Answer. The question of appropriate rate of return regulation for communications common carriers is one of the most complex issues facing the FCC. Identification of the costs and investment committed to production of a service and the proper allocation of costs among multiple services are, of course, central problems.

Although I am not yet familiar with all the issues involved, I know the Commission has a number of inquiries in progress on these issues and is actively seeking alternatives to present regulation.

The recent amendments to the Communications Act granting the Commission additional time to conduct preliminary analyses of proposed tariff changes may be helpful in minimizing the proliferation of complex and lengthy tariff proceedings.

*Question 7.* Since 1972, the FCC has been implementing a policy of "open entry" in satellite communications. Do you believe that this is the best regulatory approach for realizing the benefits of satellite technology? Are there any alternative approaches which you might have the Commission consider?

Answer. In its 1972 "open entry" decision, the FCC determined that the public interest would best be served through the competitive marketplace rather than through the creation of a monopoly in domestic satellite communications.

I understand that all potential entrants to this field, for the immediate future, have appeared and that competitive satellite facilities are now becoming operational. Hence, it may be appropriate to review the implementation of the Commission's policy to date and to evaluate whether the restrictions in the 1972 decision are serving the purposes the Commission intended. However, I am aware of no compellln reason for reconsidering the FCC's approach at this time, especially since it would appear premature to draw any final conclusions as to whether that approach will best realize the benefits of satellite technology.

*Question 8.* Some have characterized the FCC restrictions on the development and operation of cable television systems as based on a policy of insuring the continuted viability of over-the-air broadcasting. Do you agree with this chracterization? What are your views as to the appropriate regulatory approach to cable?

Answer. The Commission recently characterized its own policy in the following statement which responded to a question from Rep. John E. Moss: "(I)t is the Commission's duty to intergrate cable television into the national communications system as rapidly and comprehensively as possible, but to do so without destroying other elements of that national system—as long as those elements are also found to serve the public interest."

In earlier rule making procedures and statements, the Commission also established this principle. In 1972, the Commission stated: "(O)ur basic objective is to get cable moving so that the public may receive its benefits, and to do so without jeopardizing the basic structure of over-the-air television." Ar the same time, the Commission said that while it had long held that the public interest is served by preserving a healthy broadcast service, its action also must be "guided by the standard of what will best serve the public interest and not by a desire to protect any industry from the impact of new technology."

My view is that this is the appropriate regulatory approach to cable which, with its multichannel technology, offers the opportunlty to expand the diversity of programming as well as a groad range of non-entertainment services.

I recognize that this is an extremely complicated area which I need to study in considerably more detail. I also understand that future Congressional action with respect to copyright legislation may help to bring more equitable competitive forces into existence in this area and to resolve some of the long-standing differences between over-the-air broadcasters and cable. However, in addition to having an impact on the continued viability of both VHF and UHF broadcasting, cable also has implications for the FCC's policy of localism, for local public service broadcasting, for educational television and for the consumer, including minorities. I look forward to assessing all these factors with the objective and open-minded approach I pledge to bring to bear upon all matters under the jurisdiction of the Commission.

*Question 9.* Please state your current views on the role and importance of "localism" in commercial broadcasting. Do you believe the current structure of broadcasting adequately serves the interest of "localism?" What alternatives might you consider?

Answer. The Commission's objective in adopting the present channel allocation scheme in 1948, as I understand it, was to insure that as many communities as possible received a "local" outlet for the dissemination of local information, weather warnings, schedules of local events, local advertising and issues of community concern.

I believe the principle of localism remains a most important one. However, I am not yet in a position to evaluate how well the current *structure* of broadcasting serves the interests of localism. Nor am I sufficiently familiar with alternative delivery systems to comment with respect to their implications for local service.

This is clearly a very complex area, involving the balancing of various public interests. Therefore, I feel it is incumbent upon me to study the whole subject of localism in much greater detail before I can offer any opinions.

*Question 10.* Equal employment opportunity in broadcasting is of long standing and still pressing concern. As a Commissioner, would you vote to deny the license renewal of any station that is shown to have discriminated against minorities or women in its employment practices? Should the FCC take an active role in reviewing the EEO performance of all licensees regardless of the size of their markets or the number of their employees?

Answer. Discrimination in employment by broadcasters clearly is incompatible with their responsibilities to operate in the public interest. Hence, evidence of discrimination would raise a substantial question as to whether it would serve the public interest to renew a station's license.

I believe that compliance with the FCC's Equal Employment Opportunities program should be a condition of license renewal. Yet, my personal commitment to enforcement of the EEO program notwithstanding, I consider it inappropriate for me to predict how I might vote on any matter. My decision would have to be made upon the basis of the particular facts and circumstances of the individual case as disclosed in an evidentiary hearing.

I am aware that the FCC recently announced EEO guidelines for broadcasters and also proposed new rules for cable operators. The guidelines for broadcasters provide for a variation in reporting requirements based on the number of station employees. The reasons for not requiring smaller stations to file certain reports, as I understand it, are that (1) enforcement resources will be concentrated on stations with the vast majority of positions; (2) statistical information becomes less useful in identifying discriminatory practices as a station's staff decreases; and (3) uniform requirements would create overly burdensome administrative and paperwork demands on small stations.

While I recognize the logic of this rationale, I am troubled by the fact that this decision exempts more than one-half of the nation's broadcast stations from filing affirmative action programs. This, of course, does not relieve the smaller stations from abiding by EEO requirements.

Since these rules are now in effect, the main question is one of enforcement. I believe it is essential that the FCC take an active role in insuring that all stations, regardless of size, neither discriminate nor shirk their affirmative action responsibilities in the hiring and promotion of minorities and women. The new rules should help in this regard by contributing to a better understanding by licensees and employees as to what is required and by eliminating excuses based on ignorance of the law.

*Question 11.* There is a desire on the part of many segments of our society to broaden access to the broadcast media, both in terms of stimulating a wider range of views and ideas received by the listeners and viewers and allowing more opportunities for self-expression. What are your views with respect to these concerns; do you see any regulatory measures which might be desirable and appropriate to meet such concerns?

Answer. In adopting the Communications Act of 1934, the Congress exempted broadcasters from a common carrier status under which they could be required to make their facilities directly available to the public. Instead, Congress required broadcasters to serve the public interest and to act as public trustees. Moreover, the Supreme Court has ruled that a system of mandatory access for individuals or groups is not a matter of either constitutional or statutory right.

The Supreme Court also noted that Congress has left the FCC with some flexibility in this area. The Commission has imposed numerous affirmative public service and program service requirements on broadcasters, including the fairness doctrine. However, the Commission consistently has held that it would not be justified in dictating the establishment of a system of public access, either free or paid, on the grounds that Congress intended to permit private broadcasting to develop the widest journalistic freedom consistent with its public obligations. The corollary concern has been that since it is impossible to give exposure to all viewpoints, the alternative to leaving the right to exercise editorial judgment with the broadcaster would be to draw government into the day-to-day processes of broadcast journalism.

On the basis of my current knowledge, I do not see any regulatory measures which might be desirable and appropriate to give listeners and viewers more opportunities for self-expression that would not also have the undesirable result of injecting the Commission into editorial judgments.

I am aware that a growing number of stations are experimenting with new ways to stimulate the broadcast of a wider range of views and ideas and that

many are voluntarily granting direct access to citizens as a public service. I would encourage this kind of local station responsiveness to community interests as an approach far preferable to regulation in accommodating the various First Amendment interests involved.

Because any regulatory measures in this area would involve a fundamental change of direction, I believe it would be more appropriate for the Congress to address this issue, rather than the Commission or the courts.

*Question 12.* The Fairness Doctrine requires broadcasters to afford reasonable opportunity for the presentation of contrasting views on controversial issues of public importance which they cover in their programming. The Doctrine also requires that broadcasters affirmatively cover such issues in the first instance. As a Commissioner, would you vote to deny the license renewal of a station that did not comply with this latter obligation?

Answer. Since it was first described by the FCC 27 years ago, the Fairness Doctrine has involved a two-fold duty: (1) the broadcaster must devote a reasonable percentage of broadcast time to the coverage of public issues; and (2) coverage of these issues must be fair in the sense that it provides an opportunity for the presentation of contrasting points of view. The Fairness Doctrine has been ratified by the Congress and upheld as constitutional by the Supreme Court. This is the law of the land and as a Commissioner I would, of course, uphold it.

However, in applying the Doctrine, I believe it is essential that the Commission exercise restraint mindful of the Congressional prohibition against FCC censorship and the implications for the First Amendment's free speech protections. The Doctrine's main purpose is to establish guidelines for fairness, leaving the individual broadcasters wide journalistic discretion to determine what constitutes important public issues and which viewpoints or shades of opinions are of sufficient public importance to warrant coverage.

In enforcing the affirmative obligation of the Fairness Doctrine, it seems to me especially important that the FCC seek to determine whether the broadcaster has acted reasonably and in good faith rather than involve itself in second-guessing the licensee's editorial judgment. Hopefully, the Commission's ongoing action on complaints in this area will prevent the development of a flagrant pattern of abuse which would call into question a licensee's qualifications in meeting his public interest obligations. As noted above, I believe it is inappropriate to predict how I will vote on any matter, but I know I would approach with caution the extreme sanction of denying license renewal where the First Amendment is so implicitly involved, especially if the Fairness Doctrine were the only issue in question.

*Question 13.* Some have stated the Fairness Doctrine and Section 315 of the Communications Act of 1934 impose obligations on broadcasters which discourage discussion of important issues and unduly burden broadcast licensees. What are your views in this regard?

Answer. I do not have sufficient information to draw conclusions as to the effect upon broadcasters of these requirements under the Communications Act which are aimed at facilitating the public's right to know. It is my impression that the Fairness Doctrine generally has encouraged the discussion of important issues. The Supreme Court in the 1969 *Red Lion* case held that there was no evidence that the Doctrine had the effect of reducing coverage of controversial public issues. Having read and listened to countless broadcast editorials over the past several years, I have been impressed by the broad range of opinion broadcast over the airwaves throughout the country.

Section 315's equal time requirement, by applying to all candidates for public office, appears to have had some inhibiting effect upon broadcast coverage, especially at the national level. I am aware that legislation has been introduced to eliminate the equal time provision for the offices of President and Vice President and that consideration also has been given to amending the Act to apply only to "major party" candidates. Any changes in the law, of course, must be made by the Congress.

*Question 14.* Are you satisfied with the current relationship between the FTC (Federal Trade Commission) and FCC in the area of advertising regulation? Do you believe the FCC should be more active in the regulation of the quantity and the content of broadcast advertising?

Answer. I understand there has been some confusion in the past as to the respective jurisdictions of the FTC and the FCC over the content of advertising. A major issue was whether the Fairness Doctrine should be the appropriate vehicle for FCC action regarding such content. However, the FCC since has held that the Fairness Doctrine does not apply to advertising merely to promote the sale of a

product but only to commercials which are devoted to an obvious and meaningful discussion of public issues. This apparently has helped clarify the division of responsibilities, leaving to the FTC the primary jurisdiction for regulating the content of advertising, including false and misleading commercials. The FCC, of course, continues to have a public interest obligation to insure that licensees do not engage in the broadcast of false or deceptive material.

The FCC also long has held the primary responsibility in regulating the quantity of advertising to help insure that the public interest does not become subordinate to financial or commercial interests.

Without further study I am not in a position to express fully informed views as to the appropriate level of FCC regulation over either the quantity or quality of broadcast advertising.

*Question 15.* What are your views on the appropriate standards for broadcast license renewal proceedings where competing applications have been filed? Are you in favor of extending the present three-year broadcast license term?

Answer. The Congress, the Commission, the courts, broadcasters and representatives of the public have devoted a great deal of attention over the years to developing appropriate standards to be applied in comparative renewal situations.

Under the comparative renewal process (using criteria such as diversification of media control, integration of ownership and management, and a determination of "substantial" or "superior" service), the Commission has been unable to chart consistent standards for evaluating the record of existing licensees or clear guidelines for predicting the performance of competing applicants. While some have suggested that there is no reasonable basis for comparison between a renewal applicant and a challenger, efforts continue to identify relevant comparative as well as noncomparative factors for judging which applicant will best serve the public interest, convenience and necessity.

I understand that the Commission is presently undertaking a comprehensive study of comparative renewal standards. I look forward to having the benefit of examining this study before reaching any conclusions in this very complex area.

Since the Commission exercises continuing oversight and can take appropriate action against deficient performance any time during the license period, extending the present three-year broadcast license term may help expedite the renewal process by reducing the heavy volume of applications to be processed each year.

*Question* 16. The FCC is charged with allocating and managing the limited electromagnetic spectrum among many competing civilian users. What general principles do you believe the Commission should apply in meeting this mandate? Do you have any views on the various proposals before the FCC to drop-in additional channels in the VHF portion of the spectrum? There are increasing complaints concerning interference with television reception and increasing demand for spectrum by citizens band operators. Do you have any views as to possible solutions to these problems?

Answer. Given the fact that the limited electro-magnetic spectrum is a national resource, the basic principle the FCC should apply in allocating scarce frequency space is that of the public interest, including objective information about various public needs. However, I am not sufficiently familiar with the problems involved in spectrum allocation to offer specific solutions in this area.

I understand the VHF drop-in issue currently is under study by the FCC, but I have not had an opportunity to review the various proposals, their possible impact on UHF, the technical issues and other considerations.

With respect to citizens band operations, I was pleased to note that the recent FCC action allocating additional channels to CB also strengthened the regulations for CB equipment to help alleviate the problem of unwarranted inference with other services.

## Biographical Sketch of Margareta Eklund White

*Address:* 6703 Lupine Lane, Mclean, Va.
*Date and place of birth:* June 27, 1937, Linkoping, Sweden.
*Marital status:* Married to Stuart Crawford White.
*Names and ages of children:* Suzanne Margareta White, 9; Stuart Crawford White, Jr., 4.

*Education*

University of Redlands, California, 1955–1959, B.A., Magna Cum Laude in Government (1959).

American University, Washington, D.C., Spring, 1958 (Washington Semester Program).

Rutgers University, New Jersey, 1959–1960 (Eagleton Institute of Politics), M.A. in Political Science (1960).

*Employment record*

Assistant Press Secretary to the President and Director, Office of Communications, The White House, June 1975-present.

Assistant Press Secretary to the President and Deputy Director, Office of Communications, The White House, January-June 1975.

Assistant Director (Public Information), United States Information Agency (James Keogh, Director), Washington, D.C., February, 1973-January, 1975.

Assistant to the Director of Communications (Herbert G. Klein), The White House, January 1969-January 1973.

Assistant to the Manager for Communications, Nixon for President Committee (Herbert G. Klein), New York, June-November 1968.

Research Assistant to Raymond Moley (during this period the late Raymond Moley was writing three newspaper columns per week for the Los Angeles Times Syndicate), Washington, D.C., part-time, November 1967-June 1968.

Research Associate, The Free Society Association (a public policy research organization, now defunct; Senator Barry Goldwater, Honorary Chairman; Denison Kitchel, Chairman), Washington, D.C., June 1965-December 1966 (full-time) and January-June 1967 (part-time).

Research Assistant and Research Associate, Senator Barry Goldwater, Goldwater for President Committee and Republican National Committee (Denison Kitchel, Chairman; Dean Burch, Director and later RNC Chairman), Washington, D.C., September 1963-May 1965.

Press Secretary, Hawaii House of Representatives (Minority), Honolulu, January-May session, 1963.

Administrative Assistant and Office Manager, Whitaker and Baxter Advertising Agency (Michell N. Abramson, then resident partner of San Francisco firm), Honolulu, Hawaii, November 1961-December 1962.

Secretary and Press Aide, Rep. John H. Rousselot (R-Calif.), U.S. House of Representatives, Washington, D.C., January-June 1961.

Assistant to Press Secretary (Herbert G. Klein), Nixon-Lodge Committee, Washington, D.C., September-December 1960.

Tour co-leader for 15 high school students traveling to Scandinavia and the Soviet Union (European Travel Camp, Putney, Vermont; George Shumlin, Director), July-August 1960.

Secretary/Receptionist, Vice President Richard Nixon (Herbert G. Klein, Press Secretary), Washington, D.C., Summer 1959.

Legislative Correspondence, U.S. Senator William F. Knowland, Washington, D.C., part-time, March-June and full-time, summer 1958.

*Government experience:* See answers to 7, above.

*Memberships*

Executive Women in Government (founding member; secretary in 1975).

Contributing Member, University of Redlands Fellows.

Republican Women's Federal Forum.

*Political affiliations and activities*

Member, Republican Party.

Delegate, 10th District of Virginia Republican Convention, 1976 (Husband also delegate to Fairfax County and Virginia State Conventions).

In most of the last ten years, we have contributed $50–100 to either the Republican National Committee or Republican Presidential campaigns; my husband also has made one or two contributions of about $25 to local candidates.

See also 7 above.

*Honors and awards*

Superior Honor Award, U.S. Information Agency, 1975.

Distinguished Service Award, University of Redlands Alumni Association, 1974.

*Who's Who in America* (1976), *Who's Who in Government, Community Leaders and Noteworthy Americans*, and other similar publications over past several years; *Outstanding Young Women of America* (1964).

Woodrow Wilson National Fellowship, Eagleton Institute of Politics Fellowship, National Mortar Board Fellowship, National Social Science Honor Society (Pi Sigma Alpha) national fellowship, and others (1959).

Several scholarships and college honors (1955–1959).

*Published writings*

Several articles and pamphlets on public policy and issues published by the Free Society Association; in 1960 wrote "Mr. Justice Black, Chief Justice Marshall and the Commerce Clause," published by the late Constitutional law professor Paul Tillet in the *Nebraska Law Journal* in 1963; unpublished senior honors thesis, University of Redlands, on "Media of Communications between Members of Congress and Their Constitutents."

*Qualifications*

I will bring to the Commission an educational background in political science (including constitutional law and economics) and 18 years of experience in communications, journalism, public policy research and government service. I have served in executive and administrative positions but also have specialized in communications, research and writing. Throughout my career, I believe I have demonstrated my commitment to public service and have established a record of being fair, open-minded and thorough.

HAMEL, PARK, MCCABE & SAUNDERS,
*Washington, D.C., July 28, 1976.*

JOHN O. PASTORE,
*Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Counsel to the President has requested that we write you with regard to the President's nomination to the Federal Communications Commission of Margita E. White.

Mrs. White's husband, Stuart C. White, is a partner in this law firm. The firm is engaged in the general practice of law here in Washington, D.C. While Mr. White does not practice in the field of communications law, some of our attorneys do represent clients before the Federal Communications Commisison and in communications matters generally.

Mr. White and the firm have agreed that effective upon his wife's confirmation and so long as she remains on the Commission he will forego all participation in any income derived from the firm's communications law practice.

Sincerely,

FULLER HOLLOWAY, *Managing Partner.*

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DEPARTMENT OF JUSTICE,
*Washington, D.C.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: We have been advised that your Committee wishes the opinion of this department concerning potential problems under the Federal conflict of interest laws or other legal impediments to the service of Mrs. Margareta White to be a member of the Federal Communications Commission (FCC), the position for which she has been nominated. We are pleased to respond.

The significant conflict of interest statute involved is 18 U.S.C. § 208(a). It provides, under penalty of criminal sanctions, that an officer or employee of the Executive Branch or of an independent agency of the United States may not participate personally and substantially in a particular matter in which, to his knowledge, he, his spouse, minor children, or organization in which he is serving as an officer, director, trustee, partner, or employee has a financial interest, unless the officer or employee first obtains an appropriate exemption pursuant to 18 U.S.C. § 208(b).[1]

In addition, 47 U.S.C. § 154(b) provides that no employee or member of the Commission may hold stocks, bonds, or other securities of or otherwise be financially interested in any corporation subject to any of the provisions of Chapter 5 of Title 47 or which manufactures or sells apparatus used in wire or radio communications or furnishes services or apparatus to a company engaged in such communication. This statute, unlike 18 U.S.C. § 208(a), applies only to securities

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[1] 47 U.S.C. § 154(j) provides that a Commissioner shall not participate in any hearing or proceeding in which he has a pecuniary interest. This provision is narrower than 18 U.S.C. § 208(a) because it applies only to a pecuniary interest of the Commissioner himself, not that of his spouse or minor child. Our discussion in the text will therefore be limited to 18 U.S.C. § 208(a).

held by the member, not by the member's spouse and minor children. *Cf.* 19.735-204(e)(2)(ii). On the other hand, unlike 18 U.S.C. § 208(a), 47 U.S.C. § 154(b) contains no provision for an exemption, and its prohibitions cannot be avoided by disqualification in matters involving a company in which the individual owns securities; a Commissioner or employee must dispose of any securities covered by 47 U.S.C. § 154(b).

This office concluded in a letter dated April 28, 1965, a copy of which was made available to the Senate Committee on Commerce in connection with the nomination of Mr. James J. Wadsworth to be a member of the FCC, that 47 U.S.C. § 154(b) does not prohibit the ownership of securities in companies that are not to any significant extent subject to regulation by the FCC—in that case, companies whose only apparent relationship to the FCC's jurisdiction was their receipt of industrial and similar licenses issued and administered by the FCC. We understand that the FCC has construed the statute in this manner since 1965.

We have been furnished with a copy of the biographical and financial materials Mrs. White has submitted to your Committee. In her financial statement, she lists stocks in nine companies owned by her or her husband. We have been informed by the Office of the General Counsel of the FCC that one of the companies, Gould, Inc., is engaged in businesses which subject its stock to the prohibitions of 47 U.S.C. § 154(b).[2] If the stock is owned by her outright or jointly with her husband, the stock would have to be sold. If it is owned solely by her husband, no problem arises under 47 U.S.C. § 154(b), but the financial interest arising from Mr. White's ownership of the stock is attributed to Mrs. White for purposes of 18 U.S.C. § 208(a). She would therefore be required to disqualify herself or to seek an appropriate exemption under 18 U.S.C. § 208(b) in any particular matter which could have a direct and predictable effect on Gould, Inc.

The financial statement also reveals that the Whites' minor children have stock in three corporations, one of which, Park Electrochemical Corporation, engages in activities subject to the FCC's jurisdiction. Since it appears that Mrs. White does not own these stocks personally, 47 U.S.C. § 154(b) does not require that her children sell the Park Electrochemical stock. However, 18 U.S.C. § 208(a) would require her to disqualify herself or seek an appropriate exemption in any particular matter involving that company.

The Whites also own stock in the Tappan Corporation, a manufacturer of microwave ovens. We understand that such ovens must have an equipment certification from the FCC, but that the corporation is not sbject to any significant extent to regulation by the FCC. Ownership of stock in the Tappan Corporation would therefore not appear to be prohibited by 47 U.S.C. § 154(b). However, Mrs. White would be required under 18 U.S.C. § 208(a) to disqualify herself in any particular matter which involves the Tappan Corporation, or, for that matter, any of the other companies in which she or her family has a financial interest.

The Whites' remaining assets consist of their personal residence, items of personal property, life insurance policies, Mrs. White's Civil Service Retirement, Mr. White's partnership interest in the law firm of Hamel, Park, McCabe & Saunders, his interest in a pension plan apparently arising from his relationship with the law firm, and his partnership interest in 1776 F Street Associates, which also appears to be related to the firm. Of these, only Mr. White's financial interests arising from his being a partner in the law firm of Hamel, Park, McCabe & Saunders would appear to raise any potential problems under 18 U.S.C. § 208(a).[3]

The problem arises because the law firm regularly represents clients before the FCC—including, we understand, AT&T in certain matters—although Mrs. White states that her husband is a tax specialist and apparently does not work in the communications area.

To avoid potential conflict if interest problems involving the law firm, Mrs. White states in here answer to question (C)(5) of the Committee's questionnaire that she will disqualify herself "from participating in any case or matter before the Commission which involves a party represented by the firm of Hamel, Park, McCabe & Saunders" and that her busband "will not share in any profits from legal fees received by his firm in payment for its services with respect to communi-

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[2] We understand that Gould, Inc., is an electronics manufacturer.

[3] Because the interests are Mr. White's, they do not operate to disqualify Mrs. White from membership on the Commission under 47 U.S.C. § 154(b). Similarly, Mr. White's receipt of compensation from matters pending before Government agencies, including the FCC, would not, in our opinion, be prohibited by 18 U.S.C. § 203(a), which bars an officer of an independent agency of the United States from receiving directly or indirectly any compensation for services rendered by himself or another before a Federal department or agency.

tion matters." [4] It is our opinion that the first proposed undertaking is adequate to avoid potential conflicts of interest under 18 U.S.C. § 208(a). However, the second measure may also be appropriate in order to avoid an appearance of a conflict of interest.

Although the first statement quoted above is not wholly unambiguous, we take it to mean that Mrs. White intends to disqualify herself when her husband's firm is actually representing a party in a particular proceeding before the FCC, but not when one of the firm's clients is represented before the FCC by other counsel. The distinction is significant, because if Mrs. White disqualified herself in the latter category of cases, she would apparently disqualify herself in all matters involving AT&T, which constitute a significant portion of the FCC's work. We do not believe that this more far-reaching disqualification is required by 18 U.S.C. § 208(a).

In our opinion Mr. White would have a financial interest requiring his wife's disqualification under 18 U.S.C. § 208 only when there is a reasonable possibility that the resolution of a particular matter coming before her could have a "direct and predictable effect" on the law firm, in whose income and profits Mr. White shares. See Federal Personnel Manual, Chapter 735, Appendix C, at p. C–4. Such a direct and predictable effect would be present when Hamel, Park, McCabe & Saunders actually represents a party before the FCC. But when a client of Hamel, Park, McCabe & Saunders is a party to an FCC proceeding in which it is represented by other counsel, we believe that the possibility that the outcome of the particular proceeding would redound to the financial benefit of Mr. White, through his firm, is far too speculative and attenuated to require Mrs. White's disqualification. Therefore, we believe that Mrs. White can avoid potential conflicts of interest under 18 U.S.C. § 208(a) if she disqualifies herself in all cases in which her husband's firm is representing one of the parties.

As mentioned above, Mr. White also intends to forego his share of the firm's income and profits generated by its communications practice. This proposal is confirmed in a letter dated July 28, 1976, from Mr. Fuller Holloway, the Managing Partner of the firm, to Chairman John O. Pastore of the Subcommittee on Communications of the Senate Committee on Commerce. We have been informed that this undertaking includes the understanding that Mr. White's share of the firm's fees from non-communication work would not be augmented or that he would not otherwise be compensated for his loss of income from the firm's communications clients. We do not believe that this additional step is strictly necessary to avoid potential problems under 18 U.S.C. § 20(a) in view of the fact that Mrs. White intends to disqualify herself in matters in which her husband's firm is appearing. However, the additional measure might serve to avoid any appearance of a conflict of interest under sections 201(c)(2), (4) and (6) of Executive Order 11222 and FCC regulations promulgated to implement the Exective Order, 47 CFR 19.735–201(b), (d) and (f), which are applicable to the Commissioners by virtue of 47 CFR 19.735–102(b).

We also believe that some light may be shed on the problem of appearance of a conflict of interest in the present situation by a recent opinion of the American Bar Association's Committee on Ethics and Professional Responsibility which deals with conflicts of interest involved when a husband and wife are attorneys associated with law firms which represent opposing sides in a contr oversy. Formal Opinion 340 (September 23, 1975). The ABA opinion notes that the disciplinary rules of the ABA's Code of Professional Responsibility do not expressly require a lawyer or his firm to decline employment in all cases in which the lawyer's spouse or other close relative represents an opposing party or is a member of the firm which does. The opinion indicates instead that the question turns on such factors as the fee arrangements, whether the disputed matter is in negotiation or litigation whether the firms can adequately protect their clients' confidences, whether one or the other might neglect its clients' interests, whether because of the close relationship between husband and wife the arrangement would be contrary to the spirit of the prohibition against representation of differing interests, and whether the married lawyer in question will actually be working on the particular matter.

We recognize that Mrs. White is not an attorney and that the FCC is not an opposing party in FCC proceedings, but we believe the analogy to the situation addressed in the ABA opinion is apt in view of the professional status of Mr. White

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[4] The alternative of seeking an exemption under 18 U.S.C. § 208(b)(1) on the theory that the financial interest involved "is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect" from Mrs. White has not been proposed as a possible solution, and we do not recommend reliance on that approach here.

and Mrs. White and the fact that the FCC's interests are at least different than those of parties who appear before it. Here neither the FCC nor Mrs. White has any fee arrangement in matters coming before the Commissioners, and Mr. White will not share in any fees from his firm's cases before the FCC. There is no indication that either Hamel, Park, McCabe & Saunders or the FCC would be likely to neglect the interests they represent. Neither Mr. White nor Mrs. White will participate personally in the firm's cases before the FCC, and thus there is little likelihood that confidences pertaining to such cases would be compromised. Therefore, insofar as the recent opinion construing the ABA's Code of Professional Responsibility is thought to be helpful in addressing the problem of potential conflicts of interest or the appearance thereof in the present case, it suggests that the contemplated arrangement is satisfactory. However, to be certain that no problem arises with respect to confidential information, we recommend that Mr. White, in addition to foregoing fees from his firm's communications matters, take steps to insure that he will have no knowledge regarding such matters, and that Mrs. White similarly take steps to insulate herself from knowledge of the particulars of FCC proceedings in which her husband's firm is appearing.

We are not aware of other potential conflict of interest problems or legal impediments involved in the service of Mrs. White in the position for which she has been nominated.

Sincerely,

MARY C. LAWTON,
*Deputy Assistant Attorney General,*
*Office of Legal Counsel.*

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FEDERAL COMMUNICATIONS COMMISSION,
*Washington, D.C., July 30, 1976.*

MS. MARGITA E. WHITE,
*McLean, Va.*

DEAR MS. WHITE: This is in reference to correspondence dated July 26, 1976, requesting our opinion concerning conflicts of interest in connection with your potential service as a member of the Federal Communications Commission. The financial and other data submitted have been reviewed.

The sweeping nature of the prohibitory language in Section 4(b) of the Communications Act, particularly in terms of the diversified nature of many corporations and the ever expanding use of radio apparatus, presents many apparent inequities with respect to persons entering upon service with the Federal Communications Commission. The Commission has always recognized that the effect of Section 4(b) is far more restrictive and, hence, somewhat self-deafeting, than the national policy reflected in the general statute enacted by the Congress in 1962 (18 U.S.C. Sec. 208). It has, therefore, for many years, proposed legislation to the Congress so as to permit the employment in this Commission of persons whose outside financial interests would not, under any reasonable standard, operate to compromise the integrity and impartiality of their service. Such legislation is presently pending before the Congress but until it is enacted, the restrictions to Section 4(b) of the Act as presently written still come into play.

Section 4(b) prohibits the holding of financial interests in any company whose activities come within the language described in the section, subject to the interpretation made by the Office of Legal Counsel, Department of Justice in 1965 that Section 4(b) does not encompass companies which are not subject, in any significant sense, to regulation by the Federal Communications Commission. These include companies engaged in communication by radio or by wire; companies which manufacture or sell radio equipment used in communication by wire or radio; and further, any company whch provides services or equipment to such companies. In addition, the statutory prohibition extends to a company which owns stocks, bonds or other securities in a company engaged in communication or in the manufacture or sale of radio or common carrier equipment and to any corporation subject to the provisions of the Communications Act.

Applying the foregoing to the list of financial interests reflected in your statement to Senator Warren G. Magnuson on July 21, 1976, it is my opinion that retention of a financial interest in Gould Inc. would be clearly barred by Section 4(b); therefore, you should divest yourself of any financial interest in the company. Tappan Corporation, although it does have to receive Commission equipment approval for its microwave ovens, appears to be a company which is not subject,

in any significant sense to regulation by the Commission; therefore, you will not be required to divest yourself of any financial interest in this company.

It also appears that your children's interest in Park Electro-chemical Corporation could present a conflict of interest. However, where a financial interest in a company described in Section 4(b) is held by children, the general "Conflict of Interest Statute", 18 U.S.C. 208 sets the governing principles. Separate and apart from Section 4(b) of the Communications Act, you would still be prohibited from participating in any matters affecting those companies in which either you or members of your immediate family have a financial interest unless, upou disclosure, it is determined that the financial interest can be regarded as not so substantial to be deemed likely to affect the integrity of your services within the meaning of 18 U.S.C. 208(b).

The question of whether the financial interests of your family would permit such a determination is one upon which the Office of General Counsel cannot appropriately comment. Since you would be serving as a Presidential nominee, this question would, under Title 18 U.S.C. 208(b), be one for resolution by the President.[1] However, the legislative history of this provision, as evidenced in particular by the letter of Deputy Attorney General Katzenbach to Senator Jackson during Congressional consideration of Public Law 87–849, dated June 20, 1962, (Hearings, Conflict of Interest, Senate Committee on the Judiciary 87th Cong., 2nd Sess., pp. 95–99) fully describe the applicable standards;

". . . Although section 208 includes spouse and minor children, it permits exclusion from its coverage of interests which are not so substantial as to be likely to affect, or which are too remote or inconsequential to affect, the integrity of the service of an official. This exclusion, it seems to me, would rule out the property holdings of most spouses or minor children as financial interests which the committee might consider as possible subjects for divestiture. This would be particularly true with respect to the separate property of a spouse, which normally is not subject to any control or inter vivos property rights of his or her marriage partner."

"In my opinion, only in an exceptional case would a financial interest of a spouse or child be deemed to be a disqualifying financial interest within the purview of Section 208. Ownership by a spouse of a controlling interest in a corporation transacting business with the Department of Defense could not, perhaps, be ignored. Also, in a situation which the nominee exercises legal control over the property of his spouse, the interest of the spouse could be considered a financial interest within the contemplation of section 208 unless excluded by the exception of nonsubstantial interests. However, such situation, in my opinion, would be the exception, rather than the rule. In the ordinary case, a property holding of a spouse or minor child would seem to come within the subsection (b) exclusion."

Finally, the Communications Act prohibitions described above would be effective only upon your assumption of the office of Commissioner and the actions required thereunder need not be taken immediately upon confirmation of your nomination by the Senate. However, since such matters may well be raised at your confirmation hearing, it would be appropriate to advise the Senate Committee of your intentions in this regard.

Sincerely yours,

ASHTON R. HARDY,
*General Counsel.*

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THE WHITE HOUSE, *Washington, July 31, 1976.*

Hon. JOHN O. PASTORE,
*Chairman, Subcommittee on Communications, Committee on Commerce, United States Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Office of the Counsel to the President has conducted a review of the financial interests of Margareta E. White, President Ford's nominee to the Federal Communications Commission, and those of her husband, Stuart C. White, in order to ensure that her appointment will not raise any conflict of interest or appearance of a conflict. This is to report the results of our review.

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[1] While the President's authority to make such a determination under sec. 208(b) has been delegated by Executive Order No. 11222 to the head of an agency with respect to specified Presidential appointees, such determination with respect to FCC Commissioners are still made by the President through his counsel.

Prior to her nomination, Mrs. White expressed to us her willingness to dispose of any financial interest in an organization which has or reasonably could be expected to have in the future any case or matter under the jurisdiction of the Federal Communications Commission. Accordingly, upon the recommendation of the General Counsel of the Commission, she is now arranging for the disposition of her family interests in Gould, Inc., Tappan Corp. and Park Electrochemical Corp.

Mrs. White's husband, Stuart, is a partner in a medium sized law firm, Hamel, Park, McCabe and Saunders, which is engaged in the general practice of law and is located in the District of Columbia. Mr. White, I am advised, is a tax specialist but several of his partners regularly represent clients before the FCC. Included among the clients are American Telephone and Telegraph, the State of Alaska and numerous broadcast stations. While the law firm does represent AT&T from time to time, we are avised that AT&T handles the bulk of its legal matters, including communications work, internally and also employs other law firms for such work.

In order to eliminate any conflict of interest or appearance of conflict with regard to her husband's business interests, Mrs. White has agreed to a plan of action which may be summarized in the following manner. First, she will recuse herself from participation in any case or matter before the Commission which involves a party represented by her husband's firm. Secondly, during the course of Mrs. White's service on the Commission, Mr. White will not share in any profits from legal fees received by his firm in payment for services provided by the firm to its communication industry clients—this will result in an annual loss in compensation of approximately 10 percent. Thirdly, Mr. White has agreed to formulate with his firm a plan of action to insure that he will have no knowledge regarding the firm's communications practice and Mrs. White will develop with the Commission an arrangement to insulate herself from knowledge of the particulars of Commission proceedings in which her husband's firm is appearing. Finally, Mrs. White will, of course, also abide by all relevant standards of conduct applicable to members of the FCC, including those which generally bar ex parte discussions of pending cases and matters.

With these understandings, it is my opinion that the appointment of Mrs. White would not raise any conflict of interest or appearance of conflict.

Sincerely,

PHILIP W. BUCHEN,
*Counsel to the President.*

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McLEAN, VA., *August 19, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Committee on Commerce,*
*Washington, D.C.*

DEAR SENATOR MAGNUSON: Letters submitted by the General Counsel of the Federal Communications Commission and the Deputy Assistant Attorney General, the Department of Justice, commented with respect to financial interests reflected in my letter to you of July 21, 1976.

Among those financial interests were stocks in the following three companies: Gould, Inc., Tappen Corporation and Park Electro-Chemical Corporation.

The purpose of this letter is to advise your committee that these stocks were sold on August 2, 1976. Therefore, neither I nor any member of my family now has financial interest in any company subject to regulation by the Federal Communications Commission.

Sincerely,

MARGITA E. WHITE.

Senator MOSS. We may want to ask you to elaborate on some of them or, if there are any matters that are not clear, to clarify them.

You indicated in your written responses to the committee's questions that OMB clearance of proposed FCC legislation is aimed chiefly at assessing the impact on Federal expenditures of the proposed legislation.

Why isn't this concern fully served by congressional referral of the proposal to the White House as part of the normal legislative process of soliciting administration views on proposed legislation?

Do you support submission of proposed FCC legislation to White House clearance for any purpose other than assessing budget impact?

Mrs. WHITE. Senator, I was quite surprised when I learned through that question that the FCC does submit legislative proposals through OMB. Therefore I checked with a representative of OMB to find out the purpose of that clearance procedure with respect to regulatory agencies.

I was informed that OMB handles regulatory agency legislative proposals in a different manner from those submitted by executive departments and agencies, and that the main purpose was, as I stated in my response, to assess financial implications.

I think what they had in mind was to identify indirect expenditures that might come about through the involvement of related agencies. And it seemed to me appropriate that such information would be helpful to the Congress.

Senator MOSS. Well, isn't this concern fully served by congressional referral of the proposals to the White House?

Mrs. WHITE. Not having been that involved in the legislative process or the OMB process, I really cannot respond to that directly.

The impression I received from the OMB official I talked with was that this would be helpful to the Congress and therefore that is my answer.

Senator MOSS. In your written responses you indicate sympathy for the problem of insuring adequate citizen participation in FCC deliberations and that any solution should be governmentwide.

Do you support the creation of an agency for consumer advocacy, or what other alternative would you support?

Mrs. WHITE. I am familiar with recommendations for a consumer advocacy office. What I had in mind specifically in responding to that question was citizen participation in broadcasting vis-a-vis appearances on radio and television.

Senator MOSS. To what extent then would citizens participate? What would be their input that you had in mind?

Mrs. WHITE. Perhaps I could refresh my memory by looking at the question itself which I have here. It has been some time since I answered those questions.

Would you refresh my memory as to which question you were referring to?

Senator MOSS. Which is it by number? Let me see.

Mrs. WHITE. You are talking about question No. 3 and I was referring to No. 4.

Senator MOSS. Yes, No. 3 and No. 4. No. 4 particularly. The question posed began:

> Citizen participation in the regulatory process is essential for public confidence in the regulatory product.

And you answered:

> I agree that it is essential that citizen participation in the regulatory process be encouraged. One purpose is to insure public confidence and trust in the regulatory product, as the question notes.
>
> Equally important, citizen participation contributes to the commission's understanding of the public's views and thereby helps insure that the regulatory product indeed is responsive to the "public interest, convenience and necessity."

I don't think I need to read your answer in its entirety, but the question I was asking was whether you think that there should be an

agency for consumer advocacy to provide this input that you are talking about?

Mrs. WHITE. I have no firm opinion on that issue.

Senator MOSS. You indicate some sympathy for extending the broadcast license period beyond 3 years.

Do you see any advantage to the present 3-year broadcast licensing term?

Mrs. WHITE. Well, it seems to me that there has to be a decision as to what the length of the license period should be. Currently it is 3 years. I gather that this may be presenting excessive paperwork for the Commission, and perhaps 4 or 5 years would be equally appropriate so long as there is continued supervision on the part of the FCC over broadcasters' performance.

Senator MOSS. Under the current 3-year term, are there inordinate delays in processing before the license can be renewed? Is there such a pileup of work that it isn't done in time?

Mrs. WHITE. I have an impression there are delays, yes.

Senator MOSS. That in itself, you think, might be reason enough to extend it for some period?

Mrs. WHITE. That would be one reason.

Again, this is one of the areas that I would need to pursue in much greater depth before coming to a personal conclusion.

Therefore, my answer did not seek to come up with a specific response but simply to indicate that there might be merit in extending the license renewal period.

Senator PASTORE. Can everyone in the room hear Mrs. White?

Will you put the microphone a little closer to you, Mrs. White?

Senator MOSS. There is one matter that I wanted to open with you, and I think perhaps the chairman might want to question you on this as well.

Explain your general philosophy as to what will pose a conflict of interest problem for you as a sitting commissioner. Do you anticipate your husband's law firm association will create any problems of public perception of advantageous access to the FCC?

Mrs. WHITE. Mr. Chairman, I have a brief opening statement in which I hope to address this matter, and I wonder if I might do that before we go into questions on that particular question.

Senator MOSS. All right. You may proceed.

Mrs. WHITE. Thank you.

Mr. Chairman, first I want to state that I am grateful for the opportunity to appear here today to introduce myself and to answer any questions you and the members of this committee may have in connection with my nomination to serve as a member of the Federal Communications Commission.

I have a brief opening statement, as I said, which I anticipate will respond to some of these questions.

I am deeply honored by the President's decision to nominate me to the FCC. The fact that the President has had personal knowledge of my work as a member of his immediate staff for the past 18 months makes his expression of confidence in my abilities especially meaningful to me.

This committee, of course, also has a reponsibility to evaluate these qualifications. Therefore, it may be helpful for me to elaborate on the biographical sketch that I have submitted to provide you with a more

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specific indication of the expertise and perspective I will bring to the Commission.

Mr. Chairman, I am a generalist with wide experience in executive and staff positions in the legislative and executive branches of our National Government and in a State legislature, in journalism, in public policy research, and in politics. My specialty, in a broad sense, is communications, although I am not a product of any of the industries which the FCC regulates.

For throughout my 18-year career, I have been involved in the dynamic flow of information and ideas among government and public leaders, the media, and the public. My constant goal has been to pursue the facts, to seek public understanding of complex public issues and to encourage an open and candid dialog aimed at bringing about more informed citizen participation in and confidence in the decisions of government.

My background has given me an invaluable insight into the process of communications in this country and the world. It has provided me with wide exposure to and respect for the role of the media of communication, inspired my faith in the institutions of the free press, reinforced my commitment to protecting the rights of free speech and the public's right to know and imbued me with a sensitivity to the need for balance and prudent, yet visionary, governmental action to encourage the free flow of information and the technology which is so rapidly expanding our facilities for all forms of communication.

I believe that my long involvement in the process of communications in our democracy bears directly upon my ability to act wisely, judiciously, and responsibly as a member of the commission charged by the Congress with regulating the means of communication in the public interest. I am here today because I am confident that through dedication and hard work, I can bring to the commission a dimension of knowledge and a fresh viewpoint that will contribute to its development of regulatory policies which can best serve the American people in the years ahead.

Finally, I wish to address the concern over a possible conflict of interest which has arisen concerning my nomination.

For the 15 years we have been married, my husband and I have been pursuing independent careers. He is an attorney with a medium-size general law firm here in Washington. I have little knowledge of my husband's specialized work as a tax attorney, and only the most general familiarity with the firm's activities. Hence, when it was first called to my attention that some of my husband's partners' clients would present a conflict of interest issue with respect to my nomination to the FCC, I was frankly surprised. It still is inconceivable to me that anyone would think that my husband's law firm associates, whom I see only rarely on social occasions, would influence my thinking or that the assumption prevails that a husband makes his wife's decisions for her.

I have never sought anything for myself, yet here was a presumption that I would act improperly, that my husband would both influence my professional judgment and violate his professional ethics and that his associates would do the same.

Nevertheless, I recognized the need to take steps to avoid any appearance of conflicts. Although my husband has never practiced before the FCC, some of his partners do practice before the com-

mission. I have been informed that they represent various broadcast stations, the State of Alaska, and A.T. & T. in a very limited number of matters. A.T. & T., as I understand it, handles the bulk of its legal matters, including communications work, internally, and also employs other law firms for such work.

I believe this committee is familar with the decisions we have made to avoid any potential conflict of interest questions because of my husband's law partnership.

To summarize, I have agreed to disqualify myself from any cases or matters represented by the law firm before the FCC. I understand that the proportion of such cases as part of the total work load of the commission is very small.

My husband will not share in any income from the law firm's FCC practice, thereby removing any financial interest whatsoever on the part of our family in the firm's communications work.

In addition, I plan to take whatever steps might be appropriate to insulate myself from knowledge of the particulars of FCC proceedings in which my husband's law firm is appearing; and he, in turn, will seek to insure that he will have no knowledge regarding his firm's communications clients.

This committee also has memorandums from the Department of Justice and the White House counsel which conclude that these steps are adequate and appropriate.

We have taken every possible precaution to avoid an appearance of conflict. But I also wish to assure this committee that I never have nor ever will let financial considerations or any other improper influence sway my professional judgment nor influence my actions in seeking to serve the public.

As this committee evaluates the circumstances of my situation, I know it will recognize that, as more women pursue professional careers, there will be many more so-called conflict issues. Husbands and wives who have been pursuing independent careers in separate orbits will enter coincidentally related spheres. Inevitably, there will be some cases where one spouse or the other will have to make a professional sacrifice because no steps will suffice to remove a real conflict.

However, when precautionary measures can insure a sufficient degree of separation to avoid such a conflict, I hope it will not be necessary to abort either spouse's professional mission.

Mr. Chairman, I appreciate the time to permit me to make these comments. I also wish to thank the committee for scheduling today's hearing at this pressing time. I recognize this as a reflection of concern that the two vacancies on the FCC be filled promptly with qualified appointees so that a full seven-member Commission may continue to meet its obligations to the America public.

I will now be pleased to respond to any additional questions you may have.

Senator Moss. Thank you, Mrs. White. You state that there is only a small portion of the practice of the law firm that is before the FCC. Have you discussed this with your husband as to what amount there is?

Mrs. White. I have no specific percentages. The dilemma is that at the beginning I had no, or very little, information about the law firm, and I tried to maintain that posture, rather than involve myself in the details of the law firm's activities.

Senator Moss. So you don't know whether it is a firm that particularly specializes in that branch of the law or——

Mrs. White. Oh, no, I am very sure that this is not a particular specialty—it is one of several specialties of the firm. By making the decision my husband has not to participate in any profits or income from the firm's FCC practice, he will be taking at the current time an income cut of between 5 and 10 percent a year. So, that may be the percentage of the firm's work in this area, but I do not know what percentage it is, as far as work before the Commission is concerned.

Senator Moss. What is the size of the law firm in terms of the number of practicing lawyers?

Mrs. White. There are 16 partners, 10 associates and 3 lawyers "of Counsel."

Senator Moss. And does the firm conduct practice for other departments of Government, in addition to FCC? Do you know that?

Mrs. White. Well, of course, my husband is involved in tax work.

Senator Moss. He works in the tax area?

Mrs. White. In the tax area. And, of course, his involvement or specialty brings him into contact with the Department of Treasury and other agencies, but I can't speak for others in his firm. I frankly am not that familiar with what the firm's work involves.

Senator Moss. I have a memorandum which indicates that in the Martindale and Hubbell Law Directory, the firm is shown as being in general practice of Federal tax, corporation, and communications law, as well as before all Government departments. The fact that communications law was mentioned in that description in Martindale and Hubbell, does that indicate to you that communicatons is one of the specialties of the firm?

Mrs. White. I am not familiar with what attorneys look for in perusing Martindale and Hubbell; but my assumption would be that they were trying to attract clients in that area and that is one of the specialties.

Senator Moss. Mrs. White, both the Justice Department and the FCC opinions indicate that your family has held financial interests in three corporations.

Mrs. White. Yes, sir.

Senator Moss. This raises potential conflicts of interest. However, the staff now informs me you have stated that your family has already disposed of these interests.

Mrs. White. Yes, we have.

Senator Moss. Is that correct?

Mrs. White. Yes, that is correct.

Senator Moss. Those interests were in Gould, Inc., Park Electrochemical Corp., and Tappan Corp.?

Mrs. White. That is correct.

Senator Moss. Thank you. They have already been disposed of. What system of monitoring can be established to remove the appearance of any conflict of interest with respect to your offer to excuse yourself from FCC action, with respect to your husband's offer to withdraw from the law firm's communications practice revenue? Is there any way to monitor this so that there is no question arising in anyone's mind?

Mrs. WHITE. Which part of it are you speaking of?

Senator MOSS. Your husband's action?

Your husband volunteered to withdraw from any law revenues that came out of the communications field and you indicated that you would excuse yourself from FCC action with respect to any action that might involve your husband's firm. And those are valid, good faith things. I am not questioning that at all. I am just wondering if there is any mechanism that could be put in place so that everyone could be satisfied.

Mrs. WHITE. I would intend to work with the FCC General Counsel to work out such a system. Not having had that much familiarity with the internal workings of the Commission, I can't say how this could be done, but I can assure this committee that I will work very hard to set up such a system. As far as my husband's law firm is concerned, one of the firm's partners has submitted a letter to this committee, pointing out that this arrangement will be made. I do not know how they work out these arrangements internally, but I know that it will be worked out in a very straightforward way.

Senator MOSS. You indicate this in a sense is a landmark kind of a problem, but that it will be repeated undoubtedly in other areas of government and goverment regulation.

I am just trying to probe the parameters of how we should view this under the circumstances.

Mrs. WHITE. I don't mean to suggest that this is a landmark case, but rather that it is one of what, I believe, will be more such cases. I believe it will be important to consider each situation on a case-by-case basis, rather than to try to set a precedent that might prevent or inhibit either husband or wife from pursuing his or her career because of limited issues with respect to conflict.

Senator MOSS. The Senator from Tennessee, did you have any questions of the witness?

Senator BAKER. Mr. Chairman, thank you very much, I am sorry I wasn't here at the beginning of these hearings. The Public Works Committee had an executive session on a nominee for the Tennessee Valley Authority this morning.

I may say to Mrs. White and Mr. Fogarty that I hope the action taken in Public Works is not a precedent for the Commerce Committee. The nomination was not reported by a vote of 8 to 6.

Senator FORD. That shows the intelligence of the committee, sir.

Senator BAKER. As we say in Kentucky and Tennessee, that "ain't all it shows."

Senator FORD. That is right.

Senator BAKER. Mr. Chairman, it might be appropriate to make a few preliminary remarks.

I intend to support both these nominees. I have carefully reviewed the facts, including the statement that Mrs. White has given us and the correspondence with the FCC, the Justice Department, and the Library of Congress. Mr. Chairman, if it hasn't already been done, I would ask unanimous consent that those three opinions may be included at the appropriate place in the record.

Senator MOSS. They may be included in the record.

[The Library of Congress opinion referred to follows:]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
*Washington, D.C., August 23, 1976.*

To: Senate Commerce Committee.
From: American Law Division.
Subject: Possible Conflicts of Interest With Regard to Employment of Spouse of Public Official.

This memorandum is in response to your request for citations to relevant Federal statutes and codes on conflicts of interest which might be applicable to a particular fact situation. The situation in question is in regard to the nomination of a commissioner to the Federal Communications Commission whose husband is a partner in a law firm which does communications work before the Commission. It is understood that the nominee has agreed not to participate in any cases before the Commission in which her husband's firm participates. In addition, the nominee's husband has agreed not to have any partnership income computed to him from any case the firm has before the Commission. The nominee's husband does not personally participate in communications work for the firm before the Commission.

*Executive Order No. 11222*

General standards of ethical conduct for Government officers and employees have been expressed in Executive Order No. 11222, May 8, 1965, 30 F.R. 6469, as amended by E.O. 11590, April 23, 1971, 36 F.R. 7831. Section 201(a) of this code of conduct prohibits employees from receiving anything of monetary value from any person or group which has business with, or which is regulated or is substantially affected by the operations of the employee's agency. Thus, although in theory a financial benefit from the firm may indirectly accrue to the nominee by virtue of her husband's association with the firm, it does not appear that this possible financial benefit is that type of "gift, gratuity, favor, entertainment, loan, or any other thing of monetary value" the receipt of which was intended to be prohibited by this specific subsection of E.O. 11222.

It should be noted, however, that section 201(c) of E.O. 11222 prohibits any actions by employees, whether or not specifically prohibited by subsection (a), which even creates the appearance of a conflict of interest or which derogates the confidence of the public in the Government. Specifically, section 201(c) of E.O. 11222 states:

It is the intent of this section that employees avoid any action, *whether or not specifically prohibited by subsection (a)*, which may result in, *or create the appearance of—*

(1) Using public office for private gain;
(2) Giving perferential treatment to any organization or person;
(3) Impeding government efficiency or economy;
(4) Losing complete independence or impartiality of action;
(5) Making a government decision outside official channels; or
(6) Affecting adversely the confidence of the public in the integrity of the Government. (Emphasis added)

Additionally, section 203 of E.O. 11222 provides that "employees may not have *direct or indirect* financial interests that conflict substantially, or *appear* to conflict substantially, with their responsibilities and duties as Federal employees." (Emphasis added)

No specific precedent has been found under these standards concerning the appearances of conflicts of interest raised by the vocation or financial activities of a Federal official's spouse. The removal of Federal employees has been upheld in the past, however, on the grounds that the employee's relationship with certain individuals or firms have created "the appearance of impropriety," *Lowery* v. *Richardson*, 390 F.Supp. 356 (E.D. Okla. 1973); see: *Camero* v. *United States*, 345 F.2d 798, 170 Ct. Cl. 490 (1965). In the situation in question, it may be argued that both the nominee's husband, as a partner of the firm, and the nominee, as his spouse, have an interest in the general success or failure of the law firm, regardless of whether or not the husband shares in income derived from one specific case or client. Although the nominee has agreed (and is apparently required by Federal law) not to participate in matters before the Commission in which her husband's firm is directly involved, decisions in the communications area made in the nominee's official capacity will affect clients of the law firm who the firm

generally represent on such matters either before the Commission or in other forums. Since the firm represents clients before the Commission such as the American Telephone and Telegraph Company, it may be a difficult exercise for the nominee to refrain from decision making activity in all areas which affect the law firm through its clients.

Thus, although the arrangement in question apparently does not violate specific prohibitions enumerated in Executive Order No. 11222, arguments might possibly be raised that such a situation creates the appearance of conflicting interests, or arguably the appearance of an unwarranted opportunity for favoritism or partiality which may derogate the confidence of the public in the integrity of the governmental process. That such a conflict of interest may exist in a situation of this nature is evidenced by a regulation promulgated by the Civil Aeronautics Board, at 14 C.F.R. § 370.735–37, which specifically bars any member of an employee's immediate family from working for a legal firm representing an air carrier or an aviation trade association. Waiver of this prohibition, on grounds of hardship, may be granted in individual cases when the employment will not tend to influence, or create a conflict of interest with, the duties of the Board employee. No regulation with similar prohibitions was found which would be applicable to officers or employees of the F.C.C.

As noted, however, no reported precedents under these general standards of conduct have been found which deal with similar considerations. Further, it should be noted that under the precedents found, the apparent conflicting interest, or the apparent breach of fiduciary duty by the Federal official, was generally of a substantially more direct nature than in the instance in question. See, for example, *Lowery* v. *Richardson, supra,* (acceptance of flight by employee from a contractor who the employee reviews); *Womer* v. *Hampton,* 496 F.2d 99 (5th Cir. 1974), (employee representing an independent contractor); *United States* v. *Drum,* 329 F.2d 109 (1st Cir. 1964) (conflicting outside job of Federal employee); *Camero* v. *United States, supra,* (undue familiarity of employee with government contractor). *18 U.S.C. § 208.*

Federal law, at 18 U.S.C. § 208, prohibits officers or employees of the Government from taking any official action on any matter in which such official, or the official's spouse, has any financial interest. In the situation in question, the nominee has agreed not to participate in official matters in which her husband's law firm is participating before the Commission. (See also restriction on Commissioner's participation in matters affecting pecuniary interest, at 47 U.S.C. § 154 (j)). As discussed earlier, however, the nominee's decision making duties in certain areas may arguably affect her husband's financial interests because of his law firm's representation of clients such as the American Telephone and Telegraph Company, even when the law firm is not participating directly in the specific matter before the Commission.

