

## EXECUTIVE SESSION

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 THURSDAY, APRIL 28, 1977  
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United States Senate,  
 Committee on Finance,  
 Washington, D.C.,

The Committee met, pursuant to notice, at 9:05 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (Chairman of the Committee) presiding.

Present: Senators Long, Ribicoff, Gravel, Curtis, Hansen, Packwood and Roth.

The Chairman. The Committee will come to order.

While the other members are arriving on the scene, I will save the Deputy Secretary until we have other members on the scene and go further down the list.

Let me call Mr. Frank Libassi, nominated to be General Counsel of the Department of Health, Education and Welfare. Is he here?

Mr. Stern. He is not here yet.

The Chairman. How about Mr. Jerome Kurtz, nominated to be Commissioner of Internal Revenue?

Mr. Kurtz, would you have a seat, sir?

You have worked up here before. Your face is very familiar.



## 1 STATEMENT OF JEROME KURTZ

2 Mr. Kurtz. Yes, sir. I was Tax Legislative Counsel in  
3 the Treasury Department from 1966 to 1968, to the end of  
4 1968.

5 The Chairman. I seem to recall you were around here  
6 from time to time. What were some of the tax bills that  
7 you helped us put together?

8 Mr. Kurtz. Before this Committee, do you mean in those  
9 years?

10 The Chairman. While you were here before.

11 Mr. Kurtz. Those were the years of the investment  
12 credit suspension and reinstatement, and the Tax Lien Act  
13 was in those years, and a number of other, or minor, things.

14 The Chairman. I see.

15 You are practicing law, I take it, now?

16 Mr. Kurtz. Yes. I have been practicing law since then  
17 and before then with a firm in Philadelphia.

18 The Chairman. My impression is when a good tax lawyer  
19 comes to work here, he loses money. Would this be a  
20 financial sacrifice?

21 Mr. Kurtz. Yes.

22 The Chairman. Can you give us some idea of the  
23 dimension of the sacrifice you will have to make to take  
24 the job.

25 Mr. Kurtz. Substantially more than 50 percent.

1           The Chairman. I want you to know it takes a good deal  
2 of statesmanship and political courage for me to vote for  
3 that pay raise bill. I did it because we needed people of  
4 your competence here. I am sorry that it is still necessary  
5 for men like yourself who are willing to come back and do  
6 a tour of duty in government to make a substantial financial  
7 sacrifice to do it.

8           Personally, I think you are very well-qualified, Mr.  
9 Kurtz. I know you will do a good job for the country, if  
10 confirmed. I certainly will recommend it.

11          Mr. Kurtz. Thank you, Mr. Chairman.

12          The Chairman. Senator Packwood?

13          Senator Packwood. I talked to Mr. Kurtz in my office,  
14 but I want to go over once more the subject of taxation and  
15 fringe benefits.

16          You are aware of the Treasury Department's apparent  
17 intention to issue some regulations right at the beginning  
18 of the last Administration, and those were withdrawn. What  
19 are your personal views on whether or not Treasury and IRS  
20 should tax airline rides of airline employees, parking  
21 spaces, and a variety of fringe benefits that the Treasury  
22 was thinking about at the time?

23          Mr. Kurtz. Well, it is obviously a very difficult area.  
24 History proves that when that discussion draft came out, there  
25 was substantial disagreement within the government about the

1 conclusions reached in that discussion draft. Obviously,  
2 substantial disagreement with industry and those affected.

3 My own<sup>s</sup> view is that it requires a careful balancing of  
4 fairness or equity on the one hand and administration on the  
5 other.

6 There is no question that within the definitions of  
7 income in the Internal Revenue Code, a great number of these  
8 items are properly income. They are benefits to employees  
9 given because of employment.

10 Senator Packwood. Although presently untaxed.

11 Mr. Kurtz. Although many of them are presently untaxed.  
12 That is the other side of that scale, that is the question  
13 of administration and the feasibility of including and  
14 requiring the maintenance of records on various fringe  
15 benefits.

16 I think one cannot lump all fringe benefits into a package.  
17 There are some that are of very substantial value and  
18 accountability is not extremely difficult, and presumably  
19 they ought to be included as income. There are others that  
20 are of small value and difficult to account for. There, the  
21 cost of administration might outweigh the requirement for  
22 inclusion.

23 Senator Packwood. The standard of fairness is not if  
24 they are big or small benefits. I hope that we have not come  
25 to that standard of fairness in this country.

1 Mr. Kurtz: I used the question of being large and small  
2 as difficulty of accountability.

3 Senator Packwood. Do you think that the tuition, free  
4 tuition, that is given to relatives of teachers of private  
5 schools, to their dependents, should be taxed as income?

6 Mr. Kurtz. The tax-free nature of that, at the moment,  
7 is a question of regulation, regulations which have been  
8 outstanding for a very long time. Let me say I have a  
9 personal view on that which I will tell you in a moment.  
10 Let me qualify by saying that things frequently look different  
11 from the inside than they do from the outside in this  
12 respect.

13 From the outside, the theoretical arguments are more  
14 easily perceived, and perhaps are more compelling. Getting  
15 into the organization, you face another set of considerations.  
16 That is, the difficulty of doing it, the disruption it  
17 may cause, the administrative problems. Those I have not come  
18 completely to grips with.

19 On a theoretical basis, the basis of my view is that I  
20 think they should be taxed.

21 Senator Packwood. You think in fairness that they should  
22 be taxed?

23 Mr. Kurtz. Yes.

24 Senator Packwood. What about airline employees riding  
25 on airplanes?

1 Mr. Kurtz. That, again, falls into the same category.  
2 I think it should be taxed. Let me say that we get into a  
3 question there of valuation, of what a ticket is worth to the  
4 person. They are very difficult questions, to which I do  
5 not have an answer.

6 Senator Packwood. It is not difficult to determine what  
7 the ticket is worth to the person, what the person would  
8 have to pay if he did not ride for nothing.