The statute does not require, however, "a Government employee to act at his peril in drawing the line between substantial and trivial interests" (House Report No. 748, 87th Congress, 1st Session, to accompany H.R. 8140, p. 13). Thus, a financial interest of the Government official, or the official's spouse, may be considered "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer," and thus an exemption may be specifically granted in writing, in advance by the hiring authority (18 U.S.C. § 208(b)(1)); or an exemption may be granted generally by rule or regulation for such financial interests which are deemed "too remote or too inconsequential to affect the integrity of Government officers' or employees' services" (18 U.S.C. § 208(b)(2)). Thus, even if it is determined that the nominee's spouse has a financial interest in any decisions made by the nominee in the communications area because they affect clients of the spouse's law firm, a further determination should apparently be made as to whether such an interest is "not substantial," "too remote" or "too inconsequential" to affect the performance of the nominee, such that it may be exempted specifically, or generally, from the operation of the statute as provided in subsection (b) of 18 U.S.C. § 208.

### CIVIL SERVICE COMMISSION REGULATIONS

Civil Service Regulations governing employee responsibility and conduct add no further prohibitions or considerations than those discussed above. Prohibitions upon activities which may create the appearance of conflicts of interest are codified at 5 C.F.R. § 735.201a in the Code of Federal Regulations; prohibitions upon acceptance of gifts or other things of monetary value appear at 5 C.F.R. § 735.202; and restrictions on outside financial interests appear at 5 C.F.R. § 735.204.

Regulations of the Federal Communications Commission on employee responsibility and conduct generally reiterate the proscriptions of Executive Order No. 11222 and the regulations of the Civil Service Commission at 5 C.F.R. part 735. More detailed restrictions on outside employment and other activity appear at 47 C.F.R. § 19.735–203, which cite further to statutory proscriptions on Commissioners and employees codified from the Communications Act. These provisions do not appear to place further restrictions in relation to the possible conflict of interest situation under consideration:

**§ 19.735–203 Outside employment and other activity.**

(a) The Commissioners are prohibited from engaging in any other business, vocation, profession, or employment. (47 U.S.C. 154(b)) No Commissioner or employee of the Commission is permitted to be in the employ of or hold any official relation to any person subject to any of the provisions of the Communications Act. (47 U.S.C. 154(b)) In addition, no Commissioner or employee of the Commission may engage in outside employment or other outside activity, with or without compensation, which is in conflict with or otherwise not compatible with the full and proper discharge of his duties and responsibilities as a Commission employee. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of a conflicts of interest situation; or

(2) Outside employment which tends to impair his mental or physical capacity to perform his Commission duties and responsibilities in an acceptable manner; or

(3) Outside employment or activities which reasonably might be regarded as official Commission actions, or which will bring discredit upon, or cause unfavorable and reasonable criticism of, the Commission or the Government.

(b) No professional employee of the Commission shall engage in the private practice of his profession unless specifically authorized by the Commission. Requests for such authorizations shall, in the case of employees generally, be submitted to the Head of the Office or Bureau to which the employee is assigned; in the case of Heads of Offices and Bureaus to the Chairman; and in the case of an employee in the immediate office of a Commissioner to the Commissioner. All pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be performed, and the amount of time involved shall be set forth.

(c) Employees of the Commission are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive Order, the Civil Service Regulations, or this chapter. However, an employee of the Commission shall not, either with or without compensation engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairman gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. Articles written by the staff shall not identify the author with the Commission or the Federal government unless prior approval has been obtained: In the case of employees generally, from the Executive Director upon the recommendation of the appropriate Bureau Chief; in the case of Heads of Offices and Bureaus, from the Chairman; and in the case of an employee in the immediate office of a Commissioner, from the individual Commissioner. Nor shall documents prepared in the course of official duties be used for private gain by any Commission employee. In addition, the Commissioners shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not become part of the body of public information. (See also 47 U.S.C. 154(b) and § 735.202(b)(2).)

(d) [Reserved]

(e) This section does not preclude a Commission employee from:

(1) [Reserved]

(2) Participation in the activities of national or State political parties not proscribed by law.

(3) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

[31 F.R. 2723, Feb. 15, 1966, as amended at 32 F.R. 13457, Sept. 26, 1967; 33 F.R. 11821, Aug. 21, 1968]

Section 19.735.204 of the F.C.C. regulation prohibits employees from having a direct or indirect financial interest which conflicts substantially, or appears to conflict substantially, with the employee's official duties. Thus, under this regulation, the question of substantially of any conflicting "financial interest" is again raised. Considering the indirect nature of the possible conflicting interest of the nominee, it may be argued that such a test of substantiality has not been met in this instance. The F.C.C. regulations on financial interests are reproduced below:

**§ 19. 735–204 Financial interests.**

(a) An employee of the Commission shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities.

(b) An employee of the Commission shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(c) An employee of the Commission is expected to comply with section 4(b) of the Communications Act and to support its underlying ethical principles.

(1) Section 4(b) of the Communications Act provides in pertinent part as follows:

No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio; or in any company owning stocks, bonds, or other securities of any such company; * * * nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this Act * * *.

(2) Section 4(b) has been construed in the past not to prohibit financial interests in enterprises whose activities are not subject, in any significant sense, to regulation by the Commission. However, any employee would be disqualified from acting in any matter involving his investments and would be required to seek a waiver under the provisions of 18 U.S.C. 208(b). (See paragraph (e)(2) of this section.)

(d) No Commissioner shall have a pecuniary interest in any hearing or proceeding in which he participates. (47 U.S.C. 154(j).)

(e) An employee of the Commission is also subject to the provisions of Federal conflicts of interest statutes, which are generally applicable to Government employees, but which do not supersede the provisions of section 4(b) of the Communications Act. In summary, the main conflict of interest provisions applying to financial interests are:

(1) An employee may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

(i) This prohibition does not extend to (*a*) representation of another person, without compensation, in a disciplinary, loyalty, or other personnel matter; or (*b*) the giving of testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(ii) This prohibition may be waived under the express approval of the Government official responsible for his appointment in the case of an employee who represents, with or without compensation, his own parents, spouse or child or a person or estate he serves as a fiduciary, but only as to matters in which the employee has not participated personnally and substantially as a Government employee and which are not the subject of his official responsibility.

(2) An employee may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

(i) This prohibition shall not apply if the employee advises the Government official responsible for his appointment of the nature of the matter, makes full

disclosure of the financial interest, and receives in advance a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services.

(ii) With respect to financial interest of the employee himself, the prohibition of this subparagraph overlaps the prohibitions of section 4(b) of the Communications Act. When the prohibitions of section 4(b) are applicable, the provisions for waiver in subdivision (i) of this subparagraph are not applicable with respect to the interest of the employee himself.

(3) An employee may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

(i) This prohibition will not prevent an employee from continuing to participate in a bona fide pension plan or other employee welfare or benefit plan maintained by a foermer employer.

(ii) This prohibition is not applicable to anyone serving the Government without compensation or to contributions, awards, or other expenses under the terms of the Government Employees Training Act (5 U.S.C. 2301–2319).

[31 F.R. 2724, Feb. 15, 1966]

JACK MASKELL,
*Legislative Attorney,*
*American Law Division.*

Senator BAKER. We have a situation that goes beyond the question of whether Mrs. White should be confirmed. She is entirely right. Increasingly, men and women, husbands and wives, are going to be involved in business affairs and professional activity, indeed, in Government service. And while we need to be careful that we don't create even the appearance of impropriety or conflict of interest, we also need to be careful that we do not provide a disincentive for either men or women to agree to enter into public service.

So, it is a careful balancing judgment that we have to make and, frankly, Mr. Chairman, my inclination at this time is to resolve that issue in Mrs. White's favor. It is a tough issue. Her husband is a successful lawyer in a medium-sized law firm which has extensive representation before the agencies and departments of Government. Clearly she is interested, as he is interested, in the general prosperity of that firm.

But on the other hand, what price must you pay in order to agree to public service? Do you have to say to your husband, "Look, it's time for you to get out of the law practice because I am going to go on the FCC"? Or is it enough to say, "We must arrange this so you have no direct remuneration from any representation that the firm—not you, because you don't practice before the FCC—may have, as a result of their FCC work." Is that enough?

And my inclination is to think it is. It isn't Simon-pure. It doesn't remove this arrangement completely from the area of controversial discussion. But and once again, it is a balancing judgment. How much do you have to do, what price does the husband have to pay? More often than not, I guess it would be turned around the other way; the husband would be going into public service and the wife might be in a law firm. What price does she have to pay to reverse the situation? Do you say to her, "You have to stop practicing law?" Of course not.

We must make sure that we don't discourage the full participation of women in professional, business, and governmental activities in this country.

So, we are dealing with more than just a particular, isolated case, and we must deal with it with sensitivity. Mr. Chairman, the staff of the subcommittee has given careful attention to the legal opinions, to the other information supplied. I believe, every member of the

committee would agree that there is no technical or legal conflict of interest.

We are really just dealing with the appearance of propriety and, frankly, that is a policy judgment that the committee will make on the basis of its assessment of the relative importance to be attached to these factors.

So, I would assure Mrs. White that we will approach this matter in good faith and good conscience, aware of the importance not only to she and her husband, but to other women who will aspire to or be agreeable to governmental service.

Mr. Chairman, in the case of Joe Fogarty, Joe is the man I recommended for this job and just to set the record straight, I want to emphasize that I made the recommendation independent of the chairman of the subcommittee. I have a great respect for Mr. Fogarty and I thought he would be a valuable addition to the F.C.C. I was fully aware of the fact that Joe was a Democrat and since this is a Democratic slot, I figured he was as good a man as we would find for it and better than most; and I have no doubt that he will be an extraordinarily good choice.

During the early part of this maneuver, I was terribly afraid that the chairman was going to be so concerned for appearances—the appearance of propriety—because Mr. Fogarty was communications counsel for the committee, that he might not agree to the submission. When I talked to Senator Pastore, he had great reservations about my recommendation and said, "look you know, it isn't going to look right."

And my response was, "Well, of course, it is. Joe is a man of confidence and ability and honor and it is going to look right because he deserves to be in the position and I have no hesitation in recommending him" and I did. And only after that did Senator Pastore then add his recommendation.

His recommendation is wholehearted and enthusiastic but my colleagues know that he did have reservations because of his position as Chairman of the Communications Subcommittee.

I have no such reservations.

Now, Mr. Chairman, with that I have no particular questions. I believe you have covered the conflict-of-interest point with Mrs. White and I believe the opinions clearly demonstrate that there is no legal conflict of interest.

We have reached the point where we are dealing with the appearances of propriety as distinguished from the substance of impropriety, and I could not add anything to the record. I thank you for this chance to make a statement.

Senator Moss. I thank you, Senator, for your observations, and I concur in what you had to say. Epsecially about Joe Fogarty, whom I have known for some time, and I wholeheartedly subscribe to his nomination.

With reference to the matter of the opinions which we are glad to include in the record, I should indicate that there is still one requested from the GAO that has not arrived yet. When received, this GAO opinion will also be included in the hearing record.

These opinions will give the committee a real opportunity to assess this matter from several perspectives.

[The following information was subsequently received for the record:]

COMPTROLLER GENERAL OF THE UNITED STATES,
*Washington, D.C. August 24, 1976.*

Hon. JOHN O. PASTORE,
*Chairman, Communications Subcommittee, Committee on Commerce, U.S. Senate*

DEAR MR. CHAIRMAN: Your letter of August 13, 1976, requests our opinion concerning a possible conflict of interest should Mrs. Margareta E. White, whose nomination is pending before the Senate Committee on Commerce, become a member of the Federal Communications Commission (FCC). Concern centers on the fact that Mrs. White's husband is a partner in a law firm which represents clients before the FCC. While Mr. White is said to specialize in tax law, other members of his firm apparently engage in regular and substantial practice before the FCC.

Enclosed with your letter to us are copies of opinions by the Counsel to the President and the Department of Justice, both of which conclude that Mrs. White's appointment would not create a conffict of interest, subject to understandings concerning certain procedures and actions which she and her husband have agreed to undertake. Mrs. White will dispose of her financial holdings in companies which have, or could be expected to have in the future, any case or matter before the FCC. (There was no indication as to whether Mr. White would similarly divest himself of such holdings.) Concerning Mr. White's law partnership, the opinion of the President's Counsel indicates the following actions will be taken by the Whites:

"* * * First, she will excuse herself from participation in any case or matter before the Commission which involves a party represented by her husband's firm. Secondly, during the course of Mrs. White's service on the Commission, Mr. White will not share in any profits from legal fees received by his firm in payment for services provided by the firm to its communication industry clients—this will result in an annual loss in compensation of approximately 10 percent. Thirdly, Mr. White has agreed to formulate with his firm a plan of action to insure that he will have no knowledge regarding the firm's communications practice and Mrs. White will develop with the Commission an arrangement to insulate herself from knowledge of the particulars of Commission proceedings in which her husband's firm is appearing. Finally, Mrs. White will, of course, also abide by all relevant standards of conduct applicable to members of the FCC, including those which generally bar *ex parte* discussions of pending cases and matters."

You specifically request our independent opinion on the following questions:

"(1) Whether a conflict of interest would be present in Mrs. White's service as a Commissioner of the FCC given her husband's partnership in a law firm which represents clients before that agency; and

"(2) If so, whether the procedures proposed by the nominee * * * are sufficient to remove that conflict of interest."

In addition to any other relevant criteria, you specifically direct our attention to section 4(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(b), which provides in part that: "* * * No member of the Commission * * * shall be *financially interested* * * * in any company furnishing services * * * to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio * * *." Emphasis added.

Initially, it must be emphasized that our Office has no authority to issue formal opinions on conflict of interest questions concerning officers and employees of other agencies. The basic provisions governing such questions are criminal statutes enforced by the Department of Justice, other statutes administered by individual agencies, and non-statutory standards and requirements subject to implementation by the agencies concerned under the general guidance of the Civil Service Commission. *See, e.g.*, 18 U.S.C. §§ 201–208 (1970 & Supp. V), 1975; Exec. Order No. 11,222, 3 C.F.R. 156 (1974), 18 U.S.C. § 201 note; 47 C.F.R. Part 19 (1975). Nevertheless, in accordance with your request, we offer the analysis hereafter for such assistance as it may be to the Committee in considering Mrs. White's nomination.

With respect to general financial conflicts of interest, 18 U.S.C. § 208(a) makes it a crime for any officer or employee of, *inter alia*, any independent Federal agency to participate personally and substantially as a Government official in any matter in which the officer, or the officer's spouse or child, has a financial

interest. Subsection 208(b) authorizes exemptions from the prohibition of subsection (a) upon determination, by the Government official's appointing authority in particular cases or under general agency regulations, that financial interests are too insignificant to affect the official's integrity in the performance of his or her functions.

Section 4 of the Communications Act of 1934, as amended, 47 U.S.C. § 154 (1970), contains additional prohibitions against financial conflicts of interest (quoting from the Code):

"(b) * * * No member of the [Federal Communications] Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of this chapter, nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this chapter. * * *"

"(j) * * * No commissioner shall participate in any hearing or proceeding in which he has a *pecuniary interest.* * * *" (Emphasis added.)

In addition to the foregoing statutory provisions, certain administrative standards and requirements apply to Government officials generally under Executive Order No. 11,222, *supra,* implemented by Civil Service Commission (CSC) regulations at Part 735, title 5 of the Code of Federal Regulations (1975). FCC regulations, conforming to the CSC standards apply to FCC officials, including commissioners, under 47 C.F.R. Part 19, *supra.*

The Justice Department opinion concerning Mrs. White's situation points out certain distinctions between the two statutory provisions of principal relevance here: 47 U.S.C. § 154(b) and 18 U.S.C. § 208, *supra.* Section 154(b) of title 47 flatly prohibits FCC commissioners and employees to have "financial interests" in communication firms and companies in addition to requiring disqualification in particular matters in which the Commissioner has a pecuniary interest. Thus an individual having a proscribed *financial* interest may not work for the Commission in any capacity.

There is nothing in the legislative history to indicate whether the use of the term "financial interest" was intended to include financial benefits enjoyed by virtue of the commissioner or employee's family relationships or whether it was meant to apply only to financial interests owned or held, in the legal sense, directly by the commissioner or employee. Although the question is not free from doubt, we are inclined to the latter position in view of the language of 47 U.S.C. 154(j) which prohibits a commissioner from participating in a hearing or proceeding in which he has a "pecuniary" interest. If we interpret 47 U.S.C. 154(b) as covering all financial interests, direct or indirect, there would be no purpose to be served by enacting 47 U.S.C. 154(j) since no person with a "pecuniary" as well as a "financial" interest could even be appointed to serve on the Commission. Section 154(b) applies by its terms only to financial interests attributable to the FCC official himself or herself.

The prohibition of 18 U.S.C. § 208(a) differs in two respects. First, it is broader than section 154(b) in that it expressly attributes to the Government official financial interests of his or her spouse and children. On the other hand, it is narrower than section 154(b) in that it applies only to particular agency matters and can therefore be overcome (apart from an exemption under 18 U.S.C. § 208(b) *supra*) by voluntary disqualification from those matters in which participation would be prohibited. In other words, 18 U.S.C. § 208(a) does not affect appointments to the FCC as such.

Clearly an FCC commissioner must avoid the financial conflict of interest prohibitions of both statutes, including the broadest parameters of each statutory prohibition taken separately.[1] Thus a nominee must be free of any interest prohibited by 47 U.S.C. § 154(b) at the time of appointment and throughout his or her service. In addition, under 18 U.S.C. § 208, a commissioner cannot participate in any agency matter in which the commissioner or the commissioner's spouse or children have a pecuniary or financial interest.

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[1]In this regard, 47 U.S.C. § 154(j), *supra,* prohibiting an FCC commissioner from participating in any proceeding in which he or she has a pecuniary interest, is effectively superseded by 18 U.S.C. § 208, which proscribes the same conduct but defines pecuniary interest more broadly so as to include interests of spouse and children.

Turning to the facts here involved, with respect to 47 U.S.C. § 154(b), it appears that the law firm in which Mr. White is a partner constitutes a "company furnishing services" to companies engaged in communications, etc., as defined in section 154(b). However, for the reasons given previously, we believe the section 154(b) prohibition should be interpreted to cover only the direct financial holdings or other interests owned by the FCC official or employee. While it may certainly be assumed as a practical matter that Mrs. White is interested in the financial condition of her husband's law firm, she has no direct financial interest in the firm in a strict legal sense.

Accordingly, we do not believe that Mr. White's law partnership constitutes a bar to Mrs. White's appointment under 47 U.S.C. § 154(b).

With respect to 18 U.S.C. § 208 (and as we interpret it, 47 U.S.C. 154(j) as well), it has been pointed out that this section requires attribution to a Government official of financial interests of a spouse and children, but applies only to particular agency matters in which an official would be dealing with an individual or family financial or pecuniary interest.

Mr. White's partnership in the law firm clearly constitutes a financial interest which would be attributed to Mrs. White under section 208. However, the Justice Department opinion concludes that Mrs. White can fully comply with section 208 in this regard by disqualifying herself from any FCC matter in which her husband's law firm participates directly:

"In our opinion, Mr. White would have a financial interest requiring his wife's disqualification under 18 U.S.C. § 208 only when there is a reasonable possibility that the resolution of a particular matter coming before her could have a 'direct and predictable effect' on the law firm, in whose income and profits Mr. White shares. See Federal Personnel Manual, Chapter 735, Appendix C, at p. C–4. Such a direct and predictable effect would be present when Hamel, Park, McCabe & Saunders actually represents a party before the FCC. But when a client of Hamel, Park, McCabe & Saunders is a party to an FCC proceeding in which it is represented by other counsel, we believe that the possibility that the outcome of the particular proceeding would redound to the financial benefit of Mr. White, through his firm, is far too speculative and attenuated to require Mrs. White's disqualification. Therefore, we believe that Mrs. White can avoid potential conflicts of interest under 18 U.S.C. § 208(a) if she disqualifies herself in all cases in which her husband's firm is representing one of the parties."

The opinion also specifically concludes that Mr. White's further agreement to, in effect, forego compensation from his law firm which relates to the communications law aspect of its practice is not strictly necessary to satisfy section 208.

We agree with the Justice Department opinion on these points. As noted, applicability of the section 208 prohibition depends upon the combined presence of two distinct elements: (1) participation by a Government official in a particular agency matter and (2) a financial interest on the part of the official, or a spouse or child, with respect to that matter. If either element is absent, the prohibition does not apply. For the reasons stated in the Justice Department opinion, as quoted above, we believe that Mrs. White can eliminate the first element by disqualifying herself from any FCC matter in which her husband's firm actually participates. Thus, the prohibition is overcome at this point, regardless of whether the further procedure designed to insulate Mr. White from a financial interest in the firm's communications work would be sufficient to eliminate the second element.

Accordingly, based on the information presented to us, it appears that the procedures outlined above, specifically the disqualification procedure, will avoid problems under 18 U.S.C. § 208 should Mrs. White be appointed to the FCC.

It remains to consider the application of non-statutory requirements and standards concerning conflicts of interest. As noted previously, the principal sources in this regard are Executive Order No. 11,222, the CSC implementing regulations, and the FCC regulations at 47 C.F.R. Part 19. Each require Government employees to avoid action which might create the appearance of a conflict of interest. Section 201(c) of the Executive order requires that—

"* * * employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of—

"(1) using public office for private gain;

"(2) giving preferential treatment to any organization or person;

"(3) impeding government efficiency or economy;

"(4) losing complete independence or impartiality of action;

"(5) making a government decision outside of official channels; or

"(6) affecting adversely the confidence of the public in the integrity of the Government."

Section 203 of the Executive Order states in part:

"Employees may not * * * have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their responsibilities and duties as Federal employees * * *."

Substantively the same provisions are contained in the FCC regulations. 47 C.F.R. §§ 19.735–201a and 204.

In our view, application of the standards quoted above necessarily involves a degree of discretion and subjective judgment, particularly in considering whether certain actions or relationships give the appearance of conflict of interest or other impropriety. The instant situation is certainly troublesome on its face. We recognize that the Whites are acutely aware of the problem, and have tried hard to avoid any appearance as well as actual conflict of interest. Nevertheless, as long as Mr. White is a member of a law firm noted for its work in the communication field, the appearance, though not the fact, of a conflict of interest, may be found to exist. Such questions, including questions concerning the adequacy of the procedures undertaken by the Whites to avoid the appearance of a conflict cannot be determined in a strictly legal context. Rather, these are essentially policy questions which must be left to the judgment of the Committee and the Senate as a whole through the confirmation process.

Sincerely yours,

ROBERT F. KELLER,
*Acting Comptroller General of the United States.*

Senator MOSS. This is a sensitive thing, as the Senator from Tennessee tried to point out.

We are anxious not to prejudice or, in any way, impede service by a person simply by reason of a marriage or other relationship, and yet we are also very sensitive, as we always must be, to any appearance of conflict or favoritism of any sort that might arise.

And so we walk a tight picket fence on this, and it is certainly no reflection on the qualifications of the nominee before us, that we seem to deal with it rather delicately.

And I am sure that my other colleagues may have other points they wish to raise. I can report to the chairman that the Senator from Tennessee has asked some questions and has spoken about his view. We have placed in the record the opinions that we have received from three sources and indicated there is one that still has not been received from GAO that would go in the record when it comes in.

I am glad to return the Chair. I have not yet recognized either the Senator from Kentucky or the Senator from Alaska.

Senator PASTORE. Is Mr. White in the room?

Mrs. White. Yes, he is.

Senator PASTORE. Would you please come forward?

One of the suggestions that has been made, Mr. White, is that you would refrain from participating in any of the fees that come to the firm for any work done by the firm in relation to representing clients before the FCC; is that correct?

Mr. WHITE. That is correct, Senator.

Senator PASTORE. Now, I ask you, as a lawyer, what would be the remedy of the Congress in the event that Mrs. White was confirmed and took office and later on you changed your mind? What would be our remedy?

Mr. WHITE. Senator, I think that that is a question the answer to which comes to mind at this time. The remedy of the Senate really lies now in my making a representation, in giving the Senate my word of honor that this is what is going to happen. The law firm is a partnership, and the letter which the committee received was signed by our managing partner of our firm.

So, what the Senate would have is really more than just my word as a lawyer, but also a letter over the signature of the managing partner, who is the official representative——

Senator PASTORE. But you would admit that we have no legal remedy. We would have to accept this on good faith; isn't that correct?

Mr. WHITE. Well, in terms of a legal remedy, I am not sure what remedy at law the Senate would have.

Senatore PASTORE. Well, if Mrs. White is confirmed, the only grounds that we would have would be by the procedure of impeachment; isn't that correct? And surely the fact that somebody else reneged on an agreement that they made would not be grounds for impeachment against Mrs. White. You would admit that, wouldn't you?

Mr. WHITE. That would be true.

Senator PASTORE. You see we are raising these questions because the record has to be very, very exhaustive and clear. We, in the Congress have been criticized from time to time for not exhaustively exploring these nominations, when they come before us. And this record has to be replete with every facet.

Now, I realize the delicate situation that is presented here. And certainly I don't want to do anything to break up a marriage. I would be the last person in the world to do that. And I don't want to create an impression here or a situation where the two of you are going to sit around the dinner table, and not talk to one another about what you have done during the day.

Because to me, the sanctity and sacredness of the marriage is even more important than who gets what job.

Now, there is going to be some opposition. This is a rather controversial point. She is filling a seat at the FCC that is veing vacated by a Democrat. It is a 7-year term. For what reason they chose to give it to a Republican, I don't know, but that is the prerogative of the appointing authority, and they are within their perfect right.

We make no issue of that, no issue at all.

The fact still remains that Mrs. White, if she is confirmed, in all probability may be serving under at least two or perhaps three Presidents of the United States, so whatever we do now, in order to protect the public interest, we have to be very sure that we do it properly.

Now, I have received many complimentary letters in favor of Mrs. White, and I am going to ask that they all be placed in the record. I am going to read them. That is, I am going to read from whom they come: Women in Communications, Inc., in favor of the appointment.

We have one from the editor and manager of Diario Las Américas, Mr. Horacio Aguirre. He is in favor of the appointment.

We have one from Donald G. Herzberg, dean of the Graduate School of Georgetown University. He is in favor of the nomination. We have one here from the New England Press Association, they are in favor.

We have another letter here from Mr. Ted Powers, director of public affairs, WDBJ, and president of the National Broadcast Editorial Association, and he is in favor of it.

We have another here from Mr. Dolph C. Simons, Jr., president and publisher of the Lawrence, Kans., Daily Journal-World, and he is in favor of the nomination.

We have a letter from American Women in Radio and Television, Inc., from Ms. Saidie Adwon, and she is in favor of it.

We have another one here from Mr. Charles Mill, president of the American Business Press, Inc., of East 42d Street in New York, and he is in favor of this appointment.

We have a letter here from the United Church of Christ.

Now, this is what they say, and I must read it. They are opposed, and I guess maybe they will testify:

> If Mrs. White votes on matters in which her husband's law firm is represented, the aspect of conflict of interest becomes an issue; if she disqualifies herself, the work of the Commission is hampered.
>
> The United Church of Christ is deeply concerned with fostering the placement of women in positions of responsibility and equal influence with men in Government, the church, business, education and every other phase of our society. Indeed, the issue of women's rights was voted as the first priority of the United Church by our general synod last year. We, therefore, support the appointment of women to the FCC and other regulatory agencies.
>
> Nonetheless, where a marriage exists, the potential conflict of interest caused by a spouse's interest, whether a husband or wife, must be an element of consideration.

And the letter is opposed.

We have another from a Janet Maulden, opposed. We have a letter here from Representatives John E. Moss, Harley Staggers, and John Dingell. They take the position that we should not approve any of these appointments, inasmuch as we are so close to the election, and there may be the possibility of another President.

Well, that may be true where there are replacements, but I don't know about vacancies.

These and other letters are against. And then I understand we have some witnesses here today.

Now, for the time being I am going to turn it over.

We want to be fair. If I have ever agonized over an appointment, I have certainly agonized over this.

For some reason, this administration is falling into the habit of always dropping a hot potato in my lap. Whether it is Quello Houser, or somebody else, there is always a tremendous controversy over it.

I think Margareta White is a fine lady. I don't question her qualifications or her integrity. The thing that disturbs me is the fact that in the Martindale-Hubbell Law Directory, this is what it says about your firm, Mr. White: "General practice, Federal tax, corporation, and communications law."

Now, don't you think that if your wife is on the FCC and you are connected with this firm, there is going to be a gravitation of business to the firm, whether you take the fees or not?

Mr. WHITE. I really don't know, Senator. Precisely because——

Senator PASTORE. Well, you are a practical man. You have been around a long time.

Mr. WHITE. Well, the question has come up. But I really do not know because I am not in the FCC field, I am unfamiliar with whom the clients are, not just ours—oh, I recognize networks and so forth—but I am unfamiliar with what kind of people there are in the industry, and what motivates them to select their counsel.

It seems to me that the situation that stands after the steps that my wife has pledged to take on her part, that of recusal from cases because the firm is representing someone in the matter, and after my step where I am foregoing any participation in the firm's income,

have removed on her side the opportunity for a conflict to arise and on my side the incentive.

That, I believe, is a reasonable way to have addressed the problem. Certainly it has been under consideration by us, and its consideration by the committee is appropriate because there is obviously a possibility, there is an issue, a possibility of perceiving a conflict.

It is my personal view that the steps we have taken are reasonable to remove both any actual legal conflict and any legitimate appearance of a conflict. Whether other FCC companies or individuals would gravitate to the firm I don't know. And I don't know whether that would actually be discernable at any time.

What motivates a client to come into our doors is seldom—generally it is by reference from another satisfied client.

Senator PASTORE. Yes; and then on the other hand, you do have a member of the firm who was once general counsel of the FCC.

Mr. WHITE. That is correct.

Senator PASTORE. Don't you think he was taken in because of his connection with the FCC? Let's face it.

Mr. WHITE. Well, Mr. Pettit was with our firm before he went to the FCC as general counsel. So, the fact that he knew us when he was deciding what he would do when he was leaving the Commission means it is not surprising that he should consider coming back.

Senator PASTORE. You see what disturbs me is the fact that the administration recognized here the fact that there was a sensitivity as to conflict of interest, and they began to explore how they could cure it and correct it.

And, when they came to see me I said, "Well, why don't you put her on some other commission? You have so many other places where you can put Mrs. White."

Well, of course, naturally they refused to do it. That is their prerogative. I repeat, I wouldn't want to do anything to hurt this fine young lady, or hurt you, but after all, we have to serve the public interest here, and this will be a matter that will have to be explored when we go into executive meeting.

But I did want to ask you the questions. I might say to you, "I think you are an honorable man. I think you will live up to your word," but on the other hand is it our responsibility as elected, responsible public officials to have only a man's word to guarantee that something proper will be done? I think that is the big question, and that is not an easy one to answer. You have to be a Solomon to answer that correctly.

I will turn it over to my colleagues now.

Mr. Ford?

Senator FORD. Thank you, Mr. Chairman.

I am not a lawyer so I will probably ask the wrong questions. But, we should pursue the subject.

My colleague from Tennessee indicated, and this may not be a direct quote that "she is interested as he is interested in the general prosperity of the firm." Now, my wife and I have a relationship: I bring the paycheck home and she writes them out. So, we have very little conflict. But let's look at these opinions that we have had to read. The opinion of the Justice Department cites 18 U.S.C. 208(a), and they have no problem with the nomination.

But then the opinion cites section 4(b) of the Communications Act, and in my interpretation of the language argues very strongly against the appointment although there has been no precedent and there appears to be no formal precedent applying section 4(b) to the wife, husband, law firm situation at issue.

The point that I am trying to get to—I suspect that you will be confirmed—but you are going to be in a very, very sensitive position to eliminate the appearance, as Senator Baker tried to bring forth, of a conflict. And I doubt seriously that you can travel that road for 7 years without having an appearance of conflict. I hope you can.

But the firm has the former general counsel of the FCC, and is advertised as having communications law expertise. It is very disturbing to me and we have talked about it and we discussed this. If there is a substantial number of cases involving this firm before the FCC, I believe one of the letters that the chairman read would indicate that the Commission's decisionmaking would be diluted because Mrs. White would have to excuse herself from participating in those cases.

So, the public would not be getting the full value of all the members of the Commission. So, if you excuse yourself from 1 hearing or 5, 10, or 20 a year, then the Commission doesn't have its full force. And the public is not represented by the full membership of the Commission.

Do you have any response to that? If your husband's firm has 20 clients that come before the FCC in 1 year, you would have to excuse yourself 20 times.

Mrs. WHITE. If I understand it, Senator, not every situation would involve the personal attention of the Commissioner and that some matters are handled at the staff level where the Commissioners would not be involved at all.

Senator FORD. Well, don't you directly employ, or wouldn't you have to have some sort of approval of the employees of the Commission?

Mrs. WHITE. Not as far as I understand. I would have a personal staff, but I would not get involved in those matters.

Senator FORD. You don't think your staff would ever be contacted in some of these matters?

Mrs. WHITE. I would insure that they would be kept separate as well as I could.

Senator FORD. Then we are using staff.

Mrs. WHITE. I am talking about a personal staff, of two or three people.

Senator FORD. We would lose four then, one of the Commissioners and three or four members of the staff that would have to be excluded from each of the cases that come before the Commission in which your husband's firm is involved.

Mrs. WHITE. As I indicated in my statement, Senator, I understand this is a very minute percentage of the total work of the Commission, and I really don't have any doubt that I will be a full-time Commissioner in every sense of the word.

Senator FORD. Let me say that I don't have a good feeling about the approach I am taking here because I think you will make a good Commissioner, but there is no precedent under the Communications Act as it relates to the situation we are in now. And I think the chairman is absolutely right that we must go on notice over this particular appointment.

As for your suggestion of a 5-year licensing period, I think you are on the right track. It does have merit, so stay with that, will you? There are no women as I understand it, and very few minorities, on any of FCC Commissioner's personal staff. Would you employ women or some minorities on your staff?

Mrs. WHITE. Yes, indeed.

Senator FORD. As I understand it, then, you will be the only woman Commissioner.

Mrs. WHITE. That is correct.

Senator FORD. I think we have a very sensitive situation here and it is going to have to be looked at very, very closely. Now, your association with the White House—and we are talking about politics and it's raised its head here a couple of times—what if there is a communications complaint between the Republican National Committee and the Democratic National Committee. Would the Republicans on the Commission remove themsleves or would the Democrats remove themselves?

If we are going to get into that, that is going to be touchy, too, since you come from the White House and are so closely associated with with it.

Mrs. WHITE. Well, of course, the members of the Commission are identified either as Republican or Democrat. And I can assure you, Senator, that through out my career, my loyalty has been first to my country and to my principles and conscience and finally to the institution and individuals for whom I have worked. My full loyalty would be, as Commissioner, to the work of the Commission, and I would not be improperly influenced from any source.

Senator FORD. You indicated when we chatted that women on the Commission would add something. You hoped you could add something to it, and I think I mentioned the word compassion. That wouldn't overshadow your good judgment, having been in the White House, would it?

Mrs. WHITE. No, sir.

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

Senator STEVENS. Thank you, Mr. Chairman. Since I am going to have to leave, I will state for the record that I certainly support Mr. Fogarty's confirmation, having joined others, without your consent, sir, in recommending him to the White House.

As far as Mrs. White is concerned, my State is one of those which sought the advice of Mr. White's law firm.

I think they did so on the basis of rather searching analysis of the qualification of the people in this practice here in town, and with my help.

I don't know Mrs. White or Mr. White. And I think we are right to explore the problems that have been brought out here. But, as I sat here listening to some of the comments and questions, I wondered whether we are really looking at this with total impartiality in the final analysis, because we are all looking at it from the male side.

The chairman mentioned there would be no legal recourse.

Mr. White, I assume that disbarment aspects of the legal profession are still applicable to your firm as well as any other firm that would be involved in a similar situation, and I feel that that ought to be mentioned. You don't think it is sufficient?

Senator PASTORE. No, of course not.

Senator STEVENS. Well, I think it is sufficient if a husband states before a congressional committee that he intends to disqualify himself and not have anything to do with any aspect of the firm, including the revenue from clients that might be represented before this Commission that that certainly ought to be sufficient record to lead to disbarment proceedings if the understanding as stated publicly was ever violated.

Senator PASTORE. No, I don't think the Congress of the United States would ever place itself in that position anyway.

In fact, all I wanted to do was to point out the fact that this arrangement would have to be predicated on good faith. I am not questioning the good faith of the witness at all; but it is a possibility that we assume here, and that is of no little moment.

And I repeat again, I have agonized over this. I never met Mrs. White or Mr. White before. I think they are two very honorable people, but that is not the question. That is not the question here, we have to reach a conclusion. I haven't made up my mind.

We are going to listen to other witnesses as well, and I know that this is a sensitive situation for Mr. White, as well as Mrs. White.

This is not a pleasant experience for them at all. I know that. It is not a pleasant experience for me either. I am a human being too. I don't want to hurt anybody, especially when I only have 3 or 4 months until my term expires.

But, like everyone else, I don't want to end up being criticized, by having people say we overlooked something. And then, of course, we have the very delicate situation that Mr. Fogarty is involved as well.

I am glad you gentlemen cleared the air. I had nothing at all to do with Mr. Fogarty for that appointment. I didn't call or talk to anybody about his appointment. Certainly, friends of his suggested his name. Mr. Fogarty came to me and asked me if I had any objection to his appointment. I cannot object to a man improving his station in life or furthering an ambition. I would never do that.

In fact, in view of the fact that in January my term, as a U.S. Senator runs out, all I want to do is the right thing. I think that is all we all want to do, and I think Mr. and Mrs. White want to do the right thing. I don't know why the administration didn't take up my advice of putting Mrs. White on some other commission.

However, the committee is confronted with a novel situation, and we have to deal with it. We don't want to hurt individuals, but we must serve the public interest and I hope you two understand this. That is what it amounts to.

Senator STEVENS. Well, I am constrained to say I don't think it is the first time we have faced a problem such as this. I think women have their own separate careers. Their husbands face similar problems in business. Certainly, we faced it with regard to one of the Members of the Senate who has a spouse who is on one of the regulatory commissions.

And I believe that they have similar problems pursuing their own separate careers and I am confident that we will make the right decision. I intend to support Mrs. White's confirmation and I intend to do so on the basis of the statements that have been made and the arrangements made by the law firm.

Based on the fact that Mrs. White will have to disqualify herself under this arrangement, I think clients such as my State will face a little more difficulty, but I believe that is constant with the problems we are trying to wrestle with in the public interest here and that should be sufficient.

As a lawyer in practice for many years now, I think you have gone the full mile, in terms of both your firm and yourself, Mr. White, in trying to assure the committee and the public of doing everything you can to eliminate the concepts or the possibilities of a conflict of interest.

Perhaps there is going to be a tightrope to walk for 7 years, but it is going to be only a small amount of your business.

And I do think that you have your career, Mrs. White, and your husband has his and it is up to us to find a way to convince the public that the public interest is continually protected and allow you to pursue your careers at the same time.

So I congratulate you on trying. We may be back with further suggestions after we have explored this in executive session but I assure you that we are trying to—I think the committee is trying to protect the public interest and at the same time allow you to have your separate careers.

Again, I am sorry, I am going to have to leave, Mr. Chairman. I don't have any questions of Mr. Fogarty. I appreciate what you said. However, I don't think that that ought to be disqualification either, that a potential nominee has served on this committee staff.

We have a problem there, and I think that we all thought about that before recommending Mr. Fogarty and I am confident that he will be a good commissioner.

Senator PASTORE. Any further questions? Thank you very much.

Before we hear from the other witnesses, may we have Mr. Fogarty come back?

Mr. FOGARTY. Thank you, Mr. Chairman, thank you, Senator Baker, Senator Stevens, and Senator Moss for your very kind comments about me.

Mr. Chairman, I have a very short statement I would like to read into the record if I may.

Mr. Chairman, I, of course, feel awkward sitting for the first time on this side of the dais in this committee room, where I have worked for so many years. I am extremely thankful to the President for submitting my nomination to the Senate for a position on the FCC.

I am thankful also to you, Mr. Chairman, who introduced me to the fascinating field of telecommunications, and who allowed me to gain invaluable experience as the communications counsel of this committee.

However, the sense of satisfaction I have from the nomination is overshadowed by the fact that you have announced your decision to retire at the conclusion of this Congress.

No one can quarrel with the Senator's right to retire after almost a quarter century of public service in the Senate.

You were the father of public broadcasting, which has brought culture, beauty, and diversity of programing to television.

You are responsible, I think, in great part, for the enactment of the Communications Satellite Act, which revolutionized international and domestic telecommunications services, and which has I think promoted

peace throughout the world by bringing the peoples of the Earth closer together.

No single political figure, to my knowledge, has done more than you have to impress upon various administrations and the telecommunications industry the need to recognize and to promote the rights of minorities and women in communications, and I share very deeply this concern.

Yet these prestigious monuments are but a prolog. The future of telecommunications, in my view, and the future of mankind are inextricably linked. Telecommunications technology is exploding. Nobody can foresee in what manner the communications industry can best benefit the public in the years ahead.

But we do know that a great potential for good exists here. This is why I am so excited over the prospects of serving on the FCC. If confirmed, I will apply myself, using what talents I have to the best of my ability, to insure that the telecommunications industry serves the public interest and improves the quality of life for all citizens of our Nation.

I want to thank, if I may, finally, the Senators on this committee for whom I have been proud to work and who have very graciously supported my nomination. I wish also to thank my many firiends on the various Senate staffs for their professional assistance and counsel over the past 13 years.

In particular, I want to thank my close friends, Jim McKenna, Senator Pastore's able administrative assistant, and Mike Pertschuk, the committee's chief counsel, who, in a brilliant and unobtrusive way, has been the master craftsman of some of the finest consumer legislation ever enacted into law.

Mr. Chairman, I have submitted written responses to the questions posed by this committee. I have submitted my financial statement. I am prepared to elaborate on either, or answer any additional questions which the committee members may wish to ask of me at this time.

Senator PASTORE. Any questions?

Senator BAKER. No.

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

Our first witnesses are Manuel D. Fierro and Grace Castro Nagata.

## STATEMENTS OF MANUEL D. FIERRO, PRESIDENT, NATIONAL CONGRESS OF HISPANIC AMERICAN CITIZENS; AND GRACE CASTRO NAGATA, DIRECTOR OF COMMUNICATIONS, EAST LOS ANGELES COMMUNITY UNION

Mr. FIERRO. Mr. Chairman, I am Manuel D. Fierro, and I am president of the National Congress of Hispanic American Citizens, which is a national nonpartisan citizens lobby for the Spanish speaking.

Today I am very proud to introduce Mrs. Grace Castro Nagata, who is a director of communications at the East Los Angeles Community Union, who is also a member of the board of the National Latino Media Coalition. She is here today to present testimony on behalf of the East Los Angeles Community Union, and the east Los Angeles community.

Mrs. NAGATA. Mr. Chairman and members of the committee, my name is Grace Castro Nagata. I am here today from California representing David Lizarraga, president of the East Los Angeles Community Union—TELACU—who is also a member of the board of trustees of the National Congress of Hispanic American Citizens—El Congreso.

On behalf of TELACU, the National Latino Media Coalition, the California Association of Latins in Broadcasting and El Congreso's participating national, State, and local Spanish-speaking organizations, I want to thank you for the opportunity to appear before you today to express the public outcry that has arisen throughout the Latino communities over the nominations of Margita White and Joseph Fogarty to the FCC.

Let me say at the outset that we are here today to oppose the confirmation of both nominees, and I would like to tell you why.

We are truly dismayed at the lack of social responsibility, lack of awareness, and the lack of sensitivity demonstrated by the President in having excluded an American of Hispanic descent to fill either of these posts, in spite of the fact that the names of qualified Latinos were submitted to him for his consideration.

Latinos comprise at least 20 million, nationwide, who as yet have no voice on the FCC. In the 41 years that the FCC has been in existence, we have not yet been allowed positions of responsibility in the decisionmaking processes that affect the electronic media.

Senators, this is not by any means a new issue to you, but it is one that we, as Latinos, cannot afford to stop bringing to your attention because, traditionally, the leadership of this country has chosen, for whatever reasons, to ignore our many protests time and time again.

And here we are, once again, to tell you a few things you undoubtedly already know. And if you don't know them you should. We feel that this committee has not asserted itself in making the FCC accountable to the Latino community.

Senator PASTORE. In what way?

Mrs. NAGATA. The fact that I am still—that we are still coming back to make these kinds of presentations over the fact that we do not have Latinos serving on the FCC or in its staff in its equal employment office.

We do not feel that this committee—I know that you have, Senator Pastore—but apparently Chairman Wiley hasn't gotten the idea yet.

Senator PASTORE. I merely want the record to show that it was through the intercession of Mr. Wiggins and myself that we finally received the nomination of a Spanish-speaking person to the Board of the Public Corporation for Broadcasting.

Mr. FIERRO. Correction. He might be nominated, but he is not confirmed. That's been over 8 months ago that that was submitted to the Congress for confirmation, and I am a little concerned over the fact that it's been 8 months that that name has been before the committee.

Senator PASTORE. I know, but we were responsible, of course, for that nomination coming up here. I agree absolutely that this committee should consider only the relevant qualifications of the person who comes before us, not nationality, or color, or other irrelevant factors.

Now, even if we refuse to confirm these people whom you are opposing, there is no guarantee that you will see your desires carried out. That is not our prerogative.

I think that what you've got to do is keep banging on that door down there at 1600 Pennsylvania Avenue. That's where you have to do it.

Mrs. NAGATA. Senator Pastore, with your help, we would like to go down there and bang on that door and have it opened, unlocked and opened, and have them a little more responsive to us.

Mr. FIERRO. Mr. Chairman, you are quite aware of the fact that the Mexican-American Legal Defense and Education Fund filed a third-party complaint over 1 year ago. You received a communication of that complaint that was filed because of blatant discrimination that existed in the FCC.

I have a copy of a letter in which you, yourself, responded to that, and I would like to read it.

Senator PASTORE. Go ahead.

Mr. FIERRO. This is a letter from Richard Wiley to you. This was cast year, in October. He said:

> I have received your recent letter concerning the Mexican American Defense and Educational Fund's allegations of discrimination by this Commission.
>
> At the outset, I want to assure you that the Commission is firmly committed to a program of equal employment opportunities for all citizens. In addition, I am enclosing a copy of Mr. Perez' letter transmitting the initial MALDEF allegations, a copy of our letter outlining ongoing and projected affirmative plans for the employment of all Hispanic Americans, not only Mexican Americans, and a copy of an August 22 letter accepting certain of their allegations for processing.
>
> I trust that the material I am sending you is responsive to your concern that the Commission is not doing all it can to provide Spanish-speaking and Spanish-surnamed peoples the employment and promotional opportunities they deserve.

Now, that is in October. Here we are today. I would like to have Mrs. Nagata finish her testimony, because everything that was contained in that letter, here we are today, again presenting before this committee the same allegations, the same concerns.

And so I would like to ask her to do that. But I again want to state for the record this is nothing new to the committee. It's a continuing problem.

Senator PASTORE. You have to admit it was a well-intentioned letter. The problem apparently is that they haven't implemented their plans. But you can't blame me for what Chairman Wiley didn't do.

Mr. FIERRO. I think it's a responsibility of oversight.

Senator PASTORE. This committee has been very, very aggressive.

Mr. FIERRO. It's the responsibility of this committee to see this discrimination is stopped; that has not been carried out.

Senator PASTORE. Well, I can take a horse to water, but I can't make him drink.

Mrs. NAGATA. What shall we do about Wiley, if we can't get him to do anything about it? Or his Commissioners? Or his staff? Senator, look at the facts.

Senator PASTORE. Vote Democratic on November 3.

Senator BAKER. For a while there, you were constructive.

Senator PASTORE. You have two keynoters here now.

Mr. FIERRO. May we have Mrs. Nagata give you some testimony? She's going to give you some facts.

Senator PASTORE. Go ahead. We have all day.

Mrs. NAGATA. I have been asked by the people I am representing to continue this prepared statement on their behalf.

They are asking if any of you have—I know you have, Senator Pastore, but there are others here—have attempted to lift any of the barriers that have excluded Latinos from this process called governing; we can only say that when the results have shown success, will we hold this committee in high esteem. But until then, we cannot afford to engage in superfluous platitudes.

This year the American people have witnessed the Bicentennial, a show that outshined many a display of national pride by any country on the surface of this planet, reminding us of our cultural heritage as Americans. Many of those Americans who witnessed this spectacle, this tribute, were Latinos whose ancestors contributed to the legacy that put people like you in the very offices you now occupy—and paid for them—may I add.

It is a sore on the backside of the often bedridden body of Government that Mexican Americans, Puerto Ricans, Cubans, and other Latinos have never had a significant voice in the Government agency that regulates modern man's most profitable and powerful tool for social change—the electronic media.

Shame on America for not electing a President who would nominate and a Senate who would confirm the nomination of any minority to the Federal Communications Commission until Commissioner Benjamin Hooks was appointed. Shame on America for never having appointed a Latino to the Commission. And shame on the present administration for not raising its standard and healing at least this American bedsore today.

Look at the facts Senators:

Less than 1 percent of the FCC's total of 2,000 employees are of Hispanic origin. That means 21 Hispanics out of 2,000 employees.

Almost without exception, they are found to be in the GS–9 or ower grade levels. Most are clerical personnel.

No Hispanic serves the public, or any other kind of interest at the FCC in any supervisory capacity at all!

No Hispanics are employed in over half of the Commission's offices and bureaus.

No Hispanic is currently employed in either of the two FCC's equal employment opportunity offices.

In April of this year a position was posted for a Spanish speaking coordinator to handle affirmative action in the recruitment and hiring of Latinos for the agency. Today, 4 months later, nothing has been done to fill that position.

No Hispanic is employed in the FCC's personnel office.

No Hispanic is employed as a public information officer.

The list goes on endlessly * * * Apparently, even the quality of the few jobs Latinos have held at the Commission poses some serious questions.

Mr. Chairman and members of the committee, the FCC's record of attention to the issues that affect over 20 million Latinos is abominable.

In 1934 your predecessors in the Congress saw fit to create this Commission for several reasons. One of these reasons was to preserve

the public interest in broadcasting—and the public interest, Senators, must include all of the public.

Therefore, on behalf of the Latinos in this country, I ask that you not confirm the nominations of Margita White and Joseph Fogerty to the FCC unless they publicly specify what they each will do regarding the issues that affect Hispanics, not only in the FCC, but in the electronic media as well.

I and millions of others like me must ask you to ask yourselves whether the time is not upon us again to reaffirm the original concept of the public interest, and indeed, to preserve it for all by insisting on the nomination of the first Hispanic to the Federal Communications Commission.

Finally, Mr. Chairman and members of the committee, be assured that the political considerations that must enter into the confirmation of appointees will change as the politicians who make those decisions come and go. However, with each passing day, the Nation worsens its record for not having responded with a just measure of social consciousness to this very critical issue. That record will not pass, but it stands for all to see.

It will be recorded that I spoke here today, as some Latinos have before me, and that once again, in the Bicentennial year, a new administration was begun by the political processes that have served to make this country great.

But if history also records that the Congress failed to meet the challenge of a heretofore buried and ignored issue, then posterity can only conclude that the very simply and socially conscious matters eluded our advanced technological society.

Discrimination against Latinos in the media and in all walks of life will continue as long as there are no Americans of Hispanic descent employed in decisionmaking positions. This has been demonstrated time and time again. Stop the discrimination now. And start at the top. It is not such a novel idea and one that can be accomplished easily. Refuse to continue to confirm only whites to the FCC and watch the media begin to portray a more accurate and heterogenous image of American life consistent with its regulatory responsibility.

Senators, I thank you. I welcome any questions which you might have.

Senator PASTORE. May I ask you a question?

Mrs. NAGATA. Yes, sir.

Senator PASTORE. You say you have submitted some names to the White House.

Mrs. NAGATA. Yes.

Senator PASTORE. With whom did you talk?

Mr. FIERRO. I personally talked to Douglas Bennett, Director of the Presidential Personnel Office.

Senator PASTORE. What did he tell you?

Mr. FIERRO. He told me there were a lot of considerations and politics involved in the selection of the nominees, and one of those considerations was the fact that you were wanting to submit the name of Joseph Fogarty. This was before Fogarty's name even came up.

I spoke to them, and the consideration that we would not get a Hispanic one was because you wanted your general counsel to be nominated.

Senator PASTORE. I haven't talked to Mr. Bennett about Mr. Fogarty, or any one else in the White House about Mr. Fogarty.

Mr. FIERRO. I'm not saying that, but this is what they responded with.

And again, that they had women's concerns before them, and the committee was exerting pressure to name the general counsel.

Senator PASTORE. I quite agree that serious consideration ought to be given to the appointment of a Latino on this Commission. I think that we will, no matter what happens as a result of this presentation, address ourselves to the President, making a strong recommendation that, on the next vacancy, he ought to give very serious consideration to the appointment of a Latino.

In the meantime, I am going to instruct Mrs. White and Mr. Fogarty to put in writing what they intend to do about the hiring of more Latinos within the FCC should they be appointed.

[The following information was subsequently received for the record:]

AUGUST 24, 1976, *Alexandria, Va.*

Hon. JOHN O. PASTORE,
*Subcommittee on Communications,*
*Senate Commerce Committee, Washington, D.C.*

DEAR SENATOR PASTORE: In accordance with your directions, I am pleased to respond to the queries raised at the hearings this morning by Ms. Grace Nagata and Mr. Manuel Fierro of the National Congress of Hispanic American Citizens.

In the event that I am confirmed by the Senate to become a Commissioner on the Federal Communications Commission, I shall inspect immediately the FCC procedures with respect to the hiring of women and minorities including Hispanic-Americans—both the FCC's internal procedures, as well as the Commission's procedures with respect to broadcast licensees.

I will then actively promote those affirmative action programs or other proposals that may be necessary to correct whatever discrimination or injustice may exist.

Finally, Mr. Chairman, I want to say that as Communications Counsel to the Senate Commerce Committee, I have cooperated and enjoyed working with the National Black Media Coalition, the National Organization For Women and the National Congress of Hispanic American Citizens in the area of civil rights.

Respectfully,

JOSEPH R. FOGARTY.

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MCLEAN, VA., *August 30, 1976.*

Hon. JOHN O. PASTORE,
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in response to your request at the August 24 hearings for comments as to what I, as an FCC Commissioner, will do to promote the hiring of Hispanic Americans.

As a Commissioner, I will promote and encourage the immediate implementation of several steps currently being considered by the Commission:

(1) A full-time Spanish-speaking coordinator should be hired. This now is a part-time position but applications are under consideration for a full-time post. This effort should be given priority attention.

(2) There should be intensified recruitment efforts at schools with a significant proportion of students of Spanish and Latin descent. Apparently some recruitment now is focused upon these schools but a more concerted effort is needed to seek out Spanish-speaking lawyers, engineers and other employees from these sources.

(3) FCC field offices in areas of high density Spanish-speaking population should be instructed to assist actively in the dissemination of FCC recruitment information and to alert the Spanish-American community to upcoming visits from FCC recruiters.

(4) Spanish-speaking attorneys currently on the staff should be encouraged, as appropriate and time permitting, to assist in recruitment efforts and to serve on the Attorney Rating Board.

(5) The FCC's personnel office should contact Spanish-speaking and Latino organizations at law schools and other educational institutions prior to recruitment visits.

The above are a few specific actions that can be taken immediately to implement an affirmative outreach program to hire more Spanish-Americans to all FCC positions. Because attorneys constitute 35 percent of Commission personnel and are exempt from civil service procedures, efforts concentrated on the recruitment of lawyers could be especially productive. Such efforts also are imperative because it is my understanding that this fall there only will be four Spanish-speaking attorneys on the staff. (Two of these are among the twelve attorneys hired this past year who will join the staff following the end of the year-long hiring freeze in October.)

In addition, there must be an appreciation on the part of all Commission employees, especially those involved in hiring and promotion, that the Chairman and all the Commissioners are personally dedicated to increasing employment opportunities for Hispanic Americans at all levels and in all offices of the Commission, including the personal staffs of the Commissioners.

As I indicated in my response to one of the questions I answered in writing for the Committee, I also believe the Commission must vigorously enforce its Equal Employment Opportunity program directed toward broadcast licensees and cable operators.

If granted the opportunity to serve as a Commissioner of the FCC, I will be pleased to demonstrate through action my commitment to equal employment opportunities for Spanish-Americans, for other minorities and for women. As a Commissioner I will make every effort to carry out my pledge to exercise leadership in this area and to insure that the Commission meets its responsibility and sets an example for the industries it regulates.

I believe that the letter you have received from Mr. Horacio Aguirre, Editor of *Diario Las Americas*, is testimony to my long-standing sensitivity to the concerns of the Spanish-American community.

I hope this information will be helpful to you and the Committee.

Sincerely,

MARGITA E. WHITE.

Mrs. NAGATA. Thank you very much. And also, when either she or he will begin to enforce what they say in writing. Because, as you well know, sir, we have met in California with several of the general managers of the networks over there, bringing this problem to their attention.

In preparation for a meeting with the American Broadcasting Co., we requested a copy of the organizational chart and a copy of their affirmative action—not only policies, but its program, goals, and timetables. They would not release a copy of the organization chart, because they knew that we were going to ask how many Latinos were employed in any of the decisionmaking positions; even in the clerical positions.