9 Mr. Kurtz. We know what the price of a ticket is, but  
10 I am not sure exactly what the rules are for airline employees  
11 riding. My understanding is that they ride on the basis of  
12 space available, and therefore on standby. That gives them  
13 less rights than an ordinary ticket holder may have. It may  
14 affect the value of a ride, things of that kind.

15 Senator Packwood. They would pay the same price, if they  
16 had to pay it, that any passenger would have to pay, except  
17 that they are an airline employee and do not have to pay.  
18 I think they should be taxed on that.

19 Mr. Kurtz. In my view, it would be fair to tax them on  
20 some value. I am not certain what that value would be.

21 Senator Packwood. What about parking spaces provided by  
22 companies for their employees?

23 Mr. Kurtz. That is a very hard one. I do not know the  
24 answer to that.

25 Senator Packwood. I am curious as to what you would be

1 recommending. What do you think we should do? Should we  
2 make a recommendation to change the law?

3 Mr. Kurtz. Let me say, Senator Packwood, before I would  
4 recommend anything I would want to do a lot more work in the  
5 area. There is a lot of background material that has been  
6 developed. The cases are far more diverse and widespread  
7 than one can imagine.

8 Being a practicing lawyer --

9 Senator Packwood.. I am familiar with the cases. I want  
10 to know what your sense of equity is.

11 Mr. Kurtz. My sense of equity is where, because of  
12 employment, an employee gets a benefit which is other than  
13 trivial and which is something of value to him so he is in a  
14 better economic condition than somebody else may be earning  
15 the same amount of money, or having personally to pay for  
16 these things, that represents income under the definition of  
17 the Internal Revenue Code.

18 Senator Packwood. You would not recommend changing the  
19 law. You would simply say, if it is administratively  
20 feasible, these benefits should be taxed.

21 Mr. Kurtz. They are two different questions. One is  
22 under existing law, obviously. There I see a statutory  
23 requirement that they be taxed, if they can be.

24 As to whether the law ought to be changed, two things on  
25 that. One, that is not primarily within my jurisdiction and



1 and secondly, if it were, it depends on how it would be  
2 changed and what the result of the change would be.

3 I have not given any real thought to developing a statutory  
4 scheme which would somehow draw the line between these  
5 benefits and other kinds of income or to sort out one benefit  
6 from another benefit.

7 It may be possible to do. I just have not addressed  
8 myself to that question.

9 Senator Packwood. Let me see if I can summarize your  
10 attitude fairly.

11 Assuming it is administratively feasible, you would  
12 prefer that the law be drafted so that all fringe benefits  
13 be taxed as income.

14 Mr. Kurtz. Well, assuming it is administratively feasi-  
15 ble, I think the law requires that they be taxed. As to  
16 whether a statute could be drawn which could equitably exclude  
17 some of those and not others, I do not know the answer to  
18 that.

19 Senator Packwood. We exclude premiums now.

20 Mr. Kurtz. I would not want to see the law amended to  
21 say that fringe benefits in some broad definition was  
22 excluded. The problem I have with that is while today we  
23 know, or have some notion of what the existing fringe  
24 benefits are, what their magnitude is, who gets them, if  
25 an exclusion were drawn for it, I believe if taxpayers respond

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1 in the way they respond generally to exclusions, more and  
2 more compensation would be channelled into those fringe  
3 benefits. That, I think, would be unfortunate.

4 Senator Packwood. The policy of this government is to try  
5 to have a policy of fringe benefits to make those not  
6 taxable.

7 Mr. Kurtz. That is correct.

8 Senator Packwood. That is not a bad policy to achieve  
9 those benefits.

10 Mr. Kurtz. If Congress decides those are benefits to  
11 be encouraged, obviously, that is the way to implement it.

12 Senator Packwood. In the construction trades, building  
13 dams, this takes three, four or five years. I understand  
14 the present ruling is for those construction workers who  
15 have to drive extreme distances to work, the ruling is that  
16 only for one year will the assistance or transportation  
17 costs be passed. After that, you presume that that is  
18 compensation. There is no housing close to the dam. You have  
19 not changed the residence or location. You are still driving  
20 sixty, seventy miles. Why the year cut-off?

21 Mr. Kurtz. Well, I do not know the answer as to why  
22 there is a year cut-off. That has been a policy of quite  
23 longstanding in the service, supported by a number of cases.

24 Senator Packwood. What pragmatically happened was that  
25 it was not seriously enforced. It is becoming more seriously

1 enforced, I think unjustifiably, and it is bothering the  
2 building trades.

3 What is your policy? Should it be enforced? At the  
4 end of the year, the fact that you have to drive another  
5 three years and you have no housing either, should at the end  
6 of the year the cost now be charged?

7 Mr. Kuttz. Senator Packwood, I do not know the answer  
8 to that. I have not looked into that question very care-  
9 fully.

10 The considerations are distinguishing, as I am sure you  
11 know, distinguishing between the business expense and  
12 commuting expenses and if an individual has a steady job,  
13 for example, and chooses to live thirty or forty miles from  
14 that job, no deduction is allowed for commuting expense,  
15 nor do I think it should be.

16 On the other hand, if it is a question of what is a  
17 temporary job and what is an unusual, unanticipated kind of  
18 expense which may make it business.

19 The Chairman. If I may interject, I am going to have to  
20 leave at 10:00 o'clock in order to take over the tax bill  
21 on the Floor. What I would like to suggest is that we take  
22 care of these confirmations, the qualifications of these  
23 men. When we get through with that, as far as I am concerned,  
24 you can have the gavel and you can examine this witness  
25 about fringe benefits to your heart's content. I know of

1 your interest in this matter. I am sure he can provide you  
2 with some very useful thoughts in connection with it.

3 I would like to urge, however, that we simply look at  
4 these men's qualifications for the job at the moment and see  
5 how many of them we can recommend for confirmation. At the  
6 conclusion of that, we will call Mr. Kurtz back for you and  
7 you can get all the information that you want.

8 Senator Packwood. I like Mr. Kurtz. I move his  
9 nomination to send it to the Floor.

10 The Chairman. I do not want to deny you the right to  
11 find out everything you want to know about this man's views.  
12 I would certainly appreciate it. We do need to get this  
13 confirmed between now and 10:00 o'clock, if we can.

14 All in favor, say aye.

15 (A chorus of ayes.)

16 The Chairman. Mr. Kurtz, we are going to recommend  
17 you. Thank you very much.

18 Mr. Kurtz. Thank you.

19 The Chairman. Senator Ribicoff would like to have a  
20 chance to pass on the confirmation of the man I asked for the  
21 first time, Mr. Frank Peter Libassi. He is still not  
22 here.

23 How about Mr. Robert Carswell, nominated to be Deputy  
24 Secretary of the Treasury?

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The Chairman. Mr. Carswell, I do not think you are any stranger to us yourself. You have been around here before. I will ask that your resume be put into the record at this point.

(The biographical data of Robert Carswell follows:)

COMMITTEE INSERT

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## 1 STATEMENT OF ROBERT CARSWELL

2 Mr. Carswell. I was here from 1952 to 1955. I served  
3 as Special Assistant Secretary of the Treasury.

4 The Chairman. Who were you serving under at that time?

5 Mr. Carswell. Douglas Dillon for the first two and a  
6 half years. The last part, for Henry Bower.

7 The Chairman. You have some familiarities with the  
8 duties you will be asked to perform as Deputy Secretary of  
9 the Treasury?

10 Mr. Carswell. It is somewhat out of date, but yes.

11 The Chairman. You have consulted with our staff and  
12 also with your people about possible conflict of interest  
13 and conclude that that has been resolved?

14 Mr. Carswell. I think I have resolved everything, sir.

15 The Chairman. Thank you very much.

16 Are there any questions, gentlemen?

17 Senator Packwood. No questions.

18 The Chairman. Thank you very much, sir.

19 Mr. Carswell. Thank you.

20 Senator Ribicoff. Mr. Chairman, I move the approval of  
21 Robert Carswell.

22 The Chairman. Without objection, we will recommend  
23 him.

24 Next, let us hear from Mr. Daniel H. Brill, nominated  
25 to be Assistant Secretary of the Treasury for Economic

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policy.

Your resume will be put into the record.

(The biographical data of Daniel H. Brill follows:)

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## STATEMENT OF DANIEL H. BRILL

1  
2 The Chairman. Mr. Brill, you have had previous  
3 service in government?

4 Mr. Brill. Yes, sir. I was with the Federal Reserve  
5 for many, many years.

6 The Chairman. You come here from the Commodity Credit  
7 Corporation, I take it?

8 Mr. Brill. Control Data Corporation.

9 The Chairman. I see.

10 It says Commodity Credit Company, Baltimore subsidiary  
11 credit, Control Data Corporation.

12 Mr. Brill. Yes, sir.

13 The Chairman. You are senior advisor and Chief Economist  
14 to the Federal Open Market Committee?

15 Mr. Brill. Yes, sir.

16 The Chairman. When you have more time I would like for  
17 you to educate me a little more on that particular operation.  
18 I would like to know more about it.

19 Mr. Brill. It would be my pleasure.

20 The Chairman. Are there any questions?

21 Senator Ribicoff?

22 Senator Ribicoff. No, Mr. Chairman. Mr. Brill seems  
23 qualified. If there is no objection, I would recommend that  
24 we recommend that he be confirmed.

25 The Chairman. Senator Packwood, do you have any



1 questions of this witness?

2 Senator Packwood. No.

3 The Chairman. If there is no objection, we will  
4 recommend confirmation.

5 Mr. Brill. Thank you.

6 The Chairman. Mr. Robert C. Altman, nominated to be  
7 Assistant Secretary of the Treasury for Capital Markets and  
8 Debt Management.

9 We will have your resume put into the record at this  
10 point.

11 (The biographical data of Robert C. Altman follows:)

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## STATEMENT OF ROBERT C. ALTMAN

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2 The Chairman. Mr. Altman, I see you have had considerable  
3 financial experience. Have you explored the possibility of  
4 a conflict of interests and resolved that to the satisfaction  
5 of counsel in Treasury as well as our Committee staff?

6 Mr. Altman. Yes, sir.

7 The Chairman. Are there any questions?

8 Senator Ribicoff. I have no questions.

9 The Chairman. Senator Packwood?

10 Senator Packwood. I have no questions.

11 Senator Ribicoff. I move that we recommend confirma-  
12 tion.

13 The Chairman. Without objection, we will recommend  
14 confirmation.

15 Mr. William J. Beckham, Jr., nominated to be Assistant  
16 Secretary of the Treasury for Administration.

17 We will put your biographical sketch in the record at  
18 this point.

19 (The biographical data of William J. Beckham, Jr.  
20 follows:)

21 COMMITTEE INSERT  
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## 1 STATEMENT OF WILLIAM J. BECKHAM, JR.

2 The Chairman. Mr. Beckham, have you explored with  
3 Counsel in Treasury, as well as with our Committee staff,  
4 any possible conflicts of interest of problems and undertake  
5 to resolve those satisfactorily?

6 Mr Beckham. Yes, I have.

7 The Chairman. I see you were Chief Executive Assistant  
8 to Mayor Young of Detroit.

9 Mr. Beckham. Yes, sir.

10 The Chairman. You will not have as many fiscal headaches  
11 here as you may have experienced there, but I cannot guarantee  
12 it, by any means. You will find it just moving in on a  
13 bigger stage.

14 You served, sir, as an aide to Senator Philip Hart?

15 Mr. Beckham. Yes.

16 The Chairman. You have had some experience in the  
17 Senate?

18 Mr. Beckham. Yes.

19 The Chairman. I see you started out on the Capitol  
20 Police Force here in 1962.

21 Mr. Beckham. That is correct.

22 The Chairman. Did you go to college while you were  
23 working here?

24 Mr. Beckham. Yes, I did.

25 The Chairman. I think that is of great credit to you.

1 Are there any questions, gentlemen?

2 Senator Ribicoff. Mr. Chairman, I move that we recommend  
3 the confirmation.

4 The Chairman. Without objection, we will recommend the  
5 confirmation of Mr. William J. Beckham, Jr.

6 Mr. Joseph Laitin, nominated to be Assistant Secretary  
7 of the Treasury for Public Affairs.

8 We will have your biographical sketch put in the record  
9 at this point.

10 (The biographical data of Joseph Laitin follows:)

11 COMMITTEE INSERT

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## STATEMENT OF JOSEPH LAITIN

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2 The Chairman. Mr. Laitin -- is that how you pronounce  
3 your name?