They also told us that they did not have to release their affirmative action plan. They gave us a copy of their policy, and, you know, the policy can say anything, but a program, goals and timetable has to be more specific.

This is not the only broadcast company that we have requested this of. And yet the problems that we have over there in those neighborhoods parallel themselves here within the bureaucratic system of the FCC itself, which is why I flew out here from California. Somebody has to hear us. Somebody has to do something about it.

And, sir, we are not just asking in a very simplistic way that we want an acknowledgment of Hispanic discent. But having heard Mrs. White and Mr. Fogarty, they sound fine, but unless they really do

something, or unless the ones that are already there, or Jim Wiley himself, who gave us the big stroke job in November, 1975, when he spoke with us at the United——

Senator PASTORE. What kind of a job was that?

Mrs. NAGATA. A stroke job, sir. You know, he spoke in great brush strokes, "Oh, we are so concerned about people out there." What he doesn't realize is that the people out there are the people he was talking with—400 of us.

Senator PASTORE. Well, we are going to do something about that.

Mr. FIERRO. Let me say one last thing, Mr. Chairman. I would like to submit for the record all the communications we have received last year that indicated the same as the testimony here today. I would certainly like to request the committee to have oversight hearings on FCC in terms of their discrimination and practices against Spanish-speaking community. That is one responsibility not being—

Senator PASTORE. Why don't you make your presentation the next time we have an oversight hearing?

Mr. FIERRO. Senator, I have been coming up here for 4 years.

Senator PASTORE. I have been here for 26 years, and I don't think there are many Commissioners of Italian background either.

Mr. FIERRO. But they aren't a minority group.

But hopefully, the committee can exert itself, Mr. Chairman, and hopefully the nomination of Mr. Louis P. Terrazas can be acted on by this committee and the Congress before this recess.

Thank you very much, Mr. Chairman.

Senator PASTORE. A memorandum has been handed to me. Mr. Louis P. Terrazas was nominated to the CPB board on March 2, 1976. Although the committee forwarded its standard list of questions to him at that time, his complete responses were not received until the week of July 25, 1976.

By that time, the committee had already scheduled the hearings on these FCC nominations, and already received an additional five CPB nominations from the President.

Mr. FIERRO. May I correct that? Whereas the committee staff indicated they had submitted some materials that they requested, he never received that communication until about the early part of June. So there was not any communication in writing.

Senator PASTORE. He has submitted the written responses now.

Mr. FIERRO. He has submitted all the material the committee requested.

Senator PASTORE. Thank you very much.

Mr. FIERRO. Let me leave these letters with the reporter for the record.

Senator PASTORE. Mr. Fierro, the letters will be made part of the public files of the committee and will be available for review by any interested party.

Our next witness is Nicholas Johnson. It's always a pleasure to have you, Nick.

## STATEMENT OF NICHOLAS JOHNSON, NATIONAL CITIZENS COMMUNICATIONS LOBBY

Mr. JOHNSON. I appreciate the opportunity to appear here representing the National Citizens Communications Lobby on this occasion

regarding appointments of Margareta White and Joseph Fogarty to the FCC.

I have a statement, which I would like to submit for the record, if I may, Mr. Chairman.

Senator PASTORE. Without objection, so ordered.

Mr. JOHNSON. I will try to save some of your time today. I know you have a number of witnesses you would like to get to.

I understand others are going to discuss the problem of conflict of interest in some detail. That is a subject that you all have addressed thoroughly, and I think there is very little that I can add to your own questions and those that will be raised by others later in the day.

As you know, we have supported the concerns raised by Mr. Fierro and Mrs. Nagata before you this morning for the need for more minority representation on the Commission.

In my statement, let me select two issues to discuss that I think are not being raised perhaps as much by others.

One of those is the process of making regulatory commission appointments, and our concern as a representative citizens group with that process.

A second is simply an unabashed statement of our own position, which is that we believe that there ought to be more representation on regulatory commissions of consumer interests, of interests of television viewers, of the audience, the public, and give you a report of a meeting that we held with Mrs. White with regard to her own positions on some of those issues.

The Commerce Committee took the lead early this year in issuing a report prepared by Mr. Kramer and Mr. Graham about the appointment process. I think it was a tremendous contribution to the literature in the field, and the committee is to be commended for undertaking it.

The report recommended a number of things. One, that a commissioner should be independent. Two, that they should have a demonstrated sensitivity to consumer and minority needs.

Third, that they should be able to demonstrate by their past performance some concrete interest in the work of the agency.

And also that some member of the Commission should have specific knowledge of an experience in the work of the agency prior to appointment.

The method of Mrs. White's selection, we think, shows a real lack of sensitivity to the appointment process.

The report noted—and I quote here three or four sentences:

> Partisan political considerations dominate the selection of regulators to an alarming extent. Alarming, in that other factors—such as competence, experience, and even, on occasion, regulatory philosophy—are only secondary considerations. Most commission appointments are the result of well-stoked campaigns conducted at the right time with the right sponsors, and many selections can be explained in terms of powerful political connections and little else: commission seats are good consolation prizes for defeated Congressmen, useful runner-up awards for persons who ricochet into the appointment as a result of a strong yet unsuccessful campaign for another position; appropriate resting berths for those who have labored long and hard in the party vineyards; and a convenient dumping ground for people who have performed unsatisfactorily in other, more important Government posts.

I don't think there's any evidence in the record here that this nomination represents any change in that approach. There have been a number of reports in the press that the appointment was made for

one of those typical reasons, namely, a desire to remove Mrs. White from the Office of Communications. I don't know if that is true or not. I have no personal knowledge.

My point is simply that the appearance of this sort of manipulation of the regulatory commissions without any evidence in the record that the White House did in fact make a real effort to do a search, to consider minority appointments, and so forth, and make the best possible nomination, can only increase the cynicism of an already cynical public—as you have already heard from the two witnesses who preceded me.

The report recommended that those in the White House charged with the responsibility for selecting nominees should be given greater public visibility. This has not been done since the report was issued by the White House.

Professor Kramer testified before you:

> The White House office should actively solicit a broad range of views on who should be appointed. Upcoming vacancies should be announced far in advance of their anticipated occurrence, and suggestions solicited.

This was not done. There was no attempt to consult with interested citizens groups before the nomination was made. There was no apparent attempt to survey the field to find the best nominee.

That being the case, representatives of a number of citizens groups asked for a meeting with Mrs. White last week. Since we had not been consulted in the selection process, we felt we should have this opportunity and wanted to have an opportuuity to meet with her.

I think Mrs. White is due for a commendation for agreeing to that meeting. She certainly is not required to do so by law or past history of politics, and she did agree to meet with us. And I think that alone bespeaks a lack of hostility often found toward citizens representatives on the part of nominees.

I was not able to attend the meeting, although I have met Mrs. White socially on a prior occasion and find her a perfectly delightful person. Members of my staff and representatives of other groups were present at that meeting, and I might say that some of those attending the meeting were predisposed or hoping to find that she would, in fact, by her performance on that occasion, convince those in attendance that her appointment should be supported.

As it turned out, however, the conclusion of all who attended the meeting was that Mrs. White is not likely to be the needed voice of the consumer on the Commission.

On the issues that we care about, and in terms of the second qualification Professor Kramer refers to, she really did not display much sensitivity to the concerns of minorities and consumers. And I think to some degree that has been continued here with her statements this morning—views to which she is perfectly well entitled, but views which we are also perfectly well entitled to oppose.

And, so far as we are concerned, we don't believe that she would provide the kind of leadership for the interests that we have and would would like to see on the Commission.

As I indicate, the conflict-of-interest question is going to be pursued by others. It raises serious problems, I think. They have been addressed at this point by the White House, by the U.S. Senate, by the Justice Department, by the FCC, by the General Accounting

Office, by the law firm, by Mrs. White, and by citizens groups. That alone bespeaks an awareness of the fact that there is a very real problem here.

Mr. Chairman, I would like to also add a word about Mr. Fogarty. I think his situatiou, if I may say so, is different from that of Mrs. White.

It is relevant to us that his is a nomination for 2 years, rather than 7. A 7-year appointment does saddle whoever is elected in November with an appointee running through more than two Presidential terms, and I think an additional 2 months to find out who that President is going to be makes some sense.

We do not say that in a partisan sense. We say it because, as consumers and citizens groups, we are concerned about the regulatory appointment process and philosophy, and one of the candidates has indicated, "I will appoint consumer or citizen advocates on the FCC and other regulatory agencies as well. * * *" Needless to say, we find that prospect a little more acceptable than the one we have witnessed here.

But in the case of a 2-year appointment, whoever is elected President in November is going to have an opportunity to review that appointment some 17 months after he is inaugurated. And if the person serving that 2-year term is to have any impact at all, they really have to begin serving it at some point before it expires.

Furthermore, Mr. Fogarty is not the unknown quantity in terms of communications policy that Mrs. White represents. He has a superb background. He is not beholden to any of the industries regulated by the FCC. I do not mean to say that Mrs. White is; I mean that he has been able to gain a background in the field, which she has not, without becoming beholden.

And we believe he has demonstrated a track record of sensitivity to citizens groups, minority, and women's issues.

His character and professional qualifications are as well known to this committee as anyone's could be.

Mr. Chairman, there is more to my statement, but we have put it in the record. I appreciate you have a number of witnesses and you want to move on with it. I would be happy to answer any questions.

Senator PASTORE. No, I think you are rather explicit in what you have to say, and we will take it under advisement. Thank you very much.

Mr. JOHNSON. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF NICHOLAS JOHNSON, NATIONAL CITIZENS COMMUNICATIONS LOBBY

Chairman Pastore, and committee members, I appreciate this opportunity to appear before your committee, as Chairman of the National Citizens Communications Lobby, to speak to the nominations of Margita White and Joseph Fogarty to the Federal Communications Commission.

My concerns with Mrs. White's nomination are, in brief, as follows: (1) Mrs. White brings to this position no outstanding qualifications for the position that would warrant extraordinary treatment of her nomination. She is a well educated and bright woman who I have enjoyed meeting socially, but there is really nothing in her background that demonstrates any preparation or inclination for this type of policy making position. (2) The process by which President Ford selected her shows absolutely no sensitivity on his part to the procedures necessary to

insure that the best candidate is chosen. (3) There is no reason to believe, and some reason to doubt, that Mrs. White will use her position on the Commission to fight for the rights of citizens or to protect the consumer. (4) As this committee well knows, serious questions of conflict of interest have arisen which, at the very least, would create an awkward situation at the Commission that could seriously hamper its effectiveness. (5) With a Presidential election a couple months away, there is clearly no reason to rush and some merit in waiting for the outcome.

The matter of appointments to independent regulatory commissions has attracted much greater interest in recent years. Concern has been voiced with the quality of the nominations to the various agencies, including the FCC. This past April, your full Committee issued an outstanding report on the appointment process. In that report, the authors, Mr. Victor H. Kramer and Mr. James Graham, laid out the abuses which have plagued the regulatory appointment process and have played a major role in making these agencies unresponsive to citizen needs and captive of the very industries they are supposed to oversee. The report also made some recommendations as to the qualifications of future appointees.

The Committee's Report recommended that "the Commissioner should be independent in his or her actions, guided solely by the recognition that he must act in the public interest and nothing else." Secondly, "a commissioner should have a demonstrated sensitivity to consumer and minority needs." Thirdly, "a prospective commissioner should be able to demonstrate by his or her past performance some concrete interest in the work of the agency to which he is to be appointed." Fourth, "a commissioner should have a high standard of personal integrity, and a clear understanding of the ethical responsibilities of the office." And finally, "at least some member of each commission should have specific knowledge of, and experience in, the work of the agency prior to appointment." We are willing to assume that Mrs. White fulfills two of these five requirements: independence and personal integrity. But these are qualities which, while admirable, could easily be found in individuals who also meet the other three standards.

Mrs. White's background is in public relations. She has been involved in getting information to the news media about her employer, whether it be the USIA or some candidate for election. Whatever else may be said about Mrs. White's nomination, judged by the standards of the Committee's report, she is less than a compelling choice.

If Mrs. White's qualifications are somewhat lacking, the method of her selection shows an even greater lack of sensitivity to the need for responsible appointments to the regulatory agencies. The Commerce Committee's report on the appointment process pinpointed the problem and the sad legacy of these appointments: "Partisan political considerations dominate the selection of regulators to an alarming extent. Alarming, in that other factors—such as competence, experience, and even, on occasion, regulatory philosophy—are only secondary considerations. Most commission appointments are the result of well-stoked campaigns conducted at the right time with the right sponsors, and many selections can be explained in terms of powerful political connections and little else: commission seats are good consolation prizes for defeated Congressmen, useful runner-up awards for persons who ricochet into the appointment as a result of a strong yet unsuccessful campaign for another position; appropriate resting berths for those who have labored long and hard in the party vineyards; and a convenient dumping ground for people who have performed unsatisfactorily in other, more important Government posts." There is no evidence that this nomination represents a change in that approach. In fact, there have been a number of reports in the press that this appointment was made for one of those typical political reasons, namely, that the White House nominated Mrs. White to the FCC simply to get her out of the Office of Communications. I have no way of knowing whether or not this was the case in fact. My point is simply that the appearance of this sort of manipulation of the regulatory commissions, without any evidence that the White House did, in fact, make a real effort to select the best qualified nominee can only increase the cynicism of an already cynical public. The Commerce Committee report recommended that "the individuals who are charged with this responsibility (of selecting nominees) in the White House should be given far greater public visibility than they have today." That has not been done. The report also recommended much greater public participation in the selection process.

As Professor Kramer testified when presenting the report in November of last year, "The White House office should actively solicit a broad range of views on who should be appointed. Upcoming vacancies should be announced far in advance of their anticipated occurrence and suggestions solicited." This was not done either.

There was no attempt to consult with interested citizens groups before the nomination was made. There was no apparent attempt to survey the field to find the truly best nominee.

Consumers and citizens groups, like the one I represent, see a need for an outspoken, activist commissioner who would be willing to fight for the rights of the public against the great pressures that the regulated industries can and do put on the Commission. Only by such an appointment can the FCC and other regulatory commissions begin to return to their original purpose, that of protecting the public interest.

This is one reason why representatives of various citizens groups met with Margita White last week. Since we were not consulted in the selection of the nominee, we felt that we had an obligation to try and determine prior to these hearings whether Mrs. White would work on the Commission as a representative of the consumer's interests. I want to thank Mrs. White for agreeing to such a meeting. We do appreciate this willingness to sit down with us, which at least bespeaks a lack of the hostility often found towards citizen representatives. I was not able to attend that meeting, but members of my staff and representatives of other groups were present—at least some of whom were predisposed, or hoping, to find her acceptable. The substantive conclusion of all who attended the meeting was that Mrs. White will not be the needed voice of the consumer on the Commission. In direct contradiction of the second qualification listed by Professor Kramer, Mrs. White displayed little sensitivity to the concerns of minorities and consumers. She seemed unfamiliar with practically every major area of policy-making facing the Commission.

Most inquiries were responded to with a simple "I don't know." But her general philosophical inclination to defer as many decisions as possible to Congress or to what she described as the "workings of the free marketplace," her extreme cautiousness, and the general anti-consumer and anti-minority rights tone of the few substantive answers she did give indicated to those present that she could not be counted on to carry the banner of citizens' rights at the Commission. In preparing for the meeting the only source of information to which she turned was the FCC itself. I am afraid that her appointment will only add to the vast majority of the Commission that serves to rubberstamp the Chairman and to perpetuate the power of the regulated industries at the expense of average citizens.

The question of a serious problem of a conflict of interest is well known to this committee, and I will not dwell upon it at length. You have your reports from the various agencies, and I understand that others testifying today will explore this problem in greater detail. Yet there are clearly many problems raised by this issue which present a potential quagmire for the Commission. Mrs. White has quite rightly said she will disqualify herself from any proceeding in which the firm in which her husband has a financial interest—Hamel, Park, MacCabe, and Saunders—is involved. When she does disqualify herself, however, her potential effectiveness as a Commissioner is severely limited. If she were to ever take a forthright lead on some issue at the Commission, the adversely affected litigant need only hire Hamel, Park to silence her. And how far should her disqualification go? Is it appropriate for her to participate in cases where Hamel, Park's clients have a direct interest, even if Hamel, Park is not participating in that particular case? How can we be assured that no financial benefit, direct or indirect, will accrue to the Whites as a result of the firm's communications work while Mrs. White is on the FCC, either in direct benefits or in delayed remuneration after she leaves the Commission? Will Hamel, Park open their books to public inspection for such a purpose? How can we know whether Hamel, Park's communications work, admittedly small now, will grow substantially in the next seven years? My purpose is not even to raise all the potential questions, let alone provide the answers. It is only to begin to point to the severe problems that are potentially hidden in this conflict. The public is demanding, and rightfully so, the cleanest of appearances from Government. It simply does not make sense unnecessarily to open up the potential of another Pandora's box of ethical issues at this time.

Before I go on to discuss the role the coming Presidential election should have in your deliberations, let me make it clear that I have no intention of being partisan in this discussion. It has not been my past practice, nor is it my present intention, to oppose every nominee of a Republican President. I affirmatively supported Republican Thomas Houser before this Committee when President Nixon appointed him to the FCC, and made no attempt to oppose his appointment this year to head the Office of Telecommunications Policy. I will be supporting today President's Ford's nomination of Joseph Fogarty. We did not comment on the renomination of FCC Commissioner Lee. Although I did oppose the nomination

of Joseph Coors to the Board of the Corporation of Public Broadcasting last year, I raised few, if any, objections to the rest of the nominations of President Ford to the CPB.

We are confronted by a highly unusual situation in this country at the moment. We are being governed by a President who has been elected as neither President nor Vice President and has only narrowly just received the nomination of his own party. We have coming up, in two short months, an opportunity to hear from the people. We are dealing here with a seven year appointment, a term that will last well through that of whoever is elected President in November. It is obviously perfectly legitimate for the President to continue to nominate appointees to the executive branch in order to operate that Branch effectively. But there is good reason to wait when it comes to the long-term, policy setting nominations to the independent regulatory commissions, these "arms of Congress." Two months is not that long to wait when you are talking about an irreversible seven year appointment. Three top ranking members of the House Commerce Committee have written to Chairman Magnuson, requesting that the Senate not approve such nominations until "a President, armed with the people's mandate, takes the oath of office in January 1977." (Of course, there would be no need to wait until January if President Ford is elected.) With the people as suspicious of political manuevering as they already are, it seems only right to await their mandate rather than appear to be rushing this appointment through like some "midnight judge."

The reason for care is only re-enforced by the radical change in the appointment process promised by Mr. Carter if elected, namely, his willingness to begin to make the changes recommended in the Commerce Committee's report that I have quoted today. "I will appoint consumer or citizen advocates on the FCC and other regulatory agencies as well. . . . The thrust fo my own commitment to appointments on regulatory agencies is to fulfill the original concept which was that it would be a forum for the people and the protection of the people themselves." As you know, I have never believed that past "knowledge" or "experience" in one of the regulated industries was necessary or even desirable. But that does not mean that the appointments should be people who have no demonstrated background, interests, experience, or statements regarding consumer rights, administrative agencies, communications issues, or any other relevant area.

Let me repeat. As a citizens group concerned about the quality of broadcasting in America, we take no stand on the two candidates' foreign or agricultural policy, or even on who should be elected. We do have an interest, and a legitimate one, in who gets appointed to communications policy positions in the federal government and the process by which they are selected.

Given the unusual circumstances of the President's position, given the differences in the two major candidates' approach to regulatory appointments, and given the short period of time until the voters will speak, it would seem to be a salutory step towards restoring the faith of the American people in their national government if you were at least to hold this nomination until November.

There is nothing in the past record or current positions of Mrs. White to suggest any need for urgency in placing her on the FCC. Quite the contrary. The problems surrounding this nominee, the circumstances and methods of her selection, the unlikelihood that she would be a strong consumer advocate on the Commission, make her a questionable choice at any time. Under the present circumstances, I think the facts demand that you put aside consideration of her nomination.

Having said that, let me hasten to add that we do very much endorse the appointment of a woman to the Commission. The past, and potential, contribution of women to the operation of government is such that we can no longer afford any remaining vestiges of prejudice against their election or appointment to office. This reasoning applies equally to the FCC. But in the case of the FCC an additional force is at play. Much of the image of women in our society is shaped by television. Therefore, it is especially important that women be included amongst the ranks of advertising and of broadcasting executives and those in Washington who regulate the industry, its employment practices, and its programming. We believe that within the ranks of qualified women one can be found who would make a better FCC Commissioner than Mrs. White.

For a number of reasons, Joseph Fogarty's situation is quite different from Mrs. White's. His nomination is for a term of only two years rather than seven. Not only will the next elected President have an opportunity to review that appointment seventeen months after inauguration, but the shortness of the term demands that it be filled more quickly, so that whoever gets that seat is not saddled with serving a term which is too short to be useful. In addition Mr. Fogarty, is not

the unknown quantity which Mrs. White represents. He has garnered a superb background in communications issues without being beholden to any of the industries regulated by the FCC. He has a demonstrated track record of sensitivity to citizens' groups concerns. His character and professional qualifications are as well known to this Committee as anyone's could be.

Mr. Chairman, thank you for this opportunity to appear before you. I would be pleased to address any questions you or the other members may have.

Senator PASTORE. Now, we have three other witnesses. Two of them come from Washington, D.C., and one comes from West Virginia, Charles M. Firestone. Is he here?

Mr. FIRESTONE. Yes.

Senator PASTORE. How long will you take?

Mr. FIRESTONE. I have a four-page statement, but I am really local, also.

Senator PASTORE. All right. That being the case, we will recess until 1:30.

AFTERNOON SESSION

Senator PASTORE. Is Harvey J. Shulman here?

Mr. SHULMAN. Yes, sir.

Senator PASTORE. Will you please come forward.

You may proceed.

## STATEMENT OF HARVEY J. SHULMAN, EXECUTIVE DIRECTOR, MEDIA ACCESS PROJECT, WASHINGTON, D.C.

Mr. SHULMAN. Senator Pastore, Senator Baker, other members of the committee who will read this record, I appreciate the opportunity to be here today to discuss my concern with the nomination of Mrs. Margareta White to a 7-year term on the Commission.

I am an attorney with a public interest law firm in Washington, D.C., which does a substantial amount of its work before the FCC. Many of our clients are engaged in matters which would come before Mrs. White and other Commissioners in the course of the next 7 years.

My concern with the nomination of Mrs. White relates primarily to the ability of an important Federal agency to function fully, fairly and efficiently and to appear to so function, not only to my clients, but to the public at large. For this reason I would confine my testimony to the matter of conflict of interest and the appearance of conflict of interest and Mrs. White's disqualification from voting on certain items before the Commission.

I sat here this morning and listened to the testimony on those points. I think everyone agrees that there is a serious question as to how the conflict matter should be resolved. This committee, in its capacity to advise and consent, and the Senate in that capacity need not necessarily be limited to the strict legal definition of what is a conflict of interest and what is an appearance of a conflict of interest.

But nonetheless, I have tried to pursue that legal approach to give the committee what I think is perhaps that most narrow evaluation of the conflict question.

While no discussion of the conflict question could really be complete without some examination of the roles of a Commissioner, I think the committee is fairly familiar with the duties that face a Commissioner. They are broad and they concern adjudicatory matters as well as rulemaking. They relate to broadcasting, television and radio licenses, as

well as common carrier matters. And I note that one of the larger sections of the Communications Act—Title II—deals with the common carrier questions.

There is an initial point that Mrs. White referred to in her testimony this morning and there was some question about: Commissioners are, in fact, charged under the act with appointing lower level staff members, subject, of course, to the civil service laws. The question was raised, what should be done if a Commissioner that possibly had some conflict or appearance of conflict had to take part in appointing such lower level staff members? I urge that as one consideration when the nomination is discussed.

In view of the Commission's broad authority, it is clear that its regulatory arm stretches into virtually every single facet of American life, from family living rooms to telephone company board rooms to cargo carrier radio rooms. Because the FCC is charged with the very sensitive role of walking a delicate tightrope between censorship and fostering the public interest, it is submitted that the Senate has a special duty to insure that in this sensitive First Amendment area, only independent, impartial, well-qualified appointees are confirmed to the critical decisionmaking role of FCC Commissioner.

My first concern with the conflict question is in regard to a Commissioner's spouse.

There are several statutes and regulations which generally define instances in which a conflict exists or appears to exist. But here, again, although I would limit myself to a discussion of those legal standards, there is no reason why the Senate powers cannot go beyond them. On the other hand, in reviewing the conflict laws we have to be mindful of what Averill Harriman is recently quoted as saying, and that is:

> We are so handicapped by these restrictions which attempt to avoid the appearance of conflicts, but they don't seem to work. Just because somebody might have an indirect interest does not mean he might become a crook.

I don't feel very comfortable addressing the conflict question because it relates personally to an individual and to the questioning of one's integrity or how the public will conceive of that integrity. But I feel it is a legal question that has to be addressed.

I begin my discussion of the conflict rules by saying I am aware that Mrs. White has voluntarily offered to recuse herself from participation "in any case or matter before the Commission which involves a party represented by the firm of Hamel, Park, McCabe and Saunders," in which Mrs. White's husband is a partner.

Furthermore, "Mr. White will not share in any profits from legal fees received by his firm in payment for his services with respect to communications matters."

Yet I think it is important to recognize that Mrs. White's refusal was mandated by the conflict of interest rules so that no one, whether she is approved or not approved, could ever make the claim that either public or private pressures forced upon her an unnecessary and serious decision.

The basic conflict of interest statute is 18 U.S.C. §208(a) which imposes criminal penalties—again, showing the seriousness of the matter—upon one who—and I will paraphrase—being an officer of any independent agency participates personally and substantially as a government officer in any matter in which, to his knowledge, he or his spouse has a financial interest.

Hence, for purposes of this statute and the conflict of interest laws generally, the interests of one spouse, male or female, are considered as equivalent to that of the other spouse. An Executive order, issued by President Johnson some years ago and still in effect, would require Mrs. White, if she became a Commissioner, to file a financial disclosure statement with the Civil Service Commission in which she would have to list her husband's financial interests and all business enterprises and the like with which he is concerned as an employee, officer, owner, director, trustee, partner, adviser, or consultant. This disclosure is not limited to broadcast matters; it concerns all matters in which he is so involved.

While the treatment of spousal relationships must take account of the marital rights of both parties and the individual right in each spouse to pursue his or her own professional career, it cannot be deemed insignificant that the financial and personal interest and well-being of husband and wife are innately connected.

When considering the application of the conflict of interest laws to a public servant, either directly or through a spousal interest, every effort must be made to protect against the appearance of a conflict of interest, in addition to the actual existence of a conflict. Since, under the Executive order, "every citizen is entitled to have complete confidence in the integrity of his Government," persons in public office must be careful to—and I quote—

> Avoid any action, whether or not specifically prohibited by the Executive order, which might result in, or create the appearance of using public office for private gain; giving preferential treatment to any organization or person; impeding Government efficiency or economy; losing complete independence or impartiality of action; making a government decision outside official channels; or affecting adversely the confidence of the public in the integrity of the Government.

In order to avoid an actual conflict, or the appearance of a conflict, Mrs. White has agreed to disqualify herself from participating in matters in which her husband's firm is representing a client. There does not appear to be any agency or court decision precisely on this point, but it is appropriate to look for guidance to the rulings of the Interim Advisory Committee on Judicial Activities which was appointed by Chief Justice Burger in 1969, and which renders advisory opinions to judges on recusal questions. It must be pointed out, and case law supports this point, that Commissioners should be expected to conform to no less of an ethical standard of conduct than that expected of Federal judges. In fact, in view of the broader policymaking rules given Commissioners, even a higher standard of conduct might be expected. *See Long Beach Federal Savings & Loan Ass'n* v. *Federal Home Bank*, 189 F. Supp. 589, 607–610 (C.D. Cal. 1960), *rev'd on other grounds*, 295 F. 2d. 403 (9th Cir. 1960).

Like the statutes and the canons regulating Commissioners and attorneys, the judicial conflict provisions equate the financial interest of a judge and the judge's spouse. And I might say to this committee, in the past this has worked to the deteriment of a lot of well-qualified men who were considered for Federal appointments, and for one reason or another due to the interests of their wives, they did not get an appointment or had to make some sacrifices there.

Now, in equating the financial interest of a judge and a judge's spouse, the Interim Advisory Committee, for example, saw no difference between a case in which a judge's wife holds stock in a party

to a proceeding and a case in which the judge himself owns the stock. Accordingly, a judge must recuse himself in that situation.

In a case which is essentially on point with the facts relating to Mr. and Mrs. White, the Judicial Advisory Committee was asked to rule on whether a judge should recuse himself in any case in which one of the attorneys is a partner or associate of a law firm of which the judge's son is a partner. In broad language which sets the standard that should be applicable here, the committee said:

> The Committee believes that where the relationship is so close as that of father and son, a judge may well feel that he should disqualify himself altogether when a partner or associate of a firm of which his son is a member appears as counsel. If he does not, he should refuse to hear or participate in the hearing of the case unless all the parties willingly consent that he do so.

The committee's reference to the judge's relative as a member of the firm rather than a partner also raises the question of whether recusal would have been necessary if the son were only a firm associate. If so—and this result appears justifiable—it is because instead of the direct financial benefit which might accrue to a firm partner from the litigation in which the partner's relative has participated as a judge, there would always appear to many people to be preferential treatment accorded to the relative's employer, a loss of impartiality of the decisionmaker, and an adverse effect upon the confidence which the public must have in the integrity of Government. If the relative's firm wins its cases, if it prospers and attracts new clients, if it becomes well known to the public, the judge's relative can reasonably be expected to become a partner in the future in the normal course of things. Especially on important cases, financial interest aside, the public cannot help but say, "Well, Judge X or Commissioner Y has a son or spouse who is associated with the firm trying the case."

To put it simply, it does not look good in the public eye to have the decisionmaker participate in a proceeding in which a party is represented by a firm with which the decisionmaker's close relative is associated.

For all of these reasons, it is submitted that Mrs. White could not have done other than to disqualify herself in matters where Mr. White's firm is representing one of the parties. And although Mr. White has agreed to forego a share of the firm's profits which are related to its communications practice, this does not sufficiently mitigate the appearance of conflict so as to justify any result other than disqualification.

Moreover, the committee is urged to bring an expert in partnership law to address this point, because it does not appear that there is a practical method by which Mr. White can remove himself from all firm policies and practices that effect the firm's communications practice. A general familiarity with partnership law imparts the basic understanding that in addition to sharing a firm's profits, partners have a right and a duty to take part in decisions which affect the overall functioning of the firm. Even if Mr. White foregoes partnership income from communications cases, the Justice Department has recommended that so as to avoid the appearance of conflict, he "take steps to insure that he will have no knowledge regarding such matters."

A question is raised as to how this result can be achieved if, as a partner, Mr. White must decide upon such matters as how much each partner and associate will receive; what will be the area of the firm's

development in future years—will it be communications, tax or other areas—what clients shall the firm represent as general counsel, et cetera. In short—and I think this point was brought out this morning, and no answer was given to it—the committee must know the exact arrangements by Mr. White to meet the standards contained in the Justice Department letter which relates to his knowledge and participation in firm decisions. And if public confidence and the absence of any appearance of conflict is to be maintained, there must be some mechanism for public scrutiny of those arrangements, as well as perhaps a yearly audit by an independent accounting firm of Mr. White's financial arrangements with the firm; otherwise, there is absolutely no device for establishing that Mr. White is receiving no income directly or indirectly through subsidization as a result of the firm's communications practice.

This morning Mrs. White said she thought her husband might lose between 5 and 10 percent of his income. The White House counsel letter said it will be approximately 10 percent. We have no idea what figures we are talking about and how that is going to change over the years. If the communications practice of the firm grows, and it may be that 25 percent of the firm's practice will be communication law, is Mr. White then going to forego 25 percent of his income, or will he get an indirect subsidization through some other way? This is one reason why there must be some kind of independent auditing.

A similar practical problem arises in connection with Mrs. White's recusal. Again, the Justice Department urges that Mrs. White "take steps to insulate herself from knowledge of the particulars of FCC proceedings in which her husband's firm is appearing." The committee and the public are entitled to know before her nomination is confirmed exactly what steps Mrs. White and the Commission will take to effectuate the Justice Department's recommendation. We have not heard answers to that this morning. In fact, Mrs. White has confirmed that she has not yet consulted with the General Counsel's Office of the Commission to find out what procedures can be set up.

The problem relating to Mrs. White's effectuation of the Justice Department proposal also leads to other questions about the practicality of a recusal limited to proceedings in which Mr. White's firm is representing a party, instead of all proceedings in which an important client of Mr. White's firm is participating through the representation of other counsel.

The Justice Department did not think that Mrs. White should agree to a blanket exclusion from participating in every case concerning a client of Mr. White's firm if the client is represented by another firm in that particular proceeding. However, the Department did not rule out that there may arise specific instances requiring recusal in such other circumstances. It takes little imagination to recognize that Mr. White's firm may have a very real financial interest in cases in which some of its larger clients for which it does a substantial part of the client's work are involved in proceedings before the FCC.

For example, suppose his firm is tax counsel or general counsel to a corporation which is represented by another firm in its quest for a license before the FCC. If the Commission should vote to grant the license, there may well be a substantial increase in Mr. White's firm's broadcast or nonbroadcast work for that client.

Again, it is not suggested that in every single instance in which a party appears before the FCC and is represented by a firm other than Hamel, Park—although it uses Mr. White's firm for some of its other business—that Mrs. White must recuse herself. But there are bound to be instances in which, because of the relationship between Mr. White's firm, or perhaps Mr. White himself, and the client which chooses another firm to represent it before the FCC in a particular case, that Mrs. White would face a strong argument in favor of disqualifying herself.

Several factual situations comprising varying degrees of appearance of conflict present themselves for careful study by this committee.

For example: Client W uses Mr. White's firm in a case wherein an administrative law judge and the Review Board have made decisions at the FCC. When the case is appealed to the full Commission by a losing party, including the Commission's Broadcast Bureau, client W decides to employ another law firm whose name now appears on its pleadings. It is not known what, if any, work Mr. White's firm is still doing on the case.

Now, Mrs. White herself made reference this morning to a situation in which matters appear before the staff of the Commission but in which Commissioners don't participate personally. Well, many matters do eventually end up on the Commissioners' desks after the staff gets them. What is Mrs. White going to do in those cases, if Hamel, Park has handled the case at the lower level but suddenly Hamel, Park has handled the case at the lower level but suddenly gets out of the case above?

Another example: Client X uses Mr. White's firm for tax counsel and numerous broadcasting matters, some of which come before the FCC. Client X is an important client of Mr. White's firm in that it provides substantial income to the firm and provides the firm with greater prestige, which attracts other clients. On a particular matter in which this client has a vital stake, the client chooses to use another law firm. What will Mrs. White do in that circumstance regarding the connection between her husband's firm and this particular client?

The last example: client Y has used Mr. White's firm on numerous occasions for broadcast proceedings before the FCC. corporation A has interests identical to that of client Y, but corporation A is using other firms. If corporation A wins its case, there will be enormous benefit to client Y of Mr. White's firm. Conversely, if corporation A loses, client Y's interests will be seriously and adversely affected. Client Y chooses not to participate in an FCC proceeding of importance to it, instead relying upon corporation A's participation in the proceeding. What will Commissioner White do in that circumstance, where the result in a particular case will definitely abound to the advantage or disadvantage of Mr. White's firm's client?

These concerns, Senator, are not theoretical. For example, A.T. & T has often stated to State regulatory commissions that intrastate phone rates can be kept low if A.T. & T is insulated from interstate competition. Hence, State agencies have wound up representing A. T. & T.'s interests at the FCC, and there is a case on that point. *See Washington Utilities and Transportation Commission—FCC* 513 F. 2d 1142 (9th Cir. 1975).

This raises a very serious question, because once Mrs. White's position on an issue is generally known, parties can play "firm shop-

ping" or "alter ego shopping" to either have her recused or to allow her to participate. If A.T. & T. wants here to vote, it might decide to let another party front for it, or it might use another law firm. If, however, Mrs. White's vote is detrimental to A.T. & T. or any other party, it could affirmatively use Mr. White's firm to represent it, thereby knowing that it is eliminating an unfavorable vote.

Mr. White, to his credit, this morning indicated that he did not know what brought people through the firm's door on communications matters. I presume that if a client comes in and wants that firm's representation on communications matters, that they are not going to say, "Well, Mr. White is in the firm, and therefore, we are not going to represent you." If, in fact, they represent that client, then that client can effectuate a plan to eliminate Mrs. White's vote.

Similarly—and this is a very interesting technique—where there is a party wishing to establish an important legal principle which it knows from Mrs. White's other votes that she is not going to support, or suspects is not going to support, it can choose to litigate against one of Hamel, Park's traditional clients so that Mrs. White will have to recuse herself.

Well, the number of permutations and combinations of situations is endless, depending upon the cunning of parties and of legal counsel. Even though Mrs. White has in good faith disqualified herself from many of these proceedings, it is clear that her conscience-bound ethical decisions will be a factor in any litigation. In short, with Mrs. White on the Commission, there will be a new ingredient injected into the decisionmaking process, and one which has absolutely no relationship with the merits of the case. Whether there is a 3 to 3 tie or a 4 to 3 vote will depend upon who is the party and who is the counsel representing the party. The committee must seriously ask itself whether it wants to sanction those results.

There is another side of the coin which was briefly touched on by Senator Stevens this morning. If a situation, arises in which there is a question as to whether or not Mrs. White might or might not recuse herself, how much, in an effort to be fair, would Mrs. White lean backward? It's really saying to someone, a client of her husband's firm on other matters, or at least saying about the client in her own head, "I have really got to be fair and I have got to judge what this person has to say with the utmost care." It is almost applying a higher standard to a party rather than a lower standard. In cases, where judges have law clerks who come before them after the law clerk's practice is up, the toughest time given to those attorneys is by the judge for whom that clerk worked. It almost a presumption of trying to be too fair.

In summary, the conflict-of-interest question is not as simple as it might appear. The financial and other interest of a judge or a Commissioner's relatives, whether they be spouses or children, necessitates the recusal of the decisionmaker.

Senator BAKER. Mr. Shulman, if you'll suspend just for a minute. Senator Pastore and I had hoped to spell each other during these rollcalls so you could continue your testimony. However, that signal is the 5-minute warning on this rollcall. If you will discontinue your statement for a moment, one or the other of us will be ready to continue in a few minutes.

Mr. SHULMAN. Thank you, Senator.

[Brief recess.]

Senator PASTORE. You may proceed.

Mr. SHULMAN. I was summarizing, Senator Pastore, that the conflict-of-interest question—and I suppose this is now an understatement—is not as simple as it might first appear. The financial and other interests of a judge's or a Commissioner's relatives, whether they be spouses or children, necessitates the recusal of the decision-maker.

While it may be abundantly clear in some cases that recusal is required—for example, where a relative is a partner is a firm representing the client—disqualification may have to occur in other cases wherein the relationship between a party to the proceeding and the decision-maker's spouse's firm is substantial enough to raise a question of the appearance of conflict.

Until the committee knows the full degree of Mrs. White's willingness to recuse herself in these other cases and evaluate the results of the wild card situation which her recusal will foster, it is submitted that her appointment should not be confirmed.

A second matter of conflict, an appearance of conflict, I would like to get to relates to Mrs. White's former employer. I think there is a problem that arises concerning Mrs. White's present employment or employment in the White House Office of Communication and its implications concerning her service as an FCC Commissioner.

She has been Assistant Press Secretary to the President and Director of the White House Office of Communications. This makes no difference, Senator, whether it was in a Democratic or Republican administration. She has held that position for over a year, though she previously served as an assistant to the Director of Communications from January 1969 to January 1973. Mrs. White has been involved with informing newspaper editors and broadcast licensees around the country about the rationale for White House decisions. Her work has primarily been with the local media outside of Washington, D.C., who have no correspondents in the city.

For example—and I am sure the committee is very well familiar with this—the recent FCC rulings last year allowed licensees broad new latitude in covering certain types of press conferences, debates, and things along this nature. Mrs. White, to her credit, as an excellent press person, set up the recent spate of local broadcast interviews with the President during the primary season, the same ones that Ronald Reagan complained about.

If this committee approves Mrs. White's nomination before the November election, it is clear that she will be faced with access complaints by Federal, State and local candidates. Some of these complaints are bound to involve, as they have in every other Presidential election year, charges that the Republican or the Democratic Presidential candidate have received too much or too little broadcast coverage. The complaints may come from one of the two major party candidates or from an independent candidate, like Eugene McCarthy, or from a third party candidate.

Some of the questions concerning such complaints are bound to involve novel questions of law with far-reaching implications.

For example, section 312(a)(7) which gives Federal candidates access rights was adopted in 1972 and its full dimensions are still

unknown and probably are going to be flushed out in this Presidential year.

It is apparent that Mrs. White should disqualify herself from participating in matters relating to the coverage of the Presidential candidates.

Now, in section 4(b) of the Communications Act, Congress mandated that no more than four members of the Commission shall be from any one political party. That showed, and I submit, some concern on the part of Congress that politics, not only not infiltrate Commission decisions, but not appear to infiltrate Commission decisions. And while no specific conflict of interest law is directed to the particular fact situation of a former employee taking part in a complaint involving a former employer less than 3 months after leaving his or her job, at least there is bound to be the appearance of preferential treatment or a loss of impartiality, and most importantly, of adversely affecting the confidence of the public in the integrity of the Government.

If a former Government employee can be precluded from acting on behalf of a party to a proceeding in which the employee was involved or which was related to the employee's official responsibility when he was still serving on the Commission, then there is no reason why the opposite is not true; that is, where someone leaves one job in private industry or Government and goes to the Commission, that employee should not be precluded from participating in matters relating to the former employer.

In this case, it is not simply that Mrs. White has been an important employee of one political party or the President, it is that her formal duties in that role have involved her in one of the most critical areas of broadcasting, the relationships between political candidates and the media.

In the sensitive first amendment area in which Commissioners must make decisions, the specter of having the previous Director of the White House Office of Communications rule on section 315 or section 312 complaints only 3 months after leaving office in an election year is not acceptable.

While Mrs. White has refused to recuse herself—I should say, Senator, that I was among the persons who met with Mrs. White last week, and she stuck through 2½ hours of serious questioning on the issues and impresssed us with her willingness to talk about these matters. One of the matters that I specifically raised with her was recusal in a situation where the Republican National Committee or President Ford's Election Committee filed a complaint which directly or indirectly involved the incumbent President and his campaign committee, or the Democrats filed a complaint, or anyone, and she was not willing to state that she would recuse herself from those situations. And I submit that until that commitment has been made, that the committee should not approve her appointment.

Senator PASTORE. Mrs. White, is that allegation true?

Mrs. WHITE. I think it would be more accurate to say that I was not willing to state a position either way.

Senator PASTORE. Mr. Shulman, did you understand it that way?

Do you mean she refused to take a position on it?

Mr. SHULMAN. In my view, Senator, it was a little stronger than that, saying that she would hope that the stiuation would not arise be-

cause she would take the time to familiarize herself with the way the Commission worked and maybe these matters really would not come before her for ruling before the election.

And I left, sir, very much with the impression that there was at least an implicit refusal to recuse herself in that situation.

Senator PASTORE. Did I understand you, Mrs. White, to say that you did not want to make a decision one way or another?

Mrs. WHITE. I made the point, as the gentleman points out, that I felt it was traditional for new commissioners to familiarize themselves with the Commission for a period of time, 1 month or 2 months.

So it was quite likely that I would not be ready to vote on any matter during the election campaign. As far as any issue with respect to this area, I wasn't sure how I would act. I did not think any more about it.

Senator PASTORE. Thank you. Go ahead.

Mr. SHULMAN. And so, Senator, I would restate until that commitment is made that recusal would occur in that situation, I do not feel that the appointment should be confirmed.

My last discussion relates to the concept of the parttime commissioner. This witness is not familiar with the situation in recent years in which a commissioner of the FCC, prior to being confirmed, has agreed to recusal in a general area of cases here, where disqualification concerns cases in which Hamel, Park is serving as counsel, or other cases in which one of its clients is represented by other counsel, and cases in which a complaint concerning coverage of the Presidential race is involved. An important question arises as to whether Mrs. White's appointment would "result in, or create the appearance of impeding Government efficiency or economy." And that quote is from a Presidential Executive order.

This question, Senator, cannot be fully answered at this time because the public is not aware of the number and types of clients that Mr. White's firm now represents before the FCC. Until that information is obtained and released for public comment, the committee should not approve the nomination. I cannot meaningfully comment on the ramifications of her refusal, nor can anyone else with any specifics, and that is not a good situation.

Since we did know, however, that Mr. White's firm does some work for A.T. & T., a brief description of the potential problems relating to Mrs. White's disqualification in some A.T. & T. cases would illustrate the need for more information.

Among the more important activities of the Commission is the regulation of services, facilities, and rates of A.T. & T. In the past decade, there has been a new emphasis at the Commission on common carrier matters. Absent action by Congress—and, by the way, members of the Commission are asked to comment upon recommendations to Congress—the Commission will be faced with a series of decisions in the coming years, which will determine the extent to which A.T. & T. provides telecommunications services without competition.

Significantly, the pervasiveness of A.T. & T. in our national communications system is so great that even where A.T. & T. is not named as a party, Commission decisions in many areas inevitably have a substantial effect upon it. For example, television networks historically distributed their signals through A.T. & T.-owned and operated cables and microwave relay towers, leased from A.T. & T. under private line

tariffs approved by the FCC. Now distribution of programing over the long haul may also be provided by domestic satellite carriers operated by Western Union or RCA. The burgeoning pay cable television industry depends upon this new and less expensive way of distributing a television signal nationwide.

There must be an examination of the extent of Mr. White's firm's work for A.T. & T. on these matters, for if Mrs. White eventually disqualifies herself on them, she will be removing herself from participation in a critical area of the Commission's decisionmaking.

The Commission also has to approve the placement of satellites in orbit and other technical specifications. These decisions always affect A.T. & T. in its plans to utilize satellites. Moreover, by Commission decision, A.T. & T. cannot compete in the distribution of television signals via satellite. It must utilize its new ComStar satellites only for message telephone and WATS services for at least 3 years. And the Commission will soon be called upon to rule on matters relating to the PBS satellite network plan which would utilize over 200 satellite receivers across the country. PBS will then stop using the A.T. & T. system of private lines.

In these critical areas regarding the development of satellite technology and competition in the field, the public is entitled to know, Senator, prior to a vote to confirm Mrs. White's nomination, of the work done on these matters by Mr. White's firm and the extent to which Mrs. White will be precluded from participating in these matters.

The Commission will also be determining A.T. & T.'s ability to compete in the providing of business communications, private lines, computer communication networks, and the delicate matter of connection of customer-owned equipment into the A.T. & T. system. Interconnections into the A.T. & T. system by specialized common carrier and by mobile radio units will also come before the FCC. Though these matters get less attention in the press than do the Commission's broadcast regulation responsibilities, millions of dollars of business and the potential for rapid development of entire new communications networks, are worth great attention by this Committee in this nomination.

What work Mr. White's firm has done in these regards must be known in advance so that members of the public can address the ramifications of Mrs. White's recusal.

Without this additional information concerning the full range of representation undertaken by Mr. White's firm, this Committee risks the possibility that only a part-time commissioner will be confirmed. The breadth and depth of Mrs. White's experiences and philosophy may never come to bear upon some of the most critical decisions that the Commission will face in the next 7 years.

When added to what appears to be a necessary recusal on election-year Presidential coverage matters, another key area of concern, there is a serious question as to whether Mrs. White's membership on the Commission would impede that agency's efficient functioning.

Even the Justice Department, Senator, has expressed concern if Mrs. White were required to disqualify herself in too many matters. Now it is true the Justice Department concerned itself with the situation that would result if Mrs. White were required to excuse herself in all A.T. & T. matters. But the same principle applies if she were

required to disqualify herself in a large number of cases of any type or in a significant number of cases in any particular, important area.

Certainly, in its "advise and consent" capacity, this Committee should express no less a concern than the Justice Department about having a part-time commissioner.

In conclusion, Senator Pastore and Senator Baker, the conflict of interest laws pose serious problems for the confirmation of Mrs. White without the examination by this Committee and by citizens of more information. We must know the specific arrangements that will be made by Mr. White's firm and by the Commission to insulate Mr. and Mrs. White respectively from knowledge about or participation in matters relating to Mr. White's firm's clients.

We must know the nature and extent of the practice engaged in by Mr. White's firm in order to determine in how many cases and in what types of cases Mrs. White will be unable to hear.

Then, in view of her recusal on these cases, as well as on certain section 315 and section 312 matters in an election year, and in light of the "wild card" element that will be interjected into the Commission's decisionmaking processes because of her recusal, a conclusion must be made as to whether she should be confirmed.

And I would make one last point. There is only one FCC in this country. In that sense, it is analogous to the Supreme Court. There are a lot of district judges and court of appeals judges around the country who have interests that may or may not create conflicts or the appearance of conflict. And some of those situations are dealt with by disposal of interest. Others by recusal, because a judge can efficiently recuse himself or herself since there are hundreds of district court judges and hundreds of court of appeals judges that can hear these issues and regularly do so.

The situation is different with respect to the FCC. This nomination should be treated as if it were an appointment to the "Supreme Court of Communications."

With all of these matters left unresolved, the question is the extent of the recusal and its effect on the functioning of the FCC. I don't think that the Senate would confirm an appointment to the Supreme Court of the United States under these circumstances and I would hope that it certainly would seek more information before confirming this appointment to the FCC.

Senator PASTORE. Any questions?

Senator BAKER. Just one, Mr. Chairman.

That last point is a good point. Obviously the FCC is, although not technically for many practical cases, the court of last resort.

But, let us examine that analogy, because as I said earlier, and the chairman and others on the committee have indicated, we are dealing with a very sensitive and fairly new relationship.

What would happen if the President had sent Mrs. White's name up for the Supreme Court? Obviously, it is the constitutional court of general jurisdiction. What would we do about Mr. White in that case? We could not segregate all of his income; we could not let him renounce his income from any matter that might go to the Supreme Court.

Either she could not be concerned, or they would have to get a divorce.

Now what would you do? How could you handle that situation?

I am not trying to make a difficult situation even more delicate, but we are dealing with a case where increasingly we are going to have families with both the men and women in a career. What constructive. suggestions could you give us not only in this case, but on that occasion?

Mr. SHULMAN. Senator, sometimes there are questions which either have no answer, or have answers which are not going to please everyone.

I think Chief Justice Burger's Interim Advisory Committee opinion makes it clear that Justice White, or Mrs. Justice White, as opposed to Mr. Justice White, would have to recuse herself on matters that were handled by her husband's firm.

Senator BAKER. Isn't that the same thing she is proposing to do here?

Mr. SHULMAN. That is correct.

And in fact, I would suggest, Senator, that since as you pointed out, the Supreme Court jurisdiction is much broader in a general sense anyway, than the FCC jurisdiction, the size of the firm might be relevant. If Mr. White were a partner in a large firm in Washington, that had literally thousands or tens of thousands of cases that would come up for petition for certiori or appeal on the merits, a serious question would be raised as to whether the appointment should be approved because recusal would be too widespread.

Now there is an analogous situation here where you are dealing with the FCC. It is true that Mr. White's firm is a smaller firm, but in the firm, Senator, is the current president of the Federal Communications Bar Association, the former General Counsel of the FCC, and I understand there is another firm member that does communications practice.

So presumably these people were brought in or came back with an eye toward opening an FCC practice up. And the scope of the problem may be different, but the principles are the same.

Senator PASTORE. We should also consider the question of Mrs. White's participation in FCC rulemaking proceedings, which are very broad in scope. Rulemaking proceedings might directly, or indirectly, affect almost any case that might be under consideration, whether or not the firm actually participated in that rulemaking proceeding.

It is a very sensitive question. I wish I knew the answer to it.

Senator BAKER. It may be, Mr. Chairman, that at some point, not this afternoon I hasten to say, but at some point, Congress is going to have to address itself to that question and try to institutionalize some arrangement to relieve us of this difficulty.

But this nomination has to be dealt with on its own merits. I predict that the question will arise more frequently in the future. We ought to turn our attention to a way to avoid asking a penalty and a price for husbands or wives, for the other's career.

Senator PASTORE. Thank you very much.

Mr. SHULMAN. Thank you, Senator Baker and Senator Pastore.

Senator PASTORE. Could we have Mr. Charles M. Firestone?

You may proceed, Mr. Firestone.

## STATEMENT OF CHARLES M. FIRESTONE, ATTORNEY

Mr. FIRESTONE. Thank you Mr. Chairman, and members of the committee. Thank you for providing me this opportunity to speak on

the nomination of Margareta E. White to a 7-year term on the Federal Communications Commission.

I am Charles Firestone, a staff attorney at Citizens Communications Center for over 3 years. Prior to that I was an attorney in the FCC General Counsel's Office for almost 4 years. I have had extensive experience both within and outside the FCC in observing the performance of FCC Commissioners for the last 7 years.

I addressed this subcommittee on January 30, 1974, on the nomination of James Quello to the Commission, and later that year on broadcast renewal legislation. As in the Quello confirmation hearings, I am speaking for myself and my views are not necessarily those of citizens.

First, I would like to depart from my statement for a minute and commend you, Mr. Chairman, for your service to the public as chairman of this committee which I have seen both at the Commission and as a member of the public, because I won't ever be before you again. I would just say that I believe that knowledgeable people in the communications industry know that you have always been patient, fair, and have done the public a great service in chairing this committee.

I reiterate today my urging during the Quello confirmation hearings that the Senate require the President to appoint highly qualified people to the Commission, who are sensitive to the consumer or viewer's perspective of the public interest, and who will be independent and intelligent policymakers.

But I also urge you today to consider this nomination by an even higher standard, and to approve it only if you find that Mrs. White brings to the Commission extraordinary or outstanding qualities, characteristics or contributions to compensate for the part-time nature of her proposed commissionership.

I would like to also say that I have been troubled and agonized over this testimony. I also met with Mrs. White. She was a very nice woman, and I would like to see a woman appointed to the Commission. The problem is that there are issues here which are larger than just Mrs. White, and I would hate to be agonizing for the next 7 years over these larger issues. And that is why I am here today.

As you are well aware, Mrs. White has represented that she will disqualify herself on all matters before the Commission in which her husband's law firm, Hamel, Park, McCabe & Saunders is counsel. And her husband, Stuart White, will not take funds from the portion of the firm's revenues which derive from its communications clients.

While I do not believe Mrs. White's offer is sufficient to remove all appearances of conflict of interest, which I will address shortly, even those matters on which she will disqualify herself will be substantial, making her only a part-time commissioner.

Besides representing A.T. & T., Hamel, Park can be expected to pursue a vigorous practice before the Commission over the next 7 years. It is at present building its communications law practice. In the past few years, several well-known communications attorneys have joined the firm—including the present president of the Federal Communications Bar Association, the past General Counsel of the Federal Communications Commission, and a former Administrative Assistant to the Chairman of the Commission.

There are at least two, and maybe a third additional lawyer at the firm who are members of the Federal Communications Bar Association.

This firm, then, can be expected to participate in both important adjudicatory matters and some of the major rulemaking proceedings and inquires before the Commission through 1983.

These would include establishing major policies for some of the important telecommunications issues for the next decade or two, such as the degree of competition which will be allowed for A.T. & T., regulation of computer communications, and other common carrier, broadcasting and cable television matters.

I think what we have to do is not simply look at who Hamel, Park's clients are today, but look toward what we can expect this practice, how vigorous and extensive this practice could be expected to be over the next 7 years.

I would further question Mrs. White's standard for disqualification on FCC proceedings. A judge is supposed to avoid even the appearance of impropriety of conflict of interest. To do this I would think Mrs. White would want to disqualify herself on all matters which involve, directly or indirectly, Hamel, Park's communications clients. Moreover, I would think Mrs. White would also disqualify herself on political matters before the Commission which would have any effect on President Ford's campaign.

Senator PASTORE. I don't state this as a suggestion but rather as a hope, only as a dream: If Mr. White would set up his own law firm and get into tax work, I could sleep tonight.

Mr. FIRESTONE. As a former press and public relations director for the President while his campaign was in full swing, the appearance of impropriety would follow every vote relating to his campaign.

In addition, in order to assure the public that Mr. White is not indirectly receiving his salary from the firm's revenue from its communications clients, Hamel, Park will certainly have to open its books to the public, or its representatives. Otherwise, Mr. White's compensation would be questioned in the mind of the general public as perhaps indirectly related to Mrs. White's position on the Commission. More troublesome, without Hamel, Park's opening its books, the public will not know whether Hamel, Park's clients are paying the firm for advice but not formal representation on matters on which Mrs. White would be sitting as Commissioner.

One other thing I noticed, in the assets in the financial statement, apparently there is something called the 1776 F Street Associates, and I would note that that is the address of a law firm. I don't know to what extent—really, what it is, except it appears to be a real estate type interest, and so I would question whether or not her interest in that, or her husband's interest in that, would be increased by any increase in revenues from the firm's communications law clients.

These issues raise a valid question as to whether Mrs. White's proposal for disqualification is sufficient to avoid even the appearance of conflict, as legal and judicial canons require.