4 Mr. Laitin. Yes, sir.

5 The Chairman. Have you looked into the possible conflict  
6 of interest problems and are satisfied that they have been  
7 resolved to the satisfaction of Treasury Counsel as well as  
8 to the satisfaction of the Finance Committee staff?

9 Mr. Laitin. Yes, sir.

10 The Chairman. Are there any questions, gentlemen?

11 Senator Ribicoff. Mr. Chairman, I move that the  
12 Committee recommend Mr. Laitin.

13 The Chairman. Without objection, then, Mr. Laitin will  
14 be recommended.

15 Mr. Laitin. Thank you, sir.

16 The Chairman. Mr. Frank Peter S. Libassi, is he here  
17 now?

18 Mr. Stern. Mr. Chairman, Senator Talmadge had an  
19 amendment that he has introduced to a bill that he asked  
20 for Committee consideration of. He was unable to be here.

21 He asked that it be explained.

22 The Chairman. Which of these measures do we have to  
23 act on immediately? What is our time situation?

24 Mr. Stern. Both items two and three are related to  
25 the Congressional Budget schedule and have to be reported by

1 May 15th. In the case of the Maternal and Child Health  
2 Amendment, Senator Talmadge's amendment is an amendment to a  
3 bill that the Human Resources Committee reported out. They  
4 are going to be taking it up next week. There is a time  
5 deadline.

6 The Chairman. I would suggest that we see if we can  
7 take care of this maternal and health and medicaid amendments,  
8 and then clear that with all members of the Committee, if  
9 there is no objection, I would suggest having discussed that,  
10 we poll the Committee and see if it is all right with those  
11 who are not here, and if so, we could report this matter.

12 Senator Talmadge dropped me a note about this matter,  
13 if I can find it here.

14 He says, "Because of my responsibility as Chairman of  
15 the Senate Committee on Agriculture, Nutrition and Forestry,  
16 I will be unable to attend today's Executive Session of the  
17 Senate Finance Committee. I will therefore authorize you  
18 to vote my proxy as interested in an amendment here."

19 Would you explain that?

20 Mr. Mongan. Very quickly, Senator Talmadge had intro-  
21 duced an amendment last week from a building from the  
22 Kennedy Health Subcommittee, a bill that come to the  
23 Committee from the House. The vast majority of that bill  
24 dealt with changes in the Public Health Service Act, but  
25 folded into that bill were two provisions relating to maternal

1 and child health and medicaid.

2 Senator Kennedy recognized that they did not fall in  
3 within the jurisdiction of his Committee and he stripped  
4 them from their Committee bill.

5 Senator Talmadge put in an amendment which would reinclude  
6 those two provisions in the bill. He would like the  
7 Committee, if the Committee were to support his amendment, he  
8 would raise it as a Committee-supported amendment next week  
9 when this bill goes on the Floor.

10 The substance of the two amendments is as follows. The  
11 first deals with maternal and child health. That is our  
12 present formula grant program to the states for the care of  
13 mothers, infants and crippled children. The current authoriza-  
14 tion level under that program is \$350 million. The authoriza-  
15 tion has gradually edged up to where it is close to that  
16 authorization level. It was \$347 million last year.

17 Senator Talmadge's amendment would raise the authoriza-  
18 tion ceiling by 15 percent in order to give these programs  
19 an inflationary increase so they would not have to cut  
20 back on some of the activities which they are currently  
21 sponsoring.

22 The second activity would relate to the funding of  
23 nursing home inspectors under the Medicaid program. Twice  
24 in the past, the Congress has voted to fund those inspectors  
25 at 100 percent Federal matching, so that the states would

1 have ample funds to hire appropriately trained personnel to  
2 survey the nursing homes and intermediate care facilities.

3 The Administration has requested that 100 percent  
4 Federal matching be extended to 1980 at a cost of about  
5 \$20 million per year.

6 The Chairman. Is that the only amendment that he is  
7 recommending?

8 Mr. Mongan. Those two.

9 The Chairman. Senator Talmadge is recommending that?

10 Mr. Mongan. Senator Talmadge favors both of those.

11 The Chairman. Does it sound like a good idea to you?

12 Mr. Mongan. Yes, it does.

13 The Chairman. Why do we not propose that we poll the  
14 Committee; if it is all right with the Committee will will  
15 go ahead and report it in that fashion,

16 Without objection, then, we will poll the Committee and  
17 see if that is agreeable with them, and the time aspect of  
18 this.

19 Now, with regard to the International Trade Commission,  
20 having heard the witnesses, I would be curious as to what the  
21 Committee thinks about it. Offhand, it may be that we want  
22 to take more time on this.

23 Mr. Cassidy. Yesterday, rather, on Monday, the House  
24 passed their ITC bill. A summary has just been handed to  
25 you. It was referred to the Committee yesterday. We now have



1 a bill.

2 The Chairman. It seems to me, in view of the significance  
3 of what we are asking the International Trade Commission to  
4 do, we should recommend the budget request of the Commission.  
5 That is my personal feeling, but I would be glad to abide  
6 by the Committee on the latter.

7 What can you tell us about that.

8 Mr. Cassidy. They asked for \$12,187,000 for fiscal year  
9 1978, slightly over a 2 percent increase over 1977, and as  
10 a result of the House action, the House recommended a cut  
11 of \$665,000 from that request. Almost all of that cut would  
12 come out of self-initiated reports which the Commission might  
13 be carried on.

14 You asked, incidentally, the other day that the  
15 Commission submit a list of those reports. They have done  
16 so.

17 Senator Ribicoff. On that, I think to stop the Commission  
18 from self-initiated reports would really be retrogressive.  
19 In setting up the 1974 Trade Act, it was definitely our  
20 intention that this should be a meaningful Commission  
21 that had much to do.

22 Just as an indication, during the hearing-- I regret that  
23 Senator Packwood was not here -- we requested you, Senator  
24 Talmadge and myself, for the Commission to make a study for  
25 us in relation to the President's energy proposals as they

1 impact upon American industry. The public, on the so-called  
2 rebate to be paid for purchases of small cars, especially if  
3 it would apply to rebates to foreign cars.

4 That alone has such implications and is so important,  
5 not only in the trade field, but the tax field, that we are  
6 going to be faced with in the energy proposal. They have  
7 done some outstanding work. It is controversial. It is a  
8 controversial Commission, because it can never satisfy  
9 everybody.

10 There is such swirling around in this country, pros and  
11 cons on the whole export-import business, but to cut them  
12 out from making these reports would be undermining the main  
13 purpose of the Trade Act itself that we pass.

14 The Chairman. I do not know who but a mindreader or a  
15 crystal ball gazer could know in effect how many investiga-  
16 tions will be desirable to be made by that Commissions.

17 Who would know how many investigations the Commission  
18 might find it necessary to make, how many they might not.

19 For example, on this Committee, Senator Packwood came  
20 to me awhile back. He wanted a whole bunch of things  
21 investigated. As Chairman of the Committee, I said, if he  
22 wants information, let's see if we can get it. He will have  
23 the General Accounting Office doing a lot of work.

24 Who can predict, at this moment, even what investigations  
25 he himself might want the Commission to make before the two-

1 year period is out.

2 It seems to me that the logical thing is to give them  
3 enough money to do what they think they will be needing and  
4 then if it looks as though they can save some money, it may  
5 be that they will send some back in.

6 That is a far better thing than, for example, let us  
7 suppose Senator Roth wants an investigation made. You come  
8 up here and say, all right, this should be investigated, then  
9 you find at the last moment that they do not have any money.  
10 The money has all been used up.

11 Then you are in a position of having to get an appropria-  
12 tion authorization, a supplemental, to have something inves-  
13 tigated that you want investigated. I think it is better  
14 to have enough money over there to hope that they would not  
15 have to come back for a supplemental.

16 If they do not need it, turn it back in the way it is now.  
17 The idea of having some people do a job where you cannot  
18 predict in advance where it is going to be, I think makes  
19 no sense.

20 Furthermore, if you look at all of the matters that are  
21 investigated where these people thought these things needed  
22 to be looked into and they did, we fellows get very busy  
23 over here on this Finance Committee, the same thing on the  
24 Ways and Means Committee. People get busy with other things.

25 The people working in that trade area, it is their job

1 to maintain surveillance. Where the trouble spots appear  
2 to be developing, such as musical instruments, scientific  
3 instruments, sweaters, body support garments. If there  
4 appears to be a problem, look into it.

5 I think it makes the Commission look good if we say we  
6 want to know about the very serious situation that seems to  
7 be developing with regard to fish nets. They say, we have  
8 been thinking about it, Senator, and we have the information  
9 right here.

10 I think it is all to the better that they be right on top  
11 of their job.

12 For example, I never knew that we had any problems with  
13 regard to luggage. I see they have been looking into it.  
14 So much the better. We do not make any luggage in Louisiana.

15 If anybody does, he has the problem. There is the  
16 information he is looking for. I think we should recommend  
17 the budget they are asking for and the House will undoubtedly  
18 compromise with us to reduce it some.

19 One, recommend the budget; two, leave them the flexibility.  
20 I do not want to be the guy trying to decide whether a person  
21 over there ought to sign his name with a lead pencil or a  
22 fountain pen. Let them decide for themselves. They appear to  
23 be competent people.

24 The only real basis I can see for the House being somewhat  
25 difficult with that Commission is that the House feels that

1 is a Senate Commission, frankly, and they have to come  
2 before us for confirmation.

3 I have told our House friends from time to time that  
4 if they want to make suggestions on whether or not we should  
5 confirm people or not, it is all right with me.

6 I would just hope that the Commission will establish  
7 a better line of communication with that House Committee.  
8 Frankly, I think we ought to do it too. I would like,  
9 Senator Ribicoff, for you and your Trade Subcommittee to  
10 hold a meeting now and then with those people, socially or  
11 a business meeting, however you want to do it, to let them  
12 get off their chest whatever they think about matters.  
13 Maybe they feel that they are more a part of what is going  
14 on.

15 Senator Ribicoff. I think also, Mr. Chairman, I think  
16 it would be better if they talked with the Committee about  
17 any survey and research and reports that they have in mind,  
18 for us to determine whether, in our judgment, they are worth-  
19 while.

20 There always has to be a priority. It is obvious. Some  
21 of the research problems, balance of payments analysis, you  
22 requested the factors affecting world petroleum prices, which  
23 are certainly important; soft wood forecasting, Senator  
24 Packwood may understand what that means.

25 Senator Packwood. That description does not mean anything

1 to me.

2 Senator Ribicoff. I would do that, Mr. Chairman. Have  
3 the staff keep in touch at any time they think is advisable  
4 to call a meeting at regular intervals to be brought up to  
5 date as to their work.

6 I would certainly do that. I would expect, Mr. Cassidy,  
7 to keep us informed, both on the majority and minority side.  
8 I would not like to cut them out.

9 The Chairman. I think that would work out fine. I do  
10 not see anything wrong with that.

11 If there is no objection, why do we not recommend  
12 the budget they requested? It has been our judgment -- what  
13 we did was make that Commission as independent as we could  
14 make them, so if they request their budget and it does not  
15 go through the Bureau of the Budget, the problem we have  
16 we would have people down at the White House, down there,  
17 who tried to make the people in the State Department -- they  
18 are very liberal, you know. Those people had not turned  
19 in their Santa Claus costumes yet.