But no matter what her basis for refusal is going to be, Margareta White will have to disqualify herself, as I have pointed out, on a substantial number of important proceedings over the next 7 years.

Initially, I believe this is a danger signal: confirmation of a part-time commissioner would generally not be in the public interest, unless it is compensated by certain extraordinary or outstanding qualities, characteristics, experience, or the like which justifies the drawbacks to this nomination.

I would give, as a particular example, particular expertise in an area that is needed by the commission and will be needed by the commission in the future, or a strong background of consumer advocacy.

Senator PASTORE. Tell me again. How many attorneys are members of the FCC Bar in this office?

Mr. FIRESTONE. In Hamel, Park?

Senator PASTORE. Yes.

Mr. FIRESTONE. Well, I believe there are five, maybe six. There are the three that I mentioned. I know of one other who left the commission and is over there who was in the general counsel's office as a lawyer and probably is an associate in the firm. I have no idea. And then I was looking through and I saw at least one other who is I member of the Federal Communications Bar Association. And I should have checked to be sure, but I think that there may be one more. They certainly, I would think, would be more qualified to answer that.

But it is going to be—they're building, is my point, and I think they can expect to be participating on a large number of communications cases at the commission, including rulemaking.

[The following information was subsequently received for the record:]

The January, 1976, FCBA Directory lists the following persons as attorneys in that firm: John P. Bankson, Jr., Joe Dixon Edge, John W. Pettit, John H. Spellman, Louise A. Sunderland, and Anthony J. Thompson.

Mr. FIRESTONE. Ms. White has not, in what I have observed, demonstrated such qualities that meet this standard. Of course, this is a judgment you and the rest of the Senate must make. I strongly urge you, however, to employ the high standard that I have suggested in evaluating this nomination, and not to rush this nomination through without thorough and deliberate consideration of these questions.

Thank you for the opportunity to address these issues. I would be glad to answer your questions as best as I can.

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

Mr. Roger Hickey.

How long are you going to be, Mr. Hickey?

Mr. HICKEY. I will try to be brief, sir.

Senator PASTORE. How brief is brief?

Mr. HICKEY. Can you give me 5 minutes, sir?

Senator PASTORE. I will give you 10. Go ahead.

## STATEMENT OF ROGER HICKEY, DIRECTOR, PUBLIC MEDIA CENTER, WASHINGTON, D.C.

Mr. HICKEY. I appreciate the opportunity to share with you today my views on this nomination.

My name is Roger Hickey and I'm founder and Washington Director of the Public Media Center. I'm not a laywer.

The Public Media Center is a nonprofit media resource production and distribution center working for democratic asccess to the mass media, especially television and radio.

We are sometimes called a public-interest advertising agency, but we are not founded to sell products but to gain access for ideas in the mass media.

In our 3 years of history we have produced public service campaigns and gained air time for such important national organizations as the Consumer Federation of America, Friends of the Earth, Ralph Nader's Public Citizen organization, the Oil, Chemical and Atomic Workers Union, the United Farmworkers Union, and the NAACP Legal Defense Fund among others.

The Public Media Center was established to guarantee the public's first amendment right to be heard and it is because of our concern in this area of citizens' rights that we address the committee concerning the nomination of Mrs. Margareta White to a 7-year seat on the Commission.

I have studied Mrs. White's record, her professional experience, both in Government and private pursuits, and I was privileged to have the opportunity to ask her some questions, along with some of my colleagues at a meeting recently arranged by the National Citizens Committee for Broadcasting.

Senator PASTORE. Well, I want to say this: Regardless of what this committee decides to do, I think it was very decent and cooperative on the part of Mrs. White to appear before this group and subject herself—after all, there was no legal obligation to do it—and to answer whatever questions were put up to her.

Mr. HICKEY. Yes, sir, I agree with that. I think she was most gracious and cooperative with our request for such meeting.

Senator PASTORE. Proceed.

Mr. HICKEY. It is on the basis of what we discussed at this meeting that I felt I wanted to testify before the committee.

She allowed us a wide ranging set of questions about anything we might wish to ask her about policy or her background and philosophy. And after that meeting, I have come to the conclusion that Mrs. White is not well qualified to serve as a representative of the people of the United States on the FCC; and therefore, I come before you to ask that you reject.

Senator PASTORE. Are you referring to qualifications apart from this question of the conflict of interest?

Mr. HICKEY. Yes, sir. The reason I come before you is that in my investigation of her qualifications and opinions, and especially on the concerns of the Public Media Center and our clients, and the national organizations that we represent.

Senator PASTORE. Well, be a little more specific. What did you ask her and what did she say?

Mr. HICKEY. I was about to get into that in my testimony.

Senator PASTORE. All right. Get into it.

Mr. HICKEY. We asked her questions involving her opinion of the application of the Fairness Doctrine, the application of the Fairness Doctrine to the corporate image and product advertising, petitions for rulemaking concerning the definition and standards for public service announcements and public service programing, and the application of section 315 to political advertising concerning ballot propositions.

Senator PASTORE. And what did she say?

Mr. HICKEY. On almost all of these questions she responded that she had not formed an opinion, that she had not studied the matter, that she was uninformed on the matters, and would prefer to wait until she was properly informed.

Senator PASTORE. And do you think that is wrong?

Mr. HICKEY. Well, sir, I do feel that before the Commission come very important questions concerning the rights of citizens to be heard and that perhaps in a time longer ago we could have afforded the luxury for a certain amount of on-the-job training, so to speak, in terms of Commissioner experience.

Senator PASTORE. Now here is a lady who was invited by your group, and she was subjected to interrogation by various people; she did not have to appear, but she did. She graciously appeared, and when she was asked questions which have perplexed this committee, upon which there is diversity of opinion as to each subject you have mentioned, and she replied: "I'm reluctant to answer from the hip, I would like to study it further and then give an answer."

Now, what is so wrong with that?

I must tell you very frankly that I am disturbed about this conflict of interest, but I'm not impressed with the fact that, in your judgment, she is being ruled out as being unqualified for the simple reason that you threw at her the question, "What does she think about the fairness doctrine?"

Well, you know, there is a split opinion, even in this committee, on the fairness doctrine. And then you asked her about various other things, and there is diversity of opinion on all of those subjects. Now, maybe she did not answer in a manner you would have liked. Does that, in your opinion, disqualify her?

Mr. HICKEY. Senator, if you look at my testimony, I explicitly state that I did not expect a correct answer or proper answer from my point of view, that I do not think that my views are necessary or coinciding with my views is a necessary qualification for the FCC. I do personally expect some amount of thought and informed opinion on important views and issues that she will have to decide upon if she becomes a Commissioner of the FCC.

Senator PASTORE. Weren't you impressed with the fact that she said she would like to study it before she gave you an opinion? You weren't impressed with that?

Mr. HICKEY. I think that was a wise choice, given the situation in which she obviously had not been familiar with these issues; yes, sir.

But the question I bring before you is, should we not look for people with obvious experience and background in this area to appoint and confirm as Commissioners of the United States.

And in independent commissions I would add that Mr. Fogarty seems obviously well qualified and experienced. That recent appointees to this Commission, Commissioner Washburn formerly a respected utilities commissioner, and Commissioner Robinson obviously had a certain amount of scholarly or public service background to bring to this job. What I'm saying is that in this case we have no evidence of that at all, and that in fact on questions that we asked her, that she might be expected to have some familiarity with, we received very little informed, or I came away finding very little informed opinion—not the right opinion, but any informed opinion.

Senator PASTORE. All right, you may proceed.

Senator BAKER. Mr. Chairman, we have a vote signal.

Senator PASTORE. If we could finish before we hear the five bells, I would appreciate it.

Mr. HICKEY. I will summarize.

Senator PASTORE. Yes, please.

I'm not finding fault with you, but I do feel that sometimes we are becoming a little too heavy-handed in this proceeding. I am rather shaken and I am rather distrubed over the fact of the conflict of interest. This is a situation that neither Mr. White nor Mrs. White anticipated or set up, and I tell you very frankly that it is a very, very serious question. However, I am impressed with the fact that this is the first woman nominated to the FCC. Your groups invited this woman to appear before you, and you interrogated her. Hence, she answered the questions. She appeared before you even though she was not obligated to. Let's not be to harsh.

Mr. HICKEY. Sir, the only reason I am up here before you is to report to you that we found—at least I found—a certain lack of experience on informed opinion on the issues that she might be called upon to judge.

Senator PASTORE. Do you mind if we study your statement, and if there is anything further, we will contact you. We have to go downstairs and vote.

Mr. HICKEY. Thank you, sir, I appreciate the opportunity.

Senator PASTORE. I want to thank you for coming, but let's not be too hard.

[The statement follows:]

STATEMENT OF ROGER HICKEY, DIRECTOR, PUBLIC MEDIA CENTER, WASHINGTON, D.C.

Mr. Chairman and members of this Committee, I appreciate the opportunity to share with you today my views on the nomination of Mrs. Margareta White to be a Commissioner for a seven-year term on the Federal Communications Commission (hereafter, "FCC" or "Commission"). I am founder and Washington director of the Public Media Center. Public Media Center is a non-profit, tax exempt media resource production and distribution center working for citizen initiated democratic access to the mass media, especially television and radio.

We sometimes call ourselves a public interest advertising agency. But we were founded not to sell products but to produce and gain media access for public service messages for organizations and citizens groups wishing to address the public on important issues—sometimes issues of controversy.

In our three year history we have produced campaigns and gained air time for such important national citizens groups as the Consumer Federation of America, Friends of the Earth, Ralph Nader's Public Citizen organization, the Oil Chemical and Atomic Workers Union, the United Farmworkers Union, the NAACP Legal Defense Fund and numerous others.

Mr. Chairman, Public Media Center takes seriously the principles of public trusteeship embodied in the Broadcasting Act. We believe that the Congress acted wisely in licencing broadcasters to operate the public's airwaves for "the public necessity and convenience." And we believe that the process of regulation of broadcasting should be a dynamic one involving public spirited FCC commissioners actively engaged in a constructive dialog with the public in search of new ways to use the technology of broadcasting to move perfectly define and serve the "public necessity and convenience."

Public Media Center was established to guarantee that the public's First Amendment right to be heard is translated through practical citizen initiated programming into the modern day marketplace of ideas—the public airways of broadcasting.

And it is because of our concern in this area of citizens' rights that we address the Committee concerning the nomination of Margita White to a seven year seat on the Federal Communications Commission.

I have studied Mrs. White's record and professional experience, both in government and in private pursuits. I was priviledged to have the opportunity to ask her some questions along with some of my colleagues that a meeting arranged by the National Citizens Committee for Broadcasting ("NCCB") which she

graciously agreed to attend. And at that meeting she allowed us to address any questions we might have as to her views on FCC policy and issues as well as her background and qualifications.

After that fairly complete examination of her experience, qualifications, views and knowledge in the area of broadcast regulation, I have come to the conclusion that Mrs. White is not well qualified to serve as a representative of the people of the United States on the FCC. And I come before you to urge that you reject, or at least postpone for further study, her nomination as FCC Commissioner.

I make this recommendation with due regard for the importance of the decision before you. Indeed the decision you make on this appointment could have a major impact on communications law for the next seven years.

If I may, I would like to give some of the reasons for my recommendation on this nomination.

My personal and professional concerns in the area of broadcast regulation involve the rights of citizens to be heard on the public airwaves. I have been involved as a representative of Public Media Center in FCC proceedings involving Fairness Doctrine complaints, the applicability of the Fairness Doctrine to corporate "image" and product advertising, petitions for rulemaking concerning definition and standards for public service announcements and public service programing, and the application of Section 315 (the equal time provision) to political advertising concerning ballot initiatives.

Now it certainly would be nice to find a nominee to the FCC who shared my views on the "public interest" issues involved in these rather important proceedings. But I certainly don't expect consistency with my views to be a necessary represent the public on decisions involving these matters.

And yet in our very thorough opportunity for questions and discussions with Mrs. White on these and other issues, we received a consistent and extremely frank admission on her part that she was not informed or that she preferred to wait until she had time to study the matter before forming her views on broad philosophical questions as well as specific regulatory matters involving citizens' rights to access, access rights of candidates in political campaigns and the desirability of expanding the public interest programming obligations of stations to their audiences.

Mrs. White even professed ignorance of important issues that she might have been expected to be involved with in her job at the White House Office of Communications. She claimed to have no knowledge about any of the current controversy now surrounding the Advertising Council and its "Economic Understanding campaign paid for by taxpayers through the Nixon Commerce Department, or the recent blow-up between the Federal Energy Administration and the Ad Council over political differences. And yet she told us that part of her White House job involved acting as *the* official liaison between the Ad Council and executive agencies dealing with the Ad Council.

The role of the Advertising Council and its relationship in government and broadcasting is now the center of a major controversy involving Public Media Center clients and broadcast interests. As Commissioner, Mrs. White might soon be called upon to deal with a major Fairness Doctrine complaint involving the Ad Council's controversial "Economics" campaign.

Again, I reiterate that I did not expect a "correct" answer from my point of view on any of these issues, but rather evidence of some familiarity or thought about the issues involved.

My reason for raising this consideration before you grows out of a concern that the public and the Congress be informed about the views and philosophy of a nominee to important regulatory bodies before and not after they have been installed in a seven year position involving the rights of the public.

And my reason for opposing the nomination of Mrs. White comes from her own frank and honest admission that she has little or no knowledge about or experience with important public interest issues she would be called upon to decide. Nor does she appear to have any familiarity with the general principles underlying the functioning of an independent federal regulatory agency. Perhaps in an earlier time we could have afforded to allow regulators to learn "on the job," so to speak, but in this day and age, when the FCC is called upon each day to make decisions affecting the rights of millions of Americans in what is now a multimillion dollar industry, we cannot afford to give nominees that luxury.

Lacking specific information or opinion from Mrs. White, we can only look to her background for clues to how she might vote and as to what her communications philosophy might be.

In this admittedly imprecise and conjectural endeavor, I recommend to the Committee an article by Wenmouth Williams, Jr. of the information sciences faculty of Illinois State University published in the Spring 1976 issue of the Journal of Broadcasting. Writing on the subject of the "Impact of Commissioner Background on FCC Decisions: 1962–1975," Mr. Williams concludes that:

"Political experience is the best predictor of appointments to the Federal Communications Commission. Qualifications seem to be secondary. Almost all commissioners serving between 1962 and 1975 have had some contact with the appointing president, either through national political parties or through influential government officials. Unfortunately, few commissioners have had qualifications necessary for regulating the communications industries."

Recent Commission appointments seem to have reversed this trend. Certainly Commissioner Robinson, formerly a professor of Communications Law at the University of Minnesota, and Commissioner Washburn, formerly a respected utilities commissioner in New York State, both demonstrated backgrounds of scholarly competence and public service. But I submit to you that Mrs. White's primary professional experience for almost her entire working career has been devoted to the service of partisan communications media needs of major politicians, all on one side of the political spectrum. With that kind of background, I think it is extremely likely that Mrs. White can be expected to follow the observed general pattern of appointees.

Mr. Chairman, I submit to you that we can do better. And I suggest that we have an obligation to serve public interest by examining carefully the background and qualification of *any* nominee to the FCC.

Mr. Chairman, I do not wish to suggest that political experience should disqualify a nominee for confirmation to a post at the FCC or any other agency. I only ask that you seek some evidence of informed judgement and experience in advocating the interests of the public as well as those of partisan political interests.

Mr. Chairman, I would like to close by observing that our citizens are now in the midst of a vital and healthy political campaign for the presidency and many congressional offices. The debate of this campaign will center in part upon the regulatory philosophies and approach to government of two men and two parties. Hopefully the public will have some clear choices as to how they want their government run. I would ask the Committee to wait until we have heard the people speak in November before you confirm an appointment of this importance to the media rights of all Americans.

[Whereupon, at 3:35 p.m., the hearing was adjourned.]

[The following information was referred to on p. 60:]

LETTERS AGAINST MARGARETA WHITE NOMINATION

HOLLYWOOD FILM COUNCIL,
*July 15, 1976.*

THE PRESIDENT,
*The White House,*
*Washington, D.C.*

DEAR MR. PRESIDENT: On behalf of the Hollywood Film Council, which represents the vast preponderance of working men and women in the motion picture and television industries in Hollywood, we urge that you reconsider your recent choice to fill the FCC vacancy created by Commissioner Glen O. Robinson's retirement.

Over the past 10 years, the performance of the FCC has left much to be desired. This, in our view, is attributable to the appointment of those who are either strangers to the field and its most complicated and intricate structure, or those whose background is the very management which the Commission is to regulate. The public is the loser. It is time for the appointment of Commissioners with knowledge and with no management axe to grind. It is also time to take these appointments out of the political arena and out of the political patronage system.

Overbalanced, the Commission has followed a strange path of regulation which has resulted in denigration of the quality, particularly of the television medium. It operates with little or no foresight regarding the impact of its controls. Faced with obvious errors, instead of corrective changes the public gets continued resistance to its interests.

Under current conditions, Commissioners—apparently unmindful of any judicial attitudes—speak openly and in partisan fashion concerning pending cases, make decisions without hearings, and openly lobby on behalf of their own actions. Those who deal with the Commission find the procedures and attitudes unprofessional and inconsistent with proper quasi-judicial function and action by any governmental agency with comparable duties and function. Not only are the administrative procedures lacking in due process, the entire quasi-judicial function of the Commission has literally deteriorated.

The Commission needs strong members with the public's interest so much at stake; a person with strong administrative experience, a judicial attitude and last, but certainly not least, a person with knowledge of the interplay of forces in a complicated field which is not one-sided.

We believe the time has come to start this Commission on a new, constructive path. It can begin with appointments such as we describe.

Respectfully,

CHESTER L. MIGDEN,
*Vice President.*

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RESTON, VA., *July 16, 1976.*

Hon. HARRY F. BYRD, Jr.,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR BYRD: I ask your diligence in ensuring that Ms. Margita White is qualified to serve on the FCC.

While it is true that the word "communications" appears in both the "White House Office of Communications" and "Federal Communications Commission," it is hardly used in the same sense, and the problems and duties facing the press relations professional, although formidable, are very different from those facing an FCC commissioner.

The FCC regulates, among other things, the quality, availability, and cost of the nationwide telecommunications network, I am particularly concerned with this phase of FCC activity because I am a manager for a telephone company. (Public relations manager, in fact, so I certainly have no dislike for public relations professionals!)

The telephone industry, so vital to our nation, is at a crossroads now. Insofar as the public relies on the FCC to guarantee an available communications resource, it has the right to expect commissioners who know something about its financing, technology, management, resources, regulatory restrictions, and service responsibilities.

Let us not leave such an important, delicate, and complex industry to people who don't know anything about it. But let us instead make absolutely certain that we've left it to people who can make intelligent decisions, based on their own knowledge and in view of the facts, that will truly be in the public interest

Sincerely,

JANET MAULDEN.

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UNITED CHURCH OF CHRIST,
*New York, N.Y., July 23, 1976.*

Hon. JOHN O. PASTORE,
*U.S. Senate, 3215 Dirksen Office Building,*
*Washington, D.C.*

DEAR SENATOR PASTORE: As you know, the Office of Communication of the United Church of Christ and I, personally, are deeply concerned about the ethical aspects of broadcasting in the United States.

I believe an ethical issue has been raised by the President's appointment of Mrs. Margita White to the post of Commissioner of the Federal Communications Commission.

I do not know Mrs. White, and I have no reason to question her ability or integrity.

In her case, however, the ethical issue of potential conflict of interest is a serious one. Her husband, Stuart C. White, Esq., is a partner in the law firm of Hamel, Park, McCabe and Saunders, which depends heavily for income on clients that are involved in the communications industry and are subject to regulation by the Federal Communications Commission.

If Mrs. White votes on matters in which her husband's law firm is represented, the aspect of conflict of interest becomes an issue; if she disqualifies herself, the work of the Commission is hampered.

The United Church of Christ is deeply concerned with fostering the placement of women in positions of responsibility and equal influence with men in government, the church, business, education and every other phase of our society. Indeed, the issue of women's rights was voted as the first priority of the United Church by our General Synod last year. We, therefore, support the appointment of women to the Federal Communications Commission and other regulatory agencies.

Nonetheless, where a marriage exists, the potential conflict of interest caused by a spouse's interest, whether husband or wife, must be an element of consideration.

Sincerely yours,

Rev. EVERETT C. PARKER, *Director.*

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CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., August 2, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee,*
*5202 Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Please find enclosed a copy of a letter I received from the Hollywood Film Council regarding the nomination of Margita White to the Federal Communications Commission.

It is my hope that this correspondence will receive the Committee's review and consideration during Ms. White's confirmation hearings.

Thanking you in advance for your attention to this communication.

With kindest regards,

Sincerely,

JAMES C. CORMAN,
*Member of Congress.*

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CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., August 10, 1976.*

Senator WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee,*
*Russell Senate Office Building, Washington, D.C.*

DEAR SENATOR: There is a growing concern among many Democratic members of the House regarding the Administration's untimely efforts to fill vacancies in the various regulatory agencies with party-line Republicans. We would like to underscore that concern by placing ourselves on record in opposition to this effort in the closing months of the present Administration.

Recently, we communicated with Governor Carter and urged him to contact the Democratic leadership in the United States Senate regarding his views concerning President Ford's last minute efforts to fill regulatory agency vacancies with party faithful. We stated that our view of the President's efforts was "clearly an outrageous attempt to impose upon the American people as well as the incoming Carter Administration the views of a thoroughly discredited and unelected President."

For example, we have noted recent articles in two Washington newspapers, as well as various trade journals of the efforts of the outgoing minority leader of the Senate to secure a seven-year membership on the Interstate Commerce Commission for his Administrative Assistant, Richard Quick. While we do not know Mr. Quick personally, we feel that this is a last ditch effort on the part of the Republican leadership to place a Republican senatorial protege, inexperienced in transportation and regulatory matters, in a position of national importance which cannot be reversed by the incoming Administration for at least seven years.

In addition, a twenty-eight year old Clergyman from Ohio, Thaddeus Garrett, is awaiting confirmation for appointment to the Consumer Product Safety Commission, and the current Assistant Press Secretary to the President, Ms. Margita White, also a Republican party faithful, is awaiting confirmation of her bid to serve on the Federal Communications Commission.

We urge our distinguished colleagues in the Senate to approve *no* further nominations of Republicans for term appointments for membership on any regulatory agency until a President, armed with the people's mandate, takes the

oath of office in January of 1977. Otherwise, the incoming Administration's efforts to carry out the policy enunciated in the Democratic Platform regarding a significant area directly affecting our national economy will be sharply diminished. We urge you to give careful consideration to our views.

Sincerely,

JOHN E. MOSS,
*Chairman, Oversight and Investigations Subcommittee.*
HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce.*
JOHN D. DINGELL,
*Chairman, Subcommittee on Energy and Power.*

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COMMUNICATIONS WORKERS OF AMERICA,
*Washington, D.C., August 20, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Committe on Commerce,*
*U.S. Senate, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is to offer you the position of this Union regarding the filling of regulatory agency and commission appointments during the remainder of the 94th Congress. We are aware of numerous nominations forwarded to the Senate by the President, some of which are to be examined by the Committee on Commerce.

We believe each Presidential appointment is of special sensitivity and long-range importance to the Nation. Our Nation's top leadership presently consists of a President and Vice President who hold their positions without having been elected, although they are holding their jobs in accordance with the law and, there is every likelihood that a new President will be elected. The present incumbent should not make appointments at this late hour in his term, and the Senate should not confirm any nominees put forth by him, including those pending.

We have today a close parallel to mid-1968, when President Johnson nominated an Associate Justice of the Supreme Court to be Chief Justice, along with the nomination of a Federal Judge as Associate Justice. After extended debate, the Chief Justice nomination was withdrawn at the request of the nominee. During the course of the nominations' consideration by the Senate Committee on the Judiciary, a Senator from Michigan (who is a member of your Committee and of its Subcommittee on Communications) led the effort to oppose the nominations. The Senator criticized what he saw as "obvious political maneuvering" in order that ". . . a 'lame duck' President can fill it (i.e., the position of Chief Justice) and thereby deny the opportunity to a new President about to be elected by the people. . . . And never before in history has any President been so bold as to subject himself to the charge of 'cronyism. . . .' "

Your Committee now has pending two nominations to the Federal Communications Commission, one for the full seven-year term, the other for two years of an unexpired term. The nominee to the full term position unfortunately has close ties with the discredited Nixon Administration, having become involved early in the 1968 campaign after which she joined the White House staff. In February 1975, after two years in other Government positions, she rejoined the White House staff, serving in a propaganda-publicity job, until the present. It is not imprudent for us to believe that she would bring foursquare to the Commission the views of the Nixon-Ford Administration. We believe there are sound reasons for rejecting this nominee, in addition to the delay until after we know who will be President next year.

The nominee to the two-year unexpired term on the Commission does not bear the burdens of the other nominee. He has served quietly and effectively in Senate staff positions. We would prefer to see Mr. Ford, should he be reelected, resubmit the name for a full seven-year term. We also would hope that Mr. Carter, should he be elected, will look closely at this nominee's qualifications.

We would expect that the Administration will attempt to pressure the Senate into speedy action in filling regulatory agency appointments. However, such agencies always have succeeded in carrying on their business despite vacancies. The Federal Communications Commission, with two vacancies, has shown itself able to function. For many years, the Commission has followed a practice of conducting limited business in the month of August, to allow members and staff to take annual leave before school resumes. Each year, the Commission publishes a notice in the Federal Register establishing a "Board of Commissioners" which is empowered to act on behalf of the entire Commission in matters of urgency. This Board consists of the Commissioners who happen to be available at a given time, allowing the necessary work to proceed.

Mr. Chairman, we believe the Government will continue to function, even if certain appointments are left for the decision of the next person who is elected to serve as our President.

Sincerely yours,

GLENN C. WATTS, *President.*

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FEDERAL COMMUNICATIONS COMMISSION,
OFFICE OF THE CHAIRMAN,
*August 23, 1976.*

Hon. JOHN O. PASTORE,
*Chairman, Subcommittee on Communications, Senate Committee on Commerce, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of August 13, 1976 requesting information concerning the practice of the law firm of Hamel, Park, McCabe and Saunders before this agency.

In view of the scope of the response, the problems associated with accessing this type of information, and the limited time for response, I determined that the best way to provide the information you requested was to ask the law firm to provide a listing of the clients it represents before the FCC. At first, the law firm indicated that they would provide this information. However, on August 17th, the firm indicated that they could not supply this type of information to this agency because of what the firm considered serious ethical considerations.

In the short time following this developement, we have conducted an exhaustive search of our docket files which revealed the information contained in the attachment to this letter. This type of search, which we believed was the only remaining feasible method for gathering this information, covers all activities of the firm in formal, docketed proceedings including rulemakings. To be perfectly frank, Mr. Chairman, this information may not include all possible incidents of the law firm's representation before this agency such as informal and routine matters. However, I believe the attached listing represents the main areas of representation going back to August 15, 1969. Finally, while not noted in the attached listing, it is well known that Hamel, Park, McCabe and Saunders has represented the American Telephone and Telegraph Company and several cable television firms before this agency. Mr. Pettit has also represented Don Burden (Star Stations of Indiana) in the latter part of a license renewal proceeding.

Once again, Mr. Chairman, I would like to stress the fact that we have done everything possible to provide the Subcommittee with the maximum amount of information available to us in the limited time available. We stand ready to provide any further assistance that the Subcommittee may desire in this matter.

Sincerely yours,

RICHARD E. WILEY, *Chairman.*

Attachments.

| Docket No. | Date of designation | Attorney(s) | Client | Nature of case |
|---|---|---|---|---|
| 782 (open) | Feb. 26, 1959 | John P. Bankson, Jr. (representation began when Bankson was associated with Miller, Schroeder & Bankson). | WTOC-TV, KAUZ | Amendment of pt. 73, with respect to competition and responsibility of network television and broadcasting. |
| 495 (closed) | Mar. 2, 1966 | John G. DeGooyer | Commonwealth of Puerto Rico. | Establishment of domestic communications—satellite facilities by nongovernment entities. |
| 291 (closed) | July 27, 1971 | John W. Pettit, Louise A. Sunderland, Joe D. Edge, John P. Bankson, Jr. | George L. Hernreich trading as KFPW Broadcasting Co. (applicant). | For license to cover BPCT-3937 as mod. for new station. |
| 9870 (closed) | Dec. 5, 1972 | John P. Bankson, Jr | Kenneth N. Dawson and Randall M. Mayer doing business as Windham Broadcasting Group. | Construction permit for new FM station. |
| 9871 (closed) | Dec. 5, 1973 | do | The Nutmeg Broadcasting Co. | Do. |
| 9902 (open) | Dec. 18, 1973 | John P. Bankson, Jr., John H. Spellman. | WGTR, WGDL, WSNE, (parties). | Amendment of pt. 73 of Commission's rules to provide 1-hour advancement. |
| 9920 (closed) | Jan. 16, 1974 | John P. Bankson, Jr | David Ortiz Radio Corp. (applicant). | Construction permit for new station. |
| 0189 (closed) | Sept. 11, 1974 | John W. Pettit, Anthony J. Thonpson. | National Association of Business and Educational Radio. | Amendment of pt. 74, subpt. D (remote pickup broadcast stations). |
| 0298 (closed) | Dec. 17, 1974 | Louise A. Sunderalnd, John P. Bankson, Jr. | WNJR Radio Co., Newark, N.J. (applicant), 1430 associates, a joint venture. | Application for authority for interim operation of deleted facilities of WNJR. |
| -2645 (granted 18-76) | Jan. 21, 1976 | John W. Pettit, John P. Bankson, Jr., Louise A. Sunderland. | The Alaska Educational Broadcasting Commission. | Request amendment FM table of assignment to assign channel 269A to Wrangell, Alaska, for noncommercial use. |
| -2696 (open) | Apr. 7, 1976 | Same as RM-2645 | Same as RM-2645 | Request amendment FM table of assignments to assign channel 276A to Anchorage, Alaska, for noncommercial use. |
| -2727 (open) | July 9, 1976 | John W. Pettit, Louise A. Sunderland, Joe D. Edge. | Group for the Advancement of TV Service (GATS). | Request amendment TV table of assignments to assign channel 8 to Johnstown, Pa. |

URBAN DEVELOPMENT ASSOCIATES,
*Los Angeles, Calif., August 25, 1976.*

Senator JOHN O. PASTORE,
*Chairman, Senate Subcommittee on Communications,*
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR PASTORE: I join others in the Hispanic communities of this country in protesting the nominations of Margita White and John Fogerty to the FCC and strongly urge the appointment of a qualified Spanish-surnamed person to this post.

Sincerely yours,

FELIX CASTRO.

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CALIB,
*Los Angeles, Calif., August 31, 1976.*

Senator JOHN PASTORE,
*Chairman-Subcommittee on Communications,*
*U.S. Senate, Washington, D.C.*

DEAR SENATOR PASTORE: The California Association of Latins in Broadcasting opposes the confirmation of Margita White and Joseph Fogerty to the Federal Communications Commission. Mrs. White's affirmation would create a cloud of mistrust as a commissioner based on the premise that her husband's law firm represents American Telephone and Telegraph. This I consider a direct conflict of interest. I am also protesting the fact that the nation's Spanish speaking people are not represented on the Commission.

Until such a person is seated on that commission, we the members of the California Association of Latins in Broadcasting will protest any and all appointments made by the President. Your efforts in denying the above mentioned individuals a post on the Commission will give Chicanos and other Latinos hope that one of our people will be appointed.

Very truly yours,

FERNANDO DEL RIO,
*President.*

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TELACU,
*East Los Angeles, Calif., September 1, 1976.*

Senator JOHN O. PASTORE,
*Chairman, Senate Subcommittee on Communications, U.S.Senate, Dirksen Office Building, Washington, D.C.*

DEAR SENATOR PASTORE: On August 24, 1976 Mr. Manuel Fierro, President of the National Congress of Hispanic American Citizens (EL CONGRESO) and Ms. Grace Castro Nagata rom TELACU had the distinguished honor of testifying before you and the U.S. Senate Subcommittee on Communications.

You may recall that Mr. Fierro and Ms. Nagata took exception to the nominations of both these candidates to the Federal Communications Commission, primarily for the reasons noted in the enclosed copy of the statement made before the Committee.

Quite frankly, Latinos feel that if Mrs. White is confirmed as a Commissioner, she will definitely be more influenced by the suggestions of her husband's law firm which identifies itself as a specialist in communications law and by that firm's AT&T account, than by the *needs* of the Latin-American community.

I urge that Mrs. White not be confirmed to he FCC and that instead, the name of a qualified American of Hispanic descent be considered.

Respectfully yours,

DAVID C. LIZARRAGA,
*President.*

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CITY OF LOS ANGELES,
OFFICE OF THE MAYOR,
*September 1, 1976.*

Hon. JOHN PASTORE,
*Chairman, Subcommittee on Communications, U.S. Senate, Washington, D.C.*

DEAR SENATOR PASTORE: I am writing to express my strong opposition to the nominations of Joseph Fogerty and Margita White to the Federal Communications Commission. I further urge that at least one of these nominees be replaced with a qualified representatives of the large Latino community of the United States.

My protests to these nominations are two-fold:

(1) The nomination of Margita White is clouded by possible improprieties based upon her husband's legal representation of several large corporations involved in communications, and upon her family's stockholdings in corporations like TAPPAN and GOULD; and

(2) Latinos have been excluded from their rightful representation at all levels in the Federal Communications Commission. This situation must be remedied so that the vast Latino community will have an improved image projected in the media, have opportunity for responsible employment in the electronic media, and so that the broadcast industry will recognize and respond to the buying power of the Latino.

It is time for America's elected officials to stop ignoring the demands of the Latinos for a significant voice in the government agency that regulates the powerful electronic media. I urge your support for a Latino member of the Federal Communications Commission.

Sincerely,

GRACE M. DAVIS, *Deputy Mayor.*

PODER FEMENINO,
*Los Angeles, Calif., August 23, 1976.*

JOHN PASTORE,
*Chairman, Subcommittee on Communications, Dirksen Senate Office Building, Washington D.C.*

Poder Femenino Chicano femenist organization protest the nomination of John Fogarty and Margita White to the Federal Communication Commission. We urge appointments of Americans of Mexican decent to this Federal Communication Commission.

GLORIA JEAN GUTIERREZ,
*Chair person.*

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MIDDLETOWN, VA., *August 23, 1976.*

Senator JOHN PASTORE,
*Chairman, Subcommittee on Communications, Committee on Commerce, Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR PASTORE: The Mexican America Legal Defense and Educational Fund (MALDEF) strongly opposes the appointment of Mr. Joseph Fogarty and Ms. Margita White as Commissioners to the Federal Communications Commission. MALDEF feels that a Mexican American should be appointed: no Mexican American has ever been appointed as Commissioner since the FCC was created. Thank you.

AL PEREZ, MALDEF.

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[Telegram]

RAZA MEDIA ASSOCIATION,
*San Francisco, Calif, August 24, 1976.*

Senator JOHN PASTORE,
*Senate Office Building,*
*Washington D.C.*

Raza Media Association protests the nomination of John Fogarty and Margreta White to the FCC. We urge appointment of an American of Hispanic descent to the FCC.

JUANA SAMAYOA,
*President.*

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[Telegram]

SAN FRANCISCO, CALIF., *August 24, 1976.*

Senator JOHN PASTORE,
*Senate Office Building,*
*Washington, D.C.*

Public Media Center protests the nomination of John Fogarty and Margreta White to the FCC. We urge appointment of a third world person to the FCC.

PUBLIC MEDIA CENTER.

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U.S. SENATE,
*Washington, D.C., September 1, 1976.*

Senator JOHN PASTORE,
*Chairman, Subcommittee on Communications,*
*Dirksen Senate Office Building,*
*Washington, D.C.*

DEAR MR. CHAIRMAN: I understand that your subcommittee is currently considering the nomination of Mrs. Margita White to be a commissioner of the Federal Communictions Commission. I would like to pass along to you the recommendation of Mr. Horacio Aguirre, editor of Diario las Americas, a Spanish newspaper published in Miami, Florida.

While I personally have no knowledge of Mrs. White's qualifications for this post, I respect Mr. Aguirre's opinion a great deal. As editor of the best known and most widely-read Spanish newspaper in North America, he has had a great deal of contact with Mrs. White in her capacity as Assistant Press Secretary to the President. It is his belief that she would make an excellent commissioner I hope that you will give Mr. Aguirre's views appropriate weight when the subcommittee meets to consider this nomination.

Warm personal regards.

Most cordially,

RICHARD (DICK) STONE.

LETTERS FOR MARGARETA WHITE NOMINATION

GEORGETOWN UNIVERSITY,
GRADUATE SCHOOL,
*Washington, D.C., July 26, 1976.*

Hon. JOHN O. PASTORE,
*New Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR PASTORE: I am emboldened to write this letter, because as you might recall, I was Senator Bill Benton's Legislative Assistant when you first came to the Senate, and in that capacity worked closely with your office in a number of matters in which you and Senator Benton shared an interest.

Margareta Eklund White's nomination to the Federal Communications Commission is before your Committee, and I am writing you in strong support of her nomination.

After Senator Benton's defeat, I served in the administration of Governor Harriman in New York and then came to Rutgers, where for 17 years I directed the Eagleton Institute of Politics. Mrs. White was a graduate Eagleton fellow during the year 1959/60. During that time, I was her principal advisor and she also took my advanced Seminar in American Politics. Since her graduation, I have followed her career with interest and pride.

While we certainly differed on many political matters, I have always found Mrs. White to be an intelligent and highly motivated young woman. What also impressed me while she was a student and continues to impress me now is her high sense of integrity and understanding of the American political system. In my opinion she would bring to her position as an FCC commissioner a high degree of morality, intelligence and fairness.

If you or your Committee would like me to add a further letter of support or appear personally before you in Mrs. White's behalf, I should be happy to do so.

On a final note, I am really sorry that you have chosen to retire from the Senate. While I can well understand your reasons, you surely will be missed. When you have more time, perhaps you will give me the opportunity of telling you about some of the exciting things we are attempting to do here at Georgetown and perhaps to even entice you into some involvement.

With all good wishes,

Sincerely,

DONALD G. HERZBERG,
*Dean, Graduate School.*

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NEW ENGLAND PRESS ASSOCIATION,
*Boston, Mass., August 8, 1976.*

Hon. JOHN O. PASTORE,
*Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR PASTORE: I am writing on behalf of Margita White, a nominee for membership on the Federal Communications Commission.

In the New England Press Assoc. Mrs. White is considered a person of integrity and with the necessary capabilities to serve worthily on the commission. Her talents are also recognized by the National Newspaper Assoc. whose members comprise the great majority of this nation's newspapers.

As the immediate past president of the New England Press Assoc. I would like to urge your serious consideration of Mrs. White for the vacancy on the commission. I understand that there may be a possible concern, that is of a conflict of interest regarding her husband's position.

I personally, as well as the Board of Directors, feel that Mrs. White will and can be an impartial commission member and weigh the various concerns brought before the commission on their own merit—without being swayed by outside influences.

As a personal note to you, Senator, I would like to say that you will be sorely missed here in Rhode Island. I hope very much that you will continue to lend your own expertise to the concerns of our state.

Sincerely,

CATHERINE H. STEWART.

79-717—76——8

AUGUST 10, 1976.

Senator JOHN O. PASTORE,
*Chairman, Communications Subcommittee, Committee on Commerce, Dirksen Office Building, Washington, D.C.*

DEAR SENATOR: I am sure that one of the most difficult assignments which you face is that of properly appraising the qualifications of individuals who are nominated to fill posts of responsibility in the Federal Government. It is for that reason alone that I write to you in an effort to contribute to your thinking.

It was with real interest that I noted that Ms. Margita White was nominated for a post on the Federal Communications Commission. I have known Ms. White for some time because of her work as Director of Communications at the White House. As President of the association of business magazine publishers, I have had the opportunity to work with Ms. White on many occasions.

Ms. White has impressed me, and my associates, as an individual of great integrity, one whose dedication is illustrated by her capacity for hard work, and as a person whose past record proves that she can master complex subjects. I have every reason to believe that if approved, she will serve without fear or favor, mindful only of the best interests of all citizens.

As one who has worked in the press all his adult life—although not in the field of electronic communications—I have followed with interest and approval your efforts to develop a sound policy for electronic communications. I feel sure that Ms. White will meet your high standards.

Cordially,

CHARLES S. MILL.

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AMERICAN WOMEN IN RADIO AND TELEVISION INC.,
*Washington, D.C., August 10, 1976.*

Hon. JOHN O. PASTORE,
*U.S. Senate,*
*Washington, D.C.*

Dear SENATOR PASTORE: American Women in Radio and Television, Inc., has sent to President Ford letters nominating two of our outstanding members to the two positions now open on the Federal Communications Commission. Copies of these letters are enclosed for your information.

We believe that women of this caliber would serve the FCC very well indeed, and hope that they are being considered for appointment. They are Ms. Jane Cohen and Mrs. Virginia Pate Wetter, both former presidents of A.W.R.T.

If, however, they are out of the running for these posts, we would like to urge that you consider appointing Margita White as a Commissioner. There seems to be some hesitation because of an alleged conflict of interest due to Mr. White's position in his firm of attorneys. It would appear that his offer to refuse income from any broadcast business handled by his firm, and his explanation that he is a tax attorney in the firm, not involved in broadcase at all personally, indicate good faith in resolving any conflict of interest.

We shall appreciate your committee's particular attention to our nominations of Ms. Cohen and Mrs. Wetter and our endorsement of the nomination of Margita White.

Sincerely,

SAIDIE ADWON,
*President.*

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THE LAWRENCE DAILY JOURNAL-WORLD,
*Lawrence, Kans., August 10, 1976.*

Senator JOHN O. PASTORE,
*Washington, D.C.*

DEAR SENATOR PASTORE: I am writing to urge your favorable consideration of Mrs. Margita White for confirmation as a member of the Federal Communications Commission.

My only involvement with the Federal Communications Commission is through a FCC certificate of compliance for a cable television system which we operate in Lawrence. My assessment of Mrs. White is based solely upon my observation of performance of her responsibilities at the present time, and a brief visit with her more than a year ago at the White House.

I think the FCC has an extremely important role to play, and it is essential to have top flight and able individuals serving on this important body. I think

it is wise and proper to have some members who have knowledge and perhaps experience in the broadcast field, and others who are trained in the field of law. In addition, FCC commissioners should be knowledgeable about the workings of federal bodies and commissions and they must be able to work with the public. They should be intelligent, eager to learn as much as they can about their areas of responsibility and new developments in various fields of communication, and they must be honest men and women with the highest degree of integrity.

Mrs. White is intelligent, she has extensive experience in various levels of government employment, she has wide acquaintanceship among members of the House and Senate, her current position in the White House attests to her integrity, and I would imagine several security checks have been made by various investigative bodies. She has done an excellent job in working with representatives from the electronic and print media and she handles herself extremely well in dealing with the public.

I think she would be an excellent member of the Commission, and I am hopeful you will approve her nomination and appointment.

Sincerely,

DOLPH C. SIMONS, Jr.

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WDBJ, 7,
*Roanoke, Va., August 12, 1976.*

Hon. JOHN O. PASTORE,
*U.S. Senator,*
*Washington, D.C.*

DEAR SENATOR PASTORE: Pending before your Subcommittee on Communications of the Commerce Committee of the United States Senate is the President's nomination of Margita White to be appointed to the Federal Communications Commission.

As a member of the Board of Directors of the National Broadcast Editorial Association for several years and its current President, I have come to have a high regard for the capabilities, knowledge and dedication of Ms. White.

The National Broadcast Editorial Association, you must surely know from your experience of having spoken to us at several of our national conventions and submitting graciously to question and answer sessions, is a diversely opinionated group (as by profession they must be). I do not, therefore, speak for the entire organization in commending Ms. White to your committee. But I do believe that, if the membership were polled, you would soon discover that respect for her talent and expertise would be nearly unanimous. I personally, however, am unashamed to sign her praises as one who understands the broadcasting industry, is dedicated to the principle that a multiplicity of voices on the airwaves is a prima facie guarantee that we will always have a robust debate of the issues which affect our daily lives as citizens of this great nation and that a vigorous broadcasting system is vital to the informational needs of the American people.

Therefore, I am proud to commend her to you and trust that you and your committee will act favorably on her nomination to the Federal Communications Commission.

Cordially yours,

TED POWERS,
*Director of Public Affairs.*

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DIARIO LAS AMÉRICAS,
POR LA LIBERTAD, LA CULTURA Y LA SOLIDARIDAD HEMISFERICA,
*Miami, Fla., August 17, 1976.*

Senator JOHN O. PASTORE,
*Chairman, Communucations Subcommittee, Committee on Commerce, U.S. Senate, Washington, D.C.*

DEAR SENATOR: Next Tuesday, August 24th, I understand that a hearing will be held by the Subcommittee which you head in order to consider the nomination of Mrs. Margita E. White for the position of Commissioner of the Federal Communications Commission.

As Editor of Diario las Americas, a Spanish daily newspaper published in Miami since July 4, 1953, I have had the opportunity of knowing Mrs. White who, for the last year and a half has held the post of Assistant Press Secretary for the President of the United States.

In these last eighteen months we have received objective cooperation from Mrs. White and her office at all times. I am, therefore, in a position to say that I

think she is extremely well-qualified to serve this country in the field of social communications. To her efficiency in handling communication with the press, we have to add her very pleasant disposition always.

I strongly feel that Mrs. White would be an asset as Commissioner of the FCC, and am certain that if her nomination were approved by the Senate, she would fulfill here duties in a very satisfactory, efficient and loyal way, to the benefit of all.

Very truly yours,

HORACIO AGUIRRE,
*Editor.*

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ALICE DYKEMAN ASSOCIATES,
*Dallas, Tex., August 19, 1976.*

Hon. JOHN O. PASTORE,
*Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.*

DEAR SENATOR PASTORE: As a public relations practitioner and a professor in a management school who teaches middle management about the news media's area of responsibility, as well as a longtime observer of Margita White's professional capabilities, I would like to highly recommend her for an appointment to the Federal Communications Commission.

President Ford has wisely recommended her for the appointment, since she has so ably facilitated his efforts to communicate and expand his Administration's dialogue with the media throughout the country. She could be thrust into many volatile political situations in her capacity as Director of Communications, but she carried out her mission so well that no one could direct criticism.

I think she is highly qualified and I hope your subcommittee will agree and approve this very fine woman and able communicator.

Sincerely,

ALICE DYKEMAN.

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WOMEN IN COMMUNICATIONS, INC.,
*Washington, D.C., August 21, 1976.*

Senator JOHN PASTORE,
*Chairman, Senate Subcommittee on Communications, Senate Commerce Committee, Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR PASTORE: As immediate past president of Women in Communications, Inc., National Capital Professional Chapter, I support President Ford's nomination, and urge confirmation by the Senate Commerce Committee, of Margita E. White to a seven-year term on the Federal Communications Commission.

Members of Women in Communications who have worked professionally with Mrs. White have been impressed by her brilliance, efficiency, her discretion, clarity of decision, and practical approach. We are reassured by her fairness and objectivity. We strongly endorse the nomination.

Women in Communications, Inc., is a national organization of journalists, editors, free lance writers, men and women in radio and television, public relations, and advertising.

We shall follow with acute interest the hearings before the Senate Commerce Committee on the nomination of Mrs. White.

Yours sincerely,

NANCY POLAND, *President.*

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AMERICAN WOMEN IN RADIO AND TELEVISION INC.,
*Washington, D.C., August 23, 1976.*

Hon. JOHN O. PASTORE,
*U.S. Senate,*
*Dirksen Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR PASTORE: I respectfully urge you and the Communications Committee to give favorable consideration of Margita White to serve on the Federal Communications Commission.

Mrs. White is recognized for her dedication to the goals of the Federal Communications Commission. Without reservation, I can recommend her to fill that

vacancy. She is genuinely qualified to execute her duties as a Commissioner in the same forthright manner she projects in her position at the White House. Margita White's appointment would provide additional competence at this important decision making level.

An opportunity is before your Committee to promote the role women play in the regulatory processes of the broadcasting industry. Our industry is beset with community-related problems which we cannot in all good consciousness ignore. Those eager to serve are no less capable because of their gender. A Commission more representative of the female presence would certainly be a step in a direction of the equal opportunity premise you support.

I am fully confident that you will recognize the urgency to confirm the nomination of Margita White.

Respectfully,

MAL JOHNSON,
*Board of Trustees.*

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RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION,
*Washington, D.C., August 23, 1976.*

Senator JOHN PASTORE,
*Chairman, Senate Commerce Subcommittee, Dirksen Building,*
*Washington, D.C.*

In connection with the nomination of Mrs. Margita White to the Federal Communications Commission, I would like to state on behalf of the Radio Television News Directors Association that we have worked closely with her for the past year and a half and have always found her fair minded and objective in dealing with broadcast journalists. We feel that her wide experience in communications has imbued her with a sensitivity to the role of broadcast journalism in our society. We believe this would prove most valuable in FCC deliberations concerned with this issue.

Respectfully,

JOHN SALISBURY,
*President.*

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LETTERS FOR JOSEPH FOGARTY NOMINATION

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., August 13, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee.*

DEAR SENATOR MAGNUSON: I take pleasure in recommending to you Mr. Joseph Fogarty, Esq., for a position as Commissioner of the Federal Communications Commission.

I have had the honor and pleasure of knowing Mr. Fogarty since 1957 when he was a student at Boston College Law School, an institution of which I was dean. Mr. Fogarty graduated with distinction from Boston College in 1959 and since that time has had an admirable and most distinguished career in the legal profession.

I am, of course, enthusiastic about the appointment of Mr. Fogarty to be a Commissioner of the FCC. He possesses in abundance every personal and professional qualification necessary for this highly responsible position. Indeed, I would think that Mr. Fogarty is without doubt one of the best informed attorneys and experts on communications law in the entire United States.

In short, I recommend Mr. Fogarty with no reservations whatsoever and with the highest enthusiasm.

Cordially yours,

ROBERT F. DRINAN,
*Member of Congress.*

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CITIZENS FOR CABLE AWARENESS IN PENNSYLVANIA,
PHILADELPHIA COMMUNITY CABLE COALITION,
*Philadelphia, Pa., August 21, 1976.*

Hon. JOHN PASTORE,
*Chairman, Communications Subcommittee, U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR PASTORE: I am writing to express my delight at the nomination of Joseph Fogarty for Commissioner at the Federal Communications Commission,

and to urge approval of this nomination. As a long time critic of the FCC, and with full recognition of the inadequacy of that agency, I know just how badly someone such as Joe Fogarty is needed there, and what value such an appointment will be to the public.

Not only is Mr. Fogarty knowledgable about communications, but he has proven to be concerned and responsive, and willing to listen to and try to understand diverse views. He certainly recognizes the public interest issues surrounding communications, and having someone there who even considers public interest before vested interest will indeed be a novelty!

The recent report that showed the problems with past practises regarding regulatory commission appointments is reason enough to seek persons of Mr. Fogarty's caliber to fill such positions, so that past practises such as described do not continue.

We urge prompt consideration and approval of this nomination.

Sincerely,

LOIS BROWN,
*Member, Steering Committee, CCAP;*
*Chairperson, Legislative Committee, PCCC.*

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FEDERAL COMMUNICATIONS COMMISSION,
*Washington, D.C., September 20, 1976.*

Hon. JOHN O. PASTORE,
*Chairman, Subcommittee on Communications,*
*Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: On August 24, 1976, Ms. Grace Castro Nagata testified before the Subcommittee on Communications in connection with the nominations of Margita White and Joseph Fogarty to the FCC. Ms. Nagata's testimony focused on the employment status of Spanish-surnamed individuals at the Commission. With your approval, Mr. Chairman, we are furnishing the following information on this important subject for inclusion in the record.

As of July 18, 1976, his Commission employed 27 persons of Hispanic origin, dispersed among six of our twelve Bureaus and Staff Offices. These employees comprise 1.28% of the Commission's workforce of 2,100 employees.

Nearly half (13) of our Hispanic-origin employees are in professional and technical occupations. Of these, ten occupy positions which either are in levels at or above GS–9, or offer advancement potential at least to the GS–9 level. Only a GS–8 Translator and the two Supervisory Applications Examiners are at the full performance levels of their positions.

Five of the 27 employees of Hispanic origin occupy positions above GS–9:

| | |
|---|---|
| 1 Public Utilities Specialist | GS–12 |
| 2 Electronics Engineers | GS–11 |
| 1 Attorney | GS–11 |
| 1 Law Clerk Trainee | GS–11 |

Two Hispanic-origin employees serve as Supervisory Applications Examiners (GS–9). In addition, one Hispanic-origin employee is a GS–7 Electronics Engineer; another is a Computer Programmer, GS–5. Both occupy positions in career ladders offering advancement potential to GS–12; three of our watchstanding Electronics Technicians (1 GS–8; 1 GS–6; 1 GS–5) are of Hispanic origin and occupy positions in career ladders offering advancement potential to the GS–9 full performance level. It should also be noted that our Attorney, Engineer and Supervisory Applications Examiner positions are to varying degrees in contact with representatives or employees of the industries regulated by this Commission.

This Commission has three Equal Employment activities. Two of these, in our General Counsel's office and our Broadcast Bureau, deal with external EEO programs; the third, the EEO Director's staff in the Office of the Executive Director, is concerned solely with internal programs. Unfortunately, both the Hispanic-origin employee in the Broadcast Bureau and the Hispanic-origin employee in the Internal EEO Office left in 1976. As a result, only the part-time Coordinator of the Commission's Spanish-Speaking Program is a Hispanic-origin employee.

We are nearing final action to fill the full-time Spanish-Speaking Program Coordinator position. Pursuant to our Merit Promotion Program, applications from our own employees were solicited in March; a certificate of eligibles has been received from the U.S. Civil Service Commission; and, again according to our Merit Promotion Plan, unsolicited applications from persons with reinstatement or transfer eligibility have been co-mingled with those received from our own employees and candidates certified by the Civil Service Commission. We expect to finalize this selection process within the next 30 days.

Frankly, our inability to employ larger numbers of persons of Hispanic origin stems from a number of considerations. In some large part, the occupational mix of this Commission's workforce, coupled with the limited number of Hispanics available for consideration for appointment as Engineers, Attorneys and Electronic Technicians, (the principal professional/technical occupations for which we seek candidates outside the Commission) precludes the number of Hispanic-origin selections we would wish. U.S. Civil Service Commission staff members have emphasized to us the small number of Hispanics in engineering occupations generally, and particularly in electronics, the only specialty for which we have a need. In an all-agency summary of minority employment distributed on April 28, 1976, the Civil Service Commission reports that only 1.1% of the 18,669 Federal jobs in Electronic Engineering were occupied by Hispanics. Further, our General Counsel, who is responsible for recruiting Attorneys, points out that of 32,000 attorneys graduated this year, only 640, or 2%, are of Hispanic origin. The Civil Service Commission, in the summary cited above, reports that of 11,762 government attorney positions, only .7% were occupied by Hispanics. In this connection, we note that two of the 12 entry-level attorneys we recruited during Fiscal Year 1976 are of Hispanic origin and will be joining the Commission staff shortly after October 1st.

Another problem which we have encountered is the absence of any means of being able to assure the availability of Hispanic-origin candidates through the Civil Service Commission competitive register system. In our campus recruiting for entry-level engineers, for example, we tentatively selected three persons of Hispanic origin. However, our requests for name certification of these individuals were to no avail because they were not within reach for CSC certification.

Another circumstance which has slowed our recruitment efforts has been the employment freeze which our limited financial resources required me to impose December 15, 1975. When funds for the new Fiscal Year become available October 1, we will be faced with the prospect of filling approximately 170 vacancies. I have augmented our Personnel staff resources for this purpose and they are well aware of my interest and commitment to minority employment.

In closing, let me assure you that we are doing everything possible to increase the presence of Hispanics on our staff, particularly through an intensive recruiting effort for Spanish-surnamed attorneys and engineers. I believe that given enough time, these efforts will prove fruitful.

If you have any questions, please do not hesitate to call on me.

Sincerely,

RICHARD E. WILEY,
*Chairman.*

# NOMINATIONS—JULY–SEPTEMBER

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**MONDAY, SEPTEMBER 13, 1976**

U.S. SENATE,
COMMITTEE ON COMMERCE,
*Washington, D.C.*

The committee met at 9:17 a.m. in room 5110 of the Dirksen Senate Office Building, Hon. Frank E. Moss presiding.

## OPENING STATEMENT BY SENATOR MOSS

Senator Moss. The hearing will come to order.

The committee is considering this morning President Ford's nomination of Thaddeus Garrett to be a member of the Consumer Product Safety Commission (CPSC). Mr. Garrett has been nominated to a 7-year term on the Commission to replace Richard O. Simpson, whose term expired last October.

Prior to this hearing the committee requested Mr. Garrett to respond to a series of questions which explores regulatory philosophy and views regarding the work of the CPSC. Mr. Garrett has responded to these questions in writing and his responses will be part of the record, and, based on them, there may be questions that may be raised during the hearing today.

Additionally, Mr. Garrett has completed the committee's comprehensive biographical survey. The committee is in the process of evaluating this information and the nominee has been requested to submit some additional information regarding his personal finances.

As is the committee's custom, Mr. Garrett's financial forms are available for public inspection in the committee's information office.