20 Those people decided they are going to give away some  
21 American industry to ingratiate themselves with some foreign  
22 nation. In order to implement that decision, they proceed  
23 to go through the White House, tell the White House that that  
24 is what they want done. Then they try to get the White House  
25 to dictate to the Commission what the Commission should do.

1           Then, if the Commission does not do what the White House  
2           thinks ought to be done, then they say to the Bureau of the  
3           Budget to cut their budget, to punish them for not doing,  
4           some function that the State Department thought should be  
5           done. Some nameless person we have never met and do not  
6           know. ~~Some nameless person we never met and do not know, to~~  
7           ~~keep that from happening~~, we said for the future,  
8           just bring their budget directly up here and request it. It  
9           seems to me as though they have made a good case, in all  
10          of this penny-pinching on the budget to say, since you did  
11          not spend all of your travelling money last year, we are  
12          going to cut you.

13           Give them what they requested, a flat amount, and if you  
14          do not need all of it, turn in what is not necessary.

15           If there is no objection, why do we not recommend that.

16           Senator Ribicoff. I so move.

17           The Chairman. Without objection, we will do that much.

18           Let me raise another question. It may have partisan  
19          overtones to it. If it is objected to, I will be able to  
20          guide myself by the views of the Committee.

21           One possible answer to this thing about the tie votes is  
22          to let the President appoint one more person to the Commission.  
23          At least three must not be members of one Party, so you  
24          would have presumably three of one Party and four of another.

25           That would mean ordinarily whoever is President would name

1 a majority. I would not want him to name the Chairman, but  
2 have a seven-man Commission rather than a six-man Commission.

3 The argument for that, I think, would be that trade is  
4 no longer a partisan issue. It used to be. It used to be  
5 Democrats were the free traders and Republicans were not  
6 free traders.

7 I would think if we -- that since we made the Commission  
8 as independent as we can make them, make it a seven-man  
9 Commission. If we did that, it would tend to be the case, I  
10 assume, that you would have four men or women on there of  
11 the same party as the President and three who would be of the  
12 other Party.

13 Then, when a Republican President takes over, the majority  
14 would swing the other way around. If there were an appoint-  
15 ment, he would name one, a Republican, to his place and one  
16 Democrat, if a vacancy occurred, so it would be a four-three  
17 Republican majority in a Republican Administration and a  
18 four-three majority in a Democratic Administration.

19 What is your thought on that, Senator Roth?

20 Senator Roth. To be candid, I have reservations about  
21 that, not because of the partisan nature, because I am  
22 confident we will have a Republican President in four years  
23 and we will have a four-three advantage. Nevertheless, I  
24 agree with some of your earlier statements that the Congress  
25 has a special responsibility in the area of international





1 decision should be made here. I am not so sure that  
2 we need to invest this Executive Agency with power for  
3 decisive action. It will result in one person making a  
4 decision for the entire nation.

5 I think we are all right with three and three. If we  
6 want to make an odd number, we should go to five. These  
7 Commissions get too big.

8 The Chairman. The last thing on earth I want to do is to  
9 have a partisan fight about the Trade Commission and be in  
10 a position of ramming something through with a Democratic  
11 majority with the Republicans vehemently protesting about  
12 it.

13 There is too much bipartisan cooperation to break that  
14 tradition. I would not want to do it for the world.

15 I would be willing to go with the idea of three and three,  
16 if we can do this. Whoever is Chairman -- let's face it,  
17 the Chairman rotates under this law. He serves for eighteen  
18 months.

19 To say who is ever Chairman would have the power to  
20 make administrative decisions, the housekeeping measures about  
21 how you are going to assign your personnel, so the house-  
22 keeping thing would be under the control of the Chairman,  
23 which rotates, so each person will have his chance in the  
24 last eighteen months before his term expires, he is Chairman.

25 Then that Chairman has a housekeeping responsibility

1 unless overridden by a majority. Basically, that breaks  
2 the tie as far as housekeeping things are concerned, and  
3 the administrative type things -- can you give me an example  
4 of what those types of things are, Mr. Cassidy?

5 There, a lot of debate could be ended.

6 Mr. Cassidy. In the recent past, the Commission has  
7 spent a great deal of time on such measures as toilet paper,  
8 light bulbs, pencils, et cetera. Most of the time, however,  
9 it has been on more significant matters.

10 The Chairman. As I recall, there was something about  
11 decorating an office. For example, the Chairman did not  
12 want to repaint and redecorate his office. Somebody else  
13 said that reflects on them.

14 The question is whether you should redecorate. My  
15 attitude is that if somebody wants his office painted, go  
16 ahead and paint it. Let everybody decide for himself if  
17 he wants the walls cleaned or a picture hung on the wall.

18 Mr Cassidy. The major area of contention has been the  
19 reorganization of the Commission, which has been put in  
20 effect theoretically on January 4th of this year. There are  
21 a number of areas that have not been resolved. Most of those  
22 involved senior staff of the Commission.

23 The Chairman. Here is what I would suggest.

24 If we do it where we put the decision with the Chairman  
25 subject to a majority vote, then on a tie vote, then of course

1 the tie would go to the Chairman. That is how it would  
2 work out.

3 The present Chairman has about a year to go.

4 Mr. Cassidy. Exactly a year.

5 The Chairman. After a year, he rotates out. Who will  
6 be the next Chairman?

7 Mr. Cassidy. Mr. Parker, who is Vice Chairman, will  
8 become Chairman in June, 1978.

9 The Chairman. What is his Party designation?

10 Mr. Cassidy. Republican.

11 The Chairman. Fine.

12 Senators Packwood. You do not mean a tie vote on substan-  
13 tive matters.

14 The Chairman. We are talking about a tie vote on  
15 administrative matters, for example. Name a few of them.

16 Mr. Cassidy. Personnel budget, procurement.

17 Senator Gravel. They had tie votes on that?

18 Mr. Cassidy. That is where most of their tie votes  
19 occur.

20 Senator Packwood. I have no quarrel with that. I am  
21 just reluctant to make it seven.

22 Any decision that the Commission takes is going to be a  
23 decision to limit, not a decision to expand. I do not think  
24 that is going to be good for this country. If they are  
25 stuck with a tie vote, they cannot move.

1 The Chairman. We have the law in pretty good shape for  
2 tie votes. The way it stands now, on a tie vote, the  
3 President gets his choice, whichever way he wants to go.

4 If the President chooses one way, we have the option to  
5 go the other way.

6 Mr. Cassidy. That is correct.

7 The Chairman. If you have a three-three tie, the  
8 President can choose to take the side of Commissioners A,  
9 B and C as recommended by them, and if he chooses to go that  
10 way, we have the right to go with the Commissioners D, E  
11 and F and vote that way, if we have the votes to override.  
12 You know how difficult it is to vote a majority of both houses  
13 when you have to fight the President and half the Commission.

14 Even so, that gives us the option of voting whatever way  
15 we want to go. Anytime you have a three-three vote, if you  
16 can get three votes for a position and the Congress wants to  
17 take that position, under the law, we have a right to imple-  
18 ment that. Is that not right?

19 Mr. Cassidy. That is correct, on substantive issues; as  
20 I understand your proposal you are talking about only about  
21 administration. It would not affect the Commissioners\*  
22 voting on substantive issues.

23 Senator Curtis. What the House did, it provides that  
24 the Chairman would be responsible for administration, in all  
25 except three areas: employment, discharges and key employees,

1 external relations -- I do not know what that is -- and  
2 budget.

3 This whole thing revolves around whether or not you have  
4 a new General Counsel.

5 The Chairman. If it were my way, I would fire the General  
6 Counsel. You have to decide who in the devil is in charge  
7 of this fool thing. At some point, somebody has to be in  
8 charge.

9 We investigated things about MacArthur and Harry Truman.  
10 MacArthur was right about the taxes and how you should fight  
11 the war. He was wrong that he did not have to obey Truman's  
12 orders.

13 As far as how the war should be fought, I sat through  
14 that investigation. I am convinced that MacArthur was right  
15 about how you should fight the war. Truman was correct in  
16 that he was Commander-in-Chief.

17 If the Counsel cannot work for the Commission or for the  
18 majority of the Commission to take orders, he should resign  
19 or be fired, in my judgment. That is a different issue.

20 It seems to me that whoever is the Chairman, that the tie  
21 should go to whoever the Chairman is. In other words, if  
22 a majority wants to vote the Chairman down, they can, but  
23 you should not vote the Chairman down by a tie vote. That  
24 seems to me how you can break the tie.

25 A year from now, Mr. Parker will be the Chairman, which is

1 fine. That way we will break the tie. All I want to do is  
2 break it.

3 Senator Roth. I see no objection to that, Mr. Chairman.

4 The Chairman. Why do we not recommend that? If there  
5 is no objection, we will recommend that in administrative  
6 matters the Chairman shall have charge of administration unless  
7 voted down by the majority. It takes four votes to vote down  
8 the Chairman.

9 Mr. Cassidy. Mr. Chairman, do you want to strike the  
10 House bill and report out the House bill with these amend-  
11 ments? How do you want to proceed?

12 The Chairman. Why do we not strike the House bill and  
13 report ours?

14 Without objection, then, we will report it in that  
15 fashion.

16 Senator Ribicoff. Mr. Chairman, Mr. Libassi did not  
17 understand the time. He apologizes for not being here at  
18 9:00 o'clock. Mr. Libassi is in the room.

19 Senator Roth. Before he comes, I have one minor matter  
20 which is not controversial.

21 Last year, Mr. Chairman, we included language for the  
22 International Trade Commission to continue to make certain  
23 reports with respect to synthetic organic chemicals. That  
24 was included as a part of the report because there was never  
25 agreement, and we did not do so.

1 I would like to include that same language that we  
2 included last year.

3 Mr. Cassidy. In the bill, or in the report, sir?

4 Senator Roth. In the bill.

5 The Chairman. Without objection, agreed.

6 That will settle the Trade Commission. I would suggest  
7 that you undertake to poll the absent members, if there  
8 is no objection, so that they can all be on record as to  
9 their position on this.

10 All right.

11 Mr. Frank Peter Libassi. Is he here?

12 Senator Ribicoff. Mr. Chairman, I would like to make a  
13 few remarks for Mr. Libassi. He comes from Connecticut and  
14 I have known him for a number of years. I think he is  
15 qualified by training and experience in his position.

16 For the past nine years, he has worked to solve the  
17 problems of American cities in Hartford Connecticut. He has  
18 led an innovative private sector effort uniting political,  
19 business and community leadership for the rehabilitation  
20 of housing and for the economic and social revitalization of  
21 the city.

22 In this job, he has dealt extensively with programs in  
23 HEW, HUD and Labor. He has served at Federal and State levels.  
24 levels. During his Federal service, Mr. Libassi received  
25 his distinguished service award and superior service citation





STATEMENT OF FRANK PETER S. LIBASSI

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The Chairman. Have you explored the potential conflict of interest problems and resolved those satisfactorily, Mr. Libassi, with our staff and the counsel in your department?

Mr. Libassi. Yes, Mr. Chairman, I have.

The Chairman. Are there any further questions, gentlemen?

Senator Ribicoff.. There is a point that I would like to make, Mr. Chairman.

The General Counsel is required to review legislation passed by Congress and write opinions interpreting the law. My feeling is Counsel should provide the staff with such opinions if they are requested by members of the staff. There have been times when it is important for our staff to have those opinions, which we have not had. I think we should have those.

The Chairman. I would like to ask one or two questions.

Senator Ribicoff. Is there any objection to giving staff the opinions that you give to the Secretary on legislative matters that reflect the work of this Committee?

Mr. Libassi. No, Senator, they would be available.

The Chairman. Mr. Libassi, as General Counsel, you and your staff review some of the legislation passed by Congress and write opinions interpreting the law.

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1           Would you provide for the Committee or the staff copies  
2 of such opinions, as they are requested?

3           Mr. Libassi. Yes, Mr. Chairman, we will do that.

4           The Chairman. We would like to have that information.  
5 Will you provide copies of briefs or memoranda you prepare  
6 or receive of court cases when they are requested?