We will proceed this morning with the introduction of Mr. Garrett by Congressman Stokes and Congressman Mitchell.

Following this introduction and this testimony, Mr. Garrett will be given an opportunity to make whatever introductory remarks he wishes to make. This will be followed by the presentation of testimony by outside witnesses who have requested the opportunity to testify on this nomination.

Finally, we will ask the nominee to resume the chair to respond to the testimony of the outside witnesses if he cares to do so or answer questions which may be presented by members of the committee at that time.

We will ask Congressman Stokes, Congressman Mitchell, and Mr. Garrett to come forward so that we will all be in place and we can proceed in the manner I have outlined this morning.

I am pleased to welcome you gentlemen here before the committee. Glad to see you this morning. Go ahead, Congressman Stokes. We will hear from you.

## STATEMENT OF HON. LOUIS STOKES, U.S. REPRESENTATIVE FROM OHIO

Mr. STOKES. Thank you very much, Mr. Chairman, members of the committee.

I am Louis Stokes. I represent the 21st Congressional District of Ohio.

Mr. Chairman, I am pleased to come before you this morning in order to testify on this appointment made by the President of the United States, this nomination of Thaddeus Garrett to serve on this distinguished Commission.

I first came to know Thaddeus Garrett, when I came to the U.S. Congress in January of 1969. He at that time was administrative assistant to Congresswoman Chisholm. At that time we were very busy on organizing and founding what has now come to be known as the Congressional Black Caucus.

The Congressional Black Caucus at that time did not have a staff and consequently we had to utilize the administrative aides of the respective Congressmen and Congresswomen in order to put it together. This is where I first had an opportunity to work closely with Thad Garrett, particularly during the time that I served as chairman of the Congressional Black Caucus, for a period of 2 years. We relied very heavily upon Thad and other administrative assistants because we still did not have our own individualized caucus staff.

At the same time I came to know him as a church man. It turned out that Thad, Reverend Garrett and I, happened to belong to the same church. That is the AME Zion Church. This is a church that is very much concerned with issues, the type of issues which Thad Garrett would be concerned with as a member of this Commission.

By coming from Ohio, I have worked with him in another respect. This young man was able to become elected and become a member of the State board of education and in that capacity in serving his constitutency we often had occasion to consult with one another and to work together on educational issues affecting the entire State of Ohio.

Also during the period of time he has served as an assistant to the Vice President of the United States, on legislative matters. We have had many opportunities to consult in his capacity of representing the Vice President of the United States. So, I come before you this morning with personal knowledge of this young man, who is a minister, and who is not only a dedicated but a very committed and able administrative person. He is a person who possesses many, many other skills.

I think, Mr. Chairman, at this time in our Nation that the problems of the consumers are becoming more and more to the fore and we are learning more about the problems that people are confronted with daily in this country. I think it is extremely important that this Commission be filled with those individuals who have some understanding of what it is to be a minority person in this country, what it is to be a low-income consumer in terms of wages in this country. He brings to this position or would bring to this position, I think, a unique experience, of having worked with people who fall into this category.

I am just pleased to be here this morning to support this nomination and I would be more than happy to try and answer any questions that you might have.

Senator Moss. Thank you very much, Congressman Stokes. We are pleased to have you come before us and your personal acquaintance and relationship with the nominee is important to us. Your evaluation of his qualifications is an important contribution to this hearing.

You stated that Mr. Garret is an attorney . . .

Mr. GARRETT. A minister. He said attorney, rather than minister.

Senator Moss. I misunderstood, I guess. Obviously, in that area he would have great concern for people and their well-being, I would expect.

Does he have any scientific or technical background that would qualify him especially for this position?

Mr. STOKES. I would have to ask Thad to respond to that himself.

Senator Moss. Well, I just wondered offhand if you knew of it. We will have a chance, of course, to talk to him when he presents his statement.

Thank you very much.

We will turn to Congressman Mitchell and ask him for his evaluation.

## STATEMENT OF HON. PARREN J. MITCHELL, U.S. REPRESENTATIVE FROM MARYLAND

Mr. MITCHELL. Mr. Chairman, it's nice to see you. It's nice to see you in this setting, rather than at a Conference on the Budget Resolution.

Senator Moss. We will be in more of them.

Mr. MITCHELL. I am certain we will. Let me indicate that I assume you are aware of the fact that more than 10 members of the Congressional Black Caucus have signed a letter on behalf of Mr. Garrett. If that is not a part of the record, I would like to submit the letter now for the record.

Senator Moss. We have it and we will place it in the record immediately following your testimony.

Mr. MITCHELL. My name is Parren Michell and I represent the Seventh Congressional District of Maryland. Since being in the Congress, I think that I have never fallen below a 90- to 95-percent rating by any of the consumer groups across the country. I think that the persistent high rating I have received during the time that I have been here reflects my very sincere and deep concern about the consumer in America.

I am here, of course, to support Thaddeus Garrett, a quite remarkable person. Mr. Chairman, if I may, I will ask unanimous consent to submit my statement for the record and I will speak from portions of it.

Senator Moss. All right. The entire statement will go in the record.

Mr. MITCHELL. The stated purpose of the CPSC is to protect the public against the risks and hazards of death, personal injury, or serious or frequent illness associated with unsafe consumer products on the market.

But surely, Mr. Chairman, those consumers who dwell in the ghettoes of our Nation have rarely felt such protection. These consumers of limited means are the very ones who suffer most and literally have been "taken to the cleaners" in the purchasing of defective and unsafe products.

It's my opinion that the Commission needs in its membership a voice that will constantly make it aware of the fact that even those who are on the unemployment rolls and the welfare rolls are also American consumers and they cry out for equal and effective protection by our Government.

There is no doubt in my mind that Thadd Garrett can and will provide the Commission with that kind of perspective. He has demonstrated that at an early age one can grapple with the issues of the day and bring forth effective solutions to problems. I think he is very articulate, his mind is sharp and incisive. I think those two qualities melded with his other attributes, will insure that the consuming public will be well served by his person on the board.

Mr. Chairman, as a Member of Congress, I voted for the bill that created the CPSC. I was also cosponsor. I must confess after 6 years in Congress there is a tendency for me to be somewhat jaundiced and doubtful about legislation that we pass, about the effectiveness of it. I was delighted to cosponsor this bill and I was delighted to vote for it on the floor, but I must confess, even when I cosponsored and when I voted for the bill, there was that lingering doubt in my mind as to whether or not an excellent vehicle, that had been proposed legislatively, would be an excellent vehicle operationally.

I think you know what I am attempting to address. So very often we establish a commission or board and it simply fails to carry out the spirit and the letter of the legislation that creates it. I, frankly, would say that as I voted for the bill I had hoped that we would have vigorous, articulate Commissioners serving on the Commission, the kind of persons that Thadd Garrett is. My thinking remains the same on that.

Mr. Chairman, it has been of some concern to me when I have read the various news articles suggesting the Senate might hold up this nomination for partisan reasons, while still confirming other Presidential nominations. The committee chairman should know many of us who serve in the Congress are dedicatd and committed Democrats and we have rallied around this nomination because Thadd Garrett is a man we are proud of. He represents particularly for black Americans the symbol of quality leadership which we so desperately need in government.

I joined with the 10 members of the Congressional Black Caucus who signed the letter and join my colleague, Louis Stokes, to urge the Chair that favorable action be taken on this nomination.

I am prepared to try to respond to any questions you might have.

Senator Moss. Thank you for your testimony regarding the nominee. This committee is well aware of the long service you have given in the field of consumer protection and this Agency is one of the important facets of consumer protection. One of the things we are concerned about is having vigorous efforts made by this agency without getting bogged down as often happens in administrative agencies, with a lot of detail that slows it down so long.

I think the press was making some fun of the fact that we spent a lot of time seeing what we could do about match covers, so they wouldn't be dangerous in the hands of children and elsewhere. Finally, after a long, long time, the conclusion was probably nothing could be done to make them child proof. But nevertheless, it indicates what this Commission has to look at.

I know many people make fun of this, saying, everybody should look out for himself, but we don't have that opportunity.

We have to take what comes in the marketplace and use it and a person can't look out for himself if we permit dangerous product to go into the flow of commerce.

That is just one of the ways of our whole shifting way of life and economy that has come about. The old caveat emptor isn't quite applicable today because you don't go and buy right from the man who made the product and look at it and then walk away with it. It comes packaged and advertised and brought in from far away and all these other things have now come to characterize our market.

I know you are well aware of that and I am sure that the nominee would be, but this Commission will require a good deal of imagination and push and initiative in order to deal with these issues. I don't have any questions really. I do appreciate the appearance of both of you Members of Congress to come here and testify for us.

It helps us in making an evaluation which is our responsibility and I know you are very busy. If you have to leave—you are welcome to stay, we would be glad to have you stay for the whole hearing, but I would warrant you have other things you need to be doing. So you may be excused.

Mr. MITCHELL. Thank you for the opportunity, Mr. Chairman.

[The statement and letter referred to follows:]

STATEMENT OF HON. PARREN J. MITCHELL, U.S. REPRESENTATIVE FROM MARYLAND

Mr. Chairman and Members of the Committee, it is with a great sense of pride that I come before you in support of the nomination of Thaddeus Garrett, Jr. to be a member of the Consumer Product Safety Commission.

This nomination is clearly one of the very best and most promising to come before the Senate in a long time. It is important that those of us who know Thadd best, come forward and speak-out for his swift confirmation.

The stated purpose of the Consumer Product Safety Commission is to protect the public against the risks and hazards of death, personal injury, or serious or frequent illness associated with unsafe consumer products on the market.

But surely Mr. Chairman, those consumers who dwell in the ghettoes of our nation have rarely felt such protection. These consumers of limited means are the very ones who suffer most and literally have been "taken to the cleaners" in the purchasing of defective and unsafe products.

The Consumer Product Safety Commission needs in its membership a voice that will constantly make it aware of the fact that even those who are on the unemployment rolls and the welfare rolls are also American consumers and cry out for equal and effective protection by our government.

Thadd Garrett can and will provide the Commission with that perspective. He has demonstrated that at an early age one can grapple with the issues of the day and bring forth effective solutions to problems. His mind is sharp and incisive, and he will articulate to the consuming public those programs that will serve their interests.

As a Member of Congress, I voted for the bill that created the Consumer Product Safety Commission. But when I gave my support of that legislation. I did so only in the hope that someone of Thadd's credentials and caliber would be included in its membership.

The recent General Accounting Office report clearly calls our attention to the Commission's failure to provide adequate development of standards, tough enforcement of the law against violators and a far reaching thrust in consumer education. These findings, I submit to you, will not be answered effectively until we have not only on this Commission but others as well, people aggressively and forcefully discharging their duties in the enforcement of consumer protection laws.

What kind of Commissioner do we need on the Consumer Product Safety Commission? We need not an engineer, not a scientist, not a lawyer, but a commissioner who will be committed to enforcement of the law and someone who can fairly write and apply standards of safety.

His long years of service and his well-known working relationship with our dynamic colleague, Shirley Chisholm, speaks for itself—as he served as her top advisor on consumer issues and legislation.

Himself, an elected official, he has proven his ability to listen and be sensitive to the needs of those in need.

He has demonstrated independence of action, knowledge of the field, and even called for the creation of both the Consumer Product Safety Commission and proposed Consumer Protection Agency back in 1972.

Mr. Chairman, it has been with great alarm that I have various news articles even suggesting that the Senate might hold-up this nomination for partisan reasons, while still confirming other Presidential nominations. The Committee should know that many of us who sit in this Congress as dedicated and committed Democrats have rallied around this nomination because Thadd Garrett is a man that we are proud of—he represents particularly for Black Americans a symbol of the quality leadership which we so desperately need in government.

He is not a partisan man—he is rather a partner with those of us who seek to make this country what it ought to be.

If ever the Senate had an opportunity to put its seal of approval on a nomination, this nomination is it.

I join with my colleagues in the Congressional Black Caucus, many of whom have signed this letter of support, and my Colleagues on both sides of the ailse in strongly urging the swift confirmation of Thaddeus Garrett.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., September 2, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee, 5202 Dirksen Senate Office Building, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: We are writing to inform you of our support and endorsement of the nomination of Reverend Thaddeus Garrett, Jr., for appointment to the Consumer Product Safety Commission.

We have high esteem for Thadd as a result of our professional relationships shared with him during his employment on the Hill. At that time, Thadd was Assistant to Congresswoman Shirley Chisholm, and proved to be a man of great principle. He has proven ability in diverse areas of the legislative process including the interests of the consumer.

Because of his admirable record here on the Hill, we vigorously supported his appointment as Special Assistant to Vice President Rockefeller, and our confidence in his ability has been justified. In addition to his assigned duties as the Vice President's primary advisor on urban problems, he has maintained a productive network of communications between the White House and the Congress. On several occasions he has been instrumental in bridging the gaps of communications and understanding between us and the Administration. His service with the Vice President has been characterized by great administrative, diplomatic and leadership skills. We believe the aforementioned attributes will serve him well as he takes on an even more demanding responsibility with the Consumer Product Safety Commission.

Moreover, the importance of placing an individual who is both highly competent and sensitive to the needs and problems of the poor consumer, is immeasurable. A responsive Commission must consist of persons who fully represent the purchasing habits of this mult-ethnic and economically diversified country. Thaddeus Garrett, in addition to his proven abilities, has the sensitivity to articulate the special concerns of the minority consumer.

We urge your early and favorable consideration on his appointment to the Consumer Product Safety Commission.

Sincerely,

SHIRLEY CHISHOLM, *Member of Congress.*
CHARLES B. RANGEL, *Member of Congress.*
YVONNE B. BURKE, *Member of Congress.*
PARREN J. MITCHELL, *Member of Congress.*
RALPH H. METCALFE, *Member of Congress.*
HAROLD E. FORD, *Member of Congress.*
LOUIS STOKES, *Member of Congress.*
CHARLES C. DIGGS, Jr., *Member of Congress.*
RONALD V. DELLUMS, *Member of Congress.*
WALTER E. FAUNTROY, *Member of Congress.*

Senator MOSS. We also have a statement from Senator Brooke and Senator Taft and other Members of Congress, which will be made part of the record at this point.

[The information referred to follows:]

STATEMENT OF HON. EDWARD W. BROOKE, U.S., SENATOR FROM MASSACHUSETTS

I am pleased to urge the confirmation of Thaddeus Garrett, who has been nominated by the President to a seven-year term on the Consumer Product Safety Commission.

In his government career, Mr. Garrett has distinguished himself as a special assistant to two great public servants: Congresswoman Shirley Chisholm and Vice President Nelson Rockefeller. He has shown great dedication, great competence and great drive. By concentrating on domestic issues, notably urban affairs, he has developed expertise in many problems facing the urban dweller, the poor, and the minorities. .

He has shown considerable skill in pursuit of meaningful and viable solutions to those problems. He is a strategist, who, instead of adopting the aloof posture of the observer, has plunged in, listening, thinking deeply, formulating long-term policies to encourgae improvement and change.

Throughout his career, Mr. Garrett has kept concern for people at the core of his activities. And, he has again and again communicated their needs to those who are in the policy-making positions.

He would continue his advocacy and championship of the people as a member of the Consumer Product Safety Commission. For this Commission, more than any other, requires not just expertise in a particular subject matter, but also a true dedication to problem-solving, competence, and above all, a commitment to the people of this country.

Mr. Garrett has these qualities. And, he will, because of his varied experiences, bring to the Commission a point of view which may not now be represented. Where possible, without sacrificing the efficacy of the Commission, there should be diversity and independence among the Commissioners. In this way, we more fully insure the representative quality of the Commission, and that it can surmount barriers of culture, attitude and experience, serving all Americans equally.

I would urge the Commerce Committee to report this nomination out of committee, just as I would urge confirmation by the Senate of Mr. Garrett, a man of dedication, competence and integrity.

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UNITED STATES SENATE,
COMMITTEE ON ARMED SERVICES,
*Washington, D.C., September 9, 1975.*

Hon. WARREN G. MAGNUSON,
*Chairman, Commerce Committee,*
*United States Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I understand that Thad Garrett, the President's nominee, to fill the position on the Consumer Product Safety Commission, is coming before your committee in connection with his confirmation on Monday morning.

Mr. Garrett is a resident of Ohio, and I have known him over a period of years. I regret that prior commitments prevent my being able to present him to the committee on Monday morning, but I do want to assure the committee of my

strong support for the appointment and of my complete confidence that Mr. Garrett's abilities, character, and experience merit the favorable recommendation of the committee to the Senate.

Sincerely,

ROBERT TAFT, Jr.,
*U.S. Senator.*

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CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C. July 27, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee, 5202 Dirksen Senate Office Building, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: We are writing to inform you of our support and endorsement of the nomination of Thaddeus Garrett, Jr., for appointment to the Consumer Product Safety Commission.

We members of the Congressional Black Caucus, severally and jointly, have high esteem for Thadd as a result of our professional relationships shared with him during his employment on the Hill. At that time, Thadd was assistant to Congresswoman Shirley Chisholm, and proved to be a man of great principle. He has proven ability in diverse areas of the legislative process including the interests of the consumer.

Because of his admirable record here on the Hill, we vigorously supported his appointment as Special Assistant to Vice President Rockefeller, and our confidence in his ability has been justified. In addition to his assigned duties as the Vice President's primary advisor on urban problems, he has maintained a productive network, of communications between the White House and the Congress. On several occasions he has been instrumental in bridging the gaps of communications and understanding between us and the Administration. His service with the Vice President has been characterized by great administrative, diplomatic and leadership skills. We believe the aforementioned attributes will serve him well as he takes on an even more demanding responsibility with the Consumer Product Safety Commission.

Moreover, the importance of placing an individual who is both highly competent and sensitive to the needs and problems of the poor consumer, is immeasurable. A responsive Commission must consist of persons who fully represent the purchasing habits of this multi-ethnic and economically diversified country. Thaddeus Garrett, in addition to his proven abilities, has the sensitivity to articulate the special concerns of the minority consumer.

We urge your early and favorable consideration on his appointment to the Consumer Product Safety Commission.

Sincerely,

CHAS. B. RANGEL,
YVONNE BURKE,
_____ _____,
PARREN J. MITCHELL,
SHIRLEY CHISHOLM,
CARDISS COLLINS,
RALPH H. METCALFE.

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CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., August 24, 1976.*

Hon. WARREN MAGNUSON,
*Chairman, Committee on Commerce, United States Senate, Washington, D.C.*

DEAR WARREN: As you know, I have been intensely interested in the performance of the Consumer Product Safety Commission since its formation several years ago. I have been particularly concerned that its Commissioners be deeply committed to product safety and it was for this reason that I recently opposed the nomination for Chairman of S. John Byington. I believe that the CPSC can only become an effective agency when it has Commissioners who are both dedicated to its mission and highly experienced in the critical product safety questions facing this country.

The President has recently nominated Thaddeus Garrett, Jr., a member of Vice President Rockefeller's staff, to become a Commissioner of the Consumer Product Safety Commission. I am opposed to the confirmation of Mr. Garrett and I urge your Committee to reject the nomination. I am generally concerned about the practice of a President whose term is nearing its end and who continues to make a series of nominations to independent regulatory Commissions, expecially when many of these persons are from his White House staff. While such nominations could be acceptable if they were of unquestionably high quality and experience, I do not believe Mr. Garrett falls into this category.

Mr. Garrett appears to have had little direct experience in the consumer product safety area. While he has some experience in education and general urban problems, I believe that this is not sufficient for the great responsibility which a CPSC Commissioner must undertake. Frankly, it would be a rare individual who would have demonstrated such commitment and experience at only age 28 and I believe that, regardless of his sincerity, there is no substitute for prior experience.

I am further concerned by recent allegations that he used unauthorized endorsements during his 1974 campaign for a seat in the Ohio legislature. These are most serious charges which should be resolved before his confirmation is considered.

I know that you and I agree that we must demand an extremely high level of competence, experience and objectiveness in regulatory appointments. I do not believe Mr. Garrett meets this standard and I respectfully urge his rejection.

Sincerely,

JOHN S. MOSS,
*Chairman, Oversight and Investigations Subcommittee.*

Senator MOSS. Now, we would like to give you the opportunity to present any opening remarks you may wish to give Mr. Garrett.

Then, as I indicated, we will ask you to resume the stand and answer questions later.

## STATEMENT OF THADDEUS A. GARRETT, JR.

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

I do not have a prepared statement to submit for the record. I simply want to say in the way of introductory remarks, a thank you to both of the Members of the House for the gracious introduction formally to the Senate Committee.

Mr. Chairman, I only want to say I am, one, grateful to be nominated for this position and I am grateful for your indulgence and cooperation in providing this hearing, and certainly speeding along the process here in the Senate.

I have a commitment, Mr. Chairman. My commitment is overabundant in this field.

In answering the interrogatories provided by the committee, I did my best to try to answer them as forthrightly and as clearly as I possibly could.

The answers to those particular questions reflect in some detail my regulatory philosophy, my philosophy regarding consumerism and my stern belief that, as the Chairman has said, this Commission has a mission. It must get on with the mission. It must do the job, it must do so effectively, exercising as individual commissioners the best type of fair play and judgment.

I would hope to bring that judgment to the Commission. I would hope to bring to the Commission a sense of aggressive initiative in trying to stimulate it to get on about its task. That is basically all I would like to say at this time. I would certainly await any questions anyone has to ask.

Senator MOSS. Thank you very much.

79-717—76——9

We welcome your enthusiasm and your willingness to tackle the job. I am sure that that as much as anything, we need in our Commissioners real dedication to the Commission. We would welcome that sort of presence on it. Consequently, we will wait and see if there are questions that we wish to propound to you and we can move along. I would like to insert in the record at this point the biographical sketch and the Chairman's pre-hearing questions and your responses thereto:

[The information follows:]

*Question 1.* Personal Background and Employment History: Complete the Attached questionnaire regarding your personal finances and background.

BIOGRAPHICAL SKETCH OF THADDEUS A. GARRETT, JR.

Address: 2553 Waterside Drive NW., Washington, D.C.

Date and place of birth: May 18, 1948, in Akron, Ohio.

Marital status: Single.

Names and ages of children: Not available.

Education: University of Akron, Akron, Ohio—B.A. in Education (History and Government) 1966–70. Howard University Urban Institute of Religious Studies, 1975, Howard University Graduate School of Religion, Washington, D.C., 1975–76.

Employment record: Special Assistant to the Vice President of the United States (April 1975 to present).

Chief Assistant to U.S. Representative Shirley Chisholm (April 1971 to April 1975).

American History teacher at John R. Buchtel High School in Akron, Ohio (September 1970 to April 1971).

Ordained minister, and serving as associate pastor of the Wesley Temple A.M.E. Zion Church, Akron, Ohio (1975 to present).

Elected member of the State Board of Education of Ohio, representing the 14th Congressional District of the state (elected in November 1972).

Part-time advisor on Community Affairs to WSLR Radio Station in Akron, Ohio (1974–75).

Government experience: Refer to the listings above, plus the following:

Part-time employment on the staff of the United States House Education and Labor Committee while in college;

Membership in the summer of 1975 on a Special White House Task Force on Urban Problems; and

Service as Vice Chairman of the Human Relations Commission of Akron, Ohio.

Memberships: In the National Association for the Advancement of Colored People, the National Urban League, the National Association of State Boards of Education, Executive Board of the Ohio Lung Association and the Martin Luther King Memorial Scholarship Fund. Served as National Chairman of the Y.M.C.A. Youth-In-Government Program.

Political affiliations and activities: I am a registered Republican in Akron, Ohio. I have never held any office in a political party or on a campaign committee, nor have I made any financial contributions to a political party.

Honors and awards: In May 1976, I was awarded a Doctorate of Divinity Degree from Allen University in Columbia, South Carolina.

Published writings: Report for the United States Congress on racial discrimination in the military titled, "A Report on Racism in the United States Military—*Our Men Abroad,*" November 1971.

Qualifications: I believe that the most basic and important qualification that I have is one of unquestioned commitment to the protection of the consumer in this country. It is most important that a commissioner on the Consumer Product Safety Commission be fully supportive of the notion that the government has the responsibility to safeguard the rights and interests of consumers, and be fully prepared to implement the commission's regulatory mandate to the fullest.

Further, I believe it is essential that federal regulatory commissioners exercise their authority with a balanced sense of judgment, not in any way serving as a representative of biased and special interests. The Consumer Product Safety Commission, perhaps more than any other regulatory commission, has the responsibility to judge the quality of those commercial products which can and do have a significant impact on the quality of life in America, through safety. Sound and

sensitive judgment is therefore imperative. I believe that as both an elected and appointed public official as well as an ordained clergyman, I possess the qualities of judgment and fairplay.

Then I would like to point to a qualification which I believe to hold underlying importance for the next Consumer Product Safety Commission commissioner. That qualification is one of being able to present the urban and minority consumer perspective. For too long we have overlooked the needs and the circumstances of the urban and minority consumer in the marketplace, often the one consumer who can least afford to purchase products but of course the one who must if he is to survive. Because of my extensive background in both governmental and urban community affairs, through my tenure as an assistant to a Congresswoman who represents an area of the nation where the victimized consumer is no stranger, as the Assistant for Minority and Urban Affairs to the Vice President of this nation, as a minister administering to a minority and poor constituency and congregation, and as one who is well aware by experience of minority economic hardships, I feel most qualified to present this much needed perspective on the Commission.

Financial data: Mr. Garrett's financial data is available for public inspection in the committee's information office.

*Question 2.* Please supply the Committee with copies of any speeches, articles or other documents which you have written during the last five years relating to product safety, consumerism, the role of product standards, the relationship between government and business, the Consumer Protection Agency, or your regulatory philosophy.

OFFICE OF THE VICE PRESIDENT,
*Washington, September 9, 1976.*

Mr. ED COHEN,
*Senate Commerce Committee,*
*Dirksen Office Building, Washington, D.C.*

DEAR ED: In answer to question two of the pre-hearing questions, I am enclosing a news article which I wrote three years ago in the Akron Reporter, a weekly newspaper in Akron, Ohio.

Also, Congresswoman Shirley Chisholm will be sending you a copy of her Presidential campaign position paper on consumerism, which I drafted in 1972. Thanks.

Sincerely yours,

THADDEUS GARRETT, Jr.,
*Special Assistant to the Vice President.*

Enclosure.

[From the Reporter, Akron, Ohio, September 1973]

THE GARRETT LINE

(By Hon. Thaddeus Garrett, Jr., member, State Board of Education)

The consumer movement in America is still another example of how Americans from all walks of life have organized against the indifference or hostility of our national leadership, to attack the injustice, irrationality, and unfairness in our society. As with the civil rights, anti-war, environmental and womens' movements, consumerism reflects the fact that millions of people in this nation have lost faith in the system—but have found a faith in themselves and a determination to force a closed, rapid, and secretive administration to wake-up to their needs.

It is no coincidence that consumerism has reached a new peak under this Administration. Consumers, white and black, young and old, prosperous and poor, have joined together in the common realization that our corporate state and government have become so interlocked that the interests of industry are too often given top priority over the needs of the American taxpayer.

Many Americans have developed the uneasy feeling that big business in America exists largely in a world of its own, nourished by a mentality solely concerned with profits and dividends. This mentality is to a great extent responsible for our polluted rivers and air, our inequitable tax and criminal justice systems, inflation—and the shoddy yet expensive merchandise which has appeared in the American Marketplace during the last few years.

People do not want to hear any more that "if products are made by methods leading to the pouring of filth and industrial waste into our rivers and air, that it is the price of progress." Nor will they tolerate the reasoning that "if products are made which are unsafe, be they food items or automobiles, they (consumers)

don't have to buy them, and since the price is "reasonable", they can't have everything."

The American consumer has come to understand that when demand for some product falls off, the big corporation simply pump more money into slick and deceitful advertising techniques, inundating television with moronic and insulting commercials to make us question our masculinity or femininity, to provoke psychological insecurity, to urge us to keep up with the Joneses by buying new electric combs and similar trivial gadgets.

American industry bases its investment program on the theme of "planned obsolesence," whereby an electronics firm promoting its new color TV model is already planning to replace it on the market two years hence with a new product designed to make us feel outdated and "old-fashioned," necessitating new purchases of things we don't need and don't really want, in spite of the most energetic and smoothest efforts of Madison Avenue to convince us otherwise.

People are fed up with an industry which rushes cars to dealers after its own assembly crews admit the cars are defective. They are fed up with the bleating of the same industry that it cannot produce a clean auto engine by 1975, when it can come up with model changes and more powerful engines each year in a nation proud of the greatest technological feat in the history of mankind—sending men to the moon.

They are fed up with the tasteless compound of chemicals and artificial flavoring that are plamed off as frozen foods in our supermarkets. They are fed up with cans and boxes which do not describe contents and do not, in fact, contain the amounts they claim or do the task they promise. They have had enough of defective TV sets (1,000,000 color TV sets caught fire in 1969), cribs and playpens that allow children to strangle themselves and exploding glass bottles.

Despite the consumer laws enacted over the past decade, the American consumer is furious that he continues to be victimized in the market place. The National Commission on Product Safety found that 30,000 Americans are killed each year because of faulty products, and of 50 million accidental injuries a year 20 million are related in some manner to unsafe consumer products. The cost of these accidents is $5.5 billion a year. From $8 to $10 billion is lost by consumers each year on repairs that are either unnecessary, poorly executed or that should have been covered by a warranty. One-third of the $8.8 billion spent in 1969 on auto repairs was for unsatisfactory work.

Consumers in America lose billions of dollars due to deceptive and confusing supermarket labeling and packaging. We get back only 45 cents in benefits for each dollar paid for auto insurance, while other insurance systems pay back up to 95 cents on a dollar. Power shortages resulted in "brown-outs" during peak demand periods last summer and fall and continue to threaten widespread black-outs in the future. Utility companies have used the increasing power shortage as an excuse to raise prices and thus increase profits. Last year, electric, telephone, and gas utilities filed requests for more than $2 billion in annual rate increases.

In the face of all this, one begins to understand why young people have fled to agricultural communes and why there has been a revival of handicrafts and organic foods, nostalgia and a longing for the simple life of decades past. One realizes why the consumer has turned to imports for quality at fair prices and why certain industries in this country are now threatened. An industrial designer describes the attitude which helped give birth to the consumer movement as "revulsion against the excesses of an industrial society that increasingly channels human creativity, labor and material resources into the production and sale of superfluities—products whose chief purpose has been changed from the fulfillment of useful functions to the inflation of insatiable egotisms."

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CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., September 9, 1976.*

Mr. ED COHEN,
*Senate Commerce Committee,*
*Russell Office Building,*
*Washington, D.C.*

DEAR MR. COHEN: Please find enclosed a letter from Congresswoman Shirley Chisholm and a copy of her 1972 position paper on Consumerism, which Mr. Garrett authored.

Thank you.

Sincerely,

(Mrs.) CAROLYN J. SMITH,
*Administrative Assistant.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., September 9, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee,*
*Dirksen Senate Office Building, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: It is with great pride that I endorse the nomination of Mr. Thaddeus Garrett, Jr. to be Commissioner on the Consumer Product Safety Commission.

This letter will verify that Mr. Garrett, who served as one of my chief and closest advisors on issues and legislation for over four years, did serve as the co-ordinator of my positions on various issues during my 1972 campaign for the Democratic nomination for President.

It indeed was Mr. Garrett who conducted and co-ordinated all of the research on my position paper on consumerism, which is attached, and drafted both the paper's language as well as recommendations. He has always demonstrated a forceful advocacy for tough and progressive consumer protection programs, and has displayed an extensive knowledge of consumer affairs.

Without question, there is an urgent need for the Consumer Product Safety Commission to have a member who will forcefully represent the interests of all consumers, but will specifically present to the Commission a perspective on the plight of the low-income and minority consumer.

The nomination of Thaddeus Garrett to be Commissioner is indeed one of the most promising to come before the Senate. I strongly endorse this nomination, and join with many of my colleagues in both parties in calling for swift confirmation.

Sincerely yours,

SHIRLEY CHISHOLM,
*U.S. Congresswoman.*

Attachment.

SHIRLEY CHISHOLM SPEAKS OUT

PRESIDENTIAL CAMPAIGN POSITION PAPER NO. 7—CONSUMERISM

The consumer movement in America is still another example of how Americans from all walks of life have organized against the indifference or hostility of our national leadership, to attack the injustice, irrationality, and unfairness in our society. As with the civil rights, anti-war, environmental and womens' movements, consumerism reflects the fact that millions of people in this nation have lost faith in the system—but have found a faith in themselves and a determination to force a closed, rapid, and secretive administration to wake-up to their needs.

It is no coincidence that consumerism has reached a new peak under the Nixon Administration. Consumers, white and black, young and old, prosperous and poor, have joined together in the common realization that our corporate state and government have become so interlocked under the Nixon Administration that the interests of industry are too often given top priority over the needs of the American taxpayer.

Many Americans have developed the uneasy feeling that big business in America exists largely in a world of its own, nourished by a mentality solely concerned with profits and dividends. This mentality is to a great extent responsible for our polluted rivers and air, our inequitable tax and criminal justice systems, inflation—and the shoddy yet expensive merchandise which has appeared in the American Marketplace during the last few years.

People do not want to hear any more that "if products are made by methods leading to the pouring of filth and industrial waste into our rivers and air, that it is the price of progress". Nor will they tolerate the reasoning that "if products are made which are unsafe, be they food items or automobiles, they (consumers) don't have to buy them, and since the price is "reasonable", they can't have everything."

The American consumer has come to understand that when demand for some product falls off, the big corporations simply pump more money into slick and deceitful advertising techniques, inundating television with moronic and insulting commercials to make us question our masculinity or femininity, to provoke psychological insecurity, to urge us to keep up with the Joneses by buying new electric combs and similar trivial gadgets.

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In addition to industry's deception and shabby marketing methods, the American consumer has had to tolerate for too long the cheating and gauging TV repairman and auto mechanic, worthless insurance policies, poisoned soup and fish, dangerous toys and cosmetics harmful to the skin.

People are fed up with an industry which rushes cars to dealers after its own assembly crews admit the cars are defective. They are fed up with the bleating of the same industry that it cannot produce a clean auto engine by 1975, when it can come up with model changes and more powerful engines each year in a nation proud of the greatest technological feat in the history of mankind—sending men to the moon. They are fed up with the tasteless compound of chemicals and artificial flavoring that are palmed off as frozen foods in our supermarkets. They are fed up with cans and boxes which do not describe contents and do not, in fact, contain the amounts they claim or do the task they promise. They have had enough of defective TV sets (1,000,000 color TV sets caught fire in 1969), cribs and playpens that allow children to strangle themselves, and exploding glass bottles.

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Consumers in America lose billions of dollars due to deceptive and confusing supermarket labeling and packaging. We get back only 45 cents in benefits for each dollar paid for auto insurance, while other insurance systems pay back up to 95 cents on a dollar. Power shortages resulted in "brown-outs" during peak demand periods last summer and fall and continue to threaten widespread blackouts in the future. Utility companies have used the increasing power shortage as an excuse to raise prices and thus increase profits. Last year, electric, telephone, and gas utilities filed requests for more than $2 billion in annual rate increases.

The tale continues. Present restrictions on oil imports forced American consumers to pay an extra $5 billion for oil products in 1969. Specifically, the oil import quota system cost the average American family of four an extra $96 for gasoline and heating oil—in Vermont an extra $180, and in Wyoming an extra $228. The cost to consumers will rise to $8.4 million per year by 1980 unless changes are made.

In the face of all this, one begins to understand why young people have fled to agricultural communes and why there has been a revival of handicrafts and organic foods, nostalgia and a longing for the simple life of decades past. One realizes why the consumer has turned to imports for quality at fair prices and why certain industries in this country are now threatened. An industrial designer describes the attitude which helped give birth to the consumer movement as "revulsion against the excesses of an industrial society that increasingly channels human creativity, labor and material resources into the production and sale of superfluities—products whose chief purpose has been changed from the fulfillment of useful functions to the inflation of insatiable egotisms."

Prior to the Nixon Administration's taking office, the Federal government recognized the need for consumer assistance. Major consumer protection prior to 1968 included the Highway Safety Act of 1966, the Fair Packaging and Labeling Act of 1966. the establishment of the National Commission on Product Safety in 1967, the Wholesome Meat Act of 1967, the Truth in Lending Act of 1968, and the Fire Safety and Research Act of 1968. Legislation to establish a permanent agency to represent the consumer was originally conceived by the late Senator Estes Kefauver in 1960.

It is now clear however, that the government has withdrawn its hand of friendship from the consumer. During the debate over the above measures and since, Republican members of Congress and the Nixon Administration have consistently placed corporate interests above the rights of the consumer. Starting with his

campaign book, *Nixon on the Issues*, in which only one of 227 statements dealt with consumer protection, Richard Nixon has displayed little concern for the problems of the consumer. Since taking office he has developed the following anti-consumer record:

Appointed people with either a pre-business or an anti-consumer bias to key consumer positions in the government.

Cut funds for key consumer programs such as Highway Safety and Meat Inspection.

Refused to enforce existing Highway Safety and Fair Packaging and Labeling laws.

Refused to use existing authority to avert a fuel crisis.

Presented a legislative program which fails to meet basic consumer needs.

Weakened the Office of Consumer Affairs by undercutting pro-consumer testimony of his own Presidential Assistant for Consumer Affairs, Virginia Knauer.

Opposed creation of an independent consumer advocate agency.

Opposed unrestricted class-action consumer lawsuits.

Opposed other congressional initiatives.

This is the sorry "pro" consumer record:

The President has appointed a number of GOP loyalists and guardians of corporate interests to key consumer positions. These anti-consumer appointments include the following:

*Chief Presidential Consultant on Consumer Affairs.*—Appointed on February 11, 1969, Willie May Rogers, Director of Good Housekeeping Institute, as chief adviser with the government paying her expenses and Good Housekeeping paying her salary. This is the same Institute that was about to be investigated by a congressional committee for questionable standards of awarding its guaranty seal. The conffict of interest was so obvious and congressional and consumer criticism so vocal that the appointment was withdrawn four days after it was announced.

*Undersecretary of Agriculture.*—Appointed J. Phil Campbell, Georgia Secretary of Agriculture, who led the bitter fight against the Wholesome Meat Act of 1967.

*Chairman of Federal Power Commission.*—Appointed John Nassikas, who immediately upon taking office invited the gas companies to request price hikes, completely reversing a ten-year battle to reduce prices. The business magazine, *Forbes*, candidly commented about the appointment: "It is almost hard to believe that the FPC is now led by a man apparently so friendly toward the utility industry. . . . the new Nixon-appointed Chairman of the FPC sometimes sounds more like a natural gas executive . . . than a man burdened with the actual responsibility of regulation."

*Director of HEW Office of Consumer Affairs.*—Appointed Barabar Burns, former GOP fund-raiser and business consultant, to head the chief consumer office in HEW. At the same time, the top four consumer aides with the office were transferred out and the office has become defunct.

Apart from these incredible appointments, a survey of 20 consumer programs reveals Nixon Administration cuts in previous requests for Fiscal 1970 exceeding $13 million, plus an additional $25 million in grant to states and communities for highway safety. The Secretary of Commerce has refused to halt industry violations of package-size agreements under the Fair Packaging and Labeling Act.

The Nixon Administration's ties to the oil industry have enabled the industry to benefit from, in the words of the President's own Task Force on Oil Import Control, quota limitations that "bear no reasonable relation to current requirements for protection either of the national economy or of essential oil consumption." (These limitations cost the consumer an extra $5 billion for oil products last year.) Instead of using existing authority to phase out these quotas, as his Task Force recommended in February of 1969, President Nixon continued to court the oil industry by refusing to use this power.

Nearly one year after taking office, President Nixon delivered his first consumer message—long on rhetoric and short on concrete recommendations for safeguarding the consumer from fraud and deception in the market place. In fact, the key recommendations in the message were at best watered-down versions of pending legislation and at worst calculated attempts to sabotage strong congressional initiatives on behalf of the consumer. The message was obviously not motivated out of concern for the consumer, but rather out of political necessity, as has been the case with so many issues during this administration. Former Presidential Adviser Bryce Harlow explained to the American Advertising Federation (February 2, 1970) that the fact that it was an election year made it necessary for President Nixon to make visible efforts on behalf of the consumer.

Perhaps in the clearest instance of anti-consumer policy, the Nixon Administration has opposed creation of a single independent consumer advocate agency to represent consumer interests before federal agencies and courts, an agency which would deal solely with consumer matters and would be free from all possible outside pressures. Ralph Nader has called this measure the most important consumer legislation ever. With the support of the Administration, intensive industry pressure defeated the bill to establish such an agency, with the U.S. Chamber of Commerce declaring in a letter to its thousands of members that enactment of the bill would help "destroy the free enterprise system."

The Administration also opposed effective class-action legislation designed to provide full and equal access to the courts for all consumers victimized by fraud. It opposed the provisions on tire safety and the three-year extension of the National Traffic and Motor Vehicle Safety Act of 1966. It opposed strong bills concerned with warranty and guaranty problems.

This atrocious record of neglect of the American consumer should surprise no one for Richard Nixon is on the record as declaring, "I've always thought this country could run itself domestically without a President."

In view of this mind boggling statement, the American consumer, as well as the unemployed, the non-white, the poor in short, those who have been "taken" at one time or another and kept voiceless in this society must expect more of the same should this Administration win re-election. To the President, the thrill and excitement of more foreign trips with the adulation of the crowds, the panoply, and ceremony provides such a welcome contrast to the continuing please of Americans for his attention at home.

But if this nation's top leadership appears to have little comprehension of American reality, more and more Americans do. We know that the price of food is going up, despite the Administration's heralded economic policy, at a rate almost double that of last year. Consumerism is here to stay until effective action has been taken by *some* Administration to recognize through comprehensive legislation its pressing and legitimate needs. The plight of the consumer is that he operates with a handicap in the marketplace. He is uninformed and in effect, unprotected, despite prodigious efforts by Congress, state and local legislatures and among consumer activists to make the government and corporate structure accountable for health and safety.

The federal government must help to educate consumers in special depth so that they can understand the potential dangers to themselves and the problems. There are many lower-income individuals being defrauded in the central cities and ghetto areas. A program of preventive maintenance is needed—one that alerts the consumer to potential problems, to his rights and presses him to assert himself in the marketplace.

Our federal government must take another look at a market system which is far more efficient at turning a profit for its products than it is in providing goods and services for consumers which are safe, fairly priced, and efficient.

The Nixon Administration's practice of protecting greedy corporate managers and lackadaisical government regulations will not do. The National Commission on Product Safety reports that "Measured by achievement, self-regulation by producers of consumer goods under any of the prevailing systems, with a few exceptions, cannot be regarded as adequate. The need for a consensus commonly waters down a proposed (safety) standard until it is little more than an affirmation of the status quo."

I believe that the consumer viewpoint must be an integral part of the governmental and business decision-making process, and consumer needs must be advanced and championed. The following are some first steps which I propose toward this end:

(1) Creation of a strong, united and independent Federal agency with broad authority to defend consumers' interests.
(2) Broadened and strengthened powers for the Federal Trade Commission.
(3) Opening of Federal courts to a broad range of class-action suits against manufacturers and merchants by groups of consumers.
(4) Require manufacturers to build automobiles less susceptible to costly damage in crashes and easier to repair.
(5) Creation of an independent agency to write and enforce safety standards for consumer products.
(6) A federal no-fault insurance law.
(7) A streamlined legal system to resolve disputes between buyers and sellers.
(8) Adequate representation for consumers on government regulatory agencies and with corporation boards of directors.

*Question 3.* President Ford recently published a compilation of "consumer representation plans" submitted by the federal agencies as a suggested means to increase agency responsiveness to the consumer. Do you believe these consumer representation plans will provide meaningful consumer advocacy in the agencies?

Answer. While I would hope that these plans could assist in providing meaningful supplementary consumer representation, I strongly support the creation of an independent Agency for Consumer Protection.

*Question 4.* What steps have you taken to prepare yourself for the job as member of the Consumer Product Safety Commission?

*Answer.* I versed myself in the provisions of the Consumer Product Safety Commission Act and accompanying laws, as well as studied the commission's structure, past activities, and have read material relating to product safety, the standard-setting procedure, regulatory reform, as well as material covering the wide range of consumer needs. During my tenure as Assistant to Congresswoman Chisholm, I served as her advisor on all consumer legislation that came before the Congress.

*Question 5.* The July 22, 1976 White House press release notes that you worked for Congressman Ayres prior to assuming teaching responsibilities at the University of Akron and Buchtel High School in 1970. Was this "student teaching" or "practice teaching" under the supervision of an accredited teacher for university credit? Was this undergraduate credit work? How many credits? How many hours taught?

Answer. From the period of September 1970 through April 1971, I worked as a fully certified Social Studies teacher at John R. Buchtel High School, and served as an instructor of Senior Seminar (government seminar) in the evening during the Fall quarter at the University of Akron in Akron, Ohio.

*Question 6.* During the time period 1971–1975, the White House press release (July 22, 1976) notes that you worked both for Congresswoman Chisholm and for Welcome Radio Corporation.

(*a*) How many hour per week did you work for the Congresswoman?

Answer. My full-time job was as an Assistant to Congresswoman Chisholm working a full work week in the Congress.

(*b*) How many hours per week did you work for Welcome Radio Corporation?

Answer. I served for only over a year (from 1974–1975) as a part-time Community Affairs Advisor to WSLR Radio Station in my home town of Akron, Ohio on weekends. (WSLR is owned byjthe Welcome Radio Corporation.) I have commuted from Washington to my home in Akron on weekends for the last six years.

(*c*) Were you also attending school during this time period? If so, when and where? Full time or part time?

Answer. During part of this time I was attending Howard University's Urban Institute of Religious Studies in 1975.

*Question 7.* Is there any issue currently under consideration by the Commission from which you would have to disqualify yourself? If so, please specify.

Answer. No.

II. NOMINATION PROCESS

*Question 1.* How were you selected to be nominated to serve as a member of the Consumer Product Safety Commission?

Answer. I was informed that I was under consideration by the President for possible nomination by the White House Personnel Office in the early summer of this year. I was interviewed by Margot Boyle, an Associate Director of Personnel and subsequently with Mr. Douglas Bennett, Director of Personnel. Later I was informed of the President's intention to nominate me.

*Question 2.* Were any conditions, expressed or implied, attached to your nomination to be a member of the Commission?

Answer. None whatsoever.

*Question 3.* Did you indicate to any employee of the White House what basic policies and philosophy you would implement and adhere to as a Commissioner? If so, please describe those commitments.

Answer. None whatsoever.

*Question 4.* Did you initiate the contacts with the White House or were you recruited for the job? If you were recruited, who contacted you initially?

Answer. I was recruited by Ms. Margot Boyle.

*Question 5.* What motivated you to accept this nomination?

Answer. I firmly believed, as I now do, that I can bring a strong commitment to the cause of consumerism and a new perspective of representation of the

minority and urban and poor consumer to the Commission. I believe in the objectives of Congress as set forth in the Consumer Product Safety Commission Act.

*Question 6.* Provide the Committee with a list of each individual or company subject to the jurisdiction of the Consumer Product Safety Commission with whom you spoke regarding your candidacy for Commissioner.

Answer. I neither spoke to or communicated with any such individual or company.

III. REGULATORY PHILOSOPHY

*Question 1.* What do you consider to be the mission of the Consumer Product Safety Commission? Define the relationship between this mission and the role of industry in the area of consumer product safety.

Answer. The mission of the Consumer Product Safety Commission is clearly and well-defined in the Act:

To protect the public against unreasonable risk of injury associated with consumer products;

To assist consumers in evaluating the comparative safety of consumer products;

To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

To promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

I believe that Congressman McCollister's remarks in the House Committee Report best addressed the role of industry in consumer product safety, when he said: ". . . a comprehensive mechanism was needed, to balance the equities between the consumer and the manufacturer. On the other hand, manufacturers are not sufficiently influenced by competitivie forces to dedicate themselves to the production of safe products."

*Question 2.* What would be your basic objectives as a member of the Consumer Product Safety Commission:

Answer. It would be my objective and strong intent vigorously to increase the enforcement of the Consumer Product Safety Act, work to insure a broader range of citizen and consumer group input as well as that of the minority, poor, and urban consumer.

I believe that the commission must speed its standard-making process, expand its education program and increase enforcement through more vigilant adjudication.

*Question 3.* In the case of *Chrysler vs. the Department of Transportation*, the United States Court of Appeals for the Eighth Circuit, held that the Department of Transportation, under the National Traffic and Motor Vehicle Safety Act "is empowered to issue safety standards which require the development of new technology, and it does not limit it to issuing standards based solely on devices already fully developed". Do you believe that this is an appropriate technique to advance the state of the art of consumer product safety technology?

Answer. Yes. One only has to look at the Einvironmental Protection Agency's setting of clean-air standards before anti-pollutant devices were actually developed, as an example. It is essential that the commission be innovative in going beyond the sphere of present-day technology.

*Question 4.* The most recent budget request of the Commission contends that it would be possible to abolish the Consumer Product Safety Commission or establish a maintenance level of operation during the early 1980's. It further indicates that the Commission's mission will be accomplished by the development of 100 mandatory standards by 1982.

(*a*) Do you believe that the role of the Consumer Product Safety Commission is finite?

(*b*) If so, at what point in time do you believe the Commission's mission will be completed?

(*c*) Is the Commission's goal of the development of 100 mandatory standards by 1982 reasonable and will it fulfill the Commission's mission?

Answer (a), (b), and (c). I believe that the Commission has a great and long task to undertake in the years ahead. The Commission's work in the future will to a great extent be dictated by the increase in the number of unsafe products on the market. Therefore, since technology is not, nor can the Commission's life be finite. Certainly Congress has a responsibility to judge the need to continue to fund such an agency.

*Question 5.* How do you visualize the relationship between the Consumer Product Safety Commission and state and local authorities?

Answer. The Commission should provide assistance to state and local authorities particularly in the areas of education, investigation, information, and research. Key to these services is maximum utilization of the Commission's field of offices.

(*a*) What do you consider to be the role of consumer product safety education, and how does it relate to standards setting?

Answer. The primary role of the commission's education program should be that of constantly informing the public of the hazards and potential hazards of certain products, as well as the opportunities available for citizens and consumer groups to petition the CPSC and have input in the decisionmaking process. The public should be strongly encouraged to give such input.

No standards should be developed without citizen and consumer group input.

(*b*) What types of consumer education programs do you believe are most effective?

Answer. The most effective education programs are those which demonstrate an outreach to community and grass-roots groups, families, schools, and one that makes effective use of the media.

*Question 6.* Section 4(g)(2) of the CPSA prohibits any full-time officer or employee of the Commission who was at any time during the 12 months preceding the termination of his or her employment compensated at a rate in excess of the annual rate of basic pay in effect for GS–14 from accepting employment or compensation from any manufacturer subject to the CPSA for a period of 12 months after termination of employment with the Commission.

(*a*) Would you vote to seek an injunction against any former employee of the Commission whom you believed to be violating this section of the CPSA?

Answer. Yes.

(*b*) While the Act prohibits subsequent employment with or compensation from any manufacturer, would you refuse for a period of 12 months after termination of your employment with the Commission, employment with or compensation from any person who is regulated, directly or indirectly, by the Commission (e.g. trade association, importers, distributors, retailers)?

Answer. Yes.

*Question* 7. (*a*) To what extent and in what capacity do you believe Commission employees should participate in private standards setting bodies?

Answer. There should be no direct participation in the body, in order to avoid potential conflict of interests. Of course, the Commission should always be aware of what these bodies are doing.

(*b*) Do you see any potential conflicts of interest with such participation?

Answer. Yes. No conflict or appearance of conflict should be allowed to impede or taint the Commission or its staff.

*Question* (*8*). What is your position on the Agency for Consumer Protection?

Answer. I support its creation, and have for as early as four years ago.

*Question* (*9*). If the Agency for Consumer Protection is enacted, do you believe that the Consumer Product Safety Commission should, nevertheless, create an independent office of consumer council within the Consumer Product Safety Commission?

Answer. Yes.

*Question* (*10*). If the Agency for Consumer Protection is defeated this year would you vote to establish an independent council within the Consumer Product Safety Commission?

Answer. Yes.

*Question 11.* Section 18(h) of the Federal Trade Commission Act provides that funds be available to the FTC for the purpose of funding public interest representation on a case by case basis. Under what circumstances, if any, would you support a similar provision under the Consumer Product Safety Act?

Answer. I would be very supportive of this activity; it can serve the public's interest to provide the necessary information and facts on a product. An example would be the need for the commission to gather the most extensive facts possible from all sides in determining the safety status of a product, and enabling those who can make real contribution to this process (e.g. some consumer groups) but could not otherwise because of financial difficulties.

As evidence of this process' success in another agency, I cite James V. DeLong, Assistant Director of the Federal Trade Commission who stated very aptly in testimony before the Senate Government Operations Committee on June 24, 1976, "While obviously some participations have been more valuable than others, the program has produced evidence and information relevant and perhaps crucial to various proceedings. It has allowed the infusion of points of view

which are necessary for a fair determination which would not otherwise have been represented in the proceedings."

*Question 12.* (*a*) What do you feel should be the method for determining the Commission's priorities within and between the categories of (1) research, (2) enforcement, (3) standards development, (4) consumer education and (5) regulation under Section 15?

Answer. I believe that one such method should be an open and extensive debate based upon a review of the effectiveness of the commission's performances since its inception, both among the commissioners and the public.

(*b*) Do you believe the Commission should seek outside participation in setting its priorities? If so, what mechanism should be used?

Answer. Yes. A series of regional hearings could serve as a mechanism that I would support. The Consumer Product Safety Commission should actively seek the counsel of consumer and citizen groups.

(*c*) Section 10 of the Consumer Product Safety Act allows interested persons to petition the Commission for the issuance, amendment, or revocation of a consumer product safety rule. It further allows a petitioner to seek court review if the Commission fails to respond to the petition within 120 days or denies the petition. What impact do you believe Section 10 will have on the Commission's ability to establish its own rulemaking priorities?

Answer. Section 10 is a good provision because it allows for citizen input. I believe that it will have a favorable impact because it will provide an unedited view of the people's concerns relative to the Consumer Product Safety Commission.

*Question 13.* What would you define to be the successes of the Consumer Product Safety Commission during its first three years?

Answer. I suppose that the Commission, still in this very early stage of existence, can count among its achievements, the laying of a basic foundation for the development of standards and commencement of a research and education program.

*Question 14.* (*a*). What shortcomings do you see in the Commission's record during its first three years?

Answer. I believe the recent report issued by the Comptroller General on the Consumer Product Safety Commission highlights a number of the Commission's shortcomings. I find most alarming among the Commission's shortcomings the lack of safety standards developed, the lack of effective use of enforcement measures as well as the apparent tardiness in referral of cases to the Justice Department for prosecution.

(*b*) What changes would you favor to overcome these shortcomings?

Answer. I would favor a strong Commission resolve to pursue vigorous prosecution of violators, the establishment of a more extensive citizen-consumer group input network, and support the recommendations found in the Comptroller General's report of July 26, 1976.

*Question 15.* How would you assess the magnitude of the injury problem associated with consumer products? How would you rank consumer product accidents with the nation's major health hazards?

Answer. I would assess it as being too great as did the Congress when passing the act. Product accidents are indeed a part of the nation's major health hazards.

*Question 16.* How should the Commission utilize its field offices? What changes do you anticipate seeking between the manner in which they are used now and the manner in which you believe they should be used?

Answer. The Commission's field offices must be used to provide and encourage greater citizen input, disseminate more widely consumer safety information and play a more active investigatory role through home and neighborhood visits observing the utilization of faulty products in the poor and urban areas of the country particularly. The field offices should further be used as a liaison with state and local authorities.

*Question 17.* Do you believe that the Commission must be technically self-reliant so that it is never in the position of being dependent upon the industries it regulates for its technological know-how?

Answer. Definitely yes.

*Question 18.* (*a*) Do you believe that low income consumers face problems related to consumer product safety that are different from those faced by other consumers?

Answer. Most definitely yes!

(*b*) If so, please describe those problems and those Commission programs you would encourage in response to them.

Answer. We must always be mindful that nearly every American is a consumer in our country. And thus, we must be mindful that the broad umbrella of con-

sumerism includes the unemployed, the non-white, the poor, and in short, those who have been "taken" at one time or another and kept voiceless in this society, the low-income consumer.

Many of the low-income consumers are being defrauded in the central cities and ghetto areas. The Consumer Product Safety Commission, therefore has a responsibility to in the very least educate these consumers in special depth so that they can understand the potential dangers and hazards of certain products on the market. A program of preventive maintenance and special outreach to the low-income consumer is needed—one that alerts him or her to potential problems, to his or her rights and presses for self-assertion in the marketplace.

The plight of the low-income consumer is that she or he operates with a handicap in the marketplace. They are still basically uniformed and in effect, unprotected, despite the efforts of government to make the industry accountable for health and safety.

Certainly, as a Commissioner I would work for the strengthening of the Consumer Product Safety Commission's education and information program. This could in part be accomplished by making more effective the utilization of the field offices. While the Commission has made a commitment to educating the public-at-large, double efforts must be made reach even into the homes and neighborhoods of low-income consumers in order to accurately monitor the hazards of products.

Further I believe that the Commission must fortify its attempts to broaden the base of consumer and citizen input—to include the low-income and particularly the minority low-income consumer. This can and should be done through membership on advisory councils, forums, and hearings. Additionally, as a Commissioner, particularly contributing to the Commission a minority and urban perspective, I would work energetically toward increasing the hiring of more minority and low-income background persons to the Commission's professional staff. And then the Commissioners must be ever-mindful of the cost-effects of its decisions on the low-income consumer, in order to demonstrate and assure "economic equity" to this particular socio-economic group of citizens in our country.

IV. INDEPENDENCE OF THE CONSUMER PRODUCT SAFETY COMMISSION

*Question 1.* The independent regulatory agencies have been called "a headless fourth branch of government" which is accountable to no one. How do you define the relationship of these agencies to the Executive, Legislative, and Judicial branches of the federal government?

*Question 2.* What do you consider to be the appropriate oversight role of a Congressional committee?

Answers (1) and (2). First, I do not believe that independent regulatory agencies are or should be a "fourth branch" of government. These agencies have specific missions under the law as charged to them by the Congress.

Certainly the inter-relation among the various branches of government and the agencies should be one of co-operation. This is especially true of commissions and the judiciary. However, it is the Congress that possesses the oversight authority, and well it should.

Independent agencies exist at the sufferance of the Congress. It is then the responsibility of the Congress to review the progress and productivity of the commissions, determine the continuing effectiveness of regulatory agencies, determine the need to strengthen agency authority, increase or decrease appropriations, and generally maintain a vigilant oversight role.

*Question 3.* Sponsors of the Consumer Product Safety Act characterized it as an independent regulatory agency with the emphasis on "independence". Do you believe the Commission should be independent? Why or why not?

Answer. Yes. Regulatory Commissions must be free to make judgments that are solely in the interests of the populace and free from bias and influence.

*Question 4.* What steps will you take to preserve your independence from both political and industry pressures? What provisions in the Consumer Product Safety Act do you perceive as designed to preserve your independence from such pressures?

Answer. Commissioners should first vigorously enforce Sections 4 and 27 of the Act. They further must be very careful of maintaining communication and relationship with those from the outside who deal with the Commission. I personally would keep an open log of all calls and appointments for public scrutiny.

*Question 5.* Do you believe the Consumer Product Safety Commission can be independent if the Justice Department controls the Commission's litigation? Why or why not?

Answer. No. It certainly could not be as independent as it would and should be if it controlled its own litigation.

*Question 6.* Do you support the idea that regulatory agencies should not be required to submit the names of their top staff to the White House for political clearance?

Answer. Yes.

*Question 7.* Under Section 27(k)(1) of the Act, Commission budget requests and legislative comments are concurrently submitted to Congress and the Office of Management and Budget.The purpose of this section is to allow Congress to receive the unfettered views of the Commission on issues relating to product safety. Do you support the purpose of Section 27(k)?

Answer. Yes, and I would further make my own independent views known to Congress.

### V. AGENCY OPENNESS AND FREEDOM OF INFORMATION

*Question 1.* On November 4, 1975, the Commission finalized its meeting policy (16 CFR 1012; 40 Fed. Reg. 51360). Is there any section or provision of this policy with which you disagree or with which you do not anticipate complying? If so, please specify.

Answer. I find myself in some disagreement with the provisions for "closed" and "executive" sessions, except when the Commission is acting in an adjudicatory role like a jury. However, I would like to review further the policy in greater depth.

*Question 2.* Section 1012.4(c)(1)(B) of the meetings policy permits the Chairman and other Commissioners to hold emergency unscheduled meetings with outside parties on matters of substantial interest to the Commission without the necessity of giving seven days advance notice in the Commission's Public Calendar.

(*a*) Would you grant a request by a trade association lobbyist for an emergency unscheduled meeting to discuss postponing or withdrawing a regulation due to go into effect within a day or two?

Answer. No.

(*b*) Would your answer to (s) be different if the regulation had previously been proposed in the Federal Register and comments from the public had been sought?

Answer. No. I would consider a request from an acknowledged attorney of record, and would then extend notification to the press, consumer groups, and staff. I would support no *ex parte* meetings.

(*c*) In the event that you were to agree to hold an emergency unscheduled meeting with industry representatives on a substantial interest matter in which a consumer organization had filed a petition or otherwise expressed a strong interest, would you, prior to your meeting, notify the consumer organization of the meeting?

Answer. Answered in b.

(*d*) What steps, if any, would you take to keep yourself apprised of the identity of consumers or consumer organizations having a strong interest in particular regulatory matters?

Answer. I would direct the staff to identify and notify such groups in order to insure a balanced presentation.

*Question 3.* Section 1012.4(c)(2)(ii)(G) of the Commission's meetings policy permits the Chairman and other Commissioners to hold a closed meeting on a substantial interest matter with an outside party when, in the opinion of the Commissioner, "extraordinary circumstances"

Answer. This question is incomplete.

*Question 4.* (*a*) Despite the Commission's often described "goldfish bowl" policy of open meetings, it still maintains closed executive sessions. Do you believe these sessions should be open, except when matters of proprietary data are being discussed?

Answer. Yes, with the further exception of the commission acting in its adjudicatory role. Legislative mark-up sessions are open, so should Commission meetings.

(*b*) These executive sessions are also closed to Commission staff members, including legal counsel. Do you believe that Commission staff should continue to be excluded from such sessions when the Commission is considering issues on which specific staff members have worked?

Answer. No.

*Question 5.* The Commission's current procedures for disclosure of information under the Freedom of Information Act (15 CFR 1015.1(b)) provide that: "records which may be made available as a matter of discretion when disclosure is not prohibited by law, or is not against the public interest"

(*a*) Do you agree with this policy of general disclosure?

Answer. Yes.

(*b*) Can you give examples of instances where you believe disclosure would not be in the public interest?

Answer. No.

*Question 6.* The Freedom of Information Act permits an agency to withhold from public disclosure certain internal memoranda (5 USC 552 (b)(5). Generally, memoranda that may be withhold are not factual in nature. Rather, they express opinions and give advice to those charged with making decisions. The exemption is intended to promote "frank discussion of legal and policy matters" in writing and to ensure a free, open flow of ideas to decision makers. (S. Rep. No. 813, 9; NLRB v. Sears, Roebuck & Co., ———— U.S. ———— 1975.

(*a*) Do you agree generally with the purpose of this exemption?

Answer. Yes.

(*b*) Would you vote to apply the exemption to memoranda to the Commission from its General Counsel setting out the strengths and weaknesses of possible strategies for handling impending or current litigation?

Answer. Yes.

VI. STANDARDS AND PRODUCT HAZARDS

*Question 1.* Section 7 of the Act mandates the Commission to promulgate a consumer product safety standard when that standard poses an "unreasonable risk of injury". Section 15 requires the reporting of product hazards where there is a "substantial product hazard". Section 12 provides that the Commission can go to court to seek a seizure of products which pose an "imminent hazard".

(*a*) How do you define the distinction between these three gradations of risk?

Answer. The basic definition of gradations of risk can be found in Section 3 of the Consumer Product Safety Act. Further definition would be determined by specific factors involved in the investigation of the particular products.

(*b*) What factors go into the determination that a product may present an imminent hazard?

Answer. An imminent hazard would be determined by the degree of injury, the gravity of risk in usage, and difficulty, in ascertaining and averting the hazard by the consumer.

*Question 2.* Assume the Commission has determined to proceed to establish a consumer product safety rule because products in the market currently pose an unreasonable risk of injury. Under what circumstances should the Commission also proceed with a Section 15 order against products already in the marketplace?

Answer. If the risk of injury presents a "substantial product hazard," then the Commission should commence a proceeding to determine whether the public notice provision of sub-section C should be implemented, or the repair, replacement, or refund provision of sub-section D should be instituted. Furthermore, the Commission should determine whether "imminent hazard" exists, and whether it should go into federal court for injunctive relief to protect the public.

*Question 3.* Do you believe it is necessary for the Commission to be able to demonstrate that consumers have actually been injured before the Commission can proceed with a consumer product safety standard? It not, what additional mechanisms can the Commission use as a basis for its determination to proceed with a consumer product safety standard?

Answer. No. The basic and most obvious mechanism would be that of research.

*Question 4.* What is the role of the statement of economic impact of a consumer product safety rule required by section 9(c)(1) of the Act? How extensive should such statement be?

Answer. The statute requires that the Commission make a finding on the cost of the proposed rule. The rule involves weighing the degree of risk and the public's need for the item, as well as to set forth findings of fact on costs that should be weighed relative to the industry involved, but subject to consumer input. It should be comprehensive and definitive. Section 9(c)(1) of the act sets forth the basic guidelines.

*Question 5.* (*a*) What is the role of voluntary standards in the context of consumer product safety?

(*b*) What do you view as the dangers of voluntary standards?

Answer. (*a*) and (*b*) I generally do not favor voluntary standards. The role of voluntary standards should be affected only in lower priority areas or non-imminent risk products of the commission, as relates to products of a lesser degree of risk or hazard. A voluntary standard would be dangerous when applied to imminent risks or hazards. They further could be dangerous because they are apt to be less comprehensive and cannot be enforced. I am an advocate of tight scrutiny by the commission over standards.

(*c*) Are there any product areas with which you are familiar where you believe the Commission should defer to the voluntary standards setting approach? Please specify.

Answer. No.

(*d*) When the Occupational Safety and Health Act was adopted, many voluntary standards were adopted quickly. The Consumer Product Safety Commission, on the other hand, has been slow to adopt such voluntary standards. Do you subscribe to the approach taken by the Consumer Product Safety Commission?

Answer. Yes.

(*e*) Assume the Commission agrees that a voluntary industry standard provides a reasonable level of safety to consumers. Under what circumstances should the Commission adopt the voluntary standard as a federal consumer safety standard? Under what circumstances should the Commission take no action?

Answer. Only after subjecting that standard to the Commission's established rule-making process with appropriate input from the affected parties. The Commission should take no action to adopt that voluntary standard when it is determined that that voluntary standard is insufficient.

*Question 6.* What steps, if any, should the Commission take to ensure that manufacturers report substantial product hazards to the Commission? In borderline cases, should the Commission or the manufacturer determine whether a hazard constitutes a "substantial product hazard" under Section 15 of the Act?

Answer. If the manufacturer fails to report as Section 15 requires, the commission should vigorously enforce the criminal penalties section of the Act. Section 15 requires that the manufacturer report evidence of potential hazard, then the commission has a duty to make a determination.

*Question 7.* The Commission recently adopted new policies relating to substantial product hazard cases. In what respects do you disagree with the new Commission policies?

Answer. I have not completed my review of these newly-adopted policies, and therefore would reserve judgment until I have done so.

## VII. DEVELOPMENT OF CONSUMER PRODUCT SAFETY STANDARDS

*Question 1.* Under Section 7(b) of the Consumer Product Safety Act. the Commission commences development of a consumer product safety standard by publishing in the Federal Register a notice, *inter alia*, inviting persons or groups to submit offers to develop a proposed standard.

(*a*) Do you believe that the Commission should specify with particularity and in detail the nature of the risks of injury associated with the products?

Answer. Yes.

(*b*) Do you believe that the Commission should specify with particularity and in detail the strong and weak points of any existing standards known to the Commission which may be relevant to the proceeding?

Answer. Yes.

(*c*) Do you believe that the Commission should specify with particularity and in detail the areas which the offeror should address in its development of a proposed standard?

Answer. Yes.

*Question 2.* Do you think that the Commission should closely monitor the offeror's activities during the development of a proposed standard? Do you believe that a Commission representative should regularly brief the Commissioners regarding the offeror's activities? Do you believe that the Commission should regularly advise the offeror on the direction of the offeror's work? Once the offeror has begun its work, what role should the Commission's staff play?

Answer. Yes. Yes. Yes. The commission has a duty to monitor.

*Question 3.* Section 7(e)(2)(B) of the Consumer Product Safety Act and section 1105.7(f) of the Commission's regulations governing consumer safety standards (16 CFR 1105; 39 Fed. Reg. 16206) provide that the Commission may terminate the offeror's development of a safety standard if the Commission determines that the offeror is not "making satisfactory progress".

(*a*) If the offeror refused to address a risk of injury identified by the Commission as being unreasonable and, therefore, requiring regulatory action, would you vote to terminate the offeror's standard development?

Answer. Yes.

(*b*) If the offeror addressed a risk of injury through an approach which your staff indicated was inadequate, would you vote to terminate the offeror's standard development?

Answer. I would vote so upon satisfying myself that the staff was correct.

*Question 4*. If your evaluation of a proposed consumer product safety standard submitted by an offeror convinced you that the proposed standard did not adequately address the risks of injury identified by the Commission, would you vote to propose it? If not, do you believe that the Commission may substantially alter the terms of a proposed safety standard submitted by an offeror in the event that the Commission does not believe the proposed safety standard is adequate?

Answer. No. Yes, the Commission should act upon the advice of the General Counsel relative to the legality of doing so.

*Question 5*. Evaluate the success to date of the Commission in implementing the offeror procedure? What changes, if any, would you make in implementing the offeror procedure?

Answer. I wish to undertake an extensive personal review of the procedure, and consult with various consumer groups before making a judgment. I want to review the history of the procedure as well as evaluate its effectiveness.

*Question 6*. Section 7(d) allows the Commission to accept more than one offeror to develop a proposed consumer product safety standard. Under what circumstances should the Commission accept more than one offeror?

Answer. More than one offeror should be accepted when the nature of the risk involved raises the likelihood that there are a number of different ways to eliminate the hazard.

*Question 7*. Section 7(d)(2) authorizes the Commission to contribute to the offeror's cost in developing a proposed Consumer Product Safety standard whenever the Commission determines "that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution".

(*a*) Define the circumstances which would warrant Commission contribution to the offeror's cost.

Answer. Contribution to the cost would be warranted in those instances where it is necessary to insure broad public representation in the development process.

(*b*) Do you believe that organizations which are selected to be offerors should be reimbursed for all of the costs which they necessarily incur in the course of developing standards? If not, how do you propose to insure that consumers and consumer organizations will play an important role in the standards' development process.

Answer. I support the language of the House Committee Report that says: "It is expected that the Commission will exercise its authority under this section to provide assistance to consumer organizations or groups which are less likely to be able to bear the costs of standards development than are industrial trade organizations. Also, in instances where an offer from a technical committee or standard-writing organization is accepted, it is contemplated that the Commission would have authority under this section to limit its contribution to such of the offeror's costs as are attributable to assuring adequate participation by public representatives in the development process."

*Question 8*. Section 7(d)(3)(B) requires the Commission to promulgate regulations relating to the offeror procedure which allow for notice and opportunity by interested persons (including representatives of consumer, and consumer organizations) to participate in the development of consumer product safety standards.

(*a*) What steps, at a minimum, must the Commission take to insure adequate consumer input. Why or why not? Do you believe the Commission already possesses the legal authority to initiate such a program in aid of its statutory mission?

Answer. The Commission must insure coverage of costs because it is extremely important that consumers have the most direct channel for input into the decision-making process. Yes.

(*b*) Do you believe that both lay consumers and technically competent consumers must be involved in the offerors' standard development process and that it

is the responsibility of the Commission to ensure meaningful participation by both types of consumers?

Answer. Definitely yes.

*Question.* A number of commentators have suggested that the offeror process as implemented by the Commission has resulted in overly lengthy standards development periods.

(*a*) Do you believe the offeror process should be abandoned in favor of Commission development of standards?

Answer. While I cannot say that the offeror process should be abandoned, it should in any case be supplementary to the standards development process.

(*b*) What steps, if any, should be taken to expedite the offeror process?

Answer. The establishment of strict time deadlines would be an effective step.

(*c*) If you were to conclude that basic changes in the offeror process—such as greater Commission control—were necessary, would you ask the Congress to amend the Consumer Product Safety Act to give you the required changes?

Answer. Yes.

*Question 10.* (*a*) The commission has several different tools for insuring compliance with Commission regulations including civil and criminal sanction authority, injunctive authority and seizure authority. How should the Commission utilize these tools to attain an effective enforcement and compliance program?

Answer. The Commission should vigorously and frequently use its statutory tools.

(*b*) Would you refer all violations for criminal prosecution or only selected cases? What criteria would you use in voting on cases to refer for prosecution?

Answer. If the act is violated, I would refer all violations for prosecution. The criteria used would be the facts indicating violations.

(*c*) Where the statute violated allows civil as well as criminal penalitites, which would you generally prefer to use? What criteria would you use in selecting between them? Would you use both in appropriate cases?

Answer. I would use both options.

## VIII. MISCELLANEOUS

*Question 1.* What role do you believe the consumer product safety advisory committee should play in the affairs of the Commission?

Answer. The act (Section 12(d)) addresses itself to the role of the advisory council. I believe that it can play an effective and meaningful role. The council could be broadened and fulfill a real input and information gathering function. I support the usage of the council and believe it should be given a prominent role in assisting the commissioners.

*Question 2.* The Commission has promulgated standards by which to determine when a substance or article under the Hazardous Substances Act is a banned substance or article. Do you believe the Commission has such authority?

Answer. Section 3 of the Hazardous Substance Act indicates the Commission's authority. But if uncertain, the General Counsel should certainly be consulted.

*Question 3.* Do you believe the Commission should incorporate a sampling plan into a product safety standard? Why or why not?

Answer. Yes, if the sampling plan process will assist in the gathering of facts, in order to make proper decisions. My job as a Commissioner will be to ascertain by the effective legal means those facts that will assist the creation of good standards.

*Question 4.* Section 13 of the Act authorizes the Commission to prescribe rules for the purpose of insuring that the manufacturer of any new consumer product furnishes notice and a description of such product to the Commission before its distribution in Commerce. The Commission has yet to promulgate rules under this Section. Do you believe such rules are necessary, and if so do you plan to have the Commission promulgate those rules? What is the basis of your determination?

Answer. Yes. This is a question of "pre-market scrutiny," and I support it. I take this position because the law allows for such action when there is a lack of information adequate to determine the safety of a new product.

*Question 5.* The Consumer Product Safety Commission has adopted a policy which allows the manufacturer of fabric which does not comply with the Flammable Fabrics Act to either destroy that fabric or to rework it. The Commission does not allow the export of such non-compliance products. What is your position on this Commission policy?

Answer. I support it.

*Question 6.* Assume that a manufacturer has produced a product which contains a substantial hazard but that manufacturer has filed for bankruptcy. What should the Commission do in order to protect the public and to provide redress under Section 15?

Answer. The Commission should energetically and expeditiously implement Section 15, providing public notice of the hazard, providing for repair, replacement, and refund provisions of sub-section d, within the rules of federal bankruptcy procedures.

Senator Moss. We will have a chance to interview you more later.

We now have Mr. Herbert Simmons, Jr., acting executive director of the National Consumer Information Center, and Mrs. Maudine Cooper, deputy director of the Urban League.

Would those two witnesses come forward? We would ask Mr. Simmons if he would go first, then we will hear from Mrs. Cooper.

Mr. SIMMONS. Mr. Chairman, I understand that my colleague here has to leave. If it is OK with the chairman——

Senator Moss. Very well. That is more appropriate, anyway, yielding to the lady.

## STATEMENT OF MAUDINE COOPER, DEPUTY EXECUTIVE DIRECTOR FOR PROGRAMS AND GOVERNMENT AFFAIRS, AND DIRECTOR OF THE WASHINGTON BUREAU, NATIONAL URBAN LEAGUE, INC.

Mrs. COOPER. Thank you.

Somehow there was a little bit of mixup in the schedule this morning and Mr. Ron Brown, who is the director, and also has been named recently as deputy director of programs and Government affairs, was supposed to give the testimony. He is out of town, and he asked me to respond instead.

I have a prepared statement which I will summarize omitting some of the more lengthy sections and ask that those parts be submitted for the record.

Senator Moss. The entire statement will go in the record and you may condense or summarize it.

Mrs. COOPER. I am Maudine Cooper, deputy director for the Washington bureau.

For those of you who may not be familiar with the Urban League and others, I would explain that we are a 66-year-old civil rights, community-based organization, which has consistently directed its efforts toward activities which provided for full participation in the economic system by poor and minority persons. Through our impressive network of 4 regional offices, 105 affiliates in 35 States, and a New York headquarters, we have continually expanded those efforts.

That has meant that the league's commitment to equal opportunity and equal participation in all aspects of the American mainstream is a full-time effort. In consideration of that position, at every opportunity we seek to support those persons who are both qualified and concerned for the needs of both poor and minority communities as well as sensitive to the needs of individuals who make up those communities.

In that regard we are pleased to support Mr. Garrett's nomination as one who meets those requirements.

In our long, but very close relationship with Mr. Garrett, we have utilized at every opportunity his vast experience and expertise in the governmental processes.

During the periods in which he was assistant to Congresswoman Shirley Chisholm, and Assistant for Minority and Urban Affairs to the Vice President of the United States, we regularly sought his assistance and viewed him as an invaluable resource.

Both roles, we believe, have enhanced and contributed to Mr. Garrett's already keen awareness of the urgent needs for consumer representation in this very important regulatory commission.

The National Urban League's concern for the appointment of the nominee stems from a number of very important recognitions concerning the present CPSC statutory authority.

We recognize that the responsibilities as outlined in the Consumer Product Safety Act, the Flammable Fabrics Act, the Federal Hazardous Substance Act, the Poison Prevention Packaging Act, and the Refrigerator Safety Act should be priorities for the improved quality of living within poor communities—communities which are often minority and the victims of unscrupulous manufacturers and retailers.

The quality of the products for which standards have been developed, such as sleepwear for smaller children, lead-based paint, and child-proof packaging for prescription drugs and various over-the-counter medications, makes us conscious and concerned that minority input at the highest level be consistently supported.

Our knowledge concerning the internal workings of the CPSC and the important role of Mr. Garrett in that structure dates back to our close and warm working relationship with the former Commissioner Constance Newman. It was primarily through the efforts of Commissioner Newman that minority participation on the statutory advisory committees was spearheaded. She was instrumental in my appointment to the Advisory Committee on Poison Prevention Packaging and further instrumental in my appointment as Chair of that advisory committee.

Commissioner Newman's absence from the Commission has left what we believe to be a void in the ongoing attention to and concern for the poor and/or minority communities. Our Consumer Action Team (CAT) in its recent video and graphics program has had an opportunity to examine the Federal Government's approach to food handling, food preparation, medication instructions, as well as standard fact sheets which explain and/or justify many of the health and safety regulations.

The project staff recognized immediately that the unwary and often illiterate consumer would rarely, if ever, read, heed, or understand the pages upon pages of technical but often essential information necessary for informed product selection as well as product usage once the selection has been made.

Through the CAT project, we realized that the segment of the population which we are concerned about has been neglected by the CPSC as well as other Federal agencies designed to develop and carry out health and safety regulations.

We suspect that those who need the information the least—the wealthy—often have access to it the most; and that middle-income Americans are the audience for whom most of the materials are geared.

Little thought seems to be given to the poor and near-poor and the specific ways in which the message can be effectively delivered.

Given our unverified suspicions of what may be a widespread, if not chronic problem, we therefore view Mr. Garrett's potential role in the ongoing activities of CPSC as a critical one. We strongly believe that his linkage with community-based organizations can help steer the CPSC in a direction which it currently neglects.

The National Urban League firmly believes that because of Mr. Garrett's qualifications and our own organizational concerns for those who thus far have been programmatically neglected by the Commission, as well as other health and safety agencies, we believe that a speedy confirmation of Mr. Garrett as a commissioner for the CPSC is essential.

Thank you for your attention.

If there are any questions, I would be glad to answer them.

Senator Moss. Thank you very much, Mrs. Cooper, for your testimony in behalf of the National Urban League and the Washington Bureau.

We appreciate having that.

I don't have any specific questions at this time, so if you find it necessary to leave, you may do so.

Mrs. Cooper. Thank you again.

Senator Moss. Thank you.

We will turn now to Mr. Simmons, Herbert Simmons, National Consumer Information Center.

## STATEMENT OF HERBERT SIMMONS, JR., ACTING EXECUTIVE DIRECTOR, NATIONAL CONSUMER INFORMATION CENTER, WASHINGTON, D.C.

Mr. Simmons. Good morning, Mr. Chairman. My name is Herbert Simmons, Jr., and as Acting Executive Director of the National Consumer Information Center, I am pleased to be here this morning to testify on behalf of Thaddeus Garrett, Jr., for the appointment of Commissioner to the CPSC.

First, I would like to give you a brief background of the National Consumer Information Center and what we are all about. NCIC is a nonprofit organization which seeks to protect and advance the interests of low- to moderate-income consumers across the country.

Founded in 1968 by a group of Howard University law students, including myself, the organization, then called the Neighborhood Consumer Information Center, was formed to aid poor people in their plight against poverty, and especially, in regards to consumer issues that affect us all, but are sadly neglected in low-income echelons.

By a mandate of the Office of Economic Opportunity in 1972, we became the National Consumer Information Center and were delegated to expand our program of consumer education to low-income consumers on a national basis.

We are presently continuing this program under a grant from the Community Service Administration. While my primary purpose here today is to offer support for the nomination of Rev. Thaddeus Garrett, Jr., please permit me to take a few minutes to give my views on a matter that pertains to regulatory agencies, but somehow transcends the nomination of Reverend Garrett.

Historically, members of minority groups have not been appointed to Federal regulatory commissions, and the views of these groups have not been fairly and effectively represented. Two major exceptions to this pattern have been the appointments of Benjamin Hooks to the FCC and Constance Newman to the CPSC. Since Mr. Hooks' appointment, the number of blacks occupying important posts at the FCC has almost quadrupled. The industry which the FCC regulates has also shown increased minority representation as a result of Mr. Hooks' efforts.

The issue of minority participation on the various regulatory agencies will not evaporate with the passage of time, nor will it disappear through wishful thinking.

We, at the National Consumer Information Center, think that it is crucial that politicians of both parties maintain their commitment to see that members of minority groups are fairly represented in regulatory agencies.

The poor and disadvantaged consumers have always gone unprotected and unrepresented in vital matters that impact upon their well-being. They have been subjected to every imaginable abuse known to the commercial world. Why? Because they have been unable to effectively defend and protect themselves.

Blacks and other minorities in this country are consumers. All too often, they are more likely than their white brothers and sisters to be victims of deceptive advertising and shoddy workmanship.

The role of Government is to responsibly represent, protect, and help citizens who cannot help themselves.

The National Consumer Information Center's primary objective is to help people help themselves by educating low-income consumers so that they know their rights and responsibilities. We work very closely with community action agencies, local chapters and hundreds of other community-based consumer groups across the country and actively seek dialog and input from business, Government and labor, as well.

In addition to educational workshops, seminars and conferences, NCIC publishes a monthly newsletter called Consumer Strategy. Our primary readership is concerned with, and actively involved in, the affairs of vital relevancy to low-income consumers. Therefore, it is our intention to keep these subscribers abreast of the latest legislative measures brought before Congress and the actions of various governmental agencies that affect our constituency. In the July issue of Consumer Strategy, we published an article entitled, "Open Doors in Washington." That article was based primarily on an interview with CPSC Chairman S. John Byington.

One can appreciate the rising risk and suffering associated with consumer products. The matter of consumer product safety is everybody's business, and no segment of our society should go unprotected. It is only fair and just for every American consumer to be free of products which often injure, maim, or impair health or life.

In interviewing Chairman Byington, NCIC was especially interested in what programs the CPSC has developed and plans to implement in relation to low-income consumers.

Although there are no specific programs for this group, many deal directly with products that have a particular significance to poor people—flammable fabrics, paint and lead, inexpensive household

items, et cetera. The national electronic surveillance system, a system wired into the emergency rooms of 120 scientifically selected hospitals across the country to monitor and report on all emergencies related to a product, is also of special importance to the consumer. They are often the victims.

The CPSC was created 3 years ago to protect the American public against unreasonable risk of injury from consumer products. The Commission has an admirable mission and, under the leadership of its present Chairman, will, no doubt, make great strides.

However, there are many areas in the CPSC where there is a great need for a minority member to articulate the needs of, insure input from, and participation of minorities.

Chairman Byington strongly emphasized the Commission's openness policy during our discussion of the agency's history: Where it has been and the direction it is headed. During the frank and candid interview with him, we felt certain that this policy was, in fact, a reality and began at the top with the Chairman himself. For further verification, we talked to community leaders across the country who have dealt with the Commission. Our beliefs were confirmed as we received positive comments about cooperation received and attitudes held.

The CPSC is a young agency. Now, is the time to further their openness policy—further it from within the agency. This is not a time to consider partisan politics, but rather an opportunity to appoint a member of the black minority who is competent and qualified to do an effective, outstanding job for the Commission.

Government is not a new field for Thaddeus Garrett, Jr. This articulate young man decided his direction at an early age, and he's been moving forward ever since. He has actively worked for the interests of the black consumer. After having served as an assistant to both Republican and Democratic Congresspersons, we know that he is capable of working within the framework of our democracy, first and foremost, for the good of the people. Most recently, in his position as Special Assistant on Urban Problems to the Vice President, he has further demonstrated his capabilities and competence.

After careful review and consideration, we, at the National Consumer Information Center, wish to record our support and endorsement of Thaddeus Garrett, Jr., for appointment as a Commissioner to the CPSC.

Mr. Chairman, and members of the committee, we stand on the threshold of a new tomorrow. This new tomorrow demands the full participation of every American.

We feel that a vote for Reverond Garrett's confirmation is a vote for fair representation for blacks and other minorities in regulatory agencies.

The opportunity presents itself for this committee to confirm the appointment of a strong minority voice in the high levels of government * * * a voice aware of, and sensitive to, the needs and problems of the poor consumer * * * the voice of Thaddeus Garrett. Jr.

Certainly, if you have any questions, Mr. Chairman, I would be happy to respond.

Senator Moss. Thank you, Mr. Simmons. Your testimony was strong and to the point and we do appreciate it very much. We know that your organization is one most concerned with consumer protec-

tion and consumer information, which is a major thrust of this regulatory commission to which Mr. Garrett has now been nominated. We appreciate your evaluation of his capabilities. I am sure that in carrying on your day-to-day work, you have looked into his qualifications and are fully satisfied he has the qualifications for this important task, so we appreciate having you testify.

I don't know of any further questions of you, and we will excuse you at this point. We will now ask Ms. Kathleen O'Reilly, legislative director of the Consumer Federation of America, and Ms. Joan Claybrook of Congress. Watch to come forward, please.

We are very pleased to have you with us. I think Ms. O'Reilly, you may go first, and then Ms. Claybrook.

## STATEMENT OF KATHLEEN O'REILLY, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA, WASHINGTON, D.C.

Ms. O'REILLY. Thank you. My name is Kathleen O'Reilly, I am legislative director and staff attorney for the Consumer Federation of America.

Consumer Federation of America is a federation of 215 national, State, and local nonprofit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent over 30 million consumers throughout the United States.

Among our members are: Consumers Union, publisher of "Consumer Reports"; 17 cooperatives and credit union leagues; 45 State and local consumer organizations; 66 rural electric cooperatives; 27 national and regional organizations ranging from the national board of the YWCA to the National Education Association and 16 national labor unions.

At its most recent annual meeting in January 1976, CFA's membership overwhelmingly adopted the following policy resolution:

Qualifications for regulatory commission members:

> The President has been highly critical of the functioning of the regulatory process. In other sections of our resolutions, CFA addresses specific actions to improve the efficiency, effectiveness, and fairness of regulation. An essential element of effective regulation is the appointment and confirmation of highly qualified personnel. It is the responsibility of the President to appoint only qualified individuals and the responsibility of the Senate to confirm only those who meet this standard.
>
> Highly qualified must include demonstrated sensitivity to the public interest, independence of action, dedication to the furtherance of the role of the agency as well as knowledge of the subject field.
>
> There are several existing regulatory vacancies. We insist that the President appoint only highly qualified individuals to those positions. We will not support any who are not qualified.

A review of Thaddeus Garrett's biography and written answers to prehearing questions together with a lengthy personal visit with Mr. Garrett, have persuaded us that Thaddeus Garrett does not meet the standards of that policy resolution. Most notably Mr. Garrett does not, either through education or experience, have knowledge of the subject field of the CPSC.

Congress has repeatedly renewed its commitment to regulatory reform and has stated that it recognizes that a key ingredient of effective regulatory reform is the application of strict standards in the course of nomination proceedings for regulatory commission ap-

pointees. We urge you to insist on standards of competence and expertise as this nomination is considered.

The CPSC is a very specialized regulatory agency. The issues it considers and the packagages of information it must review are highly complex.

Yet Mr. Garrett does not have any background in chemistry, physics, engineering, or related sciences which would be invaluable in evaluating highly technical issues. Nor does Mr. Garrett have a legal or economic background which though less significant than a scientific background would nonetheless mollify that lack of a scientific background.

A member of the CPSC must be able to deal, for example, with presentations on swimming pool slides which include explanations by the Engineering Bureau aimed at describing the moment of inertia in terms of a body reaching the water.

The Economic Bureau will discuss cost in often complex terms. The legal implications of compliance or noncompliance with the Consumer Product Safety Act, Administrative Procedure Act, CPSC regulations, et cetera, are also a matter of frequent concern.

Mr. Garrett is fatally handicapped by his lack of background in these areas. He acknowledges that he does not have a technical background which lends itself to serving as a commissioner.

He insists, however, that the most important qualification is his stated commitment to serve the public interest and that the void in his background can be compensated by his selection and dependence upon qualified staff members. We disagree with Mr. Garrett's appraisal of the Commission and its staff.

The role of the staff is to supplement not substitute for knowledgeable Commissioners. The Commissioners should inspire the staff to excellence and ask frequent and probing questions to insure top performance.

It is not the role of staff to make the ultimate decisions and yet that is the inevitable consequence of confirming an unqualified Commissioner who is totally dependent on the knowledge and, therefore, the advise of staff members.

How, for example, could such a Commissioner ask even the most rudimentaty questions to satisfy himself that the Engineering Bureau's conclusions are based on quality research and do not reflect the faulty propaganda of a zealous industry lobbyist?

Our concern is intensified by many of Mr. Garrett's answers which exhibit either an extremely shallow understanding or a total misunderstanding of the CPSC and the issues it faces. Stated in brief, they include the following:

The written answer to the question on "sampling plans" does not evidence an understanding of what sampling plans are and the background which led to a recent legislative curtailing of their use. Our personal discussion with him confirmed that lack of understanding.

Mr. Garrett's description of the relationship between the CPSC and the State and local authorities is actually backward. The Commission's role is not to provide assistance to the State and local authorities. Rather the CPSC uses the States' assistance to enforce CPSC rules, by means of contracts which call for the hiring of State investigators.

In response to the question on FTC funding of public participation, Mr. Garrett answers in the most general fashion that he supports such funding. Yet he does not discuss the existing procedure whereby the CPSC pays out-of-pocket expenses for public praticipation, but does not pay salary or fee equivalents for such public participation. He is either unaware of this current CPSC controversy or has no suggestions on how to remedy the problem. Similarly, we explained the intense frustration of consumer groups who have had to deal with the FTC funding program, because the FTC never developed written guidelines on such basics as deadlines, rate of attorneys' fees, method of proving expenditures, et cetera. Mr. Garrett's answer was unresponsive to the problems described.

Mr. Garrett's blanket endorsement of the Comptroller General's July 26, 1976, report is troublesome. For example, it is recommended in that report that the CPSC develop a plan for disseminating its enforcement strategy to affected industries. In fact, the CPSC does have such a plan, but it has not found a satisfactory method for reaching small businesses that do not belong to a trade association or are otherwise accessible through mailing lists. Mr. Garrett fails to discuss this type of specific problem.

Mr. Garrett's answer to the question on low-income consumers is equally vague. He speaks in terms of minorities being "taken," but fraud is within the purview of the FTC, not the CPSC. There is no discussion of the dangers which low-income consumers are particularly susceptible to, such as lead-based paint. In the same answer he speaks of working energetically toward increasing the hiring of minority and low-income background persons to the Commission's professional staff. While that goal is praiseworthy, it is the role of the Chairman to directly assume that task.

With respect to the CPSC's meeting policy, Mr. Garrett speaks of the Commission's "adjudicatory role like a jury." In fact, the CPSC does not function as an adjudicatory or jury-like body. The Commission's function is more closely akin to that of an appellate court.

Mr. Garrett's response to the question dealing with the request of a trade association for an emergency unscheduled meeting to discuss postponing or withdrawing a regulation due to go into effect within a day or two, raises a serious question as to whether he understands the CPSC's meeting policy and requirement of Notice in the Public Calendar.

In terms of the Freedom of Information Act he says on the one hand that he can cite no examples of instances where disclosure would not be in the public interest, but states later on the same page that he would vote to apply the exemption to memoranda to the Commission from its General Counsel.

The answer to the question on the "offeror process" is difficult to understand, because there is no standards development process for it to supplement;

Further, in terms of civil versus criminal penalties, Mr. Garrett's answer does not reflect an awareness of the strategic decisions involved in determining whether to opt for civil or criminal penalties and, if both, whether they should be pursued simultaneously or in sequence.

Mr. Garrett indicates that in every instance of a violation he would impose both types of sanctions. This view evidences a disturbing lack of prosecutorial discretion. For example, a manufacturer who indicates that he or she has no intention whatever of complying with the CPSC's poison prevention packaging regulations should be dealt with in the same manner as one who is able to demonstrate that the regulations were complied with on every day but one when production difficulties beyond the control of the manufacturer made compliance impossible. An insensitivity to the day-to-day functioning of the real world and its impact on a regulator's decisions is apparent from that answer of Mr. Garrett.

Finally, Mr. Garrett's responses to our questions on such topics as congressional veto, the CPSC's position with respect to fluorocarbons, et cetera, did not evidence a basic grasp of the issues or possible solutions.

There are other areas which concern us. We question the propriety of a full-time salaried congressional staff person simultaneously acting as an issues coordinator for a presidential candidates.

We question why the White House would nominate someone who not only has no background in the regulatory process, but has not even indicated to any employee of the White House what his basic philosophies and policies are.

We urge the committee to postpone serious consideration of the nomination, until Mr. Garrett has provided detailed written answers to the question on the Commission's recently adopted new policies relating to substantial product hazard cases.

These policies are critically important to recall, repair, replacement and refunding issues.

Mr. Garrett should also be required to give a more personalized answer to the question of what the mission of the CPSC should be. A mere recitation from the enabling statute does not shed much light on his regulatory philosophy.

In sum, we are persuaded that Thaddeus Garrett is sincere and has a true desire to serve the public well.

However, he is not in any way qualified for the serious responsibilities incumbent upon a commissioner of the CPSC.

Senator Moss. Thank you, Mrs. O'Reilly, for bringing us the judgment of the federation. Was this statement prepared by the executive staff or——

Ms. O'Reilly. That is right. I have extra copies here.

Senator Moss. Fine.

I will have Ms. Claybrook now speak for Congress Watch.

## STATEMENT OF JOAN CLAYBROOK, CONGRESS WATCH, WASHINGTON, D.C.

Ms. Claybrook. Thank you. My name is Joan Claybrook, director of Public Citizen's Congress Watch, a public interest organization with supporters from all over the United States, which is concerned with the impact of Government and corporate policies on citizens.

I appreciate the opportunity to testify in opposition to the nomination by President Ford of Mr. Thaddeus Garrett, Jr., for a seat on the Consumer Product Safety Commission.

My statement will be very brief. Mr. Garrett may be a talented young man, as some of the witnesses have stated this morning, but I am testifying in opposition to Mr. Garrett's appointment, because he lacks any experience in product safety regulation or any other type of regulatory activity, and because he is the third White House staff member to be nominated by the President to the CPSC.

If he is approved, Nixon-Ford White House staff members will constitute a majority of the Commission.

The CPSC is one of the most important of the regulatory agencies, because it has authority to protect citizens from the unreasonable risks of injury in the design or manufacture of most consumer products, with the primary exceptions of food, drugs, cosmetics, and motor vehicles.

Each year some 20 million Americans are injured in the home as a result of incidents connected with consumer products.

Of the total, 110,000 are permanently disabled and 30,000 are killed. A significant number could have been spared, if more attention had been paid to hazard reduction in the past.

The annual costs to the Nation of product-related injuries may exceed $5.5 billion, and this is a figure from the June 1970 final report of the National Commission on Product Safety and does not include damage from consumer products regulated by other agencies.

It is our concern about the effectiveness of this agency which prompts us to oppose Mr. Garrett.

As the delegation of congressional Democrats to the 1975 White House meeting on regulatory reform told the President last sumrer:

> The single most debilitating flaw in our regulatory system has been the chronic failure of Presidents to name—and the Senate to insist upon the naming of—outstanding public servants qualified by training and commitment to implement the letter and spirit of the laws which they are sworn to uphold.

It is inappropriate to ask that independent Federal regulators who are appointed to serve for 7-year terms with no subsequent review of performance, be approved with anything less than commitment and training.

Yet that is what is being asked in this case. In his responses to the questions posed by the committee in advance of this hearing, Mr. Garrett makes his consumer commitment clear. And we appreciate that very much. But that is not enough. For his résumé and his responses to the committee's questions also indicate that he has no training in regulatory activities and very limited knowledge of the job.

The post of Commissioner of the CPSC is not suited to on-the-job training. It is a position of major responsibility which can influence the costs of manufacturing vast numbers of products, as well as the safety of the millions of consumers who use them.

The person who occupies that post should be from among the most experienced in this country who have familiarity with the issues and the legal authority of the Commission.

At age 28, there are very few individuals who possess sufficient training and experience for such a job, regardless of their concern for people in urban areas, the lack of such representation on this Commission and their interest in representing other views of urban people.

In Mr. Garrett's case, it must be noted that he has absolutely no training or background in the field of regulation from an economic, scientific, or legal point of view.

I took the occasion to review the questions posed by the committee, as did Mrs. O'Reilly.

I have a few comments that she did not make.

In response to questions III. 12(a), when asked about the priorities between research, enforcement, standards development, and consumer education and regulation under section 15, Mr. Garrett's only answer was, there should be open debate about that issue.

I do not think that that is the case. Nor do most regulators in the field.

The difference between prevention and injury through built-in standards and activities, as long as espoused by the National Safety Council, for example, "the life you save may be your own," is the difference between night and day.

The clear, overriding responsibility of the CPSC is the issuance of standards and enforcement of standards, and the recall of defective products.

Education is clearly a supplementary activity which is important, can be useful, but does not, in any way, supplant the need for standards and enforcement.

In response to questions III. 13, about the successes to date of the CPSC, Mr. Garrett mentioned "laying of a basic foundation for the development of standards and commencement of a research and education program," which shows to me he knows very little about what the Commission has done or about its strengths and weaknesses.

In response to question IV. 1 about the interrelationship between CPSC and other branches, Mr. Garrett talks about them as one of cooperation.

He says this is especially true of commissions and the judiciary.

I don't know of anyone who understands the separation-of-powers doctrine in the Constitution, who would make this statement there is a cooperative relationship between the regulatory agencies and the judiciary.

In response to question IV. 6 about the key achievements—about whether or not the names of top staff persons in the Commission should be cleared with the White House, Mr. Garrett says they should be. It seems to me that one of the basic achievements of Chairman Simpson in the past has been not bowing to White House pressure.

Senator Moss. I think that question said——

Ms CLAYBROOK. Did I misread that?

Senator Moss. I think you misread that. I believe he said "should not be required."

Ms CLAYBROOK. I am sorry. Then I withdraw that statement.

In response to question 6–6, about what steps the Commission can take to make sure that manufacturers report problems with consumer products, Mr. Garrett comments it should be through penalties and enforcement. But that is a—very basically out of the statute, but there are so many other steps the Commission can take and which indeed many regulators today take, by instituting systems of checks throughout the community, for example, reviewing consumer complaints, keeping track of news articles, that appear in the press, through testing by the agency and so on.

In conclusion, let me say that what concerns me about this nomination is really a political matter, as well. That President Ford, who in the past has decried the practice in prior administrations, has sent up

Mr. Garrett's nomination very late in this Congress, in the midst of the Presidential campaign for a post which has been vacant since spring.

Mr. Garrett is one of the very few minority recipients who have been nominated by Mr. Ford, and that, in fact, makes it quite difficult for me and others, to take a position in opposition to such a nomination.

However, in providing for the consumers, priority must be given to the qualifications for the job.

It can be stated with certainty that there are many individuals from minority groups who are qualified for this kind of a post.

We oppose the nomination of S. John Byington, who we believed was not qualified for the post of Commissioner or Chairman of the CPSC because he lacked any real expertise in the field, and I think it is fair to say Mr. Garrett has far less experience in Government activities than Mr. Byington.

For these reasons we oppose the nomination.

Senator Moss. Thank you for your testimony, and the specifics that you have brought us on some of the answers to the questions. Obviously the questions you raise are ones that give the committee considerable concern.

We have announced heretofore and tried to adhere to the policy that we would demand persons of the highest caliber to be confirmed as members of the regulatory agencies.

With the constant and increased attention being given to the functioning of our regulatory agencies, that becomes even more imperative, so we are much concerned with the point that you have raised, and we will, before we have completed our work, submit a number of questions, undoubtedly, to the nominee and perhaps to other persons.

We are this morning constrained by time. I am going to have to recess the hearing now and I am going to have to ask Mr. Garrett to return when we are able to reschedule the hearing. Hopefully there will be other members of the committee sitting at that time.

A number of the questions you have raised we are going to——

Ms CLAYBROOK. I have prepared a series of 15 questions, if it would be possible to include them with those that are raised later at the hearing.

Senator MOSS. We would be happy to receive them and look at them and use all or some of them, as it appears appropriate to us. We would be glad to have that, so that we can present them.

This will complete our witness list this morning. I regret we have to have this recess.

We will recess and ask Mr. Garrett if he will return when we are able to reschedule the hearing.

Anyone else that is interested is welcome, of course, to be back. I don't know of any other outside witnesses, but if there are any, we would hear them at that time, too.

We are now in recess until further call of the Chair.

[Whereupon, at 10:20 a.m., the hearing was recessed, to reconvene at the call of the Chair.

[Due to the rush of business during the final weeks of the 94th Congress, the committee was unable to reconvene the hearing. At the direction of the chairman, the following questions, which were

intended to be asked at the hearing, were submitted to Mr. Garrett for his written response.]

QUESTION OF THE COMMITTEE AND THE ANSWER THERETO

*Question 1.* The Consumer Product Safety Act provides that not more than three of the Commissioners shall be affiliated with the same political party. For the record, are you a registered Republican, Democrat, or independent?

Answer. I am a registered Republican.

Question 2. (a) In your responses to the Committee's pre-hearing questions, you indicate that you were recruited and initially interviewed for this position by Margot Boyle of the White House personnel office. (a) How did your name come to the attention of the White House personnel office? Did you in any way seek this position?

Answer. I do not know. No.

*Question.* (b) Did you at any time speak personally with the President regarding this appointment?

Answer. No.

*Question.* (c) To your knowledge, did anyone speak personally with the President on your behalf regarding this appointment?

Answer. I do not know.

*Question 3.* Question 10 of the Committee's Biographical and Financial Questionnaire asked you to list all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last ten years.

(a) You responded as follows: "I am a registered Republican in Akron, Ohio. I have never held any office in a political party or on a campaign committee, nor have I made any financial contributions to a political party." You did not respond to the question as to whether you have made financial contributions or rendered services to any election committees. Would you please respond to that question now.

Answer. I have not made any financial contributions to or rendered services to any election committee.

(b) You are currently an elected official of the State Board of Education of Ohio. When were you elected?

Answer. November, 1972.

(c) How long is your term of office?

Answer. Four years.

(d) Was that a partisan election?

Answer. No, it was a non-partisan election.

(e) Did you contribute to your own campaign?

Answer. No.

(f) On September 13, 1976, the Justice Department in an opinion to the Committee stated that in their view, your membership on the Ohio State Board of Education constitutes engaging in another "business, vocation, or employment" in violation of 15 U.S.C. 2053(c). If you are confined, will you resign from the Ohio State Board of Education?

Answer. I will of course comply with the law.

*Question 4.* In 1974, you ran for the Ohio State Legislature. (a) In conjunction with your campaign for the State Legislature, did you run an advertisement in an Akron paper called *The Reporter* in which you claimed to have the endorsement of five U.S. Congressmen?

(b) Who were those Congressmen?

(c) Did you in fact have their personal endorsements?

(d) An article dated November 4, 1974 from the *Akron Beacon Journal* quotes your opponent in that election, State Representative Peter Crossland as saying, "We checked out the people in the ad and found that they didn't endorse him It's a pure fabrication." Do you wish to comment?

(e) The article quotes Congressman Mitchell as stating, "The (black) caucus has an official position of not endorsing candidates." The article also quotes Representative John Seiberling of Akron who was asked by Crossland to seek verification of the endorsements. Congressman Seiberling was reported to have talked to three of the Congressmen mentioned in the ad and the *Beacon Journal* quotes him as stating: "All stated in the strongest possible terms that they had not made any endorsements and they were 'shocked and surprised' that their names had been used." Do you wish to comment?

*Answer.* (a)(b)(c)(d)(e) In 1974, my campaign committee sanctioned an ad in *The Reporter* newspaper, which ran the photographs of five Black Congressmen (Messrs. Rangel, Mitchell, Conyers, Dellums, Fauntroy, and Mrs. Chisholm). I want very much to clarify any confusion or misunderstanding regarding this particular advertisement. The idea occurred to my campaign manager and committee that the campaign should run an ad reflecting support of some of the Black members of Congress with whom I have worked with so closely over the last few years. Secretarial persons in the office of Congresswoman Shirley Chisholm were asked by my campaign staff to contact various Black Members of Congress to secure their endorsements as well as photographs for the ad. This took place in the last week of October, very close to the general election. Obviously, many of the Members of Congress were in their home districts campaigning for their own re-elections. However, secretarial assistants in Mrs. Chisholm's office contacted the various offices and either secured approval for the publication of the picture and the endorsement from the individual Congressmen, from either the Congressmen themselves or their designated assistants. In fact, in order to secure the pictures, approval certainly would have had to come from those respective offices. It is a well established practice that the administrative assistant in a Congressman's office has some authority to act in the Congressman's stead. At no time was there any intention to or any knowledge on our part of publishing either a picture or an endorsement by any member of Congress who did not actually endorse my candidacy. Therefore, we ran the pictures and the ad being knowledgeable of the approval from each individual Congressman or his or her office staff. Subsequent to the publication of that ad, Congressman John Seiberling who personally campaigned very hard for my opponent by his own admission, called three of those members of Congress used in the ad, in some instances in their home districts. Apparently, in some instances, the staff had given approval to the ad endorsement without clearing the same from the Congressman.

Certainly, it should be understood that that situation was completely out of my campaign staff's control. Appropriate apologies were issued, if indeed anything wrong had been done. Certainly, from our point of view, there was no malintent or intent to do wrong, and at no time did we seek to use any false endorsements.

I think it should be pointed out, Mr. Chairman, that nearly the entire Congressional Black Caucus has endorsed my nomination to be a commissioner on the Consumer Product Safety Commission; and in doing so, stand four square behind my record of integrity and honesty. These are the same members of Congress who appeared in the ad. In fact as you know Congressman Mitchell has appeared before the Committee in my behalf.

Attorney Edward Riegler in Akron, Ohio (216–375–2730), who served as my campaign manager is available to answer any questions that you might have regarding this matter.

*Question.* (f) Did you use any of your own funds in this election?

Answer. No.

*Question* (g) Have you ever run for any other public office?

Answer. No

*Question 5.* Who, if anyone, assisted you in responding to the Committee's pre-hearing questions?

Answer. No one.

*Question 6.* If confirmed, do you intend to serve on the Commission for the entire seven year term?

Answer. Yes.

*Question 7.* The opinion of the Justice Department also stated their belief that your service as associate pastor of the Wesley Temple A.M.E. Zion Church of Akron constitutes engaging in another "business, vocation, or employment" in violation of 15 U.S.C. 2053 (c). While Senator Moss has sought further clarification of this position, are you prepared to cease your activities as associate pastor with the Church should you be confirmed?

Answer. Again, I will comply with the law in this matter.

*Question 8.* You state in your responses that you would assess the magnitude of the injury problem associated with consumer products as "too great"

*Question.* (a) On whom would you place the blame for this safety problem?

Answer. I don't believe that I should place "blame" on any one party for the safety problem. The responsibility for insuring safe products for consumer consumption must be a shared responsibility by both industry and government, for they both have been too lax for too long.

*Question.* (b) How would you evaluate the effort put forth by industry in assuring the safety of products which it manufactures and sells?

Answer. To date, I have found it unsatisfactory and basically inadequate.

*Question.* (c) What impact has the mere existence of the Consumer Product Safety Commission had on the safety consciousness of industry and consumers?

Answer. Because the Commission is still very young, it is impossible to measure its total impact. However, I am afraid that its mere existence has had minimal effect. The real impact and test of the Commission's credibility will come with an aggressive enforcement of laws and development of tough standards.

*Question 9.* In your pre-hearing responses, you place a great deal of emphasis on a more vigorous consumer education program.

(a) Can you cite examples of successful consumer education programs in the safety area? Do you believe the efforts to increase seat belt usage has been successful?

Answer. In many of out public and private schools effective programs have been designed to provide not only basic consumer education but product safety education and information as well. These programs have been successful because they seek to reach the home where in many of our urban areas a great lack of knowledge and awareness exist relative to unsafe products. The seat-belt effort has not been as successful as I would like to have seen.

*Question.* (b) Can you cite any specific products or product areas where a consumer education program would help to reduce injuries and deaths attributed to those products?

Answer. Yes, products ranging from heaters to lawn mowers and power tools to cooking devices to lead paint.

*Question.* (c) In what way specifically should such an education program be pursued? What consumer education techniques would be most effective?

Answer. The Consumer Product Safety Commission should attempt to create as comprehensive an education and information program as possible. To do this, there should be a co-operative effort with the media, community groups, churches, schools, etc. This type of massive education program can only be successful if it enlists the support of those institutions in the community that actually reach people on even the most "grass roots" level. It is not sufficient merely to publish leaflets and booklets on product safety, nor to run ads on television in order to reach those consumers who never reach nor watch television.

As a member of a board of education, I have naturally had a great interest in this area. It would be a major concern of mine as a commissioner. I would thus work to explore various techniques to employ in furthering product safety education. Certainly one technique would be to work with our school systems as they seek to incorporate product safety in their curricula.

*Question 10.* You state in your pre-hearing responses that you believe low income consumers face problems related to consumer product safety that are different from those faced by other consumers.

(a) What are those problems?

Answer. One immediate problem confronting the low-income consumer is that of education and information regarding faulty or hazardous products. Those in the lower income bracket are the very ones who are not apt to read Commission literature, product instructions, or possess the ability to organize groups to combat unsafe marketing.

It is an undisputable fact that those who dwell for instance in the ghettos of our nation are forced to purchase products from questionable retail outlets, and very often have faulty products more easily "pawned-off" on them at overly exhorbitant prices. Low-income consumers have simply not had an been able to apply the type of helpful information digested in understandable terms that assists them in the market.

*Question.* (b) You emphasize the need for special consumer education programs specifically geared to the needs of the low-income consumer. How would those programs operate?

Answer. The Consumer Product Safety Commission already has the facility to initiate and further develop a consumer outreach program that could be directed from various field offices and work in conjunction with community agencies and existing social programs such as the Community Action Program. It is essential to the dissemination of this much needed consumer education and information that those organizations and institutions such as churches and schools work with the Commission's programs. For in many instances this is the only way to be effective in the urban neighborhoods and homes, especially where this is greatly needed.

The Commission must also provide a greater opportunity for low-income consumer input through membership on advisory councils, task forces, forums, etc. Programs, if they are to operate effectively in minority and low-income areas must be co-operative community programs.

79-717—76——11

*Question 11.* The Consumer Product Safety Act incorporates the use of a unique "offeror" system for the promulgation of regulations.

(a) Once an offeror has begun its work developing a proposed consumer product safety standard under section 7 of the Act, what role should the Commission play?

Answer. The Commission's role should be one of active oversight, and the prescription of regulations governing the development of proposed standards.

*Question.* (b) Under what circumstances, if any, should the Commission terminate prematurely the work of the offeror?

Answer. When the work is proving inadequate.

*Question 12.* In your responses on page 20, you state that contribution to the offeror's cost would be warranted where it is necessary to insure broad public representation in the development process.

(a) Is that the only circumstance in which you believe it is justifiable to contribute to the offeror's costs?

Answer. This is the most obvious and important one.

*Question.* (b) What types of costs do you believe should be reimbursed?

Answer. Such costs that are reasonable and necessary incurred for information and fact gathering and presentation.

*Question 13.* In your responses on page 21, you state that you do not recommend that the offeror process should be abandoned but that it should (quote) "in any case be supplementary to the standards development process."

(a) What did you mean by this? Isn't the Commission required under section 7 to utilize the offeror procedure?

Answer. I meant simply that the offeror process is of course a part of the standards development process as required by law. Where there is not an adequate offer, the Commission should develop the standard internally. The Consumer Product Safety Commission, as you know, has been exceedingly slow to develop standards. The Commission's main objective must be the promulgation of standards whether through this process or another.

*Question* (b) You also suggest the establishment of strict time deadlines to expedite the offeror process. As you may know, there already are specific time deadlines spelled out in the statute. Are you suggesting that they should be more stringent?