7           Mr. Libassi. In connection with litigation matters?

8           The Chairman. Yes.

9           Mr. Libassi. We will make briefs available to members  
10 of the Committee.

11          The Chairman. The Committee was responsible for writing  
12 the provisions in law to make parents support their children.  
13 One of those provisions required your Department to help  
14 them locate an absent parent.

15          I understand that there are some location difficulties  
16 caused by alleged invasion of privacy claims. Would you  
17 please furnish the Committee, on a continuing basis, with  
18 copies of all the opinions prepared or received by the  
19 Office of General Counsel about such claims concerning  
20 absent parents?

21          Mr. Libassi. I would be glad to provide the Committee,  
22 Mr. Chairman, with copies of legal opinions with respect to  
23 the rules governing disclosure. If I understood the question  
24 correctly, yes, we would make those opinions available to the  
25 Committee.

1           The Chairman. Let me repeat the question so you do not  
2           misunderstand.

3           Would you furnish the Committee, on a continuing basis,  
4           with copies of all opinions prepared or received by the  
5           Office of General Counsel about such claims? We are talking  
6           about claims concerning absent parents.

7           Mr. Libassi. Yes, Senator. I believe there would be  
8           no problem with that. I want to be very careful in making  
9           that agreement with the Committee that I may not be inadver-  
10          tently be violating any statute that prohibits the Depart-  
11          ment from disclosing certain information to the fullest  
12          extent authorized by the statute and the rules of Congress.  
13          We would make available our opinion with respect to those  
14          matters.

15          The Chairman. Let me give you one example. A problem  
16          we have to contend with, you are in a situation where a father  
17          is making \$20,000 a year and well able to support his  
18          children. He leaves. He has a right to do that; I am not  
19          contesting his right to leave and abandon his family. He has  
20          a right to just take off if he wants to.

21          When he leaves and goes someplace else, he becomes  
22          interested in another woman, and perhaps they marry. A  
23          second family. All right.

24          He is divorced from the first wife and marries a second,  
25          that is still his child. There are some of us who are

1 concerned about making taxpayers pay to support that man's  
2 child by his first marriage where he is well able to support  
3 that child.

4 Admittedly, he cannot take his wife out to a swanky  
5 restaurant as often as he could otherwise if he is paying  
6 something to help take care of the child by his first marri  
7 marriage, but he can make a contribution, and for some  
8 time we had a difficulty there with your Department about  
9 someone claiming that there is a right of privacy in that  
10 Social Security number.

11 Here is the government trying to do right by the mother  
12 and the child and by the taxpayers. At that point, we want  
13 to know what the person's Social Security number is in order  
14 to call upon that man to do his duty.

15 Furthermore, we also had a fight to protect for the  
16 states the right to have the Social Security number on a  
17 driver's license or automobile registration papers. That  
18 helps us to find that person and to see if he is really in a  
19 position to make a contribution or not.

20 The Committee has prevailed in those areas.

21 While we respect the right of privacy, he does not have  
22 the right to be on the taking down end where he must identify  
23 himself when it comes his turn to do a duty that he owes to  
24 his government and his own family.

25 To say, oh, no, you do not have a right to know who I am,

1 it seems to me we have just about crossed that where you are  
2 claiming advantages from your government, and you do have  
3 a right to know who you are and where you live.

4 Can I take it that you will cooperate with that Committee  
5 in that respect for that information?

6 Mr. Libassi. Mr. Chairman, we certainly want to cooperate  
7 with the Committee. I think it is important that parents  
8 remain responsible for their children and before the general  
9 taxpayer is asked to provide financial support for any child  
10 that the parent of that child should be identified, located  
11 and required to provide financial support.

12 There is no reason why other hardworking families that  
13 are working very hard to support their own children should,  
14 in addition, support children when there is a parent, in fact,  
15 financially able to do so.

16 With the basic principle, I have no disagreement and will  
17 lend my full support to the Committee. I am a little  
18 cautious as to not making commitments to the Committee that  
19 I could not keep in terms of what the Department's present  
20 laws under which we are operating on the basic principle  
21 that the Committee has my full cooperation, Mr. Chairman.

22 The Chairman. You have outstanding credentials in the  
23 area of Civil Rights and nondiscrimination and I just want  
24 to point out to you that it is the worth kind of discrimina-  
25 tion for us to tax one father to support some other father's

1 child when the father who is paying those taxes to do that  
2 is not as well able to support his own child as the man to  
3 whom he is paying the money by way of the government.

4 Mr. Libassi. It is that kind of injustice that brings  
5 discredit on very good programs, Mr. Chairman.

6 The Chairman. Here is a father making \$10,000 a year.  
7 He is working very hard in supporting his family. Here is  
8 another guy making \$20,000 a year and has nobody to support,  
9 except himself. At least he is trying to escape his duty  
10 to make a contribution to his own child.

11 It is not right for this man making \$20,000 to be leaning  
12 on the fellow who is only making \$10,000 and has a big family  
13 to support.

14 Now and then we have to have sympathy towards our own  
15 people who are obeying the law and doing what is right. We  
16 must not discriminate against them, just as we do not want  
17 to discriminate against anybody.

18 When one relies upon the right of privacy to victimize  
19 the people who are doing what is right in this country, that  
20 is just unfair and it involves a discrimination of its own  
21 sort that I hope you would recognize.

22 Mr. Libassi. Yes, sir.

23 The Chairman. Thank you very much.

24 Senator Ribicoff. Mr. Chairman, if there are no further  
25 questions, I move that the Committee recommend F. Peter

1 Libassi for confirmation as HEW General Counsel;

2 The Chairman. Is there any objection?

3 Without objection, agreed. We will poll the Committee  
4 with regard to all of these nominees. If anybody wants to  
5 make any objection, I would like to know it before we get  
6 to the Floor with it.

7 Thank you very much.

8 (Thereupon, at 10:05 a.m. the Committee adjourned to  
9 reconvene subject to the call of the Chair.)

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