Answer. Yes, I am aware of the fact that an offeror has 150 days after publication of notice. I am suggesting that the Commission's enforcement of the deadlines be as strict as possible.

*Question 14.* Your answer to question 1 on page 15 of your prehearing responses was somewhat perplexing. You were asked to define the distinction between the three gradations of risk under the Consumer Product Safety Act—an "unreasonable risk of injury" under section 7, a "substantial product hazard" under section 15, and an "imminent hazard" under 12. You state that the basic definitions of gradations of risk can be found in section 3 of the Consumer Product Safety Act. Can you be more specific as to where you were referring?

Answer. The sole reference to section 3 was an error in the prehearing questions. The definitions of the three gradations of risk are found in the law under sections 7, 12 and 15. Any further distinction would have to be drawn from the facts gathered and applied in various cases.

*Question 15.* Throughout your responses to the Committee's prehearing questions, you have emphasized the need to insure public participation in Commission decisionmaking. For example, you suggest a review of the Commission's performance by the public in establishing Commission priorities among spending priorities for research, enforcement, standards development, education and section 15 activities. What mechanisms should be used to insure this consumer input?

Answer. There are many ways to guarantee public participation and citizen input. Advisory councils, hearings, forums, and specialized task forces are just a few.

*Question 16.* You have stated in your answers that you would favor establishing a program at the Commission similar to the FTC representation program whereby public interest representation would be funded by the Consumer Product Safety Commission on a case by case basis.

(a) Do you believe the Commission has the legal authority to implement such a program?

Answer. Yes, under Section 10.

*Question.* (b) What criteria would you use to determine which case should involve the participation of a Consumer Product Safety Commission-financed public interest representative?

Answer. The criteria set forth under the law in Section 10.

*Question 17.* Section 10 of the Consumer Product Safety Act allows interested persons to petition the Commission for the issuance, amendment, or revocation of a consumer product safety rule. If the Commission denies the petition or fails to respond to it within 120 days, the petitioner may seek court review. The Commission has encountered some difficulty with this provision because often times products which are the subject of a petition are given higher regulatory priority than another product which may be more of a safety problem than the product named in the petition. How should the Commission resolve this conflict between responding to petitions and focusing its resources where they would result in the highest benefits?

Although this can be viewed in part as a management problem, in another sense it is a problem which was inherent when the act provided for the petition process. The Commission could conceivably be swamped with requests. While I have no set solution to the problem at this point, one suggestion is consideration of additional Commission funding in this work area in order to expedite the process.

*Question 18.* In addition to the Consumer Product Safety Act, the Commission is also responsible for implementing "transferred acts": the Flammable Fabrics Act, the Hazardous Substances Act, the Poison Prevention Packaging Act and the Refrigerator Safety Act. Some have suggested that these transferred acts should be repealed and all products should be regulated under the Consumer Product Safety Act. Do you believe the transferred acts should be repealed?

Answer. No.

*Question 19.* On page 12 of your responses, you state that the Commission should conduct both its own civil litigation and criminal litigation?

Answer. The question is incomplete.

*Question 20.* In your response to a question on page 22, you state that if the Act is violated, that you would vote to refer *all* violations for prosecution.

(a) The GAO recently criticized the Commission for not being selective in the cases which it refers to the Justice Department for prosecution, pointing out that of the 25 cases referred to Justice by the Consumer Product Safety Commission, 16 were refused because they were either too old, *de minimis* violation, or the alleged violator had corrected the violation. GAO concluded that the Commission wasted substantial resources in referring each violation for prosecution. Do you believe it would be wise to prosecute *all* violations?

Answer. I do not believe that the Commission should allow any cases to grow old as referral to the Justice Department should be expeditious and swift. Of course, there are violations of a less substantial or severe nature. The Commission should therefore be prudent and discriminating in judging such violations. However, it is my firm belief that all violations of a severe and substantial nature should be prosecuted.

*Question.* (b) You also point out that where allowed, you would seek *both* civil, and criminal penalties, against an alleged violator. Wouldn't this be somewhat severe?

Answer. I do not believe that vigorous prosecution of knowing violators is too severe where human lives are involved or the potential of great hazard. The Consumer Product Safety Commission has an enforcement responsibility, and it should be fulfilled.

*Question 21.* When the Commission first began operations three years ago, it received notifications of possible substantial product hazards under section 15(b) at the rate of several per week. Today, they are being filed at a much less frequent rate. What steps can the Commission take to insure that manufacturers are meeting their section 15 obligations to inform the Commission about potential substantial product hazards?

Answer. The Commission of course has a monitoring responsibility and can as part of that activity enlist the assistance of consumer groups. This also substantiates my belief in vigorous enforcement of the law over manufacturers. I would of course want to work with the other commissioners in devising the most effective mechanism.

*Question 22.* In your pre-hearing responses, you state that the Commission should provide assistance to state and local product safety authorities. What kind of assistance do you have in mind?

Answer. While state and local authorities provide enforcement assistance to the Consumer Product Safety Commission, this can be a reciprocal function. For too long states and localities have lacked any effective co-ordination of activities in this field. The commission through its field offices particularly can provide a great

service to local areas. The whole question of how the commission can administer a more effective education and information program to a large extent will depend on its relationship with state and local authorities and their willingness to not only work with a federal agency, but to also make use of that agency's resources.

*Question 23.* In the pre-hearing questions, you were asked whether the Commission should incorporate a sampling plan into a product safety standard. Your answer was somewhat confusing and perhaps you would care to elaborate upon it.

Answer. The sampling plan has raised a great number of questions and considerable controversy among commissioners and various groups. I want to take the time to conduct a thorough review and assessment of the concept and possible effectiveness of the sampling plan before I take a firm position on its usage.

My response in the pre-hearing questions emphasized my intent to explore every possible avenue for fact-gathering in making proper decisions on safety standards.

*Question 24.* (a) How should the Commission utilize the statement of economic impact of a proposed consumer product safety rule or industry required by section 9(c)(1)?

Answer. The Commission should utilize the statement of economic impact in making a finding of cost. A rule involves weighing the degree of risk and the public's need for an item, as well as cost factors. Since the statute requires that the commission make a cost finding of the proposed rule, the statement of impact is key. The amount that it should weigh in the Commission's determinations can vary from case to case.

*Question.* (b) In what ways should cost-benefit analyses be used in the work of the Consumer Product Safety Commission?

Answer. Cost-benefit analyses should be used in as many ways as possible. Without question this should be used first in assisting the Commissioners in making standards determination as well as in the process of investigations that ultimately lead to commission decisions. It is most important that the Consumer Product Safety Commission measure the total impact of its decisions on both industry and the consumer. Cost-benefit analyses assists in determining that impact.

*Question 25.* In your answers to the Committee's pre-hearing questions, you state that in your opinion, there should be not direct participation by Commission employees in private standards setting bodies.

(a) Are you aware of the Commission's regulations contained in 16 CFR 1031 regarding the relationship between Commission employees and private standards setting bodies?

Answer. I am aware of the fact that those staff persons not serving in a high decision-making position at the Commission are permitted to participate in private standards-setting bodies.

*Question.* (b) There are significant differences between your views and the Commission's regulations which do allow for some degree of participation. Do you plan to seek a modification of the Commission's regulations?

Answer. I would want to take the regulations under further review before making such a determination.

*Question.* (c) Do you have confidence in the ability of the private standards setting organizations to establish sufficiently stringent consumer product safety standards?

Answer. No, not without careful Consumer Product Safety Commission scrutiny.

*Question 26.* In response to question 5 on page 15, you state that you are unable to give examples of instances where you believe that disclosure of records would not be in the public interest. In response to question 6 on page 15 however, you state that you would not vote to allow disclosure of General Counsel's memoranda.

(a) Are there any other documents for which you would not vote for disclosure?

Answer. None of which I am aware of at this time.

*Question.* (b) The Commission has, in the past, refused to comment on draft GAO reports on the grounds that under its Freedom of Information guidelines, it would have to release such drafts to the public. The GAO prohibits public distribution of its draft reports. Do you believe the Commission should modify its Freedom of Information guidelines to exempt GAO draft reports so that it may comment on those reports prior to publication?

Answer. This is a question of considerable importance as it involves the basic right of the public to know as well as the Commission's posture of inter-action with G.A.O. I have a strong commitment to openness in government and public exposure of the public's business. However, I would want to answer this issue directly after greater consideration of the arguments for and against such an exemption by my colleagues and others.

ANSWERS TO "PUBLIC CITIZEN" GROUP QUESTIONS BY THADDEUS GARRETT, JR.

*Question 1.* In balancing the costs and benefits of product safety regulations, what weight should be given to the needs of low income consumers who are unable to pay higher prices for products without some other sacrifice?

Answer. A great deal of consideration should be given to this problem.

*Question 2.* Are there differences in the rationale for regulation between such programs as those administered by the CAB and ICC as opposed to those administered by the Food and Drug Administration or the Product Safety Commission and how does that difference argue for or against continuation of product safety regulations?

Answer. I am not familiar enough with the rationale of the other agencies. My concern is with the rationale for regulation and programs administered by the Consumer Product Safety Commission. I am convinced that that rationale is a good one.

*Question 3.* If a bill creating a Consumer Protection Agency is enacted, will fees for citizen participation such as are now paid by the Federal Trade Commission be needed? If yes, please explain why.

Answer. As I have stated previously I strongly support the creation of a Consumer Protection Agency, and if necessary I would certainly favor a provision for payment of fees. However, my interest and concern rests with the effective operation of the Consumer Product Safety Commission.

*Question 4.* Where there is overlapping statutory jurisdiction between the Product Safety Commission and other agencies, please explain how you would decide which authority should be used.

Answer. I would extend whatever statutory authority the Consumer Product Safety Commission had to the limit.

*Question 5.* Do you believe that the criminal penalties in the Consumer Product Safety Statute are satisfactory? If yes, why should a criminal violator have to be given a warning after commission of the crime before he can be prosecuted for a continuing violation or subsequent commission of the crime?

Answer. I could be supportive of greater maximum penalties, and would support a proper amendment that would eliminate the warning after commission of the crime.

*Question 6.* Do you favor exemptions for small business from regulatory statutes? If yes, under what circumstances should small business be exempted?

Answer. No.

*Question 7.* Should the Product Safety statute be modeled after the Food and Drug law and require pre-market notification prior to manufacturing a product with test data submitted with the marketing notification, and who should pay for the tests to be conducted?

Answer. I support pre-market scrutiny. Experiences under section 13 should be considered.

*Question 8.* Should the Consumer Product Safety regulations be simplified to allow informal rulemaking under 5 U.S.C. 553? Please explain your answer.

Answer. I would want to study this prospect further.

*Question 9.* Should trade secrets be publically disclosed if they involve health or safety decisions under the rulemaking or adjudicatory provisions of the Product Safety Act?

Answer. This question is not clear. Decisions involving health and safety should predominate over other considerations within the realm of the law.

*Question 10.* What techniques can the Commission develop which have been used successfully in other agencies for gathering information in the hands of consumers to assist the Commission in developing standards and enforcing the law?

Answer. The commission should always explore new ways for citizen input. As I have stated in my answers to previous questions, advisory councils, task forces, hearings, etc. are all methods of information-gathering. Further financial assistance to certain consumers and citizen groups in order for them to provide needed input is essential.

*Question 11.* Is seven years too long a term for a person to be appointed to the Consumer Product Safety Commission?

Answer. No.

*Question 12.* Should a person with no background in product safety matters and no knowledge of the statute be appointed to a seven year term as a Commissioner?

Answer. As far as my nomination is concerned I meet all of the requirements and qualifications as set forth in the law for membership on the Consumer Product Safety Commission, possess knowledge of the statute, and have a proven record in consumer affairs.

*Question 13.* Should former White House staff members be appointed to a majority of the positions in any independent regulatory agency?

Answer. Persons who are nominated to regulatory agencies should be judged on their individual positions on the issues and be considered on the basis of the contributions they can make, not on their place of employment.

*Question 14.* What have you done specifically to pursuade the President or the Vice President to support the Consumer Protection Agency bill? Why was your recommendation rejected?

Answer. I made my position on the creation of the Consumer Protection Agency known as early as three years ago. I have no way of knowing why my position has not been accepted.

*Question 15.* What specific programs, issues or ideas have you uniquely been responsible for initiating during the past 17 months you have served as a member of the Vice President's staff and how many recommendations have been adopted or implemented? Please describe each.

Answer. It has not been my job to simply make recommendations to the Vice President. I have served as his advisor on Minority and Urban Affairs as well as his liaison with the House of Representatives. My role has been in large part a public liaison role, and to that extent I have been responsible for opening-up a great number of new lines of communication between various minority groups and the Office of the Vice President as well as Congress.

Finally, let me address the issue of qualification for membership on the Consumer Product Safety Commission. The Consumer Product Safety Act clearly outlines the structure of and statutory requirements for membership. I, as the nominee presently before the Senate, meet those statutory requirements and qualifications.

Further, in April of this year the Senate Commerce Committee outlined proposed criteria for able members of federal regulatory commissions. By the committee's own advocated standards I possess without question, the qualifications.

The Commerce Committee report recommended that:

(1) A commissioner be independent in his actions. I have a long established record of independence both as an elected and appointed official. This is substantiated by those supporting my nomination in both parties.

(2) A commissioner should have demonstrated sensitivity to consumer and minority needs. Obviously, I as a minority consumer who has worked and been out-spoken for a long time relative to the problems of my people in the urban area particularly, along with my work with Congresswoman Shirley Chisholm and the Congresional Black Caucus more than meet this requirement.

(3) A commissioner should demonstrate some interest in the work of the agency. Clearly I have demonstrated this not only by my work in the Congress, but by my writings as published statements as well.

(4) A commissioner should have a high standard of integrity. I have always sought to allow my professional and religious principles to be a standard of conduct for my public service.

(5) Finally at least *some* members of each commission should have knowledge of and experience in the work of the agency. I have diligently studied the agency and acquired a working knowledge of its mission and operations.

Without question, under the Committee's own recommendations, as well as those set forth by consumer groups, I have been able to qualify in every category. It is this fact that I would hope the committee will consider, along with my sincere desire to be a champion of consumer rights and protection.

[Telegram]

WASHINGTON BUREAU, NAACP,
*Washington, D.C., July 29, 1976.*

Hon. WARREN MAGNUSON,
*U.S. Senate,*
*Washington, D.C.*

Urgently request that hearings be held promptly on the nomination of Mr. Thaddeus Garrett to the Product Safety Commission. Mr. Garrett is an unusually brilliant and able young man. We have known him and have been assisted by him on legislative matters from the days when he was working as a top staff person in the office of Representative Ayres (R-Ohio). Subsequently we had much cooperation from him when he was on the staff of Representative Chisholm (D–N.Y.). He has the unusual quality of being able to work outside party lines for the good of the people. It is our opinion that this type of individual should be

encouraged by prompt hearings and confirmation. He represents the kind of concern among the talented young people that the Nation needs badly. We are disturbed that there have been some indications that an effort may be made to delay this hearing on partisan grounds. This would indeed be a tragedy. We hope very much that the committee will proceed to expedite and have this nomination approved. It should also be remembered that at a time when organizations like the NAACP are fighting to get black participation in the public service this appointment fits into that program. We have been advised that there are those who do not want to see a black representative in this agency at this high level. We therefore strongly urge that every effort be made to thwart what seems to be a kind of underhanded attack which has strong racial overtones.

CLARENCE MITCHELL,
*Director.*

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[Telegram]

LOS ANGELES, Calif., *July 30, 1976.*

Senator WARREN G. MAGNUSON,
*Capitol One, D.C.*

DEAR SENATOR: Your assistance in the confirmation of Pat Garrett to the Consumers Product Safety Commission would be greatly appreciated. He is a good Democrat and an excellent choice for the position.

Sincerely,

JACK E. TANNER.

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[Mailgram]

WASHINGTON, D.C., *July 30, 1976.*

HON. WARREN G. MAGNUSON,
*Russell Office Building,*
*Washington, D.C.*

It is most important the the Commerce Committee hold immediate hearings on the nomination of Rev. Thaddeus Garret Jr. as commissioner on the Consumer Products Safety Commission.

The time has come for the minority and poor consumers to have a strong voice in the high levels of government. Reverend Garrett will be that voice. This is not a partisan nomination, for he has the strong support of those of us in both parties.

He is qualified and holds the trust and confidence of a broad segment of America.

Again, we urge speedy hearings before the August recess, and early confirmation.

Rev. JESSE L. JACKSON,
*National President, Operation Push.*

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NATIONAL CONSUMER INFORMATION CENTER,
*Washington D.C., August 31, 1976.*

Hon. WARREN G. MAGNUSON,
*Russell Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR MAGNUSON: The National Consumer Information Center is an agency which represents the interests of low to moderate income consumers across the country.

The nomination of Thaddeus Garrett, Jr. to the U.S. Product Safety Commission has come to our attention. It is with great urgency that we support this nomination. The need for minority input on the Commission is of great importance to low and moderate income consumers.

Mr. Garrett will bring to the Commission new vitality. He is an able spokesman and can articulate well the concerns of the low-income community.

We kindly request your support in the confirmation of Mr. Thaddeus Garrett, Jr. to the U.S. Product Safety Commission.

With many thanks.

Sincerely,

HERBERT SIMMONS, Jr.,
*Acting Executive Director.*

[Mailgram]

NATIONAL BOARD OF DIRECTORS,
*New York, N.Y., September 14, 1976.*

Senator WARREN MAGNUSON,
*Chairman, Senate Consumer Committee, Russell Senate Building, Washington, D.C.*:

Resolution adopted by the NAACP National Board of Directors on September 13, in support of Thaddeus Garrett for the Consumer Safety Products Commission wherein Mr. Thaddeus Garrett has been nominated to the Consumer Safety Products Commission where as Mr. Garrett is an extremely well qualified forward moving most able young black man who has been supported by black leaders including Members of Congress where as the opposition to the appointment of Mr. Garrett is that he is black and the preference for the appointment by some is that of a white man therefore be it resolved that the NAACP National Board of Directors go on record as supporting President Ford nomination of Mr. Thaddeus Garrett to the Consumer Safety Products Commission furthermore be it resolved that the sentiment of the board be conveyed to Senator Warren Magnuson, Chairman of the Senate Consumer Committee, James Pearson, Ranking Member of the Consumer Committee, Frank Moss, Chairman of the Subcommittee on Consumer Affairs, Phil Hart, Vice Chairman, Subcommittee on Consumer Affairs.

MARGARET BUSH WILSON,
*Chairman of the NAACP.*

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[Mailgram]

BINNEY & SMITH, INC.,
*New York, N.Y., September 15, 1976.*

Senator WARREN MAGNUSON,
*Chairman, Senate Commerce Committee, Senate Office Building, Washington, D.C.*:

Your committee is currently considering the nomination of Thaddeus Garrett to the Consumer Product Safety Commission. Although we recognize Mr. Garrett's interest in minority urban poor consumers, I strongly urge his appointment not be approved because of his youth, lack of training and experience.

REYNOLDS GIRDLER, Jr.,
*Vice President, Corporate Relations.*

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NATIONAL FOREST PRODUCTS ASSOCIATION,
*Washington, D.C., September 13, 1976.*

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee, Rayburn Senate Office Building, U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: President Ford has nominated Mr. Thaddeus A. Garrett, Jr., for a seven-year term as Commissioner of the Consumer Product Safety Commission. The National Forest Products Association applauds the President's selection of Mr. Garrett as an eminently qualified person to fill this responsibility.

Mr. Garrett has an excellent background of experience in public work connected with problems affecting consumers both at the national level and at the state level. As Vice President Rockefeller's advisor on urban affairs, minority affairs, legislative affairs and the Productivity Commission, he has demonstrated the depth and scope of knowledge that bring to the Consumer Product Safety Commission a quality of superior ability that would be in the best national interest.

We urge you and other members of the Senate Commerce Committee to endorse President Ford's nomination of Mr. Garrett. We are glad to take this opportunity to present our views to you.

Sincerely,

JOSEPH B. MCGRATH.

SYSTEM SAFETY SOCIETY,
*Newport Beach, Calif., September 22, 1976.*

Hon. JOHN E. MOSS,
*U.S. House of Representatives, Rayburn House Office Building, Independence Avenue, Washington, D.C.*

DEAR CONGRESSMAN MOSS: As we have previously indicated, the System Safety Society is concerned with the long standing practice of non-safety professional individuals being selected and confirmed to critical positions on various safety boards and commissions. We feel this practice tends to defeat the intent of the implementing legislation, and has led to the many errors in judgement observed in such agencies as the Consumer Products Safety Commission (CPSC).

We note with dismay that yet another appointee has been selected for the CPSC who has no professional product safety training or experience. We respectfully request that you evaluate the professional safety related qualifications of Mr. T. A. Garrett, Jr.

We would also request your consideration on the matter of suitable legislation that would stipulate that at least minimal professional safety expertise or experience be made a basic criteria for selection to boards and commissions responsible for establishing policy and regulations pertaining to safety of products or services.

The System Safety Society would be happy to provide you with recommendations on qualification criteria for safety professions.

Sincerely,

REX B. GORDON,
*President.*

# NOMINATIONS—JULY–SEPTEMBER

TUESDAY, SEPTEMBER 21, 1976

U.S. SENATE,
COMMITTEE ON COMMERCE,
*Washington, D.C.*

The committee met at 10 a.m. in room 5110, Dirksen Senate Office Building, Hon. John O. Pastore, presiding.

## OPENING STATEMENT BY SENATOR PASTORE

Senator PASTORE. It is 10 o'clock ladies and gentlemen, and the hearing will come to order.

We are here this morning to consider three nominations to the board of directors of the Corporation for Public Broadcasting.

The nominees before the committee this morning are Clyde M. Reed of Kansas, Charles W. Roll, Jr., of New Jersey, and Louis P. Terrazas of Texas.

Two of these, Mr. Reed and Mr. Roll are Republican nominees, designated so, to replace Republicans whose terms have expired. Mr. Reed is to replace Mr. Schooley. I don't know whether or not Mr. Schooley was anxious for renomination or reappointment, but that is a matter for the political authorities. But the fact still remains that Clyde M. Reed is replacing a Republican, Frank E. Schooley.

And Charles W. Roll, Jr., of New Jersey, also a Republican, is replacing Jack Wrather, another Republican, who I understand was not anxious to have his name on the corporation board.

And the third one is Louis P. Terrazas, of Texas, who is filling a vacancy.

These are the three nominations before us today.

With reference to Louis P. Terrazas, I want to mention at this time that his nomination is a result of the recommendations made by me and several members of this committee that it was about time that the White House consider the appointment of an Hispanic American, so that the Spanish-speaking minorities would have representation on this particular board, and I think that is a very salutory thing.

And I am happy to announce today that we will consider that nomination as well.

So if Mr. Reed will first please come forward.

Inasmuch as Mr. Reed comes from Kansas, I shall introduce my friend and colleague, Mr. Pearson.

## OPENING STATEMENT BY SENATOR PEARSON

Senator PEARSON. Mr. Chairman, thank you very much.

I am very pleased to introduce to this committee Mr. Clyde Reed, of Parsons, Kans., who has been my friend for many, many years.

He is one of the most distinguished and respected newspapermen in the State of Kansas. He is a distinguished son from a distinguished family. His father served as Governor of the State of Kansas and served in the U.S. Senate from 1939 to 1949 as the ranking Republican member of the Commerce Committee.

Mr. Reed has served in many capacities throughout the State at all levels of the public services. This service includes urban affairs, activities in his own community, and membership on the State Board of Regents.

I believe one of the most important aspects to this nomination, which I heartily recommend, is Mr. Reed's total commitment to the principles, purposes, and quality educational standards of the Corporation for Public Broadcasting.

I am very pleased to present Mr. Reed to the committee.

Senator PASTORE. We have received, Mr. Reed, your biographical data, and your responses to the questions submitted to you by the staff.

(The material follows:)

BIOGRAPHICAL SKETCH OF CLYDE M. REED

207 Crestview, Parsons, Kansas 67357. Mailing address: P.O. Box 836, Parsons, Kansas 67357. Born May 14, 1914 at Parsons, Kansas. Married September 10, 1937 to Betty Ann Walker of Hutchinson, Kansas. Son, Clyde M. Reed III, 33, Denver, Colorado, real estate sales associate; Daughter, Carolyn Ann Reed, 30, Arlington, Virginia, legal staff of the Federal Election Commission.

Education: Graduate of the University of Kansas, 1937, with B.A. degree and major in political science. Earlier attended Parsons Junior College, Parsons, Kansas for one year.

Employment record:

Joined news staff of The Parsons Sun, a daily newspaper, in June 1937 following graduation from the University of Kansas. On the staff of The Sun until December 1940.

On the office staff of Hon. Clyde M. Reed, then a United States Senator, in Washington in December 1940, serving as his secretary until June 1942.

General manager of The Parsons Sun, September 1942.

Editor and general manager of The Parsons Sun September 1945.

Editor and publisher of The Parsons Sun from November 1949 to date.

Government experience:

Federal co-chairman Canadian River Commission, 1953–64, appointed by President Eisenhower.

Member, Kansas State Board of Regents, 1961–1963; Chairman, Kansas State Board of Regents 1963–1965.

Chairman, Kansas Study Commission on Local School Finances, 1968–1970.

Member, Parsons Urban Renewal Agency, 1966–1968.

Chairman, Parsons Urban Renewal Agency, 1968–1973.

Vice chairman, Parsons Urban Renewal Agency, 1973 to date.

Memberships:

Phi Kappa Psi, social fraternity; Sigma Delta Chi, professional journalism fraternity; president, Parsons Rotary Club, Parsons Chamber of Commerce; president of Parsons Community Hotel, Inc., a community-built hotel and chairman of financial campaigns that led to its construction; president, Kansas Press Association; chairman, Kansas Associated Press organization; chairman of Labette County Red Cross fund drive and of Parsons Community Chest fund campaign; National president, University of Kansas Alumni Association, 1956.

The Associated Press, American Newspaper Publishers Association, Inland Daily Press Association, Founder and first president of Mid-America, Inc., 10-county southeast Kansas economic development organization; National Association for the advancement of colored people; director, Kansas Lung Association.

First United Presbyterian Church, Parsons, Kansas.

Political affiliation and activities: Member of Republican Party. $500 contributed to Pearson Senatorial Committee, Wichita, Kansas, 1966; amounts of $25 to $100 contributed to Kansas Republican State Committee and Labette County Republican Committee at various times, with no record of dates available.

Honors and awards: Honorary degree as Doctor of Letters, College of Emporia (Kansas) 1962; William Allen White Foundation Award for Journalistic Merit, 1963; University of Kansas Alumni Award for Distinguished Service, 1968 (highest award given to alumni because the University grants no honorary degree; Cardinal Citation, Labette Community Junion College, 1973, as outstanding citizen, journalist and public servant; Kappa Tau Alpha, national journalism scholarship society, 1973, for contribution to the journalism profession as outstanding state publisher; William Allen White Foundation national Editorial Award, 1976, Inland Daily Press Association.

Published writings: Author of an estimated 25,500 editorials appearing in The Parsons Sun from 1942 to date, based on an average of 750 editorials a year for 34 years. Titles too numerous to mention.

Qualifications:

Broad and long journalistic experience together with a deep interest in communication of all kinds has fitted me for service on the board of the Corporation for Public Broadcasting.

Experience in various facets of government, federal, state and local, has given insight into governmental activity and knowledge of inter-relationships.

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## Questions of the Committee and the Answers Thereto

*Question 1.* Although appointed by the President, by and with the advice and consent of the Senate, the members of the Board of Directors of the Corporation for Public Broadcasting are expected and, indeed, required to exercise their own independent judgment in the affairs of the Corporation subject to established law and policy. Will the fact of your nomination by the President and possible confirmation by the Senate compromise or in any way have a potential for influencing you in the exercise of such independent judgment?

Answer. My answer to this question is that my reputation as an individual and an editor long has been one of independent judgment and action. I know of no reason to change under the circumstances mentioned, or for any other reasons.

*Question 2.* A matter of critical importance to public broadcasting has been the appropriate relationship to be established between the Corporation, Public Broadcasting Service and the local non-commercial educational stations with respect to program development, selection, and funding. What are your general views with respect to the role the Corporation should play in this regard.

Answer. The role of the Corporation for Public Broadcasting is many sided. Generally I believe that the Corporation should have a role of blazing new trails in the field and strengthening tested paths, both with financial support if necessary. There should be a balanced policy as between the Corporation on hand and the Public Broadcasting Service and local non-commercial educational stations on the other. The Federal role never should become overpowering.

*Question 3.* Public broadcasting's presentation of programs treating public affairs and public issues is a subject of great importance and sensitivity. What are your views as to the principles and policy considerations which should apply in this area? What, in your judgment, should be the Corporation's role with respect to the development of programming in the area of public affairs?

Answer. Principles and policies of balance should be in line with the Congressional mandate for fairness to serve many different audiences. Affairs and issues of minorities should be treated with the sensitivity they deserve. The Corporation should be continually exploring more effective means of serving its varied public through programming development.

*Question 4.* Equal employment opportunity in public broadcasting is a matter of extreme concern. What, in your judgment are the responsibilities of the Corporation in this area to insure that the rights of minority groups under the law are fully realized?

Answer. The responsibilities of the Corporation in helping to insure the full rights of minority groups under the law must be kept continually in mind, recognizing that the corporation is not a regulatory agency. Support and encouragement should be exercised.

*Question 5.* The Corporation has recently expressed support for a proposed FCC requirement that noncommercial educational stations engage in formal

ascertainment of the educational and cultural needs and interests of their respective local communities for purposes of developing their program service. Do you agree with this position?

Answer. The answer is yes.

*Question 6.* What are your views with respect to public broadcasting's role in providing programing specifically designed to meet the particular educational and cultural needs and interests of racial, ethnic, minorities, and women—all segments of our society?

Answer. The Corporation is charged by the Congressional mandate with promoting development and distribution on "programs of high quality, obtained from diverse sources." I fully support that directive and will be dedicated to it during my service.

*Question 7.* From the standpoint of your qualifications, background and interests, what contribution to public broadcasting would you intend to make as a member of the Board of Directors of the Corporation?

Answer. I want public broadcasting to be of utmost value to all citizens, regardless of station in life. My experience is in the broad field of communication and am certain that I can draw upon knowledge from that field in becoming a valuable member of the board once I am fully conversant with its operations.

*Question 8.* Do you think that the decision-making process of CPB, PBS and the local stations should be more open to public participation?

Answer. I believe public participation in the decision-making process is desirable if at the same time it is recognized that there are limits. In the case of the Corporation, public advice and counsel must be welcome but there comes a time with every public body that discussion ends and decisions made by those charged with making them.

Senator PASTORE. We understand with reference to this information, everything is very much in order.

Now, for the record, you do come aboard as a Republican nominee, is that correct?

## STATEMENT OF CLYDE M. REED

Mr. REED. Yes, sir.

Senator PASTORE. And you do confirm your willingness to appear before any committee of Congress once you are asked to come?

Mr. REED. I do, yes, sir.

Senator PASTORE. Do you want to add anything else?

Mr. REED. I have no public statement, sir.

I would be happy to answer any questions.

Senator PASTORE. Well, let me ask you.

You are a busy man. You have a fine reputation in your community. Why do you want to become a member of this board?

Mr. REED. Because I am interested primarily in public service, but not paid, full-time public service.

I have served in various functions in Kansas. As Senator Pearson said, served on the Board of Regents. I have been a member and chairman of the State Board of Regents. I have had other duties, taken other assignments, and I believe strongly in the public broadcasting. And I think it has an important role to sell, and I believe I can add something to that role as a member of the board of the corporation.

Senator PASTORE. Thank you very much for that statement.

Let me ask you this question:

Will you make it your duty to use whatever influence you can as a member of the board of directors of the corporation, to see that equal opportunities legislation is lived up to and minority groups are recognized as much as they should be?

Mr. REED. I certainly will. I certainly will, sir.

Senator PASTORE. I have no further questions.

Does anybody in this room have any statements for or against this nomination?

[No response.]

The Chair hears none. We thank you very much, sir. You may step aside.

I should like to read a statement into the record by Senator Baker.

STATEMENT OF HON. HOWARD H. BAKER, JR., U.S. SENATOR FROM TENNESSEE

I regret that I cannot be in Washington today to introduce Mr. Charles Roll to the Commerce Committee for confirmation to the Board of Directors for the Corporation for Public Broadcasting.

It has been my pleasure to know and work with Mr. Roll for more than a decade, and I can personally assure you of his excellent character, professional competence and his dedication to the high ideals of public service.

Mr. Roll has enjoyed a distinguished career in public opinion research, which has given him a unique understanding of public sentiments.

I am especially keen on Mr. Roll's joining the CPB Board because I am convinced that he has the broad background and experience that will enrich their deliberations and prove constructive in policymaking matters.

I also want to comment on the nominations of Mr. Louis Terrazas and Mr. Clyde Reed. I have reviewed the background of both men and have found them extremely well qualified for these important positions.

Because of my responsibilities as a delegate to the United Nations, it is necessary for me to be in New York today, but I want you to know that they all have my endorsement and I urge the Committee to expedite their confirmation.

Senator PASTORE. Now we have Mr. Charles W. Roll, Jr.

Would you want to add anything to that, Mr. Roll?

## STATEMENT OF CHARLES W. ROLL, JR.

Mr. ROLL. No, sir.

I would like to say that it was my understanding that Senator Case, my senior Senator was going to submit a letter, which I understand hasn't arrived yet.

He had to be at a very important engagement in New Jersey.

Senator PASTORE. We will keep the record open for that letter.

[The letter follows:]

UNITED STATES SENATE,
*Washington, D.C., September 21, 1976.*

Hon. JOHN O. PASTORE,
*Chairman, Communications Subcommittee,*
*Committee on Commerce, Dirksen Office Building,*
*Washington, D.C.*

DEAR MR. CHAIRMAN: I regret that I cannot be present at the hearing today to introduce Charles W. Roll, Jr., of Lawrenceville, New Jersey, who has been nominated for membership on the Board of Directors of the Public Broadcasting Corporation.

Mr. Roll is a friend of long standing. His background and experience will enable him, I am sure, to make a real contribution to the work of the Board. It is a pleasure to commend him to you.

Sincerely,

CLIFFORD P. CASE,
*U.S. Senator.*

Mr. ROLL. I have known him for 22 years.

Senator PASTORE. I would like to ask you the same questions I asked Mr. Reed.

What is your interest in becoming a member of this board?

Mr. ROLL. Well, sir, some 5 years ago I had the good fortune to be asked to tape a three-part program on survey research for the Nebraska Educational Television Council on Higher Education.

So I am, you might say, a one-shot performer on public television—I'm sorry, that was instructional TV. I am a constant viewer of it, I have 18 years of background in the survey research field. And what with the increasing attention being paid to possible need for ascertainment needs in communities, I do feel that I would have some capability, or some expertise in assessing those programs and assessing what they show, the ascertainment.

Senator PASTORE. You come aboard as the Republican nominee, is that correct?

Mr. ROLL. Yes.

Senator PASTORE. I ask you the same question I asked Mr. Reed:

If you were asked by any committee of Congress to appear as a witness at any time, will you directly do so?

Mr. ROLL. Yes, sir. Certainly.

Senator PASTORE. The staff informs me that everything else is in order.

Mr. Pearson?

Senator PEARSON. I have no questions.

Senator PASTORE. Thank you very much.

You may step aside.

Mr. ROLL. Thank you very much.

[The material referred to follows:]

BIOGRAPHICAL SKETCH OF CHARLES W. ROLL, JR.

I Personal:

(*a*) Born July 26, 1928, Trenton, New Jersey

(*b*) Home address: 2797 Main Street, Lawrenceville, New Jersey

(*c*) Marital Status: Single

II Educational background:

(*a*) Graduated with honors from Princeton University in June of 1950 with an AB. Departmental work was in Politics and senior thesis was entitled, "New Jersey Legislative Policy—1880 to 1920." (1946–1950)

(*b*) Received an M.A. from the Department of Public Law and Government of Columbia University in the City of New York, June, 1953. Master's essay was entitled, "A Civic Experiment: Trenton (N.J.) Adopts and discards Council-Management Government." (1950–1953)

III Professional experience:

(*a*) August, 1958 to the present. The Gallup Group of Companies, 53 Bank Street, Princeton, New Jersey, as Study Director:

1. *The Gallup Organization, Inc.* Marketing and attitude research. Have directed research for such clients as The Institute for International and Social Research (now affiliated with the School of Advanced International Studies of Johns Hopkins University in Washington), Potomac Associates (Washington), Columbia Pictures, Philadelphia '76 (their bicentennial organization), etc.

2. *Political Surveys and Analyses, Inc.*, founded in 1962 by Archibald Crossley but owned by Gallup between 1969 and 1975 when it was discontinued.* Clients included Nelson Rockefeller, now Vice President; U.S. Senator Howard Baker; Governor Mike O'Callaghan of Nevada; former Governors Richard Hughes and Robert Meyner of New Jersey; Representatives Edwin Forsythe, Helen Meyner, and Millicent Fenwick of New Jersey; the late Frank Hogan, District Attorney of Manhattan; former Representative Bob Steele of Connecticut, *The Wall Street Journal*, among others.

*Served as President during 1969–1975.

3. *Public Opinion Surveys, Inc.* Directed surveys for the *Saturday Evening Post, Look, Ladies Home Journal, The New York Times, The Philadelphia Bulletin* (all to provide editorial content), as well as former Congressman Ogden Reid and former Pennsylvania Governor Raymond Shafer (to provide guidance for incumbent officials).

(*b*) 1973 to the present, founder and president of Polls, Inc., Lawrenceville, New Jersey

*Polls, Inc.'s* clients have included Schreiber Chaira Brownstein (the advertising agency for Frank Rizzo's re-election campaign for the Philadelphia mayoralty in 1975), Kyle Testerman (Mayor of Knoxville, Tennessee) and Lamar Alexander of Nashville, Tennessee.

[These activities have been based on a solid background of all phases of survey research including sampling, questionnaire design, interviewing techniques, data analysis and final report writing.]

(*c*) March 1957 to August 1958, Assistant Director of The Department of Social Security and Insurance, New Jersey State Chamber of Commerce, 54 Park Place, Newark, New Jersey

IV Professional experience abroad:

(*a*) Istanbul, Turkey; July–October, 1967; Consultant to Turkish Airlines under a program sponsored by International Executive Service Corps of New York City, N.Y., (then headed by David Rockefeller and Frank Pace.) Placed first full-scale on-board survey aboard Turkish Airline planes, international as well as internal flights and made fifty recommendations for improving their public relations based on the survey data.

(*b*) Vietnam, Laos, and Paris; April, 1970; accompanied H. Ross Perot on his second trip to the Far East seeking a return for U.S. P.O.W.'s. Gave verbal run-down of a comprehensive opinion study on American attitudes regarding the P.O.W. problem to newsmen accompanying Perot on the trip.

(*c*) Santiago, Chile; September, 1975; worked with principals of independent affiliate, Gallup-Chile to help prepare suitable article (for dissemination in the U.S. by the American Gallup Poll) detailing the results of an internal opinion survey revealing favorable public attitudes toward the Pinochet regime along with the results of surveys in other countries indicating unfavorable attitudes toward the amount of freedom in Chile.

V Publications:

(*A*) *Articles*

1. "We, Some of the People: Apportionment in the Thirteen State Conventions Ratifying the Constitution," *The Journal of American History*, 56 (1969): 21–40.

First thorough analysis of the subject, showing that, "unequal districting, though not resulting in . . . sn extreme violation of the concept of majority rule, did immeasurably benefit the pro-Constitution forces."

The article was reprinted in *An Interdisciplinary Approach to American History* (Vol. 1), ed. by Ari and Olive Hoogenboom, Prentice Hall, Englewood Cliffs, New Jersey, 1973.

2. "Straws in the Wind: the Record of the Daily News Poll," *The Public Opinion Quarterly*, vol. 32, Summer 1968:

Two steps to improve the accuracy of the Straw Poll were recommended, which steps were later adopted, probably coincidentally, when a professional poll-taker became their consultant and their accuracy improved considerably.

3. "Goldwater Can Win," *New York Herald Tribune*, October 25, 1964 (also *Washington Star*, November 1, 1964).

Showed that, under our electoral college system, theoretically Goldwater could win with less than 20 percent of the popular vote and that a somewhat greater likelihood would be a 40%-of-the-vote Goldwater victory with his strength coming from southern states where generally fewer citizens turned out to vote and smaller western states where the automatic allocation of electoral votes for each state's two senators, regardless of size, had the effect of giving such states a bonus in electoral votes. It did not work out this way!

(*b*) *Books*

1. Co-author, *Polls: Their Use and Misuse in Politics*, Basic Books, New York, N.Y., 1972.

*The Washington Post* called it, ". . . probably the best guide available."

*The New York Times:* "A sensible book about public opinion polling by two pros."

John W. Gardner: ". . . by far the best available on the significance of polls in politics."

2. Co-author, *Hopes and Fears of the American People*, Universe Books, New York, N.Y., 1971.

Using an internationally proven in-depth polling technique, this examination of the national consensus implied grave periods ahead if our leaders ignored the unprecedented pessimism, concern, shift in attitudes and disillusionment of our citizens. This examination was reported on the front page of *The Sunday New York Times* and in *The Washington Post, The Boston Globe, The Chicago Sun-Times*, and *Time Magazine*. Bill Moyers said it was "a book to be read if you want to know more about where the real greening of America is happening."

3. A planned book will deal with the effect of events, economic, conditions, war, etc. on presidential popularity based on some 475 (up to now) Gallup Poll readings since 1934. The importance of the idea is suggested by the correlation existing between high scores and high percentage of presidential requests acceded to by Congress.

VI Educational activities:

(*a*) Adjunct Professor of Political Science, Trenton State College, Trenton, New Jersey; January–June, 1975. Taught an undergraduate course entitled "Political Analysis."

(*b*) Taft Institute Guest Lecturer, July, 1975, at Trenton State College: and on three occasions (in the fall of 1972, 1973, and 1974) at State University of New York at New Paltz. Spoke on "Polling in the Political Process."

(*c*) Other such appearances at Rider College, Lawrenceville, New Jersey and at Princeton University.

(*d*) Since 1964 preparer of the annual current events quiz for Quill and Scroll, the honor society for high school journalism students. The quiz is utilized to determine Quill and Scroll college scholarship winners.

VII TV Experience and appearances:

(*a*) Prepared and taped a series of three programs on public opinion research for the Nebraska Educational Television Council on Higher Education, located, at the time, on the University of Nebraska campus, August 1971.

(*b*) Appeared on Elly Guggenheimer's talk show and discussed polling, October 1972, Mutual Broadcasting System in New York City. (She currently is New York City's Consumer Affairs Commissioner.)

(*c*) Appeared on two occasions on John Bartholemew Tucker's talk show during the week of the presidential election, November, 1972.

(*d*) Taped a program for the U.S.I.A. to be shown overseas, November 1972. The discussion of the significance of the presidential election results included John Chancellor, Robin McNeil, Tom Wicker, Hugh Sidney, and Richard Scammon.

(*e*) Appeared on one ABC (NYC) evening news program, October, 1972, an NBC (Philadelphia) discussion program, 1971, and, on radio, a Barry Farber discussion program, November, 1972, and a telephone-in-question-and-answer program on another New York radio station.

VIII Community involvement:

(*a*) President-elect, Trenton Torch Club a discussion group for professional and business people. Secretary-Treasurer, 1974–1975. Vice-president and program chairman, 1975–1976.

(*b*) Chairman, Lawrence Township Republican Committee and member of the Executive Committee of the Mercer County Republican Committee, both since June, 1974. Republican District Committeeman since April, 1970.

IX Military service record: Inducted into the Army December 6, 1954. Basic training at Fort Dix, New Jersey, December 6, 1954 to May 5, 1955. With Hq. Det, 5th Ord. Bn, Fort Bliss, Texas, May 7, 1955. Worked as security NCO processing applications for security clearances and as custodian of security and senstive documents. Cleared for Secret. Discharged, December 5, 1956, as Sp. 3 with Good Conduct Medal, at Fort Bliss.

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## Questions of the Committee and the Answers Thereto

*Question 1.* I cannot foresee any problems such as the compromising of my independent judgment because of my nomination to the CPB board by the President or because of confirmation by the U.S. Senate—if it follows. As I see it, nomination and confirmation are required by institutions of government (the

Constitution and the law); the loyalty that must result after these actions is loyalty to the public welfare the law and its institutions are established to promote rather than loyalty to the individual personalities who are merely the instrumentalities of these actions.

*Question 2.* These very complicated and slowly evolving relationships seem to be pointing in a productive and—what is equally important—workable direction.

Thus, the Corporation should continue to safeguard the autonomy of the local non-commercial educational stations in program development and selection and to encourage that degree of program diversity that best serves the needs and interests of each locality. CPB's Community Service Grants to stations, I understand, go a long way toward enabling their local programming services and, of course, should be continued.

CPB should continue its working partnership with Public Broadcasting Service in providing technical program distribution facilities (which enable a broader selection of programming for local stations) and in supporting the station program cooperative (which encourages local stations to purchase programming developed on a cooperative basis at less cost than would be possible if developed on an individual basis).

CPB should continue to encourage the underwriting of programming by the private sector in the interest of rounding out a balanced program in terms of public interest and needs. To this end, CPB should always stand ready, as at present, to pilot and develop important new programs. Examples coming to mind first are NOVA and Theater in America.

*Question 3.* It seems to me that programs treating public affairs and public issues must be an integral part of public broadcasting operating in a democracy. Public broadcasting generally should try to handle these programs in ways in which commercial broadcasting cannot or does not handle them. Thus, where possible, there should be treatment in depth rather than once-over-lightly treatment, more programming on the less dramatic but nonetheless important subject areas and less on subjects treated frequently elsewhere, the programming of actual proceedings—hearings, sessions, debates, etc.—rather than the secondary analyses by commentators, greater emphasis on local and state problems and less on national and international problems.

I realize these are target goals to be worked toward, not absolutes to be demanded, but I would like to see CPB encourage local stations along these lines and work to pilot and develop these kinds of public affairs programs on its own.

Of course balance and objectivity are musts in this kind of programming, but, in my present view, because these qualities are matters of individual judgment, I would be most reluctant, even in an extreme case, to have CPB go very far down the road of interference with program content.

*Question 4.* CPB should not in any way limit its clear-cut responsibilities as far as insuring that minority rights are fully realized when it comes to equal employment opportunities in the public broadcasting industry. I approve of CPB's own actions in this respect: (1) recommending that the FCC require all broadcasting licensees without exception to adopt three-stage affirmative action programs, (2) adopting a new, more demanding affirmative action plan in its own job placement and decision-making, and (3) requiring the issuance of a semi-annual report by CPB management on CPB activities related to minority concerns.

It is this kind of performance in its leadership role which, I feel, is CPB's soundest contribution in this matter. As a private corporation CPB ought not to be placed in a position of enforcing a law it is not specifically charged by law to enforce. This is particularly so when there is a number of government agencies better able to enforce equal employment opportunities regulations in public broadcasting entities when breaches occur. I would have no objection, however, to CPB's becoming a fact-gatherer with regard to these entities which receive grants if those agencies charged with enforcement require this information to bring about compliance.

*Question 5.* As a survey researcher by profession, I would have to agree that there is great value in ascertaining the needs and interests of people you serve. I recognize, however, that there could be special problems in the case of non-commercial educational stations pursuing this in their respective local communities. The interests and needs of special unvoiced groups public broadcasting has a special responsibility to serve run the risk of being lost in the shuffle of the communities majorities. Using scientific samples of sufficient size to develop representative data from these special publics might prove prohibitively costly. A

specialized local interest or need of, say, top priority might not be as readily served or met at the local level as a more general interest or need of somewhat lesser, but still important priority, which might be served or met easily by more distant program developers. And sometimes a real interest or need is not felt—and therefore does not surface in the ascertainment process. Still, however, I would like to see the ascertainment effort be made.

*Question 6.* The raison d'etre of public broadcasting is that it carries that programming commercial broadcasting cannot or does not carry, that it serves those viewers or listeners in our society commercial broadcasting does not adequately serve. I would have to support public broadcasting's role in providing programming to meet the educational and cultural needs and interests of racial and ethnic minorities as well as women when these needs and interests are not being met by commercial broadcasting. The overlooked minorities are not limited to these categories and these others, too, ought to be served by public broadcasting.

*Question 7.* As one who has had the experience of taping a three-part series on polling used on a number of educational TV stations and as one who more than frequently finds himself viewing a public TV channel in preference to the fare on commercial TV, I welcome the opportunity to have a voice in the planning and policy making of this most important cultural institution. More specifically, as an 18-year veteran of the survey research business, involved primarily in public opinion, I would like to think that my most important contribution would come in helping the Board to assess the needs and desires of (1) the American people and (2) those publics public broadcasting is giving a special voice to as well as to assess the program developed to measure these needs and interests.

*Question 8.* I believe there should be maximum amount of public input before those responsible for making decisions on public matters do so. This does not mean that I believe meaningful public input must be limited to those segments of the public that happen to be best organized or to speak with the loudest voice. Nor does it mean, in my opinion, that public sentiment must always be blindly followed by those charged with the responsibility of sound decision-making. It does mean, however, that the content of public sentiment about public matters always should be sought and taken into account.

It is also my desire that as much of the public's business is conducted in open meetings as possible, I applaud CPB's open board meetings. I do not know enough yet about P.B.S. and the local stations to know (1) to what extent their decision-making process can be further opened up to open meetings and public participation and (2) to what extent CPB can or should force or influence them to do so. I do know certain aspects of business life do not lend themselves to this. To open up when some things such as negotiations or future development plans are being discussed could prove counter-productive or to do so when personnel matters are being considered could likely prove unfair to people.

Senator PASTORE. Mr. Terrazas?

I see that we have timed this beautifully.

Senator TOWER. If I had known you were chairing today, I would have been on time.

Senator PASTORE. The Chair recognizes the distinguished Senator from Texas, who will introduce the next nominee.

## STATEMENT OF HON. JOHN TOWER, U.S. SENATOR FROM TEXAS

Senator TOWER. Thank you, Mr. Chairman.

I am honored to have this opportunity to introduce the President's nominee to the Board of Directors of the Corporation for Public Broadcasting, Mr. Louis P. Terrazas. I am especially pleased to give my unqualified support to my friend and fellow Texan. His nomination has a profound significance, that in my view far exceeds the filling of a vacancy which has existed now for some time on the CPB Board.

Louis Terrazas is proudly a Texan of Mexican ancestry and heritage. If he is confirmed by the Senate, the CPB will have for the first time

in its history, a representative from our Nation's Spanish-speaking community, who will participate in the highest policy level proceedings of the CPB.

The significance of this honor and responsibility which the President has conferred upon Louis Terrazas, perhaps is best understood in the following light:

Under Public Law 94–192, or the Public Broadcasting Financing Act of 1975, the CPB may request advanced appropriations through fiscal year 1979. Beginning with fiscal year 1976, the total authorized appropriations for those 4 years is $452 million.

With these moneys the CPB, through its Board of Directors, will carry out long-range planning to insure that public television and radio broadcasting provides for the viewing needs of specialized and unique audiences throughout the country.

Mr. Chairman, as U.S. Senator for Texas, I represent a constituency which is comprised of a sizable Spanish-speaking community. The programing and viewing needs of this community, not only in Texas or the Southwest, but throughout the country as well, are those of a special audience.

Fortunately, CPB and its Board have worked with others, including local public television stations, to develop programs that are tailored to the interests of these special audiences.

Local public television stations in my State have been active in these efforts, most notably KLRN–TV in Austin, Tex., which has in fact received the CPB Community Service Award for its excellent bilingual/multi-cultural series, "Carrascolendas," which it produced for National Public Television with funding from the U.S. Office of Education.

Public television was further enhanced when Carrascolendas entered the Japan prize interntional educational program contest in Tokyo in 1973 and won what has been referred to as the coveted UNICEF prize.

Mr. Chairman, there presently are more than 11 million persons of Spanish origin living in this country today. As part of the American public, this audience is also reached by television.

As we have seen, television is a most pervasive and effective means of communication, whether for advertising purposes or for innovative children's educational programs. Without question, television is the singular most powerful media in existence today.

Public television continues to have an increasingly important role to play in the development of good, innovative program offerings. To fulfill that role in a manner which does justice to the needs and aspirations of all elements of our society, the CPB Board of Directors should have the participation of Louis Terrazas. Thus, I urge the committee to approve his nomination.

Senator PASTORE. Mr. Terrazas, do you want to add anything to the statement that was made?

## STATEMENT OF LOUIS P. TERRAZAS

Mr. TERRAZAS. No, sir; I don't believe so. Not at this time.

Senator PASTORE. There is an ambiguity about one of your answers. I think there may be a misunderstanding.

When you were asked a question by the committee—whether you would be willing to provide such information as is requested by any duly constituted committee of Congress on such occasions as you may reasonably be requested to do so—you responded, "yes, provided that it would have a bearing on my nomination."

Mr. TERRAZAS. That is correct. That is the way I answered it, sir.

Senator PASTORE. What do you mean by that?

What if you are called before any other committee of Congress that has nothing to do with this nomination?

Mr. TERRAZAS. I would also be willing to and happy to appear before such a body.

Senator PASTORE. I see.

In other words, you understood the question as asking whether you would come here to answer any questions having to do with your nomination.

Is that the way you understood it?

Mr. TERRAZAS. That is right.

Senator TOWER. I think that was a misunderstanding of the question, Mr. Chairman.

Senator PASTORE. I thought it was an ambiguity. I am not making much of that. I just wanted it on the record.

Well, let me say this. I am very happy that, finally, the President has appointed one who is very familiar with the Spanish-speaking people, their wants and needs, their aspirations.

I understand from the staff that everything is favorable; and with the high recommendation that comes to us from the Senator from Texas, I have no further questions.

Thank you very much, sir.

Mr. TERRAZAS. Thank you, sir.

[The information referred to follows:]

BIOGRAPHICAL SKETCH OF LOUIS P. TERRAZAS

2527 Hiawatha, San Antonio, Tx 78210. June 22, 1931, San Antonio, Tx. Emma Cisneros Terrazas. Mary Diane 20 yrs. old; Michael Louis 9 yrs old. San Antonio College 1950–51. St. Mary's University 1953.

49–50 U.S. Navy. 50–54 Student and part-time employment; A.H. Beck Foundation; N.W.B. Foundation Co.; Guido Bros. Construction. 54 Eagle Finance; Central Finance. 55–59 Manager, Bank Loan Co. 60–61 American National Louis P. Terrazas Insurance Co. 61–68 Louis P. Terrazas Insurance Co. 68–73 Oakdell Inc. 73–Present—Gold Bond Mfg. Inc.

Served in an advisory position to the Agency Spanish Speaking Affairs (Wash. D.C.) in 1972

White House Task force on Housing in 1971 and 72 (Wash. D.C.)

Sertoma Club (Service Club), Past President St. Margaret Mary's Church, Finance Committee Member of the Carpet Cushion Council Monday Morning Quarterback Club, San Antonio, Tx. IMAGE.

Task force on Solar Energy, San Antonio, Texas. National Economic Development Agency, San Antonio, Tx. Intercultural Development Research Association.

Member of the Republican Men's Club, San Antonio, Tx. National Executive Board of Republican National Hispanic Assembly. State Chairman for the Republican National Hispanic Assembly of Texas. Vice Chairman of Independents Citizens Assoc. 1974, San Antonio, Tx. Average Political Contribution Annually $200.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

*Question 1.* Although appointed by the President, by and with the advice and consent of the Senate, the members of the Board of Directors of the Corporation

for Public Broadcasting are expected and, indeed, required to exercise their own independent judgment in the affairs of the Corporation subject to established law and policy. Will the fact of your nomination by the President and possible confirmation by the Senate compromise or in any way have a potential for influencing you in the exercise of such independent judgment?

Answer 1. No, it would not—I would continue to exercise independent judgment in all my affairs.

*Question 2.* A matter of critical importance to public broadcasting has been the appropriate relationship to be established between the Corporation, Public Broadcasting Service and the local non-commercial educational stations with respect to program development, selection, and funding. What are your general views with respect to the role the Corporation should play in this regard.

Answer 2. The local stations should certainly be developing local programs with the Corporation for Public Broadcasting, making national programs available to local stations.

*Question 3.* Public broadcasting's presentation of programs treating public affairs and public issues is a subject of great importance and sensitivity. What are your views as to the principles and policy considerations which should apply in this area? What, in your judgment, should be the Corporation's role with respect to the development of programming in the area of public affairs?

Answer 3. The local stations should develop their own public affairs programs with unbiased and detailed reporting on local community issues. On the subject of funding I would like to reserve my opinion until such time as I have additional information.

*Question 4.* Equal employment opportunity in public broadcasting is a matter of extreme concern. What, in your judgment are the responsibilities of the Corporation in this area to insure that the rights of minority groups under the law are fully realized?

Answer 4. Not only as a matter of legal obligations, but also on a moral basis, the Corporation should pursue the hiring of minorities in every facet of broadcasting. The Corporation should monitor all stations to see that these directives are implemented.

*Question 5.* The Corporation has recently expressed support for a proposed FCC requirement that noncommercial educational stations engage in formal ascertainment of the educational and cultural needs and interests of their respective local communities for purposes of developing their program service. Do you agree with this position?

Answer 5. Yes—I agree with the FCC requirement.

*Question 6.* What are your views with respect to public broadcasting's role in providing programming specifically designed to meet the particular educational and cultural needs and interests of racial, ethnic, minorities, and women—all segments of our society?

Answer 6. I certainly agree that all segments of our system should be provided some specific programming.

*Question 7.* From the standpoint of your qualifications, background and interests, what contribution to public broadcasting would you intend to make as a member of the Board of Directors of the Corporation?

Answer 7. I believe that my many years in business have prepared me to weigh problems or situations and to make good and rational decisions. Also, being Chairman of the Board of my company and having served as Director on other Boards has given me the knowledge of the duties and responsibilities of a member of the Board. I have also had some experience in dealing with the Federal Government. In addition, I feel that I can bring a layman's as well as a businessman's perspective to the Corporation.

Most policy Boards in our country have under-representation of Spanish-speaking Americans—I hope to bring to the Board a better understanding of the needs that can be met by the Corporation for Public Broadcasting.

*Question 8.* Do you think that the decision-making process of CPB, PBS and the local stations should be more open to public participation?

Answer 8. Although the final decisions rest with the Board it is of vital importance that the Board members receive input from the public to enable Board members to render judgments beneficial to all.

Senator PASTORE. We have a witness here on this nomination, Mr. Fierro, an old friend of this committee.

## STATEMENT OF MANUEL D. FIERRO, PRESIDENT, NATIONAL CONGRESS OF HISPANIC AMERICAN CITIZENS

Mr. FIERRO. Mr. Chairman, Senator Pearson, I don't have a prepared statement, but I just wanted to say on behalf of the National Congress of Hispanic American Citizens, I wanted to extend our gratitude to the committee and the chairman for their efforts in securing this nomination.

And it is with a deep sense of joy and pride to be here today to hear Mr. Terrazas' confirmation hearing. And I certainly commend the chairman for his sensitivity and responsiveness to the concerns of our Nation's Spanish-speaking community. And I think that this has opened up a new era, and that hopefully we will see some changes in CPB and public broadcasting, that will begin to be more responsive and sensitive to the needs of our Spanish-speaking community.

So again, with that, I just wanted to extend our gratitude to the chairman and the committee for their efforts.

Senator PASTORE. I want to thank you, Mr. Fierro, for your very fine remarks. I want to ask Mr. Terrazas one further question.

Mr. Terrazas, you come aboard as a Republican; correct?

Mr. TERRAZAS. Yes; I am a Republican.

Senator PASTORE. Are there any other witnesses here for or against these three nominations?

[No response.]

Senator PASTORE. The Chair hears none. We will now declare a recess.

Senator PEARSON. Pardon me, Mr. Chairman.

Senator Dole wanted to appear personally on behalf of Mr. Reed. He is busy, for obvious reasons, and will submit his statement for the record. I am sure the chairman will accept it at that time.

Senator PASTORE. Fine. That may go in the record.

[The statement follows:]

### STATEMENT OF HON. ROBERT DOLE, U.S. SENATOR FROM KANSAS

It is a pleasure for me to share with the members of the Commerce Committee my strong support for the nomination of Clyde Reed to the Board of Directors of the Public Broadcasting Corporation. Clyde has an outstanding record as a public servant, both in his participation with community action groups and Kansas government, and in his many years as one of Kansas' most renown editors and publishers. His reputation and the work which his reputation is based on speak for themselves. Having known him for many years, let me assure you of his competence, his integrity, and his dedication.

Clyde is a leader in the newspaper profession, in his church and community, and throughout Kansas. His tireless efforts on behalf of economic development in Southeast Kansas have brought many jobs to an area plagued by many economic problems. He served as the chairman of the Parsons urban renewal agency and was instrumental in its efforts to rejuvenate the downtown area of Parsons, Kansas, a community which has benefitted greatly from the work of the Reed family.

Clyde and his family have been associated with the political process in an important way for many years. His father, Clyde Reed, Sr., was a Kansas governor and represented my State in the United States Senate for more than 10 years starting in 1939. Clyde himself was the Republican nominee for Governor of Kansas in 1958 and has remained active with regard to issues of importance to his State and his community.

Clyde has served as the editor of *The Parsons Sun* since 1942 and has been both the editor and the publisher since 1949. He is, without a doubt, one of the State's foremost journalists. He has received the William Allen White Award for excellence in the newspaper profession and was the recipient of the Kappa Tau Alpha National Journalism Scholarship Society's Award as the outstanding State

publisher. He has served as the president of the Kansas Press Association and The William Allen White Foundation, and his interest in service within the print media has been longstanding and substantial.

Clyde Reed's life has been characterized by involvement in innumerable areas and by a record of excellence in service in these areas. I am confident he will serve as an outstanding member of the board of The Public Broadcasting Corporation and I am privileged to support his confirmation.

Senator PASTORE. All right.

We will stand in recess. The nominations will come up at the next executive meeting.

[Whereupon, at 10:15 a.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

CORPORATION FOR PUBLIC BROADCASTING,
*Washington, D.C., August 2, 1976.*

Mr. CLYDE M. REED,
*Editor and Publisher, The Parsons Sun,*
*Parsons, Kans.*

DEAR MR. REED: I have received your letter of July 30, 1976, with attachments and have reviewed them, as you requested, for the purpose of offering an opinion on the existence of any potential conflicts of interest or other legal barriers to your service as a member of the Board of Directors of the Corporation for Public Broadcasting.

During our telephone conversation this morning, you provided additional information, requested by me, regarding your citizenship and the activities of Sun Publishing Company, Parsons, Kansas.

On the basis of the written and oral information you have supplied, I am able to conclude that no potential conflicts of interest or other legal barriers to your service as a member of the Board of Directors of this Corporation are apparent. At your request, by copy of this letter, I am so notifying the U.S. Senate Commerce Committee.

I am also returning to you, uncopied, the financial data and documents received with your July 30, 1976 letter. Each page of these materials has been marked by me for identification. I request that you retain these marked copies in your record pending disposition of your nomination by the Senate and thereafter for any period of service on the CPB Board so that they will again be available to me should the need for them ever arise.

It was a pleasure to speak with you and to comply with your request. I look forward to meeting you in Washington.

Sincerely,

THOMAS G. GHERARDI,
*Vice President, General Counsel.*

AUGUST 16, 1976.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce, U.S. Senate,*
*Washington, D.C.*

DEAR MR. CHAIRMAN: We have received copies of letters dated July 26, 1976, that you sent to five persons who have been nominated to be members of the Board of Directors of the Corporation for Public Broadcasting. The five nominees are Mr. Paul M. Stevens, Mr. Leslie N. Shaw, Mr. Charles W. Roll, Jr., Mr. Clyde M. Reed, and Mr. Charles H. Crutchfield.

In accordance with your regular practice with respect to nominations which are referred to the Senate Committee on Commerce, you requested that each of the five nominees obtain the written opinion of the Office of Legal Counsel as to any potential conflict of interest or other legal barrier to his service on the Board of Directors. As you know, this office's past letters to the Commerce Committee regarding nominees to various positions under the Committee's jurisdiction have focused on potential problems under the generally applicable Federal conflict of interest statutes, 18 U.S.C. §§ 201 *et seq.*, and any special conflict of interest statute that may be applicable to the particular position to which the individual has been nominated.

The generally applicable conflict of interest statute of concern in most nominations is 18 U.S.C. § 208(a). It provides, under penalty of criminal sanctions, that

an officer or employee of the Executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, may not participate personally and substantially in a particular matter in which, to his knowledge, he, his spouse, minor children, or organization in which he is serving as an officer, director, trustee, partner, or employee has a financial interest.

This provision is not applicable to members of the Board of Directors of the Corporation for Public Broadcasting. Congress has expressly provided that the Corporation "will not be an agency or establishment of the United States." 47 U.S.C. § 396(b). The members of its Board of Directors are therefore not officers or employees of the Executive Branch or of an independent agency of the United States within the meaning of 18 U.S.C. § 208(a). Indeed, 47 U.S.C. § 396(d) (2) provides that "members of the Board shall not, by reason of such membership, be deemed to be employees of the United States." Neither are the members of the Board in the last of the three categories of persons to whom 18 U.S.C. § 208(a) applies—officers and employees of the District of Columbia. The Corporation is established as a nonprofit corporation subject to the District of Columbia Nonprofit Corporation Act, *see* 47 U.S.C. § 396(b), but the Board members are surely not officers or employees of the District of Columbia by virtue of this provision.

The other generally applicable conflict of interest statutes also apply only to officers and employees of the Executive Branch (and in some cases, the Legislative and Judicial Branches as well), of an independent agency of the United States, or of the District of Columbia. *See, e.g.*, 18 U.S.C. §§ 203(a)(2), 205, 207(a) and 209(a). Therefore, none of these statutes is applicable to the members of the Board of Directors of the Corporation for Public Broadcasting either.

Because the general conflict of interest statutes this Office is charged with construing do not apply in this case, and because there appears to be no other conflict of interest provision which is specifically applicable to the members of the Board, no purpose would be served by our reviewing or commenting on the financial and biographical data that the nominees have submitted to the Committee.

I am sorry that we cannot be of assistance in this matter.

Sincerely,

MARY C. LAWTON,
*Deputy Assistant Attorney General,*
*Office of Legal Counsel.*

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CORPORATION FOR PUBLIC BROADCASTING,
*Washington, D.C., September 14, 1976.*

Mr. CHARLES W. ROLL, Jr.,
*Lawrenceville, N.J.*

DEAR Mr. ROLL: I have received your letter of August 6, 1976, with attachments and have reviewed them, as you requested, for the purpose of offering an opinion on the existence of any potential conflicts of interest or other legal barriers to your service as a member of the Board of Directors of the Corporation for Public Broadcasting.

As you know, CPB is the private, nonprofit corporation described in Title II of the Public Broadcasting Act of 1967. Among other activities in support of public broadcasting, CPB is authorized to arrange for the interconnection of public broadcasting stations and the distributions of programs to them. 47 U.S.C. 396.

The financial statements attached to your August 6, 1976, letter reflect your interest in the as yet undisbursed trust of C. W. Roll, Sr., and the as yet undistributed estate of your mother. The corpus of your father's trust is composed in part of stockholdings in International Telephone and Telegraph Company (ITT) (420 shares) and your interest in the as yet undistributed estate of your mother includes ITT stock (375 shares). Although ITT may offer interconnection services to broadcasters and other customers, CPB does not directly, nor to my knowledge, indirectly and substantially, provide interconnection service to public broadcasting stations through any arrangement with ITT, nor is CPB presently planning such an arrangement with ITT.

During a telephone conversation subsequent to your letter, you provided additional information regarding your ownership of a debenture issued by the Radio Corporation of America (RCA). You reported that this debenture had a face value of $100, and an unknown market value estimated by you at less than face value. Your income from this debenture is less than $5 per year. Although RCA and affiliated companies offer satellite interconnection and related services to broadcasters and other customers, CPB does not presently arrange interconnection of public broadcasting stations through RCA companies, nor is CPB presently planning such an arrangement. Further, your present interests in RCA would appear to be remote and small enough as to bring them within the well-established *de minimis* exception to conflicts of interests rules.

On the basis of the written and oral information you have supplied, I am able to conclude that no potential conflicts of interest or other legal barriers to your service as a member of the Board of Directors of this Corporation are apparent. At your request, by copy of this letter, I am so notifying the U.S. Senate Commerce Committee.

I am also returning to you, uncopied, the financial data and documents received with your August 6, 1976 letter. Each page of these materials has been marked by me for identification. I request that you retain these marked copies in your records pending disposition of your nomination by the Senate and thereafter for any period of service on the CPB Board, so that they will again be available to me should the need for them ever arise.

It was a pleasure to speak with you and to comply with your request.

Sincerely,

THOMAS G. GHERARDI,
*Vice President, General Counsel.*

Enclosures.

CORPORATION FOR PUBLIC BROADCASTING,
*Washington, D.C., September 20, 1976.*

Mr. LOUIS P. TERRAZAS,
*San Antonio, Tex.*

DEAR MR. TERRAZAS: I have received your response to the inquiries of the U.S. Senate Commerce Committee, with attachments, and have reviewed them, as you requested, for the purpose of offering an opinion on the existence of any potential conflicts of interest or other legal barriers to your service as a member of the Board of Directors of the Corporation for Public Broadcasting.

On the basis of the written information you have supplied, I am able to conclude that no potential conflicts of interest or other legal barriers to your service as a member of the Board of Directors of this Corporation are apparent. At your request, by copy of this letter, I am so notifying the U.S. Senate Commerce Committee.

I am also returning to you, uncopied, the financial data and documents received with your response. Each page of these materials has been marked by me for identification. I request that you retain these marked copies in your record pending disposition of your nomination by the Senate and thereafter for any period of service on the CPB Board so that they will again be available to me, should the need for them ever arise.

It was a pleasure to comply with your request.

Sincerely,

Thomas G. GHERARDI,
*Vice President, General Counsel.*

SEPTEMBER 20, 1976.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,*
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: We received a copy of your letter to Mr. Louis P. Terrazas who has been nominated to be a member of the Board of Directors of the Corporation for Public Broadcasting. You requested that he obtain the written opinion of the Office of Legal Counsel as to any potential conflict of interest or other legal barrier to serve on the Board of Directors.

As we advised you on August 16, 1976 in connection with five other nominees to the Board of Directors of the Corporation, the general conflict of interest statutes are not applicable to members of the Board of Directors of the Corporation for Public Broadcasting since Congress has expressly provided that the Corporation is not an agency or establishment of the United States. 47 U.S.C. 396(b). Because the general conflict of interest statutes do not apply to this case, and because there appears to be no other conflict of interest provision which is specifically applicable to the members of the Board, no purpose would be served by our reviewing or commenting on the financial or background data provided by Mr. Terrazas.

Sincerely,

MARY C. LAWTON,
*Deputy Assistant Attorney General,*
*Office of Legal Counsel.*

# NOMINATIONS—JULY–SEPTEMBER

FRIDAY, SEPTEMBER 24, 1976

U.S. SENATE,
COMMITTEE ON COMMERCE,
*Washington, D.C.*

The committee met at 10:32 a.m. in room 5110, Dirksen Senate Office Building, Hon. Wendell H. Ford presiding.

## OPENING STATEMENT BY SENATOR FORD

Senator FORD. Good morning, ladies and gentlemen.

This is a hearing to consider the nomination of Richard G. Quick to be a Commissioner of the Interstate Commerce Commission (ICC).

Mr. Quick is presently administrative assistant to Senator Scott of Pennsylvania, for whom he has worked since 1972.

Previously he had worked as a computer analyst. He has served in the Army where he moved to the rank of captain. Mr. Quick is presently a major in the Army Reserve.

Mr. Quick comes well recommended by his State delegation.

He is accompanied this morning by Senator Scott and the Senator will probably have some statements from Senator Schweiker, Representative Rooney of Pennsylvania, and others.

Before welcoming our witness, I'd like to point out the often underestimated importance of the office of the ICC Commissioner. Transportation accounts for over 20 percent of our gross national product and an adequate transportation network is essential to the maintenance of our economy.

The ICC is an essential and extraordinarily important part of our Nation's transportation system. Thus, while there is no doubt that the Commission can be significantly reformed, there is also no doubt that we must have the best-qualified Commissioners possible if these reforms are ever to be meaningful.

I, for one, think it's time that we begin to demand excellence and high qualifications for the nominees to the Commission and I can assure you that this nomination process will be conducted in a manner to insure that the next Commissioner is fully qualified to assume the the duties of his office.

I'd like to now welcome Senator Scott, and I see Representative Rooney is here, so, Senator Scott, would you like to proceed.

## STATEMENT OF HON. HUGH SCOTT, U.S. SENATOR FROM PENNSYLVANIA

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

I realize the time constraints of the committee and the importance of filling the current vacancy on the ICC, and I thank you for scheduling this hearing.

I recognize, too, that Representative Rooney is very busy in these closing days of the session. I especially appreciate the fact that he is also here to make a statement.

It's a pleasure to urge this committee to act favorably on the nomination of Richard G. Quick to the ICC, which Commission bears the demanding responsibility of keeping Federal regulation attuned to the needs of a dynamic industry, and Mr. Quick is eminently qualified to assume and meet this challenge.

He currently serves as my administrative assistant and senior adviser on administrative, legislative, constituent, media, and other matters. The Commission is an arm of Congress, and he has an intimate understanding of it and broad experience in the legislative branch.

The second most important influence at work upon this regulatory agency is the White House. Mr. Quick has represented me not only in coordination with other Members of Congress, but also with Cabinet-level officers. He has maintained constant liaison with the White House on matters requiring coordination with the Senate minority leader on Presidential appointments and legislation. He is recognized and respected at the highest levels of our Government as a man of immense integrity, ability, and experience.

And while Mr. Quick has experience in a broad range of complex legislative issues, I will focus on some of the transportation issues the Congress has dealt with in recent years. And as a Senator, I have tried to keep abreast of these issues and, like the members of the committee, have relied heavily on my staff to keep me informed.

He has been the senior staff member who has insured that I have been kept apprised not only of the intricacies of the legislation we have passed, but also that of many of the changes in the ICC itself. Anyone charged with that responsibility has had to be conversant with both the Railroad Revitalization and Regulatory Reform Act of 1976, and the Rail Reorganization Act of 1973. His knowledge and expertise, however, does not stop there, because Pennsylvania has faced, and continues to face, the problems created by railroad reorganization.

Our Commonwealth contains approximately 1,000 miles of light-density lines which affect hundreds of businesses and thousands of people. He has worked on and understands the problems of rail transportation.

I must add that I have not let his qualifications rest there—other transportation issues have surfaced and have been met straight on. The Motor Carrier Reform Act and reform for the trucking industry have been brought to my attention by hundreds of independent truckers, who have faced tremendous adversities, such as increased fuel costs. Mr. Quick has a knowledge of and sensitivity to these problems.

The Senate is again facing the question of waterway user charges for our Nation's inland waterways and whether or not we support them, I think we would all agree that the issues are complex, and as a result of an indepth examination of these issues, Richard Quick has gained not only a knowledge of our Nation's complex inland water problems, but also an insight into the impact of water transportation on our Nation's economy.

Pennsylvania has one of the most diverse and intricate systems of transportation, and I know of no one who has worked more diligently and ably with these problems than has Richard Quick.

Good management is the avenue to improvement of the administrative process. The quality of administration suffers when administrators fail to delegate minor administrative matters. As my administrative assistant, Richard Quick has demonstrated that he knows where to draw the line. He has the ability to summon the best in an individual and make that individual reach his or her maximum potential. He is held in high esteem by his subordinates.

Complementing the above, he enjoys the bipartisan respect and cooperation of his peers and Members of Congress on both sides of the aisle. A review of your file will include some supportive comments from Congressman Rooney, who is here and who is chairman of the House Subcommittee on Transportation and Commerce; Congressman Doc Morgan, chairman of the Pennsylvania Congressional Delegation, who in this instance speaks for the delegation; Congressman Daniel J. Flood; and Congressman Bud Shuster. On this side of the Capitol I have received personal and informal expressions of approval from Senators Magnuson, Pastore, Hartke, Pearson, and Weicker, to name a few, and this is not to prejudge their decisions in the committee, but they have expressed general interest.

Much of the work is quasi-judicial.

Enhancing his strong administrative and technical work experience background is his master's degree in public law, a study of the regulatory process. This education, combined with his study of management sciences, economics, and financial management, provides him with the well-rounded education so necessary in the competitive environment of the ICC.

He has a distinguished record of public service.

And currently a major in the Active Army Reserve, he distinguished himself more than 8 years ago as the recipient of the Bronze Star Medal which he earned for service during his tour of duty in Vietnam. He is an honorable and able individual.

Mr. Chairman, he pursued his M.P.A. in public law in the hope that he would one day be given the opportunity to serve on a regulatory commission. We are fortunate to be able to recruit an individual of his caliber, ability, and his experience as a Commissioner of the Interstate Commerce Commission.

I enthusiastically and unequivocally recommend Mr. Quick as the man to fill the ICC vacancy. I know that, if confirmed, he'll reflect great credit on himself and bring new vitality to the ICC.

I may add also that his wide experience and close contacts with the staffs of Members not only of the Senate, but a great many

Members of the House keeps him very acutely aware of the problems of the Congress vis-a-vis the Executive and vis-a-vis the regulatory agencies.

And I submit for the record, detailed biographical materials on Mr. Quick and thank you for this opportunity to appear on behalf of this highly qualified designee, and ask that they be included in the record.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF RICHARD G. QUICK

*Business Address*: U.S. Senate, 260 Russell Senate Office Building, Washington, D.C. 20510, 202–224–6324.

*Home Address*: 8702 Etta Drive, Springfield, Virginia 22153, [redacted].

*Personal*: Born: August 8, 1942, Bellefonte, Pennsylvania, Married, two children.

*Education*: American University, M.P.A. Major: Public Law; Minor: Technology of Management. University of Puget Sound, Tacoma, Washington, B.A. Major: Economics, Minor: Financial Management.

*Employment*:

Administrative Assistant to U.S. Senator Hugh Scott, May, 1975 to Present.

Legislative Assistant to the Minority Leader of the U.S. Senate, 1974–75.

Special Assistant to U.S. Senator Hugh Scott, 1972–74.

Systems Analyst, U.S. Veterans Administration, 1970–72.

Engineer Technician/Computer Specialist, U.S. Department of Commerce, 1963–66.

*Military*:

Major, Active Army Reserve, Adjutant General Corps, 1971–Present.

Captain, U.S. Army, Corps of Engineers, 1967–70.

Senator SCOTT. I'd like to read briefly a letter from Congressman Flood.

As you know, I am unable to personally appear before the Commerce Committee in support of Richard Quick's nomination to the ICC. Knowing as well of my strong support for Richard I would appreciate very much your reading the enclosed letter to Senator Ford for me endorsing [him].

And the letter of endorsement, after the opening paragraph, which repeats about what I have said, says that he has known Mr. Quick for many years; he has served as an assistant to Senator Scott, "and I have always known him to be dedicated to service to the people of the Commonwealth * * * and the Nation * * *." It would not be an understatement to say that Richard Quick possesses a knowledge of transportation affairs and a skillful expertise in that field ranking with any on Capitol Hill. In fact, as I am sure Senator Scott will attest, he was instrumental in insuring the passage of the ConRail legislation which averted a catastrophe for rail transportation in the Northeast.

You can be sure that [he] would be an excellent selection as a Commissioner. . . . He has the high qualifications, the fitness of character, and the strict personal standards which I am sure exceed even the highest of criteria your Committee might establish.

I [wish] that you [would] convey to your colleagues . . . the high regard I [have for him] and my enthusiastic support. . . .

And a letter from the chairman, who is also Chairman of the House Delegation of both parties from Pennsylvania, states that he is very glad to hear that he has been designated and encloses a statement of support which attests to his professional capabilities without reservation.

He has an innate ability to analyze a problem, formulate a course of action, and implement a plan to resolve the question.

It is a rare pleasure to know and work with such a diligent, efficient, tireless individual.

I can only conclude that he will maintain these traits in his new position. I have no doubt [he] will make a valuable contribution to the formulation and implementation of our . . . transportation policy and I firmly believe his nomination and confirmation to be in the best interests of the country.

And has concluding remarks.

I ask unanimous consent that that may be included.

And the letter from Senator Schweiker, who is in Pennsylvania today unavoidably on business and had not planned to be called out of town, and he joins in the recommendation of Mr. Quick, states his wide range of experience in government, his service with distinction in the Army Corps of Engineers in Vietnam, his service as a major in the Active Army Reserve, his degrees in public law and economics from two universities, and his amount of expertise, including experience with major air, rail, shipping, and trucking concerns and urges the approval of the nomination.

And Representative Shuster, who is also the ranking member of the Subcommittee on Transportation of the House, who submits a lengthy statement in which he details his experience with Mr. Quick, particularly in regard to the problems of the railroad shops in Altoona and elsewhere and the development of the ConRail legislation and the frequent conversations he's had with him, and the public hearings where Mr. Quick has been effective in setting up information which led to the approval of ConRail and speaks of his thorough knowledge with all areas of transportation and of the regulatory processes which govern many of our transportation systems.

I believe it would be very beneficial to the interests of the American people if my subcommittee and the Congress could count on the direction and assistance of a man like Richard Quick at the ICC during consideration of our bills.

And he says a good deal more along the same lines and believes that while the ICC has been coming under criticism, much of this criticism can be mitigated by the work of—by the Commissioners, whom he respects, and by the work of Mr. Quick as a member of the Commission.

And I ask unanimous consent that those be placed in the record.

Senator FORD. I thank the Senator and his appearance here today and his statement we have in the consideration of the nomination, and those supporting letters from your Congressmen will be given consideration and will be in the record.

[The letters follow:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., September 24, 1976.*

Senator WENDELL H. FORD,
*U.S. Senate, Washington, D.C.*

DEAR SENATOR FORD: I regret that I am unable to appear personally before your distinguished Committee as you consider the nomination of Richard Quick to the Interstate Commerce Commission; however, I am grateful for this opportunity to recommend him to you.

I have known Richard for the many years he has served as an assistant to Senator Scott, and I have always known him to be dedicated to service to the people of the Commonwealth of Pennsylvania and to the Nation as well. It would not be an understatement to say that Richard Quick possesses a knowledge of transportation affairs and a skillful expertise in that field ranking with any on Capitol

Hill. In fact, as I am sure Senator Scott will attest, he was instrumental in insuring the passage of the CONRAIL legislation which averted a catastrophe for rail transportation in the Northeast.

You can be sure that Richard would be an excellent selection as a Commissioner on the Interstate Commerce Commission. He has the high qualifications, the fitness of character, and the strict personal standards which I am sure exceed even the highest of criteria your Committee might establish.

I hope you will convey to your colleagues on the Committee the high regard I hold for Richard Quick and my enthusiastic support for his appointment.

Thanking you, I am

Sincerely yours,

DANIEL J. FLOOD, M.C.

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STATEMENT OF HON. THOMAS E. MORGAN, U.S. REPRESENTATIVE FROM PENNSYLVANIA

Dear Mr. Chairman: I am pleased to appear before the Committee today to testify on behalf of Richard G. Quick's nomination to the Interstate Commerce Commission.

In his capacity as Administrative Assistant to United States Senator Hugh Scott, Richard has been of great service to the Commonwealth of Pennsylvania. I have personally had the pleasure of working with Richard on a number of occasions, including transportation related matters. I can attest to his highly professional capabilities without reservation. He has an innate ability to analyze a problem, formulate a course of action, and implement a plan to resolve the question.

It is a rare pleasure to know and work with such a diligent, efficient, tireless individual.

I can only conclude that he will maintain these traits in his new position. I have no doubt that Richard will make a valuable contribution to the formulation and implementation of our United States transportation policy and I firmly believe his nomination and confirmation to be in the best interests of the country.

Your expeditious confirmation of Richard Quick's nomination will do justice to his outstanding background.

I thank the Chairman for the opportunity to address the Committee in Richard Quick's behalf.

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STATEMENT OF HON. RICHARD S. SCHWEIKER, U.S. SENATOR FROM PENNSYLVANIA

Mr. Chairman, I am pleased to join with my senior colleague, Senator Scott, in recommending Richard G. Quick for appointment as a Commissioner of the Interstate Commerce Commission. I have had many opportunities to work with Mr. Quick in his capacity as Administrative Assistant to Senator Scott, and I believe he will serve the ICC diligently.

Richard Quick has a wide range of experience in government and the military. In addition to his service with Senator Scott as Administrative Assistant, Legislative Assistant and Special Assistant, he has been employed by the Veterans Administration and the Commerce Department. He served with distinction with the U.S. Army Corps of Engineers in Vietnam, and he is a major in the Active Army Reserve. He has degrees in public law from American University and economics from the University of Puget Sound.

As chief aide to Senator Scott, Mr. Quick has developed a significant amount of expertise in matters pertaining to the ICC. Pennsylvania is a transportation hub for the northeastern United States, with major air, rail, shipping and trucking centers throughout the commonwealth. His background in dealing with these matters suit him well for service on the ICC.

Mr. Chairman, I respectfully urge the committee to approve Mr. Quick's nomination to be a Commissioner of the Interstate Commerce Commission.

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STATEMENT OF HON. BUD SHUSTER, U.S. REPRESENTATIVE FROM PENNSYLVANIA

Thank you, Mr. Chairman.

I am very pleased to be here today to offer my enthusiastic support for the nomination of Richard Quick as a Commissioner to the Interstate Commerce Commission. I am Congressman Bud Shuster and I represent the 9th Congressional District in Central Pennsylvania.

Richard Quick, as Administrative Assistant to Senator Hugh Scott, is well known to all members of the Pennsylvania Congressional Delegation. He is highly respected, is a man of integrity and the Delegation worked with him closely on numerous projects of benefit to the people of our great Commonwealth.

I have enjoyed a close, personal relationship with Mr. Quick since I came to Congress back in 1972. Altoona, Pennsylvania, the largest city in my Congressional District, is well known throughout the nation as a major railroading center. The largest railroad shops in the East are located in Altoona with over 5,000 employees. Needless to say, I have been deeply interested and closely associated with the development of ConRail because of its direct impact in a large segment of the population of Central Pennsylvania. Richard Quick has been invaluable to me in promoting Altoona as a railroading center and fostering a positive relationship with the ICC, the Rail Services Planning Office, and others involved in ConRail's formulation.

I consulted with Mr. Quick frequently during consideration of the ConRail legislation and also during public hearings, several of which were held in my Congressional District. I was particularly impressed with Mr. Quick's broad knowledge of the transportation industry and transportation needs, and his insight into the workings of the ICC contributed immeasurably to my efforts in the ConRail development. Because of Mr. Quick's assistance, which I might add he gave willingly and enthusiastically, the Altoona shops were designated as the "heart" of ConRail's repair and maintenance facilities.

Beyond Mr. Quick's familiarity with the ICC and railroad matters, he is thoroughly knowledgeable about all areas of transportation and the regulatory processes which govern many of our transportation systems. As you know, the Congress will soon be considering legislation to reform the regulatory process, and the House Surface Transportation Subcommittee, on which I serve as Ranking Minority Member, is in the process of holding hearings on this matter. We expect to develop a bill to take to the floor during the early part of the next Congress.

While I enjoy a favorable relationship with the ICC, I believe it would be very beneficial to the interests of the American people if my Subcommittee and the Congress could count on the direction and assistance of a man like Richard Quick at the ICC during consideration of our bill.

Enhancing Mr. Quick's credentials to serve on the ICC is his very close association with transportation legislation during his years with Senator Scott. I know personally that Mr. Quick contributed substantially to the development of major transportation legislation on the Senate side, and there is no question that this experience would be a tremendous asset to him as an ICC Commissioner in dealing in the legislative area.

Mr. Chairman, the ICC has been coming under renewed attack, lately, because of what some contend are antiquated policies and a close-minded attitude towards the regulatory process. I believe this Committee can do a lot to mitigate that criticism by confirming the nomination of Richard Quick. I am confident that Richard Quick would serve with honor and integrity as an ICC Commissioner, and I respectfully urge you to expedite confirmation of his nomination so that the full Senate can take up this matter during the last days of the 94th Congress.

I appreciate the opportunity to appear before you today and I am grateful for the courtesies afforded me. I would be happy to respond to any questions that you or the other Members of the Committee may have.

Thank you very much, Mr. Chairman.

Senator FORD. I have no questions for the Senator.

Congressman, if you would like to proceed, we would be delighted to hear from you.

## STATEMENT OF HON. FRED ROONEY, U.S. REPRESENTATIVE FROM PENNSYLVANIA

Mr. ROONEY. Thank you, Mr. Chairman. I'd like to commend you for the promptness with which you started this meeting here. In the House it's not generally started exactly on time.

Senator FORD. I'm just a freshman here and I still think you have to be on time.

Mr. ROONEY. I appreciate very much the opportunity to appear before this distinguished committee, Mr. Chairman. It is my pleasure and privilege to appear before you today to offer testimony in support of the nomination of the very able and talented individual, Richard Quick, to the ICC.

And permit me to digress for a moment because this may be my last opportunity to appear on the Senate side before the retirement of a very distinguished American, Hugh Scott.

It would be remiss of me to fail to extend my warmest good wishes to a long time friend and very dedicated public servant, the senior Senator from the great Commonwealth of Pennsylvania.

He has served many years in Congress and has devoted over a half century of his life to the people of Pennsylvania and this Nation.

I know that we are of different party affiliation. We have had numerous occasions, however, to work together for common goals which affect not only my congressional district but the Commonwealth of Pennsylvania and the Nation as a whole. And I am personally very deeply grateful to you, Senator Scott, for the many times that you've graciously extended your assistance and your very fine counsel, and I want to commend you for the service you have rendered to our Nation and the leadership that you have provided in the very important work in the U.S. Senate.

I'm pleased and privileged also today to cooperate once more for a common purpose to express to this very distinguished committee my support for the nomination of Richard Quick to the Interstate Commerce Commission.

It gives me great pleasure to join with Senator Scott and my friend Senator Schweiker and my colleagues on the House side, Congressman Morgan, Congressman Flood, and Congressman Shuster, in wholeheartedly endorsing the nomination of Richard Quick to the Interstate Commerce Commission.

During the past several years I have had the opportunity to work closely with Mr. Quick on matters of interest and concern to our mutual constituency in Pennsylvania. In my capacity as chairman of the House Subcommittee on Transportation and Commerce, I have worked with Richard on numerous occasions on matters pertaining to CONRAIL and other transportation legislation. Richard has always distinguished himself, and I believe he is fully qualified to admirably serve as a member of this very fine Interstate Commerce Commission.

I have the highest regard for Richard and I strongly urge this committee to act favorably on his nomination.

I will be very happy to answer any questions.

Senator FORD. I have no questions for the Congressman.

Do you have any?

Senator STEVENS. No. Thank you very much for your appearance.

Senator FORD. If you want to stay around, that will be fine. We would like to have you, but I have no questions for either the Congressman or the Senator.

Mr. Quick, let's get to you. Do you have a written statement or you just want to answer questions?

## STATEMENT OF RICHARD G. QUICK

Mr. QUICK. Mr. Chairman, I have no prepared statement this morning. However, I would like to take this opportunity to thank you, Senator Stevens, and the other members of the committee who have expressed an interest in my appointment, also Congressman Rooney for being here this morning, and Congressmen Flood, Morgan, and Shuster, who have expressed support for my nomination.

I understand that several of the members of the committee have already expressed an understanding and appreciation for my nomination and hopefully they will, in the final analysis, approve of it when it comes before the committee for a vote.

And, of course, the most important thanks go to my boss, my Senator from Pennsylvania. I have been fortunate to have served with him since 1972, more recently as his administrative assistant. It's been a tremendous opportunity for me. I have learned from him every day, and I feel very strongly that if given the opportunity to serve on the Interstate Commerce Commission, that my experiences with him will contribute greatly to my ability to serve as an effective Commissioner.

Thank you.

Senator STEVENS. Senator, could I interrupt you? I have to go to another meeting.

Senator FORD. You can always interrupt. You have seniority.

Senator STEVENS. It's age, I hope.

I do want to thank you for chairing the committee's hearings today.

I have known Richard Quick in working with our minority leader and through people in my office who have also worked with him.

I'm delighted to see this nomination and I think that he will be a very fine member of the ICC. We have a stake in that ICC, those of us who have come from the far-off provinces of this land, so I'm very happy to see this young man with training and education and, I know, the capacity to handle a job like this and who will expedite some of the work down there.

So I appreciate your letting me interrupt you. And I wish you well Richard. I hope you'll excuse me.

Now that we have another of our colleagues here, I can get away with ease.

Thank you, sir.

Senator FORD. Senator, we have received a statement from Senator Scott and he has presented some statements from his congressional delegation including Senator Schweiker from the great Commonwealth of Pennsylvania.

And Congressman Rooney has made his statement.

And Senator Stevens made a statement and had to leave.

Do you have any comments at this point?

Senator WEICKER. No comments at this time, Mr. Chairman. It's good to see Richard; Senator Scott, Congressman, good to see you.

Senator FORD. I'll start with a few questions and we will proceed.

Mr. Quick, have you been professionally employed in the transportation field?

Mr. QUICK. No.

Senator FORD. It's my understanding from reading your résumé and other items that we have received, that you have served primarily as an engineer, analyst, and then as a Senate administrative and a legislative aide; is that correct?

Mr. QUICK. That's correct.

Senator FORD. One indication that you may have the qualifications demanded by this office is your statement in response to our questionnaire as a result of your experience in the Senate, and I quote from your statements there, that you have, quote, a level of expertise in railroad transportation that would serve me well on the ICC; and you also gained a knowledge of the trucking industry; and then gained some insight into the impact of our transportation system of the inland waterways. And we'll get into those areas with some questions.

You, I believe, stated in your replies to our questionnaire, that the tremendous adversities faced by trucking in general and independent truckers in particular, has suggested the need for the Motor Carrier Reform Act.

While I understand personally that many of the independent owners and operators have problems with the existing motor carrier regulations, I think I'm also correct in stating that the majority of the certificated carriers are adamantly opposed to the DOT Reform Act, which they feel would severely damage the industry. Thus the merits of the bill are in dispute.

Which of these views do you favor, the DOT view that the proposed act is needed for the regulated carrier, or the ICC view that the bill would undermine the existing system?

Mr. QUICK. Mr. Chairman, I really don't feel that I have sufficient information to make a firm recommendation today as to which view that I would, in the final analysis, adopt or recommend. I think that both parties have displayed, in many instances, a strong argument for and against the provisions of the bill, and many of them, I know, have been debated in the committee, at least I understand that they have.

I think it's important that a matter of this magnitude, particularly legislation that's going to affect such a huge diverse industry, be given a thorough study, and perhaps the members of the committee and the members of your staff now have the information they need to make that judgment.

I, myself, would feel the need to make further inquiries, more detailed analysis to hopefully provide me with the information that I need to reach a specific conclusion.

Senator FORD. Your background wouldn't as you stated in your questionnaire—place you in a position today of making a judgment which would be the best direction to go?

I imagine that you've had, as Senator Scott said, some political pressure from the differing views; but you wouldn't have any direction which way you would tip today?

Mr. QUICK. Well, as I said in my statement, the information available to me to date would suggest a need for that kind of reform. However, I really don't feel that i have sufficiently studied the matter and gotten to it indepth from the perspective of both the ICC, the Department of Transportation, the administration view. Not only that, but the close coordination that I think would be needed with the members of your committee prior to making that kind of determination.

I do believe that my general understanding of the industry and my own personal desires with respect to regulatory reform—that particular service would help me make a very responsive and direct decision at that time.

Senator FORD. With your background and expertise that you say that you have, are you aware of the position of the shippers as it pertains to the DOT recommendation?

Mr. QUICK. Would you repeat that, please?

Senator FORD. Are you aware of the survey that has been taken as it relates to the attitude of the shippers, their interest in the DOT Reform Act?

Mr. QUICK. No; I'm not familiar with that.

And also—and if I may revert back to my response to the previous question, I would state that I feel that I have the ability to withstand political pressures that might be brought to bear on the final decision because I think as a Commissioner on the ICC, one of my obligations is to make a totally objective decision within the parameters of the legislative charter that we are functioning under and other considerations that are important.

I don't think the specific political implications and pressures, if I understand you correctly, should play that great a role in the final decision.

Senator FORD. Well, let me rephrase that a little bit.

The industry pressure you are going to get from both sides——

Mr. QUICK. Right.

Senator FORD [continuing]. How would you propose, then, to analyze the information that you would receive?

Mr. QUICK. I think the industry can play a very significant role in presenting their case as they see it, to justify the position that they are recommending, and I think that should be taken into consideration very objectively.

Senator FORD. Of course, you're talking about the carriers and the shippers, too, and there is a difference——

Mr. QUICK. Yes, sir.

Senator FORD [continuing]. Of opinion as it relates to the DOT Reform Act.

Mr. QUICK. Yes, sir.

Senator FORD. The 1976 Rail Act was designed to reduce the Commission's rate regulation role wherever there was adequate competition to control prices.

The Commission is supposed to regulate maximum rate levels only when a carrier has, and I believe, I think, correctly, market dominance over the traffic.

Are you familiar with the Commission's proposed standard for determining whether a carrier has market dominance?

Mr. QUICK. I'm fairly familiar, not in detail, with some of the proposals that they've brought forward. They've had some recent conversations down there regarding the standards that should be established in determining market dominance.

But I don't consider myself an expert in that area.

Senator FORD. You don't have the expertise in this area to——

Mr. QUICK. Well, I have not an expertise in the market dominance area. However, I would say that I agree with the provisions of the

public law as they relate to the market dominance theory and what I perceive as their attempt to implement a theory that should have a positive impact on the industry.

Senator FORD. Do you think they facilitate the congressional purpose?

Mr. QUICK. I would reserve judgment on that, but it would appear to me that until that time that the provisions of the act are fully implemented, that they have not.

Senator FORD. Do you have any recommendations as to what standards you think should be used in determining whether a carrier has market dominance or not?

Mr. QUICK. No specific recommendations. I would hope to—of course, when the information is available to me, but I would think the situation should fall within the mandate and the charter of the enacting legislation and you, of course, are the best judgment of when we've reached that point in time. I would hope to expand the number of carriers to the maximum extent possible that fall outside the definition of market dominance to that level that would provide a balanced system.

Senator FORD. You expressed some knowledge and I think those that support you here today have expressed their confidence in your knowledge of rail reorganization, and so forth, and I want to talk to you about the ICC jurisdiction.

When a railroad proposes a new rate over which the ICC has jurisdiction, do you know who has the burden of proof that the rate is just and reasonable?

Mr. QUICK. The railroad.

Senator FORD. Do you think this is the proper system?

Mr. QUICK. Yes.

Senator FORD. Why?

Mr. QUICK. The—first of all, the railroad should have all the information, available information, needed to provide a proper judgment. It's really not the intent of the ICC that they manage the railroad per se. At least it's not my understanding.

So, therefore, I think we have to place some trust in the management of the railroad, their ability to gather information and make determinations based not only on the cost of running the railroad, but perhaps even their long-term financial needs.

And hopefully they should be in a better position to make an accurate determination. And I would think that if we could rely totally on them—I mean, it would certainly be in our best interest.

Senator FORD. You say rely totally on the railroad? You said you rely totally?

Mr. QUICK. Well, what I meant was if the system would permit a determination by the railroads that we could rely totally on for information, it would be in our best interests.

But, I think it's been proven in a few cases that the information submitted on rates may not take into consideration all the factors that the ICC's concerned about. For instance, socio and economic factors.

And as a result much of the information is subject to question.

Senator FORD. Well, I suggest that's—we're getting into it deep enough, but I think we've gotten your knowledge of it, anyway.

In general, do you know what commodities carried by motor carriers are not regulated by the Commission?

Mr. QUICK. In general, I think you're talking about raw agricultural products.

Senator FORD. Do you know which are not regulated for the railroad?

Mr. QUICK. Not offhand.

Senator FORD. All commodities are regulated that are carried by the railroads and it is a difference and it would be something that you might want to look into.

Since the motor carriers do compete with railroads in the agricultural commodity field, do you think this system should be changed?

Mr. QUICK. I think it's a question that would require further study before I could make a direct response, in all honesty.

Senator FORD. Well, what we're talking about here is we're getting into some reforms, and the motor carriers are exempt in some commodities and the railroads are not exempt in any and all the commodities are regulated for the railroads, and this is one of the areas in which I think you have some knowledge.

The Department of Transportation has recently published a line classification system, which implies that railroad investments should be made primarily on high density lines and that the remaining system should be downgraded over a period of time.

Do you see the railroads of the future as being primarily high density bulk commodity carriers or do you think the existing feeder line system should be preserved?

Mr. QUICK. I would have to certainly opt for the feeder line system. I think we need a total balanced transportation network and that, in my mind, would include the feeder line system and the use of the light density.

Senator FORD. Most of the railroads, with the information that I have in what little time I've had here in this level of Government, they would like to concentrate on the high density traffic and leave more of the local movements to the trucking industry, which are generally becoming more economical, I think, maybe, for railroads than local service.

So it may be that you're not leaning as much on railroad's recommendations here as you would in their rates, but this would increase the ability of the trucking industry to create profit and reduce the cost for the railroads to be more profitable and then do a better job in high density areas.

Of course, may not be a very popular view with some of the railroad union people, but we have to look to what the consumers might be interested in.

I have two or three more questions if it's all right.

Mr. QUICK. Yes, sir.

Senator FORD. Many economists say the motor carrier industry is as close as any industry to being capable of classical market competition.

Do you agree with this statement?

Mr. QUICK. Well, perhaps under the current guidelines, regulations, and legislation which have been established to date, that may be the

case. But are you suggesting the elimination of the regulatory process on the industry?

Senator FORD. Uh-huh. I mean, that's the thrust of it, yes.

Mr. QUICK. My own personal theory would be that the end result would not be a perfectly competitive system.

Senator FORD. There are presently 11 Commissioners at the ICC. Most Commissions have five to seven. Is 11 too many?

Mr. QUICK. That's a decision for you to make, Senator. [Laughter.]

Senator FORD. Well, we're hearing a lot about sunshine and sunset. [Laughter.]

And, you know, we might just whack it and I just want to know—you know, we're talking about efficiency and I think the people out there want efficiency and this is a large Commission and you're talking about reform and expertise and that sort of thing. I'd like to have your opinion.

Mr. QUICK. I'd support whatever number you perceive to be in the public interest, in that we must have a sufficient number of Commissioners down there to make the decisions, to run the organization and run the operation. If your final representation was that we needed less Commissioners, I would hope to, before you make that decision, to provide you with some input as a Commissioner as I perceive the situation to be down there.

But, again, if you believe there should be five and you feel justified in enacting that legislation, I would support it.

Senator FORD. Well, I appreciate your confidence in our knowledge.

You said you worked on the Rail Reorganization and Revitalization Act and that you have thereby acquired some knowledge about the railroads. You must, then, be very aware of the problem of time delays at the Commission that plague railroad management.

Do you think the 1976 Rail Act would help to eliminate some of this delay and if so, how?

Mr. QUICK. I would certainly think that the provisions of the act would help to eliminate these delays. I think the rate flexibility that is incorporated in the act, the rate-setting flexibility by the carrier, the requirements on the Commission to respond in a specific number of days to questions that are put to it, and more specifically I think that it's the intent of Congress in the enactment of the legislation, that we all work together to set up a more efficient ICC operation that can be more responsive to the questions that are put before it and I think it's a tremendous step in that direction.

Senator FORD. I think the act establishes time limits for ICC proceedings and its decisionmaking process. I think that, if I recall correctly, the act limited the number of appeals that could be made in an agency proceeding and required the individual opinions of each Commissioner to be indicated in the Commission reports.

However, there was one loophole that the ICC could get around the time limits by notifying the Congress, so I think the Congress did build into this act—at least we attempted by legislation—I don't think you can legislate attitude. I think we legislated in a manner to expedite and to eliminate the delays that were there.

Senator, do you have any questions?

Senator WEICKER. Yes, just a couple, Mr. Chairman.

You are aware at the present time of the joint effort between Government Operations and the Commerce Committee to investigate

the various regulatory agencies, the ICC being one of them, in the hopes of producing reforms; are you aware of that?

Mr. QUICK. Yes, sir.

Senator WEICKER. Do you envisage the fact that maybe the whole ICC ought to be eliminated?

Mr. QUICK. No. Certainly not. But I would have to objectively state that I recognize that it's a changing society, it's a changing economy; I think there are so many things that have to be taken into consideration.

Certain reforms are needed. I think they're needed on an ongoing basis. Hopefully they can be by implementing the system so it's an evolving course. But in those instances where legislative reform is needed or regulatory reform is needed, I think that it's something that we have to do on a very regular basis and it's a review that's a must, it's needed. The ultimate goal has got to be a system that best serves the public interest. And I support that concept.

Senator WEICKER. I think it's important. It's obviously an issue that's been very much in the public attention.

Really, all I'm asking you is, are you fully prepared to go into this position with the attitude that you would, if it served the best interests, vote yourself out of a job?

Mr. QUICK. Absolutely, without reservation.

Senator WEICKER. All right. Then the last question:

Looking at your very impressive background here, I'd just like to know, first of all, what is the American University's M.P.A., public law? May I ask what that is?

Mr. QUICK. It's a study of the—it's a graduate program in public administration, but it's a study in itself of the regulatory process.

Senator WEICKER. What is an M.P.A.?

Mr. QUICK. Master's degree in public administration.

Senator WEICKER. Well, you have your B.A. from University of Puget Sound. I notice that your career has been entirely with the Government——

Mr. QUICK. That's correct.

Senator WEICKER [continued]. Starting off with the Department of Commerce as an engineer technician/computer specialist, then a system analyst with the VA, special assistant to Senator Scott, legislative assistant to Senator Scott as minority leader of the Senate, and administrative assistant.

I also note in your résumé that you are a Vietnam veteran, presently a major in the Adjutant General Corps.

Now the reason why I mention your background is that I'm going to put the question directly to you and give you an opportunity to respond to those that portray this as some sort of a super political appointment and that you were a political hack or whatever.

This is an image that some try to create. I'm very impressed with the fact that you've dedicated yourself to government service.

And what I'd like to do is just to, admittedly, throw you a softball to allow you to respond yourself to these perceptions.

And I think that's fair, Mr. Chairman, because, aside from the specifics—and we've gone into, I think, very detailed specifics for the committee—I think he should be allowed in this forum to tell us why he thinks he is the best man for this job. And why you want to do it.

Mr. QUICK. I'd be delighted to, Senator. Thank you.

First of all, I don't like to think of myself as a political hack that you referred to. I don't think anybody would like to.

Senator WEICKER. I'm not referring to you as that.

Mr. QUICK. As you mentioned in your statement, sometimes, perhaps, there's a perception, particularly when dealing in the dynamic environment that we're involved in.

No. 1, I think, as you pointed to in a review of my record, I have been serving with the Federal Government since 1963.

You didn't mention, though, that I was drafted into the U.S. Army in 1966 and I went on to graduate from officers candidate school with distinction. I served 3 years on active duty, being released as a captain, and, of course, I had 1 year in there serving in Vietnam. I returned to government service through my own choice. I have always had a strong desire to serve. In fact, I volunteered for service in Vietnam because I felt that it was the place to be at the time.

My education in public law, regulatory law—and I might point out with a minor degree in technology of management, which is the study of computers, and so forth—were initiated to provide me with the tools that I would need to serve in my capacity as an assistant to U.S. Senator Hugh Scott.

But, more importantly, to manage the resources of a large office—being a Senator's office, we've got approximately 50 people on the staff—in order that we could provide the best service possible for our constituency in Pennsylvania.

As a result I have developed what I think is considerable management expertise and ability to lead people and ability to organize and ability to make things happen—positive things happen. And I consider that to be my strongest qualification.

I don't necessarily think of myself as a specialist in any one area, although I do have a real interest in transportation, as I think is reflected by my work in the Corps of Engineers in the Army working for the Department of Commerce and more recently working in legislation with the Senator.

I think of myself as a manager, of somebody with the ability to get a job done, a job that's needed, and recognizing, I believe, as an ICC Commissioner, that I would have to look very closely at the mandate or license or charter provided by the legislative branch. I would have to, although I'm down there serving a set term, weigh heavily the considerations put forth by the committee, by Congressmen and Senators. Combining that insight with my knowledge of the legislative branch, my prior experience with the executive and the military, and what I believe to be a rather strong background in management and the ability to get things done, would serve me well at the ICC.

In conclusion, I have a strong desire to serve the public, to serve the public interest, and hopefully to make a contribution to the betterment of our governmental system.

Senator WEICKER. Well, I just want to say that it's very clear to me that really you have made a career in the Government. I think it's very unusual to find a young person who is willing to go ahead and involve himself or herself in the sacrifices that are necessarily involved in that type of career. Nobody makes any money in the business of Government, elected or nonelected. There has to be dedication there

and I just wish that more of your type would consider Government rather than other more lucrative areas of endeavor.

I've got no apologies to make for the quality of people that I have been associated with over the years in government at any particular level, and I think this seems to me to be a very logical next step in what has been your entire life.

One last question and if you hear some murmurs at your back, well, don't you worry; you just look at me and listen to what it is I'm going to ask you.

A Weicker amendment to S. 3308, a regulatory procedure reform bill reported by this committee, would prohibit any Commissioner from practicing before that Commission for 2 years after he or she leaves.

Do you favor in general this type of restriction on what I call the revolving door problem within the regulatory agencies?

Mr. QUICK. Yes, sir.

Senator WEICKER. I have no further questions.

Senator SCOTT. Senator, may I just make another statement because if I don't, inferences will be drawn that ought to be said publicly.

Senator WEICKER. Please, sir.

Senator SCOTT. Mr. Quick's name was under consideration at the White House in the personnel office before I became aware of it and I'd be glad to make that statement under oath.

I was consulted after the event and I said that I would, of course, very gladly support Mr. Quick. I did not initiate the undertaking.

I was pleased that his friends and Mr. Quick himself showed that interest in going on into further Government service.

Mr. Quick came to me after I was elected in 1970 and has never raised a cent of money for me in my campaign or for any other purpose.

Senator WEICKER. Thank you, Senator.

Senator FORD. I have just a couple of items I would like to wind up with.

You indicated in your statements to Senator Schweicker that—about your administrative ability. Do you——

Senator WEICKER. Now, listen, Mr. Chairman, I had to go through that confusion for almost 1 month at convention time. This is Weicker; the other is Schweicker

Senator FORD. Oh, excuse me.

[Laughter.]

Senator FORD. Well, I have been reading statements about Mr. Quick from Mr. Schweicker, who is not here, and I guess I want to give him due credit.

But, with limited apology to the Senator from Connecticut——

Senator WEICKER. I'm not asking for an apology.

Senator FORD. You talked about your administrative ability. Do you actually want to become chairman of the Commission?

Mr. QUICK. I——

Senator FORD. The reason I ask that question, if you want to ask me why I ask it, is because the only individual that I understand has any administrative responsibility on the Commission is the Chairman.

Mr. QUICK. Well, I would certainly aspire to the goal of being chairman of the ICC, yes, sir, and hopefully to go beyond that 1 day, if the opportunities arise.

Senator FORD. Well, I just——

Mr. QUICK. But certainly the management ability has to be put to play in the—I'm not that familiar, but I recognize—I think it's the Reorganization Act of 1969 as it pertains to the ICC and the reassignment of the administrative responsibilities to the chairman.

But I think in my own internal office, my own personal office down at the ICC, I think in the recommendations that I make to the chairman and the studies that I initiate and the problems that I get involved in, I do very strongly believe that I can bring my management ability to play.

And hopefully—and I'm sure that Mr. Stafford would seek my advice and my counsel, as I'm sure he does with the other members of the Commission.

Senator FORD. I think maybe the problem that we're confronted with here is not bad management of the Commission, but bad regulation, and that would be where you ought to put your energy. You remind me a little bit of the fellow that my coach, when I was in high school described that he would like to have and that is one that came out for spring training and he looked up at this fellow and said, "Where do you play?"

And he looked down at the coach and said, "Wherever you're the weakest."

And so I like your enthusiasm. I think it's going to be all right.

Mr. QUICK. Mr. Chairman, I only aspire to be a good commissioner on the Interstate Commerce Commission.

Senator FORD. That's fine. If you want to aspire to be chairman, that's all right with me.

[Laughter.]

I won't knock it. I haven't tried it.

Mr. QUICK. Not at this time. I just want to be a good commissioner.

Senator FORD. Fine.

We've received all your papers now from the Justice Department and all of them are in order and I have, of course, this statement to make, that the committee or individual members, of course, reserve the right to schedule additional hearings or seek additional information if any member wishes such information.

And one point I want to make, too, is that you said that you were very knowledgeable of the Rail Reorganization and Revitalization Act and that you had acquired an expertise about the railroads. I was a little bit disappointed that you didn't relate the decision-making proceedings that the act established in order to cut down on the time delay, which we got into. I thought that was one of the important items that I saw in the Revitalization Act that was important to those who were being regulated, that they couldn't be out in limbo so long.

I have no further questions.

Senator?

Mr. QUICK. Just if I may, Senator, I agree with wha t you're saying, but I did mention it early in my testimony. I did make reference to that provision.

Senator FORD. Well, let me ask you another question.

Mr. QUICK. Yes, sir.

Senator FORD. We have tried to expedite this hearing. We submitted questions which you received late yesterday afternoon and your answers were in here this morning.

Did you answer all those questions yourself?

Mr. QUICK. I take full responsibility for those questions, sir.

Senator FORD. I asked if you answered them.

Mr. QUICK. Yes, sir. I——

Senator FORD. OK. That's all I want. Now don't go any further. Your answer is yes. And I'm not an attorney, so——

Mr. QUICK. I'm not, either.

Senator FORD. Good. We may get along.

[Laughter.]

Senator FORD. Because it's attorneys that have created one heck of a mess, you know, and maybe a nonattorney can straighten it out. Use four- or five-letter words and you'll get along all right.

Thank you very much.

Mr. QUICK. Thank you, Senator.

[Whereupon, at 11:26 a.m., the hearing was concluded.]

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